

# Enrolled Senate Bill 489

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CHAPTER .....

AN ACT

Relating to court records; creating new provisions; amending ORS 14.130, 14.160, 18.255, 25.091, 25.100, 25.110, 33.055, 33.125, 105.113, 105.135, 107.449, 113.025, 131.375, 131.385, 135.375, 161.365, 416.448, 419B.124, 419B.127, 419B.130, 419B.132, 419C.050, 419C.053, 419C.056 and 419C.059; repealing ORS 14.140, 14.150 and 419C.062; and declaring an emergency.

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

## CONTEMPT PROCEEDINGS

**SECTION 1.** ORS 33.055 is amended to read:

33.055. (1) Except as otherwise provided in ORS 161.685, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding or, with leave of the court, participate in the proceeding, by filing a motion requesting that defendant be ordered to appear:

- (a) A party aggrieved by an alleged contempt of court.
- (b) A district attorney.
- (c) A city attorney.
- (d) The Attorney General.

(e) Any other person specifically authorized by statute to seek imposition of sanctions for contempt.

*[(3) A motion to initiate a proceeding under this section shall be filed in the proceeding to which the contempt is related, if there is a related proceeding.]*

**(3) If the alleged contempt is related to another proceeding, a motion to initiate a proceeding to impose remedial sanctions must be filed in accordance with rules adopted under ORS 33.145.**

(4) The person initiating a proceeding under this section shall file supporting documentation or affidavits sufficient to give defendant notice of the specific acts alleged to constitute contempt.

(5)(a) The court may issue an order directing the defendant to appear. Except as otherwise provided in paragraph (b) of this subsection, the defendant shall be personally served with the order to appear in the manner provided in ORCP 7 and 9. The court may order service by a method other than personal service or issue an arrest warrant if, based upon motion and supporting affidavit, the court finds that the defendant cannot be personally served.

(b) The defendant shall be served by substituted service if personal service is waived under ORS 107.835. If personal service is waived under ORS 107.835, the defendant shall be served by the method specified in the waiver.

(6) The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. The defendant may waive the opportunity for a hearing by stipulated order filed with the court.

(7) A defendant has no right to a jury trial and, except as provided in this section, has only those rights accorded to a defendant in a civil action.

(8) A defendant is entitled to be represented by counsel. A court shall not impose on a defendant a remedial sanction of confinement unless, before the hearing is held, the defendant is:

(a) Informed that such sanction may be imposed; and

(b) Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.

(9) If the defendant is not represented by counsel when coming before the court, the court shall inform the defendant of the right to counsel, and of the right to appointed counsel if the defendant is entitled to, and financially eligible for, appointed counsel under subsection (8) of this section.

(10) Inability to comply with an order of the court is an affirmative defense.

(11) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(12) Proceedings under this section are subject to rules adopted under ORS 33.145. Proceedings under this section are not subject to the Oregon Rules of Civil Procedure except as provided in subsection (5) of this section or as may be provided in rules adopted under ORS 33.145.

**SECTION 2.** ORS 33.125 is amended to read:

33.125. (1) The imposition of a sanction for contempt shall be by a judgment.

(2) A judgment in a proceeding for imposition of a remedial sanction may be appealed in the same manner as from a judgment in an action at law. An appeal from a judgment imposing a punitive sanction shall be in the manner provided for appeals in ORS chapter 138. Appeals from judgments imposing sanctions for contempt in municipal courts and justice courts shall be in the manner provided by law for appeals from those courts.

[3(a)] **(3)** *[If a motion to initiate proceedings to impose remedial sanctions is filed in a related proceeding under ORS 33.055 (3) before entry of judgment in the related proceeding,]* **If a proceeding to impose remedial sanctions is related to another proceeding as described in ORS 33.055 (3) and the court determines, before entry of judgment in the related proceeding,** that the defendant is in contempt, the court may suspend *[imposition]* **impositions** of sanctions and entry of judgment on the contempt until entry of judgment in the related proceeding.

*[(b) If a motion to initiate proceedings to impose remedial sanctions is filed in a related proceeding under ORS 33.055 (3) before entry of judgment in the related proceeding, and the court denies the motion or declines to impose sanctions, the court shall enter judgment on that denial or determination only as part of the judgment in the related proceeding.]*

(4) An appeal from a contempt judgment shall not stay any action or proceeding to which the contempt is related.

