

Enrolled
House Bill 2225

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Chief Justice Martha L. Walters for Judicial Department)

CHAPTER

AN ACT

Relating to courts; creating new provisions; amending ORS 1.300, 7.095, 21.135, 21.200, 21.205, 21.345, 33.055, 107.434, 133.545 and 136.600; and declaring an emergency.

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

TRANSCRIPTION FEES

SECTION 1. ORS 21.345 is amended to read:

21.345. (1)(a) A transcriber may not charge more than [~~\$3~~] **\$4.25** per page for preparation of a transcript.

(b) The Judicial Department may periodically increase the maximum fee a transcriber may charge to account for changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the last time the fee was increased. If the Judicial Department increases the fee under this paragraph, the adjusted maximum fee shall be rounded to the nearest quarter dollar, but the unrounded amount shall be used to calculate subsequent adjustments. The increased fee becomes effective on July 1 following the election to increase the fee and applies to transcripts ordered on or after July 1 following the election to increase the fee.

[(b)] (c) A transcriber may not charge a fee in addition to the fee established under this subsection for:

- (A) An electronic copy required to be served on a party;
- (B) A paper copy required to be served on an unrepresented party under ORS 19.370 (4)(a) or (b); or
- (C) A paper copy required to be filed with the trial court under ORS 19.370 (4)(d).

(2) Except as provided in subsection (3) of this section, a reporter employed by one of the parties may charge fees as agreed to between the reporter and all of the parties to the proceeding for preparing transcripts on appeal. The reporter and the parties must agree to the fees to be charged before the commencement of the proceeding to be recorded. A share of any fees agreed upon shall be charged to parties joining the proceeding after the commencement of the proceeding.

(3) A reporter employed by one of the parties may not charge a public body, as defined by ORS 174.109, fees for preparing transcripts on appeal that exceed the fees established by subsection (1) of this section.

(4) Each page of the original transcript on appeal prepared under this section must be prepared as specified by rules for transcripts on appeal adopted by the Supreme Court and the Court of Appeals.

(5) Except as otherwise provided by law, the fees for preparing a transcript requested by a party shall be paid forthwith by the party, and when paid shall be taxable as disbursements in the case. The fees for preparing a transcript requested by the court, and not by a party, shall be paid by the state from funds available for the purpose.

(6) When the court provides personnel to prepare transcripts from audio records of court proceedings, the fees provided in subsection (1) of this section to be paid by a party shall be paid to the clerk of the court.

(7) For purposes of this section, "transcript" has the meaning given that term in ORS 19.005.

SENIOR JUDGES

SECTION 2. ORS 1.300 is amended to read:

1.300. (1) A judge who retires from the circuit court, Oregon Tax Court, Court of Appeals or Supreme Court, except a judge retired under the provisions of ORS 1.310, may be designated a senior judge of the State of Oregon by the Supreme Court and, if so designated, shall be so certified by the Secretary of State.

(2)(a) Upon filing with the Secretary of State an oath of office as a senior judge as prescribed in ORS 1.212, a senior judge is eligible for temporary assignment, with the consent of the senior judge, by the [*Supreme Court*] **Chief Justice of the Supreme Court or the designee of the Chief Justice**, to a state court as provided in this subsection, whenever the [*Supreme Court*] **Chief Justice or the designee of the Chief Justice** determines that the assignment is reasonably necessary and will promote the [*more*] efficient administration of justice.

(b) A senior judge who retired from the Supreme Court may be assigned **under this subsection** to any state court.

(c) A senior judge who retired from a court other than the Supreme Court may be assigned **under this subsection** to any state court other than the Supreme Court.

(d) **A senior judge assigned to serve as a circuit court judge may be assigned under this subsection to serve in any one or more counties or judicial districts during the term of the assignment.**

(3) The assignment of a senior judge [*shall be made by an order which*] shall designate the court **or courts** to which the judge is assigned and the duration of the assignment. [*Promptly after assignment of a senior judge under this section, the Supreme Court shall cause a certified copy of the order to be sent to the senior judge and another certified copy to the court to which the judge is assigned.*] **The Chief Justice or the designee of the Chief Justice shall promptly notify the senior judge, and the court or courts to which the judge is assigned, of the assignment.**

(4) Each senior judge assigned as provided in this section has all the judicial powers and duties, while serving under the assignment, of a regularly elected and qualified judge of the court to which the senior judge is assigned. The powers, jurisdiction and judicial authority of the senior judge in respect to any case or matter tried or heard by the senior judge while serving under the assignment shall continue beyond the expiration of the assignment so far as may be necessary to:

(a) Decide and dispose of any case or matter on trial or held under advisement.

