

HB 3148 A STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Judiciary**Action Date:** 05/03/23**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 3-0-1-1**Yeas:** 3 - Gelser Blouin, Manning Jr, Prozanski**Exc:** 1 - Thatcher**Abs:** 1 - Linthicum**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Amie Fender-Sosa, LPRO Analyst**Meeting Dates:** 4/27, 5/3**WHAT THE MEASURE DOES:**

Concerning missing individuals, removes authorization for a peace officer to request an investigative subpoena (subpoena) be issued from a circuit court judge, but continues to allow a peace officer to request a subpoena from the Attorney General, a district attorney or a county attorney. Sets forth process for a peace officer to request a court order if a peace officer can demonstrate a person is unlikely to comply with subpoena or has refused to comply with subpoena. Permits the court to hold a hearing on its own motion or upon request. Specifies subpoena or court order must be served in compliance with Oregon Rules of Civil Procedure 7 (ORCP 7: summons instructions). Specifies that a recipient of an investigative subpoena or court order may request a protective order or other relief from the subpoena; allows assertion of individual's right against self incrimination, or any other right. Directs that evidence obtained pursuant to this section may not be used for a criminal investigation or prosecution of the missing individual.

ISSUES DISCUSSED:

- Sheriffs are tasked with the search and rescue of missing persons
- It has been difficult for sheriffs' offices and rescuers to obtain information to assist in rescues
- Sheriffs use investigative subpoenas to search for records related to the whereabouts of the missing person
- Recipients of subpoenas (example provided of a cell phone service company) have been confused by the subpoena
- Sheriffs have been able to get prompt responses / compliance with a court order, instead of a subpoena
- Current law may protect a person who committed a criminal act against the missing individual
- Amendment lays out process and procedures for application of court order, service and information to be provided to the person served

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

Current law allows for a peace officer who has probable cause to believe that a person is missing and in danger to request that the Attorney General, a district attorney, a city or county attorney, or a circuit court judge execute and serve an investigative subpoena. (A subpoena is a writ or order commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply, such as being held in contempt of court. Sometimes the subpoena can also require the production of documents or things.) In addition, any information, documents or physical evidence obtained as a result of the investigative subpoena may not be used for criminal investigation or prosecution of anyone, including the person who may have caused the person to be missing.

HB 3148 A STAFF MEASURE SUMMARY

House Bill 3148 A creates a process for a peace officer to request a court order (instead of a subpoena) if a peace officer can demonstrate a person is unlikely to comply with subpoena or has refused to comply with subpoena. It directs that evidence obtained from the subpoena or court order may not be used for a criminal investigation or prosecution of the missing individual.