

**Enrolled**  
**House Bill 2710**

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Joint Interim Committee on State Justice System Revenues)

CHAPTER .....

AN ACT

Relating to courts; creating new provisions; amending ORS 1.202, 2.560, 8.125, 9.572, 9.576, 9.820, 18.999, 20.190, 21.010, 21.125, 21.270, 21.615, 24.115, 24.135, 24.190, 34.340, 36.520, 36.522, 36.524, 36.610, 36.615, 46.405, 46.425, 46.455, 46.461, 46.465, 46.475, 46.488, 46.570, 51.080, 51.310, 52.635, 55.011, 55.095, 105.130, 105.938, 106.120, 107.434, 107.795, 109.100, 109.787, 110.426, 112.820, 114.515, 114.720, 125.060, 125.075, 125.605, 125.842, 125.845, 130.045, 130.355, 130.400, 133.055, 135.265, 135.921, 137.225, 137.540, 138.560, 166.274, 180.345, 181.823, 181.826, 182.040, 205.360, 305.490, 352.066, 417.825, 419B.529, 419B.555, 701.133, 813.210 and 813.240 and sections 2, 4, 6, 8, 10, 12, 13, 15, 17, 20, 22, 25, 26, 27, 29, 31, 32, 33, 35, 37 and 38, chapter 659, Oregon Laws 2009, section 37g, chapter 885, Oregon Laws 2009, sections 35, 42, 45, 48 and 51, chapter 107, Oregon Laws 2010, section 1, chapter 224, Oregon Laws 2011 (Enrolled House Bill 2367), section 27, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), section 3, chapter \_\_\_, Oregon Laws 2011 (Enrolled House Bill 2104), and section 5, chapter \_\_\_, Oregon Laws 2011 (Enrolled House Bill 3075); repealing ORS 1.204, 2.565, 9.574, 9.830, 9.840, 9.850, 21.040, 21.110, 21.111, 21.112, 21.114, 21.275, 21.310, 21.325, 21.335, 21.350, 21.420, 21.480, 21.580, 21.660, 21.670, 21.730, 21.990, 36.170, 108.130, 352.655, 458.350, 458.355, 458.360 and 458.365 and section 1, chapter 659, Oregon Laws 2009, sections 3 and 4, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), sections 2 and 5, chapter \_\_\_, Oregon Laws 2011 (Enrolled House Bill 2104), and section 4, chapter \_\_\_, Oregon Laws 2011 (Enrolled House Bill 3075); appropriating money; declaring an emergency; and providing for revenue raising that requires approval by a three-fifths majority.

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

**DEPOSIT OF COURT FEES AND CHARGES**

**SECTION 1. Transfers to General Fund. Except as otherwise provided by law, all amounts collected as fees and charges in the Supreme Court, the Court of Appeals, the Oregon Tax Court and the circuit courts shall be transferred to the State Court Administrator for deposit in the General Fund.**

**SECTION 2. Section 1 of this 2011 Act applies to all fees and charges collected in courts on or after the effective date of this 2011 Act.**

**SECTION 3. Legislative intent relating to funding certain programs, services and activities. It is the intent of the Legislative Assembly that funding be provided to the following entities by appropriations each biennium to fund programs, services and activities that were funded through court fees before the 2011-2013 biennium:**

(1) To the counties of this state for the purposes of funding mediation services, conciliation services and other services in domestic relations cases.

(2) To the counties of this state for the purposes of funding the operation of law libraries or of providing law library services.

(3) To the Oregon University System to fund the programs and expenses of the Mark O. Hatfield School of Government and the University of Oregon School of Law under ORS 36.100 to 36.238 and 183.502.

(4) To the Housing and Community Services Department for the purpose of funding programs that defray the cost of rent for dwelling units for very low income households.

(5) To the Oregon University System to fund clinical legal education programs at accredited institutions of higher education that provide civil legal services to victims of domestic violence, stalking or sexual assault.

(6) To the State Department of Agriculture for the purpose of funding mediation programs established by the department, other than individual farm credit mediations.

(7) To the Judicial Department for the purposes of funding the appellate mediation program established under ORS 2.560.

(8) To the Department of Human Services for the funding of the Office of Children's Advocate.

#### LEGAL AID

**SECTION 3a. Legal Aid Account.** (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.

(2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.

(3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572.

#### CIRCUIT COURT FILING FEES

##### (Payment)

**SECTION 4. Filing fees payable in advance.** A pleading or other document may be filed by the circuit court only if the filing fee required by law is paid by the person filing the document or a request for a fee waiver or deferral is granted by the court. Filing fees are not refundable under any circumstances. Unless otherwise specifically provided by statute, the filing fee for an action or proceeding is the only fee or charge that may be collected for the filing, whether by the court or any other public body, as defined by ORS 174.109.

**SECTION 5. Caption of pleading; amended pleadings.** (1) The caption of any complaint or other document filed in a circuit court for the purpose of commencing an action or other civil proceeding must include a reference to the statute that establishes the filing fee for the proceeding. If the proceeding is subject to a filing fee established under section 15 of this 2011 Act, the caption must indicate the amount in controversy. If the proceeding is subject to a

filing fee established under section 21 or 28 of this 2011 Act, the caption must indicate the value of the estate.

(2) If at any time a party files an amended pleading in a proceeding that is subject to a filing fee established under section 15, 21 or 28 of this 2011 Act, and the pleading increases the amount in controversy or the value of the estate in the proceeding, the caption of the pleading must note that increased amount. The court shall collect an additional filing fee from the party filing the pleading that is equal to the difference between the filing fee that was paid by the party when the original pleading was filed and the filing fee that would have been collected if the amount had been pleaded in the original pleading.

(3) If at any time the court determines that a party has failed to comply with the requirements of this section, the court may require that the party pay all fees that should have been paid at the time the document was filed.

**SECTION 6.** Section 5 of this 2011 Act applies only to proceedings commenced on or after October 1, 2011. Any proceeding commenced before October 1, 2011, shall continue to be governed by the law in effect immediately before October 1, 2011.

(Standard Filing Fee)

**SECTION 7.** ORS 21.110 is repealed.

**SECTION 7a.** The repeal of ORS 21.110 by section 7 of this 2011 Act becomes operative immediately after the amendments to ORS 21.110 by section 31, chapter 107, Oregon Laws 2010, become operative under section 17, chapter 659, Oregon Laws 2009, as amended by section 143 of this 2011 Act.

**SECTION 8. Standard filing fee.** (1) Unless a specific fee is provided by other law for a proceeding, a circuit court shall collect a filing fee of \$240 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) The filing fee established by 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 21.615.

(c) Interpleader actions.

(d) Adoptions under ORS chapter 109.

(e) Actions relating to a trust.

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

(g) Declaratory judgment actions.

(h) 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.

**SECTION 9.** Section 8 of this 2011 Act applies only to proceedings commenced on or after October 1, 2011.

(Domestic Relations Filing Fee)

**SECTION 10.** ORS 21.111 and 108.130 are repealed.

**SECTION 11. Domestic relations filing fee.** A circuit court shall collect a filing fee of \$260 when a complaint or other document is filed for the purpose of commencing one of the following proceedings and when an answer or other first appearance is filed in the proceeding:

(1) Proceedings for dissolution of marriage, annulment of marriage or separation.

(2) Filiation proceedings under ORS 109.124 to 109.230.

(3) Proceedings under ORS 108.110, 109.100 and 109.103.

**SECTION 12.** Section 11 of this 2011 Act applies only to proceedings commenced on or after October 1, 2011.

(Simple Proceeding Filing Fee)

**SECTION 13. Simple proceeding filing fee.** In the following proceedings, a circuit court shall collect a filing fee of \$105 when a complaint or other document is filed for the purpose of commencing an action or other proceeding and at the time of filing an answer or other first appearance in the proceeding:

- (1) Applications for change of name under ORS 33.410.
- (2) Applications for a legal change of sex under ORS 33.460.
- (3) Guardianship proceedings under ORS chapter 125.
- (4) Any other action or proceeding that is statutorily made subject to the fee established by this section.

**SECTION 14.** Section 13 of this 2011 Act applies only to proceedings commenced on or after October 1, 2011.

(Tort and Contract Actions)

**SECTION 15. Filing fee for tort and contract actions.** (1) A circuit court shall collect the following filing fees when a complaint or other document is filed for the purpose of commencing an action or other civil proceeding based on a tort or contract and when an answer or other first appearance is filed in the proceeding:

- (a) If the amount claimed is \$10,000 or less, the court shall collect a filing fee of \$150.
  - (b) If the amount claimed is more than \$10,000 and less than \$50,000, the court shall collect a filing fee of \$240.
  - (c) If the amount claimed is more than \$50,000, and less than \$1 million, the court shall collect a filing fee of \$505.
  - (d) If the amount claimed is \$1 million or more and less than \$10 million, the court shall collect a fee of \$755.
  - (e) If the amount claimed is \$10 million or more, the court shall collect a filing fee of \$1,005.
- (2) The filing fees provided by this section apply to proceedings for the foreclosure of a mortgage, lien or other security interest. For the purposes of such proceedings, the amount claimed is the amount of the debt secured by the mortgage, lien or other security interest that is owing as of the date that the proceeding is filed.
- (3) The filing fees provided by this section apply to proceedings for specific performance of a contract. For the purposes of such proceedings, the amount claimed is the amount owing under the contract on the date that the proceeding is filed.
- (4) A court shall collect the filing fees provided by this section when an appeal from a justice court is filed under ORS 53.005 to 53.125 or a case is transferred from a justice court under ORS 52.320.
- (5) For purposes of this section, the amount claimed in a proceeding does not include any amount claimed as attorney fees or as costs and disbursements.

(6) For purposes of this section, the amount claimed in a proceeding includes any penalty or forfeiture provided by statute or arising out of contract.

**SECTION 16.** Section 15 of this 2011 Act applies only to proceedings commenced on or after October 1, 2011.

(Filing Fees for Support Enforcement Cases)

**SECTION 16a.** The filing fees described sections 8, 11, 13 and 15 of this 2011 Act may not be charged to a district attorney or to the Division of Child Support of the Department of Justice for the filing of any proceeding related to the provision of support enforcement services as described in ORS 25.080.

**(Adoption and Change of Name)**

**SECTION 17. ORS 21.114 is repealed.**

**SECTION 18.** ORS 419B.529 is amended to read:

419B.529. (1) Notwithstanding ORS 109.309, a prospective adoptive parent is not required to file a petition for adoption when:

(a) A juvenile court that is a circuit court has entered an order of permanent commitment of a ward to the Department of Human Services under ORS 419B.527 or the parent has signed and the department has accepted a release and surrender to the department and a certificate of irrevocability and waiver as provided in ORS 418.270 regarding a child;

(b) The department has completed a home study as defined in ORS 109.304 that finds the prospective parent is suitable to adopt the child or ward and the department consents to the adoption of the child or ward by the prospective parent;

(c) A home study and a placement report requesting the juvenile court to enter a judgment of adoption have been filed in the juvenile court proceeding; and

(d) At the time the placement report is filed under paragraph (c) of this subsection, the prospective adoptive parent files the adoption report form required under ORS 109.400.

(2) Notwithstanding [ORS 21.114] **section 8 of this 2011 Act**, the clerk of the juvenile court may not charge or collect first appearance [or hearing] fees for a proceeding under this section.

(3) After the filing of the home study and the placement report requesting the court to enter a judgment of adoption, the juvenile court that entered the order of permanent commitment may proceed as provided in ORS 109.307 and 109.350 and may enter a judgment of adoption.

(4) Records of adoptions filed and established under this section shall be kept in accordance with, and are subject to, ORS 7.211.

**SECTION 19. The amendments to ORS 419B.529 by section 18 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**(Probate)**

**SECTION 20. ORS 21.310 is repealed.**

**SECTION 21. Probate filing fees and accounting fees.** (1) Except as provided in ORS 114.515, a probate court shall collect the following filing fees for the filing of a petition for the appointment of personal representative:

(a) If the value of the estate is less than \$50,000, \$240.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, \$505.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, \$755.

(d) If the value of the estate is \$10 million or more, \$1,005.

(2) A probate court shall collect the following fees for an annual or final accounting filed in a probate proceeding:

(a) If the value of the estate is less than \$50,000, \$30.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, \$255.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, \$505.

(d) If the value of the estate is \$10 million or more, \$1,005.

(3) For the purpose of determining the value of the estate under this section, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(4) A person filing an appearance in a probate proceeding must pay the fee established under section 8 of this 2011 Act.

(5) The fees established under this section apply to county courts exercising probate jurisdiction.

**SECTION 22.** ORS 114.515 is amended to read:

114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(c) The Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under ORS 114.517, if the decedent received public assistance pursuant to ORS chapter 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(2) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is \$275,000 or less;

(b) Not more than \$75,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than \$200,000 of the fair market value of the estate is attributable to real property.

(3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

(4) An affidavit filed under the provisions of this section must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney approved by the Director of Human Services or the Director of the Oregon Health Authority, a copy of the document approving the attorney must be attached to the affidavit.

(5) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

(6) The clerk of the probate court shall charge and collect [*a fee of \$23*] **the fee established under section 13 of this 2011 Act** for the filing of any affidavit under this section.

(7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.

(8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded.

**SECTION 23. Section 21 of this 2011 Act and the amendments to ORS 114.515 by section 22 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**SECTION 24. Section 25 of this 2011 Act is added to and made a part of ORS 114.505 to 114.560.**

**SECTION 25. (1) A person filing a petition for summary determination under ORS 114.540 or a petition for summary review of administration of estate under ORS 114.550, or any other appearance in a proceeding under ORS 114.505 to 114.560, must pay the filing fee established under section 8 of this 2011 Act.**

**(2) If at any time after the filing of an affidavit under ORS 114.515 a petition for appointment of a personal representative is filed for the same estate, the person filing the petition must pay the fees established under section 21 of this 2011 Act.**

**SECTION 26. Section 25 of this 2011 Act applies only to proceedings commenced on or after October 1, 2011.**

**(Protective Proceedings)**

**SECTION 27. Guardianship filing fees. (1) A circuit court shall collect the filing fee established under section 13 of this 2011 Act for the filing of the initial documents in a guardianship proceeding and for filing an appearance in a guardianship proceeding.**

(2) The fees established under this section apply to county courts exercising probate jurisdiction.

**SECTION 28. Conservatorship filing fees and accounting fees.** (1) The court shall collect the following filing fees for the filing of the initial documents in a conservatorship proceeding:

- (a) If the value of the estate is less than \$50,000, \$240.
- (b) If the value of the estate is \$50,000 or more, but less than \$1 million, \$505.
- (c) If the value of the estate is \$1 million or more, but less than \$10 million, \$755.
- (d) If the value of the estate is \$10 million or more, \$1,005.

(2) The court shall collect the following fees for an annual or final accounting filed in a conservatorship proceeding:

- (a) If the value of the estate is less than \$50,000, \$30.
- (b) If the value of the estate is \$50,000 or more, but less than \$1 million, \$255.
- (c) If the value of the estate is \$1 million or more, but less than \$10 million, \$505.
- (d) If the value of the estate is \$10 million or more, \$1,005.

(3) For the purpose of determining the value of the estate under this section, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(4) Except as provided in subsection (1) of this section, at the time of filing an appearance in a conservatorship proceeding the party filing the appearance must pay the filing fee established under section 8 of this 2011 Act.

(5) The fees established by this section apply to county courts exercising probate jurisdiction.

**SECTION 29.** ORS 112.820 is amended to read:

112.820. (1) An attorney authorized to destroy a will under ORS 112.815 may proceed as follows:

(a) The attorney shall first publish a notice in a newspaper of general circulation in the county of the last-known address of the testator, if any, otherwise in the county of the principal place of business of the attorney. The notice shall state the name of the testator, the date of the will and the intent of the attorney to destroy the will if the testator does not contact the attorney within 90 days after the date of the notice.

(b) If the testator fails to contact the attorney within 90 days after the date of the notice, the attorney may destroy the will.

(c) Within 30 days after destruction of the will, the attorney shall file with the probate court in the county where the notice was published an affidavit stating the name of the testator, the name and relationship of each person named in the will whom the testator identified as related to the testator by blood, adoption or marriage, the date of the will, proof of the publication and the date of destruction.

(d) The clerk of the probate court shall charge and collect [*a fee of \$17*] **the fee established under section 13 of this 2011 Act** for filing of the affidavit.

(2) If a will has not been admitted to probate within 40 years following the death of the testator, an attorney having custody of the will may destroy the will without notice to any person or court.

**SECTION 30.** ORS 130.045 is amended to read:

130.045. (1) For purposes of this section, "interested persons" means any settlor of a trust who is living, all beneficiaries of the trust who have an interest in the subject of the agreement, any acting trustee of the trust, and the Attorney General if the trust is a charitable trust subject to the enforcement or supervisory powers of the state or the Attorney General under the provisions of ORS 128.610 to 128.750.

(2) Except as otherwise provided in subsection (3) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(3) A nonjudicial settlement agreement is valid only to the extent the agreement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

- (4) Matters that may be resolved by a nonjudicial settlement agreement include:
- (a) The interpretation or construction of the terms of the trust or other writings that affect the trust.
  - (b) The approval of a trustee's report or accounting.
  - (c) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.
  - (d) The resignation or appointment of a trustee and the determination of a trustee's compensation.
  - (e) Transfer of a trust's principal place of administration.
  - (f) Liability of a trustee for an action or failure to act relating to the trust.
  - (g) Determining classes of creditors, beneficiaries, heirs, next of kin or other persons.
  - (h) Resolving disputes arising out of the administration or distribution of the trust.
  - (i) Modifying the terms of the trust, including extending or reducing the period during which the trust operates.
- (5)(a) Any interested person may file a settlement agreement entered into under this section, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust.
- (b) After collecting the fee provided for in subsection (7)[(a)] of this section, the clerk shall enter the agreement or memorandum of record in the court's register.
- (c) Within five days after the filing of an agreement or memorandum under this subsection, the person making the filing must serve a notice of the filing and a copy of the agreement or memorandum on each person interested in the trust whose address is known at the time of the filing. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

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CAPTION            NOTICE OF FILING OF  
OF CASE            SETTLEMENT AGREEMENT  
                          OR MEMORANDUM OF  
                          SETTLEMENT AGREEMENT

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. Unless you file objections to the agreement within 120 days after that date, the agreement will be approved and will be binding on all persons interested in the trust.

If you file objections within the 120-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all persons interested in the trust. See ORS 130.045.

\_\_\_\_\_  
Signature

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(d) Proof of mailing of the notices required under this subsection must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(e) If no objections are filed with the court within 120 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons interested in the trust.

(6)(a) If objections are filed with the court within 120 days after the filing of a settlement agreement or memorandum under this section, the clerk of the court shall collect the fee provided in subsection (7)[(a)] of this section. Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all persons interested in the trust and give notice to those persons of the time and place fixed by the



court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections may be made personally or by registered or certified mail, return receipt requested.

(b) Proof of mailing of objections must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(c) The court shall approve an agreement entered into under this section after a hearing upon objections filed under this subsection unless:

(A) The agreement does not reflect the signatures of all persons required by this section;

(B) The agreement is not authorized by this section; or

(C) Approval of the agreement would not be equitable.

(d) An agreement approved by the court after a hearing is binding on all persons interested in the trust.

(e) Persons interested in the trust may waive the notice required under subsection (5) of this section. If all persons interested in the trust waive the notice, the agreement is effective and binding on all persons interested in the trust upon filing of the agreement or memorandum with the court.

(7)(a) The clerk of the circuit court shall collect in advance [a fee of \$65] **the filing fees established under section 8 of this 2011 Act** for the filing of an agreement or memorandum of agreement under subsection (5) of this section[,] and [a fee of \$32.50] for the filing of objections under subsection (6) of this section.

*[(b) In addition to the filing fees provided for in paragraph (a) of this subsection, the clerk shall charge and collect in proceedings under this section all additional fees authorized by law for civil actions, suits or proceedings in circuit court.]*

*[(c) A pleading or other document is not considered filed unless the fees required by this subsection are paid. Filing fees may not be refunded to any party.]*

**SECTION 31. Sections 27 and 28 of this 2011 Act and the amendments to ORS 112.820 and 130.045 by sections 29 and 30 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

### (Foreign Judgments)

**SECTION 32.** ORS 24.115 is amended to read:

24.115. (1) A copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of this state may be filed in the office of the clerk of any circuit court of any county of this state. **Except as otherwise provided by law, the person filing the copy of the foreign judgment must pay the filing fee established under section 8 of this 2011 Act.** The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court.

(2) A certified copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of this state shall be recorded in the County Clerk Lien Record of any county other than the county in which the judgment is originally filed, in order to become a lien upon the real property of the judgment debtor in that county as provided in ORS 18.152.

(3) A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the circuit court in which the foreign judgment is filed, and may be enforced or satisfied in like manner.

(4) A foreign judgment of a tribal court of a federally recognized Indian tribe that is filed in a circuit court under this section, and that otherwise complies with 26 U.S.C. 414(p) as a domestic relations order as defined in 26 U.S.C. 414(p), is a domestic relations order made pursuant to the domestic relations laws of this state for the purposes of 26 U.S.C. 414(p).

**SECTION 33.** ORS 24.135 is amended to read:

24.135. (1) If the judgment debtor shows the court of any county that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires,

or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the court of any county any ground upon which enforcement of a judgment of any court of any county of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

**(3) Any person making an appearance in proceedings related to foreign judgments filed under ORS 24.115, including a judgment debtor filing a proceeding seeking a stay of judgment under this section or otherwise seeking relief from enforcement of the judgment, must pay the filing fee established under section 8 of this 2011 Act.**

**SECTION 34.** ORS 109.787 is amended to read:

109.787. (1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to any circuit court in this state:

(a) A letter or other document requesting registration;

**(b) The filing fee established under section 13 of this 2011 Act;**

[(b)] **(c)** Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

[(c)] **(d)** Except as otherwise provided in ORS 109.767, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody, parenting time or visitation in the child custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1) of this section, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

(3) The person seeking registration of a child custody determination shall serve notice upon the persons named under subsection [(1)(c)] **(1)(d)** of this section notifying them of the opportunity to contest the registration in accordance with this section.

