

# Enrolled Senate Bill 51

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CHAPTER .....

AN ACT

Relating to state court administration; creating new provisions; amending ORS 1.003, 1.810, 1.830, 5.060, 8.420, 8.435, 8.445, 8.455, 107.095, 133.120, 133.545 and 137.547; repealing ORS 3.238; and declaring an emergency.

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

## CONSOLIDATION OF PROBATION VIOLATION PROCEEDINGS

**SECTION 1.** ORS 137.547 is amended to read:

137.547. (1) Notwithstanding any other provision of law, the Chief Justice of the Supreme Court may make rules or issue orders under ORS 1.002 to establish procedures for the consolidation of probation violation proceedings pending against a probationer in multiple circuit courts.

(2) Rules made or orders issued under this section:

*[(a) Shall provide that if a probationer is alleged to have violated the conditions of a sentence of probation in more than one court, an initiating court may consider consolidation of some or all pending probation violation proceedings before one or more appropriate courts:]*

*[(A) Upon the motion of the district attorney or the defense counsel in the county in which the probationer is in custody or otherwise before the court; or]*

*[(B) Upon the court's own motion.]*

*[(b) May determine which courts are appropriate courts for the consolidation of probation violation proceedings in described circumstances or establish a process for determining an appropriate court.]*

*[(c) (a) Shall require the consent of the probationer to a consolidated probation violation proceeding and written waivers by the probationer as determined necessary or fair.*

*[(d) (b) Shall require the approval of the judge of any responding court, the initiating court and any appropriate court being considered for a consolidated probation violation proceeding.*

*[(e) (c) Shall require the approval of the district attorney of the county for any responding court, the initiating court and any court being considered as an appropriate court.*

*[(f) May provide for the recall of warrants in any court other than the appropriate court as convenient to accomplish the purposes of this section.]*

*[(g) May provide for the transmission of copies of such papers, records or other information to or from courts, district attorneys and parole and probation officers as is necessary, appropriate or convenient for a consolidated probation violation proceeding under this section.]*

*[(h) May provide any processes necessary, appropriate or convenient for the proceeding before the appropriate court and for the appropriate court to make a disposition of the cases that are consolidated in a proceeding under this section.]*

*[(i) May include any rules or orders establishing other procedures necessary, appropriate or convenient for the fair and expeditious resolution of consolidated probation violation proceedings under this section.]*

*[(3) When an appropriate court transmits the judgment it enters for a consolidated probation violation proceeding under this section to the initiating court, if different from the appropriate court, and to a responding court for filing, thereafter that judgment is for all purposes the same as a judgment of the court of the initiating or responding county with regard to the matters on which that judgment makes determination and disposition.]*

*[(4) As used in this section:]*

*[(a) "Appropriate court" means the court most appropriate to hold a consolidated probation violation proceeding under this section given the totality of the circumstances involving the alleged probation violations and multiple jurisdiction proceedings. The circumstances include, but are not limited to:]*

*[(A) The location, residence or work location of the probationer;]*

*[(B) The location of the probationer's parole and probation officer;]*

*[(C) The location of any witnesses or victims of the alleged violations or of any alleged new offenses with which the probationer is charged;]*

*[(D) The location of any victims of the offense for which the probationer was sentenced to probation;]*

*[(E) The nature and location of previous offenses for which the probationer is serving a sentence;]*

*[(F) The nature of any new offenses with which the probationer is charged;]*

*[(G) The resources of local jails;]*

*[(H) The nature and location of any services that may be appropriate as a consequence of the alleged violation or new charges;]*

*[(I) Whether the judge who imposed the original sentence provided in the original judgment direction to return any probation violation proceedings to that judge; and]*

*[(J) The interests of local courts and district attorneys concerning the probationer and any disposition that a court may impose concerning the probationer.]*

*[(b) "Initiating court" means the court in which a probationer is in custody or otherwise before the court.]*

*[(c) "Responding court" means a court other than an initiating court or appropriate court that entered a judgment under which the probationer is currently serving a sentence of probation and which court consents to the consolidation of probation violation proceedings in an appropriate court under this section.]*

## **INTERIM PRESIDING JUDGE**

**SECTION 2.** ORS 1.003 is amended to read:

1.003. (1) The Chief Justice of the Supreme Court shall appoint after conferring with and seeking the advice of the Supreme Court, and may remove at pleasure:

(a) The Chief Judge of the Court of Appeals.

(b) The presiding judge for each judicial district.

