

Senate Bill 1557

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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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Changes some laws about contempt of court. (Flesch Readability Score: 78.8).
Modifies provisions relating to contempt proceedings.

A BILL FOR AN ACT

Relating to courts; creating new provisions; and amending ORS 33.055, 33.065, 33.075 and 476.274.

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

SECTION 1. 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]* **contempt plaintiffs** may initiate the proceeding *[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, 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. 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.]

(4) A contempt plaintiff shall initiate the proceeding by filing a complaint, an affidavit or declaration based on personal knowledge under penalty of perjury in the form required

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.

by ORCP 1 E and an ex parte motion requesting that the contempt defendant be ordered to personally appear before the court. The affidavit or declaration and any other supporting documentation is sufficient to give the contempt defendant notice of the specific acts alleged to constitute contempt.

(5) The court may dismiss the action at any time if the court determines that the contempt plaintiff has not established a prima facie case for the contempt action.

(6) If the court orders the contempt defendant to appear:

(a) The order must direct the parties to personally appear in court on an identified date and time and state whether the proceeding will be held in person or remotely.

(b) The contempt plaintiff shall serve the contempt defendant with the order as provided in subsection (7) of this section.

(c) Upon being served, the contempt defendant may, but is not required to, file a responsive pleading within 21 days. Any affirmative defense must be set forth affirmatively in a responsive pleading.

(d) The court may permit the use of provisional process under ORCP 83.

(e) If the contempt plaintiff fails to appear as directed in the order, the court may dismiss or continue the action.

(7)(a) Except as otherwise provided in paragraph (b) of this subsection, the contempt plaintiff shall cause the contempt defendant to be personally served in the manner provided in ORCP 7 D with the complaint, the affidavit or declaration, any other supporting documentation filed with the complaint, the ex parte motion and the order to appear. If the contempt defendant is represented by counsel in a proceeding to which the action for contempt under this section is related, the contempt plaintiff shall cause service upon the counsel in the manner provided in ORCP 9 with the same documents required to be served on the contempt defendant under this paragraph. The court may order service by a method other than personal service on the contempt defendant or issue an arrest warrant if, based upon the motion and supporting affidavit or declaration under penalty of perjury in the form required by ORCP 1 E, 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)] (8) 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.

(9)(a) If the contempt defendant does not appear for the hearing scheduled under subsection (6) of this section:

(A) The court may continue the hearing, issue an order or warrant pursuant to ORS 33.075 or take other appropriate action.

(B) The contempt plaintiff may seek an order of default or judgment by default under ORCP 69, except that the requirement that the plaintiff file a motion and supporting documents may be satisfied by evidence presented at the hearing.

(C) If the contempt plaintiff seeks an order of default or judgment by default under ORCP 69, the court may address default at the hearing.

(b) If the court finds the contempt defendant in default on the plaintiff's motion as pro-

1 vided in paragraph (a)(B) of this subsection, the court may:

2 (A) Find the contempt defendant in contempt of court if the court determines that the
3 plaintiff satisfied the burden of proof; and

4 (B) As appropriate in the absence of the contempt defendant, order the relief sought or
5 impose any other sanction necessary to cure the contempt as provided in ORS 33.105.

6 (c) Nothing in this subsection allows the court to impose a sanction of confinement.

7 [(7)] (10)(a) A contempt defendant has no right to a jury trial and, except as provided in this
8 section, has only those rights accorded to a defendant in a civil action.

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

12 (c) If the contempt defendant is not represented by counsel when appearing before the
13 court, the court shall inform the contempt defendant of the right to retained counsel, and,
14 if confinement has been sought as a sanction, of the right to appointed counsel if the con-
15 tempt defendant is financially eligible.

16 (d) A court may not impose a remedial sanction of confinement on a contempt defendant
17 unless, before the hearing is held, the contempt defendant is:

18 [(a)] (A) Informed that such sanction may be imposed; and

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

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

25 [(10)] (11) Inability to comply with an order of the court is an affirmative defense.

26 [(11)] (12) In any proceeding for imposition of a remedial sanction other than confinement, proof
27 of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a reme-
28 dial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

29 (13)(a) Upon finding the contempt defendant in contempt of court, the court may order
30 the relief sought or impose any other sanction necessary to cure the contempt as provided
31 in ORS 33.105.

32 (b) The court may also:

33 (A) Require the contempt defendant to pay the contempt plaintiff's attorney fees and
34 costs;

35 (B) Continue the proceedings to allow the contempt defendant to cure the contempt; and

36 (C) Enter a general judgment dismissing the action if the contempt defendant cures the
37 contempt.

38 (14)(a) Except as provided in paragraph (b) of this subsection, the court may grant the
39 prevailing party an award of attorney fees and costs under ORCP 68.

40 (b) If the court dismisses the action based on the contempt defendant's cure of the con-
41 tempt, the court may award attorney fees and costs to the contempt plaintiff if the cure
42 arose as a result of the plaintiff's complaint.

43 [(12)] (15) Proceedings under this section are subject to rules adopted under ORS 33.145. Pro-
44 ceedings under this section are not subject to the Oregon Rules of Civil Procedure except as pro-
45 vided in [subsection (5)] subsections (4), (6), (7), (9) and (14) of this section or as may be provided

in rules adopted under ORS 33.145.