(4) The notice required by subsection (3) of this section must state that:

(a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) A hearing to contest the validity of the registered determination must be requested within 21 days after service of notice; and

(c) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(5) A person seeking to contest the validity of a registered order must request a hearing within 21 days after service of the notice **and pay the filing fee established under section 13 of this 2011 Act.** At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) The issuing court did not have jurisdiction under ORS 109.741 to 109.771;

(b) The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under ORS 109.741 to 109.771; or

(c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724, in the proceedings before the court that issued the order for which registration is sought.

(6) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(7) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

**SECTION 35.** ORS 110.426 is amended to read:

110.426. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in ORS 110.405, 110.408 and 110.411 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. **The person filing the request for registration, and any other person making an appearance in the proceeding, must pay the filing fee established under section 13 of this 2011 Act.**

**SECTION 36.** ORS 125.842 is amended to read:

125.842. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. **The person registering the order, and any other person making an appearance in the proceeding, must pay the filing fee established under section 13 of this 2011 Act.**

**SECTION 37.** ORS 125.845 is amended to read:

125.845. If a conservator has been appointed in another state and a petition for a conservatorship order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the conservatorship order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. **The person registering the order, and any other person making an appearance in the proceeding, must pay the filing fee established under section 13 of this 2011 Act.**

**SECTION 38.** The amendments to ORS 24.115, 24.135, 109.787, 110.426, 125.842 and 125.845 by sections 32 to 37 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.

**(Habeas Corpus Proceedings)**

**SECTION 39.** ORS 34.340 is amended to read:

34.340. The writ shall be allowed by the court or judge thereof upon the petition of the party for whose relief it is intended, or of some other person in behalf of the party, signed and verified by the oath of the plaintiff, to the effect that the plaintiff believes it to be true. The petition must be accompanied by [a] the filing fee [of \$28] **established under section 8 of this 2011 Act.**

**SECTION 40.** The amendments to ORS 34.340 by section 39 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.

**(Arbitration-Related Proceedings)**

**SECTION 41.** ORS 36.520 is amended to read:

36.520. (1) Recourse to a court against an arbitral award may only be by an application for setting aside in accordance with subsections (2) and (3) of this section.

(2) An arbitral award may be set aside by the circuit court only if:

(a) The party making application furnishes proof that:

(A) A party to the arbitration agreement referred to in ORS 36.466 was under some incapacity or that the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of the State of Oregon or the United States;

(B) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case;

(C) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to

arbitration, provided that, if the decisions on matters not submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(D) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ORS 36.450 to 36.558 from which the parties cannot derogate, or, failing such agreement, was not in accordance with ORS 36.450 to 36.558; or

(b) The circuit court finds that:

(A) The subject matter of the dispute is not capable of settlement by arbitration under the laws of the State of Oregon or of the United States; or

(B) The award is in conflict with the public policy of the State of Oregon or of the United States.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under ORS 36.518, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The circuit court, when asked to set aside an arbitral award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

(5) The clerk of the circuit court shall collect **the filing fees established under section 8 of this 2011 Act** from the party making application for setting aside under subsection (1) of this section [*a filing fee of \$39*] and from a party filing an appearance in opposition to the application. [*a filing fee of \$39. However, if the application relates to an arbitral award made following an application or request to a circuit court under any section of ORS 36.450 to 36.558 in respect to which the parties have paid filing fees under ORS 21.110, filing fees shall not be collected under this subsection. An application for setting aside or an appearance in opposition thereto shall not be deemed filed unless the fee required by this subsection is paid by the filing party.*]

**SECTION 42.** ORS 36.522 is amended to read:

36.522. (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the circuit court, shall be enforced subject to the provisions of this section and ORS 36.524.

(2) The party relying on an award or applying for its enforcement shall supply the authenticated original or a certified copy of the award and the original or certified copy of the arbitration agreement referred to in ORS 36.466. If the award or agreement is not made in the English language, then the party relying on the award or applying for its enforcement shall supply a duly certified translation thereof into the English language.

(3) The party relying on an arbitral award or applying for its enforcement shall deliver to the clerk of the circuit court the documents specified in subsection (2) of this section along with proof of the delivery of a copy of the arbitral award as required by ORS 36.514 (4). The relying party shall pay to the clerk [*a*] **the filing fee [*of \$25*] established under section 8 of this 2011 Act**, after which the clerk shall enter the arbitral award of record in the office of the clerk. If no application to set aside is filed against the arbitral award as provided in ORS 36.520 within the time specified in ORS 36.520 (3) or, if such an application is filed, the relying party after the disposition of the application indicates the intention to still rely on the award or to apply for its enforcement, judgment shall be entered as upon the verdict of a jury, and execution may issue thereon, and the same proceedings may be had upon the award with like effect as upon a verdict in a civil action.

**SECTION 43.** ORS 36.524 is amended to read:

36.524. (1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) At the request of the party against whom it is invoked, if that party pays the clerk of the circuit court [a] **the filing fee [of \$25] established under section 8 of this 2011 Act** and furnishes to the court where recognition or enforcement is sought proof that:

(A) A party to the arbitration agreement referred to in ORS 36.466 was under some incapacity or that the agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made;

(B) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the party's case;

(C) The arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or the award contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;

(D) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(E) The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) If the court finds that:

(A) The subject matter of the dispute is not capable of settlement by arbitration under the laws of the State of Oregon or of the United States; or

(B) The recognition or enforcement of the arbitral award would be contrary to the public policy of the State of Oregon or of the United States.

(2) If an application for setting aside or suspension of an award has been made to the court referred to in subsection (1)(a)(E) of this section, and if it considers it proper, the court where recognition or enforcement is sought may adjourn its decision on application of the party claiming recognition or enforcement of the award. The court may also order the other party to provide appropriate security.

**SECTION 44.** ORS 36.615, as amended by sections 40 and 41, chapter 107, Oregon Laws 2010, is amended to read:

36.615. (1)[(a)] Except as otherwise provided in ORS 36.730, an application for judicial relief under ORS 36.600 to 36.740 must be made by petition to the court. **The petitioner and the respondent must pay the filing fees established under section 8 of this 2011 Act.** [*Except as otherwise provided in this subsection, a person filing the first petition relating to an agreement to arbitrate or relating to an arbitration proceeding must pay the filing fee provided by ORS 21.110 (1) for plaintiffs, and persons responding to the petition must pay the filing fee provided by ORS 21.110 (1) for defendants. If subsequent petitions are filed relating to the same agreement to arbitrate or arbitration proceeding, no additional filing fees shall be required of the parties.*]

[(b) *If the first petition relating to an arbitration proceeding is a petition to seek confirmation, vacation, modification or correction of an award under ORS 36.700, 36.705 or 36.710, the person filing the petition must pay a fee of \$39, and a person filing an appearance in opposition to the petition must pay a filing fee of \$39.*]

[(c) *If a civil action is pending relating to the same dispute that is the subject of the arbitration, and filing fees were paid for that action under ORS 21.110, filing fees may not be charged under this subsection for the filing of any petition under ORS 36.600 to 36.740.*]

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of a first petition to the court under ORS 36.600 to 36.740[,] must be served in the manner provided by ORCP 7 D. Otherwise, notice of the petition must be given in the manner provided by ORCP 9.

**SECTION 45. The amendments to ORS 36.520, 36.522, 36.524 and 36.615 by sections 41 to 44 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

(Small Claims)

**SECTION 46.** ORS 46.570 is amended to read:

46.570. [(1) In the small claims department of circuit court there shall be charged and collected in civil cases by the clerk of the court the following fees for the following purposes and services:]

[(a)(A) Plaintiff filing a claim, \$26 when the amount or value claimed does not exceed \$1,500, and \$55 when the amount or value claimed exceeds \$1,500; and]

[(B) Defendant demanding a hearing, \$24 when the amount or value claimed by plaintiff does not exceed \$1,500, and \$50 when the amount or value claimed by plaintiff exceeds \$1,500.]

[(b) Transcription of judgment from small claims department, \$7.]

[(c) Transfer of cause to circuit court on counterclaim, \$12.]

[(2) Except as otherwise provided in subsection (1) of this section, fees provided for in this section shall be collected in advance. A pleading or other document shall be filed by the clerk only if the required fee is paid or if a request for a fee waiver or deferral is granted by the court. Fees provided for in this section may not be refunded.] **The small claims department of a circuit court shall collect the following filing fees from the plaintiff when a claim is filed in the court, and from the defendant when the defendant demands a hearing:**

**(1) \$50, when the amount claimed is \$2,500 or less; and**

**(2) \$90, when the amount is more than \$2,500.**

**SECTION 47.** ORS 46.405 is amended to read:

46.405. (1) Except as provided in subsection (6) of this section, each circuit court shall have a small claims department.

(2) Except as provided in this section, all actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture must be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$750.

(3) Except as provided in this section [and ORS 46.455 (2)(c)], an action for the recovery of money, damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed [\$7,500] **\$10,000**.

(4) Class actions may not be commenced and prosecuted in the small claims department.

(5) Actions providing for statutory attorney fees in which the amount or value claimed does not exceed \$750 may be commenced and prosecuted in the small claims department or may be commenced and prosecuted in the regular department of the circuit court. This subsection does not apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

(6) If a circuit court is located in the same city as a justice court, the circuit court need not have a small claims department if the circuit court and the justice court enter into an intergovernmental agreement that provides that only the justice court will operate a small claims department. If an intergovernmental agreement is entered into under this subsection, the agreement must establish appropriate procedures for referring small claims cases to the justice court.

**SECTION 48.** ORS 46.425 is amended to read:

46.425. (1) An action in the small claims department shall be commenced by the plaintiff's filing with the clerk of the court a verified claim in the form prescribed by the court[, and by paying the fee prescribed by ORS 46.570 (1)(a) for each action filed].

(2) The claim shall contain the name and address of the plaintiff and of the defendant, followed by a plain and simple statement of the claim, including the amount and the date the claim allegedly accrued. The claim shall include an affidavit signed by the plaintiff and stating that the plaintiff made a bona fide effort to collect the claim from the defendant before filing the claim with the clerk.

(3) Except in actions arising under ORS chapter 90, the plaintiff must include in a claim all amounts claimed from the defendant arising out of a single transaction or occurrence. Any plaintiff alleging damages on a transaction requiring installment payments need only claim the installment payments due and owing as of the date of filing of the claim, and need not accelerate the remaining

payments. The plaintiff may include in a claim all amounts claimed from a defendant on more than one transaction or occurrence if the total amount of the claim does not exceed [~~\$7,500~~] **\$10,000**.

(4) Notwithstanding subsection (3) of this section, a plaintiff bringing an action on assigned claims:

(a) Need bring an action only on those claims that have been assigned as of the date the action is filed; and

(b) May bring separate actions for each person assigning claims to the plaintiff.

**SECTION 49.** ORS 46.455 is amended to read:

46.455. Within 14 days after the date of service of the notice and claim upon the defendant as provided in ORS 46.445:

(1) If the defendant admits the claim, the defendant may settle it by:

(a) Paying to the plaintiff the amount of the claim plus the amount of all filing fees and service expenses paid by the plaintiff and mailing proof of that payment to the court.

(b) If the claim is for recovery of specific personal property, delivering the property to the plaintiff and paying to the plaintiff the amount of all filing fees and service expenses paid by the plaintiff and mailing proof of that delivery and payment to the court.

(2) If the defendant denies the claim, the defendant:

(a) May demand a hearing in the small claims department in a written request to the clerk in the form prescribed by the court, accompanied by payment of the defendant's fee prescribed; and

(b) When demanding a hearing, may assert a counterclaim in the form provided by the court[; or].

[~~(c)~~] **(3)** If the amount or value claimed exceeds \$750, **the defendant** has a constitutional right to a jury trial and may claim that right in a written request to the clerk in the form prescribed by the court, accompanied by payment of the appearance fee required from defendants [*in circuit court actions together with the amount of the circuit court jury trial fee for the first day of trial*] **under section 15 of this 2011 Act**. The request shall designate a mailing address to which a summons and copy of the complaint may be served by mail. Thereafter, the plaintiff's claim will not be limited to the amount stated in the claim, though it must involve the same controversy.

**SECTION 50.** ORS 46.461 is amended to read:

46.461. (1) The defendant in an action in the small claims department may assert as a counterclaim any claim that, on the date of issuance of notice pursuant to ORS 46.445, the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff.

(2) If the amount or value of the counterclaim exceeds [~~\$7,500~~] **\$10,000**, the court shall strike the counterclaim and proceed to hear and dispose of the case as though the counterclaim had not been asserted unless the defendant files with the counterclaim a motion requesting that the case be transferred from the small claims department to the circuit court. After the transfer the plaintiff's claim will not be limited to the amount stated in the claim filed with the small claims department, though it must involve the same controversy.

(3)(a) If the amount or value of the counterclaim exceeds that specified in subsection (2) of this section, and the defendant files a motion requesting transfer as provided in subsection (2) of this section, the case shall be transferred to the circuit court. The clerk of the court shall notify the plaintiff and defendant, by mail, of the transfer. The notice to the plaintiff shall contain a copy of the counterclaim and shall instruct the plaintiff to file with the court and serve by mail on the defendant, within 20 days following the mailing of the notice, a reply to the counterclaim and, if the plaintiff proposes to increase the amount of the claim originally filed with the small claims department, an amended claim for the increased amount. Proof of service on the defendant of the plaintiff's reply and amended claim may be made by certificate of the plaintiff or plaintiff's attorney attached to the reply and amended claim filed with the court. The defendant is not required to answer an amended claim of the plaintiff.

(b) Upon filing the motion requesting transfer, the defendant shall pay to the clerk of the court [*the transfer fee required by ORS 46.570 (1)(c) and*] an amount equal to the difference between the

fee paid by the defendant as required by ORS 46.570 [(1)(a)] and the fee required of a defendant [by ORS 21.110] **under section 15 of this 2011 Act**. Upon filing a reply to the counterclaim, the plaintiff shall pay to the clerk of the court an amount equal to the difference between the fee paid by the plaintiff as required by ORS 46.570 [(1)(a)] and the fee required of a plaintiff [by ORS 21.110] **under section 15 of this 2011 Act**.

**SECTION 51.** ORS 46.465 is amended to read:

46.465. (1) If the defendant demands a hearing in the small claims department, under the direction of the court the clerk shall fix a day and time for the hearing and shall mail to the parties a notice of the hearing time in the form prescribed by the court, instructing them to bring witnesses, documents and other evidence pertinent to the controversy.

(2) If the defendant asserts a counterclaim, the notice of the hearing time shall contain a copy of the counterclaim.

(3)(a) If the defendant claims the right to a jury trial, the clerk shall notify the plaintiff by mail of the requirements of this paragraph. Within 20 days after the mailing of the notice, the plaintiff must file a formal complaint with the court and serve by mail a summons and copy of the complaint on the defendant at the designated address of the defendant. Proof of service must be filed by the plaintiff with the court. Proof of service may be made by filing a certificate of the plaintiff or the plaintiff's attorney with the complaint.

(b) The plaintiff's claim in the formal complaint filed pursuant to this subsection is not limited to the amount stated in the claim filed in the small claims department, but the claim in the formal complaint must relate to the same controversy.

(c) The defendant must file an appearance in the matter within 10 days after the date on which the summons and copy of the complaint would be delivered to the defendant in due course of mail. Thereafter the cause shall proceed as other causes in the court, and costs and disbursements shall be allowed and taxed. Fees not previously paid shall be charged and collected as provided for other cases tried in the circuit court, except that the [appearance] **filing** fee for the plaintiff shall be an amount equal to the difference between the **filing** fee paid by the plaintiff as required by ORS 46.570 and the **filing** fee required of the plaintiff under [ORS 21.110] **section 15 of this 2011 Act**.

(4)(a) If the defendant claims the right to a jury trial and does not prevail in the action, the court shall award to the plaintiff reasonable attorney fees incurred by the plaintiff in the action. Unless attorney fees are otherwise provided for in the action by contract or statutory provision, attorney fees awarded under this paragraph may not exceed \$1,000.

(b) If the defendant asserts a counterclaim that requires transfer of the matter under the provisions of ORS 46.461, and the defendant does not prevail in the action, the court shall award to the plaintiff reasonable attorney fees incurred by the plaintiff in the action.

**SECTION 52.** ORS 46.475 is amended to read:

46.475. (1) Upon written request, the court may extend to the parties additional time within which to make formal appearances required in the small claims department of a circuit court.

(2) If the defendant fails to pay the claim, demand a hearing, or demand a jury trial and comply with ORS 46.465 (3)(c), upon written request from the plaintiff the clerk shall enter a judgment against the defendant for the relief claimed plus the amount of the small claims filing fees and service expenses paid by the plaintiff and the prevailing party fee provided by ORS 20.190.

(3) If the plaintiff fails within the time provided to file a formal complaint pursuant to ORS 46.465 (3)(a), the clerk shall[:]

[(a)] dismiss the case without prejudice.[: and]

[(b) *If the defendant applies therefor in writing to the clerk not later than 30 days after the expiration of the time provided for the plaintiff to file a formal complaint, refund to the defendant the amount of the jury trial fee paid by the defendant under ORS 46.455 (2)(c).*]

(4) If the defendant appears at the time set for hearing but no appearance is made by the plaintiff, the claim shall be dismissed with prejudice. If neither party appears, the claim shall be dismissed without prejudice.



(5) Upon good cause shown within 60 days, the court may set aside a default judgment or dismissal and reset the claim for hearing.

**SECTION 52a.** ORS 51.080 is amended to read:

51.080. (1) A justice court has jurisdiction, but not exclusive, of the following actions:

(a) For the recovery of money or damages only, when the amount claimed does not exceed ~~[\$7,500]~~ **\$10,000**.

(b) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed ~~[\$7,500]~~ **\$10,000**.

(c) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding ~~[\$7,500]~~ **\$10,000**.

(d) To give judgment without action, upon the confession of the defendant for any of the causes specified in this section, except for a penalty or forfeiture imposed by statute.

(2) For purposes of this section, the amount claimed, value of property, damages or any amount in controversy does not include any amount claimed as costs and disbursements or attorney fees as defined by ORCP 68 A.

**SECTION 52b.** ORS 51.310 is amended to read:

51.310. (1) Except as provided in ORS 105.130, the justice of the peace shall collect, in advance except in criminal cases, and issue receipts for, the following fees:

(a) For the first appearance of the plaintiff, ~~[\$30]~~ **\$40**.

(b) For the first appearance of the defendant, ~~[\$22.50]~~ **\$40**.

(c) In the small claims department, for a plaintiff filing a claim, ~~[\$22.50]~~ **\$28**; and for a defendant requesting a hearing, ~~[\$15]~~ **\$28**.

(d) For transcript of judgment, \$6.

(e) For transcript of judgment from the small claims department, ~~[\$5]~~ **\$6**.

(f) For certified copy of judgment, ~~[\$3.50]~~ **\$6**.

(g) For issuing writs of execution or writs of garnishment, ~~[\$5]~~ **\$6** for each writ.

(h) For taking an affidavit of a private party, \$1.

(i) For taking depositions, for each folio, 70 cents.

(j) For supplying to private parties copies of records and files, the same fees as provided or established for the county clerk under ORS 205.320.

(k) For each official certificate, \$1.

(L) For taking and certifying for a private party an acknowledgment of proof of any instrument, \$3.

(m) Costs in criminal cases, where there has been a conviction, or upon forfeiture of security, \$5.

(2) Not later than the last day of the month immediately following the month in which fees set forth in subsection (1) of this section are collected, the justice of the peace shall pay all such fees, other than those for performing marriage ceremonies, over to the county treasurer of the county wherein the justice of the peace was elected or appointed, for crediting to the general fund of the county, and shall take the receipt of the treasurer therefor.

**SECTION 53.** ORS 55.011 is amended to read:

55.011. (1) Except as provided in subsection (8) of this section, in each justice court created under any law of this state there shall be a small claims department.

(2) Except as provided in this section, all actions for the recovery of money, damages, specific personal property, or any penalty or forfeiture must be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed \$750.

(3) Except as provided in this section [*and ORS 46.455 (2)(c)*], an action for the recovery of money, damages, specific personal property, or any penalty or forfeiture may be commenced and prosecuted in the small claims department if the amount or value claimed in the action does not exceed ~~[\$7,500]~~ **\$10,000**.

(4) Class actions may not be commenced and prosecuted in the small claims department.

(5) Actions providing for statutory attorney fees in which the amount or value claimed does not exceed \$750 may be commenced and prosecuted in the small claims department or may be commenced and prosecuted in the regular department of the justice court. This subsection does not apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

(6) Jurisdiction of the person of the defendant in an action commenced in the small claims department shall be deemed acquired as of the time of service of the notice and claim.

(7) Except as provided in ORS 55.065 (2)(c), the provisions of ORS 55.020 to 55.140 shall apply with regard to proceedings in the small claims department of any justice court.

(8) If a justice court is located in the same city as a circuit court, the justice court need not have a small claims department if the justice court and the circuit court enter into an intergovernmental agreement that provides that only the circuit court will operate a small claims department. If an intergovernmental agreement is entered into under this subsection, the agreement must establish appropriate procedures for referring small claims cases to the circuit court.

**SECTION 53a.** ORS 55.095 is amended to read:

55.095. (1) The defendant in an action in the small claims department may assert as a counterclaim any claim that, on the date of issuance of notice pursuant to ORS 55.045, the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff.