## AUXILIARY COURTS AND TRANSFERS OF PROCEEDINGS

**SECTION 3.** ORS 25.100 is amended to read:

25.100. (1) With respect to any order or judgment entered pursuant to ORS 107.095, 107.105, 108.120, 109.155, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110, if a party seeking modification or enforcement of an order or judgment for the payment of money files a certificate to the effect that a party is presently in another county of this state, the court may, upon motion of the party, *[order that certified copies of the files, records and prepared transcripts of testimony in the original proceeding be transmitted to the clerk of]* **enter an order designating** the circuit court of

any county in this state in which the obligee or obligor resides, or in which property of the obligor is located, **as an auxiliary court for purposes of the order or judgment.**

**(2) The clerk of the circuit court in which the original order or judgment was entered shall notify the auxiliary court of the order designating the auxiliary court.**

*[(2) Any files, records and prepared transcripts of testimony maintained in the county to which certified copies have been transmitted as provided in subsection (1) of this section shall be auxiliary to those maintained in the county of origin, whose files, records and prepared transcripts shall remain the official record.]*

*[(3) The original of any order entered in the auxiliary county under ORS 25.110 shall be entered in the files and records of the auxiliary county and certified copies thereof shall be forwarded to the county of origin for filing. The party submitting the original order for signature shall submit an extra copy for forwarding by the clerk and shall indicate on that copy where it is to be forwarded.]*

*[(4) Notwithstanding any file number assigned in the auxiliary county for purposes of identification, the file number assigned in the county of origin shall be the reference number for all purposes including support payment records in the Department of Justice.]*

**SECTION 4.** ORS 25.091 is amended to read:

25.091. (1) As used in this section:

(a) "Child support judgment" has the meaning given that term in ORS 25.089.

(b) "Governing child support judgment" means a child support judgment issued in this state that addresses child support, including medical support as defined in ORS 25.321, and is entitled to exclusive prospective enforcement or modification with respect to any earlier child support judgment issued in this state.

(2) Notwithstanding any other provision of this section or ORS 25.089, when two or more child support judgments exist involving the same obligor and child and one or more of the judgments was issued by a tribunal of another state, the court shall apply the provisions of ORS chapter 110 before enforcing or modifying a judgment under this section or ORS 25.089.

(3) When two or more child support judgments exist involving the same obligor and child and the same period, any party to one or more of the child support judgments or the administrator, under ORS 416.448, may file a petition with the court for a governing child support judgment under this section. When a matter involving a child is before the court and the court finds that two or more child support judgments exist involving the same obligor and child and the same period, the court on its own motion, and after notice to all affected parties, may determine the controlling terms of the child support judgments and issue a governing child support judgment under this section.

(4)(a) Except as provided in paragraph (b) of this subsection, when two or more child support judgments exist involving the same obligor and child and the same period, and each judgment was issued in this state, there is a presumption that the terms of the last-issued child support judgment are the controlling terms and terminate contrary terms of each earlier-issued child support judgment.

(b) If the earlier-issued child support judgment requires provision of a specific type of child support and the last-issued child support judgment is silent with respect to that type of child support, the requirement of the earlier-issued child support judgment continues in effect.

(5) A party may rebut the presumption in subsection (4) of this section by showing that:

(a) The last-issued child support judgment should be set aside under the provisions of ORCP 71;

(b) The last-issued child support judgment was issued without prior notice to the issuing court, administrator or administrative law judge that:

(A) There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or

(B) There existed in this state or any other jurisdiction another child support judgment involving the child; or

(c) The last-issued child support judgment was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment in accordance with ORS 25.089.

(6) When a court finds that two or more child support judgments exist involving the same obligor and child and the same period, and each child support judgment was issued in this state, the court shall set the matter for hearing to determine the controlling terms of the child support judgments. When the child support judgments were issued in different counties of this state, the court may *[cause the records from the original proceedings to be transmitted to the court in accordance with]* **designate an auxiliary court under ORS 25.100.**

(7) Following a review of each child support judgment and any other evidence admitted by the court:

(a) The court shall apply the presumption in subsection (4) of this section, unless the presumption is rebutted, and shall determine the controlling terms of the child support judgments; and

(b) Notwithstanding ORS 25.089 (3), the court shall issue a governing child support judgment addressing child support, including medical support as defined in ORS 25.321, for the benefit of the child.

(8) The governing child support judgment must include:

(a) A reference to each child support judgment considered and a copy of the judgment;

(b) A determination of which terms regarding child support, including medical support as defined in ORS 25.321, are controlling and which child support judgment or judgments contain those terms;

(c) An affirmation, termination or modification of the terms regarding child support, including medical support as defined in ORS 25.321, in each of the child support judgments;

(d) Except as provided in subsection (9) of this section, a reconciliation of any child support arrears or credits under all of the child support judgments; and

(e) The effective date of each controlling term and the termination date of each noncontrolling term in each of the child support judgments. In determining these dates, the court may apply the following:

(A) A controlling term is effective on the date specified in the child support judgment containing that term or, if no date is specified, on the date the child support judgment was entered as described in ORS 18.075.

(B) A noncontrolling term is terminated on the date the governing child support judgment is entered as described in ORS 18.075.

(9) The court may order the parties, in a separate proceeding under ORS 25.167 or 416.429, to reconcile any child support arrears or credits under all of the child support judgments.

(10) When the governing child support judgment is entered as described in ORS 18.075, the noncontrolling terms of each earlier child support judgment are terminated. However, subject to subsection (11) of this section, the entry of the governing child support judgment does not affect any child support payment arrearage or any liability related to medical support, as defined in ORS 25.321, that has accrued under a child support judgment before the governing child support judgment is entered.

