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OREGON STATE SHERIFFS' ASSOCIATION
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To: **Members of the House Committee on Judiciary**

From: Brad O'Dell, Lieutenant Douglas County Sheriff's Office
Oregon State Sheriffs' Association & Oregon Association Chiefs of Police

Date: February 28, 2023

Re: **HB 3148-Testimony-Support-Court Order for information on a missing person**

Chair Kropf and members of the committee,

For the record, my name is Brad O'Dell, I am a Lieutenant with the Douglas County Sheriff's Office and I oversee the Search and Rescue team at the Douglas County Sheriff's Office. In addition to the Douglas County Sheriff's Office, I'm testifying today on behalf of Oregon State Sheriffs' Association (OSSA) and Oregon Association Chiefs of Police in support of HB 3148.

I'd like to begin my testimony today by thanking Representative Osborne for introducing this important measure.

Oregon Sheriffs are tasked with the responsibility of Search and Rescue of persons who are reported missing in their counties. In the past several years, there have been several searches where critical personal information necessary to locate a missing individual has been difficult for Sheriff's Office rescuers to obtain under the current subpoena requirements. I'd like to share an example of this from my county.

In August of 2019, our agency was made aware of a young father named Sean and his two-year-old daughter Maddison who had gone missing. They were overdue and family had expressed great concern for their wellbeing. It was reported that it was abnormal for them to not have contact with other family members. Our agency aggressively investigated the incident, to include attempting to utilize the provisions of ORS 404.135; the ORS HB 3148 proposes to change. As written into law, ORS 404.135 allows investigators to obtain an investigative subpoena to obtain records to further the search of a missing person.

What we found were that entities were unfamiliar with an investigative subpoena and ultimately refused to provide any documentation. Ultimately, our investigators were able to obtain a court order from the Circuit Court and served that order upon the entities who then provided the information. One of those entities, a cellphone carrier, provided information and documentation which allowed investigators to identify an area to focus the search. Sadly, just over three months after being reported, their bodies were recovered from the river where their vehicle had crashed and been submerged underwater. Without the information obtained by

the court order, it would have been extremely difficult to limit and focus on the proper search area.

I would also like to highlight a key language change that HB 3148 provides. This is found in proposed subsection 5, which reads:

*(5) Information, documents or physical evidence obtained pursuant to this section may not be used for criminal investigation or prosecution **of the missing individual.***

When investigating these types of cases, it is not always immediately apparent that the case is criminal in nature until well into the investigation. The current law, as it is written today, could prevent any information, documents or physical evidence from being used to prosecute a person who committed a criminal act against the missing person. By adding the language “of the missing person”, it protects the missing person from investigation and prosecution for any information discovered during the investigation, but does not unintentionally afford the same protections for a person who committed a criminal act against the missing individual.

An example of this would be if investigators were to discover an individual other than the missing person using the missing person’s debit card and upon further investigation it is learned the missing person was the victim of homicide. The use of the missing person’s debit card after their disappearance could be crucial evidence in the prosecution of the case.

The issues lie in the fact that the investigators weren’t aware at the time they had obtained the investigative subpoena or court order that the missing person’s case was the result of a criminal offense – they were simply investigating a missing person case. However, information obtained from court order or investigative subpoena led investigators to uncover a criminal offense, evidence of which was obtained in good faith while attempting to locate a missing person. As the law exists today, this evidence cannot be used in a criminal prosecution.

That is where this important bill you are hearing today alleviates these concerns. HB 3148 would authorize a peace officer to request a court order from the Circuit Court for information regarding a missing person. It also provides protection for the missing person against self-incrimination or having the information obtained through the court order used to criminally investigate or prosecute the missing person; but it will also protect the missing person’s interest in justice by not preventing crucial evidence being inadmissible in a prosecution of an individual who caused the missing person’s disappearance.

With that, I urge you to please join me in supporting HB 3148 and its important provisions. I would also like to thank you for the opportunity to testify before you today. I’m happy to answer any questions that you may have.