(2) If the amount of the counterclaim asserted by the defendant exceeds [~~\$7,500~~] **\$10,000**, the justice of the peace shall strike the counterclaim and proceed to hear and dispose of the case as though the counterclaim had not been asserted unless the defendant files with the counterclaim a motion requesting that the case be transferred from the small claims department to a court of appropriate jurisdiction and an amount to pay the costs of the transfer. After the transfer the plaintiff's claim will not be limited to the amount stated in the claim filed with the justice of the peace, though it must involve the same controversy.

(3)(a) If the amount or value of the counterclaim exceeds the jurisdictional limit of the justice court for a counterclaim and the defendant files a motion requesting transfer and an amount to pay the costs of transfer as provided in subsection (2) of this section, the case shall be transferred to the circuit court for the county in which the justice court is located and be governed as provided in ORS 52.320 for transfers to the circuit court. The justice court shall notify the plaintiff and defendant, by mail within 10 days following the order of transfer, of the transfer. The notice to the plaintiff shall contain a copy of the counterclaim and shall inform the plaintiff as to further pleading by the plaintiff in the court of appropriate jurisdiction.

(b) Upon filing the motion requesting transfer, the defendant shall pay to the court of appropriate jurisdiction an amount equal to the difference between the fee paid by the defendant as required by ORS 51.310 (1)(c) and the appearance fee for a defendant in the court of appropriate jurisdiction.

**SECTION 53b.** ORS 133.055 is amended to read:

133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy of the criminal citation to the person. The criminal citation shall require the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the person were arrested for the offense.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

(b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace officer is not required to arrest both persons.

(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:

(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;

(B) If reasonably ascertainable, the history of domestic violence between the persons involved;

(C) Whether any alleged crime was committed in self-defense; and

(D) The potential for future assaults.

(3) Whenever any peace officer has reason to believe that a family or household member, as defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a person with a disability has been abused as defined in ORS 124.005, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

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IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in the small claims department of a court if the total amount claimed is under ~~[\$7,500]~~ **\$10,000**.

Similar relief may also be available in tribal courts.

For further information you may contact: \_\_\_\_\_.

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**SECTION 54. The amendments to ORS 46.405, 46.425, 46.455, 46.461, 46.465, 46.475, 46.570, 51.080, 51.310, 55.011, 55.095 and 133.055 by sections 46 to 53b of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**(Forcible Entry or Wrongful Detainer)**

**SECTION 55.** ORS 105.130 is amended to read:

105.130. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.161, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

(2) Upon filing a complaint in the case of a dwelling unit to which ORS chapter 90 applies, the clerk shall:

(a) Collect a filing fee of ~~[\$13]~~ **\$75**;

(b) Collect any other fee authorized by law or ordinance; and

(c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and provide to the plaintiff or an agent of the plaintiff sufficient copies of the summons and complaint for service.

*[(3) After a complaint is filed under subsection (2) of this section, if the defendant demands a trial, the plaintiff shall pay an additional filing fee of \$29 and the defendant shall pay a filing fee of \$42.]*

**(3) The court shall collect a filing fee of \$75 from a defendant that demands a trial under this section.**

(4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to possession as plaintiff. The plaintiff may appear in person or through an attorney. In an action to which ORS chapter 90 applies, the plaintiff may also appear through a nonattorney who is an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(5) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, a state agency may appear in an action brought pursuant to ORS 105.110 through an officer or employee of the agency if:

(a) The Attorney General consents to the representation of the agency by an officer or employee in the particular action or in the class of actions that includes the particular action; and

(b) The agency, by rule, authorizes an officer or employee to appear on its behalf in the particular type of action being conducted.

*[(6) In addition to the fees charged under subsection (2) of this section, the clerk shall collect a surcharge from the plaintiff at the time a complaint is filed that is subject to the filing fees established by subsection (2) of this section and from a defendant at the time a defendant demands a trial in the action. The surcharge shall be deposited by the State Court Administrator into the State Treasury to the credit of the Housing and Community Services Department Low Income Rental Housing Fund established by ORS 458.350. The amount of the surcharge shall be \$10.]*

*[(7) A document or pleading shall be filed by the clerk only if the fees and surcharges required under this section are paid by the person filing the document or pleading or if an application for a waiver or deferral of fees and court costs is granted by the court under ORS 21.680 to 21.698. Fees and surcharges provided for in this section may not be refunded.]*

*[(8)]* **(6)** An action brought under ORS 105.110 by a person entitled to possession of premises on the basis of circumstances described in ORS 105.115 (1)(d), (e) or (f) is subject to the filing fees and other court or sheriff fees applicable to an action concerning a dwelling unit that is subject to ORS chapter 90. The procedure under ORS 105.105 to 105.168 that is applicable to an action concerning a dwelling unit subject to ORS chapter 90 shall also apply to an action brought under ORS 105.115 (1)(d), (e) or (f), except that the complaint must be in the form prescribed in ORS 105.126.

**SECTION 56. The amendments to ORS 105.130 by section 55 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

#### **(Post-Conviction Relief)**

**SECTION 57.** ORS 138.560 is amended to read:

138.560. (1) A proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 shall be commenced by filing a petition and two copies thereof with the clerk of the circuit court for the county in which the petitioner is imprisoned or, if the petitioner is not imprisoned, with the clerk of the circuit court for the county in which the petitioner's conviction and sentence was rendered. Except as otherwise provided in ORS 138.590, the petitioner *[shall]* **must** pay *[a \$28]* **the** filing fee **established under section 8 of this 2011 Act** at the time of filing a petition under this section. If the petitioner prevails, the petitioner shall recover the fee pursuant to the Oregon Rules of Civil Procedure. The clerk of the court in which the petition is filed shall enter and file the petition and bring it promptly to the attention of such court. A copy of the petition need not be served by petitioner on the defendant, but, in lieu thereof, the clerk of the court in which the petition is filed shall immediately forward a copy of the petition to the Attorney General or other attorney for the defendant named in ORS 138.570.

(2) For the purposes of ORS 138.510 to 138.680, a person released on parole or conditional pardon shall be deemed to be imprisoned in the institution from which the person is so released.

(3) Except when petitioner's conviction was for a misdemeanor, the release of the petitioner from imprisonment during the pendency of proceedings instituted pursuant to ORS 138.510 to 138.680 shall not cause the proceedings to become moot. Such release of petitioner shall not change the venue of the proceedings out of the circuit court in which they were commenced and shall not affect the power of such court to transfer the proceedings as provided in subsection (4) of this section.

(4) Whenever the petitioner is imprisoned in a Department of Corrections institution and the circuit court for the county in which the petitioner is imprisoned finds that the hearing upon the petition can be more expeditiously conducted in the county in which the petitioner was convicted and sentenced, the circuit court upon its own motion or the motion of a party may order the petitioner's case to be transferred to the circuit court for the county in which petitioner's conviction and sentence were rendered. The court's order is not reviewable by any court of this state.

(5) When a petitioner who is imprisoned in a Department of Corrections institution is transferred to another Department of Corrections institution, the circuit court in which a post-conviction relief proceeding is pending may deny a motion for a change of venue to the county where the petitioner is transferred. The court's order is not reviewable by any court of this state.

**SECTION 58. The amendments to ORS 138.560 by section 57 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

#### **(Firearm Permits)**

**SECTION 59.** ORS 166.274, as amended by section 19, chapter 826, Oregon Laws 2009, and section 2, chapter 86, Oregon Laws 2010, is amended to read:

166.274. (1) A person barred from possessing or purchasing a firearm may file a petition for relief from the bar in accordance with subsection (2) of this section if:

(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) to (C) or 166.270; or

(b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a) to (d) or (g).

(2) A petition for relief described in this section must be filed in the circuit court in the petitioner's county of residence.

(3) A person may apply once per calendar year for relief under the provisions of this section.

(4)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or

(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(5)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

(6) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(7) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.

(8) A person barred from possessing or purchasing a firearm because the person, while a minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to petition for relief under this section until more than four years have passed since the person was discharged from the jurisdiction of the juvenile court.

(9) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.

(10) *[Filing fees shall be as for any civil action filed in the court.]* **A person filing a petition under this section must pay the filing fee established under section 8 of this 2011 Act.**

(11)(a) Initial appeals of petitions shall be heard de novo.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party.

**SECTION 60.** ORS 166.274, as amended by sections 19 and 20, chapter 826, Oregon Laws 2009, and section 3, chapter 86, Oregon Laws 2010, is amended to read:

166.274. (1) A person barred from possessing a firearm under ORS 166.250 (1)(c)(A) to (E) or 166.270 or barred from purchasing a firearm under ORS 166.470 (1)(a) to (g) may file a petition for relief from the bar in the circuit court in the petitioner's county of residence.

(2) A person may apply once per calendar year for relief under the provisions of this section.

(3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or

(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(4)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.

(7) A person barred from possessing or purchasing a firearm because the person, while a minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to petition for relief under this section until more than four years have passed since the person was discharged from the jurisdiction of the juvenile court.

(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.

(9) *[Filing fees shall be as for any civil action filed in the court.]* **A person filing a petition under this section must pay the filing fee established under section 8 of this 2011 Act.**

(10)(a) Initial appeals of petitions shall be heard de novo.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party.

**SECTION 61. The amendments to ORS 166.274 by sections 59 and 60 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**(Tax Court)**

**SECTION 62.** ORS 305.490 is amended to read:

305.490. (1) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay [a] **the filing fee established under section 8 of this 2011 Act** at the time of filing for each complaint or petition. *[as follows:]*

*[(a) For a complaint or petition in the magistrate division, \$25.]*

*[(b) For a complaint or petition in the regular division, \$50.]*

*[(c) If a complaint or petition is specially designated under ORS 305.501 for hearing in the regular division, a fee of \$50.]*

(2) Neither the State of Oregon, nor any county, school district, municipal corporation or other public corporation therein, nor any officer of any such public political division or corporation, appearing in the representative capacity of the officer of any public political division or corporation, shall be required to pay the fee prescribed under this section. The party entitled to costs and disbursements on such appeal shall recover from the opponent of the party the amount so paid upon order of the court, as in equity suits in the circuit court.

(3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving inheritance taxes, the court grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional assessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding in the matter, if any, before the magistrate; and

(B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees of other experts incurred by the executor or individual taxpayer in preparing for and conducting the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the magistrate.

(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the Department of Revenue in the manner provided by ORS 305.790.

(4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation, exemptions, special assessments or omitted property, the court finds in favor of the taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding in the matter, if any, before the magistrate; and

(B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred by the individual taxpayer in preparing for and conducting the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the magistrate.

(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the Department of Revenue in the manner provided by ORS 305.790.

(5) All fees and other moneys received or collected by the clerk by virtue of the office of the clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund as miscellaneous receipts.

**SECTION 63.** The amendments to ORS 305.490 by section 62 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.

**(Emancipation)**

**SECTION 64.** ORS 419B.555 is amended to read:

419B.555. (1) The juvenile court shall conduct a preliminary hearing on the minor's application for emancipation within 10 days of the date on which it is filed or as soon as possible thereafter. At the time of the preliminary hearing, the court may issue a temporary custody order, stay any pending proceedings or enter any other temporary order appropriate to the circumstances. No action of the court pursuant to this subsection may be extended beyond the date set for a final hearing.

(2) The final hearing shall be held no later than 60 days or as soon as possible after the date on which the application is filed.

(3) Notice to the parent or parents of the applicant shall be made pursuant to ORS 419B.812 to 419B.839.

(4) At the preliminary hearing, the court shall advise the minor of the civil and criminal rights and civil and criminal liabilities of an emancipated minor. This advice shall be recited in the judgment of emancipation.

(5) The hearing mentioned in subsection (2) of this section may be waived by the minor and parent or parents.

(6) [A uniform] **The** filing fee [of \$77] **established under section 8 of this 2011 Act** shall be charged and collected by the court for each application for emancipation. [In addition, the court shall collect any other fees required by law.]

**SECTION 65.** The amendments to ORS 419B.555 by section 64 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.

**APPELLATE COURT FILING FEES**

**SECTION 66.** ORS 21.010, as amended by section 30, chapter 659, Oregon Laws 2009, and section 37f, chapter 885, Oregon Laws 2009, is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of [~~\$154~~] **\$355** in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator [~~the sum~~] **a filing fee** of [~~\$154~~] **\$355**. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200 and the involuntary commitment of persons determined to be mentally ill under ORS 426.135 or persons determined to be mentally retarded under ORS 427.295, or on judicial review of orders of the Psychiatric Security Review Board under ORS 161.385 (9) or orders of the State Board of Parole and Post-Prison Supervision.

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

**(5) The filing and appearance fees established by this section apply to cases of original jurisdiction in the Supreme Court.**



**SECTION 67.** The amendments to ORS 21.010 by section 66 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.

**SECTION 68.** ORS 21.040 is repealed.

**SECTION 68a.** ORS 2.565 is repealed.

**SECTION 68b.** Any funds in the Appellate Mediation Program Revolving Account on the effective date of this 2011 Act shall be transferred by the State Treasurer to the General Fund.

#### **OTHER COURT FEES**

##### **(Document Fee)**

**SECTION 69.** ORS 21.325 and 21.580 are repealed.

**SECTION 70. Document fee.** (1) A circuit court shall collect a fee of \$15 for:

- (a) Making or entering a transcript of a judgment.
- (b) Preparing a certified copy of a satisfaction document under ORS 18.225 (5).
- (c) Issuing notices of restitution as provided in ORS 105.151.
- (d) Any other service that is statutorily made subject to the fee established in this section.

(2) A circuit court shall collect a fee of \$35 for issuing a writ of execution or a writ of garnishment.

**SECTION 71.** Section 70 of this 2011 Act applies to all services described in section 70 of this 2011 Act that are rendered on or after October 1, 2011.

##### **(Other Court Services)**

**SECTION 72. Other court services.** (1) A circuit court may collect such fees as the Chief Justice of the Supreme Court may establish or authorize for any service the court may be required or authorized to perform and for which no fee is provided by law.

(2) A fee may not be established under this section for location or inspection of court records.

##### **(Motion Fees in Circuit Court)**

**SECTION 73.** ORS 21.125 is amended to read:

21.125. *[(1) In any action, suit or proceeding subject to a fee under ORS 21.110, or in any civil appeal or petition subject to a fee under ORS 21.010, the Chief Justice of the Supreme Court may require that a \$50 fee be paid at the time of filing a motion identified by the Chief Justice as being subject to a fee under this section. If the Chief Justice has identified a motion as being subject to a fee under this section, the responding party must file a fee of \$35 upon the filing of a response to the motion. The Chief Justice by order shall identify motions that are subject to fees under this section.]*

**(1) In any action or other proceeding subject to a fee under sections 8, 13 or 15 of this 2011 Act, a \$100 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 for judgment by voluntary dismissal under ORCP 54 A(1), for motions for judgment by written stipulation under ORCP 67 F or for motions for entry of default judgment under ORCP 69 B(1).*

[4] (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.

[5] (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 74. Motion fees in domestic relation cases. (1) In any action or other proceeding subject to a fee under section 11 of this 2011 Act, a \$150 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 section 11 of this 2011 Act, a \$50 fee must be paid by the party filing one of the following motions 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 75.** 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. The procedure must be easy to understand and initiate. Unless the parties otherwise agree, 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 charge a filing fee of \$50, subject to waiver or deferral of the fee under ORS 21.680 to 21.698.]* 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. 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:

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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.

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(c) A motion, affidavit and 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).

**(Motion Fees in Appellate Courts)**

**SECTION 76. Motion fees in appellate courts. In any appeal or petition for review subject to a fee under ORS 21.010, a \$50 fee must be paid by the party filing one of the following motions and by the party responding to the motion:**

- (1) A motion to dismiss filed by a respondent.**
- (2) A motion to determine jurisdiction.**
- (3) A motion for continuance.**
- (4) A motion for an extension of time for the filing of a brief or other document in the proceeding.**

**SECTION 77. Sections 74 and 76 of this 2011 Act and the amendments to ORS 21.125 and 107.434 by sections 73 and 75 of this 2011 Act apply to all motions that are filed on or after October 1, 2011.**

**(Hearing and Trial Fees)**

**SECTION 78. ORS 21.275 is repealed.**

**SECTION 79. ORS 21.270 is amended to read:**

21.270. (1) In any civil action, suit or proceeding in the circuit court, other than a protective proceeding under ORS chapter 125 or a probate, adoption or change of name proceeding, trial fees shall be collected as provided in this section.

(2) The clerk of the circuit court shall collect from the plaintiff, appellant or moving party, for a trial on the merits without a jury, a trial fee of [~~\$77~~] **\$125** for each full or partial day of the trial. The amount of the fee for the first day of trial shall be collected in advance and is due and payable when the action, suit or proceeding is set for trial. The amount of the fee for subsequent days of trial shall be collected on the day the trial concludes.

(3)(a) The clerk shall collect from the plaintiff or appellant, for a trial by a jury of more than six persons, a jury trial fee of [~~\$193~~] **\$225** for each full or partial day of the trial. The clerk shall collect from the plaintiff or appellant, for a trial by a jury of six persons, a jury trial fee of [~~\$110~~] **\$150** for each full or partial day of the trial. The amount of the fee for the first day of trial shall be collected in advance and is due and payable when the action, suit or proceeding is set for trial by jury. The amount of the fee for subsequent days of trial shall be collected on the day the trial concludes.

(b) If the plaintiff or appellant waives a trial by jury, and the defendant or respondent desires a trial by jury, the clerk shall collect the jury trial fee from the defendant or respondent, and not from the plaintiff or appellant.

(c) A case in which the jury trial fee for the first day of trial has not been paid shall be tried by the court without a jury, unless the court otherwise orders. If a case in which the jury trial fee for the first day of trial has not been paid is tried by a jury, the clerk shall tax against the losing party the total amount of the jury trial fee. The jury trial fee constitutes a monetary obligation

payable to the court, and may be made part of the judgment in the case by the clerk without further notice to the debtor or further order of the court.

(4) If a counterclaim, cross-claim or third party claim is tried on any day other than a day on which the claim of the plaintiff is tried, the clerk shall collect from the party asserting the counterclaim, cross-claim or third party claim the trial fee or jury trial fee, whichever is applicable, for that day, and shall not collect the applicable fee for that day from the plaintiff. If the party asserting a counterclaim, cross-claim or third party claim waives a trial by jury on the claim, and the party defending against the claim desires a trial by jury on the claim, the clerk shall collect the jury trial fee from the defending party and not from the asserting party.

(5) The fees provided for in this section include any reporting of the trial proceedings, but not the preparation of transcripts of a report.

(6) Except as otherwise provided in subsection (3)(c) of this section, the fees provided for in this section that are paid by a party shall be considered costs and disbursements and may be taxed and collected as other costs and disbursements by the prevailing party.

(7) A court shall order that a trial fee paid under the provisions of this section be refunded to the party that paid the fee if all claims in the action or proceeding are decided without the commencement of a trial and the party that paid the fee files a motion and affidavit requesting refund of the fee not more than 15 days after entry of judgment disposing of the action or proceeding.

**SECTION 80. The amendments to ORS 21.270 by section 79 of this 2011 Act apply to all trials conducted on or after October 1, 2011.**

#### (Third-Party Complaints)

**SECTION 81.** Section 13, chapter 659, Oregon Laws 2009, as amended by section 27, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 13.** (1) Notwithstanding ORS 21.110 (11)(g), when a person files a third-party complaint in a civil action, suit or proceeding in circuit court, the clerk of the court shall collect from the third-party plaintiff the same fees, charges and surcharges that would be required of a plaintiff filing the same complaint in an original action. Fees collected under this section are subject to ORS 21.110 (9).

(2) When a third-party defendant files an appearance in a civil action, suit or proceeding in circuit court, the clerk of the court shall collect the same fees, charges and surcharges that would be required of a defendant filing the same appearance in an original action.

(3) This section applies only to third-party complaints and appearances filed on or after October 1, 2009, and before [July] **October** 1, 2011.

*[(4) All amounts imposed as fees under this section shall be deposited in the Judicial System Surcharge Account.]*

*[(5) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from amounts imposed under this section.]*

**SECTION 81a.** Section 13, chapter 659, Oregon Laws 2009, as amended by section 27, chapter 107, Oregon Laws 2010, and section 81 of this 2011 Act, is amended to read:

**Sec. 13.** (1) *[Notwithstanding ORS 21.110 (11)(g),]* When a person files a third-party complaint in a civil action[, *suit*] or proceeding in circuit court **and the complaint names a defendant who has not already appeared in the proceeding**, the clerk of the court shall collect from the third-party plaintiff the same [*fees, charges and surcharges*] **filing fee** that would be required of a plaintiff filing the same complaint in an original action. [*Fees collected under this section are subject to ORS 21.110 (9).*]

(2) When a third-party defendant files an appearance in a civil action[, *suit*] or proceeding in circuit court, the clerk of the court shall collect the same [*fees, charges and surcharges*] **filing fee** that would be required of a defendant filing the same appearance in an original action.

*[(3) This section applies only to third-party complaints and appearances filed on or after October 1, 2009, and before October 1, 2011.]*

**SECTION 82.** The amendments to section 13, chapter 659, Oregon Laws 2009, by section 81a of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.

**(Settlement Conference Fees)**

**SECTION 83.** Section 32, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 32.** (1) In any civil proceeding subject to a fee under ORS 21.110, 21.111, 21.114 or 21.310 in which the parties request a settlement conference before a judge, or in which a settlement conference before a judge is required by law or by the court, each party participating in the conference shall pay a \$50 fee to the court before the conference is conducted.

(2) Notwithstanding ORS 3.428 (3), the fee required under subsection (1) of this section must be paid when parties request a settlement conference through a family law facilitation program.

(3) The fee imposed under this section applies only to settlement conferences conducted on or after October 1, 2009, and before [July] **October 1, 2011.**

*[(4) All fees imposed under this section shall be deposited in the Judicial System Surcharge Account.]*

*[(5) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.]*

**SECTION 83a.** Section 32, chapter 659, Oregon Laws 2009, as amended by section 83 of this 2011 Act, is amended to read:

**Sec. 32.** (1) In any civil proceeding subject to a fee under [ORS 21.110, 21.111, 21.114 or 21.310] **section 11 of this 2011 Act** in which the parties request a settlement conference before a judge, or in which a settlement conference before a judge is required by law or by the court, each party participating in the conference shall pay a [\$50] **\$100** fee to the court [before] **for each day or partial day during which** the conference is conducted.

