

Enrolled
House Bill 2394

Sponsored by Representative COWAN (at the request of Oregon State Sheriffs' Association)

CHAPTER

AN ACT

Relating to service of legal documents; creating new provisions; and amending ORS 136.595 and 163.741 and ORCP 55 D.

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

SERVICE OF SUBPOENAS

SECTION 1. ORCP 55 D, as amended by the Council on Court Procedures on December 13, 2008, is amended to read:

D Service; service on law enforcement agency; service by mail; proof of service.

D(1) Service. Except as provided in subsection (2) of this section, a subpoena may be served by the party or any other person 18 years of age or older. The service shall be made by delivering a copy to the witness personally and giving or offering to the witness at the same time the fees to which the witness is entitled for travel to and from the place designated and, whether or not personal attendance is required, one day's attendance fees. **If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent, guardian or guardian ad litem.** The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. A subpoena for taking of a deposition, served upon an organization as provided in Rule 39 C(6), shall be served in the same manner as provided for service of summons in Rule 7 D(3)(b)(i), D(3)(c)(i), D(3)(d)(i), D(3)(e), D(3)(f), or D(3)(h). Copies of each subpoena commanding production of books, papers, documents or tangible things and inspection thereof before trial, not accompanied by command to appear at trial or hearing or at deposition, whether the subpoena is served personally or by mail, shall be served on each party at least seven days before the subpoena is served on the person required to produce and permit inspection, unless the court orders a shorter period. In addition, a subpoena shall not require production less than 14 days from the date of service upon the person required to produce and permit inspection, unless the court orders a shorter period.

D(2) Service on law enforcement agency.

D(2)(a) Every law enforcement agency shall designate individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

D(2)(b) If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or

to one of the individuals designated by the agency [*which*] **that** employs the officer [*not later than 10 days prior to the date attendance is sought*]. A subpoena may be served [*in this manner*] **by delivery to one of the individuals designated by the agency that employs the officer** only if **the subpoena is delivered at least 10 days before the date the officer's attendance is required**, the officer is currently employed as a peace officer **by the agency**, and **the officer** is present within the state at the time of service.

D(2)(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to give actual notice to the officer whose attendance is sought of the date, time, and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall promptly notify the court and a postponement or continuance may be granted to allow the officer to be personally served.

D(2)(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department, or a municipal police department.

D(3) Service by mail.

Under the following circumstances, service of a subpoena to a witness by mail shall be of the same legal force and effect as personal service otherwise authorized by this section:

D(3)(a) The attorney certifies in connection with or upon the return of service that the attorney, or the attorney's agent, has had personal or telephone contact with the witness, and the witness indicated a willingness to appear at trial if subpoenaed;

D(3)(b) The attorney, or the attorney's agent, made arrangements for payment to the witness of fees and mileage satisfactory to the witness; and

D(3)(c) The subpoena was mailed to the witness more than 10 days before trial by certified mail or some other designation of mail that provides a receipt for the mail signed by the recipient, and the attorney received a return receipt signed by the witness more than three days prior to trial.

D(4) Service by mail; exception. Service of subpoena by mail may be used for a subpoena commanding production of books, papers, documents, or tangible things, not accompanied by a command to appear at trial or hearing or at deposition.

D(5) Proof of service. Proof of service of a subpoena is made in the same manner as proof of service of a summons except that the server need not certify that the server is not a party in the action, an attorney for a party in the action or an officer, director or employee of a party in the action.

SECTION 2. ORS 136.595 is amended to read:

136.595. (1) Except as provided in ORS 136.447 and subsections (2) and (3) of this section, a subpoena is served by delivering a copy to the witness personally. **If the witness is under 14 years of age, the subpoena may be served by delivering a copy to the witness or to the witness's parent, guardian or guardian ad litem.** Proof of the service is made in the same manner as in the service of a summons.

(2)(a) Every law enforcement agency shall designate an individual or individuals upon whom service of subpoena may be made. At least one of the designated individuals shall be available during normal business hours. In the absence of the designated individuals, service of subpoena pursuant to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement agency.

(b) [*If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on the peace officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer not later than 10 days prior to the date attendance is sought. A subpoena may be served in this manner only if the officer is currently employed as a peace officer and is present within the state at the time of service.*] **If a peace officer's attendance at trial is required as a result of employment as a peace officer, a subpoena may be served on such officer by delivering a copy personally to the officer or to one of the individuals designated by the agency that employs the officer. A subpoena may be served by delivery to one of the individuals designated by the agency that employs the officer only if the subpoena is delivered at least 10 days before the date the officer's attendance is required,**

the officer is currently employed as a peace officer by the agency, and the officer is present within the state at the time of service.

(c) When a subpoena has been served as provided in paragraph (b) of this subsection, the law enforcement agency shall make a good faith effort to actually notify the officer whose attendance is sought of the date, time and location of the court appearance. If the officer cannot be notified, the law enforcement agency shall contact the court and a continuance may be granted to allow the officer to be personally served.

(d) As used in this subsection, "law enforcement agency" means the Oregon State Police, a county sheriff's department or a municipal police department.

(3) A subpoena for the production of papers, documents, records and other tangible things may be served on a corporation or limited partnership in the manner provided by ORCP 7 D(3) for the service of a summons.

(4) When a subpoena has been served as provided in subsection (1), (2) or (3) of this section and, subsequent to service, the date on, or the time at, which the person subpoenaed is to appear has changed, a new subpoena is not required to be served if:

(a) The subpoena is continued orally in open court in the presence of the person subpoenaed; or

(b) The party who issued the original subpoena notifies the person subpoenaed of the change by first class mail and by:

(A) Certified or registered mail, return receipt requested; or

(B) Express mail.

SERVICE OF STALKING PROTECTIVE ORDER

SECTION 3. ORS 163.741 is amended to read:

163.741. (1) **Service of a stalking protective order shall be made by personal delivery of a copy of the order to the respondent. The respondent need not be served if an order of the court indicates that the respondent appeared in person before the court.**

[(1)] (2) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is *[issued and the person to be restrained has actual notice thereof]* **served on a respondent**, the person serving the order shall deliver forthwith to the county sheriff a true copy of the order and an affidavit of proof of service on which it is stated that personal service of the order was made on the respondent. *[If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and accompanying proof of service is not necessary.]* **If service of the order is not required under subsection (1) of this section, a copy of the order shall be delivered to the sheriff by the court.** Upon receipt of the order and *[completion of any required service]* **any required proof of service**, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. The sheriff shall also provide the complainant with a true copy of *[the]* **any required** proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state. The complainant may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

[(2)] (3) When a stalking protective order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice under subsection (1) of this section, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the stalking protective order or to transmit a copy of the order to the requesting jurisdiction.

[3] (4) When a stalking protective order [described in subsection (1) of this section] is terminated by order of the court, the clerk of the court shall deliver forthwith a true copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

SECTION 4. The unit captions used in this 2009 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 2009 Act.

Passed by House April 29, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 21, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State