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January 24, 2023

VIA ELECTRONIC SUBMISSION ONLY

The Honorable Diane Larson
Chair, ND Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Testimony in Support of SB 2216

Dear Chairman Larson and members of the Senate Judiciary Committee:

My name is Luke Heck, and I am a criminal defense attorney in Fargo, ND, and other than during law school, a lifelong North Dakotan. I submit this written testimony in full support to SB2216. Put simply, SB2216 is “no brainer” legislation that supports and protects the privacy of those arrested and accused, but not convicted, of a crime, as well as protects those law enforcement who placed themselves in peril during a critical incident. SB2216 protects both classes of individuals, the arrestee and the arrestor, from disclosure of their personal contact information, which continues to be harvested by third parties, while they are struggling through difficult times in their lives and/or careers.

As a defense attorney, my clients are often arrested for an alleged offense. Over the course of the last few years, these arrests have led to clients receiving harassing, misrepresentative letters from third party vendors seeking financial benefit from their misfortunes. One example is a third party ignition interlock company, which provides services for “blow-and-go” breath testing devices to install in vehicles. While ignition interlock is utilized in many states, the NDDOT does not acknowledge ignition interlock devices for those suffering a DUI license suspension or revocation, nor does the North Dakota court system utilize interlock for any purpose. Instead, clients are confused, and are being bamboozled by entities such as this who attempt to get North Dakotans to pay for services they do not need and cannot use.

Another example is the utilization of arrest records and citation information being used by my own profession. It is now commonplace for potential clients to come in with direct solicitation letters from some select defense lawyers. While letter solicitation is “ethical” under the North Dakota Rules of Professional Conduct, I have reviewed some of these letters, and have found misstatements of North Dakota DUI law being provided to individuals. This occurs because there are no protections in place to make an accused’s contact information, such as phone number and mailing address, confidential prior to an individual being convicted.

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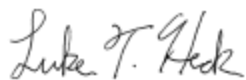
There simply is no legitimate purpose for an arrestee's address and phone number to be public record or accessible to data harvesting. These are individuals who have a constitutional right to the presumption of innocence, not the presumption that they will receive a half dozen direct mailings about paying for services they cannot utilize.

The same is true with law enforcement. Law enforcement officers who are involved in "critical incidents," as defined in SB2216, deserve to be protected from the dissemination of their identity and personal contact information just as well. These individuals either directly placed themselves in danger serving their community, or otherwise were involved in a very serious investigation, often times involving death. These law enforcement professionals unfortunately, as the adage goes, take their work home with them when critical incidents occur. Officers deserve to be able to be with their families, and get whatever professional assistance necessary after dealing with traumatic incidents in their careers. They deserve that without harassment, and without their names and personal information being made public prior to the matter's investigation being completed.

SB2216 does not bar the disclosure of contact information in perpetuity. Instead, the bill acknowledges the inherent public policy and privacy interests in protecting our police after critical incidents, and ensures those accused of crimes are free from harassing, misleading communications while they still enjoy the presumption of innocence. In other words, the information sought to be protected under SB2216 is only confidential for specific periods of time, until an accused has been convicted and until a critical incident investigation has been completed. SB2216 provides practical protections for those who should already have such protections.

I respectfully ask this Committee to recommend a "do pass" of SB2216, with the amended language striking "correctional facilities" from the section in question. Please do not hesitate to contact me if you have any questions.

Very truly yours,



Luke T. Heck

LTH:lh