(2) Notwithstanding ORS 3.428 (3), the fee required under subsection (1) of this section must be paid when parties request a settlement conference through a family law facilitation program.

*[(3) The fee imposed under this section applies only to settlement conferences conducted on or after October 1, 2009, and before October 1, 2011.]*

**(3) In civil proceedings other than those described in subsection (1) of this section, if the parties request a settlement conference before a judge, or a settlement conference before a judge is required by law or by the court, each party participating in the conference shall pay a \$200 fee to the court for each day or partial day during which the conference is conducted.**

**(4) The fees required by this section shall be collected in advance, and are due and payable on the first day of the settlement conference.**

**SECTION 84.** The amendments to section 32, chapter 659, Oregon Laws 2009, by section 83a of this 2011 Act apply to all settlement conferences conducted on or after October 1, 2011.

**SECTION 85.** ORS 2.560 is amended to read:

2.560. (1) The Court of Appeals shall sit primarily in Salem, but also may sit in other locations designated under ORS 1.085 (2).

(2) The Court of Appeals may make and enforce all rules necessary for the prompt and orderly dispatch of the business of the court, and the remanding of causes to the lower courts, and not inconsistent with applicable rules made or orders issued by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals.

(3) The Court of Appeals shall establish an appellate mediation program and make and enforce all rules necessary for the prompt and orderly dispatch of the business of the program. *[The parties to the appeal shall pay the fees of a mediator providing services under the program, unless those fees are waived or deferred by the Court of Appeals.]* **The parties to the appeal must pay the following fees for the mediator:**

**(a) \$150 for an appeal related to workers' compensation under ORS chapter 656; and**

**(b) \$350 for all other appeals.**

**SECTION 86.** The amendments to ORS 2.560 by section 85 of this 2011 Act apply to all mediations conducted under ORS 2.560 on or after October 1, 2011.

**(Motion for Order Setting Aside Conviction)**

**SECTION 87.** ORS 137.225 is amended to read:

137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court that would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state is not included.

(2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction," or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department of State Police bureau of criminal identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police bureau of criminal identification.

**(d) In addition to the fee established under paragraph (c) of this subsection, when a person makes a motion under subsection (1)(a) of this section the person must pay the filing fee established under section 8 of this 2011 Act.**

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, it shall enter an appropriate order that shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-

rest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to its occurrence.

(5) The provisions of subsection (1)(a) of this section apply to a conviction of:

(a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

(b) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:

(A) Any sex crime; and

(B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

(e) A violation, whether under state law or local ordinance.

(f) An offense committed before January 1, 1972, that if committed after that date would be:

(A) A Class C felony, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for any sex crime or for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

(D) A violation.

(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

(a) A conviction for a state or municipal traffic offense.

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this section, a conviction that has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable.

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section do not apply to criminally negligent homicide under ORS 163.145, when that offense was punishable as a Class C felony.

(8) The provisions of subsection (1)(b) of this section do not apply to:

(a) A person arrested within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.

(b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as a result of the person's successful completion of a diversion agreement described in ORS 813.200.

(9) The provisions of subsection (1) of this section apply to convictions and arrests that occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

(10) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

(11) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest record.

(12) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:

- (a) Abandonment of a child, ORS 163.535.
- (b) Attempted assault in the second degree, ORS 163.175.
- (c) Assault in the third degree, ORS 163.165.
- (d) Coercion, ORS 163.275.
- (e) Criminal mistreatment in the first degree, ORS 163.205.
- (f) Attempted escape in the first degree, ORS 162.165.
- (g) Incest, ORS 163.525, if the victim was at least 18 years of age.
- (h) Intimidation in the first degree, ORS 166.165.
- (i) Attempted kidnapping in the second degree, ORS 163.225.
- (j) Attempted robbery in the second degree, ORS 164.405.
- (k) Robbery in the third degree, ORS 164.395.
- (L) Supplying contraband, ORS 162.185.
- (m) Unlawful use of a weapon, ORS 166.220.

(13) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

**SECTION 88. The amendments to ORS 137.225 by section 87 of this 2011 Act apply to all motions filed under ORS 137.225 on or after October 1, 2011.**

#### **(Marriage Solemnization)**

**SECTION 89.** ORS 106.120 is amended to read:

106.120. (1) As used in this section, "judicial officer" means:

(a) A judicial officer of this state as that term is defined in ORS 1.210 and includes but is not limited to a judge of a municipal court and a justice of the peace.

(b) An active judge of a federal court.

(c) An active United States magistrate judge.

(2) Marriages may be solemnized by:

(a) A judicial officer;

(b) A county clerk;

(c) Religious congregations or organizations as indicated in ORS 106.150 (2); or

(d) A clergyperson of any religious congregation or organization who is authorized by the congregation or organization to solemnize marriages.

(3) A person authorized to solemnize marriages under subsection (2) of this section may solemnize a marriage anywhere in this state.



(4)(a) When a marriage is solemnized by a tax, appellate or circuit judge of this state, the clerk of the court or the county clerk shall collect a fee of [\$25] **\$100** and deposit the fee in the Judicial Department Operating Account established in ORS 1.009.

(b) When a marriage is solemnized by a county clerk, the county clerk shall collect a fee of [\$25] **\$100**, as provided in ORS 205.320.

(c) The fee described in this subsection may be collected only if:

(A) The marriage is solemnized during normal working hours, excluding holidays;

(B) The marriage is solemnized in court facilities or a county clerk's office; or

(C) More than a minimal amount of staff time or other court or county clerk's office resources are used in connection with the solemnization.

(d) The Chief Justice of the Supreme Court or the county clerk may establish a written procedure for waiver of the fee required under this subsection in exigent circumstances, including but not limited to indigency of the parties to the marriage.

(5) In addition to any fee collected under subsection (4) of this section, a judicial officer of this state and a county clerk may charge and accept an agreed upon personal payment not to exceed \$100 plus actual costs for the solemnization of a marriage if that solemnization is performed:

(a) At a place other than the courthouse where the judicial officer or county clerk serves; or

(b) Outside of the judicial officer's or county clerk's normal working hours.

(6) The charging and accepting of a personal payment by a judicial officer of this state or a county clerk under subsection (5) of this section does not constitute a violation of any of the provisions of ORS chapter 244.

(7) The amount of actual costs charged by a judicial officer of this state or a county clerk under subsection (5) of this section may not exceed:

(a) Actual expenses for food and lodging as verified by receipts.

(b) If travel is made by personal vehicle, the actual number of round-trip miles from the judicial officer's or county clerk's home or office, whichever is greater, compensated at the rate of reimbursement then provided by the State of Oregon to its employees or, if travel is made by a commercial carrier, reimbursement shall be made of the actual costs thereof, verified by receipts.

(8) A judicial officer of this state or a county clerk shall maintain records of the amount of personal payments received for performing marriages, of actual costs and the supporting documentation related thereto for a period of four years.

(9) The parties to a marriage solemnized by a tax, appellate or circuit judge of this state shall show to the judge proof of payment of the fee required under subsection (4)(a) of this section before solemnization. Except as provided in subsection (4)(d) of this section, the judge may not solemnize a marriage without proof of payment of the fee.

**SECTION 90. The amendments to ORS 106.120 by section 89 of this 2011 Act apply to all marriages solemnized under ORS 106.120 on or after October 1, 2011.**

#### (Collection Account Fees)

**SECTION 91.** Section 35, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 35.** [(1)] The amendments to ORS 1.202 by section 34 [of this 2009 Act], **chapter 659, Oregon Laws 2009**, apply only to judgments entered on or after October 1, 2009, and before [July] **October 1, 2011.**

[(2) *Notwithstanding ORS 1.202 (1), all fees imposed under ORS 1.202 (1) after October 1, 2009, and before July 1, 2011, that are in excess of \$100 shall be deposited in the Judicial System Surcharge Account.*]

[(3) *The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under ORS 1.202 (1) that are in excess of \$100 pursuant to the amendments to ORS 1.202 by section 34 of this 2009 Act.*]

**SECTION 91a.** Section 37, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 37.** (1) The amendments to ORS 1.202 by section 36, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] become operative on [July] **October 1, 2011**.

(2) The amendments to ORS 1.202 by section 36, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] do not affect any fee imposed before [July] **October 1, 2011**, and all amounts added to judgments under the amendments to ORS 1.202 by section 36 of this 2009 Act that are collected on or after July 1, 2011, shall continue to be deposited in the Judicial System Surcharge Account].

**SECTION 92.** ORS 1.202 is amended to read:

1.202. (1) All circuit courts and appellate courts of this state, and all commissions, departments and divisions in the judicial branch of state government, shall add a fee of not less than \$50 and not more than \$200 to any judgment that includes a monetary obligation that the court or judicial branch is charged with collecting. The fee shall cover the cost of establishing and administering an account for the debtor and shall be added without further notice to the debtor or further order of the court. The fee shall be added only if the court gives the defendant a period of time in which to pay the obligation after the financial obligation is imposed. Fees under this subsection shall be deposited in the General Fund.

(2) All circuit courts and appellate courts of this state, and all commissions, departments and divisions in the judicial branch of state government, that use private collection agencies, the Department of Revenue or an offset of federal tax refunds pursuant to an agreement entered into under ORS 1.196 shall add a fee to any judgment referred for collection that includes a monetary obligation that the state court or the commission, department or division is charged with collecting. A fee to cover the costs of collecting judgments referred to the private collection agency, the Department of Revenue, the United States Financial Management Service or the Internal Revenue Service shall be added to the monetary obligation without further notice to the debtor or further order of the court. The fee may not exceed the actual costs of collecting the judgment. [Fees under this subsection shall be deposited in the Judicial Department Collections Account established under ORS 1.204 and may be used only for the purposes specified in ORS 1.204.]

(3) The Chief Justice of the Supreme Court may authorize courts to waive or suspend the fees required to be added to judgments under this section. Except to the extent authorized by the Chief Justice, a court may not waive or suspend the fees required to be added to judgments under this section.

**SECTION 92a.** ORS 1.202, as amended by section 36, chapter 659, Oregon Laws 2009, is amended to read:

1.202. (1) All circuit courts and appellate courts of this state, and all commissions, departments and divisions in the judicial branch of state government, shall add a fee of not less than \$50 and not more than [~~\$100~~] **\$200** to any judgment that includes a monetary obligation that the court or judicial branch is charged with collecting. The fee shall cover the cost of establishing and administering an account for the debtor and shall be added without further notice to the debtor or further order of the court. The fee shall be added only if the court gives the defendant a period of time in which to pay the obligation after the financial obligation is imposed. Fees under this subsection shall be deposited in the General Fund.

(2) All circuit courts and appellate courts of this state, and all commissions, departments and divisions in the judicial branch of state government, that use private collection agencies, the Department of Revenue or an offset of federal tax refunds pursuant to an agreement entered into under ORS 1.196 shall add a fee to any judgment referred for collection that includes a monetary obligation that the state court or the commission, department or division is charged with collecting. A fee to cover the costs of collecting judgments referred to the private collection agency, the Department of Revenue, the United States Financial Management Service or the Internal Revenue Service shall be added to the monetary obligation without further notice to the debtor or further order of the court. The fee may not exceed the actual costs of collecting the judgment. [Fees under this subsection shall be deposited in the Judicial Department Collections Account established under ORS 1.204 and may be used only for the purposes specified in ORS 1.204.]

(3) The Chief Justice of the Supreme Court may authorize courts to waive or suspend the fees required to be added to judgments under this section. Except to the extent authorized by the Chief Justice, a court may not waive or suspend the fees required to be added to judgments under this section.

**SECTION 93. The amendments to ORS 1.202 by section 92a of this 2011 Act apply to all judgments entered on or after October 1, 2011.**

**(Relief From Sex Offender Reporting)**

**SECTION 94.** ORS 181.823 is amended to read:

181.823. (1)(a) No sooner than two years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction over a person required to report under ORS 181.595, 181.596 or 181.597, the person may file a petition for relief from the duty to report. The person must file the petition in the juvenile court in which the person was adjudicated for the act that requires reporting. **The person must pay the filing fee established under section 8 of this 2011 Act.**

(b) The juvenile court in which a petition under this section is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim and witnesses require the transfer.

(c) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

(d) The person, the district attorney and the juvenile department are parties to a hearing on a petition filed under this section.

(2) When a person files a petition under this section and the petition was filed:

(a) No later than three years after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the state has the burden of proving by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public.

(b) More than three years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the person has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.

(3) In determining whether the state or the person has met the burden of proof established in subsection (2) of this section, the juvenile court may consider but need not be limited to considering:

(a) The extent and impact of any physical or emotional injury to the victim;

(b) The nature of the act that subjected the person to the duty of reporting as a sex offender;

(c) Whether the person used or threatened to use force in committing the act;

(d) Whether the act was premeditated;

(e) Whether the person took advantage of a position of authority or trust in committing the act;

(f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;

(g) The vulnerability of the victim;

(h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;

(i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;

(j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;

(k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;

(L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:

(A) The availability, duration and extent of the treatment activities;

(B) Reports and recommendations from the providers of the treatment;

(C) The person's compliance with court, board or supervision requirements regarding treatment; and

(D) The quality and thoroughness of the treatment program;

(m) The person's academic and employment history;

(n) The person's use of drugs or alcohol before and after the adjudication;

(o) The person's history of public or private indecency;

(p) The person's compliance with and success in completing the terms of supervision;

(q) The results of psychological examinations of the person;

(r) The protection afforded the public by the continued existence of the records; and

(s) Any other relevant factors.

(4) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(5) When a petition is filed under this section, the state has the right to have a psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court of its intention to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile court for good cause shown may direct the state to select a different evaluator.

(6) As soon as practicable after a petition has been filed under this section, the district attorney or juvenile department shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section and, if the victim has requested, to inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.

(7)(a) When a petition has been filed under this section and the petition was filed:

(A) No later than three years after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the court shall hold a hearing on the petition no sooner than 60 days and no later than 120 days after the date of filing.

(B) More than three years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

(b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court may extend the period of time in which a hearing on the petition must be held.

(8) When the state has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public, the court shall deny the petition. When the person has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant the petition.

(9) When a juvenile court enters an order relieving a person of the requirement to report under ORS 181.595, 181.596 or 181.597, the person shall send a certified copy of the juvenile court order to the Department of State Police.

(10) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may stipulate that the person may not petition for relief under this section as part of an agreement that the person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707.

**SECTION 95.** ORS 181.826 is amended to read:

181.826. (1) Except as provided in subsection (6) of this section, when a person is required to report under ORS 181.595, 181.596 or 181.597 as a result of having been found in a juvenile adjudication in another United States court to have committed an act while the person was under 18 years of age that would constitute a sex crime if committed in this state by an adult, the person may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the duty to report. **The person must pay the filing fee established under section 8 of this 2011 Act. A petition may be filed under this section only if:**

- (a) The person has been registered as a sex offender in this state for at least two years;
- (b) At least two years, but not more than five years, have elapsed since the termination of supervision on probation or parole; and
- (c) The person submits with the petition all releases and waivers necessary to allow the district attorney for the county in which the petition is filed to obtain the following documents from the jurisdiction in which the person was adjudicated for the act for which reporting is required:
  - (A) The juvenile court petition;
  - (B) The dispositional report to the court;
  - (C) The order of adjudication or jurisdiction;
  - (D) Any other relevant court documents;
  - (E) The police report relating to the act for which reporting is required;
  - (F) The order terminating jurisdiction for the act for which reporting is required; and
  - (G) The evaluation and treatment records or reports of the person that are related to the act for which reporting is required.

(2) A person filing a petition under this section has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.

(3) Unless the court finds good cause for a continuance, the court shall hold a hearing on the petition no sooner than 90 days and no later than 150 days after the date the petition is filed.

(4) Notwithstanding subsection (1)(b) of this section, if a person has not been registered as a sex offender in this state for two years until more than five years have elapsed since the termination of supervision on probation or parole, the person may file a petition seeking relief under this section if the person files the petition no later than 90 days after the date on which the person has been registered as a sex offender in this state for two years.

(5) If a person who files a petition under this section is required to report as a sex offender for having committed an act that if committed in this state could have subjected the person to prosecution as an adult under ORS 137.707, the court may not grant the petition notwithstanding the fact that the person has met the burden of proof established in subsection (2) of this section unless the court determines that to do so is in the interest of public safety.

(6) This section does not apply to a person who is required to register as a sex offender for life in the jurisdiction in which the offense occurred.

(7) In a hearing under this section, the court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(8) If the court is satisfied by clear and convincing evidence that the person is rehabilitated and that the person does not pose a threat to the safety of the public, the court shall enter an order relieving the person of the duty to report. When the court enters an order under this subsection, the person shall send a certified copy of the court order to the Department of State Police.

**SECTION 96. The amendments to ORS 181.823 and 181.826 by sections 94 and 95 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**"ADD-ONS"**

(Generally)

**SECTION 97.** (1) Notwithstanding any other provision of law, during the period commencing on July 1, 2011, and ending September 30, 2011, all fees, charges and surcharges under ORS 21.111 (4), 21.112, 21.350, 21.480, 36.170, 105.130 (6) and 417.825 (1)(c) shall continue to be collected and shall be paid into the General Fund and be available for general governmental purposes.

(2) Notwithstanding any other provision of law, an ordinance, resolution or other provision increasing the fee established under ORS 21.112 that takes effect on or after July 1, 2011, is void. The amount of the fee established under ORS 21.112 that is in effect on June 30, 2011, for the county shall continue in effect for the period commencing on July 1, 2011, and ending September 30, 2011.

(Legal Aid)

**SECTION 97a.** ORS 9.574 and 21.480 are repealed.

**SECTION 97b.** The repeal of ORS 21.480 by section 97a of this 2011 Act becomes operative immediately after the amendments to ORS 21.480 by section 34, chapter 107, Oregon Laws 2010, become operative under section 35, chapter 107, Oregon Laws 2010, as amended by section 151 of this 2011 Act.

**NOTE:** Section 98 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 99.** ORS 9.572 is amended to read:

9.572. (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from [*fees collected under ORS 21.480*] **the program**. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.

(3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

**SECTION 100.** ORS 9.576 is amended to read:

“9.576. (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from [*fees collected under ORS 21.480*] **the program**. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.

(2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.

(3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the provider has failed to

show satisfactory progress towards achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

**SECTION 101.** ORS 21.615 is amended to read:

21.615. (1) In an appeal to a circuit court from a justice court or municipal court in an action for commission of a state violation or an action for violation of a city charter or ordinance, but not in an action for commission of a state crime,[:]

[*(a)*] the filing[,] **and** trial [*and law library*] fees required by **section 8 of this 2011 Act and ORS [21.110,] 21.270 [and 21.350]** are required of the appellant and respondent.

[*(b)*] *The legal aid fee required by ORS 21.480 is required of the appellant.*

(2) Payment of fees required by subsection (1) of this section is subject to ORS 20.140.

(3) Fees required by subsection (1) of this section may be waived or deferred by a judge of the circuit court for the reason and in the manner provided in ORS 21.680 to 21.698.

**SECTION 102.** ORS 180.345 is amended to read:

180.345. (1) The Department of Justice is responsible for the administration, supervision and operation of the program authorized by Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.), hereinafter the Child Support Program. The Administrator of the Division of Child Support of the Department of Justice is the Child Support Program Director for the State of Oregon.

(2) The Department of Justice, by and through the director, may:

(a) Enter into cooperative agreements with appropriate courts, law enforcement officials, district attorneys, Indian tribes or tribal organizations and state agencies to provide assistance in carrying out Child Support Program services and any other matters of common concern;

(b) Provide billing, receipting, record keeping, accounting and distribution services for child and spousal support cases that receive services required under state and federal law;

(c) Maintain the state plan required under federal law and act as the liaison for the Child Support Program with the United States Department of Health and Human Services;

(d) Establish policy and adopt rules for the operation of the Child Support Program by the Department of Justice and by entities entering into cooperative agreements under this section;

(e) Conduct performance and program audits of entities entering into cooperative agreements under this section; and

(f) Perform any other act necessary or desirable to ensure the effective administration of the Child Support Program under state and federal law.

(3) The Department of Justice shall accept and disburse federal funds made available to the state for provision of the Child Support Program and all related functions in a manner consistent with federal law. The department may retain the state share of moneys recovered under child support assignments for the administration of the Child Support Program as allowed under federal regulations.

(4) It is the policy of the Child Support Program to inform persons served by the program, in a manner consistent with federal law, of resources not provided by the program that are available for assistance in family law matters including, but not limited to, services provided through the courts of this state, the Oregon State Bar, law schools and legal service providers that receive funding from [*fees collected under ORS 21.480*] **the Legal Services Program established under ORS 9.572**. The program shall consult with the local family law advisory committees established under ORS 3.434 to ensure that eligible individuals are aware of the services offered by the program. The policy described in this subsection shall be incorporated into staff training and is applicable to all entities that have entered into cooperative agreements with the Department of Justice under this section.

(5) The director shall ensure that Child Support Program policy and rules, to the maximum extent practicable, meet the needs of the majority of families served by the program. The director shall guide program staff regarding implementation of the policy and rules.

**SECTION 103.** ORS 352.066 is amended to read:

352.066. (1) Pursuant to ORS 351.870, there is created within the Oregon University System the Mark O. Hatfield School of Government. The Mark O. Hatfield School of Government shall be ad-

ministered by Portland State University. The president of Portland State University shall appoint the director of the Mark O. Hatfield School of Government.

