

# House Bill 2322

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

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows affidavit in support of search warrant to be sworn to telephonically.  
Modifies time for filing notice of appeal from amended or supplemental criminal judgment.  
Clarifies authority of judges to practice law.  
Clarifies that stay of judgment may be sought only by party who has filed notice of appeal.  
Authorizes Chief Justice to establish fees for copies and services.  
Allows Chief Justice to designate locations for holding circuit court proceedings outside of judicial district in event of emergency.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to courts; creating new provisions; amending ORS 1.085, 1.220, 3.070, 3.185, 19.335, 20.310, 21.020, 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 indi-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 viduals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set  
 2 forth facts bearing on any unnamed informant’s reliability and shall disclose, as far as possible, the  
 3 means by which the information was obtained.

4 (5) Instead of the written affidavit described in subsection (4) of this section, the judge may take  
 5 an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed  
 6 statement shall be considered to be an affidavit for the purposes of this section. In such cases, the  
 7 recording of the sworn oral statement and the transcribed statement shall be certified by the judge  
 8 receiving it and shall be retained as a part of the record of proceedings for the issuance of the  
 9 warrant.

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

17 (b) When a court issues a warrant upon an application made under paragraph (a) of this sub-  
 18 section:

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

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

26  
 27 **APPEAL OF AMENDED AND SUPPLEMENTAL CRIMINAL JUDGMENTS**

28  
 29 **SECTION 2.** ORS 138.071 is amended to read:

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

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

- 35 (a) The date of entry of the order disposing of the motion; or
- 36 (b) The date on which the motion is deemed denied.

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

39 **(4) If the trial court enters a corrected or a supplemental judgment under ORS 138.083,**  
 40 **a notice of appeal from the corrected or supplemental judgment must be filed not later than**  
 41 **30 days after the defendant receives notice that the judgment has been entered.**

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

- 45 (A) The defendant, by clear and convincing evidence, shows that the failure to file a timely no-

1 tice of appeal is not attributable to the defendant personally; and

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

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

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

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

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

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

20 138.083. (1)(a) The sentencing court shall retain authority irrespective of any notice of appeal  
21 after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic  
22 or clerical errors or to delete or modify any erroneous term in the judgment. The court may correct  
23 the judgment either on the motion of one of the parties or on the court's own motion after written  
24 notice to all the parties.

25 (b) If a sentencing court enters *[an amended]* **a corrected** judgment under this *[section]* **sub-**  
26 **section while an appeal of the judgment is pending,** the court shall immediately forward a copy  
27 of the *[amended]* **corrected** judgment to the appellate court. Any modification of the appeal neces-  
28 sitated by the *[amended]* **corrected** judgment shall be made in the manner specified by rules adopted  
29 by the appellate court.

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

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

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

40  
41 **PRACTICE OF LAW BY JUDGES**

42  
43 **SECTION 4.** ORS 1.220 is amended to read:

44 1.220. *[Any judicial officer may act as an attorney in any action, suit or proceeding to which the*  
45 *judicial officer is a party or in which the judicial officer is directly interested. A judge of the county*

1 *court or justice of the peace, otherwise authorized by law, may act as an attorney in any court other*  
 2 *than the one of which the judge of the county court or justice of the peace is judge, except in an action,*  
 3 *suit or proceeding removed therefrom to another court for review, but no judicial officer shall, as at-*  
 4 *torney, institute or cause to be instituted any suit, action or proceeding, or act as attorney in any suit,*  
 5 *action or proceeding with or without hire, in any court or otherwise, other than as in this section al-*  
 6 *lowed. No judicial officer shall have a partner who shall practice law or act as attorney in the court*  
 7 *over which the judicial officer presides.]*

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

10 **(2) A judicial officer appointed or elected to a full-time position may not have a partner**  
 11 **who acts as an attorney in the court in which the judicial officer presides.**

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

16 **(4) A judge of a county court or justice court who is an active member of the Oregon**  
 17 **State Bar may act as an attorney in a court other than the court in which the judicial officer**  
 18 **presides.**

19  
 20 **STAY OF JUDGMENT ON APPEAL**

21  
 22 **SECTION 5.** ORS 19.335 is amended to read:

23 19.335. (1) If a judgment is for the recovery of money, a supersedeas undertaking acts to stay  
 24 the judgment if the undertaking provides that the appellant will pay the judgment to the extent that  
 25 the judgment is affirmed on appeal.

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

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

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

40 (4) If a judgment requires the foreclosure of a mortgage, lien or other encumbrance, and also  
 41 requires payment of the debt secured by the mortgage, lien or other encumbrance, a supersedeas  
 42 undertaking acts to stay that portion of the judgment that requires payment of the debt if the  
 43 undertaking provides that the appellant will pay any portion of the judgment remaining unsatisfied  
 44 after the sale of the property subject to the mortgage, lien or other encumbrance. The amount of  
 45 the undertaking must be stated in the undertaking. The requirements of this subsection are in ad-

1 dition to any provisions in a supersedeas undertaking that may be required under subsection (2) or  
 2 (3) of this section to stay delivery or transfer of property.

