

House Bill 2394

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

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 that if witness is under 14 years of age, subpoena may be served by delivering copy to witness or to witness's parent, guardian or guardian ad litem.

Provides that service of stalking protective order be made by personal delivery of copy of order to respondent.

A BILL FOR AN ACT

1
2 Relating to service of legal documents; creating new provisions; and amending ORS 136.595 and
3 163.741 and ORCP 55 D.

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

SERVICE OF SUBPOENAS

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8 **SECTION 1.** ORCP 55 D, as amended by the Council on Court Procedures on December 13,
9 2008, is amended to read:

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

11 D(1) Service. Except as provided in subsection (2) of this section, a subpoena may be served by
12 the party or any other person 18 years of age or older. The service shall be made by delivering a
13 copy to the witness personally and giving or offering to the witness at the same time the fees to
14 which the witness is entitled for travel to and from the place designated and, whether or not per-
15 sonal attendance is required, one day's attendance fees. **If the witness is under 14 years of age,**
16 **the subpoena may be served by delivering a copy to the witness or to the witness's parent,**
17 **guardian or guardian ad litem.** The service must be made so as to allow the witness a reasonable
18 time for preparation and travel to the place of attendance. A subpoena for taking of a deposition,
19 served upon an organization as provided in Rule 39 C(6), shall be served in the same manner as
20 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).
21 Copies of each subpoena commanding production of books, papers, documents or tangible things and
22 inspection thereof before trial, not accompanied by command to appear at trial or hearing or at
23 deposition, whether the subpoena is served personally or by mail, shall be served on each party at
24 least seven days before the subpoena is served on the person required to produce and permit in-
25 spection, unless the court orders a shorter period. In addition, a subpoena shall not require pro-
26 duction less than 14 days from the date of service upon the person required to produce and permit
27 inspection, unless the court orders a shorter period.

28 D(2) Service on law enforcement agency.

29 D(2)(a) Every law enforcement agency shall designate individual or individuals upon whom ser-
30 vice of subpoena may be made. At least one of the designated individuals shall be available during

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 normal business hours. In the absence of the designated individuals, service of subpoena pursuant
 2 to paragraph (b) of this subsection may be made upon the officer in charge of the law enforcement
 3 agency.

4 D(2)(b) If a peace officer’s attendance at trial is required as a result of employment as a peace
 5 officer, a subpoena may be served on such officer by delivering a copy personally to the officer or
 6 to one of the individuals designated by the agency [*which*] **that** employs the officer [*not later than*
 7 *10 days prior to the date attendance is sought*]. A subpoena may be served [*in this manner*] **by de-**
 8 **livery to one of the individuals designated by the agency that employs the officer** only if **the**
 9 **subpoena is delivered at least 10 days before the date the officer’s attendance is required**, the
 10 officer is currently employed as a peace officer **by the agency**, and **the officer** is present within
 11 the state at the time of service.

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

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

19 D(3) Service by mail.

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

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

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

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

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

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

37 **SECTION 2.** ORS 136.595 is amended to read:

38 136.595. (1) Except as provided in ORS 136.447 and subsections (2) and (3) of this section, a
 39 subpoena is served by delivering a copy to the witness personally. **If the witness is under 14 years**
 40 **of age, the subpoena may be served by delivering a copy to the witness or to the witness’s**
 41 **parent, guardian or guardian ad litem.** Proof of the service is made in the same manner as in the
 42 service of a summons.

43 (2)(a) Every law enforcement agency shall designate an individual or individuals upon whom
 44 service of subpoena may be made. At least one of the designated individuals shall be available dur-
 45 ing normal business hours. In the absence of the designated individuals, service of subpoena pursu-

1 ant to paragraph (b) of this subsection may be made upon the officer in charge of the law
 2 enforcement agency.

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

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

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

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

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

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

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

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

33 (B) Express mail.

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 35 **SERVICE OF STALKING PROTECTIVE ORDER**

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 37 **SECTION 3.** ORS 163.741 is amended to read:

38 **163.741. (1) Service of a stalking protective order shall be made by personal delivery of a**
 39 **copy of the order to the respondent. The respondent need not be served if an order of the**
 40 **court indicates that the respondent appeared in person before the court.**

41 *[(1)]* **(2) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is [is-**
 42 *sued and the person to be restrained has actual notice thereof]* **served on a respondent,** the person
 43 serving the order shall deliver forthwith to the county sheriff a true copy of the order and an affi-
 44 davit of proof of service on which it is stated that personal service of the order was made on the
 45 respondent. *[If an order entered by the court recites that the respondent appeared in person before the*

1 court, the necessity for further service of the order is waived and accompanying proof of service is not
 2 necessary.] **If service of the order is not required under subsection (1) of this section, a copy**
 3 **of the order shall be delivered to the sheriff by the court.** Upon receipt of the order and [*com-*
 4 *pletion of any required service*] **any required proof of service**, the county sheriff shall forthwith
 5 enter the order into the Law Enforcement Data System maintained by the Department of State Po-
 6 lice and into the databases of the National Crime Information Center of the United States Depart-
 7 ment of Justice. The sheriff shall also provide the complainant with a true copy of [*the*] **any**
 8 **required** proof of service. Entry into the Law Enforcement Data System constitutes notice to all law
 9 enforcement agencies of the existence of such order. Law enforcement agencies shall establish pro-
 10 cedures adequate to ensure that an officer at the scene of an alleged violation of such order may
 11 be informed of the existence and terms of such order. Such order shall be fully enforceable in any
 12 county in the state. The complainant may elect to deliver documents personally to a county sheriff
 13 or to have them delivered by a private person for entry into the Law Enforcement Data System and
 14 the databases of the National Crime Information Center of the United States Department of Justice.

15 [(2)] **(3)** When a stalking protective order has been entered into the Law Enforcement Data
 16 System and the databases of the National Crime Information Center of the United States Department
 17 of Justice under subsection (1) of this section, a county sheriff shall cooperate with a request from
 18 a law enforcement agency from any other jurisdiction to verify the existence of the stalking pro-
 19 tective order or to transmit a copy of the order to the requesting jurisdiction.

20 [(3)] **(4)** When a stalking protective order [*described in subsection (1) of this section*] is terminated
 21 by order of the court, the clerk of the court shall deliver forthwith a true copy of the termination
 22 order to the county sheriff with whom the original order was filed. Upon receipt of the termination
 23 order, the county sheriff shall promptly remove the original order from the Law Enforcement Data
 24 System and the databases of the National Crime Information Center of the United States Department
 25 of Justice.

26 **SECTION 4. The unit captions used in this 2009 Act are provided only for the convenience**
 27 **of the reader and do not become part of the statutory law of this state or express any leg-**
 28 **islative intent in the enactment of this 2009 Act.**

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