

**B-Engrossed**  
**House Bill 2399**

Ordered by the Senate May 23  
Including House Amendments dated April 17 and Senate Amendments  
dated May 23

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen Rosenblum)

**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.

Provides that state appeal from order allowing demurrer must be decided by appellate court within prescribed time limits.

Provides that, for purposes of naming defendant in post-conviction relief petition, petitioner released on post-prison supervision shall be deemed to be imprisoned in institution from which petitioner was released. Corrects terminology in statute regulating contact with victims during post-conviction relief proceedings. Sets time limits for filing notice of cross-appeal in post-conviction relief proceeding. Specifies that Attorney General represents defendant on appeal from post-conviction relief judgment.

Provides that, for purposes of theft offense, when value of property cannot reasonably be ascertained, value is presumed to be less than \$100.

Requires financial institution to respond electronically to electronic request from law enforcement agency for information concerning customer account information.

**Authorizes electronic signatures for search warrant affiants who swear to affidavit by telephone.**

**A BILL FOR AN ACT**

1  
2 Relating to crime; creating new provisions; and amending ORS 133.545, 138.261, 138.560, 138.625,  
3 138.650, 164.115 and 192.603.

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

5 **SECTION 1.** ORS 138.261 is amended to read:

6 138.261. (1) When a defendant is charged with a felony and is in custody pending an appeal un-  
7 der ORS 138.045 (1)(a), **(b)** or (d), the Court of Appeals and the Supreme Court shall decide the ap-  
8 peal within the time limits prescribed by this section.

9 (2)(a) Pursuant to rules adopted by the Court of Appeals, the Court of Appeals shall ensure that  
10 the appeal is fully briefed no later than 90 days after the date the transcript is settled under ORS  
11 19.370.

12 (b) Notwithstanding paragraph (a) of this subsection, the Court of Appeals may allow more than  
13 90 days after the transcript is settled to fully brief the appeal if it determines that the ends of justice  
14 served by allowing more time outweigh the best interests of the public, the parties and the victim  
15 of the crime.

16 (3) The Court of Appeals shall decide the appeal no later than 180 days after the date of oral  
17 argument or, if the appeal is not orally argued, the date that the State Court Administrator delivers  
18 the briefs to the Court of Appeals for decision. Any reasonable period of delay incurred by the Court  
19 of Appeals on its own motion or at the request of one of the parties is excluded from the 180-day  
20 period within which the Court of Appeals is required to issue a decision if the Court of Appeals

**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 determines that the ends of justice served by a decision on a later date outweigh the best interests  
2 of the public, the parties and the victim of the crime.

3 (4)(a) In determining whether to allow more than 90 days after the transcript is settled to fully  
4 brief the appeal or more than 180 days after oral argument or delivery of the briefs to decide the  
5 appeal, the Court of Appeals shall consider whether:

6 (A) The appeal is unusually complex or presents novel questions of law so that the prescribed  
7 time limit is unreasonable; and

8 (B) The failure to extend the time limit would likely result in a miscarriage of justice.

9 (b) If the Court of Appeals decides to allow additional time to fully brief the appeal or to decide  
10 the appeal, the Court of Appeals shall state the reasons for doing so in writing and shall serve a  
11 copy of the writing on the parties.

12 (5) If the Supreme Court allows review of a decision of the Court of Appeals on an appeal de-  
13 scribed in subsection (1) of this section, the Supreme Court shall issue its decision on review no  
14 later than 180 days after the date of oral argument or, if the review is not orally argued, the date  
15 the State Court Administrator delivers the briefs to the Supreme Court for decision. Any reasonable  
16 period of delay incurred by the Supreme Court on its own motion or at the request of one of the  
17 parties is excluded from the 180-day period within which the Supreme Court is required to issue a  
18 decision if the Supreme Court determines that the ends of justice served by a decision on a later  
19 date outweigh the best interests of the public, the parties and the victim of the crime.

20 (6) In an appeal by the state under ORS 138.045 (2), the Supreme Court shall issue its decision  
21 no later than one year after the date of oral argument or, if the appeal is not orally argued, the date  
22 that the State Court Administrator delivers the briefs to the Supreme Court for decision.

