

Senate Bill 296

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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 **as introduced**.

Authorizes Chief Justice of Supreme Court, during period of statewide emergency and upon finding of good cause, to extend or suspend time period or time requirement in rule or statute in specified court proceedings. Authorizes Chief Justice to direct or permit electronic court appearances during period of statewide emergency.

Authorizes presiding judge of circuit court, during period of statewide emergency, to extend custody and postpone trials upon finding of good cause, and within specified limits.

Authorizes date of appearance in criminal citation to be more than 30 days after citation issuance date during period of statewide emergency.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to judicial authority during statewide emergencies; creating new provisions; amending ORS
3 1.002, 1.012 and 133.060; and declaring an emergency.

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

5 **SECTION 1.** ORS 1.002 is amended to read:

6 1.002. (1) The Supreme Court is the highest judicial tribunal of the judicial department of gov-
7 ernment in this state. The Chief Justice of the Supreme Court is the presiding judge of the court
8 and the administrative head of the judicial department of government in this state. The Chief Justice
9 shall exercise administrative authority and supervision over the courts of this state consistent with
10 applicable provisions of law and the Oregon Rules of Civil Procedure. The Chief Justice, to facilitate
11 exercise of that administrative authority and supervision, may:

12 (a) Make rules and issue orders appropriate to that exercise.

13 (b) Require appropriate reports from the judges, other officers and employees of the courts of
14 this state and municipal courts.

15 (c) Pursuant to policies approved by the Judicial Conference of the State of Oregon, assign or
16 reassign on a temporary basis all judges of the courts of this state to serve in designated locations
17 within or without the county or judicial district for which the judge was elected.

18 (d) Set staffing levels for all courts of the state operating under the Judicial Department and for
19 all operations in the Judicial Department.

20 (e) Establish time standards for disposition of cases.

21 (f) Establish budgets for the Judicial Department and all courts operating under the Judicial
22 Department.

23 (g) Assign or reassign all court staff of courts operating under the Judicial Department.

24 (h) Pursuant to policies approved by the Judicial Conference of the State of Oregon, establish
25 personnel rules and policies for judges of courts operating under the Judicial Department.

26 (i) Establish procedures for closing courts in emergencies.

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 (j) Establish standards for determining when courts are closed for purposes of ORCP 10, ORS
2 174.120 and other rules and laws that refer to periods of time when courts are closed.

3 (k) Take any other action appropriate to the exercise of the powers specified in this section and
4 other law, and appropriate to the exercise of administrative authority and supervision by the Chief
5 Justice over the courts of this state.

6 (2) The Chief Justice may make rules for the use of electronic applications in the courts, in-
7 cluding but not limited to rules relating to any of the following:

8 (a) Applications based on the use of the Internet and other similar technologies.

9 (b) The use of an electronic document, or use of an electronic image of a paper document in lieu
10 of the original paper copy, for any record of the courts maintained under ORS 7.095 and for any
11 document, process or paper that is served, delivered, received, filed, entered or retained in any
12 action or proceeding.

13 (c) The use of electronic signatures or another form of identification for any document, process
14 or paper that is required by any law or rule to be signed and that is:

15 (A) Served, delivered, received, filed, entered or retained in any action or proceeding; or

16 (B) Maintained under ORS 7.095.

17 (d) The use of electronic transmission for:

18 (A) Serving documents in an action or proceeding, other than a summons or an initial complaint
19 or petition;

20 (B) Filing documents with a court; and

21 (C) Providing certified electronic copies of court documents and other Judicial Department re-
22 cords to another person or public body.

23 (e) Payment of statutory or court-ordered monetary obligations through electronic media.

24 (f) Electronic storage of court documents.

25 (g) Use of electronic citations in lieu of the paper citation forms as allowed under ORS 153.770,
26 including use of electronic citations for parking ordinance violations that are subject to ORS 221.333
27 or 810.425.

28 (h) Public access through electronic means to court documents that are required or authorized
29 to be made available to the public by law.

30 (i) Transmission of open court proceedings through electronic media.

