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M E M O R A N D U M

TO: Honorable Sen. Robert Wagner, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony in support of SB 48 –A5

DATE: 5/25/21

Cash bail is a deeply flawed method of determining who should and should not be detained pretrial. Judges, prosecutors and even defense attorneys have only a very limited insight into a defendant's financial circumstances, and so the resulting bail amount is often at best an approximation of the amount necessary to guarantee a defendant's appearance in court. The injustice that this creates is most manifest on the higher and lower ends of the income spectrum, where an affluent person will most typically be able to procure their own release but an indigent or houseless person may find themselves detained for a failure to muster a surety of several hundred dollars. A system of pretrial release that relies on financial circumstances as the mechanism that governs a defendant's release will typically disadvantage the poor.

In the meantime, a detained person may lose jobs, homes, custody of their children, and access to community supports and treatment. Multiple studies have demonstrated that a person who is detained pretrial is generally more likely to accept a plea offer and is more likely to serve a longer period of incarceration than a person who is released pending trial.

While Senate Bill 48, with the addition of the amendments currently under consideration, will take a substantial step toward creating a more equitable system of pretrial detention, the extensive discussion around this bill also highlighted some of the difficulties presented by amending Oregon's system of pretrial detention without a constitutional amendment.¹

¹ Oregon's Constitution establishes violent felonies shall not be bailable "when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and

Despite these limitations, SB 48 is worthy of passage. SB 48, as amended, will provide the Chief Justice of the Supreme Court, in consultation with the Criminal Justice Advisory Committee, with the power to promulgate rules governing those persons and offenses who will be subject to release, with or without special conditions. This will create consistency throughout the state and should do much to prevent lengthy pretrial detention stemming from the failure to raise a small amount of bail to post against a low level misdemeanor offense.

SB 48 will also clarify the timelines in which a release decision should be made by the court and significantly enhance opportunities for victim notification and engagement early in the process. While making sure that victims are provided with the opportunity to be heard regarding release decisions and release criterion remains an important policy objective which warrants both additional legislative attention and monetary investment, SB 48 constitutes an important step in this regard.

The Multnomah County District Attorney's Office wishes to thank the Criminal Justice Commission, particularly Executive Director Ken Sanchagrin, for hosting a truly inclusive and open dialogue around this important policy issue. We look forward to continuing to work with the CJC and other stakeholders moving forward.

MCDA urges the passage of SB 48.

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convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release." Art I, Sec. 43. This provision presents a potential alternative to our current system of pretrial detention, but the current language is too narrow to accommodate, for example, a defendant who would deliberately avoid apprehension or flee the jurisdiction if released.