23 (7)(a) In determining whether to allow more than 180 days after oral argument or delivery of the  
24 briefs to decide the review, the Supreme Court shall consider whether:

25 (A) The review is unusually complex or presents novel questions of law so that the prescribed  
26 time limit is unreasonable; and

27 (B) The failure to extend the time limit would likely result in a miscarriage of justice.

28 (b) If the Supreme Court decides to allow additional time to decide the review, the Supreme  
29 Court shall state the reasons for doing so in writing and shall serve a copy of the writing on the  
30 parties.

31 (8) Failure of the Court of Appeals or the Supreme Court to decide an appeal or review within  
32 the time limits prescribed in this section is not a ground for dismissal of the appeal or review.

33 (9) Any delay sought or acquiesced in by the defendant does not count against the state with  
34 respect to any statutory or constitutional right of the defendant to a speedy trial.

35 **SECTION 2.** ORS 138.560 is amended to read:

36 138.560. (1) A proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 shall be  
37 commenced by filing a petition with the clerk of the circuit court for the county in which the  
38 petitioner is imprisoned or, if the petitioner is not imprisoned, with the clerk of the circuit court for  
39 the county in which the petitioner's conviction and sentence was rendered. Except as otherwise  
40 provided in ORS 138.590, the petitioner must pay the filing fee established under ORS 21.135 at the  
41 time of filing a petition under this section. If the petitioner prevails, the petitioner shall recover the  
42 fee pursuant to the Oregon Rules of Civil Procedure. The clerk of the court in which the petition  
43 is filed shall enter and file the petition and bring it promptly to the attention of such court. A copy  
44 of the petition need not be served by petitioner on the defendant, but, in lieu thereof, the clerk of  
45 the court in which the petition is filed shall immediately forward a copy of the petition to the At-

1 torney General or other attorney for the defendant named in ORS 138.570.

2 (2) For the purposes of ORS 138.510 to 138.680, a person released on parole, **post-prison**  
3 **supervision** or conditional pardon shall be deemed to be imprisoned in the institution from which  
4 the person [*is so*] **was** released.

5 (3) Except when petitioner's conviction was for a misdemeanor, the release of the petitioner  
6 from imprisonment during the pendency of proceedings instituted pursuant to ORS 138.510 to 138.680  
7 shall not cause the proceedings to become moot. Such release of petitioner shall not change the  
8 venue of the proceedings out of the circuit court in which the proceedings were commenced and  
9 shall not affect the power of such court to transfer the proceedings as provided in subsection (4)  
10 of this section.

11 (4) Whenever the petitioner is imprisoned in a Department of Corrections institution and the  
12 circuit court for the county in which the petitioner is imprisoned finds that the hearing upon the  
13 petition can be more expeditiously conducted in the county in which the petitioner was convicted  
14 and sentenced, the circuit court upon its own motion or the motion of a party may order the  
15 petitioner's case to be transferred to the circuit court for the county in which petitioner's conviction  
16 and sentence were rendered. The court's order is not reviewable by any court of this state.

17 (5) When a petitioner who is imprisoned in a Department of Corrections institution is trans-  
18 ferred to another Department of Corrections institution, the circuit court in which a post-conviction  
19 relief proceeding is pending may deny a motion for a change of venue to the county where the  
20 petitioner is transferred. The court's order is not reviewable by any court of this state.

21 **SECTION 3.** ORS 138.625 is amended to read:

22 138.625. (1) A petitioner in a post-conviction relief proceeding may not compel a victim to testify,  
23 either by deposition, hearing or otherwise, unless the petitioner moves for an order of the court al-  
24 lowing a subpoena.

25 (2) A copy of the motion for a subpoena under this section must be served on the counsel for  
26 the defendant.

27 (3) The court may not grant an order allowing a subpoena under this section unless the  
28 petitioner can demonstrate good cause by showing that:

29 (a) The victim's testimony is material to the post-conviction relief proceeding;

30 (b) The testimony is favorable to the petitioner; and

31 (c) The testimony was not introduced at trial.

