# Enrolled
# House Bill 2322

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of House Interim Committee on Judiciary for Judicial Department)

CHAPTER .....

AN ACT

Relating to courts; creating new provisions; amending ORS 1.085, 1.220, 2.570, 3.070, 3.185, 19.335, 20.310, 133.545, 138.071, 138.083, 305.475 and 419B.806; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

## SEARCH WARRANTS

**SECTION 1.** ORS 133.545 is amended to read:

133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except as otherwise provided in subsection (2) of this section, a search warrant issued by a judge of a circuit court may only be executed within the judicial district in which the court is located. A search warrant issued by a justice of the peace may only be executed within the county in which the justice court is located. A search warrant issued by a municipal judge authorized to exercise the powers and perform the duties of a justice of the peace may only be executed in the municipality in which the court is located.

(2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution of a search warrant outside of the judicial district in which the court is located, if the judge finds from the application that one or more of the objects of the search relate to an offense committed or triable within the judicial district in which the court is located. If the warrant authorizes the installation or tracking of a mobile tracking device, the officer may track the device in any county to which it is transported.

(3) Application for a search warrant may be made only by a district attorney or by any police officer.

(4) The application shall consist of a proposed warrant in conformance with ORS 133.565, and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that the objects of the search are in the places, or in the possession of the individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the means by which the information was obtained.

(5) Instead of the written affidavit described in subsection (4) of this section, the judge may take an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed statement shall be considered to be an affidavit for the purposes of this section. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the judge

receiving it and shall be retained as a part of the record of proceedings for the issuance of the warrant.

(6)(a) In addition to the procedure set out in subsection (5) of this section, the proposed warrant and the affidavit may be sent to the court by facsimile transmission or any similar electronic transmission that delivers a complete printable image of the signed [*and acknowledged*] affidavit and proposed warrant. **The affidavit may have a notarized acknowledgement, or the affiant may swear to the affidavit by telephone. A judge administering an oath telephonically under this subsection must execute a declaration that recites the manner and time of the oath's administration. The declaration must be filed with the return.**

(b) When a court issues a warrant upon an application made under paragraph (a) of this subsection:

(A) The court may transmit the signed warrant to the district attorney or police officer by means of facsimile transmission or similar electronic transmission, as described in paragraph (a) of this subsection. The court shall file the original signed warrant and a printed image of the district attorney's or police officer's application with the return.

(B) The district attorney or police officer shall deliver the original signed [*and acknowledged*] affidavit to the court with the return. **If the affiant swore to the affidavit by telephone, the affiant must so note next to the affiant's signature on the affidavit.**

## APPEAL OF AMENDED AND SUPPLEMENTAL CRIMINAL JUDGMENTS

**SECTION 2.** ORS 138.071 is amended to read:

138.071. (1) Except as provided in [*subsections (2), (3) and (4) of*] this section, [*the*] **a** notice of appeal [*shall*] **must** be served and filed not later than 30 days after the judgment or order appealed from was entered in the register.

(2) If a motion for new trial or motion in arrest of judgment is served and filed [*the*] **a** notice of appeal [*shall*] **must** be served and filed within 30 days from the earlier of the following dates:

(a) The date of entry of the order disposing of the motion; or

(b) The date on which the motion is deemed denied.

(3) A defendant cross-appealing [*shall*] **must** serve and file the notice of cross-appeal within 10 days of the expiration of the time allowed in subsection (1) of this section.

**(4) If the trial court enters a corrected or a supplemental judgment under ORS 138.083, a notice of appeal from the corrected or supplemental judgment must be filed not later than 30 days after the defendant receives notice that the judgment has been entered.**

[*(4)(a)*] **(5)(a)** Upon motion of a defendant, the Court of Appeals shall grant the defendant leave to file a notice of appeal after the time limits described in subsections (1) to [*(3)*] **(4)** of this section if:

(A) The defendant, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the defendant personally; and

(B) The defendant shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) A defendant [*shall not be*] **is not** entitled to relief under this subsection for failure to file timely notice of cross-appeal when the state appeals pursuant to ORS 138.060 (1)(c) or (2)(a).

