



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

June 22, 2020

(SENT BY EMAIL ONLY)

Joint Interim Committee on the First Special Session of 2020
900 Court St. NE, Room 347
Salem, OR 97301

Re: COVID-19 and Oregon's Justice System: Support for LC 45, Section 14, LC 84, Section 6

Dear Co-Chairs Courtney and Kotek; Co-Vice Chairs Girod and Drazan; and Members of the Joint Interim Committee on the First Special Session of 2020:

The Oregon Judicial Department (OJD) must continue to provide essential court services during this pandemic, but we also must protect the health and safety of justice system participants. To do that, we need your help. We have taken several steps to curtail in-court proceedings and have rapidly expanded remote hearings and services, but we need additional statutory authorization to take additional measures, as reflected in LC 45, Section 14 and LC 84, Section 6. What follows is a description of the legislation and a summary of actions we have taken and will continue to take, pursuant to existing authority.

1. Oregon's Judicial Branch Seeks Legislation Granting the Chief Justice the Ability to Extend or Suspend Certain Mandatory Timelines

Oregon's judicial branch seeks statutory authority for the Chief Justice to extend or suspend certain statutory timelines and to clarify the Chief Justice's authority to order remote participation in court proceedings as needed to address this public health emergency. This authority would extend to both criminal and noncriminal (civil) timelines after the case has been initiated and could be exercised only during the time in which the Governor declares a state of emergency and for sixty days thereafter.

Though courts have existing statutory discretion to extend some deadlines, many statutes require a judge, clerk, or litigant to act on a strict time frame, and does not provide judicial authority to suspend or extend those deadlines. Other statutes may be understood to require in-person appearances, or pose obstacles to ordering remote appearances. We are requesting Chief Justice authority to suspend or extend such deadlines and requirements for in-person appearances. Our courts have been able to accomplish a great deal, notwithstanding the challenges of the pandemic, but as our state reopens and cases are on the rise, flexibility is needed to protect the health, rights, and safety of parties, litigants, jurors, and others involved in the justice system.

Since similar legislation was first proposed in March, our courts have been able to continue serving the public and those who need resolution in critical matters. Yet, certain challenges remain, and

this legislation will grow ever more urgent as we face a rise in COVID-19 cases, a rising backlog of court cases, including cases that require trial by jury, and an anticipated tsunami of landlord-tenant matters after the eviction moratorium expires. OJD has presented to both the Senate and House Judiciary Committees on the challenges to our justice system. A link to the House presentation and additional materials is available [here](#).

a. LC 84, Section 6 Provides Courts the Authority to Place Safety and Public Welfare at the Fore

The Omnibus Bill, LC 84, Section 6 (also LC 45, Section 14) addresses the statutory barriers the courts currently face in balancing rights and safety during the pandemic. Unlike court systems in other states, the Chief Justice and judges across the state are without the ability to suspend mandatory timelines affecting court proceedings, filings, and appearances. In many other states, such changes can be made by court rules or orders.

Section 6 is a product of three months of drafting, review, and editing between the Oregon Judicial Department, Judiciary Committee counsel, Legislative Counsel and key stakeholders including the Oregon Criminal Defense Lawyers Association, the Oregon District Attorneys Association, the Attorney General's office, and leaders of the civil and criminal bars of Oregon who all came to consensus on the bill language. Section 6 would accomplish the following:

- **Grants authority to the Chief Justice to suspend or extend certain mandatory timelines in civil and criminal cases so that the health, safety and the rights of the parties and the public can be preserved;**
- **Allows for the date of first appearance on a criminal citation to exceed 30 days and permits the Presiding Judge of a Circuit Court to extend the date of first appearance;**
- **Provides for good-cause extensions of the date set for jury trial of individuals who are in custody where public health circumstances require the extension and where release of the defendant would present risk of harm to the public or to the victim; and**
- **Clarifies that the Chief Justice has authority to direct remote or electronic appearances in all court proceedings, with a right of a party to request an in-person hearing.**

Nothing in this legislation would in any way limit rights afforded under the U.S. and Oregon Constitutions. The good-cause extension for trial of defendants who are held in custody was crafted in response to a request for additional guardrails from legislative members and was a product of a consensus-based work group. This provision **does not authorize indefinite detention** – which is prohibited under constitutional provisions. Instead it gives courts the tools to assess dangerousness of a person in custody and the public health risks to the community.

The Chief Justice understands the significance of these requests. The Chief Justice may not need to enter an order suspending or extending deadlines in all cases or case types as much has been and will be accomplished through remote hearings, written submissions, and electronic filings. Yet

the future is uncertain and as the backlog continues to grow, we must have the opportunity to nimbly and effectively respond to emergent circumstances. Permitting the Chief Justice to craft an order suspending and extending deadlines will allow those most familiar with court proceedings to sort out these kinds of issues and balance public need and public health for court proceedings to the extent permitted by constitutional and other public safety considerations.

2. Oregon's Court Responses to the Pandemic to Date

We also would like to update you on the actions we are taking to ensure that we can continue to provide needed justice services, while adhering to public health guidelines. On Monday, March 16, Chief Justice Order 20-006 was issued to reduce court activities to essential, minimum levels. Subsequent Chief Justice Orders (CJOs) were issued as courts began to reopen and expand services, consistent with the Governor's phased-in process. Information regarding current court services can be found on the individual circuit or appellate court's website and at our statewide COVID-19 site [here](#).

These CJOs have significantly reduced the number of people coming into our courthouses and reduced large-group gatherings at criminal arraignments, as well as traffic court, landlord-tenant, and other high-volume dockets, while allowing for expanded remote participation. We are prioritizing cases that affect fundamental rights, public safety, and family and child welfare. Circuit and appellate courts have responded promptly to the CJOs and have implemented immediate changes to operations to slow the spread of the virus and to keep court users, staff, and judges safe. We are using technology where available, have launched new remote-hearing technology, and are requiring that in-person appearances adhere to social distancing requirements, and are cleaning courtroom spaces.

To examine changes to these CJOs, the Chief Justice has established OJD and Oregon State Bar collaborative work groups. These work groups will make recommendations to OJD on changes to the CJOs, consistent with justice system needs and community health advisements.

We understand that the proposed legislation is extraordinary, but we seek it to respond to extraordinary times. The Chief Justice, our judges and staff remain committed to listening and responding to how these measures are impacting your community. We welcome feedback through circuit court leadership and to our management teams at cjofeedback@ojd.state.or.us.

Thank you for all the work you are doing to serve and safeguard Oregonians.

Sincerely,



Nancy J. Cozine
State Court Administrator