

House Bill 3316

Sponsored by COMMITTEE ON JUDICIARY (at the request of Kurt Miller)

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**.

Provides for depositions in criminal actions.

A BILL FOR AN ACT

1
2 Relating to depositions in criminal actions; creating new provisions; amending ORS 135.891 and
3 136.420; and repealing ORS 136.080, 136.090 and 136.100.

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

5 **SECTION 1.** ORS 136.420 is amended to read:

6 136.420. In a criminal action, the testimony of a witness shall be given orally in the presence
7 of the court and jury, except in the case of a witness whose testimony is taken by deposition by
8 order of the court [*in pursuance of the consent of the parties, as provided in ORS 136.080 to*
9 *136.100*].

10 **SECTION 2.** (1) **A party in a criminal action may move the court for an order allowing**
11 **the taking of a deposition to perpetuate the testimony of a witness. The moving party must**
12 **provide all parties with reasonable written notice of:**

13 (a) **The name, address and date of birth of the witness; and**

14 (b) **Where the deposition is to be taken.**

15 (2) **If the defendant or the witness is in custody, the moving party must also notify the**
16 **officer who has custody of the defendant or witness of the scheduled date, time and location.**
17 **If both the defendant and the witness are in custody, the location shall be determined by the**
18 **court.**

19 (3) **The court may grant the motion only if the moving party proves by a preponderance**
20 **of the evidence that the witness's proposed testimony is material and relevant to the case**
21 **and that there is a substantial likelihood that the witness will be unavailable at trial because:**

22 (a) **Of age, infirmity or mental or physical illness;**

23 (b) **A personal appearance by the witness would be an undue hardship on the witness; or**

24 (c) **Of other circumstances that constitute good cause.**

25 (4) **If the court grants the motion, the court may, in its discretion, set conditions re-**
26 **garding the time, place and method of taking the deposition. The court may, for good cause,**
27 **change the deposition date or location based on a request of a party. The court may also**
28 **require the witness to bring to the deposition any designated books, papers and documents.**

29 (5) **A deposition in a criminal action must be taken and filed in the same manner as a**
30 **deposition in a civil action, except that:**

31 (a) **The scope and manner of the deposition examination and cross examination shall be**
32 **the same as would be allowed during a criminal trial; and**

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 (b) The district attorney shall provide to the defendant or the defendant's attorney, for
 2 use at the deposition, any statement of the witness in the district attorney's custody and
 3 control to which the defendant would be entitled at trial.

4 (6)(a) The defendant has the right to be present at the deposition.

5 (b) If the defendant is out of custody and fails to appear, absent good cause, the defend-
 6 ant waives the right to be present and the right to object to the taking and use of deposition
 7 based on that right.

8 (c) If the defendant is in custody, the court shall direct the officer who has custody of
 9 the defendant to bring the defendant before the court and the officer shall do so.

10 (d) If the defendant persists in disruptive conduct justifying exclusion after being warned
 11 by the court, the defendant may be excluded.

12 (7) A witness who is committed under ORS 136.612 may move that the testimony of the
 13 witness be perpetuated by deposition. The witness shall file a written motion and give notice
 14 to the parties and, if the defendant is in custody, to the officer who has custody of the de-
 15 fendant. After the deposition is taken, the court shall order the witness discharged.

16 (8)(a) A deposition of the defendant or victim may not be granted unless the witness
 17 consents.

18 (b) The parties may also, by agreement and with the court's consent, take and use a
 19 deposition.

20 (c) When an application is made for postponement of a trial, the court may require as a
 21 condition precedent to granting the postponement that the moving party consent to the
 22 taking and use of a witness deposition. Unless this consent is given, the court may refuse
 23 to allow a postponement for any cause.

24 (9) All objections to any testimony or evidence taken at the deposition shall be made at
 25 the time of the deposition and noted upon the record. The court before which the testimony
 26 is offered shall rule on any objections before the testimony is offered. Any objection not
 27 made at the deposition is waived.

28 (10) The moving party shall pay the costs associated with the taking of the deposition,
 29 including any cost for the actual deposition, preparation of the deposition transcript or other
 30 reproduction of the deposition if taken by audio or video recording. The moving party shall
 31 also provide all parties with a true and accurate copy of the entire deposition transcript or
 32 other reproduction of the deposition if taken by audio or video recording. The copy shall be
 33 provided within a reasonable time and at the moving party's expense.

34 **SECTION 3.** ORS 135.891 is amended to read:

35 135.891. A diversion agreement carries the understanding that if the defendant fulfills the obli-
 36 gations of the program described therein, the criminal charges filed against the defendant will be
 37 dismissed with prejudice. It shall include specifically the waiver of the right to a speedy trial. It
 38 may include, but is not limited to, admissions by the defendant, stipulation of facts, stipulation that
 39 depositions of witnesses may be taken pursuant to [ORS 136.080 to 136.100] **section 2 of this 2007**
 40 **Act**, payment of costs as defined in ORS 135.705, restitution, performance of community service,
 41 residence in a halfway house or similar facility, maintenance of gainful employment, and partic-
 42 ipation in programs offering medical, educational, vocational, social and psychological services,
 43 corrective and preventive guidance and other rehabilitative services.

44 **SECTION 4.** ORS 136.080, 136.090 and 136.100 are repealed.
 45