31 (j) Electronic transmission and electronic signature on documents relating to circuit court jurors
32 under ORS 10.025.

33 (3) The Chief Justice may make rules relating to the data that state courts may require parties
34 and other persons to submit for the purpose of distinguishing particular persons from other persons.
35 If the rules require the submission of data that state or federal law does not require that the courts
36 make public, the rules may also require courts to keep the data confidential and not release the data
37 except pursuant to a court order issued for good cause shown. Data that is made confidential under
38 the rules is not subject to disclosure under ORS 192.311 to 192.478.

39 (4) Rules adopted by the Chief Justice under subsection (2) of this section must be consistent
40 with the laws governing courts and court procedures, but any person who serves, delivers, receives,
41 files, enters or retains an electronic document, or an electronic image of a paper document in lieu
42 of the original paper copy, in the manner provided by a rule of the Chief Justice under subsection
43 (2) of this section shall be considered to have complied with any rule or law governing service, de-
44 livery, reception, filing, entry or retention of a paper document.

45 **(5)(a) As used in this subsection:**

1 (A) “Criminal action” has the meaning given that term in ORS 131.005.

2 (B) “Criminal proceeding” has the meaning given that term in ORS 131.005.

3 (C) “Period of statewide emergency” means the period of time during which any decla-
4 ration of a state of emergency under ORS 401.165, public health emergency under ORS
5 433.441 or catastrophic disaster under Article X-A, section 1, of the Oregon Constitution, is-
6 sued by the Governor, and any extension of the declaration, is in effect, and continuing for
7 60 days after the declaration and any extension is no longer in effect.

8 (b) During a period of statewide emergency, and upon a finding of good cause, the Chief
9 Justice may extend or suspend any time period or time requirement established by statute
10 or rule, other than ORS 133.060, 136.290 or 136.295, that:

11 (A) Applies in any case, action or proceeding after the case, action or proceeding is ini-
12 tiated in any circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme
13 Court;

14 (B) Applies to the initiation of an appeal to the magistrate division of the Oregon Tax
15 Court or an appeal from the magistrate division to the regular division;

16 (C) Applies to the initiation of an appeal or judicial review proceeding in the Court of
17 Appeals; or

18 (D) Applies to the initiation of any type of case or proceeding in the Supreme Court.

19 (c)(A) Notwithstanding any other statute or rule to the contrary, during a period of
20 statewide emergency, the Chief Justice may direct or permit any appearance before a court
21 or magistrate to be by telephone, other two-way electronic communication device or simul-
22 taneous electronic transmission.

23 (B) If an appearance is set to occur by electronic means as described in subparagraph (A)
24 of this paragraph, a presiding judge may instead order that the appearance be in person if,
25 upon the request of a party, the presiding judge determines that there is a particular need
26 for an in-person hearing or that a party has a constitutional right to an in-person hearing.

27 (C) Notwithstanding ORS 125.150 (3), during a period of statewide emergency, the Chief
28 Justice may direct or permit that any interview of a person described in ORS 125.150 (3) by
29 a visitor appointed by the court be conducted by telephone, other two-way electronic com-
30 munication device or simultaneous electronic transmission.

31 (D) The presiding judge may delegate the authority described in this paragraph to an-
32 other judge of the court.

33 (d) Nothing in this subsection affects the rights of a defendant under the Oregon and
34 United States Constitutions.

35 [(5)] (6) Rules made and orders issued by the Chief Justice under this section shall permit as
36 much variation and flexibility in the administration of the courts of this state as are appropriate to
37 the most efficient manner of administering each court, considering the particular needs and cir-
38 cumstances of the court, and consistent with the sound and efficient administration of the judicial
39 department of government in this state.

40 [(6)(a)] (7)(a) The Chief Justice may establish reasonable fees for the use of the Oregon Judicial
41 Case Information Network, including fees for electronic access to documents.

42 (b)(A) Before permanently adopting or increasing fees under this subsection, the Chief Justice
43 shall provide notice to interested persons and allow a reasonable opportunity for comment.