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

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

11  
 12 **EXCERPT OF RECORD ON APPEAL**

13  
 14 **SECTION 6.** ORS 20.310 is amended to read:

15 20.310. (1) In any appeal to the Court of Appeals or review by the Supreme Court, the court  
 16 shall allow costs and disbursements to the prevailing party, unless a statute provides that in the  
 17 particular case costs and disbursements shall not be allowed to the prevailing party or shall be al-  
 18 lowed to some other party, or unless the court directs otherwise. If, under a special provision of any  
 19 statute, a party has a right to recover costs, such party shall also have a right to recover dis-  
 20 bursements. On the same terms and conditions, when the Supreme Court denies a petition for re-  
 21 view, the respondent on review is entitled to costs and disbursements reasonably incurred in  
 22 connection with the petition for review.

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

29  
 30 **FEES FOR COPIES AND SERVICES**

31  
 32 **SECTION 7.** ORS 21.020 is amended to read:

33 21.020. [(1) *The State Court Administrator shall collect a fee of \$1 for affixing the seal of the court*  
 34 *to a document.*]

35 [(2)] The Chief Justice of the Supreme Court by order may establish or authorize fees for copies  
 36 of records of the appellate courts and the administrative offices of the State Court Administrator,  
 37 for services relating to those records and for other services that the appellate courts or adminis-  
 38 trative offices of the State Court Administrator are authorized or required to perform for which no  
 39 fees are specifically provided by law. [*The fee established by the Chief Justice for paper copies of re-*  
 40 *records may not exceed 25 cents per page, except for records for which additional services are required.*  
 41 *If additional services are required, fees for providing the records are subject to ORS 192.440.*]

42  
 43 **EMERGENCY CIRCUIT COURT LOCATIONS**

44  
 45 **SECTION 8.** ORS 1.085 is amended to read:

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

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

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

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

13 3.070. Any judge of a circuit court in any judicial district may, in chambers, grant and sign de-  
 14 faults, judgments, interlocutory orders and provisional remedies, make findings and decide motions,  
 15 demurrers and other like matters relating to any judicial business coming before the judge from any  
 16 judicial district in which the judge has presided in such matters. The judge may hear, in chambers,  
 17 contested motions, demurrers and other similar matters pending within the judicial district, at any  
 18 location [in the district] designated under ORS 1.085. Upon stipulation of counsel, the judge may try  
 19 and determine any issue in equity or in law where a jury has been waived and hear and decide  
 20 motions, demurrers and other like matters, in chambers, at any location in the state where the judge  
 21 may happen to be, relating to any judicial business coming before the judge from any judicial district  
 22 in which the judge has presided in such matters. The judge may exercise these powers as fully and  
 23 effectively as though the motions, demurrers, matters or issues were granted, ordered, decided,  
 24 heard and determined in open court in the county where they may be pending. If signed other than  
 25 in open court, all such orders, findings and judgments issued, granted or rendered, other than orders  
 26 not required to be filed and entered with the clerk before becoming effective, shall be transmitted  
 27 by the judge to the clerk of the court within the county where the matters are pending. They shall  
 28 be filed and entered upon receipt thereof and shall become effective from the date of entry in the  
 29 register.

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

31 3.185. (1) Notwithstanding ORS 1.040, a judge of the Circuit Court for Marion County when  
 32 hearing matters relating to writs of habeas corpus as provided in ORS 34.310 to 34.730 may direct  
 33 that the court be held or continued at any location designated under ORS 1.085 [(2)] and under such  
 34 conditions as may be ordered.

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

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

38 305.475. The principal office of the tax court shall be in the state capital, but the court may hold  
 39 hearings in any [county seat] **location** designated under ORS 1.085 [(2)]. The county court or board  
 40 of county commissioners, upon request of the judge of the tax court, shall provide the court with  
 41 suitable rooms [at the county seat] when hearings are held in the county [seat].

42  
 43 **CONSOLIDATION OF DOMESTIC RELATION CASES AND JUVENILE CASES**

44  
 45 **SECTION 12.** ORS 419B.806 is amended to read:

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

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

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

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

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

21 (6) The judge shall set out separately from orders entered under this chapter or ORS chapter  
 22 419C any orders or judgments made in other actions subject to the consolidation order. The trial  
 23 court administrator shall file the orders and judgments in the appropriate actions subject to the  
 24 consolidation order. An order or judgment in an individual juvenile court action is final if it finally  
 25 disposes of the rights and duties of the parties to that action, without reference to whether the order  
 26 or judgment disposes of the rights and duties of the parties to another action with which the action  
 27 has been consolidated.

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

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

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

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

42  
 43 **MISCELLANEOUS**  
 44

45 **SECTION 13. The unit captions used in this 2007 Act are provided only for the conven-**

1 ience of the reader and do not become part of the statutory law of this state or express any  
2 legislative intent in the enactment of this 2007 Act.

3 SECTION 14. This 2007 Act being necessary for the immediate preservation of the public  
4 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect  
5 on its passage.  
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