(b) Hear and decide any motion for a new trial or for a judgment notwithstanding a verdict, or objections to any cost bill, that may be filed in the case.

(c) Settle a transcript for appeal and grant extensions of time therefor.

(5) A senior judge assigned as provided in this section shall receive as compensation for each day the senior judge is actually engaged in the performance of duties under the assignment an amount equal to five percent of the gross monthly salary of a regularly elected and qualified judge of the court to which the senior judge is assigned, or one-half of that daily compensation for services of one-half day or less. However, a retired judge shall not receive for services as a senior judge

during any calendar year a sum of money which when added to the amount of any judicial retirement pay received by the senior judge for the year exceeds the annual salary of a judge of the court from which the senior judge retired. The compensation shall be paid upon the certificate of the senior judge that the services were performed for the number of days shown in the certificate. Services by a senior judge under an assignment and receipt of compensation for services shall not reduce or otherwise affect the amount of any retirement pay to which the senior judge otherwise would be entitled.

(6) A senior judge assigned to a court located outside the county in Oregon in which the senior judge regularly resides shall receive, in addition to daily compensation, reimbursement for hotel bills and traveling expenses necessarily incurred in the performance of duties under the assignment. The expenses shall be paid upon presentation of an itemized statement of the expenses, certified by the senior judge to be correct.

SECTION 3. ORS 133.545 is amended to read:

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

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

(3) Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant to ORS 1.615 to serve as a judge pro tempore in a circuit court, **or a senior judge duly assigned to serve in a circuit court under ORS 1.300 and who has authorization from the presiding judge of that judicial district**, may authorize execution of a search warrant in any judicial district in which the judge [*serves as judge pro tempore if the application requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit court judge for the judicial district is not available, whether by reason of conflict of interest or other reason, to issue the warrant within a reasonable time*] **is assigned to serve as judge pro tempore or as senior judge.**

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

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

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

(B) Identity theft;

(C) Aggravated identity theft;

(D) Computer crime;

(E) Fraudulent use of a credit card;

(F) Forgery in any degree;

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

(H) Theft in any degree; or

(I) Aggravated theft in the first degree;

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

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

(5) Application for a search warrant may be made only by a district attorney, a police officer or a special agent employed under ORS 131.805.

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

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

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

(b) When a court issues a warrant upon an application made under paragraph (a) of this subsection:

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

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

SERVICE OF PARENTING TIME MOTION

SECTION 4. ORS 107.434 is amended to read:

107.434. (1) The presiding judge of each judicial district shall establish an expedited parenting time enforcement procedure that may or may not include a requirement for mediation or participation in an alternative dispute resolution conference under ORS 107.103. The procedure must be easy to understand and initiate. Unless the parties otherwise agree or an alternative dispute resolution conference under ORS 107.103 is scheduled, the court shall conduct a hearing no later than 45 days after the filing of a motion seeking enforcement of a parenting time order. The court shall provide forms for:

(a) A motion filed by either party alleging a violation of parenting time or substantial violations of the parenting plan. When a person files this form, the person must include a copy of the order establishing the parenting time.

(b) An order requiring the parties to appear and show cause why parenting time should not be enforced in a specified manner. The party filing the motion shall serve a copy of the motion and the order on the other party **in the manner provided by law for service of a summons**. The order must include:

- (A) A notice of the remedies imposable under subsection (2) of this section and the availability of a waiver of any mediation requirement; and
 - (B) A notice in substantially the following form:
-

When pleaded and shown in a separate legal action, violation of court orders, including visitation and parenting time orders, may also result in a finding of contempt, which can lead to fines, imprisonment or other penalties, including compulsory community service.

(c) A motion, supported by an affidavit or a declaration under penalty of perjury in the form required by ORCP 1 E, and an order that may be filed by either party and providing for waiver of any mediation requirement on a showing of good cause.

(2) In addition to any other remedy the court may impose to enforce the provisions of a judgment relating to the parenting plan, the court may:

- (a) Modify the provisions relating to the parenting plan by:
 - (A) Specifying a detailed parenting time schedule;
 - (B) Imposing additional terms and conditions on the existing parenting time schedule; or
 - (C) Ordering additional parenting time, in the best interests of the child, to compensate for wrongful deprivation of parenting time;
- (b) Order the party who is violating the parenting plan provisions to post bond or security;
- (c) Order either or both parties to attend counseling or educational sessions that focus on the impact of violation of the parenting plan on children;
- (d) Award the prevailing party expenses, including, but not limited to, attorney fees, filing fees and court costs, incurred in enforcing the party's parenting plan;
- (e) Terminate, suspend or modify spousal support;
- (f) Terminate, suspend or modify child support as provided in ORS 107.431; or
- (g) Schedule a hearing for modification of custody as provided in ORS 107.135 (11).

