

House Bill 2659

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Authorizes district attorney or city attorney to allow private party or, under certain circumstances, private party's attorney to prosecute certain traffic violations.

A BILL FOR AN ACT

1
2 Relating to violations; creating new provisions; and amending ORS 8.660, 153.058, 153.073, 153.076
3 and 153.083.

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

5 **SECTION 1.** ORS 153.058 is amended to read:

6 153.058. (1) A person other than an enforcement officer may commence a violation proceeding
7 by filing a complaint with a court that has jurisdiction over the alleged violation. The filing of the
8 complaint is subject to ORS 153.048. The complaint shall be entered by the court in the court record.

9 (2) A complaint under this section must contain:

10 (a) The name of the court, the name and address of the person bringing the action and the name
11 and address of the defendant.

12 (b) A statement or designation of the violation that can be readily understood by a person
13 making a reasonable effort to do so and the date, time and place at which the violation is alleged
14 to have occurred.

15 (c) A certificate signed by the complainant stating that the complainant believes that the named
16 defendant committed the violation specifically identified in the complaint and that the complainant
17 has reasonable grounds for that belief. A certificate conforming to this section shall be deemed
18 equivalent of a sworn complaint. Complaints filed under this section are subject to the penalties
19 provided in ORS 153.990.

20 (3) Upon the filing of a complaint under this section, the court shall cause a summons to be
21 delivered to the defendant and shall deliver a copy of the complaint to the district attorney for the
22 county in which the complaint is filed. The court may require any enforcement officer to serve the
23 summons.

24 (4) If the complaint does not conform to the requirements of this section, the court shall set it
25 aside upon motion of the defendant made before the entry of a plea. A pretrial ruling on a motion
26 to set aside may be appealed by the state.

27 (5) A court may, acting in its sole discretion, amend a complaint filed under the provisions of
28 this section.

29 [(6)] **(6)(a)** A court shall dismiss a complaint filed under this section upon the motion of the
30 district attorney for the county or of the city attorney for a city if:

31 [(a)] **(A)** The district attorney or city attorney has brought a proceeding against the defendant

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 named in the complaint or intends to bring a proceeding against the defendant named in the com-
 2 plaint; and

3 [(b)] (B) The proceeding is brought by the district attorney or city attorney by reason of the
 4 same conduct alleged in the complaint.

5 (b) **At the request of the complainant, the district attorney or city attorney may au-**
 6 **thorize the complainant to prosecute a violation described in subsection (8)(b) of this section.**
 7 **The authorization must be in writing and filed with the court.**

8 (7) Any political subdivision of this state may require by ordinance that violation proceedings
 9 for the purpose of enforcing the charter or ordinances of the political subdivision may not be com-
 10 menced in the manner provided by this section and that those proceedings may be commenced only
 11 by enforcement officers.

12 (8) A person other than an enforcement officer may commence a violation proceeding under this
 13 section only for:

14 (a) Boating violations under ORS chapter 830, or any violation of rules adopted pursuant to ORS
 15 chapter 830 if the violation constitutes an offense;

16 (b) Traffic violations under ORS chapters 801 to 826, or any violation of rules adopted pursuant
 17 to those chapters if the violation constitutes an offense;

18 (c) Violations under the wildlife laws, as described in ORS 496.002, or any violation of rules
 19 adopted pursuant to those laws if the violation constitutes an offense;

20 (d) Violations under the commercial fishing laws, as described in ORS 506.001, or any violation
 21 of rules adopted pursuant to those laws if the violation constitutes an offense; or

22 (e) Violations of ORS 618.121 to 618.161, and violation of rules adopted pursuant to those laws
 23 if the violation constitutes an offense.

24 **SECTION 2.** ORS 153.073 is amended to read:

25 153.073. (1) Unless notice is waived by the defendant, the court shall mail or otherwise provide
 26 to the defendant notice of the date, time and place at least five days before the date set for trial
 27 under ORS 153.070. If the citation is for a traffic violation, or is for a violation of ORS 471.430, the
 28 notice must contain a warning to the defendant that if the defendant fails to appear at the trial, the
 29 driving privileges of the defendant are subject to suspension under ORS 809.220.

30 (2) **If the district attorney or city attorney has filed the written authorization described**
 31 **in ORS 153.058 (6)(b), the court shall mail or otherwise provide to the complainant notice of**
 32 **the date, time and place at least five days before the date set for trial under ORS 153.070.**

33 **SECTION 3.** ORS 153.076 is amended to read:

34 153.076. (1) Violation proceedings shall be tried to the court sitting without jury. The trial in a
 35 violation proceeding may not be scheduled fewer than seven days after the date that the citation is
 36 issued unless the defendant waives the seven-day period.

37 (2) The state, municipality [or], political subdivision **or complainant** shall have the burden of
 38 proving the charged violation by a preponderance of the evidence.

39 (3) The pretrial discovery rules in ORS 135.805 to 135.873 apply in violation proceedings.

40 (4) The defendant may not be required to be a witness in the trial of any violation.

41 (5) Defense counsel shall not be provided at public expense in any proceeding in which only
 42 violations are charged.

43 (6) A district attorney [or], city attorney **or, if the district attorney or city attorney has filed**
 44 **the written authorization described in ORS 153.058 (6)(b), the complainant's attorney** may aid
 45 in preparing evidence and obtaining witnesses but, except upon good cause shown to the court,

1 [shall] **may** not appear in violation proceedings unless counsel for the defendant appears. The court
 2 shall ensure that the district attorney [or], city attorney **or complainant's attorney** is given timely
 3 notice if defense counsel is to appear at trial.

4 **SECTION 4.** ORS 153.083 is amended to read:

5 153.083. Notwithstanding ORS 9.160 and 9.320, in any trial of a violation, whether created by
 6 ordinance or statute, in which a city attorney [or], district attorney **or complainant's attorney**
 7 does not appear, the peace officer who issued the citation for the offense **or, if the district attor-**
 8 **ney or city attorney has filed the written authorization described in ORS 153.058 (6)(b), the**
 9 **complainant** may present evidence, examine and cross-examine witnesses and make arguments re-
 10 lating to:

- 11 (1) The application of statutes and rules to the facts in the case;
- 12 (2) The literal meaning of the statutes or rules at issue in the case;
- 13 (3) The admissibility of evidence; and
- 14 (4) Proper procedures to be used in the trial.

15 **SECTION 5.** ORS 8.660 is amended to read:

16 8.660. (1) The district attorney shall attend the terms of all courts having jurisdiction of public
 17 offenses within the district attorney's county, and, except as otherwise provided in this section,
 18 conduct, on behalf of the state, all prosecutions for such offenses therein.

19 (2) A district attorney shall not conduct prosecutions under this section when:

20 (a) A city attorney is prosecuting a violation under ORS chapter 153; [or]

21 **(b) The district attorney or a city attorney has authorized a complainant to prosecute a**
 22 **traffic violation under ORS chapter 153; or**

23 [(b)] (c) The district attorney is prohibited from appearing in a violation proceeding under the
 24 provisions of ORS 153.076.

25 **SECTION 6. The amendments to ORS 8.660, 153.058, 153.073, 153.076 and 153.083 by**
 26 **sections 1 to 5 of this 2011 Act apply to violations alleged to have been committed on or after**
 27 **the effective date of this 2011 Act.**

28