(2) Except as provided in subsection (3) of this section, the term of office of the Chief Judge or presiding judge is two years, commencing on January 1 of each even-numbered year. A judge is eligible for reappointment as Chief Judge or presiding judge.

(3) If there is a vacancy for any cause in the office of Chief Judge or presiding judge:

(a) When the vacancy occurs after January 1 of an even-numbered year and before July 1 of the following odd-numbered year, the Chief Justice shall make an appointment for a term expiring December 31 of that odd-numbered year.

(b) When the vacancy occurs after June 30 of an odd-numbered year and before January 1 of the following even-numbered year, the Chief Justice shall make an appointment for a term expiring December 31 of the odd-numbered year following that even-numbered year.

(c) The Chief Justice *[shall]* **may** designate a judge of the Court *[concerned]* **of Appeals to serve as acting Chief Judge** *[or acting presiding judge to serve]* until an appointment is made as provided in this section. **The Chief Justice may designate any circuit court judge to serve as acting presiding judge until an appointment is made as provided in this section.**

(4) Before appointing a Chief Judge or presiding judge the Chief Justice shall confer with and seek the advice of the judges of the courts concerned in respect to the appointment.

(5) The Chief Justice shall give written notice of the judge appointed as Chief Judge or presiding judge to each judge of the court concerned not later than 10 days before the effective date of the appointment. A majority of the judges of the courts concerned may disapprove the appointment by a written resolution signed by each judge disapproving the appointment and submitted to the Chief Justice before the effective date of the appointment. If the appointment is so disapproved, the Chief Justice shall appoint another judge as Chief Judge or presiding judge, and shall notify each judge of the courts concerned as provided in this subsection. If the courts concerned have five or more judges, a second appointment is subject to disapproval, as provided in this subsection, by a majority of the judges of the courts concerned. A third appointment is not subject to disapproval under this subsection.

### **PRIMA FACIE CASES IN DIVORCE PROCEEDINGS**

**SECTION 3.** ORS 107.095 is amended to read:

107.095. (1) After the commencement of a suit for marital annulment, dissolution or separation and until a general judgment therein, the court may provide as follows:

(a) That a party pay to the other party such amount of money as may be necessary to enable the other party to prosecute or defend the suit, including costs of expert witnesses, and also such amount of money to the other party as may be necessary to support and maintain the other party.

(b) For the care, custody, support and maintenance, by one party or jointly, of the minor children as described in ORS 107.105 (1)(a) and for the parenting time rights as described in ORS 107.105 (1)(b) of the parent not having custody of such children.

(c) For the restraint of a party from molesting or interfering in any manner with the other party or the minor children.

(d) That if minor children reside in the family home and the court considers it necessary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.

(e) Restraining and enjoining either party or both from encumbering or disposing of any of the real or personal property of either or both of the parties, except as ordered by the court.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of installment liens and encumbrances thereon.

(g) That even if no minor children reside in the family home, the court may require one party to move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.

(2) A limited judgment under ORS chapter 18 may be entered in an action for dissolution or annulment of a marriage providing for a support award, as defined by ORS 18.005, or other money award, as defined by ORS 18.005. Notwithstanding ORS 19.255, a limited judgment entered under this

subsection may not be appealed. Any decision of the court in a limited judgment subject to this subsection may be appealed as otherwise provided by law upon entry of a general judgment.

(3) The court shall not require an undertaking in case of the issuance of an order under subsection (1)(c), (d), (e), (f) or (g) of this section.

(4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are copetitioners or the respondent is found by the court to be in default or the respondent having appeared has waived further appearance or the parties stipulate to the entry of a judgment, the court may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a judgment of annulment or dissolution or for separation based upon a current affidavit of the petitioner or copetitioners, setting forth a prima facie case, and covering such additional matters as the court may require. If [*child support or*] custody of minor children is involved, then the affidavit **must** also [*shall*] include[.]

[*(a) The gross monthly income of each party, to the best of the affiant's knowledge; and*]

[*(b) the name of the party with whom the children currently reside and the length of time they have so resided.*]

(5) When a court orders relief under subsection (1)(c) or (d) of this section, the court may include in its order an expiration date for the order to allow entry of the order into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice as provided in ORS 107.720. If the person being restrained was provided notice and an opportunity to be heard, the court shall also include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) or (g)(8) to affect the person's ability to possess firearms and ammunition or engage in activities involving firearms.