ORCP CITATION CHANGE

SECTION 5. ORS 136.600 is amended to read:

136.600. The provisions of ORS 44.150 and ORCP 39 B and [55 E and G] **55 A(6)(d) and 55 B(4)** apply in criminal actions, examinations and proceedings.

ELECTRONIC RECORDS

SECTION 6. ORS 7.095 is amended to read:

7.095. (1) Where the application of electronic data processing techniques is determined to be feasible and expedient in maintaining records of the courts of this state, the Chief Justice of the Supreme Court may authorize records to be kept by use of electronic data processing equipment. Court records maintained as provided by this section shall contain the information otherwise required by law for the records of courts in this state. **Notwithstanding ORS 192.311 to 192.478, records shall not be subject to public disclosure until reviewed and accepted by the court.**

(2) The State Court Administrator may prescribe standards governing the use of such techniques, the preservation of the records so maintained, and controls to prevent unauthorized access to records maintained through the use of electronic data processing equipment.

CONTEMPT

SECTION 7. ORS 21.135 is amended to read:

21.135. (1) Unless a specific fee is provided by subsection (3) **or** (4) of this section or other law for a proceeding, a circuit court shall collect a filing fee of \$281 when a complaint or other document is filed for the purpose of commencing an action or other civil proceeding and when an answer or other first appearance is filed in the proceeding.

(2) Except as provided in subsection [(4)] (5) of this section, the filing fee established by subsection (1) of this section applies to:

(a) Proceedings in which only equitable remedies are sought.

(b) Appeals from a conviction of a violation in justice or municipal courts as provided in ORS 21.285.

(c) Interpleader actions.

(d) Actions relating to a trust.

(e) Proceedings for judicial review of an agency order.

(f) Declaratory judgment actions.

(g) Any other action or proceeding that is statutorily made subject to the fee established by this section and any other civil proceeding for which a specific filing fee is not provided.

(3)(a) The circuit court shall collect a filing fee of \$263 in adoption cases under ORS chapter 109, excluding readoptions under ORS 109.385, when a petition is filed for the purpose of commencing an adoption proceeding or when any other document or other first appearance is filed in the proceeding. The fee shall include the cost of issuing one or more certificates of adoption under ORS 109.410.

(b) When separate petitions for adoption of multiple minor children are concurrently filed under ORS 109.276 by the same petitioner, one filing fee shall be charged for the first petition filed and the filing fees for concurrently filed petitions shall not be charged.

(4) The circuit court shall collect a filing fee of \$56 for actions seeking remedial sanctions for contempt of court under ORS 33.055 and when a first appearance is filed in the proceeding.

[(4)] (5) The filing fee established under subsection (1) of this section does not apply to:

(a) Expunction proceedings under ORS 419A.262;

(b) Petitions under ORS 163A.130 or 163A.135 for an order relieving the person from the duty to report as a sex offender if the person is required to report under ORS 163A.025; or

(c) Any juvenile delinquency proceeding arising under ORS chapter 419B or 419C.

SECTION 8. ORS 21.200 is amended to read:

21.200. (1) In any action or other proceeding subject to a fee under ORS 21.135, 21.145, 21.160 or 21.170, a \$111 fee must be paid by the party filing one of the following motions and by the party responding to the motion:

(a) A motion for summary judgment under ORCP 47.

(b) A motion for judgment notwithstanding the verdict under ORCP 63.

(c) A motion for new trial under ORCP 64.

(d) A motion for relief from judgment under ORCP 71.

(e) A motion for preliminary injunction under ORCP 79.

[(f) A motion seeking remedies for contempt of court.]

(2) The fees provided for in this section may not be collected from the state, a county, a city or a school district.

(3) The fees provided for in this section may not be collected for motions made to an arbitrator or mediator in an arbitration or mediation required or offered by a court, or to any motion relating to an arbitration or mediation required or offered by a court.

(4) The clerk shall file a motion or response that is subject to a fee under this section only if the fee required by this section is paid when the motion or response is submitted for filing.

SECTION 9. ORS 21.205 is amended to read:

21.205. (1) In any action or other proceeding subject to a fee under ORS 21.155, a \$167 fee must be paid by the party filing a motion that seeks entry of a supplemental judgment and by a party responding to the motion.

(2) The fee provided for in subsection (1) of this section does not apply to any motion under ORCP 68, 69 or 71.

