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MEMORANDUM

TO: Honorable Sen. Prozanski, Chair

FROM: Aaron Knott, MCDA Policy Director

SUBJECT: Testimony in support of SB 915

DATE: 3/29/23

BACKGROUND

Due to ethical conflict rules, prosecutors are almost never asked to prosecute someone who they know personally. If the conflict is relatively minor, the expectation is that the prosecutor will hand the case off to a colleague as soon as they become aware that the conflict exists. If the conflict is more significant – a family member, or someone who works in the office, to give two examples – the general procedure is to hand the matter off completely to another District Attorney's office, or to the Oregon Department of Justice. This is necessary to maintain the faith of the public in the integrity of the process.

But when law enforcement is the subject of the prosecution, this rule does not always apply. Despite the fact that prosecutors work closely alongside members of front line law enforcement in developing and prosecuting criminal cases, often developing strong professional relationships that can span years, the standard expectation is that when those members of law enforcement are the subject of a criminal investigation, the DA's office will proceed with the prosecution as though that prior relationship does not exist.

The fatal use of force by a law enforcement officer is an extremely sensitive event which must be handled with the highest levels of process and transparency, especially in communities which view the collaborative relationship between prosecution and law

enforcement with suspicion. One option which exists under current law, and which multiple prosecutors already utilize, is to refer these matters to the Oregon Department of Justice via their “DA-Assist function.” This function, which is also responsible for handling conflict cases and complex litigation referrals for the entire state and especially for Oregon’s rural counties, does not have significant staffing to handle all that is being asked of them, nor do they have specialized capacity to address officer use of force cases as the complex and discrete category of cases that they are. Under Senate Bill 111 (2005), any case involving the fatal use of force by law enforcement must be subjected to a higher level of scrutiny and mandatory process, necessarily requiring the involvement of a prosecutor’s office.

SENATE BILL 915 MAKES A NEEDED INVESTMENT FOR THE TRANSPARENT, ACCOUNTABLE PROSECUTION OF FATAL USE OF FORCE CASES

SB 915 would create a specialized resource within the Oregon Department of Justice to handle the referral of criminal prosecutions involving the fatal use of force by law enforcement. This additional resource would allow for these cases to be handled by specialized experts not immediately connected to the local municipality where the use of force occurred. This would be an opt-in model similar to how the Oregon DOJ’s DA-Assist function is structured more broadly – while any Oregon prosecutor could request the involvement of DOJ in a fatal use of force prosecution, none would be required to do so. This modest investment would allow DOJ to invest in specialized expertise to manage these crucially important and sensitive cases without risking the displacement of other priorities, while furthering a transparent and arm’s length process of investigation and prosecution for participating counties.

We urge the passage of Senate Bill 915.

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