## SHORTHAND REPORTERS

**SECTION 4.** ORS 8.420 is amended to read:

8.420. (1) The State Court Administrator shall verify the qualifications of shorthand reporters to be certified and shall issue the certificate of shorthand reporter to qualified applicants.

(2) The administrator shall adopt policies necessary to administer ORS 8.415 to 8.455 and may appoint any committees necessary to function in accordance with ORS 8.415 to 8.455.

(3) The administrator shall:

(a) Adopt policies establishing the qualifications necessary for the issuance of a certificate of certified shorthand reporter;

(b) Determine the qualifications of persons applying for certificates under ORS 8.415 to 8.455;

(c) Adopt policies for the examination of applicants and the issuing of certificates under ORS 8.415 to 8.455;

(d) Grant certificates to qualified applicants upon compliance with ORS 8.415 to 8.455 and policies of the administrator;

(e) Establish continuing education requirements for [*biennial*] renewal of certificates;

(f) Collect fees as set by the administrator;

(g) Require the [*biennial*] **regular** renewal of all certificates;

(h) Establish a code of conduct and grounds for disciplinary action; and

(i) Investigate complaints regarding court reporters.

(4) The Certified Shorthand Reporters Advisory Committee shall recommend:

(a) Standards establishing the qualifications necessary for the issuance of a certificate of certified shorthand reporter;

(b) Qualifications required of persons applying for certificates under ORS 8.415 to 8.455;

(c) Procedures for the examination of applicants and the issuing of certificates under ORS 8.415 to 8.455;

(d) Certificates be granted by the administrator to qualified applicants upon compliance with ORS 8.415 to 8.455 and policies of the administrator;

(e) Continuing education requirements for [*biennial*] renewal of certificates;

(f) A code of conduct and grounds for suspension or revocation of certificates or other disciplinary action to the administrator;

(g) Investigation of complaints regarding court reporters at the direction of the administrator; and

(h) Any corrective action that may be required.

**SECTION 5.** ORS 8.435 is amended to read:

8.435. (1) The certificate of certified shorthand reporter shall be granted to any person who meets the requirements of ORS 8.415 to 8.455 and policies of the State Court Administrator.

(2) Any person who has received from the administrator a certificate of “certified shorthand reporter” shall be styled and known as a “certified shorthand reporter” and may also use the abbreviation of “C.S.R.”

(3) A certificate shall be renewed [*biennially*] **regularly** as provided by policies of the administrator.

(4) Certificates issued by the administrator may be renewed [*biennially*] upon payment of the fee established under ORS 8.445, completion of established continuing education requirements and compliance with the code of conduct policy as established by the administrator.

(5) A person may not assume or use the title or designation “certified shorthand reporter” or the abbreviation “C.S.R.” or any other title, designation, words, letters, abbreviation, sign or device tending to indicate that the person is a certified shorthand reporter unless the person has received a certificate as a certified shorthand reporter under ORS 8.415 to 8.455 and policies of the administrator that is not revoked, suspended or lapsed.

**SECTION 6.** ORS 8.445 is amended to read:

8.445. [*(1) The State Court Administrator shall establish a fee schedule for fees authorized by ORS 8.415 to 8.455, as follows:*]

[*(a) Not to exceed \$100 for initial registration.*]

[*(b) Not to exceed \$100 for biennial renewal.*]

[*(c) Not to exceed \$100 for the examination.*]

**(1) The State Court Administrator shall establish and collect reasonable fees for applications, examinations, certifications and renewals of certification authorized by ORS 8.415 to 8.455.**

(2) Fees **collected under this section** are nonrefundable.

(3) [*Subject to a report to the Emergency Board prior to adopting the fees and charges,*] The fees [*and charges*] established under this section [*shall*] **may** not exceed the cost of administering and enforcing ORS 8.415 to 8.455[*, consistent with the budget authorized by the Legislative Assembly, as that budget may be modified by the Emergency Board*].

**SECTION 7.** ORS 8.455 is amended to read:

8.455. (1) There is created a Certified Shorthand Reporters Advisory Committee consisting of seven members appointed by the State Court Administrator as follows:

(a) Four members of the advisory committee shall be persons skilled in the practice of shorthand reporting and shall have been engaged continuously in the practice of shorthand reporting for a period of not less than five years prior to the date of appointment as a member of the advisory committee. Appointees shall be certified under ORS 8.415 to 8.455. [*Of the shorthand reporter members, two shall be official reporters and two shall be free-lance reporters;*]

(b) Two members of the advisory committee shall be members of the Oregon State Bar[*; and*].