(11) For purposes of reconciling any child support arrears or credits under all of the child support judgments, amounts collected and credited for a particular period under one child support judgment must be credited against the amounts accruing or accrued for the same period under any other child support judgment.

(12) Not sooner than 30 days and not later than 60 days after entry of the governing child support judgment, a party named by the court, or the petitioner if the court names no other party, shall file a *[certified]* copy of the governing child support judgment with each court or the administrator that issued an earlier child support judgment. A party who fails to file a *[certified]* copy of the governing child support judgment as required by this subsection is subject to monetary sanctions, including but not limited to attorney fees, costs and disbursements. A failure to file does not affect the validity or enforceability of the governing child support judgment.

(13) This section applies to any judicial proceeding in which child support may be awarded or modified under this chapter or ORS chapter 107, 108, 109 or 416 or ORS 125.025, 419B.400, 419B.923, 419C.590 or 419C.610.

**SECTION 5.** ORS 416.448 is amended to read:

416.448. (1) As used in this section:

(a) "Child support judgment" has the meaning given that term in ORS 25.089.

(b) "Governing child support judgment" has the meaning given that term in ORS 25.091.

(2) Notwithstanding any other provision of this section or ORS 25.089, when two or more child support judgments exist involving the same obligor and child, and when one or more of the judgments was issued by a tribunal of another state, the administrator shall apply the provisions of ORS chapter 110 before enforcing or modifying a child support judgment under this section or ORS 25.089.

(3) When the administrator finds that two or more child support judgments exist involving the same obligor and child and the same period, and each child support judgment was issued in this state:

(a) The administrator may petition the court for the county where a child who is subject to the judgments resides for a governing child support judgment under ORS 25.091; or

(b) The administrator may apply the presumption described in ORS 25.091, determine the controlling terms of the child support judgments and issue a proposed governing child support order and notice to the parties in the manner prescribed by rules adopted by the Department of Justice under ORS 416.455. The proposed governing child support order must include all of the information described in ORS 25.091 (8). The administrator shall serve the proposed governing child support order and notice in the manner provided in ORS 416.425. The notice must include a statement that the proposed governing child support order shall become final unless a written objection is made to the administrator within 30 days after service of the proposed governing child support order and notice.

(4) If the administrator receives a timely written objection to a proposed governing child support order issued under subsection (3)(b) of this section, the administrator shall certify the matter to the court for the county where a child who is subject to the judgments resides for a governing child support judgment under ORS 25.091.

(5) If the administrator does not receive a timely written objection to a proposed governing child support order issued under subsection (3)(b) of this section, the governing child support order is final. The administrator shall certify the governing child support order to a court for review and approval. The governing child support order is not effective until reviewed and approved by the court. If the court approves the governing child support order, the governing child support order becomes the governing child support judgment upon filing as provided in ORS 416.440.

(6) When a governing child support judgment is entered as described in ORS 416.440, the non-controlling terms of each earlier child support judgment are terminated. However, subject to subsection (7) of this section, the entry of a governing child support judgment does not affect any support payment arrearage or any liability related to medical support, as defined in ORS 25.321, that has accrued under a child support judgment before the governing child support judgment is entered.

(7) For purposes of reconciling any child support arrears or credits under all of the child support judgments, amounts collected and credited for a particular period under one child support judgment must be credited against the amounts accruing or accrued for the same period under any other child support judgment.

(8) Not sooner than 30 days and not later than 60 days after entry of the governing child support judgment, the administrator shall file a *[certified]* copy of the governing child support judgment with each court that issued an earlier child support judgment. A failure to file does not affect the validity or enforceability of the governing child support judgment.

(9) When an administrative law judge finds that two or more child support judgments exist involving the same obligor and child and the same period, and each child support judgment was issued in this state, the administrative law judge shall remand the matter to the administrator to follow the provisions of subsection (3) of this section.

**SECTION 6.** ORS 25.110 is amended to read:

25.110. (1) Upon *[receipt of such certified copies referred to in]* **entry of an order designating an auxiliary court under** ORS 25.100, the *[circuit court of the county to which such certified copies*

*have been transmitted shall have*] **auxiliary court has** jurisdiction to compel compliance with *[such]* **an order or judgment for payment of support** the same as if it were the court *[which]* **that** made and entered the original order or judgment *[for the payment of support]*.

