

HB 3399: Local Courts. Testimony to House Judiciary Committee

This bill establishes a baseline standard for qualifications of local court judges and court procedures to ensure consistent practices, with the objective of ensuring equal access to justice across the state.

Our state does not have one, single, unified court system. We have a system of state circuit courts, in every county. Local communities also have the authority to set up their own local courts. The latest count in the registry of local courts, according to the Judicial Department, is 181: 146 municipal courts, and 35 justice courts.

The Judicial Department manages the state courts, but has no authority over any local court. The Commission on Judicial Fitness has jurisdiction only over State Court judges and Justice Court judges, i.e. Justices of the Peace. County commissions or administrators, and city councils or managers, have administrative relationships with local courts.

This proposal sets minimum standards for local courts and their judges, only for those courts that handle criminal proceedings. The bill has two main components: it sets one minimum standard for local courts and one for judges. In a nutshell, it requires judges to have some minimal education, and for the court to keep a record of a criminal proceeding. That's all.

An early draft of a legislative concept related to local courts was circulated months ago, and some of the analysis has been in response to that draft or the original bill without amendments that have been written subsequently. Over the past year, I have met with colleagues, judges from rural Oregon, representatives of the Judicial Department, attorneys, AOC, LOC, and other stakeholder organizations.

I have especially appreciated participating in several meetings in the past month or two with judges from eastern Oregon, and thank Rep. Smith and Judge Chris Perry of Wheeler County for their time. Those meetings have been very helpful in reaching a new, streamlined version of the concept, with a significantly narrower scope, and the remaining points have been modified in major ways.

The most recent amendments clarify the **definition of "criminal proceedings"** so that it does not include violations; explain the **educational requirement** that can substitute for a JD (a short course offered by the National Judicial College, about a week in length, or another equivalent); and recognize extenuating circumstances. Amendments were posted on March 25 (almost a week before this public hearing.)

Record of proceedings

The first part of the bill would require justice and municipal courts to keep a transcript or audio record of criminal proceedings for at least 12 months. This is a minimal requirement that can be useful to all parties in making their case should there be an appeal, or in resolving a claim of misconduct.

It's important to note that this bill does not require local courts to become courts of record, which sets a more rigorous standard.¹

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I have seen concern about the cost of recording equipment, and citing a cost of around \$10,000. That appears to be based on a system that has been installed in a local Court of Record, such as the Beaverton Municipal Court, which *is* a Court of Record. Our research indicates that recording equipment is commonly available for a little more or less than \$1,000. For example, a smaller court can purchase an all-inclusive Phillips 2-channel, 4-microphone system for \$850. For a larger court, you can buy a Roland R44 4-channel recorder for around \$800 (depending on where you buy it). With additional microphones, cable adapters, extensions, and SD memory cards, the total cost for this advanced system comes to around \$1300. These are only two options, a low-cost simple one for a smaller court and a more complex one for a larger court, and both are well below the cited \$10,000 threshold.

Judge Perry has provided an even much lower-cost example that he has successfully implemented in Wheeler County for under \$100 per year. That equipment is suitable for a simple recording of proceedings, to capture the statements made in court.

Educational requirement

The second part of the bill establishes an educational standard for newly-elected or appointed judges. Currently, under Oregon state law, you do not have to have a law degree, have passed the bar exam, or be a member of the Bar Association to be a judge in a justice or municipal court (you do in a court of record). In other words, there is no minimum educational requirement for judges trying criminal cases.

The qualifications of individuals serving as judges in local courts vary from place to place. Municipal court judges or justices of the peace are not necessarily required to be trained in law, either by degree or certification, or to be a member of the bar. Many of the lay judges have completed a course that provides basic education in the law, and administering the law – but not all. Of twelve lay justices of the peace, we know of nine that have completed the course available from the National Judicial College, but only four completed it within the first year of presiding as judge. All justices of the peace attend continuing legal education programs accredited by the Oregon State Bar, meeting a requirement for all judges, both lay and lawyer judges, to complete 30 hours of legal education every two years.

This bill requires new judges to have a law degree, or complete the National Judicial College course on courts of special jurisdiction within 12 months of being elected or appointed. This course provides valuable information on topics such as courtroom procedures, making evidentiary rulings, handling cases with self-represented litigants, and creating a sense of impartiality and fairness in the courtroom. The National Judicial College has two types of scholarships available. One is a \$1,000 federally funded award from the State Justice Institute, and another is up to \$500 from the NJC.

The bill also provides for an extension of time to complete the educational requirement should some unexpected, exigent circumstance prevent the new judge from completing the course. A judge may request a one-time, 12-month extension from the presiding judge of the judicial district. (During this time of extension, the presiding judge may choose to require additional educational requirements to help the new judge be fully prepared for their role.)

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Amendments:

-3: The intent is to require new judges to take a shorter, 10-day course on courts of special jurisdiction rather than the year-long program of a Certificate in Judicial Development. This amendment fixes the error.

-4: Excludes violations from the definition of “criminal”, therefore requiring only misdemeanor and felony proceedings be recorded.

-5: Sets the dates the bill is effective. Makes the recording section apply only to proceedings occurring on or after the effective date. Makes the educational requirement apply only to municipal judges and justices of the peace appointed, elected, or reelected on or after the effective date.

-6: Provides flexibility to include a one-time 12-month extension of the educational requirement under exigent circumstances.

-7: Provides flexibility to allow the presiding judge of a judicial district to identify a course he or she feels is an educational equivalent to the course on courts of special jurisdiction at the National Judicial College. The intent is such that should a more local or cheaper alternative to the course exist, it could satisfy the requirements of this bill. This one, however, is tricky, and would place a burden on the presiding judge to review the content of the NJC course, and then review the content of the proposed substitute course, to determine whether it is suitable.

Four of the amendments are critical to the bill, and represent agreements that narrowed the scope and impact on local courts. Those are -3, -4, -5, and -6. The bill drafter has acknowledged a drafting problem in lines 2 and 3 of the -6 amendment which incorrectly refer to the Certificate of Judicial Development rather than the course on courts of special jurisdiction. She assures me that this will be fixed and the correct course will be included in the language if and when the -6 amendment is adopted.

Closing

I believe that the amendments satisfactorily address the concerns that have been raised. While “raising the bar” to ensure justice, the bill is written to avoid or minimize adverse impact on current courts and their judges. Thank you.

ⁱ Five local courts of record registered with State Supreme Court: West Linn, St. Helens, Lake Oswego, Beaverton, and Florence