

TO: Joint Interim Committee on the First Special Session of 2020
FROM: Mae Lee Browning, Oregon Criminal Defense Lawyers Association
DATE: June 25, 2020
RE: Support for House Bill 4212 (Judicial Proceeding Extensions, Section 6, Subsection 3a)

Dear Speaker Kotek, President Courtney, Co-Vice Chairs Drazan and Girod, and Members of the Committee:

There is consensus on HB 4212, section 6, subsection 3a regarding the extension of time a person may be held in custody before trial beyond the current statutory 180 days. After LC 45 was heard on June 22, 2020, a workgroup convened to arrive at the consensus language that included OCDLA, AFSCME, OPDS, OJD, ODAA, and DOJ.

The workgroup seriously took into consideration the extension of a person’s time in custody before trial, when the person is presumed innocent. The impact of being in custody before trial affects a person’s ability to maintain their job and their ability to contribute to their family and parent their child, among other things. During the pandemic, being held in jail is now a very serious health risk and possible risk to life. There are inequities in the current bail system that disproportionately affects BIPOC people and people from marginalized communities that cannot be addressed in this bill. The purpose of this workgroup was to try to strike a balance with the balloon of cases the courts are seeing as well as the reality of holding a jury trial during the pandemic – the effect on the defendant, the attorneys, court staff, and the public who is called in for jury duty.

The workgroup crafted the language very narrowly as to when a person may be held pre-trial beyond 180 days, listed out the factors the court must consider, and provided a back stop of 240 days as the maximum extension past the 180 days. The workgroup that met between June 22 and June 24 eliminated the second tier from the original three tier system. In the new second tier (what was the third tier before), we changed the language from “a crime other than a violent felony” to “a person crime.” We changed the language “for more than a total of 180 days” to “for not more than 240 days.” Below is the following language that was agreed upon (starting at the bottom of page 6 of HB 4212 to the top of page 7), which is underlined.

1 (3)(a) Notwithstanding ORS 136.290 and 136.295, and subject to paragraph (b) of this sub-
2 section, during the time in which any declaration of a state of emergency issued by the
3 Governor related to COVID-19, and any extension of the declaration, is in effect, and con-
4 tinuing for 60 days after the declaration and any extension is no longer in effect, the pre-
5 siding judge of a circuit court may, upon the motion of a party or its own motion, and upon
6 a finding of good cause, order an extension of custody and postponement of the date of the
7 trial beyond the time limits described in ORS 136.290 and 136.295.

8 (b) Notwithstanding paragraph (a) of this subsection, for a defendant to whom ORS
9 136.290 and 136.295 applies, the presiding judge may not extend custody and postpone the
10 defendant’s trial date if, as a result, the defendant will be held in custody before trial for
11 more than a total of 180 days, unless the court holds a hearing and proceeds as follows:

12 (A) If the defendant is charged with a violent felony, the court may deny release upon

13 making the findings described in ORS 135.240 (4), notwithstanding the fact that a court did
14 not previously make such findings; or

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2 **(B) If the defendant is charged with a person crime, the court may**

3 **set a trial date that results in the defendant being held in custody before trial for not more**
4 **than 240 days if the court:**

4 (i) Determines the extension of custody is based upon good cause due to circumstances
5 caused by the COVID-19 pandemic, public health measures resulting from the COVID-19
6 pandemic or a situation described in ORS 136.295 (4)(b) caused by or related to COVID-19;
7 and

8 (ii) Finds, by clear and convincing evidence, that there is a substantial and specific dan-
9 ger of physical injury or sexual victimization to the victim or members of the public by the
10 defendant if the defendant is released, and that no release condition, or combination of re-
11 lease conditions, is available that would sufficiently mitigate the danger.

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OCDLA is grateful for being a part of this workgroup who worked diligently and thoughtfully. If you have any questions, please do not hesitate to contact me.

OCDLA has been the leading voice for public defense policy in Oregon for over 40 years representing 1,200 providers statewide. Our members work with youth in the juvenile justice system, parents whose children have been removed, children in foster care, and adults in criminal justice system, appeals, civil commitments, and post-conviction relief proceedings. OCDLA advocates for legislation ensuring the rights of the accused, those involved in the juvenile justice system, and the attorneys, investigators and others who do this difficult work.

OCDLA recognizes the long overdue importance of reforming pretrial detention in this state and the elimination of cash bail. We hope that there will be a discussion around these issues and serious reform in the long session, and we hope to be a part of that process.

Thank you for your consideration.

Respectfully submitted by,
Mae Lee Browning, J.D.
Oregon Criminal Defense Lawyers Association