



**TO: Sen. Floyd Prozanski, Chair  
Sen. Kim Thatcher, Vice Chair  
Members of Senate Judiciary Committee**

**FR: Amanda Dalton  
On behalf of OR District Attorneys Association**

**RE: SB 867 - Support**

February 27, 2023

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Generally speaking, a person accused of crime has the constitutional right to confront their accusers. However, there is a longstanding exception under the constitution for those instances where a victim does not come to court because of the defendant's actions. This can include tampering with the victim, intimidation, and outright threats of violence, and is particularly common in domestic violence cases. This legal doctrine, called **"Forfeiture by Wrongdoing,"** stands for the principle that if a defendant causes a victim not come to court through these unlawful behaviors, they should not benefit from the victim's absence.

Over the last few years, Oregon's courts have added requirements to this constitutional test which require the state to continue to attempt to personally serve a victim with subpoenas at their home and places of work, hold them in contempt of court or request material witness warrants for their arrest in order to prove that they are "unavailable" for the purposes of this doctrine. **None of this is required by the constitution.**

For victims who are terrified of further harm from defendants who have already hurt them, the trauma of having state investigators come to their home and work to pressure them into testifying is very real. In many cases, victims simply go underground or actively flee the area.

Developed in consultation with victims groups, the Department of Justice and multiple District Attorney's offices, the pending amendment language would bring Oregon into alignment with constitutional standards. The prosecution would still be required to prove that the reason a witness or victim did not appear to court was directly due to the actions taken by the defendant to scare, threaten or intimidate them, but would no longer be required to keep pursuing an already terrified victim with additional subpoena attempts, home visits from investigators, contempt orders and other highly intrusive measures.

We urge your support of Senate Bill 867.