32 (4) If the court grants an order allowing a subpoena under this section, upon a request by the  
33 victim for no personal contact between the parties, the court may allow the victim to appear by  
34 telephone or other communication device approved by the court.

35 (5) If contacted by the [*defense*] **petitioner** or any agent of the [*defense*] **petitioner**, the victim  
36 must be clearly informed by the [*defense*] **petitioner** or other contacting agent, either in person or  
37 in writing, of the identity and capacity of the person contacting the victim, that the victim does not  
38 have to talk to the [*defendant's*] **petitioner's** attorney, or other agents of the [*defendant*]  
39 **petitioner**, or provide other discovery unless the victim wishes, and that the victim may have a  
40 district attorney, assistant attorney general or other attorney or advocate present during any  
41 interview or other contact.

42 (6) As used in this section, "victim" has the meaning given that term in ORS 135.970.

43 **SECTION 4.** ORS 138.650 is amended to read:

44 138.650. (1) Either the petitioner or the defendant may appeal to the Court of Appeals within  
45 30 days after the entry of a judgment on a petition pursuant to ORS 138.510 to 138.680. The manner

1 of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall  
2 be the same as that provided by law for appeals in criminal actions, except that:

3 (a) The trial court may provide that the transcript contain only such evidence as may be mate-  
4 rial to the decision of the appeal; and

5 (b) With respect to ORS 138.081 (1), if petitioner appeals, petitioner shall cause the notice of  
6 appeal to be served on the attorney for defendant, and, if defendant appeals, defendant shall cause  
7 the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of  
8 record, on petitioner.

9 (2)(a) Upon motion of the petitioner, the Court of Appeals shall grant the petitioner leave to file  
10 a notice of appeal after the time limit described in subsection (1) of this section if:

11 (A) The petitioner, by clear and convincing evidence, shows that the failure to file a timely no-  
12 tice of appeal is not attributable to the petitioner personally; and

13 (B) The petitioner shows a colorable claim of error in the proceeding from which the appeal is  
14 taken.

15 (b) The request for leave to file a notice of appeal after the time limit described in subsection  
16 (1) of this section shall be filed no later than 90 days after entry of the judgment from which the  
17 petitioner seeks to appeal and shall be accompanied by the notice of appeal sought to be filed. A  
18 request for leave under this subsection may be filed by mail. The date of filing shall be the date of  
19 mailing if the request is mailed as provided in ORS 19.260.

20 (c) The Court of Appeals may not grant relief under this subsection unless the defendant has  
21 received notice of and an opportunity to respond to the petitioner's request for relief.

22 **(3) A party cross-appealing shall serve and file the notice of cross-appeal:**

23 **(a) Within 10 days of the expiration of the time allowed in subsection (1) of this section;**  
24 **or**

25 **(b) If the petitioner's notice of appeal is filed pursuant to subsection (2) of this section,**  
26 **within 10 days of the expiration of the time allowed in subsection (2) of this section.**

27 [(3)] (4) An appeal under this section taken by the defendant stays the effect of the judgment.  
28 If the petitioner is incarcerated, the trial court may stay the petitioner's sentence pending the  
29 defendant's appeal and order conditional release or security release, in accordance with ORS 135.230  
30 to 135.290, only if:

31 (a) The post-conviction court's judgment vacates the judgment of conviction or reduces the  
32 sentence or sentences imposed upon conviction;

33 (b) The petitioner has completed any other sentence of incarceration to which the petitioner is  
34 subject; and

35 (c) The petitioner otherwise would be entitled to immediate release from incarceration under the  
36 court's judgment.

37 **(5) In an appeal under this section or to the United States Supreme Court, the Attorney**  
38 **General shall represent the defendant.**

39 **SECTION 5.** ORS 164.115 is amended to read:

40 164.115. For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be as-  
41 certained as follows:

42 (1) Except as otherwise specified in this section, value means the market value of the property  
43 at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of re-  
44 placement of the property within a reasonable time after the crime.

45 (2) Whether or not they have been issued or delivered, certain written instruments, not including

1 those having a readily ascertainable market value, shall be evaluated as follows:

2 (a) The value of an instrument constituting an evidence of debt, including, but not limited to, a  
3 check, draft or promissory note, shall be considered the amount due or collectible thereon or  
4 thereby.

