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MEMORANDUM

TO: Honorable Rep. Kropf, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony in support of HB 2323

DATE: 1/25/23

BACKGROUND

For the last six years, a new line of judicial decisions have created deep uncertainty throughout the criminal justice system. These cases, which began with *State v. Simonov*, decided in 2016, have abruptly reversed a longstanding interpretation regarding how mental state is used in determining guilt. For most of Oregon's history, the term "mental state" was used to by the legislature to instruct prosecutors what needed to be proven in order to establish that the defendant had made the decision to commit a crime. After *Simonov* and its progeny, the state has increasingly been obligated to prove a mental state not just where it was explicitly written by the legislature, but as to many other elements of the crime which do not have a listed mental state in statute. The consequences have been significant.

In 2016, following the court's decision in *State v. Simonov*, prosecutors frequently found themselves unable to prosecute otherwise routine stolen car cases because of a new requirement that the state not only prove that the defendant knew they were stealing a car, but that they also knew that the owner did not consent to the theft. Given that a defendant generally has never met the person from whom they are stealing a car, this requirement was often impossible to prove. As prosecution of stolen car cases declined even as the raw number of stolen cars increased, the legislature responded with the passage of HB 2328 (2019), which reached a compromise only as to the crime of

unauthorized use of a vehicle. In the years following *Simonov*, a series of opinions have extended the requirement that the state prove a mental state for additional elements to a range of other crimes including theft and assault, all without announcing a clear rule that can be applied across all crime types. The resulting uncertainty has resulted in over a dozen additional court cases just within the last two years, each addressing a new crime and often failing to clarify what exactly prosecutors are required to prove.

A few examples of the new and shifting legal obligation of how the new requirement that the prosecution prove a mental state element for these additional circumstances are provided below:

- A person intends to steal a laptop computer. The state now must prove that they have a culpable mental state not just for choosing to steal the laptop, but also for how much the laptop costs. There is typically no physical evidence that would allow the state to prove what the defendant thinks about the cost of the stolen laptop – that information exists entirely in their mind.
- A person intends to break a car window. The state must now also prove that they had a culpable mental state as to the amount of damage they caused when they broke the window, not just that they intentionally broke it.
- A person intentionally hits their girlfriend in the face, shattering their orbital socket. When asked, they claim they didn't mean to hit her that hard. The state now must prove that they had a culpable mental state as to the severity of the injury, not just the intent to cause harm.

House Bill 2323 restores the previous understanding of mental state.

In the years prior to *Simonov*, both the prosecution and defense would argue the mental state of a crime, as it was written by the legislature, for any conduct element of the crime. HB 2323 restores that understanding. This returns the fundamental role of the idea of a mental state to where it existed for at least three decades prior to *Simonov* – that once the decision is made to commit a criminal act and that can be proven beyond a reasonable doubt, the consequences that flow from that decision are the fault of the defendant, regardless of whether they were fully anticipated. If you push someone with the intent to harm them and they fall into the street as a result, you should bear responsibility for the harm caused, regardless of whether you specifically anticipated they would strike their head on the concrete below.

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