(2) The purposes of the Mark O. Hatfield School of Government are:

(a) To prepare students for careers in political service, public administration and the administration of justice;

(b) To perform the duties required of the school under ORS [21.480,] 36.179, 183.502 and 390.240; and

(c) To assist the Criminal Justice Research and Policy Institute in carrying out the duties under subsection (3) of this section.

(3) There is created within the Mark O. Hatfield School of Government the Criminal Justice Research and Policy Institute. The institute may assist the Legislative Assembly and state and local governments in developing policies to reduce crime and delinquency by:

(a) Providing the Legislative Assembly with objective, nonpartisan analyses of existing or proposed state criminal justice policies, which analyses may not be inconsistent with state or federal law or the Oregon or United States Constitution;

(b) Evaluating programs, including but not limited to programs dealing with public safety professionalism, ethics in leadership and childhood development, funded directly or indirectly by the State of Oregon that are intended to reduce criminal and delinquent behavior or to improve professionalism in public safety careers;

(c) Managing reviews and evaluations relating to major long-term issues confronting the state involving criminal and juvenile justice, public safety professionalism, ethics in leadership and early childhood development programs;

(d) Initiating, sponsoring, conducting and publishing research on criminal and juvenile justice, public safety professionalism, ethics in leadership and early childhood development that is peer reviewed and directly useful to policymakers;

(e) Organizing conferences on current state issues that bring together policymakers, public agencies and leading academicians; and

(f) Seeking to strengthen the links among the Legislative Assembly, state and local governments, the Oregon Criminal Justice Commission, the Department of Public Safety Standards and Training and the academic community in the interest of more informed policymaking, the application of best practices and more relevant academic research.

(4) The Governor, the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives or the chairperson of a legislative committee with responsibility over criminal or juvenile justice systems or childhood development programs may request the assistance of the Criminal Justice Research and Policy Institute in evaluating criminal or juvenile justice programs developed for, but not necessarily limited to, preventing delinquency, reducing crime and improving professionalism in public safety careers.

(5) Agencies, departments and officers of state and local governments may assist the Criminal Justice Research and Policy Institute in the performance of its functions and furnish information, data and advice as requested by the institute.

#### **(Law Libraries)**

**SECTION 104. ORS 9.830, 9.840, 9.850 and 21.350 are repealed.**

**SECTION 105. ORS 9.820 is amended to read:**

9.820. In all counties containing more than 400,000 inhabitants, according to the latest federal decennial census, the **governing body of the** county [*court or board of county commissioners*] may contract with any law library association or corporation owning and maintaining a law library in the county at or convenient to the courthouse, for the use of the library by the judges of the circuit and county courts, county commissioners, district attorney and all members of the bar[, *and shall, if the association permits the use of its library by all members of the bar without charge, pay therefor*



*all library fees collected pursuant to ORS 21.350 (1) to the library association or corporation for the use of the library].*

**SECTION 106.** ORS 8.125 is amended to read:

8.125. The State Court Administrator shall, to the extent directed by the Chief Justice of the Supreme Court:

(1) Assist the Chief Justice in exercising administrative authority and supervision under ORS 1.002.

(2) Consistent with applicable provisions of law and rules made thereunder:

(a) Supervise the personnel plan for officers, other than judges, and employees of the courts of this state who are state officers or employees.

(b) Prescribe the form and content and supervise the preparation of consolidated budgets, for submission to the Legislative Assembly, applicable to expenditures made and revenues received by the state in respect to the courts of this state.

(c) Supervise an accounting system for the recording, monitoring and auditing of expenditures made and revenues received by the state in respect to the courts of this state.

(d) Establish and maintain inventory records of property of the state in the custody or control of the courts of this state or any judge, other officer or employee thereof.

(3) Conduct a continuing survey of the administrative methods and activities, records, business and facilities of the courts of this state and make recommendations to the Chief Justice based on the survey.

(4) Collect and compile statistical and other data relating to the courts of this state and municipal courts, including the caseload, workload, performance, status, management, expenses and revenues of those courts, and make reports on the business and condition of those courts.

(5) Establish and supervise a statewide public information service concerning the courts of this state.

(6) Establish and supervise education programs for judges, other officers and employees of the courts of this state and municipal courts pertinent to the performance of the functions of those judges, other officers and employees.

(7) Provide to the judges, other officers and employees of the courts of this state, to attorneys and to the public appropriate assistance services relating to the administration and management of the courts of this state.

(8) Prepare and maintain a continuing long-range plan for improvement and future needs of the courts of this state.

(9) Supervise and maintain the law libraries of the judicial department of government of this state, including the State of Oregon Law Library, and excluding county law libraries [*established under ORS 9.820 and 9.840*].

(10) Enter into contracts on behalf of the Judicial Department, including but not limited to financing agreements entered into pursuant to ORS 283.087.

(11) Prescribe minimum retention schedules and standards for all records of the state courts and the administrative offices of the state courts, including but not limited to minimum retention schedules and standards for registers, dockets, indexes, files, citations, notes, audio records, video records, stenographic records, exhibits, jury records and fiscal and administrative documents, whether maintained in paper, micrographic, electronic or other storage form. The State Court Administrator shall ensure that the minimum record retention schedules and standards prescribed under this subsection conform with policies and standards established by the State Archivist under ORS 192.105, 357.825 and 357.835 (1) for public records valued for legal, administrative or research purposes.

**(Dispute Resolution Programs)**

**SECTION 107.** ORS 36.170 is repealed.

**SECTION 107a.** The repeal of ORS 36.170 by section 107 of this 2011 Act becomes operative immediately after the amendments to ORS 36.170 by section 38, chapter 107, Oregon Laws 2010, become operative under section 20, chapter 659, Oregon Laws 2009, as amended by section 144 of this 2011 Act.

**(Domestic Relations Services)**

**SECTION 108.** ORS 21.112 is repealed.

**SECTION 109.** ORS 107.795 is amended to read:

107.795. Nothing in ORS [21.112,] 107.615 and 107.755 to 107.795 shall preclude a party from obtaining any orders available under ORS 107.700 to 107.735 or ORS 124.005 to 124.040 before or during mediation.

**NOTE:** Section 110 was deleted by amendment. Subsequent sections were not renumbered.

**(Office of Children's Advocate)**

**SECTION 111.** ORS 417.825 is amended to read:

417.825. (1) In addition to any other fees provided by law, the appropriate agency:

(a) When birth certificates are registered with the state, shall pay a \$1 fee on each birth certificate registered with the agency.

(b) That issues birth certificates for the state or a county, shall collect a \$1 fee on each birth certificate issued by the agency.

*[(c) When adoptions and divorces are filed with the court, shall collect a \$1 fee on each adoption and divorce filed with the agency.]*

(2) The agencies paying or collecting the fees described in subsection (1) of this section shall transfer moneys from the fees imposed by this section to the State Treasurer for deposit in the Department of Human Services Account established under ORS 409.060. The moneys deposited under this section are appropriated continuously to the Department of Human Services for use by the Office of Children's Advocate for the administration of ORS 417.805, 417.810 and 417.815.

**(Domestic Violence Clinical Programs)**

**SECTION 112.** ORS 352.655 is repealed.

**SECTION 112a.** Any funds in the Domestic Violence Clinical Legal Education Account on the effective date of this 2011 Act shall be transferred by the State Treasurer to the General Fund.

**(Low Income Housing)**

**SECTION 113.** ORS 458.350, 458.355, 458.360 and 458.365 are repealed.

**SECTION 113a.** Any funds in the Housing and Community Services Department Low Income Rental Housing Fund on the effective date of this 2011 Act shall be transferred by the State Treasurer to the General Fund.

**MISCELLANEOUS**

**SECTION 114.** ORS 21.335, 21.420, 21.660, 21.670, 21.730 and 21.990 are repealed.

**SECTION 114a.** Section 8, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 8.** (1) The amendments to ORS 18.999 by section 7, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] become operative [July] **October 1, 2011**.

(2) The amendments to ORS 18.999 by section 7, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] do not affect the amount that may be recovered under ORS 18.999, as in effect immediately

before [July] **October** 1, 2011, for writs of garnishment issued on or after October 1, 2009, and before [July] **October** 1, 2011.

**SECTION 114b.** Section 6, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 6.** The amendments to ORS 18.999 by section 5, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] become operative October 1, 2009, and apply only to writs of garnishment issued on or after October 1, 2009, and before [July] **October** 1, 2011.

**SECTION 115.** ORS 18.999, as amended by section 7, chapter 659, Oregon Laws 2009, is amended to read:

18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff has expended to recover a debt under ORS 18.854 or to enforce a judgment and establishes procedures for that recovery. The following apply to this section:

(1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff may proceed as follows:

(a) Before crediting the total amount of moneys received against the judgment or debt, the plaintiff may recover and keep from the total amount received under the garnishment, attachment or payment any moneys allowed to be recovered under this section.

(b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall credit the remainder of the moneys received against the judgment or debt as provided by law.

(2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid on and to be credited against the original judgment or debt sought to be enforced. No additional judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

(3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those described in subsection (4) of this section that the plaintiff has paid to enforce the existing specific judgment or debt that the specific garnishment or attachment was issued to enforce or upon which the payment was received. Moneys recoverable under subsection (1)(a) of this section remain recoverable and, except as provided under subsection (8) of this section, may be recovered from moneys received by the plaintiff under subsequent garnishments, attachments or payments on the same specific judgment or debt.

(4) This section allows the recovery only of the following:

(a) Statutorily established moneys that meet the requirements under subsection (3) of this section, as follows:

(A) Garnishee's search fees under ORS 18.790.

(B) Fees for delivery of writs of garnishment under ORS 18.652.

(C) Circuit court fees as provided under [ORS 21.325] **sections 70 and 72 of this 2011 Act**.

(D) County court fees as provided under ORS 5.125.

(E) County clerk recording fees as provided in ORS 205.320.

(F) Actual fees or disbursements made under ORS 21.410.

(G) Costs of execution as provided in ORS 105.112.

(H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed [\$12] **\$35** for each garnishment.

(I) Costs of an execution sale as described in ORS 18.950 (2).

(J) Fees paid under ORS 21.125 for motions and responses to motions filed after entry of a judgment.

(b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and ending upon recovery of the amount under this section.

(5) The plaintiff shall be responsible for doing all of the following:

(a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section and making the accounting available for any proceeding relating to that judgment or debt.

(b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under subsection (1)(a) of this section.

(6) Moneys recovered under subsection (1)(a) of this section remain subject to all other provisions of law relating to payments, or garnished or attached moneys including, but not limited to, those relating to exemption, claim of exemption, overpayment and holding periods.

(7) Nothing in this section limits the right of a plaintiff to recover moneys described in this section or other moneys in any manner otherwise allowed by law.

(8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recoverable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced to a judgment or to a debt enforceable under ORS 18.854.

**SECTION 116. (1) The amendments to ORS 18.999 (4)(a)(C) by section 115 of this 2011 Act apply only to circuit court fees paid on or after October 1, 2011. Any circuit court fee paid under ORS 21.325, as in effect immediately before October 1, 2011, may continue to be collected in the manner provided by ORS 18.999 on and after October 1, 2011.**

**(2) The amendments to ORS 18.999 (4)(a)(H) by section 115 of this 2011 Act apply only to writs of garnishment issued on or after October 1, 2011.**

**SECTION 117.** ORS 24.190 is amended to read:

24.190. (1) For the purposes of this section:

(a) "Foreign restraining order" means a restraining order that is a foreign judgment as defined by ORS 24.105.

(b)(A) "Restraining order" means an injunction or other order issued for the purpose of preventing:

(i) Violent or threatening acts or harassment against another person;

(ii) Contact or communication with another person; or

(iii) Physical proximity to another person.

(B) "Restraining order" includes temporary and final orders, other than support or child custody orders, issued by a civil or criminal court regardless of whether the order was obtained by filing an independent action or as a pendente lite order in another proceeding. However, for a civil order to be considered a restraining order, the civil order must have been issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, immediately upon the arrival in this state of a person protected by a foreign restraining order, the foreign restraining order is enforceable as an Oregon order without the necessity of filing and continues to be enforceable as an Oregon order without any further action by the protected person.

(b) A foreign restraining order is not enforceable as an Oregon order if:

(A) The person restrained by the order shows that:

(i) The court that issued the order lacked jurisdiction over the subject matter or lacked personal jurisdiction over the person restrained by the order; or

(ii) The person restrained by the order was not given reasonable notice and an opportunity to be heard under the law of the jurisdiction in which the order was issued; or

(B) The foreign restraining order was issued against a person who had petitioned for a restraining order unless:

(i) The person protected by the foreign restraining order filed a separate petition seeking the restraining order; and

(ii) The court issuing the foreign restraining order made specific findings that the person was entitled to the order.

(3)(a) A person protected by a foreign restraining order may present a true copy of the order to a county sheriff for entry into the Law Enforcement Data System maintained by the Department of State Police. Subject to paragraph (b) of this subsection, the county sheriff shall enter the order into the Law Enforcement Data System if the person certifies that the order is the most recent order in effect between the parties and provides proof of service or other written certification that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the restraining order. Law enforcement agencies shall es-

establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable as an Oregon order in any county or tribal land in this state.

(b) The Department of State Police shall specify information that is required for a foreign restraining order to be entered into the Law Enforcement Data System.

(c) At the time a county sheriff enters an order into the Law Enforcement Data System under paragraph (a) of this subsection, the sheriff shall also enter the order into the databases of the National Crime Information Center of the United States Department of Justice.

(4) Pending a contempt hearing for alleged violation of a foreign restraining order, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Unless the order provides otherwise, the security amount for release is \$5,000.

(5) ORS 24.115, 24.125, 24.129, 24.135, 24.140, 24.150 and 24.155 do not apply to a foreign restraining order.

(6) A person protected by a foreign restraining order may file a certified copy of the order and proof of service in the office of the clerk of any circuit court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the circuit court in which the foreign judgment is filed, and may be enforced or satisfied in like manner. The **court may not collect a filing fee** [provided for in ORS 21.325 (3) shall not apply to] for a filing under this section.

**SECTION 118.** ORS 36.610 is amended to read:

36.610. (1) Except as otherwise provided in this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of ORS 36.600 to 36.740 to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of this section or ORS 36.615 [(1)], 36.620 (1), 36.630, 36.675 (1) or (2), 36.720 or 36.730;

(b) Agree to unreasonably restrict the right under ORS 36.635 to notice of the initiation of an arbitration proceeding;

(c) Agree to unreasonably restrict the right under ORS 36.650 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under ORS 36.670 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under ORS 36.600 to 36.740, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or ORS 36.625, 36.660, 36.680, 36.690 (4) or (5), 36.700, 36.705, 36.710, 36.715 (1) or (2), 36.735 or 36.740 or section 3 (1) or (3) or 31, chapter 598, Oregon Laws 2003.

(4) Subsections (2) and (3) of this section do not apply to agreements to arbitrate entered into by two or more insurers, as defined by ORS 731.106, or self-insured persons for the purpose of arbitration of disputes arising out of the provision of insurance.

**SECTION 119.** ORS 46.488 is amended to read:

46.488. (1) A judgment creditor may not create a judgment lien for a judgment entered in the small claims department of a circuit court if the money award is less than \$10, exclusive of costs and disbursements. A judgment creditor may create a judgment lien for a judgment entered in the small claims department of a circuit court in an amount of \$10 or more and less than \$3,000, exclusive of costs and disbursements, only as provided in subsection (3) of this section.

(2) If a judgment is rendered in the small claims department in an amount of \$3,000 or more, the clerk shall note in the register of the circuit court that the judgment creates a judgment lien if the judgment otherwise complies with the requirements of ORS chapter 18 for creating a judgment lien. A judgment creditor may create a lien for the judgment in other counties in the manner provided by ORS 18.152.

(3) When a judgment is entered in the small claims department in an amount of \$10 or more and less than \$3,000, exclusive of costs or disbursements, a judgment creditor may at any time before expiration of judgment remedies for the judgment under ORS 18.180 create a judgment lien for the judgment by paying to the clerk of the court that entered the judgment the fees established [by ORS 21.325 (1) and (2)] **under section 70 (1)(a) of this 2011 Act** and requesting that the clerk of the court note in the register and in the judgment lien record that the judgment creates a judgment lien. Upon receipt of the fees and request for creating a judgment lien, the clerk shall note in the register that the judgment creates a judgment lien. Upon entry of the notation in the register, the judgment creates a lien as described in ORS 18.150, and a judgment creditor may create a lien for the judgment in other counties in the manner provided by ORS 18.152.

**SECTION 120.** ORS 52.635 is amended to read:

52.635. (1) After a judgment that includes a money award is docketed in a justice court, a certified copy of the judgment or a lien record abstract for the judgment may be recorded in the County Clerk Lien Record for the county that contains the justice court that rendered the judgment. The certified copy or lien record abstract may be recorded by the judgment creditor or by the agent of the judgment creditor at any time after the judgment is rendered and before the judgment expires under ORS 18.194 or is fully satisfied. From the time the certified copy of the judgment or the lien record abstract is recorded in the County Clerk Lien Record, the judgment is a lien upon the real property of the defendant in the county.

(2) In lieu of recording a certified copy of a judgment or a lien record abstract for a judgment under subsection (1) of this section, a judgment that includes a money award rendered by a justice court in a civil action may be transcribed to the circuit court for the county that contains the justice court that rendered the judgment. The judgment may be transcribed by the filing of a certified transcript of the judgment with the clerk of the circuit court. The transcript must contain a copy of all the docket entries made in the case and the judgment as rendered by the justice court, certified to be a true and correct transcript from the original entries by the justice court. Upon filing of the certified transcript, the clerk shall enter the transcribed judgment in the register of the circuit court and in the judgment lien record. The clerk shall note in the register that the transcribed judgment creates a judgment lien. A judgment in a criminal action may not be transcribed to circuit court under the provisions of this subsection.

(3) A certified copy of a judgment docketed in a justice court, or a lien record abstract for the judgment, may be recorded in any County Clerk Lien Record. The judgment or lien record abstract may be recorded in a county other than the county that contains the justice court that rendered the judgment without transcribing the justice court judgment to the circuit court for the county that contains the justice court that rendered the judgment, or recording a certified copy of the judgment or a lien record abstract for the judgment in the County Clerk Lien Record for the county that contains the justice court. If the judgment has been transcribed to circuit court, or a certified copy of the judgment or a lien record abstract for the judgment has been recorded in any County Clerk Lien Record, a lien record abstract for the judgment in the form provided by ORS 18.170 may be recorded in the County Clerk Lien Record for any other county. From the time the certified copy of the judgment or lien record abstract for the judgment is recorded in the County Clerk Lien Record of another county, the judgment is a lien upon the real property of the defendant in that county.

(4) A certified copy of a certificate of extension filed under ORS 18.194, or a lien record abstract for the certificate of extension, may be transcribed to circuit court or recorded in a County Clerk Lien Record in the same manner as provided for judgments under this section and with like effect.

(5) The transcribing of a justice court judgment to circuit court under this section, or the recording of a certified copy of a justice court judgment or a lien record abstract under this section, does not extend the lien of the judgment more than 10 years from the original entry of the judgment in the justice court.

(6) The fee for filing a transcript with the clerk of the circuit court under subsection (2) of this section shall be as provided in [ORS 21.325 (2)] **section 70 (1) of this 2011 Act**. The fee for re-

ording a certified copy of a justice court judgment or a lien record abstract under this section shall be as provided in ORS 205.320.

(7) A justice court and circuit court may enter into an agreement to allow for electronic transcription of justice court judgments under this section. A justice court and county clerk may enter into an agreement to allow for electronic recording of judgments and lien record abstracts under this section.

**SECTION 121. The amendments to ORS 52.635 by section 120 of this 2011 Act apply only to transcripts filed in circuit courts on or after October 1, 2011.**

**SECTION 122.** ORS 105.938 is amended to read:

105.938. (1) Upon petition of an insurer, a court may order that data from a motor vehicle event data recorder be retrieved or used without the consent of the owner of the motor vehicle after an accident if the court determines that:

- (a) The owner has a policy of insurance for the vehicle issued by the insurer;
- (b) The data is necessary to reconstruct the facts of the accident and to allow the insurer to determine the obligations of the insurer under the insurance policy; and
- (c) An accurate and timely determination of the facts of the accident cannot occur without the data.

(2) A petition under this section must be filed in the circuit court for the county in which the owner of the motor vehicle resides. The petition must be served on the owner in the manner provided by ORCP 7 not less than 30 days before a hearing on the petition. An insurer filing a petition under this section must pay the filing fee specified by [ORS 21.110] **section 8 of this 2011 Act.**

**SECTION 123. The amendments to ORS 105.938 by section 122 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**SECTION 124.** ORS 109.100 is amended to read:

109.100. (1) Any minor child or the administrator may, in accordance with ORCP 27 A, apply to the circuit court in the county in which the child resides, or in which the natural or adoptive father or mother of the child may be found, for an order upon the child's father or mother, or both, to provide for the child's support. The child or the administrator may apply for the order by filing in the county a petition setting forth the facts and circumstances relied upon for the order. If satisfied that a just cause exists, the court shall direct that the father or mother appear at a time set by the court to show cause why an order of support should not be entered in the matter.

(2) The petitioner shall state in the petition, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor child, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.103, 109.165, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor child.

(3) The petitioner shall include with the petition a certificate regarding any pending support proceeding and any existing support order. The petitioner shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (2) of this section.

(4) The judgment of a court under subsection (1) of this section is final as to any installment or payment of money that has accrued up to the time either party makes a motion to set aside, alter or modify the judgment, and the court may not set aside, alter or modify the judgment, or any portion thereof, that provides for any payment of money that has accrued prior to the filing of the motion.

(5) The provisions of ORS 108.120 [and 108.130] apply to proceedings under subsection (1) of this section.

(6) In any proceeding under this section, both the child's physical and legal custodians are parties to the action.

