

**Written Testimony for the Oregon House of Representatives  
House Bill 2609**

Committee on the Judiciary  
Chair Jeff Barker

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The city of Beaverton supports House Bill 2609. The bill would give prosecutors the option of verifying a misdemeanor criminal complaint or information by certification rather than by oath. This small procedural change would help reduce waste and improve operational efficiencies in connection with the electronic filing of misdemeanor criminal complaints. I urge your support of House Bill 2609.

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### **The Problem**

Oregon prosecutors who use (or plan to use) an electronic document management or a case management system in connection with preparing and filing accusatory instruments have a problem. The problem centers on the requirement found in ORS 133.015(8) that a misdemeanor criminal information or complaint contain a "verification" by the complainant.<sup>1</sup>

Under Oregon law, the act of verification means making a statement under oath, which in turn generally requires the statement be verified by a notary public. The act of verifying an accusatory instrument creates a traffic jam in the processing electronically stored accusatory instrument because the common practice used to verify an information or complaint is to print out the accusatory instrument, apply a notary's seal to the accusatory instrument under oath or affirmation, and then scan the document back into the electronic system.

One of the hallmarks of an inefficient electronic case management or document management system is when an electronically stored document is printed out, acted upon, and then scanned back into the system. The problem is not something the authors of the state's criminal procedure code foresaw when the code was drafted in 1972.

### **The Solution**

The proposed solution to this problem is to allow prosecuting agencies to "certify" an information or complaint in a misdemeanor criminal prosecution and to punish a false certification of an accusatory instrument as a Class A misdemeanor.

The proposed solution entails an amendment to the state's criminal procedure code. The change would allow complainants the option of "certifying" a misdemeanor accusatory instruments in addition to "verifying" the information or complaint.

The proposed solution does not mandate any change in a prosecuting office's policies, practices or procedures. Misdemeanor accusatory instruments can still be verified, if desired. The proposed solution will only provide a way for prosecuting agencies that use an electronic document management

or case management system to improve their operational efficiencies in connection with the preparation and filing of misdemeanor accusatory instruments.

The specific changes to criminal procedure code being proposed are, first, amend ORS 133.015(8) to add the following bolded text:

(8) The verification by the complainant and the date of the signing of the information or complaint. **An information or complaint charging a defendant with an offense, other than an offense punishable as a felony, shall be deemed verified by the complainant if it contains a form of certificate in which the complainant certifies, under the penalties described in ORS 133.992, that the complainant has sufficient grounds to believe, and does believe, that the defendant named in the information or complaint committed the offense specified in the information or complaint..**

And second, amend ORS 133.922 to add the following bolded text:

(1) [Any] A person who maliciously and without probable cause causes a search warrant or a court order for interception to be issued and executed is guilty of a Class A misdemeanor.

**(2) A person who knowingly falsely certifies an information or complaint under ORS 133.015 (8) is guilty of a Class A misdemeanor.**

The proposed solution also would punish a false certification of an accusatory instrument in the same fashion Oregon law currently punishes the false verification of accusatory instruments. Both acts would be punished as a Class A misdemeanor. A false certification would be punishable under a newly amended ORS 133.922(2) as a false certification of an accusatory instrument. A false verification would remain punishable as a false swearing under ORS 162.075.

## The Legal Analysis

The requirement of verification of a misdemeanor accusatory instrument is found at ORS 133.015, which reads in full:

### **ORS 133.015 Contents of information or complaint.**

An information or complaint shall contain substantially the following:

- (1) The name of the court in which it is filed;
- (2) The title of the action;
- (3) A statement that accuses the defendant or defendants of the designated offense or offenses;
- (4) A separate accusation or count addressed to each offense charged, if there be more than one;
- (5) A statement in each count that the offense charged therein was committed in a designated county;
- (6) A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time;
- (7) A statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended; and
- (8) The verification by the complainant and the date of the signing of the information or complaint.

The legislative history of ORS 133.015 provides little insight into the meaning of the term “verification” as used in subsection 8 of the statute. The commentary to the section of the final draft of the Oregon Criminal Procedure Code essentially states that ORS 133.015 is derived from ORS 132.550, relating to the content and sufficiency of indictments, but that provision does not mention “verification” in its text.

The term “verification” (or any of its related forms) is not defined in the state criminal code or criminal procedure code. But evidence that a verification entails an oath or affirmation is found in ORS 131.005(3), which is part of the same criminal procedure code that includes ORS 133.015. ORS 131.005(3) states that a complaint is a written instrument “verified by oath.”

Outside of the state criminal code and criminal procedure code, the term “verification on oath or affirmation” is defined in ORS Chapter 194 (Uniform Law on Notarial Acts) as “a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.” While ORS Chapter 194 is not part of the criminal code or criminal procedure code, it is closely related to the verification of legal documents, which would include criminal informations and complaints.

In common use, the meaning of the verification is “the act or process of verifying; the state of being verified.” The term’s root word, “verify,” means “to confirm or substantiate in law by oath” or “to establish the truth, accuracy, or reality of.” It seems the first definition is most relevant in this context: to confirm or substantiate by oath.

By virtue of the ordinary dictionary meaning and the context and purpose of the term’s use in ORS 133.015, a complainant’s “verification” of an information or complaint conveys that the complainant’s signing of the instrument is a confirmation or substantiation by oath or affirmation. Oregon case law supports this conclusion. See, e.g., Watts v. Gerking, 111 Or 641, 660 (1924) (meaning of “verify” is to confirm or substantiate by oath).

In summary, Oregon law requires the verification of an information or complaint, which must be accomplished by oath or affirmation. This statutory requirements regularly results in the electronically stored information or complaint being printed out, the notary seal being applied upon verification of the accusatory instrument, and the notarized document then being scanned back into to electronic document management or case management system. This processing inefficiency can be avoided if prosecuting offices could simply “certify” rather than “verify” a misdemeanor complaint or information.

## Conclusion

House Bill 2609 would make a narrowly focused procedural change in the Oregon Criminal Code that would promotes justice by reducing waste and improving operational efficiencies. I urge your support.

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<sup>1</sup> In this context, a misdemeanor complaint “means a written accusation, verified by the oath of a person, filed with a magistrate, and charging another person with the commission of an offense, other than an offense punishable as a felony.” ORS 131.005(3). The complaint serves both to commences an action and as a basis for prosecution thereof. *Id.* In comparison, an information in this context means a “district attorney’s information,” which is “a written accusation by a district attorney [which includes a city attorney, see ORS 131.005(8)] and if filed with a magistrate to charge a person with the commission of an offense, other than an offense punishable as a felony, serves to both commence an action and as a basis for the prosecution thereof.”