(2) The only *[court having]* **courts that have** jurisdiction to modify any provision of the original order or judgment *[is]* **are**:

(a) The court having original jurisdiction of the cause in which *[such]* **the** order or judgment was entered; **and** *[or the circuit court of the county in which either party resides if that court has received the certified copies referred to in ORS 25.100.]*

(b) **An auxiliary court designated under ORS 25.100.**

(3) **When an auxiliary court enters an order or judgment under this section, the clerk of the auxiliary court shall forward the order or judgment to the clerk of the court in which the original order or judgment was entered. The clerk of the court in which the original order or judgment was entered shall file the auxiliary court's order or judgment in the original court file.**

*[2) The provisions of ORS 25.100 (2) to (4) shall apply to this section.]*

**SECTION 7.** ORS 107.449 is amended to read:

107.449. (1) Upon motion of a party to a proceeding under ORS 107.135 (1) that is not otherwise covered under the provisions of ORS 25.100 (1), based upon convenience of the parties, the court that *[has]* entered the original judgment may *[order that the matter be transferred to an auxiliary circuit court]* **enter an order designating an auxiliary court located** where either party resides for the purpose of hearing the matter.

*[2) Upon entry of an order under this section and payment by the moving party of the copying and certification costs, the clerk of the court that ordered the transfer shall transmit certified copies of the files, records and prepared transcripts of testimony in the original proceeding to the clerk of the court receiving the matter. Upon receipt of such certified copies, the circuit court of the county to which such certified copies have been transmitted shall have jurisdiction the same as if it were the court that made and entered the original order or judgment.]*

(2) **Upon entry of an order designating an auxiliary court under this section:**

(a) **The clerk of the court in which the original order or judgment was entered shall notify the auxiliary court of the order designating the auxiliary court.**

(b) **The auxiliary court has jurisdiction the same as if it were the court that made and entered the original order or judgment.**

(3) The only *[court having]* **courts that have** jurisdiction to modify any provision of the original order or judgment *[is]* **are**:

(a) The court having original jurisdiction of the cause in which *[such]* **the** order or judgment was entered; **and** *[or the circuit court of the county in which either party resides if that court has received the certified copies referred to in subsection (2) of this section. The provisions of ORS 25.100 (2) to (4) shall apply to all records maintained and orders issued in the auxiliary proceeding.]*

(b) **An auxiliary court designated under this section.**

(4) **When an auxiliary court enters an order or judgment under this section, the clerk of the auxiliary court shall forward the order or judgment to the clerk of the court in which the original order or judgment was entered. The clerk of the court in which the original order or judgment was entered shall file the auxiliary court's order or judgment in the original court file.**

**SECTION 8.** ORS 14.130 is amended to read:

14.130. When the place of trial has been changed **as provided in ORS 14.110**, the clerk shall **promptly notify the clerk of the proper or more convenient court of the change** *[forthwith transmit to the clerk of the proper court, a transcript of the proceedings in such cause, with all the original papers filed therein, having first made out and filed in the office of the clerk, authenticated copies of all such original papers].*

**SECTION 9.** ORS 14.160 is amended to read:

14.160. [Upon the filing of the transcript and papers with the clerk of the court to which the cause is transferred, the change of venue shall be deemed] **A change of venue is complete upon entry of an order changing the place of trial**, and thereafter the action shall proceed as though it had been commenced in [that] **the proper or more convenient court.**

**SECTION 10. ORS 14.140 and 14.150 are repealed.**

**SECTION 11. ORS 18.255 is amended to read:**

18.255. (1) The circuit court for the county where a judgment debtor resides may enforce a circuit court judgment entered in another circuit court if a transcript of the original judgment is filed with the court. The circuit court for the county where a judgment debtor resides may issue a writ of execution against real property under the provisions of this section only if a certified copy of the original judgment, or a lien record abstract in the form provided by ORS 18.170, is recorded in the County Clerk Lien Record for that county, in addition to the filing of a transcript of the original judgment with the circuit court for that county. In no event shall the court administrator be liable for issuing a writ of execution, writ of garnishment or other execution for a judgment transcribed pursuant to this section.

(2) A judgment creditor who files a transcript of a judgment under subsection (1) of this section must give written notice of the filing to the circuit court in which the judgment was originally entered.

(3) At the time a transcript of a judgment is filed under this section, the judgment creditor or the attorney for the judgment creditor must make and file with the court administrator a statement containing the information required for a money award under ORS 18.042 (2) and an affidavit setting forth:

- (a) The name and last-known address of the judgment creditor;
- (b) The name and last-known address of the judgment debtor;
- (c) A statement that the judgment creditor has a good faith belief that the judgment debtor resides in the county in which the transcript of the judgment is filed;
- (d) A statement that the judgment has not been satisfied and that execution on the judgment has not been stayed; and
- (e) A statement that written notice of the filing has been given to the circuit court in which the judgment was originally entered.

(4) The circuit court in which a transcript of a judgment is filed under this section is the only court with authority to issue a writ of execution, writ of garnishment or other execution on the transcribed judgment until the judgment creditor files an affidavit with the circuit court certifying that the judgment debtor no longer resides in that county. A copy of the affidavit must be filed by the judgment creditor in the court in which the judgment was originally entered. After the filing of an affidavit under this subsection, only the circuit court in which the judgment was originally entered may issue a writ of execution, writ of garnishment or other execution on the judgment.

