

**TESTIMONY ON SENATE BILL 1557-A
BEFORE HOUSE JUDICIARY COMMITTEE
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**PRESENTED BY: CHANNA NEWELL,
SENIOR COUNSEL FOR GOVERNMENT RELATIONS
OREGON JUDICIAL DEPARTMENT**

Chair Kropf, Vice-Chair Wallan, Vice-Chair Chotzen, and Members of the Committee:

Thank you for the opportunity to present to you on Senate Bill (SB) 1557-A. The Oregon Judicial Department (OJD) is proposing SB 1557-A to ensure consistent processes for remedial contempt proceedings in circuit courts. Below, we will outline some basic information on contempt of court and the types of sanctions the court may impose, provide a summary of how this bill came into being, then provide an outline of what the bill does.

Contempt of Court

Contempt of court can be based on several behaviors, all of which must be willful. Contempt can be based upon misconduct in the presence of the court that interferes with the proceeding, disobedience or obstruction of the court's authority or orders or judgments, refusal to appear as a witness or refusal to produce a record contrary to a court order, or violating specific statutory provisions for which contempt is a specific action.¹ The court has inherent power to impose a remedial or punitive sanction for contempt of court.²

Punitive sanctions are sanctions imposed to punish past contempt of court. Remedial sanctions are imposed to end continued contempt or to compensate for injury, damage, or cost from current or past contempt of court. Confinement may be a punitive sanction for contempt if it is for a definite period of time and does not change regardless of compliance with a court's order. Confinement can also be a remedial sanction if it continues or accumulates until the defendant complies with the court's order. Fines as a sanction for contempt can likewise be punitive or remedial, depending on whether it is conditioned on compliance with a court's order.

Development of SB 1557-A

OJD has a workgroup, the Statewide Forms Workgroup (SFWG) that produces or modifies forms for statewide use. Forms produced by the SFWG and approved by the State Court Administrator are made available on the OJD website and can be used by attorneys and self-represented parties in any circuit court in Oregon.

¹ See ORS 33.015(2).

² See ORS 33.025(1).

The SFWG undertook an effort to develop a statewide form for use in contempt proceedings. Oregon Revised Statute (ORS) 33.055 provides the current procedure for imposing remedial sanctions in contempt. Upon undertaking this effort, the group found that the remedial contempt procedures included many points where the process was permissive, not mandatory. For example, ORS 33.055(5)(a) says, “The court may issue an order directing the contempt defendant to appear.” These discretionary actions mean that different circuit courts develop different standard processes for the same statutory provisions. Other places in the statute lack clarity on what is expected from the litigants. For example, ORS 33.055(4) says, “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.” It may be difficult for a litigant to know exactly what documents are necessary to proceed with the contempt action. As a result of the variety of practice that results from the permissive and vague nature of the statute, a statewide form that could be used in any circuit court could not be developed.

The group decided to convene a larger workgroup to review the remedial contempt statutes and provide a process for use statewide. The group consisted of 18 individuals, including judges, OJD staff, family law attorneys, and members of the Department of Justice. Once it completed its initial review and provided its recommendations, the proposal was reviewed by the Statewide Family Law Advisory Committee, which recommended approval by the Chief Justice. The proposal was further reviewed by presiding judges. Revisions were made based on feedback and the proposal is before you today.

What the Measures Does

SB 1557-A provides a consistent process for litigants in a contempt of court proceeding by providing a mandatory process for remedial sanctions.

- 1) Current law states only that the person initiating the proceeding must file supporting documentation or an affidavit and serve that upon the defendant.
 - SB 1557-A clarifies the documents a contempt plaintiff must provide in their initial filing: a complaint, an affidavit or declaration, and an *ex parte* motion requesting the contempt defendant personally appear before the court.
- 2) Statute currently provides judicial discretion on whether to order a contempt defendant to appear.
 - SB 1557-A makes clear that a court can order a defendant to appear and provides direction on the order, method of appearance, and form of service allowed.

- 3) Current statute does not provide a process for hearing a contempt motion, though most jurisdictions utilize a “show cause” hearing process.
 - SB 1557-A specifies that if a contempt defendant fails to appear at a hearing as ordered, the court may continue the hearing, issue a warrant, or take other appropriate actions. If the contempt plaintiff seeks an order of default or judgment by default, the court may address that at the hearing. If the court finds the defendant in contempt on the default judgment, the court may find the defendant in contempt of court and order the relief sought or other sanctions necessary to cure the contempt. If a contempt defendant does not appear at hearing, the court may not impose confinement as a sanction.
- 4) Contempt defendants have a right to be represented by retained counsel at a hearing, but if confinement is sought as a sanction, the defendant has a right to be represented by appointed counsel, if financially eligible.
 - SB 1557-A retains this principle while clarifying defendants’ rights to an attorney.
- 5) Current law allows an award of attorney fees for the prevailing party when a defendant is found in contempt.
 - SB 1557-A incorporates the court rule that Oregon Rules of Civil Procedure (ORCP) Rule 68 applies to contempt actions in which remedial sanctions are sought. In addition, SB 1557-A addresses case law by allowing attorney fees when the contempt case is dismissed before a hearing because the defendant cured the noncompliance as a result of the contempt complaint.
- 6) Finally, SB 1577-A sets out venue provisions for contempt that comply with and add to provisions set out in existing civil and criminal statutes.
 - SB 1557-A provides that a contempt action can be commenced in three locations: the circuit court that issued or entered the order or judgment that provides the basis for the alleged contempt, the circuit court for the county in which the alleged violation occurred, or the county in which the contempt defendant resides at the commencement of the action. The measure makes clear that this venue provision does not apply to contempt filings brought under the Family Abuse Prevention Act (FAPA).

Taken together, the revised statute provides a consistent, statewide process. It provides clarity to litigants and directions to courts and ensures procedural fairness across the state.