(c) One member of the advisory committee shall be a public member and not be a reporter or a member of the Oregon State Bar or related thereto. The public member is entitled to compensation and expenses as provided in ORS 292.495.

(2) The term of a member of the advisory committee shall be three years. A member is eligible for reappointment to the advisory committee. Vacancies occurring shall be filled by appointment for the unexpired term.

(3) The advisory committee shall organize by the election of one of its members as president and one as secretary.

(4) A majority of the advisory committee shall constitute a quorum for all purposes.

## JUDICIAL CONFERENCE OF THE STATE OF OREGON

**SECTION 8.** ORS 1.810 is amended to read:

1.810. There hereby is created and established a Judicial Conference of the State of Oregon. The conference shall consist of all the judges of the Supreme Court, the Court of Appeals, the Oregon Tax Court and the circuit courts and all senior judges certified under ORS 1.300. The Chief Justice **of the Supreme Court** shall be chairperson of the conference and shall have power to invite any persons not members of the conference to attend the meetings of the conference and consult with it in the performance of its duties. The State Court Administrator shall act as executive secretary of the conference. [*Each member of the conference, the State Court Administrator, and each person invited by the Chief Justice, is entitled to reimbursement for hotel bills and traveling expenses necessarily incurred in the performance of duties relating to the Judicial Conference of the State of Oregon.*]

**SECTION 9.** ORS 1.830 is amended to read:

1.830. The **Judicial Conference of the State of Oregon** shall meet [*at such time as shall be designated by its chairperson, not less than once*] annually **or at such other times as the Chief Justice of the Supreme Court directs.**

## SEARCH AND ARREST WARRANTS

**SECTION 10.** ORS 133.120 is amended to read:

133.120. (1) A judge of the Supreme Court or the Court of Appeals may issue a warrant of arrest for any crime committed or triable within the state, and any other magistrate mentioned in ORS 133.030 may issue a warrant for any crime committed or triable within the territorial jurisdiction of the magistrate's court.

(2) **Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant to ORS 1.615 to serve as a judge pro tempore in a circuit court may issue a warrant of arrest for a crime committed or triable within the territorial jurisdiction of any circuit court in which the judge serves as judge pro tempore if the request for the warrant includes an affidavit showing that a regularly elected or appointed circuit court judge for the judicial district is not available, whether by reason of conflict of interest or other reason, to issue the warrant within a reasonable time.**

**SECTION 11.** ORS 133.545 is amended to read:

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

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

(3) **Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant to ORS 1.615 to serve as a judge pro tempore in a circuit court may authorize execution of a search warrant in any judicial district in which the judge serves as judge pro**

**tempore if the application requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit court judge for the judicial district is not available, whether by reason of conflict of interest or other reason, to issue the warrant within a reasonable time.**

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

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

[5] (6) Instead of the written affidavit described in subsection [(4)] (5) of this section, the judge may take an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed statement is an affidavit for the purposes of this section. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the judge receiving it and shall be retained as a part of the record of proceedings for the issuance of the warrant.

[(6)(a)] (7)(a) In addition to the procedure set out in subsection [(5)] (6) of this section, the proposed warrant and the affidavit may be sent to the court by facsimile transmission or any similar electronic transmission that delivers a complete printable image of the signed affidavit and proposed warrant. The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by telephone. A judge administering an oath telephonically under this subsection must execute a declaration that recites the manner and time of the oath's administration. The declaration must be filed with the return.

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

(A) The court may transmit the signed warrant to the person making application under subsection [(3)] (4) of this section by means of facsimile transmission or similar electronic transmission, as described in paragraph (a) of this subsection. The court shall file the original signed warrant and a printed image of the application with the return.

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

## **SPECIAL TERMS OF COURT**

**SECTION 12. ORS 3.238 is repealed.**

**SECTION 13. ORS 5.060 is amended to read:**

5.060. There shall be a term of the county court in each county for the transaction of judicial business on the first Monday of each month, and at such other times as the court in term or the judge in vacation may appoint[, *in like manner and with like effect as the circuit court or judge is authorized by ORS 3.238*]. The court shall be open at 10 a.m.

## **CAPTIONS**

**SECTION 14. The unit captions used in this 2013 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 2013 Act.**

## **EMERGENCY CLAUSE**

**SECTION 15.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

**Passed by Senate March 13, 2013**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 8, 2013**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

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Kate Brown, Secretary of State