(c) The request for leave to file a notice of appeal after the time limits prescribed in subsections (1) to (3) of this section [*shall*] **must** be filed no later than 90 days after entry of the order or judgment being appealed [*and shall be accompanied by the notice of appeal sought to be filed*]. **The request for leave to file a notice of appeal after the time limit prescribed in subsection (4) of this section must be filed no later than 90 days after the defendant receives notice that the judgment has been entered.** A request for leave under this subsection **must be accompanied by the notice of appeal,** may be filed by mail and [*shall be*] **is** deemed filed on the date of mailing if the request is mailed as provided in ORS 19.260.

(d) The court shall not grant relief under this subsection unless the state has notice and opportunity to respond to the defendant's request for relief.

(e) The denial of a motion under paragraph (a) of this subsection [*shall be*] **is** a bar to post-conviction relief under ORS 138.510 to 138.680 on the same ground, unless the court provides otherwise.

**SECTION 3.** ORS 138.083 is amended to read:

138.083. (1)**(a)** The sentencing court shall retain authority irrespective of any notice of appeal after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors or to delete or modify any erroneous term in the judgment. The court may correct the judgment either on the motion of one of the parties or on the court's own motion after written notice to all the parties.

**(b)** If a sentencing court enters [*an amended*] **a corrected** judgment under this [*section*] **subsection while an appeal of the judgment is pending**, the court shall immediately forward a copy of the [*amended*] **corrected** judgment to the appellate court. Any modification of the appeal necessitated by the [*amended*] **corrected** judgment shall be made in the manner specified by rules adopted by the appellate court.

(2)**(a)** A judgment that orders payment of restitution but does not specify the amount of restitution imposed is final for the purpose of appealing [*from*] the judgment.

**(b)** Notwithstanding the filing of a notice of appeal, the sentencing court retains authority to determine the amount of restitution and to enter a supplemental judgment to specify the amount and terms of restitution.

**(c) If a sentencing court enters a supplemental judgment under this subsection while an appeal of the judgment of conviction is pending, the court shall immediately forward a copy of the supplemental judgment to the appellate court.** Any modification of the appeal necessitated by the supplemental judgment may be made in the manner specified by rules adopted by the appellate court.

## PRACTICE OF LAW BY JUDGES

**SECTION 4.** ORS 1.220 is amended to read:

1.220. [*Any judicial officer may act as an attorney in any action, suit or proceeding to which the judicial officer is a party or in which the judicial officer is directly interested. A judge of the county court or justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which the judge of the county court or justice of the peace is judge, except in an action, suit or proceeding removed therefrom to another court for review, but no judicial officer shall, as attorney, institute or cause to be instituted any suit, action or proceeding, or act as attorney in any suit, action or proceeding with or without hire, in any court or otherwise, other than as in this section allowed. No judicial officer shall have a partner who shall practice law or act as attorney in the court over which the judicial officer presides.*]

**(1) Except as provided in this section, a judicial officer appointed or elected to a full-time position may not act as an attorney in an action or proceeding.**

**(2) A judicial officer appointed or elected to a full-time position may act as an attorney in an action or proceeding if the judicial officer is an active member of the Oregon State Bar and is either a party to the action or proceeding or the judicial officer has a direct interest in the action or proceeding.**

**(3) A judge of a county court or justice court who is an active member of the Oregon State Bar:**

**(a) May act as an attorney in a court other than the court in which the judge presides; and**

**(b) May not be engaged in the practice of law with an attorney who appears in the court in which the judge presides.**

**(4) A judge pro tempore may not preside in an action or proceeding if an attorney who is engaged in the practice of law with the judge appears in the action or proceeding.**

## STAY OF JUDGMENT ON APPEAL

**SECTION 5.** ORS 19.335 is amended to read:

19.335. (1) If a judgment is for the recovery of money, a supersedeas undertaking acts to stay the judgment if the undertaking provides that the appellant will pay the judgment to the extent that the judgment is affirmed on appeal.

