

HB 2399 B STAFF MEASURE SUMMARY**Carrier:** Sen. Bentz**Senate Committee On Judiciary****Action Date:** 05/16/19**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 7-0-0-0**Yeas:** 7 - Bentz, Fagan, Gelser, Linthicum, Manning Jr, Prozanski, Thatcher**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Gillian Fischer, Counsel**Meeting Dates:** 5/15, 5/16**WHAT THE MEASURE DOES:**

Establishes time limits for filing notice of cross-appeal in post-conviction relief proceedings. Specifies that the Attorney General represents a defendant on appeal from post conviction relief judgment. Amends the presumed value of property that cannot reasonably be ascertained, for purposes of a theft offense, to be less than \$100. Exempts charge of conspiracy or endeavor to commit pattern of racketeering activity from specific pleading requirements. Amends ORS 192.603 to allow police or district attorney's office to make requests for account information from a financial institution by secure electronic message. Provides that financial institution shall respond in a secure electronic message to such requests. Allows for an affiant to sign an affidavit electronically if the affiant swears to the affidavit by telephone. Makes technical changes.

ISSUES DISCUSSED:

- Housekeeping measure relating to criminal procedures
- Procedural simplicity for representation of petitioners in post-conviction relief cases
- Allows financial institutions to provide requested information without interfering with ongoing investigations

EFFECT OF AMENDMENT:

Allows for an affiant to sign an affidavit electronically if the affiant swears to the affidavit by telephone.

BACKGROUND:

House Bill 2399 B is an omnibus criminal procedure measure.

Certain state's appeals in criminal cases are expedited in the Court of Appeals or the Supreme Court. Not included in the list of expedited appeals are the state's appeals from the grant of a pre-trial demurrer. House Bill 2399 B corrects that scrivener's error by adding a missing reference to ORS 138.261.

ORS 138.570 currently provides that the district attorney (DA) handles defense of post-conviction relief (PCR) actions when the petitioner is out of custody. The Department of Justice handles all PCR actions when the petitioner is in Department of Corrections' custody or has been released on parole or conditional pardon. If the petitioner is released on post-prison supervision, the DA handles the defense of the PCR action. This can lead to inconsistent handling of PCR issues between petitioners who are on parole versus those on post-prison supervision. HB 2399 B states the Department of Justice (DOJ) will assume responsibility for cases where the petitioner has been released from prison and is now on post-prison supervision.

ORS 138.625(5) effectuates a crime victim's right not to talk to representatives of the "defendant" once the case moves into the PCR stage. However, the "defendant" in the PCR stage is often the State of Oregon and the effect of the statute is that the victim does not have to talk to the State, which is not the intended outcome of the statute. HB 2399 B changes references of "defense" and "defendant" to the "petitioner" to effectuate the intent of ORS 138.625.

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ORS 164.115 provides that, for purposes of the theft statutes, if the value of stolen property cannot be reasonably ascertained, it shall be presumed to be "less than \$50." The dollar value threshold for Theft III was \$50 but, that threshold has since increased to \$100. HB 2399 B changes the dollar amount in ORS 164.115 from \$50 to \$100.