**SECTION 125.** ORS 114.720 is amended to read:

114.720. (1) A surviving spouse may claim the elective share by filing a petition for the exercise of the election in a circuit court within the time allowed by ORS 114.610 (1)(c). Venue for the proceeding is as provided in ORS 113.015. A copy of the petition must be served on all persons who would be entitled to receive information under ORS 113.145 and on all distributees and recipients of portions of the augmented estate known to the surviving spouse who can be located with reasonable efforts. The fee for filing a petition under this subsection shall be the amount prescribed in [ORS 21.310] **section 21 of this 2011 Act**, based on the value of the nonprobate estate. The Oregon Rules of Civil Procedure apply to proceedings under this section. Any party to a proceeding under this section may request that the pleadings and records in the proceeding be sealed.

(2) A surviving spouse may withdraw a petition filed under this section at any time before entry of a judgment on the petition.

(3) If a probate proceeding is commenced for the estate of the deceased spouse under ORS 113.035 either before or after a petition is filed under this section, the court shall consolidate the proceedings under this section with the probate proceedings.

**SECTION 126. The amendments to ORS 114.720 by section 125 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**SECTION 127.** ORS 125.060 is amended to read:

125.060. (1) The notices required by this section must be given to all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give the notice.

(2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be given by the petitioner to the following persons:

(a) The respondent, if the respondent has attained 14 years of age.

(b) The spouse, parents and adult children of the respondent.

(c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the respondent.

(d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent.

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of the respondent during the 60-day period before the filing of the petition.

(g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

(h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by the State of Oregon through the Department of Human Services, a representative of the department.

(j) If the respondent is receiving moneys paid or payable for medical assistance provided under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, a representative of the authority.

(k) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the respondent is confined.

(L) If the respondent is a foreign national, the consulate for the respondent's country.

(m) Any other person that the court requires.

(3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's



actions or for protective orders in addition to those sought in the petition must be given by the person making the motion to the following persons:

(a) The protected person, if the protected person has attained 14 years of age.

(b) Any person who has filed a request for notice in the proceedings.

(c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the protected person.

(d) If the protected person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) Any other person that the court requires.

(4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and phone number of the person requesting notice. A copy of the request must be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court. The person filing the request must pay the fee specified by [ORS 21.310 (5)] **section 8 of this 2011 Act**.

(5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific provision of this chapter.

(6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and grandparents.

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

(a) Any attorney who is representing the respondent in any capacity.

(b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility, the system described in ORS 192.517 (1).

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section must be given by the person making the motion to the following persons:

(a) Any attorney who represented the protected person at any time during the protective proceeding.

(b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the system described in ORS 192.517 (1).

(9) A respondent or protected person may not waive the notice required under this section.

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding.

**SECTION 128. The amendments to ORS 125.060 by section 127 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**SECTION 129.** ORS 125.075 is amended to read:

125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected person may present objections to a petition or to a motion in a protective proceeding, including but not limited to:

- (a) Any person entitled to receive notice under ORS 125.060.
- (b) Any stepparent or stepchild of the respondent or protected person.
- (c) Any other person the court may allow.

(2) Objections to a petition may be either written or oral. Objections to a motion must be in writing. Objections to a petition or to a motion must be made or filed with the court within 15 days after notice of the petition or motion is served or mailed in the manner prescribed by ORS 125.065. The court shall designate a place where oral objections may be made. If a person appears within the time allowed at the place designated by the court for the purpose of making oral objections, the clerk of the court shall provide a means of reducing the oral objections to a signed writing for the purpose of filing the objection.

(3) If objections are presented by any of the persons listed in subsection (1) of this section, the court shall schedule a hearing on the objections. The petitioner or person making the motion shall give notice to all persons entitled to notice under ORS 125.060 (3) of the date, time and place of the scheduled hearing at least 15 days before the date set for hearing. Notice shall be given in the manner prescribed by ORS 125.065.

(4) Notwithstanding [*ORS 21.310*] **section 21 of this 2011 Act**, the court shall not charge or collect any fee from a respondent or protected person for the filing of objections under the provisions of this section or for the filing of any motion by a respondent or protected person.

(5) The court for good cause shown may provide for a different method or time of giving notice under subsection (3) of this section.

**SECTION 130.** ORS 125.605 is amended to read:

125.605. (1) In addition to the requirements of ORS 125.055, a petition for the appointment of a temporary fiduciary must contain allegations of the conditions required under ORS 125.600.

(2) Notice of a petition for the appointment of a temporary fiduciary must be given to the persons specified in ORS 125.060 (2) in the manner provided by ORS 125.065 at least two days before the appointment of a temporary fiduciary. The court may waive the requirement that notice be given before appointment if the court finds that the immediate and serious danger requires an immediate appointment. In no event may the notice required by ORS 125.060 be given more than two days after the appointment is made.

(3) Notice of a motion for the extension of a temporary fiduciary's authority beyond 30 days under ORS 125.600 (3) must be given to the persons specified in ORS 125.060 (2) in the manner provided by ORS 125.065 at least two days before the entry of an order granting the extension.

(4) The court shall appoint a visitor if the petition seeks appointment of a temporary guardian. A visitor may be appointed by the court if a petition seeks appointment of a temporary conservator. Within three days after the appointment of the temporary fiduciary, the visitor shall conduct an interview of the respondent. The visitor shall report to the court within five days after the appointment of a temporary fiduciary is made. The report of the visitor shall be limited to the conditions alleged to support the appointment of a temporary fiduciary.

(5) If objections are made to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority under ORS 125.600 (3), the court shall hear the objections within two judicial days after the date on which the objections are filed. Notwithstanding [*ORS 21.310*] **section 21 of this 2011 Act**, no fee shall be charged to any person filing an objection to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority under ORS 125.600 (3).

**SECTION 131.** ORS 130.355, as amended by sections 43 and 44, chapter 107, Oregon Laws 2010, is amended to read:

130.355. (1) At any time after the death of a settlor of a trust described in ORS 130.350 (2), a trustee of the trust may petition the probate court to determine the claims of creditors of the

settlor. A petition under this section must include all of the following information to the extent known by the trustee:

(a) The settlor's name, the settlor's date of birth, the settlor's date and place of death and the last four digits of the settlor's Social Security number.

(b) The name of the trustee.

(c) The address at which claims must be presented.

(d) The name of the trust, if any, and the date of the trust, including the dates of any amendments.

(e) The facts establishing venue in the county where the petition is being filed.

(2) The clerk of the court shall charge and collect in advance from the trustee the filing fee required from a plaintiff under [ORS 21.110 (1)] **section 8 of this 2011 Act**.

(3) A proceeding under this section may be brought only:

(a) In the county where the settlor had domicile or a place of abode at the time of death;

(b) In any county where assets of the trust were located at the time of death or are located at the time the proceeding is commenced; or

(c) In the county where the settlor died.

(4) The court has personal jurisdiction over a trustee that files a petition under this section, whether the trustee is a resident or nonresident of this state, for the purposes of any proceeding relating to the trust that may be instituted by an interested person.

**SECTION 132. The amendments to ORS 130.355 by section 131 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**SECTION 133.** ORS 130.400, as amended by sections 46 and 47, chapter 107, Oregon Laws 2010, is amended to read:

130.400. (1) The trustee may compromise a claim against the trust estate.

(2) A claim presented to a trustee under ORS 130.350 to 130.450 shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the trustee mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and to the attorney of the claimant if the claimant has an attorney.

(3) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant requests a summary determination or brings an action in the manner provided by subsection (4) of this section.

(4) If a trustee disallows a claim submitted under ORS 130.350 to 130.450 in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may:

(a) File a request for summary determination of the claim in the probate court, with proof of service of a copy of the request upon the trustee or the attorney of the trustee; or

(b) Commence a separate action against the trustee on the claim in the probate court.

(5) If the claimant fails either to request a summary determination or commence a separate action as provided in subsection (4) of this section, the claim is barred to the extent the claim has been disallowed by the trustee.

(6) If a claimant prevails in a proceeding or action under subsection (4) of this section, the claim shall be allowed or judgment entered in the full amount determined to be due to the claimant. The claim or judgment shall be paid from the assets of the trust estate only to the extent that funds are available after payment of other claims with higher priority under ORS 130.425.

(7) If the claimant files a request for summary determination of a claim under subsection (4) of this section, the trustee may notify the claimant in writing that the claimant must commence a separate action against the trustee on the claim within 60 days after the claimant receives the notice. Notice under this subsection must be given by the trustee within 30 days after the request for summary determination is served on the trustee or the attorney of the trustee. If the claimant fails to commence a separate action within the time allowed, the claim is barred to the extent the claim has been disallowed by the trustee.

(8) In a proceeding for summary determination under this section:

(a) The trustee shall make response to the claim as though the claim were a complaint filed in an action.

(b) The court shall hear the matter without a jury, after notice to the claimant and trustee. The court shall determine the claim in a summary manner, and shall make an order allowing or disallowing the claim in whole or in part.

(c) No appeal may be taken from the order of the court made in a proceeding for summary determination under this section.

(9) If a civil action is commenced under subsection (4) of this section, a trustee, or beneficiary, may petition the court to approve a proposed disposition of claims or to provide instructions on the treatment of claims.

(10) A claimant filing a request for summary determination of a claim under subsection (4) of this section must pay the filing fee required of a defendant or respondent under [ORS 21.110 (1)] **section 8 of this 2011 Act** and other fees applicable to civil actions in circuit court.

**SECTION 134. The amendments to ORS 130.400 by section 133 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011.**

**SECTION 135.** ORS 182.040 is amended to read:

182.040. (1) All state boards and commissions that are supported by fees, fines, licenses or taxes or other forms of income not derived from a direct tax on tangible property shall pay the various counties of the State of Oregon the same fees required of others for services rendered.

(2) ORS 182.040 to 182.060 do not apply to:

(a) Except for those fees required in ORS 205.320, services rendered for the Bureau of Labor and Industries on wage claims assigned to it for collection.

(b) Any of the provisions or requirements of ORS [21.310,] 52.410 to 52.440, 156.160, 205.360 and 205.370 **and section 21 of this 2011 Act.**

**SECTION 136.** ORS 205.360 is amended to read:

205.360. The clerk of the county court shall receive and receipt for fees prescribed in [ORS 21.310] **section 21 of this 2011 Act** that are collected by the clerk, stating in the receipt the amount so received, from whom received and on what account the amount was received, specifying the cause or proceeding. If it is ascertained at any time that the clerk has received any such fees not so accounted for, or done service without collecting fees therefor as provided in [ORS 21.310] **section 21 of this 2011 Act**, or neglected duty in any other respect, the payment of salary of the clerk shall be withheld until the matter is fully rectified.

**SECTION 137.** ORS 701.133, as amended by sections 49 and 50, chapter 107, Oregon Laws 2010, is amended to read:

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed [*the amount of the filing fee provided by ORS 21.110 (1) for a plaintiff filing a civil action in circuit court*] **\$100**. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees as damages in the final order of the board.

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

**CHAPTER 659, OREGON LAWS 2009  
(ENROLLED HOUSE BILL 2287 (2009)),  
SURCHARGES**

**(Elimination of Judicial System Surcharge Account)**

**SECTION 138. Section 1, chapter 659, Oregon Laws 2009, is repealed.**

**SECTION 139. Any funds in the Judicial System Surcharge Account on the effective date of this 2011 Act shall be transferred by the State Treasurer to the General Fund.**

**(Offense Surcharge)**

**SECTION 140. Section 2, chapter 659, Oregon Laws 2009, as amended by section 20, chapter 107, Oregon Laws 2010, is amended to read:**

**Sec. 2.** (1) In all cases of conviction for the commission of a crime or violation, excluding parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon the defendant, in addition to any fine, cost or other monetary obligation imposed, an offense surcharge under this section. Except when the person successfully asserts the defense set forth in ORS 419C.522, the offense surcharge shall also be imposed by the circuit court and county court in juvenile cases under ORS 419C.005 (1). The offense surcharge is a penal obligation in the nature of a fine and shall be in an amount as follows:

(a) \$35 in the case of a felony.

(b) \$35 in the case of a misdemeanor.

(c) \$45 in the case of a violation as described in ORS 153.008.

(2) A court may waive all or part of the offense surcharge required by this section only if the court imposes no fine on the defendant.

(3) The offense surcharge required by this section shall be imposed only for offenses that are committed on or after October 1, 2009, and before July 1, 2011.

(4)(a) Offense surcharges imposed under this section are part of the base fine for the purposes of ORS chapter 153.

(b) The provisions of ORS 153.093 do not affect the amount of the offense surcharge imposed and collected under this section, and the amount calculated under ORS 153.093 (1) includes the full amount of the offense surcharge.

(5) Offense surcharges imposed in a circuit court under this section are category 3 monetary obligations for the purposes of ORS 137.295 and shall be collected as provided in ORS 137.295. Offense surcharges imposed in a justice court, county court or municipal court under this section are category 4 monetary obligations for the purposes of ORS 137.295 and shall be collected as provided in ORS 137.295. Amounts collected as offense surcharges under this section [*may not be deposited in*

*the Criminal Fine and Assessment Account, or transferred to the Department of Revenue, under ORS 137.295 (5), but]* must be deposited or paid as follows:

(a) Offense surcharges imposed in circuit courts shall be deposited by the Department of Revenue in the *[Judicial System Surcharge Account]* **General Fund**.

(b) Offense surcharges imposed in a justice court or county court shall be paid to the county treasurer.

(c) Offense surcharges imposed in a municipal court shall be paid to the city treasurer.

*[(6) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from amounts imposed as offense surcharges under this section.]*

#### **(Filing Fee Surcharges and Temporary Fees)**

**SECTION 141.** Section 4, chapter 659, Oregon Laws 2009, as amended by section 25, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 4.** (1) In addition to the fees provided for in ORS 21.010 (1), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, at the time of filing a response in the Court of Appeals or the Supreme Court, the State Court Administrator shall collect a surcharge of \$8.

(2)(a) In addition to the fees provided for in ORS 21.111 (1), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, in the proceedings specified in ORS 21.111 (2) the clerk of the circuit court shall collect a surcharge of \$5 from the petitioner at the time the petition is filed, and shall collect a surcharge of \$3 from the respondent upon the respondent making an appearance.

(b) In addition to the fees provided for in ORS 21.111 (3), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, the clerk of the circuit court shall collect from the moving party a surcharge of \$3 at the time of the filing of a motion for the modification of a decree of marital annulment, dissolution or separation, if the motion is filed more than one year after the entry of the decree in the register of the court.

(3) In addition to the fees provided for ORS 21.114 (1), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, the clerk of the court shall collect:

(a) In an adoption proceeding, a surcharge of \$2 from the party filing the petition for adoption and a surcharge of \$1 from an objecting party appearing separately or objecting parties appearing jointly.

(b) In a change of name proceeding, a surcharge of \$61 from the party filing the application for change of name and a surcharge of \$61 from an objecting party appearing separately or objecting parties appearing jointly.

(4) In addition to the fee provided for in ORS 21.114 (3), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, in any adoption or change of name proceeding in a court having jurisdiction, the clerk of the court shall collect from the party having the affirmative of the issue, at the time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein, a surcharge of \$2.

(5)(a) In addition to the trial fee provided for in ORS 21.270 (2), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, the clerk of the circuit court shall collect from the plaintiff, appellant or moving party, for a trial on the merits without a jury, a surcharge on the trial fee of \$33 for each full or partial day of the trial.

(b) In addition to the jury trial fee provided for in ORS 21.270 (3), for the period commencing October 1, 2009, and ending *[June 30]* **September 30**, 2011, the clerk shall collect from the plaintiff or appellant, for a trial by a jury of more than six persons, a surcharge on the jury trial fee of \$32 for each full or partial day of the trial. The clerk shall collect from the plaintiff or appellant, for a trial by a jury of six persons, a surcharge on the jury trial fee of \$40 for each full or partial day of the trial.

(6) In addition to the hearing fee provided for in ORS 21.275 (3), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the circuit court shall collect a surcharge on the hearing fee of \$12 if the hearing period is not more than three hours or \$33 if the hearing period is more than three hours.

(7)(a) In addition to the fees provided for in ORS 21.310 (1), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect the following surcharges for the filing of the initial papers in any probate proceeding, including petitions for the appointment of personal representatives, probate of wills and contest of wills, or in any conservatorship proceeding:

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Where the amount of the estate is:

1. Not more than \$10,000--a surcharge of \$1.
2. More than \$10,000 and not more than \$25,000--a surcharge of \$4.
3. More than \$25,000 and not more than \$50,000--a surcharge of \$8.
4. More than \$50,000 and not more than \$100,000--a surcharge of \$12.
5. More than \$100,000 and not more than \$500,000--a surcharge of \$15.
6. More than \$500,000 and not more than \$1,000,000--a surcharge of \$19.
7. More than \$1,000,000--a surcharge of \$23.

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(b) In addition to the fee provided for in ORS 21.310 (3), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk shall collect a surcharge of \$1 for the filing of the initial papers in any guardianship proceeding.

(c) In addition to the fee provided for in ORS 21.310 (5), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, at the time of filing any answer, motion or objection in a probate proceeding or protective proceeding under ORS chapter 125, the party filing the answer, motion or objection shall pay a surcharge of \$1 to the clerk.

(d) In addition to the fee provided for in ORS 21.310 (7), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk shall collect from the party having the affirmative of the issue, at the time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein, a surcharge on the trial or hearing fee of \$2.

(8) In addition to the fees provided for in ORS 21.325 (3), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect a surcharge of \$2 for the filing of a copy of foreign judgment and affidavit filed as provided in ORS 24.115 and 24.125 or the filing of a copy of child custody determination of another state filed as provided in ORS 109.787.

(9) In addition to the fees provided for in ORS 21.325 (4), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect a surcharge of \$6 for issuing a writ of execution or a writ of garnishment.

(10) In addition to the fee provided for in ORS 34.340, for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect a surcharge of \$1 upon the filing of a petition for a writ of habeas corpus.

(11) In addition to the fees provided for in ORS 36.520 (5), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the circuit court shall collect from the party making application for setting aside under ORS 36.520 (1) a surcharge of \$2 and from a party filing an appearance in opposition to the application a surcharge of \$1.

(12) In addition to the fee provided for in ORS 36.522 (3), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the circuit court shall collect a surcharge of \$1 for the filing of an arbitral award or application for enforcement of an arbitral award under ORS 36.522.

(13) In addition to the fee provided for in ORS 36.524 (1), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the circuit court shall collect a surcharge of \$1 for the filing under ORS 36.524 (1).

(14) In addition to the fee provided for in ORS 36.615 (1)(b), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the circuit court shall collect a surcharge of \$2 upon the filing of a petition to seek confirmation, vacation, modification or correction of an award under ORS 36.700, 36.705 or 36.710, and a surcharge of \$1 from a person filing an appearance in opposition to the petition.

(15) In addition to the fees provided for in ORS 46.570 (1), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, in the small claims department of a circuit court the clerk of the court shall collect:

(a) A \$24 surcharge when a defendant demands a hearing and the amount or value claimed by the plaintiff does not exceed \$1,500; and

(b) A \$50 surcharge when a defendant demands a hearing and the amount or value claimed by the plaintiff exceeds \$1,500.

(16)(a) In addition to the fees provided for in ORS 105.130 (2), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, upon filing a complaint in the case of a dwelling unit to which ORS chapter 90 applies, the clerk of the court shall collect a surcharge of \$12.

(b) In addition to the fees provided for in ORS 105.130 (3), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, if the defendant demands a trial after a complaint is filed under ORS 105.130 (2), the plaintiff shall pay a surcharge of \$2.

(17) In addition to the fee provided for in ORS 107.434 (1), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect a surcharge of \$3 upon the filing of a motion seeking enforcement of a parenting time order or a substantial violation of a parenting plan.

(18) In addition to the fee provided for in ORS 112.820 (1)(d), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the probate court shall collect a surcharge of \$1 for filing of an affidavit under ORS 112.820 (1).

(19) In addition to the fee provided for in ORS 114.515 (6), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the probate court shall collect a surcharge of \$1 upon the filing of an affidavit under ORS 114.515.

(20) In addition to the fee provided for in ORS 130.045 (7), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the circuit court shall collect a surcharge of \$3 for the filing of an agreement or memorandum of agreement under ORS 130.045 (5) and a surcharge of \$2 for the filing of objections under ORS 130.045 (6).

(21) In addition to the fee provided for in ORS 138.560, for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, a petitioner shall pay a surcharge of \$1 at the time of filing a petition under ORS 138.560.

(22) In addition to the fee provided for in ORS 166.274, for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect a surcharge of \$5 for the filing of a petition for relief under ORS 166.274.

(23) In addition to the fees provided for in ORS 305.490, for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the tax court shall collect the following surcharges:

(a) For a complaint or petition in the magistrate division, \$50.

(b) For a complaint or petition in the regular division, \$100.

(c) If a complaint or petition is specially designated under ORS 305.501 for hearing in the regular division, a fee of \$100.

(24) In addition to the fee provided for in ORS 419B.555 (6), for the period commencing October 1, 2009, and ending [June 30] **September 30**, 2011, the clerk of the court shall collect a surcharge of \$4 for each application for emancipation under ORS 419B.555.



*[(25) Except as provided in subsection (26) of this section, surcharges imposed under this section shall be deposited in the Judicial System Surcharge Account. The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from surcharges imposed under this section.]*

*[(26)] (25)* A surcharge imposed by a county court under subsection (7) of this section or by a justice court under subsection (16) of this section shall be paid to the county treasurer.

**SECTION 142.** Section 15, chapter 659, Oregon Laws 2009, as amended by section 30a, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 15.** (1) The amendments to ORS 21.110 by section 14, chapter 659, Oregon Laws 2009, apply only to civil actions, suits and proceedings filed on or after October 1, 2009, and before *[July]* **October 1, 2011**.

(2) The amendments to ORS 21.110 by sections 28 and 29, **chapter 107, Oregon Laws 2010**, *[of this 2010 Act]* apply only to civil actions, suits and proceedings filed on or after May 1, 2010, and before *[July]* **October 1, 2011**.

