

House Bill 2640

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**.

Requires showing that material witness previously failed to comply with subpoena before warrant of arrest may be issued for witness and before witness may be detained in custody.

Prohibits issuance of warrant of arrest for material witness, or detention in custody of material witness, if material witness is victim of crime.

Requires court to terminate material witness order if, within 10 days after entry of order, court receives evidence that witness remains detained and has participated in deposition to perpetuate testimony.

A BILL FOR AN ACT

1
2 Relating to material witnesses; creating new provisions; and amending ORS 136.611, 136.612 and
3 136.616.

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

5 **SECTION 1.** ORS 136.611 is amended to read:

6 136.611. (1) If, upon receipt of an application under ORS 136.608, the court determines that the
7 application is well founded, the court shall:

8 (a) Enter an order directing the prospective witness to appear before the court at a designated
9 time; or

10 (b) Issue a warrant of arrest directing the sheriff to take the person into custody and bring the
11 person before the court, if:

12 **(A) The prospective witness is not a victim of any crime in the action against the de-**
13 **fendant;**

14 **(B) The prospective witness previously failed to comply with a lawfully issued subpoena;**
15 **and**

16 **(C) The application included facts establishing a reasonable belief that the prospective witness**
17 **would not respond to an order to appear.**

18 (2) An order under subsection (1) of this section must inform the prospective witness of the
19 purpose of the hearing and must be served in the manner provided in ORCP 7 for the service of a
20 summons.

21 (3) When the prospective witness appears before the court, the court shall inform the person:

22 (a) Of the nature and purpose of the hearing; and

23 (b) That the person has all of the rights of a person in a criminal proceeding including, but not
24 limited to, the right to counsel, the right to appointed counsel at state expense if the person is un-
25 able to afford counsel and the right to call witnesses and have subpoenas issued.

26 (4) The hearing may be postponed at the request of the prospective witness for the purpose of
27 obtaining counsel. If the hearing is postponed, the court shall order the prospective witness to ap-
28 pear at a future time. In addition, the court may require the prospective witness to pay an amount

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 to secure the person’s appearance. If the person refuses to comply with the order, the court shall
 2 commit the person to the jail of the county, or other appropriate detention facility, until the person
 3 complies or is discharged.

4 **SECTION 2.** ORS 136.612 is amended to read:

5 136.612. (1) At the hearing to determine whether a material witness order should be entered:

6 (a) The applicant has the burden of proving by a preponderance of the evidence all facts es-
 7 sential to support the order;

8 (b) The prospective witness may testify and may call witnesses;

9 (c) All testimony is under oath; and

10 (d) The Oregon Evidence Code shall apply in any material witness proceeding under ORS
 11 136.611, except that hearsay may be admitted if the court determines that it would impose an un-
 12 reasonable hardship on one of the parties or on a witness to require that the primary source of the
 13 evidence be produced at the hearing, and if the witness furnishes information bearing on the
 14 informant’s reliability and, as far as possible, the means by which the information was obtained.

15 (2) If the court finds by a preponderance of the evidence that the prospective witness possesses
 16 information that is material to the pending action, **has previously failed to comply with a lawfully**
 17 **issued subpoena, is not a victim of any crime in the action against the defendant** and will not
 18 appear at the time the attendance of the witness is required, the court shall establish a security
 19 amount calculated to ensure the attendance of the witness and shall enter a material witness order.

20 (3)(a) If the security amount is paid, the court shall release the witness. If someone other than
 21 the witness pays the security amount, the court shall release the witness only if the witness con-
 22 sents, in writing, to the payment of the security.

23 (b) If the security amount is not paid, the court shall commit the witness to the jail of the
 24 county, or other appropriate detention facility, until the witness pays the security amount or the
 25 attendance of the witness is no longer needed in the action.

26 (4) Unless **terminated as provided in subsection (5) of this section** or vacated as provided
 27 in subsection [(5)] **(6)** of this section, a material witness order remains in effect:

28 (a) If issued by a circuit court, during the pendency of the criminal action in the circuit court;
 29 or

30 (b) If issued by a court other than a circuit court, until the attendance of the witness is no
 31 longer needed in any part of the criminal action.

32 **(5) The court shall immediately terminate the material witness order if, within 10 days**
 33 **after entry of the order, the court is presented with credible evidence that the witness:**

34 **(a) Remains committed to a detention facility; and**

35 **(b) Has participated in a deposition to perpetuate the testimony of the witness as de-**
 36 **scribed in ORS 136.616.**

37 [(5)] **(6)** At any time after the entry of a material witness order, the court, upon application of
 38 either party to the order and notice to the other party, may vacate or modify the order. The court
 39 shall consider new, or changed, facts or circumstances. The court may vacate the order or may
 40 modify any part of the order. If the court reduces the security amount, the court shall exonerate
 41 any part of the original security amount in excess of the modified amount that has been paid.

42 **SECTION 3.** ORS 136.616 is amended to read:

43 136.616. (1) As used in this section, “material witness order” has the meaning given that term
 44 in ORS 136.608.

45 (2) At any time after the court enters a material witness order, the court may order, or the

1 district attorney or the defendant may file a petition to conduct, a deposition to perpetuate the
2 testimony of the material witness.

3 (3)(a) The petition must be in writing and sworn to by the petitioner.

4 (b) The petitioner shall serve a notice and a copy of the petition on the opposing party and on
5 the material witness.

6 (4) A petition filed under this section must describe:

7 (a) The basis on which the court entered the material witness order;

8 (b) Any findings made by the court in establishing the security amount under ORS 136.612;

9 (c) Any findings made by the court in detaining the material witness; and

10 (d) The reasons that perpetuating the testimony of the material witness is necessary.

11 (5) The court shall grant or deny the petition no later than 30 days after the date the petition
12 is filed. The court shall consider whether the perpetuation of the testimony will prevent failure or
13 delay of justice for the parties and the material witness. If the court orders the deposition of the
14 material witness, the court may specify the subject matter of the deposition, impose limitations on
15 the deposition and require audio or video recording of the deposition.

16 (6) **Except as provided in ORS 136.612 (5),** the deposition of a material witness under this
17 section does not invalidate or otherwise affect the material witness order, but may be considered in
18 connection with an application to vacate or modify the order under ORS 136.612 [(5)] (6).

19 (7) The Oregon Evidence Code applies to depositions under this section.

20 **SECTION 4. The amendments to ORS 136.611, 136.612 and 136.616 by sections 1 to 3 of this**
21 **2017 Act apply to material witness proceedings occurring on or after the effective date of this**
22 **2017 Act.**

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