(2) If a judgment requires the transfer or delivery of possession of real property, a supersedeas undertaking acts to stay the judgment if the undertaking provides that the appellant will not commit waste or allow waste to be committed on the real property while the appellant possesses the property, and the appellant will pay the value of the use and occupation of the property for the period of possession if the judgment is affirmed. The value of the use and occupation during the period of possession must be stated in the undertaking.

(3)(a) If a judgment requires the transfer or delivery of possession of personal property, a supersedeas undertaking acts to stay the judgment if the undertaking provides that the appellant will obey the judgment of the appellate court, and that if the appellant does not obey the judgment, the appellant will pay an amount determined by the trial court and stated in the undertaking.

(b) If a judgment requires the transfer or delivery of possession of personal property, the judgment is stayed without the filing of a supersedeas undertaking if the appellant transfers or delivers the personal property to the court or places the property in the custody of an officer or receiver appointed by the trial court.

(4) If a judgment requires the foreclosure of a mortgage, lien or other encumbrance, and also requires payment of the debt secured by the mortgage, lien or other encumbrance, a supersedeas undertaking acts to stay that portion of the judgment that requires payment of the debt if the undertaking provides that the appellant will pay any portion of the judgment remaining unsatisfied after the sale of the property subject to the mortgage, lien or other encumbrance. The amount of the undertaking must be stated in the undertaking. The requirements of this subsection are in addition to any provisions in a supersedeas undertaking that may be required under subsection (2) or (3) of this section to stay delivery or transfer of property.

(5) If a judgment requires the execution of a conveyance or other instrument, the judgment is stayed without the filing of a supersedeas undertaking if the appellant executes the instrument and deposits the instrument with the trial court administrator. Unless otherwise directed by the appellate court, the instrument must be held by the trial court administrator until issuance of the appellate judgment terminating the appeal.

**(6) Except as provided in ORCP 72, a stay of judgment described in this section takes effect only after the party has filed a notice of appeal and filed any supersedeas undertaking required for the stay.**

## EXCERPT OF RECORD ON APPEAL

**SECTION 6.** ORS 20.310 is amended to read:

20.310. (1) In any appeal to the Court of Appeals or review by the Supreme Court, the court shall allow costs and disbursements to the prevailing party, unless a statute provides that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court directs otherwise. If, under a special provision of any statute, a party has a right to recover costs, such party shall also have a right to recover disbursements. On the same terms and conditions, when the Supreme Court denies a petition for review, the respondent on review is entitled to costs and disbursements reasonably incurred in connection with the petition for review.

(2) Costs and disbursements on appeal to the Court of Appeals or Supreme Court or on petition for review by the Supreme Court are the filing or appearance fee, the reasonable cost for any bond or irrevocable letter of credit, the prevailing party fee provided for under ORS 20.190, the printing, including the [*abstract*] **excerpt** of record, required by rule of the court, postage for the filing or service of items that are required to be filed or served by law or court rule, and the transcript of testimony or other proceedings, when necessarily forming part of the record on appeal.

**NOTE:** Section 7 was deleted by amendment. Subsequent sections were not renumbered.

**EMERGENCY CIRCUIT COURT LOCATIONS**

**SECTION 8.** ORS 1.085 is amended to read:

1.085. (1) Except to the extent otherwise specifically provided by law, the Chief Justice of the Supreme Court shall designate the principal location for the sitting of the Supreme Court, Court of Appeals, Oregon Tax Court and each circuit court. For each circuit court there shall be a principal location in each county in the judicial district.

(2) The Chief Justice may designate locations for the sitting of the Supreme Court, Court of Appeals, Oregon Tax Court and each circuit court other than those designated under subsection (1) of this section. **Except as provided in subsection (3) of this section,** [*other*] locations **designated under this subsection** for a circuit court [*shall*] **must** be in the **circuit court's** judicial district.