*[(3) All fees imposed pursuant to the amendments to ORS 21.110 by section 14, chapter 659, Oregon Laws 2009, and by sections 28 and 29 of this 2010 Act shall be deposited in the Judicial System Surcharge Account.]*

*[(4) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed pursuant to the amendments to ORS 21.110 by section 14, chapter 659, Oregon Laws 2009, and by sections 28 and 29 of this 2010 Act.]*

**SECTION 143.** Section 17, chapter 659, Oregon Laws 2009, as amended by section 32, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 17.** The amendments to ORS 21.110 by section 31, **chapter 107, Oregon Laws 2010**, *[of this 2010 Act]* become operative *[July]* **October 1, 2011**.

**SECTION 144.** Section 20, chapter 659, Oregon Laws 2009, as amended by section 39, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 20.** *[(1) The amendments to ORS 36.170 by section 18, chapter 659, Oregon Laws 2009, become operative October 1, 2009.]*

*[(2)]* The amendments to ORS 36.170 by section 38, **chapter 107, Oregon Laws 2010**, *[of this 2010 Act]* become operative *[July]* **October 1, 2011**.

**SECTION 145.** Section 25, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 25.** (1) In a court with probate jurisdiction, the clerk shall charge and collect the following fees for an annual or final accounting filed in a probate proceeding or a conservatorship proceeding on or after October 1, 2009, and before *[July]* **October 1, 2011**:

(a) If the amount of the estate is not more than \$500,000, a fee of \$100.

(b) If the amount of the estate is more than \$500,000 and not more than \$1 million, a fee of \$200.

(c) If the amount of the estate is more than \$1 million, a fee of \$300.

(2) In determining fees under subsection (1) of this section in a probate proceeding, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(3) All fees imposed under this section in a circuit court shall be deposited in the *[Judicial System Surcharge Account]* **General Fund**. All fees imposed by a county court under this section shall be paid to the county treasurer.

*[(4) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.]*

**SECTION 146.** Section 27, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 27.** (1) In addition to the fee provided in ORS 137.225, upon the filing of an application under ORS 137.225 (1), the court shall order the defendant to pay a fee of \$250 to the court.

(2) This section applies only to applications filed under ORS 137.225 (1) on or after October 1, 2009, and before *[July]* **October 1, 2011**.

(3) Fees imposed under this section in the circuit court shall be deposited by the clerk of the court in the *[Judicial System Surcharge Account]* **General Fund**. Fees imposed in a justice court

under this section shall be paid to the county treasurer. Fees imposed in a municipal court under this section shall be paid to the city treasurer.

*[(4) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from amounts imposed under this section.]*

**SECTION 147.** Section 29, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 29.** *[(1)]* The amendments to ORS 21.010 by section 28 *[of this 2009 Act]*, **chapter 659, Oregon Laws 2009**, apply only to filings and appearances made on or after October 1, 2009, and before *[July]* **October 1, 2011**.

*[(2) All fees imposed under the amendments to ORS 21.010 by section 28 of this 2009 Act shall be deposited in the Judicial System Surcharge Account.]*

*[(3) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under the amendments to ORS 21.010 by section 28 of this 2009 Act.]*

**SECTION 147a.** Section 37g, chapter 885, Oregon Laws 2009, is amended to read:

**Sec. 37g.** The amendments to ORS 21.010 by section 37f, **chapter 885, Oregon Laws 2009**, *[of this 2009 Act]* become operative *[July]* **October 1, 2011**.

**SECTION 147b.** Section 31, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 31.** The amendments to ORS 21.010 by section 30, **chapter 659, Oregon Laws 2009**, *[of this 2009 Act]* become operative *[July]* **October 1, 2011**.

**SECTION 148.** Section 33, chapter 659, Oregon Laws 2009, as amended by section 37i, chapter 885, Oregon Laws 2009, is amended to read:

**Sec. 33.** (1) In any appeal or petition for review subject to a fee under ORS 21.010, the clerk of the court shall collect a fee of \$50 from any party filing a motion for continuance or a motion for an extension of time for the filing of a brief or other document in the proceeding.

(2) The fee imposed under this section applies only to motions filed on or after October 1, 2009, and before *[July]* **October 1, 2011**.

*[(3) All fees imposed under this section shall be deposited in the Judicial System Surcharge Account.]*

*[(4) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.]*

**SECTION 149.** Section 38, chapter 659, Oregon Laws 2009, as amended by section 37h, chapter 885, Oregon Laws 2009, is amended to read:

**Sec. 38.** (1) In any civil proceeding subject to a fee under ORS 21.110, 21.111, 21.114 or 21.310, the clerk of a circuit court shall collect the sum of \$10 for filing or submission of an ex parte order or judgment for the purpose of signature by the judge and entry.

(2) The fee established under this section may not be collected for filings or submissions in small claims actions. The Chief Justice by order may provide for exemptions from the fees established by this section if exemptions are needed for the equitable imposition of those fees.

(3) The fee imposed under this section applies only to ex parte orders or judgments filed or submitted on or after October 1, 2009, and before *[July]* **October 1, 2011**.

*[(4) All fees imposed under this section shall be deposited in the Judicial System Surcharge Account.]*

*[(5) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.]*

**NOTE:** Section 150 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 151.** Section 35, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 35.** The amendments to ORS 21.480 by section 34, **chapter 107, Oregon Laws 2010**, *[of this 2010 Act]* become operative *[July]* **October 1, 2011**.

**SECTION 152.** Section 42, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 42.** The amendments to ORS 36.615 by section 41, **chapter 107, Oregon Laws 2010**, *[of this 2010 Act]* become operative *[July]* **October 1, 2011**.

**SECTION 153.** Section 45, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 45.** The amendments to ORS 130.355 by section 44, **chapter 107, Oregon Laws 2010**, [of this 2010 Act] become operative [July] **October 1, 2011**.

**SECTION 154.** Section 48, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 48.** The amendments to ORS 130.400 by section 47, **chapter 107, Oregon Laws 2010**, [of this 2010 Act] become operative [July] **October 1, 2011**.

**SECTION 155.** Section 51, chapter 107, Oregon Laws 2010, is amended to read:

**Sec. 51.** The amendments to ORS 701.133 by section 50, **chapter 107, Oregon Laws 2010**, [of this 2010 Act] become operative [July] **October 1, 2011**.

#### (Security Release Amounts)

**SECTION 156.** Section 10, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 10.** (1) The amendments to ORS 135.265 by section 9, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] apply only to security deposits made on or after October 1, 2009, and before [July 1, 2011] **October 1, 2011**.

(2) All amounts retained in a circuit court under ORS 135.265 as security deposit costs from security deposits made on or after October 1, 2009, and before [July 1, 2011] **October 1, 2011**, that are in excess of \$200 shall be deposited in the [Judicial System Surcharge Account] **General Fund**. All amounts retained in a justice court under ORS 135.265 as security deposit costs from security deposits made on or after October 1, 2009, and before [July 1, 2011] **October 1, 2011**, that are in excess of \$200 shall be paid to the county treasurer. All amounts retained in a municipal court under ORS 135.265 as security deposit costs from security deposits made on or after October 1, 2009, and before [July 1, 2011] **October 1, 2011**, that are in excess of \$200 shall be paid to the city treasurer.

*[(3) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from amounts retained as security deposit costs that are in excess of \$200 pursuant to the amendments to ORS 135.265 by section 9 of this 2009 Act.]*

**SECTION 157.** Section 12, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 12.** (1) The amendments to ORS 135.265 by section 11, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] become operative [July 1, 2011] **October 1, 2011**.

(2) The amendments to ORS 135.265 by section 11, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] do not affect the amount of security release costs that may be deducted from security amounts deposited on or after October 1, 2009, and before [July 1, 2011] **October 1, 2011**.

**SECTION 158.** ORS 135.265 is amended to read:

135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of a circuit court shall

be paid over as directed by the State Court Administrator for deposit in the [*Criminal Fine and Assessment Account created under ORS 137.300*] **General Fund**. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary.

**SECTION 159.** ORS 135.265, as amended by section 11, chapter 659, Oregon Laws 2009, is amended to read:

135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more than [\$200] **\$750**, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of a circuit court shall be paid over as directed by the State Court Administrator for deposit in the [*Criminal Fine and Assessment Account created under ORS 137.300*] **General Fund**. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary.

**SECTION 160.** The amendments to ORS 135.265 by section 159 of this 2011 Act apply only to security deposits returned on or after October 1, 2011.

**(Bench Probation Fees and Probation Violation Assessments)**

**SECTION 161.** Section 22, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 22.** [(1)] The amendments to ORS 137.540 by section 21, **chapter 659, Oregon Laws 2009**, [of this 2009 Act] apply only to orders of probation and probation violation determinations made on or after October 1, 2009, and before July 1, 2011.

[(2) *The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from assessments imposed by a court under the amendments to ORS 137.540 by section 21 of this 2009 Act.*]

**SECTION 162.** ORS 137.540, as amended by section 23, chapter 659, Oregon Laws 2009, is amended to read:

137.540. (1) The court may sentence the defendant to probation subject to the following general conditions unless specifically deleted by the court. The probationer shall:

- (a) Pay supervision fees, fines, restitution or other fees ordered by the court.
- (b) Not use or possess controlled substances except pursuant to a medical prescription.
- (c) Submit to testing for controlled substance or alcohol use if the probationer has a history of substance abuse or if there is a reasonable suspicion that the probationer has illegally used controlled substances.
- (d) Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
- (e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency.
- (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both. Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver.
- (g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
- (h) Permit the parole and probation officer to visit the probationer or the probationer's work site or residence and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the probationer.
- (i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
- (j) Obey all laws, municipal, county, state and federal.
- (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
- (L) Not possess weapons, firearms or dangerous animals.
- (m) If recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer if the probationer:
  - (A) Is under supervision for a sex offense under ORS 163.305 to 163.467;
  - (B) Was previously convicted of a sex offense under ORS 163.305 to 163.467; or
  - (C) Was previously convicted in another jurisdiction of an offense that would constitute a sex offense under ORS 163.305 to 163.467 if committed in this state.
- (n) Participate in a mental health evaluation as directed by the supervising officer and follow the recommendation of the evaluator.
- (o) Report as required and abide by the direction of the supervising officer.
- (p) If required to report as a sex offender under ORS 181.596, report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:
  - (A) When supervision begins;
  - (B) Within 10 days of a change in residence;
  - (C) Once each year within 10 days of the probationer's date of birth;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(E) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(2) In addition to the general conditions, the court may impose any special conditions of probation that are reasonably related to the crime of conviction or the needs of the probationer for the protection of the public or reformation of the probationer, or both, including, but not limited to, that the probationer shall:

(a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence or to the premises thereof, or be subject to any combination of such confinement and restriction, such confinement or restriction or combination thereof to be for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is the lesser.

(b) For felonies committed on or after November 1, 1989, be confined in the county jail, or be subject to other custodial sanctions under community supervision, or both, as provided by rules of the Oregon Criminal Justice Commission.

(c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as specifically ordered by the court in order to pay restitution.

(3) When a person who is a sex offender is released on probation, the court shall impose as a special condition of probation that the person not reside in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides, without the approval of the person's supervising parole and probation officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides, without the approval of the director of the probation agency that is supervising the person or of the county manager of the Department of Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole and probation officer of a person subject to the requirements of this subsection shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subsection:

(a) "Dwelling" has the meaning given that term in ORS 469.160.

(b) "Dwelling" does not include a residential treatment facility or a halfway house.

(c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(d) "Sex offender" has the meaning given that term in ORS 181.594.

(4)(a) If the person is released on probation following conviction of a sex crime, as defined in ORS 181.594, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the court, if requested by the victim, shall include as a special condition of the person's probation that the person not reside within three miles of the victim unless:

(A) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county;

(B) The person demonstrates to the court by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(C) The person demonstrates to the court by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the probation; or

(D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(b) A victim may request imposition of the special condition of probation described in this subsection at the time of sentencing in person or through the prosecuting attorney.

(c) If the court imposes the special condition of probation described in this subsection and if at any time during the period of probation the victim moves to within three miles of the probationer's residence, the court may not require the probationer to change the probationer's residence in order to comply with the special condition of probation.

(5) When a person who is a sex offender, as defined in ORS 181.594, is released on probation, the Department of Corrections or the county community corrections agency, whichever is appropriate, shall notify the city police department, if the person is going to reside within a city, and the county sheriff's office of the county in which the person is going to reside of the person's release and the conditions of the person's release.

(6) Failure to abide by all general and special conditions imposed by the court and supervised by the Department of Corrections or a county community corrections agency may result in arrest, modification of conditions, revocation of probation or imposition of structured, intermediate sanctions in accordance with rules adopted under ORS 137.595.

**(7) The court may order that probation be supervised by the court. If the court orders that probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees imposed under this subsection in the circuit court shall be deposited by the clerk of the court in the General Fund. Fees imposed in a justice court under this subsection shall be paid to the county treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treasurer.**

[7] (8) The court may at any time modify the conditions of probation.

[8] (9) A court may not order revocation of probation as a result of the probationer's failure to pay restitution unless the court determines from the totality of the circumstances that the purposes of the probation are not being served.

[9] (10) It is not a cause for revocation of probation that the probationer failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

**(11) If the court determines that a defendant has violated the terms of probation, the court shall collect a \$25 fee from the defendant. The fee becomes part of the judgment and may be collected in the same manner as a fine. Fees collected under this subsection in the circuit court shall be deposited by the clerk of the court in the General Fund. Fees collected in a justice court under this subsection shall be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be paid to the city treasurer.**

[10] (12) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 181.594.

**SECTION 163. The amendments to ORS 137.540 by section 162 of this 2011 Act apply only to orders of probation and probation violation determinations made on or after July 1, 2011.**

#### **(Diversion Fees)**

**SECTION 164.** Section 26, chapter 659, Oregon Laws 2009, is amended to read:

**Sec. 26.** (1) In addition to the fees provided in ORS 135.921 and 813.240, upon the filing of a petition for diversion under ORS 135.909 or 813.210, the court shall order the defendant to pay \$100 to the court as a program administration fee.

(2) This section applies only to petitions for diversion filed on or after October 1, 2009, and before [July 1, 2011] **January 1, 2012.**

(3) Fees imposed under this section in the circuit court shall be deposited by the clerk of the court in the [Judicial System Surcharge Account] **Criminal Fine and Assessment Account.** Fees imposed in a justice court under this section shall be paid to the county treasurer. Fees imposed in a municipal court under this section shall be paid to the city treasurer.

[4] *The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section.*

**SECTION 165.** ORS 135.921 is amended to read:

135.921. (1) The filing fee paid by a defendant at the time of filing a petition for a possession of marijuana diversion agreement as provided in ORS 135.909 *[shall be \$233 and shall be ordered paid as follows if the petition is allowed:]*

*[(a) \$123 to the Department of Revenue for deposit in the Criminal Fine and Assessment Account; and]*

*[(b) \$110 to be distributed as provided for the disposition of costs under ORS 153.630.] is \$335. A fee collected under this section in the circuit court shall be deposited by the clerk of the court in the Criminal Fine and Assessment Account. If the fee is collected in a municipal or justice court, \$125 of the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine and Assessment Account, and the remainder of the fee shall be paid to the city or county treasurer.*

*(2) If less than the [\$233] full filing fee is [paid to the court by the defendant under subsection (1) of this section] collected under this section in a justice or municipal court, the money [actually] received shall be allocated [in the amounts provided] first to the [State Treasurer and the remainder as provided for the disposition of costs under ORS 153.630] **Department of Revenue for deposit in the Criminal Fine and Assessment Account.***

*(3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$90 directly to the agency or organization providing the diagnostic assessment.*

*[(4) The Chief Justice of the Supreme Court may require that any or all fees distributed by circuit courts under this section be distributed through the offices of the State Court Administrator.]*

**SECTION 166. The amendments to ORS 135.921 by section 165 of this 2011 Act apply only to petitions for diversion filed on or after January 1, 2012.**

**SECTION 167.** ORS 813.240 is amended to read:

813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 **is \$363. A fee collected under this subsection in the circuit court shall be deposited by the clerk of the court in the Criminal Fine and Assessment Account. If the fee is collected in a municipal or justice court, \$163 of the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine and Assessment Account, and the remainder of the fee shall be paid to the city or county treasurer.** *[shall be \$261 and shall be ordered paid as follows if the petition is allowed:]*

*[(a) \$136 to be credited and distributed under ORS 137.295 as an obligation payable to the state;]*

*[(b) \$100 to be treated as provided for disposition of fines and costs under ORS 153.630; and]*

*[(c) \$25 to be paid to the Director of the Oregon Health Authority for deposit in the Intoxicated Driver Program Fund created under ORS 813.270, to be used for purposes of the fund.]*

**(2) If less than the full filing fee is collected under subsection (1) of this section in a municipal or justice court, the money received shall be allocated first to the Department of Revenue for deposit in the Criminal Fine and Assessment Account.**

*[(2)] (3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.*

**SECTION 168. The amendments to ORS 813.240 by section 167 of this 2011 Act apply only to petitions for diversion filed on or after January 1, 2012.**

**NOTE:** Section 169 was deleted by amendment. Subsequent sections were not renumbered.

**SECTION 170.** ORS 813.210 is amended to read:

813.210. (1) After an accusatory instrument has been filed charging the defendant with the offense of driving while under the influence of intoxicants, a defendant may file with the court a petition for a driving while under the influence of intoxicants diversion agreement described in ORS 813.200. The petition:

(a) Must be filed within 30 days after the date of the defendant's first appearance on the summons, unless a later filing date is allowed by the court upon a showing of good cause. For purposes



of this paragraph, the filing of a demurrer, a motion to suppress or a motion for an omnibus hearing does not constitute good cause.

(b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea or a no contest plea or after commencement of any trial on the charge whether or not a new trial or retrial is ordered for any reason.

(2) The defendant shall pay to the court, at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement, a filing fee established under ORS 813.240. The court may make provision for payment of the filing fee by the defendant on an installment basis. The court may waive all or part of the filing fee in cases involving indigent defendants. The filing fee paid to the court under this subsection shall be retained by the court if the petition is allowed. The filing fee shall be distributed as provided by ORS 813.240.

(3) The defendant shall pay to the agency or organization providing the diagnostic assessment, at the time the petition is allowed, the fee required by ORS 813.240 [(2)] (3).

(4)(a) Unless otherwise provided under paragraph (b) of this subsection, the defendant shall pay to the court any court-appointed attorney fees agreed to under ORS 813.200 (4)(i). Payments shall be made prior to the end of the diversion period on a schedule determined by the court.

(b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS 813.200 (4)(i).

(5) The defendant shall cause a copy of the petition for a driving while under the influence of intoxicants diversion agreement to be served upon the district attorney or city attorney. The district attorney or city attorney may file with the court, within 15 days after the date of service, a written objection to the petition and a request for a hearing.

## **PREVAILING PARTY FEES**

**SECTION 170a.** ORS 20.190 is amended to read:

20.190. (1) Except as provided in subsections (2) to (5) of this section, a prevailing party in a civil action or proceeding who has a right to recover costs and disbursements in the following cases also has a right to recover, as a part of the costs and disbursements, the following additional amounts:

(a) In the Supreme Court or Court of Appeals, on an appeal, \$100.

(b) In a circuit court:

(A) When judgment is given without trial of an issue of law or fact or on an appeal, \$60; or

(B) When judgment is given after trial of an issue of law or fact, \$85.

(c) In a small claims department, a county court or justice court, one-half of the amount provided for in paragraph (b) of this subsection.

(2) In lieu of the prevailing party fee provided for in subsection (1) of this section, in any civil action or proceeding in which recovery of money or damages is sought, a prevailing party who has a right to recover costs and disbursements also has a right to recover, as a part of the costs and disbursements, the following additional amounts:

(a) In a circuit court:

(A) When judgment is given without trial of an issue of law or fact, \$275; or

(B) When judgment is given after trial of an issue of law or fact, \$550.

(b) In a small claims department, a county court or justice court:

(A) When judgment is given without trial of an issue of law or fact, [~~\$85~~] **\$93**; or

(B) When judgment is given after trial of an issue of law or fact, [~~\$100~~] **\$108**.

(3) In addition to the amounts provided for in subsection (2) of this section, in any civil action or proceeding in a circuit court in which recovery of money or damages is sought, the court may award to the prevailing party up to an additional \$5,000 as a prevailing party fee. The court shall consider the following factors in making an award under the provisions of this subsection:

(a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.

- (b) The objective reasonableness of the claims and defenses asserted by the parties.
  - (c) The extent to which an award of a larger prevailing party fee in the case would deter others from asserting good faith claims or defenses in similar cases.
  - (d) The extent to which an award of a larger prevailing party fee in the case would deter others from asserting meritless claims and defenses.
  - (e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.
  - (f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.
  - (g) Any award of attorney fees made to the prevailing party as part of the judgment.
  - (h) Such other factors as the court may consider appropriate under the circumstances of the case.
- (4) Nonprevailing parties are jointly liable for the prevailing party fees provided for in this section. A court may not award more than one prevailing party fee to a prevailing party under this section, or more than one prevailing party fee against a nonprevailing party regardless of the number of parties in the action, and, upon being paid the amount of the award, the prevailing party may not seek recovery of any additional amounts under the provisions of this section from any other nonprevailing party.
- (5) In any appeal from the award or denial of a prevailing party fee under subsection (2) of this section, the court reviewing the award may not modify the decision of the court in making or denying an award, or the decision of the court as to the amount of the award, except upon a finding of an abuse of discretion.
- (6) The prevailing party fees provided for in this section may not be awarded in the following proceedings:
- (a) A class action proceeding under ORCP 32.
  - (b) A condemnation proceeding.
  - (c) Proceedings under the provisions of ORS chapters 25, 107, 108, 109 and 110.
  - (7) Mandatory arbitration under ORS 36.400 to 36.425 does not constitute a trial of an issue of law or fact for the purposes of this section.