5 (b) The value of any other instrument which creates, releases, discharges or otherwise affects  
6 any valuable legal right, privilege or obligation shall be considered the greatest amount of economic  
7 loss which the owner might reasonably suffer because of the loss of the instrument.

8 (3) The value of a gambling chip, token, imitation currency or similar device is its face value.

9 (4) The value of the wildlife listed in ORS 496.705 is the amount of damages as specified in ORS  
10 496.705.

11 (5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an  
12 amount less than [\$50] **\$100** in a case of theft, and less than \$500 in any other case.

13 (6) The value of single theft transactions may be added together if the thefts were committed:

14 (a) Against multiple victims by similar means within a 30-day period; or

15 (b) Against the same victim, or two or more persons who are joint owners, within a 180-day  
16 period.

17 **SECTION 6.** ORS 192.603 is amended to read:

18 192.603. (1) **As used in this section:**

19 (a) **“Account information” means, whether or not the financial institution has an account**  
20 **under a particular customer’s name, the number of customer account items dishonored or**  
21 **that created overdrafts, dollar volume of dishonored items and items that when paid created**  
22 **overdrafts, a statement explaining any credit arrangement between the financial institution**  
23 **and the customer to pay overdrafts, dates and amounts of deposits and debits to a**  
24 **customer’s account, copies of deposit slips and deposited items, the account balance on such**  
25 **dates, a copy of the customer’s signature card and the dates the account opened or closed.**

26 (b) **“Secure electronic message” means an electronic message that is encrypted or oth-**  
27 **erwise transmitted in a manner that is reasonably calculated to prevent accidental, unlawful**  
28 **or unauthorized disclosure or access to parties not authorized to receive or access the elec-**  
29 **tronic message.**

30 [(1)] (2) When a police or sheriff’s department or district attorney’s office in this state requests  
31 account information from a financial institution to assist in a criminal investigation, the financial  
32 institution shall supply a statement setting forth the requested account information with respect to  
33 a customer **or a customer** account specified by the police or sheriff’s department or district  
34 attorney’s office, for a period of up to three months prior to and three months following the date  
35 of occurrence of the account transaction giving rise to the criminal investigation. The disclosure  
36 statement required under this subsection may include only account information as defined in sub-  
37 section [(2)] (1) of this section. **If the police or sheriff’s department or district attorney’s office**  
38 **makes the request by sending a secure electronic message to the financial institution, the**  
39 **financial institution shall respond to the request in a secure electronic message.** The police  
40 or sheriff’s department or district attorney’s office requesting the information shall, within 24 hours  
41 of making the request, confirm the request in a written or **secure** electronic message delivered or  
42 mailed to the financial institution, setting forth the nature of the account information sought, the  
43 time period for which account information is sought, and that the information has been requested  
44 pursuant to a criminal investigation.

45 [(2) *As used in this section, “account information” means, whether or not the financial institution*

1 *has an account under a particular customer's name, the number of customer account items dishonored*  
2 *or which created overdrafts, dollar volume of dishonored items and items which when paid created*  
3 *overdrafts, a statement explaining any credit arrangement between the financial institution and the*  
4 *customer to pay overdrafts, dates and amounts of deposits and debits to a customer's account, copies*  
5 *of deposit slips and deposited items, the account balance on such dates, a copy of the customer's sig-*  
6 *nature card and the dates the account opened or closed.]*

7 **SECTION 7.** ORS 133.545 is amended to read:

8 133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a  
9 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except  
10 as otherwise provided in subsections (2), (3) and (4) of this section, a search warrant issued by a  
11 judge of a circuit court may be executed only within the judicial district in which the court is lo-  
12 cated. A search warrant issued by a justice of the peace may be executed only within the county  
13 in which the justice court is located. A search warrant issued by a municipal judge authorized to  
14 exercise the powers and perform the duties of a justice of the peace may be executed only in the  
15 municipality in which the court is located.

