



OFFICE OF THE DISTRICT ATTORNEY

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To: Members of the House Committee on Judiciary
From: Richard Wesenberg, Douglas County District Attorney
Date: February 7, 2023
Re: HB 3148-Testimony-Support-Court ordered Subpoena for information on a missing person

Chair Kropf and members of the committee,

For the record, my name is Richard L. Wesenberg Jr., I am the Douglas County District Attorney and I am responsible for the prosecution of criminal offenses in Douglas County. I'm testifying today on behalf of the Douglas County District Attorney's Office and its prosecutors.

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

District Attorneys and their offices are tasked with the prosecution of criminal offenses across this state. As such, law enforcement refers cases to us for this purpose. However, prosecutors are not always involved from the beginning of investigations; specifically, in the cases of missing persons where there are no indications of criminal wrongdoing. These cases are often investigated and resolved by law enforcement without the involvement of any prosecutor's office as there is no need for one to be involved.

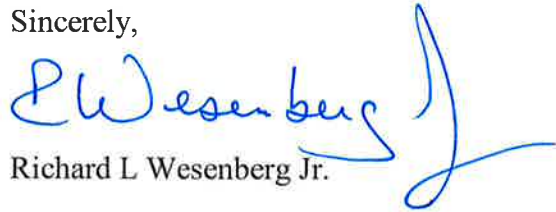
However, there are many examples of cases that began as missing person investigations that turn out to be homicides, kidnappings or have some other criminal component. These facts are often learned well into the investigation. Herein lies my concern with how the law is written today in ORS 404.135 that HB 3148 attempts to correct.

The law as it stands today reads that if an investigator obtains an investigative subpoena the "*information, documents or physical evidence obtained pursuant to the section may not be used for criminal investigation or prosecution.*" (ORS 404.135 (3))

The need to add the words "*of the missing individual.*" are critical to ensure the integrity of any subsequent prosecution that may be required, if while acting in good faith, a police officer obtains the information pursuant to the law, but later discovers the missing person's disappearance is criminal in nature. With the proposed change in HB 3148, my concerns are alleviated and may assist in locating many missing individuals while protecting them from investigation or prosecution while not jeopardizing a subsequent prosecution of those who have done criminal acts against the missing person.

Please join me in supporting HB 3148. Thank you for considering my testimony on this important bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Wesenberg Jr.", with a large, stylized flourish extending from the end of the signature.

Richard L. Wesenberg Jr.