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M E M O R A N D U M

TO: Honorable Sen. Prozanski, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony in support of SB 343 -1

DATE: 2/19/23

The Multnomah County District Attorney's Justice Integrity Unit ("JIU") works to uphold justice by evaluating the soundness and fairness of closed cases. This includes the reevaluation of cases involving the use of evidence which is later found to be insufficient. In August of 2022, the JIU notified the District Attorney that they had encountered a problematic number of cases involving cases referred prosecution for driving while suspended on both the misdemeanor and felony levels which appeared to be reliant on inaccurate Department of Motor Vehicle (DMV) records. In these cases, DMV records would indicate that a person's status was "suspended" even though by statute the period of suspension had already expired. The date of expiration for the suspension would often appear within these records as "00/00/0000." The status of the driver, which appears at the top of the driving record, would indicate "Status: Felony (or Misdemeanor) Suspended."

For a law enforcement official running DMV records from the on-board system of their patrol car, this entry is meant to signal that a driver is suspended, and creates probable cause that the person should be arrested and their car towed. For prosecutors and defense attorneys, these records can create the strong misimpression that a person is guilty of a crime that they are not factually guilty of. The potential for unlawful arrest or prosecution is, therefore, unacceptably high.

In late August, MCDA convened a discussion with DMV, the Department of Corrections (“DOC”), and law enforcement partners to investigate the cause of the error. After investigation, it was determined that the error was being caused by the current method of calculating when a term of suspension begins.

Under Oregon law, a driver’s license suspension imposed as the result of a criminal conviction begins at the time of release from any term of incarceration, not from the moment of sentencing or the entry of judgment.¹ This is meant to keep any period of incarceration from counting against the duration of the suspension imposed. As a practical matter, DMV will impose the suspension at the point that a person has entered custody even though the term of their suspension has not officially begun. Because at this point the exact termination date of the suspension is unknown, the expiry is entered with a placeholder of “00/00/0000.” Because DMV cannot know precisely when a person will be released from custody, the practice under existing law has been to require the person released to affirmatively notify DMV that they have been released via a “NOTICE OF RELEASE FROM INCARCERATION,” which is a standardized DMV form.

If the person does not complete the form, DMV has no way of knowing that a person has been released. As such, the termination date remains “00/00/0000,” essentially meaning that a person will stay suspended indefinitely, or until they take affirmative action to reinstate their driving privileges. This can be true years after the underlying suspension was meant to elapse, exposing these individuals to arrest, prosecution and even conviction. Given that many of individuals will have been told by their attorneys and the court of conviction that their suspension would be for a certain amount of time after their release, the potential for an unjust result is even higher, as some of these individuals will have no reason to believe they are criminally suspended.²

After several meetings, DOC and DMV were able to reach an agreement wherein DMV will provide DOC a data file on a rolling basis of all active suspension based judgments based in their system. DOC will data match that list by name, DOB and crime, then provide DMV with the matched data set to include the projected release date from DOC on all listed crimes. The agencies have expressed confidence that this will resolve the

¹ See ORS 807.240, 809.409 and 809.411.

² It is important to note that these individuals will typically be “violation” level suspended, and technically still forbidden from driving. However, the penalties associated with this level of suspension are vastly less serious than for Felony DWS, which is a Class C Felony which can carry a presumptive prison sentence.

issue with inaccurate records as to all individuals sentenced to a term of incarceration at DOC.

Unfortunately, the same issue exists for individuals sentenced to a jail sentence. After discussion with our law enforcement partners, it was the conclusion of the group that requiring the jails to provide DMV with this information on a rolling basis was not feasible. Because of the varying levels of staffing, turnover, and IT system sophistication across Oregon's many jails, even a statutory mandate requiring DMV to be updated whenever a person with a qualifying offense is released from custody seemed complicated to implement and unlikely to be followed consistently.

SENATE BILL 343 -1 WILL PREVENT THIS ISSUE FOR INDIVIDUALS SENTENCED TO JAIL

The result of workgroup discussions, the policy proposal offered by SB 343 -1 was the only viable fix. This bill will modify the law so that a driver's license suspension **for any person not sentenced to prison** will begin on the day of sentencing, not the day of release from custody. This will have the effect of shortening suspension periods by the duration of any jail sanction, but the reduction will be relatively modest. More importantly, no other fix for this problem was available, at least within the collective expertise of the participants in the workgroup. **The -1 amendments require a slight further revision to fully draw the necessary distinction between individuals sentenced to a term of jail versus a term of prison.** But the need for a legislative fix is clear – in the absence of legislative action, the risk of wrongful arrest and possible wrongful prosecution remains significant.

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