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DATE: February 23, 2016

TO: Senate President Pro Tempore Diane Rosenbaum, Chair Senate Rules Committee

FR: Jeffrey R. Rhoades, Deputy District Attorney, Multnomah County

RE: **SB 1553A- Protecting Vulnerable Road Users; Position of Support**

Chair Rosenbaum and Members of the Committee:

This testimony is given in support of Senate Bill 1553A, which seeks to protect vulnerable road users suffering serious physical injury by means of a motor vehicle.

I. Terminology and Legal Background

Senate Bill 1553A creates a new category of Assault III that applies in cases where a vulnerable road user suffers serious physical injury as a result of criminal negligence by means of a motor vehicle. Three important legal terms of art are utilized in this bill: 1) vulnerable user of a public way; 2) serious physical injury; and 3) criminal negligence.

Vulnerable User of a Public Way: ORS 801.608 defines the term “vulnerable user of a public way” as follows: “vulnerable user of a public way means a pedestrian, a highway worker, a person riding an animal or a person operating any of the following on a public way, crosswalk or shoulder of the highway: 1) A farm tractor or implement of husbandry; 2) A skateboard; 3) Roller skates; 4) In-line skates; 5) A scooter; or 6) A bicycle.” ORS 801.608. This provision is currently utilized in statutes such as “Careless Driving,” which has an increased penalty when this special class of victim is involved. See ORS 811.315(3). The legislature created these provisions in 2007 via HB 3314.

Serious Physical Injury: “Serious physical injury,” represents the most egregious category of injury under the law. The term is defined as “physical injury which creates a substantial risk of death or which causes serious and protracted impairment of health or protracted loss of impairment of the function of any bodily organ.” ORS 161.015(8). Typical examples of serious physical injury include loss of limbs, paralysis and permanent brain damage. Oftentimes victims suffering such injuries will require constant medical care for the remainder of their lives.

Criminal Negligence: Lastly, “criminal negligence,” means that “a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that [a] circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.” ORS 161.085(10). Criminal negligence is a much higher bar than civil negligence and it is important to recognize that it must be proven to the highest standard under the law- beyond a reasonable doubt. Thus, crimes committed

with criminal negligence are not “accidents” as in many civil cases where fault apportionment may be at issue. Rather, they constitute criminal activity and should be handled by the criminal justice system where crime victims are afforded certain rights and protections not available in the civil realm.

II. Senate Bill 1553A Fixes a Gap in the Law

Currently, if a vulnerable road user dies as a result of criminally negligent assault with a motor vehicle, the defendant may be charged with “Criminally Negligent Homicide” under ORS 163.145. If the victim survives, but is paralyzed or loses a limb, no criminal charges exist. Senate Bill 1553A fixes a gap in Oregon law by allowing the state to pursue charges when a vulnerable road user suffers serious physical injury by means of criminal negligence with a motor vehicle. Without the ability to pursue such charges, restitution cannot be made available to the victim.

Indeed, Senate Bill 1553A is rooted in a crime victim’s constitutional right to restitution. Article I, Section 42 of the Oregon Constitution guarantees a crime victim “[t]he right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury.” Or. Const. Art. I Sec. 42. Restitution may only be granted upon defendant’s conviction and is oftentimes among the most important pieces of a defendant’s sentence from the victim’s perspective. For victims suffering serious physical injury, restitution is of the utmost importance.

Senate Bill 1553A applies the sentencing guidelines purposefully to make certain there will not be an appreciable impact to the Department of Corrections. The bill classifies the crime as a “crime severity 4,” meaning that the application of the sentencing guidelines makes a Department of Corrections sentence impossible. Rather, sentencing on such cases is most likely to constitute probation with appropriate conditions such as high risk driving courses, drug and alcohol treatment and an appropriate payment plan for restitution. The bill therefore assists crime victims without increasing Oregon’s prison population.

Furthermore, the bill will not have a significant impact on Oregon’s courts. Very few incidents fitting this crime category occur in a given year, meaning that our courts will not be subject to an increase in litigation. However, when these crimes occur they invariably involve traumatic injury such as paralysis and brain damage. Despite the small number of cases, those that do occur are serious and the victims have a greater need for restitution payments.

The Multnomah County District Attorneys Office and the Oregon District Attorneys Association urge the committee to recommend passage of Senate Bill 1553A, which affords important protections to vulnerable road users without significant cost to Oregon’s criminal justice system.