SECTION 2. ORS 33.065 is amended to read:

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

(2) The following persons may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive sanction:

(a) A city attorney.

(b) A district attorney.

(c) The Attorney General.

(3) If a city attorney, district attorney or Attorney General who regularly appears before the court declines to prosecute a contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is authorized to practice law in this state, and who is not counsel for an interested party, to prosecute the contempt. The court shall allow reasonable compensation for the appointed attorney's attendance, to be paid by:

(a) The Oregon Department of Administrative Services, if the attorney is appointed by the Supreme Court, the Court of Appeals or the Oregon Tax Court;

(b) The city where the court is located, if the attorney is appointed by a municipal court; and

(c) The county where the prosecution is initiated, in all other cases.

(4) The prosecutor may initiate proceedings on the prosecutor's own initiative, on the request of a party to an action or proceeding or on the request of the court. After the prosecutor files an accusatory instrument, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(5) Except as otherwise provided by this section, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding, and all proceedings on the accusatory instrument shall be in the manner prescribed for criminal proceedings.

(6) Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. This subsection does not affect any right to a jury that may otherwise be created by statute.

(7) Inability to comply with an order of the court is an affirmative defense. If the defendant proposes to rely in any way on evidence of inability to comply with an order of the court, the defendant shall, not less than five days before the trial of the cause, file and serve upon the city attorney, district attorney or Attorney General prosecuting the contempt a written notice of intent to offer that evidence. If the defendant fails to file and serve the notice, the defendant shall not be permitted to introduce evidence of inability to comply with an order of the court at the trial of the cause unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice, or to file the notice within the time allowed, is made to appear.

[(8) The court may impose a remedial sanction in addition to or in lieu of a punitive sanction.]

[(9)] (8) In any proceeding for imposition of a punitive sanction, proof of contempt shall be beyond a reasonable doubt.

(9) Upon finding the contempt defendant in contempt of court, the court may impose a remedial sanction in addition to or in lieu of a punitive sanction.

SECTION 3. ORS 33.075 is amended to read:

33.075. (1) If a *[person]* **contempt defendant** served with an order to appear under ORS 33.055 fails to appear at the time and place specified in the order, **and in person or remotely as specified in the order**, the court may issue any order or warrant necessary to compel the *[appearance of the defendant]* **contempt defendant's personal appearance**.

(2) A person against whom a complaint has been issued under ORS 33.065 may be cited to appear in lieu of custody as provided in ORS 133.055. If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(3) When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the sheriff shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings.

(4) The defendant shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in ORS 135.230 to 135.290, to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant.

(5) The sheriff shall return the warrant and the security deposit, if any, given to the sheriff by the defendant by the return day specified in the warrant.

(6) When a warrant for contempt issued under subsection (2) of this section has been returned after having been served and the defendant does not appear on the return day, the court may do either or both of the following:

(a) Issue another warrant.

(b) Proceed against the security deposited upon the arrest.

(7) If the court proceeds against the security under subsection (6) of this section and the sum specified is recovered, the court may award to any party to the action any or all of the money recovered as remedial damages.

SECTION 4. ORS 476.274 is amended to read:

476.274. (1) At the request of the State Fire Marshal, for the purpose of investigating liability for the actual cost, as defined in ORS 476.276, of a fire, the Attorney General may administer oaths and affirmations, take testimony or depositions and by subpoena compel:

(a) The attendance of witnesses;

(b) The production of documents, including but not limited to writings, drawings, graphs, charts, photographs and other data compilations from which information can be obtained and translated; and

(c) The production of any other tangible thing that the Attorney General deems relevant or material to the investigation.

(2) Each witness subpoenaed under subsection (1) of this section shall receive the fees and mileage provided in ORS 44.415 (2).

(3) If a person fails to comply with a subpoena issued under this section, or if a party or witness refuses to testify on any matter under this section, the State Fire Marshal may petition the circuit court of any county to order the person to show cause why the person has failed to comply with the subpoena and should not be held in contempt.

(4) If the State Fire Marshal petitions a circuit court as described in subsection (3) of this sec-

tion, the State Fire Marshal shall serve the person with the document initiating the contempt action as described in ORS 33.055 [(5)(a)].

(5) If the State Fire Marshal petitions a circuit court as described in subsection (3) of this section and the person does not show good cause why the person has failed to comply with the subpoena, the circuit court shall compel obedience with the subpoena by proceedings for contempt.

SECTION 5. Section 6 of this 2026 Act is added to and made a part of ORS 33.015 to 33.155.

SECTION 6. (1) Except as provided in subsection (2) of this section, an action to impose either remedial or punitive sanctions for contempt under ORS 33.015 to 33.155 shall be commenced and tried in:

(a) The circuit court that issued or entered the order or judgment that provides the basis for the alleged contempt;

(b) The circuit court for a county in which a violation of the order or judgment occurred; or

(c) The county in which the contempt defendant resides at the commencement of the action.

(2) In a punitive contempt proceeding, all objections of improper place of trial are waived by a contempt defendant unless the contempt defendant objects in the manner set forth in ORS 131.335 to 131.363.

SECTION 7. Section 6 of this 2026 Act and the amendments to ORS 33.055, 33.065, 33.075 and 476.274 by sections 1 to 4 of this 2026 Act apply to contempt proceedings initiated on or after the effective date of this 2026 Act.