(5) When a transcribed judgment is filed with a circuit court under this section, the court administrator shall enter the transcribed judgment in the register but shall not note in the register that the judgment creates a judgment lien. [*The files and records of the court in which the judgment was originally entered remain the official record of the proceeding, and files and records maintained by a court in which a transcribed judgment has been filed are auxiliary to the files and records of the court in which the judgment was originally entered.*] Satisfaction documents under ORS 18.225 and certificates of extension under ORS 18.180 to 18.190 may be filed only in the court in which the judgment was originally entered.

(6) This section does not apply to justice courts, municipal courts or county courts performing judicial functions.

**SECTION 12. ORS 113.025 is amended to read:**

113.025. (1) If proceedings seeking the appointment of a personal representative of the same estate or proceedings to probate a will of the same decedent are commenced in more than one county, they shall be stayed except in the county where first commenced until final determination there of venue. A proceeding is considered commenced by the filing of a petition. In determining venue, if

the court finds that transfer to another county where a proceeding has been commenced is for the best interest of the estate, it may in its discretion order such transfer.

*[(2) If the proper venue is determined to be in another county, the clerk of the court shall transmit to the clerk of the court for the other county a transcript of the proceeding with all the original papers filed therein, and the court for the other county thereupon has exclusive jurisdiction of the proceeding to the same extent and with like effect as though the proceeding were in the court on original jurisdiction.]*

**(2) When the court enters an order transferring the proceeding to another county, the clerk of the court shall notify the court for the other county of the order, and the court for the other county has exclusive jurisdiction of the proceeding to the same extent and with like effect as though the proceeding were in the court on original jurisdiction.**

**SECTION 13.** ORS 131.375 is amended to read:

131.375. When the court has ordered a change of venue, the clerk shall *[forthwith make and retain authenticated copies of the original papers filed in the case and transmit to]* **notify** the clerk of the proper court *[a transcript of the proceedings and the original papers]*.

**SECTION 14.** ORS 131.385 is amended to read:

131.385. The change of the place of trial is complete *[when the transcript and papers are filed with the clerk of the court to which the trial is transferred]* **upon entry of an order changing the place of trial**, and thereafter the action shall proceed in the same manner as if it had been commenced in *[that]* **the court to which the trial is transferred.**

**SECTION 15.** ORS 135.375 is amended to read:

135.375. (1) As used in this section:

(a) "Initiating county" means the county in which the defendant appears for the purpose of entering a plea to a criminal charge.

(b) "Responding county" means a county in which another criminal charge is pending against the defendant entering a plea in the initiating county.

(2) Upon entry of a plea of guilty or no contest, or after conviction on a plea of not guilty, if a charge is pending against the defendant for a crime *[which]* **that** is within the jurisdiction of a coordinate court of a responding county in the state, the defendant may state in writing that the defendant desires:

(a) To waive venue and trial in the responding county;

(b) To waive indictment by the grand jury of the responding county;

(c) To plead guilty or no contest; and

(d) To consent to disposition of the case by the court in the initiating county.

(3) Upon receipt of the request and the written approval of the district attorney of the initiating county, the clerk of the court **of the initiating county** shall *[forthwith transmit copies of the request and approval to]* **notify** the court and the district attorney of the responding county.

*[(4) Upon receipt of the papers described in subsection (3) of this section and the written approval of the district attorney of the responding county, the clerk of the court shall forthwith transmit certified copies of the papers in the proceeding to the court of the initiating county.]*

*[(5)]* **(4)** Upon receipt of *[the papers described in subsection (4) of this section, the court]* **written approval from the district attorney of the responding county, the court of the initiating county** may allow the defendant to enter the plea.

*[(6)]* **(5)** The original judgment entered by the court of the initiating county *[shall be transmitted to the court of the responding county for filing. The judgment shall thereafter be considered, for all purposes,]* **after the defendant enters a plea under subsection (4) of this section is the same for all purposes** as a judgment of the court of the responding county.

**SECTION 16.** ORS 419B.124 is amended to read:

419B.124. If during the pendency of a proceeding in any court other than a juvenile court it is ascertained that the age of the person who is the subject of the proceeding is such that the matter is within the exclusive jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is pending *[forthwith to transfer the proceeding, together with all the papers, documents*



and testimony connected therewith,] to **transfer the proceeding** to the juvenile court of the county in which the proceeding is pending. **The clerk of the court transferring the proceeding shall notify the clerk of the juvenile court of the transfer.**

**SECTION 17.** ORS 419B.127 is amended to read:

419B.127. *[If a proceeding is initiated in a court of a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition, shall transfer the proceeding to the court of the county of the child's residence for such further proceeding as the receiving court finds proper. A like transfer may be made if the residence of a child or ward changes during the proceeding, or if the ward has been adjudicated within the jurisdiction of the court when the proceeding is initiated on grounds specified in ORS 419B.100 (1)(b) or (c) and other proceedings involving the ward are pending in the county of the ward's residence. Certified copies of the court records pertaining to the immediate proceeding shall accompany the case on transfer.]*