**(3) The Chief Justice may designate locations in the state for the sitting of circuit courts in the event of an emergency. Locations designated under this subsection need not be in the circuit court's judicial district.**

**SECTION 9.** ORS 3.070 is amended to read:

3.070. Any judge of a circuit court in any judicial district may, in chambers, grant and sign defaults, judgments, interlocutory orders and provisional remedies, make findings and decide motions, demurrers and other like matters relating to any judicial business coming before the judge from any judicial district in which the judge has presided in such matters. The judge may hear, in chambers, contested motions, demurrers and other similar matters pending within the judicial district, at any location [*in the district*] designated under ORS 1.085. Upon stipulation of counsel, the judge may try and determine any issue in equity or in law where a jury has been waived and hear and decide motions, demurrers and other like matters, in chambers, at any location in the state where the judge may happen to be, relating to any judicial business coming before the judge from any judicial district in which the judge has presided in such matters. The judge may exercise these powers as fully and effectively as though the motions, demurrers, matters or issues were granted, ordered, decided, heard and determined in open court in the county where they may be pending. If signed other than in open court, all such orders, findings and judgments issued, granted or rendered, other than orders not required to be filed and entered with the clerk before becoming effective, shall be transmitted by the judge to the clerk of the court within the county where the matters are pending. They shall be filed and entered upon receipt thereof and shall become effective from the date of entry in the register.

**SECTION 10.** ORS 3.185 is amended to read:

3.185. (1) Notwithstanding ORS 1.040, a judge of the Circuit Court for Marion County when hearing matters relating to writs of habeas corpus as provided in ORS 34.310 to 34.730 may direct that the court be held or continued at any location designated under ORS 1.085 [*(2)*] and under such conditions as may be ordered.

(2) When a court is held at a location directed as provided by subsection (1) of this section, every person held or required to appear at the court shall appear at the location so directed.

**SECTION 11.** ORS 305.475 is amended to read:

305.475. The principal office of the tax court shall be in the state capital, but the court may hold hearings in any [*county seat*] **location** designated under ORS 1.085 [*(2)*]. The county court or board of county commissioners, upon request of the judge of the tax court, shall provide the court with suitable rooms [*at the county seat*] when hearings are held in the county [*seat*].

## CONSOLIDATION OF DOMESTIC RELATION CASES AND JUVENILE CASES

**SECTION 12.** ORS 419B.806 is amended to read:

419B.806. (1) As used in this section, "consolidated" means that actions are heard before one judge of the circuit court to determine issues regarding a child or ward.

(2) In any action filed in the juvenile court in which the legal or physical custody of a child or ward is at issue and there is also a child custody, parenting time, visitation, restraining order, filiation or Family Abuse Prevention Act action involving the child or ward in a domestic relations, filiation or guardianship proceeding, the matters shall be consolidated. Actions must be consolidated under this subsection regardless of whether the actions to be consolidated were filed or initiated before or after the filing of the petition under ORS 419B.100.

(3) Consolidation does not merge the procedural or substantive law of the individual actions. Parties to the individual consolidated actions do not have standing, solely by virtue of the consolidation, in every action subject to the order of consolidation. Parties must comply with provisions for intervention or participation in a particular action under the provisions of law applicable to that action.

(4) Upon entry of an order of consolidation, all pending issues pertaining to the actions subject to the order shall be heard together in juvenile court. The court shall hear the juvenile matters first unless the court finds that it is in the best interest of the child or ward to proceed otherwise.

(5) A judge shall make and modify orders and findings in actions subject to the order of consolidation upon the filing of proper motions and notice as provided by law applicable to the actions. Any findings, orders or modifications must be consistent with the juvenile court orders, and persons who were parties to the juvenile court action may not relitigate issues in consolidated actions.