44 (B) Before temporarily adopting or increasing fees under this subsection, the Chief Justice shall
45 provide notice to interested persons.

1 (C) The Chief Justice shall by order establish a process for notice and comment under this
2 paragraph.

3 (c) Fees adopted under this subsection must be reasonably calculated to recover or offset costs
4 of developing, maintaining, supporting or providing access to or use of state court electronic appli-
5 cations and systems.

6 [(7)] (8) The judges, other officers and employees of the courts of this state shall comply with
7 rules made and orders issued by the Chief Justice. Rules and orders of a court of this state, or a
8 judge thereof, relating to the conduct of the business of the court shall be consistent with applicable
9 rules made and orders issued by the Chief Justice.

10 [(8)] (9) The Chief Judge of the Court of Appeals and the presiding judge of each judicial district
11 of this state are the administrative heads of their respective courts. They are responsible and ac-
12 countable to the Chief Justice of the Supreme Court in the exercise of their administrative authority
13 and supervision over their respective courts. Other judges of the Court of Appeals or court under
14 a presiding judge are responsible and accountable to the Chief Judge or presiding judge, and to the
15 Chief Justice, in respect to exercise by the Chief Justice, Chief Judge or presiding judge of admin-
16 istrative authority and supervision.

17 [(9)] (10) The Chief Justice may delegate the exercise of any of the powers specified by this
18 section to the presiding judge of a court, and may delegate the exercise of any of the administrative
19 powers specified by this section to the State Court Administrator, as may be appropriate.

20 [(10)] (11) This section applies to justices of the peace and the justice courts of this state solely
21 for the purpose of disciplining of justices of the peace and for the purpose of continuing legal edu-
22 cation of justices of the peace.

23 **SECTION 2. Section 3 of this 2021 Act is added to and made a part of ORS chapter 136.**

24 **SECTION 3. (1) Notwithstanding ORS 136.290 and 136.295, and subject to subsection (2)**
25 **of this section, during a period of statewide emergency, the presiding judge of a circuit court**
26 **may, upon the motion of a party or its own motion, and upon a finding of good cause, order**
27 **an extension of custody and postponement of the date of the trial beyond the time limits**
28 **described in ORS 136.290 and 136.295.**

29 **(2) Notwithstanding subsection (1) of this section, for a defendant to whom ORS 136.290**
30 **and 136.295 applies, the presiding judge may not extend custody and postpone the defendant's**
31 **trial date if, as a result, the defendant will be held in custody before trial for more than a**
32 **total of 180 days, unless the court holds a hearing and proceeds as follows:**

33 **(a) If the defendant is charged with a violent felony, the court may deny release upon**
34 **making the findings described in ORS 135.240 (4), notwithstanding the fact that a court did**
35 **not previously make such findings; or**

36 **(b) If the defendant is charged with a person crime, the court may set a trial date that**
37 **results in the defendant being held in custody before trial for more than a total of 180 days,**
38 **but not more than a total of 240 days, if the court:**

39 **(A) Determines the extension of custody is based upon good cause due to circumstances**
40 **caused by, or resulting from the cause of, the period of statewide emergency or a situation**
41 **described in ORS 136.295 (4)(b) caused by, or resulting from the cause of, the period of**
42 **statewide emergency; and**

43 **(B) Finds, by clear and convincing evidence, that there is a substantial and specific dan-**
44 **ger of physical injury or sexual victimization to the victim or members of the public by the**
45 **defendant if the defendant is released, and that no release condition, or combination of re-**

1 lease conditions, is available that would sufficiently mitigate the danger.

2 (3) The result of a hearing held pursuant to this section does not affect the ability of a
3 party to request a modification of the release decision under ORS 135.285.

4 (4) This section does not authorize a defendant to be held in custody before trial for a
5 period longer than the maximum term of imprisonment the defendant could receive as a
6 sentence under ORS 161.605 or 161.615.

7 (5) If the court proceeds under subsection (2)(b) of this section, the defendant shall con-
8 tinue to be eligible for security release and the court may maintain, lower or raise the se-
9 curity amount at the hearing.