**(1) A court, on its own motion or on the motion of a party made at any time prior to disposition, shall transfer a proceeding to the court of the county where a child resides if the proceeding was initiated in a court of a county other than the county where the child resides.**

**(2) A court, on its own motion or on the motion of a party made at any time during the proceeding, may transfer a proceeding to the court of the county where a child or ward resides if:**

**(a) The residence of the child or ward changes during the proceeding; or**

**(b) The ward has been adjudicated to be within the jurisdiction of the court under ORS 419B.100 (1)(b) or (c) and other proceedings involving the ward are pending in the county of the ward's residence.**

**(3) The clerk of a court transferring a proceeding under this section shall notify the court to which the proceeding is transferred.**

**SECTION 18.** ORS 419B.130 is amended to read:

419B.130. *[Where] When* a juvenile court proceeding is pending in a county other than the county in which the child resides and the case is transferable under ORS 419B.124 or 419B.127, the juvenile court of the county in which the child resides may authorize the court in which the case is pending to proceed with the case in either of the following ways *[where] when* it will facilitate disposition of the case without adverse effect on the interests of the child:

**(1) [To] The court may** hear, determine and dispose of the case in its entirety; or

**(2) The court may,** prior to transferring the case[, to]:

**(a)** Conduct a hearing into the facts alleged to bring the child within the jurisdiction of the juvenile court[, to];

**(b)** Determine the facts *[and to certify its];*

**(c) Enter an order including the court's findings [to]; and**

**(d) Notify** the juvenile court of the county in which the child resides.

**SECTION 19.** ORS 419B.132 is amended to read:

419B.132. *[(1)]* When a proceeding is pending in the juvenile court of any county, the juvenile court of that county may authorize the juvenile court of any other county to do one or both of the following, when it will facilitate the disposition of the case without adverse effect on the interests of the child or ward:

**(1) The court may:**

**(a) [To] Conduct** a hearing into the facts alleged to bring the child within the jurisdiction of the juvenile court[, to];

**(b)** Determine the facts *[and to certify its];*

**(c) Enter an order including the court's findings [to]; and**

**(d) Notify** the court in which the case is pending.

*[(b)]* **(2) [To] The court may** assume jurisdiction over the case and administer protection supervision of the ward, when the court in which the proceeding is pending:

[(A)] **(a)** Finds that the ward has moved to the other county or orders as part of its disposition of the proceeding that legal custody of the ward be given to a person residing in the other county; and

[(B)] **(b)** Is advised that the court of the other county will accept the wardship and jurisdiction of the case. The county accepting wardship and jurisdiction shall pay the cost of administering protective supervision of the ward, unless the transferring and receiving counties otherwise agree. The county transferring jurisdiction shall pay the cost of transporting the ward, unless the transferring and receiving counties otherwise agree.

*[(2) When the juvenile court of one county is authorized by the juvenile court of another county to conduct a hearing into facts as provided in this section or ORS 419B.130, the facts so found and certified may be taken as established by the court of the county authorizing the hearing and, if adopted by written order of the latter court, form a part of its record in the case.]*

**SECTION 20.** ORS 419C.050 is amended to read:

419C.050. Except as otherwise provided in ORS 137.707, if during the pendency of a proceeding involving an allegation of a crime in any court other than a juvenile court it is ascertained that the age of the person who is the subject of the proceeding is such that the matter is within the exclusive jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is pending [forthwith] to transfer the proceeding[, together with all the papers, documents and testimony connected therewith,] to the juvenile court of the county in which the proceeding is pending. **The clerk of the court transferring the proceeding shall notify the clerk of the juvenile court of the transfer.**

**SECTION 21.** ORS 419C.053 is amended to read:

419C.053. *[(1) If a proceeding is initiated in a court of a county other than the county in which the youth resides, that court, on its own motion or on the motion of a party made at any time prior to disposition, may transfer the proceeding to the court of the county of the youth's residence for such further proceeding as the receiving court finds proper. A like transfer may be made if the residence of the youth changes during the proceeding, or if the youth has been adjudicated within the jurisdiction of the court where the proceeding is initiated on grounds specified in ORS 419C.005 (1), and other proceedings involving the youth are pending in the county of the youth's residence. Certified copies of the court records pertaining to the immediate proceeding shall accompany the case on transfer.]*

**(1) A court, on its own motion or on the motion of a party made at any time prior to disposition, may transfer a proceeding to the court of the county where a youth resides if:**

**(a) The proceeding was initiated in a court of a county other than the county where the youth resides;**

**(b) The residence of the youth changes during the proceeding; or**

**(c) The youth has been adjudicated to be within the jurisdiction of the court under ORS 419C.005 (1), and other proceedings involving the youth are pending in the county of the youth's residence.**

**(2) The clerk of a court transferring a proceeding under this section shall notify the court to which the proceeding is transferred.**