(6) The judge shall set out separately from orders entered under this chapter or ORS chapter 419C any orders or judgments made in other actions subject to the consolidation order. The trial court administrator shall file the orders and judgments in the appropriate actions subject to the consolidation order. An order or judgment in an individual juvenile court action is final if it finally disposes of the rights and duties of the parties to that action, without reference to whether the order or judgment disposes of the rights and duties of the parties to another action with which the action has been consolidated.

(7)(a) When the actions described in subsection (2) of this section exist in two or more [*judicial districts*] **circuit courts**, the judges assigned to the actions shall confer to determine the appropriate [*judicial district*] **court** in which to consolidate and hear the actions. The judges shall confer not later than 10 judicial days after a court has received notice of the existence of an action in another [*judicial district*] **circuit court**.

(b) If the judges agree on the [*judicial district*] **circuit court** in which the actions should be consolidated, the judges shall take such action as is necessary to consolidate the actions in the circuit court [*of that district*].

(c) If the judges do not agree on the [*judicial district*] **circuit court** in which the actions should be consolidated, the actions must be consolidated in the [*judicial district*] **court** in which the juvenile action is filed or, if more than one juvenile action is pending, in the [*judicial district*] **court** in which the first juvenile action was filed.

(8) Nothing in this section requires the consolidation of any administrative proceeding under ORS chapter 25 or 416 with a juvenile court or other action.

## APPOINTED JUDGES OF THE COURT OF APPEALS

**SECTION 13.** ORS 2.570 is amended to read:

2.570. (1) In hearing and determining causes, the judges of the Court of Appeals may sit together or in departments.

(2) A department shall consist of three judges. For convenience of administration, each department may be numbered. The Chief Judge shall from time to time designate the number of depart-

ments and make assignments of the judges among the departments. The Chief Judge may sit in one or more departments and when so sitting may preside. The Chief Judge shall designate a judge to preside in each department.

(3) The majority of any department shall consist of regularly elected [*and qualified*] **or appointed** judges of the Court of Appeals. However, if disqualifications, recusals or other events reduce the number of available judges to fewer than three, the Supreme Court may appoint such number of qualified persons as may be necessary as pro tempore members of the Court of Appeals.

(4) The Chief Judge shall apportion the business of the court between the departments. Each department shall have power to hear and determine causes, and all questions that may arise therein, subject to subsection (5) of this section. The presence of three judges is necessary to transact business in any department, except such business as may be transacted in chambers by any judge. The concurrence of two judges is necessary to pronounce judgment.

(5) The Chief Judge or a majority of the regularly elected [*and qualified*] **or appointed** judges of the Court of Appeals at any time may refer a cause to be considered en banc. When sitting en banc, the court may include not more than two judges pro tempore of the Court of Appeals. When the court sits en banc, the concurrence of a majority of the judges participating is necessary to pronounce judgment, but if the judges participating are equally divided in their view as to the judgment to be given, the judgment appealed from shall be affirmed.

(6) The Chief Judge may rule on motions and issue orders in procedural matters in the Court of Appeals.

(7) A judge or judge pro tempore of the Court of Appeals may participate in the decision of the matter without resubmission of the cause even though the judge is not present for oral argument on the matter.

(8) A judge or judge pro tempore of the Court of Appeals may participate in the decision of a matter without resubmission of the cause in the following circumstances:

(a) The judge was appointed or elected to the Court of Appeals after submission of the cause.

(b) The judge is participating in the decision of a cause that was submitted to a department, and the judge is participating in lieu of a judge of the department who has died, become disabled, is disqualified or is otherwise unable to participate in the decision of a cause submitted to the department.

(c) The judge is considering a cause en banc, but the judge was not part of the department that originally considered the cause.

**MISCELLANEOUS**

**SECTION 14. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.**

**SECTION 15. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

**Passed by House March 19, 2007**

**Repassed by House June 6, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 4, 2007**

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President of Senate

**Received by Governor:**

.....M.,....., 2007

**Approved:**

.....M.,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2007

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Secretary of State