(3) In any action or other proceeding subject to a fee under ORS 21.155, a \$56 fee must be paid by the party filing *[one of the following motions]* **a motion under ORS 107.434** and by a party responding to the motion[.].

[(a) A motion filed under ORS 107.434; and]

[(b) A motion seeking remedies for contempt of court.]

[(4) Only the fees specified by subsection (1) of this section may be collected if a party concurrently files a motion that seeks entry of a supplemental judgment and a motion seeking remedies for contempt of court.]

SECTION 10. ORS 33.055 is amended to read:

33.055. (1) Except as otherwise provided in ORS 161.685, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding *[or, with leave of the court, participate in the proceeding, by filing a motion requesting that]* **by filing an action and may request that the contempt defendant** be ordered to appear:

(a) A party aggrieved by an alleged contempt of court.

(b) A district attorney.

(c) A city attorney.

(d) The Attorney General.

(e) Any other person specifically authorized by statute to seek imposition of sanctions for contempt.

(3) If the alleged contempt is related to another proceeding, *[a motion]* **an action** to initiate a proceeding to impose remedial sanctions must be filed in accordance with rules adopted under ORS 33.145.

(4) The person initiating a proceeding under this section shall file supporting documentation or affidavits sufficient to give **the contempt defendant** notice of the specific acts alleged to constitute contempt.

(5)(a) **The contempt defendant shall be served with the document initiating the contempt action in the manner provided in ORCP 7.** The court may issue an order directing the **contempt defendant** to appear. Except as otherwise provided in paragraph (b) of this subsection, the **contempt defendant** shall be personally served with the order to appear in the manner provided in ORCP 7 *[and 9]*. **If the contempt defendant is represented by counsel in a proceeding to which the action for contempt under this section is related, that counsel shall also be served with the initiating instrument and any order to appear in the manner provided in ORCP 9.** The court may order service by a method other than personal service **on the contempt defendant** or issue an arrest warrant if, based upon motion and supporting affidavit, the court finds that the **contempt defendant** cannot be personally served.

(b) The **contempt defendant** shall be served by substituted service if personal service is waived under ORS 107.835. If personal service is waived under ORS 107.835, the **contempt defendant** shall be served by the method specified in the waiver.

(6) The court may impose a remedial sanction only after affording the **contempt defendant** opportunity for a hearing tried to the court. The **contempt defendant** may waive the opportunity for a hearing by stipulated order filed with the court.

(7) A **contempt defendant** has no right to a jury trial and, except as provided in this section, has only those rights accorded to a defendant in a civil action.

(8) A **contempt defendant** is entitled to be represented by counsel. A court shall not impose on a **contempt defendant** a remedial sanction of confinement unless, before the hearing is held, the **contempt defendant** is:

(a) Informed that such sanction may be imposed; and

(b) Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.

(9) If the **contempt** defendant is not represented by counsel when coming before the court, the court shall inform the **contempt** defendant of the right to counsel, and of the right to appointed counsel if the **contempt** defendant is entitled to, and financially eligible for, appointed counsel under subsection (8) of this section.

(10) Inability to comply with an order of the court is an affirmative defense.

(11) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(12) Proceedings under this section are subject to rules adopted under ORS 33.145. Proceedings under this section are not subject to the Oregon Rules of Civil Procedure except as provided in subsection (5) of this section or as may be provided in rules adopted under ORS 33.145.

APPROPRIATIONS

SECTION 11. Notwithstanding any other provision of law, the General Fund appropriation made to the Public Defense Services Commission by section 1 (6), chapter __, Oregon Laws 2023 (Enrolled Senate Bill 5532), for the biennium beginning July 1, 2023, for court mandated expenses, is increased by \$902,665 for the purpose of carrying out the amendments to ORS 21.345 by section 1 of this 2023 Act.

SECTION 12. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Justice by section 1 (5), chapter __, Oregon Laws 2023 (Enrolled Senate Bill 5514), for the biennium beginning July 1, 2023, for defense of criminal convictions, is increased by \$50,000 for the purpose of carrying out the amendments to ORS 21.345 by section 1 of this 2023 Act.

CAPTIONS

SECTION 13. The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

OPERATIVE DATES

SECTION 14. The amendments to ORS 21.345 and 107.434 by sections 1 and 4 of this 2023 Act become operative on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

SECTION 15. The amendments to ORS 21.135, 21.200, 21.205 and 33.055 by sections 7 to 10 of this 2023 Act become operative on October 1, 2023.

EMERGENCY CLAUSE

SECTION 16. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House June 7, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State