**SECTION 170b. The amendments to ORS 20.190 by section 170a of this 2011 Act apply only to actions commenced on or after the effective date of this 2011 Act.**

#### **JOINT COMMITTEE ON STATE COURTS REVENUE STRUCTURE**

**SECTION 171. (1) There is created a Joint Committee on State Courts Revenue Structure, consisting of three members of the Senate appointed by the President of the Senate and three members of the House of Representatives appointed by the Speaker of the House of Representatives. The Chief Justice of the Supreme Court, the Oregon State Bar Association, the League of Oregon Cities and the Association of Oregon Counties shall each designate a nonvoting liaison to the committee.**

**(2) The committee shall conduct a review of all state court fees and fines. In conducting this review, the committee shall consider the following principles:**

- (a) Fee and fine amounts should be transparent and easy to access and administer.**
- (b) Fee and fine amounts should be equitable and fair.**
- (c) The court fee structure should not adversely impact access to justice.**
- (d) The court fee structure should not adversely affect judicial authority to waive or defer fees or to establish a payment plan for litigants.**
- (e) The statutory fee structure and fee amounts should be uniform across this state.**
- (f) All state court revenue sources should be easily identifiable and reflected in statute.**
- (g) The court fee structure should generate biennial revenue commensurate with the end-of-session revenue forecast.**
- (h) Fees and fines should be a fixed dollar amount.**

- (i) Surcharges and assessments should not be imposed on fees or fines.
- (j) Fines for violations should be uniform in state courts, justice courts and municipal court.
- (k) Revenues from fees and fines should not be dedicated.
- (3) In conducting the review required by subsection (2) of this section and making recommendations relating to the court fee structure, the committee shall give due consideration to the fairness of those fees and the financial burdens placed on the parties who are ultimately responsible for the payment of the fees.
- (4) The committee shall identify statutes and court practices that are not in conformity with the principles listed in subsection (2) of this section.
- (5) The committee shall monitor all legislation passed by the Seventy-sixth Legislative Assembly relating to court fees and fines, and evaluate the effect of the exercise of judicial discretion on revenues generated by fines.
- (6) The committee shall study funding of court security, court facilities and county law libraries, and make recommendations on the manner in which court security, court facilities and county law libraries should be funded.
- (7) The committee shall issue a report not later than January 1, 2013. The report must describe statutes and court practices identified by the committee as failing to conform with the principles listed in subsection (2) of this section, and recommend statutory and other changes. A copy of the report shall be delivered to the House Committee on Judiciary, the Senate Committee on Judiciary and the Joint Committee on Ways and Means.
- (8) A majority of the members of the Joint Committee on State Courts Revenue Structure constitutes a quorum for the transaction of business.
- (9) Official action by the committee requires the approval of a majority of the members of the committee.
- (10) The President of the Senate shall designate one of the members appointed by the President to serve as cochair of the committee. The Speaker of the House of Representatives shall designate one of the members appointed by the Speaker to serve as cochair of the committee.
- (11) If there is a vacancy for any cause, the appointing authority shall make an appointment. The appointment becomes effective immediately.
- (12) The committee shall meet at times and places specified by the call of a cochair or of a majority of the members of the committee.
- (13) The committee may adopt rules necessary for the operation of the committee.
- (14) The Legislative Administrator, the Legislative Fiscal Office and the Legislative Revenue Office shall provide administrative support to the committee.
- (15) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the committee consider necessary to perform their duties.

**SECTION 172.** Section 171 of this 2011 Act is repealed on the date of the convening of the 2013 regular session of the Legislative Assembly as specified in ORS 171.010.

#### **ELIMINATION OF COLLECTIONS AND REVENUE MANAGEMENT PROGRAM**

**SECTION 173.** ORS 1.204 is repealed.

**SECTION 174.** Any funds in the Judicial Department Collections Account on the effective date of this 2011 Act shall be transferred by the State Treasurer to the General Fund.

#### **OPERATIVE DATES**

**SECTION 175.** Sections 3, 4, 5, 6, 7a, 8, 9, 11 to 16a, 19, 21, 23 to 28, 31, 38, 40, 45, 54, 56, 58, 61, 63, 65, 67, 70, 71, 72, 74, 76, 77, 80, 82, 84, 86, 88, 90, 93, 96, 97b, 107a, 116, 121, 123, 126, 128, 132, 134 and 160 of this 2011 Act, the amendments to ORS 1.202, 2.560, 8.125, 9.820, 18.999, 21.010, 21.125, 21.270, 21.615, 24.115, 24.135, 24.190, 34.340, 36.520, 36.522, 36.524, 36.610, 36.615, 46.405, 46.425, 46.455, 46.461, 46.465, 46.475, 46.488, 46.570, 51.080, 51.310, 52.635, 55.011, 55.095, 105.130, 105.938, 106.120, 107.434, 107.795, 109.100, 109.787, 110.426, 112.820, 114.515, 114.720, 125.060, 125.075, 125.605, 125.842, 125.845, 130.045, 130.355, 130.400, 133.055, 135.265, 137.225, 138.560, 166.274, 181.823, 181.826, 182.040, 205.360, 305.490, 417.825, 419B.529, 419B.555 and 701.133 and sections 13 and 32, chapter 659, Oregon Laws 2009, by sections 18, 22, 29, 30, 32 to 37, 39, 41 to 44, 46 to 53b, 55, 57, 59, 60, 62, 64, 66, 73, 75, 79, 81a, 83a, 85, 87, 89, 92a, 94, 95, 101, 105, 106, 109, 111, 115, 117 to 120, 122, 124, 125, 127, 129, 130, 131, 133, 135, 136, 137 and 159 of this 2011 Act and the repeal of ORS 9.574, 9.830, 9.840, 9.850, 21.040, 21.111, 21.112, 21.114, 21.275, 21.310, 21.325, 21.335, 21.350, 21.420, 21.580, 21.660, 21.670, 21.730, 21.990 and 108.130 by sections 10, 17, 20, 68, 69, 78, 97a, 104, 108 and 114 of this 2011 Act become operative October 1, 2011.

### CONFLICT AMENDMENTS

**SECTION 176.** Section 1, chapter 224, Oregon Laws 2011 (Enrolled House Bill 2367), is amended to read:

**Sec. 1.** *[If the county governing body has passed a resolution under ORS 9.840 providing for the operation of a law library or the provision of law library services, the county governing body may enter into a contract with a law library association or other organization for the operation of the law library or provision of law library services. A county governing body entering into a contract under this section may use fees collected and paid to the county under ORS 9.840 to pay all amounts agreed to under the contract.]*

**(1) Each county shall:**

**(a) Operate a free law library at a location that is convenient and available at reasonable hours; or**

**(b) Provide free law library services at one or more locations that are convenient and available at reasonable hours.**

**(2) A county governing body may enter into a contract with a law library association or other organization for the operation of the law library, or the provision of law library services, required by this section.**

**SECTION 177.** If Senate Bill 408 becomes law, section 3, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408) (amending ORS 181.823), is repealed and ORS 181.823, as amended by section 94 of this 2011 Act, is amended to read:

181.823. [(1)(a)] **(1)** *[No sooner than two years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction over a person required to report under ORS 181.595, 181.596 or 181.597, the person may file a petition for relief from the duty to report. The person must file the petition]* **A person required to report as a sex offender under section 1 (1)(a), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), may file a petition for an order relieving the person of the duty to report. The person must pay the filing fee established under section 8 of this 2011 Act. If the person resides:**

**(a) In this state and is required to report under section 1 (2) or (3), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), the petition must be filed in the juvenile court in which the person was adjudicated for the act that requires reporting. *[The person must pay the filing fee established under section 8 of this 2011 Act.]***

**(b) In another state and is required to report under section 1 (4), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), the petition must be filed in the juvenile court in the county in which the person attends school or works.**

(2) If the act giving rise to the obligation to report would constitute:

(a) A Class A or Class B felony sex crime if committed by an adult, the petition may be filed no sooner than two years after the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than two years after the person is discharged from the jurisdiction of the board.

(b) A Class C felony sex crime if committed by an adult, the petition may be filed no sooner than 30 days before the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than 30 days before the person is discharged from the jurisdiction of the board.

[(b)] (3)(a) The juvenile court in which a petition under this section is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim and witnesses require the transfer.

[(c)] (b) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

[(d)] (c) The person, the district attorney and the juvenile department are parties to a hearing on a petition filed under this section.

[(2) When a person files a petition under this section and the petition was filed:]

[(a) No later than three years after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the state has the burden of proving by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public.]

[(b) More than three years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction,]

(4) The person **filing the petition** has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.

[(3)] In determining whether [*the state or*] the person has met the burden of proof [*established in subsection (2) of this section*], the juvenile court may consider but need not be limited to considering:

- (a) The extent and impact of any physical or emotional injury to the victim;
  - (b) The nature of the act that subjected the person to the duty of reporting as a sex offender;
  - (c) Whether the person used or threatened to use force in committing the act;
  - (d) Whether the act was premeditated;
  - (e) Whether the person took advantage of a position of authority or trust in committing the act;
  - (f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;
  - (g) The vulnerability of the victim;
  - (h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;
  - (i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;
  - (j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;
  - (k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;
  - (L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:
    - (A) The availability, duration and extent of the treatment activities;
    - (B) Reports and recommendations from the providers of the treatment;
    - (C) The person's compliance with court, board or supervision requirements regarding treatment;
- and
- (D) The quality and thoroughness of the treatment program;

- (m) The person's academic and employment history;
- (n) The person's use of drugs or alcohol before and after the adjudication;
- (o) The person's history of public or private indecency;
- (p) The person's compliance with and success in completing the terms of supervision;
- (q) The results of psychological examinations of the person;
- (r) The protection afforded the public by the continued existence of the records; and
- (s) Any other relevant factors.

[(4)] (5) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

[(5)] (6) When a petition is filed under this section, the state has the right to have a psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court of its intention to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile court for good cause shown may direct the state to select a different evaluator.

[(6)] (7) As soon as practicable after a petition has been filed under this section, the district attorney or juvenile department shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section and, if the victim has requested, to inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.

[(7)(a)] (8)(a) [*When a petition has been filed under this section and the petition was*] **When a petition filed under this section is filed:**

(A) [*No later than three years after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction,*] **While the person is under the jurisdiction of the juvenile court or the Psychiatric Security Review Board or less than three years after the date the jurisdiction is terminated,** the court shall hold a hearing [*on the petition*] no sooner than 60 days and no later than 120 days after the date of filing.

(B) [*More than three years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction,*] **Three years or more after the date the juvenile court or board jurisdiction is terminated,** the court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

(b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court may extend the period of time in which a hearing on the petition must be held.

[(8)] (9)(a) [*When the state has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public, the court shall deny the petition. When the person has the burden of proof under subsection (2) of this section and*] **When the person** proves by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant the petition.

**(b) Notwithstanding paragraph (a) of this subsection, the court may not grant a petition filed under this section before the date the juvenile court or board jurisdiction over the person is terminated.**

[(9)] (10) When a juvenile court enters an order relieving a person of the requirement to report under [*ORS 181.595, 181.596 or 181.597*] **section 1, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408),** the person shall send a certified copy of the juvenile court order to the Department of State Police.

[(10)] (11) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may stipulate that the person may not petition for relief under this section as part of an agreement

that the person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707.

**(12) When a petition is filed under subsection (2)(b) of this section before the termination of juvenile court or board jurisdiction, if the person, or the parent or guardian of the person if the person is less than 18 years of age, requests counsel and is without sufficient financial means to employ suitable counsel to represent the person, for purposes of the petition described in this section, the court shall appoint suitable counsel to represent the person. Appointment of counsel under this subsection is subject to ORS 419C.200, 419C.203, 419C.206 and 419C.209.**

**SECTION 178. If Senate Bill 408 becomes law, section 4, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408) (amending ORS 181.826), is repealed and ORS 181.826, as amended by section 95 of this 2011 Act, is amended to read:**

181.826. (1) Except as provided in subsection [(6)] (7) of this section, [*when a person is required to report under ORS 181.595, 181.596 or 181.597 as a result of having been found in a juvenile adjudication in another United States court to have committed an act while the person was under 18 years of age that would constitute a sex crime if committed in this state by an adult, the person may file a petition in the circuit court of the county in which the person resides for*] **a person required to report under section 1 (1)(b), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), may file a petition in the juvenile court for an order relieving the person of the duty to report. [The person must pay the filing fee established under section 8 of this 2011 Act. A petition may be filed under this section only if:] The person must pay the filing fee established under section 8 of this 2011 Act. If the person resides:**

(a) [*The person has been registered as a sex offender in this state for at least two years;*] **In this state and is required to report under section 1 (2) or (3), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), the petition must be filed in the juvenile court of the county in which the person resides.**

(b) [*At least two years, but not more than five years, have elapsed since the termination of supervision on probation or parole; and*] **In another state and is required to report under section 1 (4), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), the petition must be filed in the juvenile court of the county in which the person attends school or works.**

**(2) If the act giving rise to the obligation to report would constitute:**

(a) **A Class A or Class B felony sex crime if committed in this state by an adult, the petition may be filed no sooner than two years after the termination of the other United States court's jurisdiction over the person.**

(b) **A Class C felony sex crime if committed in this state by an adult, the petition may be filed no sooner than 30 days before the termination of the other United States court's jurisdiction over the person.**

[(c)] **(3) The person [submits] filing the petition must submit with the petition all releases and waivers necessary to allow the district attorney for the county in which the petition is filed to obtain the following documents from the jurisdiction in which the person was adjudicated for the act for which reporting is required:**

[(A)] **(a) The juvenile court petition;**

[(B)] **(b) The dispositional report to the court;**

[(C)] **(c) The order of adjudication or jurisdiction;**

[(D)] **(d) Any other relevant court documents;**

[(E)] **(e) The police report relating to the act for which reporting is required;**

[(F)] **(f) The order terminating jurisdiction for the act for which reporting is required; and**

[(G)] **(g) The evaluation and treatment records or reports of the person that are related to the act for which reporting is required.**

[(2)] **(4) A person filing a petition under this section has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.**

[3] (5) Unless the court finds good cause for a continuance, the court shall hold a hearing on the petition no sooner than 90 days and no later than 150 days after the date the petition is filed.

[4] *Notwithstanding subsection (1)(b) of this section, if a person has not been registered as a sex offender in this state for two years until more than five years have elapsed since the termination of supervision on probation or parole, the person may file a petition seeking relief under this section if the person files the petition no later than 90 days after the date on which the person has been registered as a sex offender in this state for two years.*

[5] (6) If a person who files a petition under this section is required to report as a sex offender for having committed an act that if committed in this state could have subjected the person to prosecution as an adult under ORS 137.707, the court may not grant the petition notwithstanding the fact that the person has met the burden of proof established in subsection [(2)] (4) of this section unless the court determines that to do so is in the interest of public safety.

[6] (7) This section does not apply to a person who is required to register as a sex offender for life in the jurisdiction in which the offense occurred.

[7] (8) In a hearing under this section, the court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

[8] (9) If the court is satisfied by clear and convincing evidence that the person is rehabilitated and that the person does not pose a threat to the safety of the public, the court shall enter an order relieving the person of the duty to report. When the court enters an order under this subsection, the person shall send a certified copy of the court order to the Department of State Police.

**SECTION 179.** If Senate Bill 68 and House Bill 3204 do not become law, section 27, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), is amended to read:

**Sec. 27.** (1) Sections 1 and 2 [*of this 2011 Act*], **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, and the amendments to ORS 93.275, 181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections [3, 4 and] 7 to 24 [*of this 2011 Act*], **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, and **sections 177 and 178 of this 2011 Act** become operative on January 1, 2012.

(2) Sections 1 and 2 [*of this 2011 Act*], **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, and the amendments to ORS 21.110, 93.275, 181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections [3] 5 to 24 [*of this 2011 Act*], **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, and **sections 177 and 178 of this 2011 Act** apply to persons adjudicated before, on or after [*the effective date of this 2011 Act*] **June 7, 2011**.

(3) A person who is adjudicated before January 1, 2012, and, but for the amendments to ORS 181.595, 181.596 and 181.597 by sections 11, 12 and 13, **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, would be required to make an initial report as a sex offender on or after January 1, 2012, shall make an initial report that complies with section 1 (6) [*of this 2011 Act*], **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, no later than the date described in section 1 (2) [*of this 2011 Act*], **chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)**, as applicable.

**SECTION 180.** If Senate Bill 68 becomes law and House Bill 3204 does not become law, section 27, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), as amended by section 36b, chapter \_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 68), is amended to read:

**Sec. 27.** (1) Sections 1 and 2, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), and the amendments to ORS 93.275, 181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections [3, 4,] 7 to 11 and 13 to 24, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), [*and*] section 36a [*of this 2011 Act*], **chapter \_\_\_, Oregon Laws 2011 (Enrolled Senate Bill 68)**, and **sections 177 and 178 of this 2011 Act** become operative on January 1, 2012.



(2) Sections 1 and 2, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), and the amendments to ORS 21.110, 93.275, 181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections [3] 5 to 11 and 13 to 24, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), [and] section 36a [of this 2011 Act], **chapter \_\_, Oregon Laws 2011 (Enrolled Senate Bill 68), and sections 177 and 178 of this 2011 Act** apply to persons adjudicated before, on or after [the effective date of chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)] **June 7, 2011**.

(3) A person who is adjudicated before January 1, 2012, and, but for the amendments to ORS 181.595, 181.596 and 181.597 by sections 11 and 13, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), and section 36a [of this 2011 Act], **chapter \_\_, Oregon Laws 2011 (Enrolled Senate Bill 68)**, would be required to make an initial report as a sex offender on or after January 1, 2012, shall make an initial report that complies with section 1 (6), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), no later than the date described in section 1 (2), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), as applicable.

**SECTION 181.** If Senate Bill 68 does not become law and House Bill 3204 becomes law, section 27, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), as amended by section 9, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3204), is amended to read:

**Sec. 27.** (1) Sections 1 and 2, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), and the amendments to ORS 93.275, 181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections [3, 4] 7 to 10, 13, 14 and 16 to 24, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), [and] sections 6 to 8 [of this 2011 Act], **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3204), and sections 177 and 178 of this 2011 Act** become operative on January 1, 2012.

(2) Sections 1 and 2, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), and the amendments to ORS 21.110, 93.275, 181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections [3] 5 to 10, 13, 14 and 16 to 24, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), [and] sections 6 to 8 [of this 2011 Act], **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3204), and sections 177 and 178 of this 2011 Act** apply to persons adjudicated before, on or after [the effective date of chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408)] **June 7, 2011**.

(3) A person who is adjudicated before January 1, 2012, and, but for the amendments to ORS 181.595, 181.596 and 181.597 by section 13, chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), and sections 6 and 7 [of this 2011 Act], **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3204)**, would be required to make an initial report as a sex offender on or after January 1, 2012, shall make an initial report that complies with section 1 (6), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), no later than the date described in section 1 (2), chapter 271, Oregon Laws 2011 (Enrolled Senate Bill 408), as applicable.

**SECTION 182.** If House Bill 3075 becomes law and House Bill 2104 does not become law, section 4, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3075) (amending ORS 813.240), is repealed.

**SECTION 183.** If House Bill 3075 becomes law and House Bill 2104 does not become law, section 5, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3075), is amended to read:

**Sec. 5.** The amendments to ORS 813.030[ 813.240] and 813.602 by sections 2 [to 4 of this 2011 Act] and 3, **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3075)**, apply to offenses that occur on or after the effective date of [this 2011 Act] **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 3075)**.

**SECTION 184.** If House Bill 3075 does not become law and House Bill 2104 becomes law, section 2, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104) (amending ORS 813.240), is repealed.

**SECTION 185.** If House Bill 3075 does not become law and House Bill 2104 becomes law, section 3, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104), is amended to read:

**Sec. 3.** The amendments to ORS 813.030 [*and 813.240 by sections 1 and 2 of this 2011 Act*] by **section 1, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104)**, apply to persons convicted of driving while under the influence of intoxicants on or after the effective date of [*this 2011 Act*] **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104)**, and to persons who file a petition for a driving while under the influence of intoxicants diversion agreement on or after the effective date of [*this 2011 Act*] **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104)**.

**SECTION 186.** If both House Bill 3075 and House Bill 2104 become law, sections 2 and 5, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104) (both amending ORS 813.240), are repealed and ORS 813.240, as amended by section 167 of this 2011 Act, is amended to read:

813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 is [~~\$363~~] **\$386**. A fee collected under this subsection in the circuit court shall be deposited by the clerk of the court in the Criminal Fine and Assessment Account. If the fee is collected in a municipal or justice court, \$163 of the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine and Assessment Account, and the remainder of the fee shall be paid to the city or county treasurer.

(2) If less than the full filing fee is collected under subsection (1) of this section in a municipal or justice court, the money received shall be allocated first to the Department of Revenue for deposit in the Criminal Fine and Assessment Account.

(3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.

**SECTION 187.** If both House Bill 3075 and House Bill 2104 become law, section 3, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104), as amended by section 6, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104), is amended to read:

**Sec. 3.** The amendments to ORS 813.030 and 813.240 by [*sections 4 and 5 of this 2011 Act*] **section 4, chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104), and section 186 of this 2011 Act** apply to persons convicted of driving while under the influence of intoxicants on or after the effective date of [*this 2011 Act*] **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104)**, and to persons who file a petition for a driving while under the influence of intoxicants diversion agreement on or after the effective date of [*this 2011 Act*] **chapter \_\_, Oregon Laws 2011 (Enrolled House Bill 2104)**.

#### CAPTIONS

**SECTION 188.** The unit and section captions used in this 2011 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 2011 Act.

#### EMERGENCY CLAUSE

**SECTION 189.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on July 1, 2011.

**Passed by House June 28, 2011**

**Repassed by House June 30, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate June 29, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State