10 (6) The presiding judge may delegate the authority described in this section to another
11 judge of the court.

12 (7) Nothing in this section affects the rights of a defendant under the Oregon and United
13 States Constitutions.

14 (8) As used in this section:

15 (a) "Good cause" means situations described in ORS 136.295 (4)(b) or circumstances
16 caused by, or resulting from the cause of, the period of statewide emergency.

17 (b) "Period of statewide emergency" means the period of time during which any decla-
18 ration of a state of emergency under ORS 401.165, public health emergency under ORS
19 433.441 or catastrophic disaster under Article X-A, section 1, of the Oregon Constitution, is
20 issued by the Governor, and any extension of the declaration, is in effect, and continuing for
21 60 days after the declaration and any extension is no longer in effect.

22 (c) "Person crime" means a person felony or person Class A misdemeanor, as those
23 terms are defined in the rules of the Oregon Criminal Justice Commission.

24 (d) "Release decision" has the meaning given that term in ORS 135.230.

25 **SECTION 4.** ORS 133.060 is amended to read:

26 133.060. (1) A person who has been served with a criminal citation shall appear before a
27 magistrate of the county in which the person was cited at the time, date and court specified in the
28 citation, which shall not be later than 30 days after the date the citation was issued.

29 (2) If the cited person fails to appear at the time, date and court specified in the criminal cita-
30 tion, and a complaint or information is filed, the magistrate shall issue a warrant of arrest, upon
31 application for its issuance, upon the person's failure to appear.

32 (3)(a) Notwithstanding subsection (1) of this section, during a period of statewide emer-
33 gency, the date specified in a criminal citation on which a person served with the citation
34 shall appear may be more than 30 days after the date the citation was issued.

35 (b) During a period of statewide emergency, the presiding judge of a circuit court may,
36 upon the motion of a party or the court's own motion, and upon a finding of good cause,
37 postpone the date of appearance described in paragraph (a) of this subsection for all pro-
38 ceedings within the jurisdiction of the court.

39 (c) The presiding judge may delegate the authority described in paragraph (b) of this
40 subsection to another judge of the court.

41 (d) Nothing in this subsection affects the rights of a defendant under the Oregon and
42 United States Constitutions.

43 (e) As used in this subsection, "period of statewide emergency" means the period of time
44 during which any declaration of a state of emergency under ORS 401.165, public health
45 emergency under ORS 433.441 or catastrophic disaster under Article X-A, section 1, of the

1 **Oregon Constitution, issued by the Governor, and any extension of the declaration, is in ef-**
2 **fect, and continuing for 60 days after the declaration and any extension is no longer in effect.**

3 **SECTION 5.** ORS 1.012 is amended to read:

4 1.012. (1) The State Court Technology Fund is established in the State Treasury, separate and
5 distinct from the General Fund. Interest earned by the State Court Technology Fund shall be
6 credited to the fund.

7 (2) All fees received on and after July 1, 2013, for the use of the Oregon Judicial Case Infor-
8 mation Network under ORS 1.002 [(6)] (7) and for the use of other state court electronic applications
9 and systems shall be deposited into the fund.

10 (3) The fund consists of the moneys deposited into the fund under subsection (2) of this section,
11 the moneys deposited into the fund under ORS 21.006 and the moneys allocated to the fund under
12 ORS 137.300.

13 (4) Moneys in the fund are continuously appropriated to the Judicial Department for the pur-
14 poses of:

15 (a) Developing, maintaining and supporting state court electronic applications, services and
16 systems and for providing access to and use of those applications, services and systems; and

17 (b) Providing electronic service and filing services.

18 **SECTION 6.** **The Chief Justice of the Supreme Court may exercise the authority de-**
19 **scribed in ORS 1.002 (5)(b) notwithstanding the fact that the date of the time period or time**
20 **requirement has already passed as of the effective date of this 2021 Act.**

21 **SECTION 7.** **This 2021 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
23 **on its passage.**