16 (2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution  
17 of a search warrant outside the judicial district in which the court is located, if the judge finds from  
18 the application that one or more of the objects of the search relate to an offense committed or  
19 triable within the judicial district in which the court is located. If the warrant authorizes the in-  
20 stallation or tracking of a mobile tracking device, the officer may track the device in any county  
21 to which it is transported.

22 (3) Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant  
23 to ORS 1.615 to serve as a judge pro tempore in a circuit court may authorize execution of a search  
24 warrant in any judicial district in which the judge serves as judge pro tempore if the application  
25 requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit  
26 court judge for the judicial district is not available, whether by reason of conflict of interest or  
27 other reason, to issue the warrant within a reasonable time.

28 (4) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution  
29 of a search warrant outside the judicial district in which the court is located if the judge finds that:

30 (a) The search relates to one of the following offenses involving a victim who was 65 years of  
31 age or older at the time of the offense:

32 (A) Criminal mistreatment in the first degree as described in ORS 163.205 (1)(b)(D) or (E);

33 (B) Identity theft;

34 (C) Aggravated identity theft;

35 (D) Computer crime;

36 (E) Fraudulent use of a credit card;

37 (F) Forgery in any degree;

38 (G) Criminal possession of a forged instrument in any degree;

39 (H) Theft in any degree; or

40 (I) Aggravated theft in the first degree;

41 (b) The objects of the search consist of financial records; and

42 (c) The person making application for the search warrant is not able to ascertain at the time  
43 of the application the proper place of trial for the offense described in paragraph (a) of this sub-  
44 section.

45 (5) Application for a search warrant may be made only by a district attorney, a police officer

1 or a special agent employed under ORS 131.805.

2 (6) The application shall consist of a proposed warrant in conformance with ORS 133.565, and  
3 shall be supported by one or more affidavits particularly setting forth the facts and circumstances  
4 tending to show that the objects of the search are in the places, or in the possession of the indi-  
5 viduals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set  
6 forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the  
7 means by which the information was obtained.

8 (7) Instead of the written affidavit described in subsection (6) of this section, the judge may take  
9 an oral statement under oath. The oral statement shall be recorded and a copy of the recording  
10 submitted to the judge who took the oral statement. In such cases, the judge shall certify that the  
11 recording of the sworn oral statement is a true recording of the oral statement under oath and shall  
12 retain the recording as part of the record of proceedings for the issuance of the warrant. The re-  
13 cording shall constitute an affidavit for the purposes of this section. The applicant shall retain a  
14 copy of the recording and shall provide a copy of the recording to the district attorney if the district  
15 attorney is not the applicant.

16 (8)(a) In addition to the procedure set out in subsection (7) of this section, the proposed warrant  
17 and the affidavit may be sent to the court by facsimile transmission or any similar electronic  
18 transmission that delivers a complete printable image of the signed affidavit and proposed warrant.  
19 The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by  
20 telephone. **If the affiant swears to the affidavit by telephone, the affidavit may be signed**  
21 **electronically.** A judge administering an oath telephonically under this subsection must execute a  
22 declaration that recites the manner and time of the oath's administration. The declaration must be  
23 filed with the return.

24 (b) When a court issues a warrant upon an application made under paragraph (a) of this sub-  
25 section:

26 (A) The court may transmit the signed warrant to the person making application under sub-  
27 section (5) of this section by means of facsimile transmission or similar electronic transmission, as  
28 described in paragraph (a) of this subsection. The court shall file the original signed warrant and  
29 a printed image of the application with the return.

30 (B) The person making application shall deliver the original signed affidavit to the court with  
31 the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the  
32 affiant's signature on the affidavit.

33 **SECTION 8. (1) The amendments to ORS 164.115 by section 5 of this 2019 Act apply to**  
34 **crimes committed on or after the effective date of this 2019 Act.**

35 **(2) The amendments to ORS 138.261 by section 1 of this 2019 Act apply to appeals taken**  
36 **on or after the effective date of this 2019 Act for which the time limit in ORS 138.071 has**  
37 **not expired.**

38 **(3) The amendments to ORS 138.650 by section 4 of this 2019 Act apply to proceedings in**  
39 **which the notice of appeal is filed on or after the effective date of this 2019 Act.**

40