*[(2)] (3) Notwithstanding subsection (1) of this section, if a youth has no ascertainable residence in any county in this state, the court of the county wherein a proceeding is initiated may adjudicate any petition under ORS 419C.005 (1).*

**SECTION 22.** ORS 419C.056 is amended to read:

419C.056. *[Where]* **When** a juvenile court proceeding is pending in a county other than the county in which the youth resides and the case is transferable, the juvenile court of the county in which the youth resides may authorize the court in which the case is pending to proceed with the case in either of the following ways *[where]*, **when** it will facilitate disposition of the case without adverse effect on the interests of the youth:

**(1) [To] The court may** hear, determine and dispose of the case in its entirety; or

**(2) The court may,** prior to transferring the case[, to];

(a) Conduct a hearing into the facts alleged to bring the youth within the jurisdiction of the juvenile court[, *to*];

(b) Determine the facts [*and to certify its*];

(c) **Enter an order including the court's findings** [*to*]; **and**

(d) **Notify** the juvenile court of the county in which the youth resides.

**SECTION 23.** ORS 419C.059 is amended to read:

419C.059. (1) [*Where*] **When** a proceeding is pending in the juvenile court of any county, the juvenile court of that county may authorize the juvenile court of any other county to do one or both of the following, [*where*] **when** it will facilitate the disposition of the case without adverse effect on the interests of the youth:

(a) **The court may:**

[*(1)*] (A) [*To*] Conduct a hearing into the facts alleged to bring the youth within the jurisdiction of the juvenile court[, *to*];

(B) Determine the facts [*and to certify its*];

(C) **Enter an order including the court's findings** [*to*]; **and**

(D) **Notify** the court in which the case is pending.

[*(2)*] (b) [*To*] **The court may** assume jurisdiction over the case and administer probation or protection supervision of the youth, [*where*] **when** the court in which the proceeding is pending:

[*(a)*] (A) Finds that the youth has moved to the other county or orders as part of its disposition of the proceeding that legal custody of the youth be given to a person residing in the other county; and

[*(b)*] (B) Is advised that the court of the other county will accept jurisdiction of the case.

(2) The cost of administering probation or protective supervision of the youth shall be paid by the county accepting jurisdiction **under subsection (1)(b) of this section**, unless the transferring and receiving counties otherwise agree. The cost of transporting the youth shall be paid by the county transferring jurisdiction, unless the transferring and receiving counties otherwise agree.

**SECTION 24.** ORS 419C.062 is repealed.

## **DETERMINATION OF FITNESS TO PROCEED**

**SECTION 25.** ORS 161.365 is amended to read:

161.365. (1) When the court has reason to doubt the defendant's fitness to proceed by reason of incapacity as described in ORS 161.360, the court may call any witness to its assistance in reaching its decision and shall order that a community mental health program director or the director's designee consult with the defendant to determine whether services and supervision necessary to safely restore the defendant's fitness to proceed are available in the community. After the consultation, the program director or the director's designee shall provide to the court a copy of the findings resulting from the consultation. If the court determines the assistance of a psychiatrist or psychologist would be helpful, the court may:

(a) Order that a psychiatric or psychological examination of the defendant be conducted by a certified evaluator as defined in ORS 161.309 and a report of the examination be prepared; or

(b) Order the defendant to be committed for the purpose of an examination for a period not exceeding 30 days to a state mental hospital or other facility designated by the Oregon Health Authority if the defendant is at least 18 years of age, or to a secure intensive community inpatient facility designated by the authority if the defendant is under 18 years of age.

(2) The report of an examination described in this section must include, but is not necessarily limited to, the following:

(a) A description of the nature of the examination;

(b) A statement of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, an opinion as to whether the defendant is incapacitated within the description set out in ORS 161.360; and

(d) If the defendant is incapacitated within the description set out in ORS 161.360, a recommendation of treatment and services necessary to restore capacity.

(3) Except when the defendant and the court both request to the contrary, the report may not contain any findings or conclusions as to whether the defendant as a result of mental disease or defect was subject to the provisions of ORS 161.295 or 161.300 at the time of the criminal act charged.

(4) If the examination by the psychiatrist or psychologist cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report [shall] **must** so state and [shall] **must** include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect affecting capacity to proceed.

(5) The report [shall] **must** be filed [in triplicate] with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for defendant.

(6)(a) When upon motion of the court or a financially eligible defendant, the court has ordered a psychiatric or psychological examination of the defendant, a county or justice court shall order the county to pay, and a circuit court shall order the public defense services executive director to pay from funds available for the purpose:

(A) A reasonable fee if the examination of the defendant is conducted by a psychiatrist or psychologist in private practice; and

(B) All costs including transportation of the defendant if the examination is conducted by a psychiatrist or psychologist in the employ of the Oregon Health Authority or a community mental health program established under ORS 430.610 to 430.670.

(b) When an examination is ordered at the request or with the acquiescence of a defendant who is determined not to be financially eligible, the examination shall be performed at the defendant's expense. When an examination is ordered at the request of the prosecution, the county shall pay for the expense of the examination.

(7) The Oregon Health Authority shall establish by rule standards for the consultation described in subsection (1) of this section.

**FORCIBLE ENTRY AND WRONGFUL DETAINER**

**SECTION 26.** ORS 105.113 is amended to read:

105.113. Notwithstanding ORCP 7 [C], for premises to which ORS chapter 90 or ORS 91.120 applies, the summons must be in substantially the following form and be available from the court clerk:

---

IN THE CIRCUIT COURT  
FOR THE COUNTY OF

No. \_\_\_\_\_

SUMMONS  
RESIDENTIAL EVICTION

PLAINTIFF (Landlord or agent):

\_\_\_\_\_  
\_\_\_\_\_

vs.

DEFENDANT (Tenants/Occupants):

\_\_\_\_\_  
\_\_\_\_\_  
TO: \_\_\_\_\_ (Street address and city of property occupied by defendant)  
\_\_\_\_\_ (Mailing address if different)

NOTICE TO TENANTS:  
READ THESE PAPERS CAREFULLY  
YOUR LANDLORD WANTS TO  
EVICT YOU

ON \_\_\_\_\_, 2\_\_\_\_\_ AT \_\_\_\_\_ A.M./P.M., you must come to the County Court House located at \_\_\_\_\_. You do not have to pay any fees to the court for this first hearing.

• If you do not appear in court and your landlord does, your landlord will win automatically and can have the Sheriff physically remove you.

• If you do show up in court and your landlord does not, this eviction action will be dropped.

• If both of you show up:

• The judge may ask you to try to reach an agreement with your landlord, but this is voluntary. Trained mediators may be available free of charge to help resolve disputes.

• The court will schedule a trial if you and your landlord do not reach an agreement or if you do not agree to move out.

IF YOU WANT A TRIAL, YOU MUST:

• Show up in court at the time scheduled above;

• On the same day, file an Answer with the Court giving a legal reason why you should not be evicted (the Court can give you a form);

• Give a copy of the Answer to your landlord (or your landlord's agent or attorney); and

• Pay a filing fee of \$\_\_\_\_\_ (the judge may allow payment to be deferred in certain circumstances).

IF YOU HAVE QUESTIONS, YOU SHOULD SEE AN ATTORNEY IMMEDIATELY. If you need help finding an attorney, you can contact the Oregon State Bar's Lawyer Referral Service online at [www.oregonstatebar.org](http://www.oregonstatebar.org) or by calling 503-684-3763 (in the Portland metropolitan area) or toll-free elsewhere in Oregon at 800-452-7636.

\_\_\_\_\_  
Signature of Plaintiff (landlord or agent)

Plaintiff's address:  
  
\_\_\_\_\_

---

Plaintiff's telephone number: \_\_\_\_\_

[I certify that this is a true copy of the original summons:]

[\_\_\_\_\_]
[Signature of Plaintiff (landlord or agent)]

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**SECTION 27.** ORS 105.135 is amended to read:

105.135. (1) Except as provided in this section, the summons shall be served and returned as in other actions.

(2) [At the time the clerk collects the filing fee under ORS 105.130,] The clerk shall enter the first appearance date on the summons. That date shall be seven days after the judicial day next following payment of filing fees unless no judge is available for first appearance at that time, in which case the clerk may extend the first appearance date for up to seven additional days. At the request of the plaintiff, the clerk may enter a date more than seven days after the judicial day next following payment of filing fees if a judge will be available.

(3) Notwithstanding ORCP 10, by the end of the judicial day next following the payment of filing fees:

(a) The clerk shall mail [a true copy of] the summons and complaint by first class mail to the defendant at the premises.

(b) The process server shall serve the defendant with [a true copy of] the summons and complaint at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching [a true copy of] the summons and complaint in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

(4) A sheriff may serve a facsimile of [a certified true copy of] a summons and complaint that is transmitted to the sheriff by a trial court administrator or another sheriff [using a telephonic] by means of facsimile communication [device]. A copy of the facsimile must be attached to the sheriff's return of service. Before transmitting a summons and complaint to a sheriff under this subsection, the person sending the facsimile must receive confirmation by telephone from the sheriff's office that a telephonic facsimile communication device is available and operating.

(5) The process server shall indicate the manner in which service was accomplished by promptly filing with the clerk a certificate of service as provided by ORCP 7 F(2)(a).

(6) In the case of premises to which ORS chapter 90 applies, the summons shall inform the defendant of the procedures, rights and responsibilities of the parties as specified in ORS 105.137.

**CAPTIONS**

**SECTION 28.** The unit captions used in this 2017 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 2017 Act.

**EMERGENCY CLAUSE**

**SECTION 29.** This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

**Passed by Senate February 14, 2017**

.....  
Lori L. Brocker, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House May 24, 2017**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2017

**Approved:**

.....M,....., 2017

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2017

.....  
Dennis Richardson, Secretary of State