

Enrolled
House Bill 2282

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Judicial Department)

CHAPTER

AN ACT

Relating to criminal procedure; creating new provisions; amending ORS 18.048, 133.069, 135.030, 135.355, 135.360, 135.767, 137.030, 137.040, 137.545 and 153.045; and declaring an emergency.

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

SECTION 1. ORS 133.069 is amended to read:

133.069. (1) A criminal citation issued with a form of complaint must contain:

- (a) The name of the court at which the cited person is to appear.
- (b) The name of the person cited.
- (c) A complaint containing at least the following:

(A) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(B) A statement or designation of the crime that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the crime is alleged to have been committed.

(C) A form of certificate in which the peace officer must certify that the peace officer has [reasonable] **sufficient** grounds to believe, and does believe, that the person named in the complaint committed the offense specified in the complaint. A certificate conforming to this subparagraph shall be deemed equivalent to a sworn complaint.

(d) The date on which the citation was issued, and the name of the peace officer who issued the citation.

(e) The date, time and place at which the person cited is to appear in court, and a summons to so appear.

(f) If the arrest was made by a private party, the name of the arresting person.

(2) The district attorney for the county shall review any criminal citation issued with a form of complaint that is to be filed in a circuit or justice court. The review must be done before the complaint is filed.

(3) If the complaint does not conform to the requirements of this section, the court shall set the complaint aside upon motion of the defendant made before entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.

(4) A court may amend a complaint at its discretion.

SECTION 2. ORS 153.045 is amended to read:

153.045. (1) Except as provided in subsection (5) of this section, a citation conforming to the requirements of this section must be used by enforcement officers for all violations. The citation may contain other language in addition to the language specified in this section.

(2) Uniform citation forms for violations shall be adopted by the Supreme Court under ORS 1.525. In adopting those forms, the Supreme Court may combine the requirements for violation citations under this section and the requirements for criminal citations under ORS 133.066. More than one violation may be charged on a single citation form, but a crime and a violation may not be charged on the same citation form.

(3) A violation citation shall consist of at least four parts. Additional parts may be inserted for administrative use. The required parts are:

- (a) A complaint in the form prescribed by ORS 153.048.
- (b) The abstract of court record.
- (c) The police record.
- (d) A summons in the form prescribed by ORS 153.051.

(4) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(5) The complaint shall contain a form of certificate in which the enforcement officer must certify, under the penalties provided in ORS 153.990, that the enforcement officer has [*reasonable*] **sufficient** grounds to believe, and does believe, that the person named in the complaint committed the violation specified in the complaint. A certificate conforming to this subsection shall be deemed equivalent of a sworn complaint.

SECTION 3. The use prior to the effective date of this 2005 Act of a certificate required by ORS 133.069 or 153.045 that used the term “sufficient grounds” rather than “reasonable grounds” is validated.

SECTION 4. (1) As used in this section:

- (a) **“Criminal proceeding” has the meaning given that term in ORS 131.005.**
- (b) **“Parties” means the State of Oregon and the person being prosecuted.**
- (c) **“Simultaneous electronic transmission” means television, telephone or any other form of electronic communication transmission if the form of transmission allows:**
 - (A) **The court and the person making the appearance to communicate with each other during the proceeding;**
 - (B) **A defendant who is represented by counsel to consult privately with defense counsel during the proceeding;**
 - (C) **The victim to participate in the proceeding to the same extent that the victim is entitled to participate when the person making the appearance is physically present in the court; and**
 - (D) **The public to hear and, if the transmission includes a visual image, to see the appearance if the public has a right to hear and see the appearance when the person making the appearance is physically present in the court.**

(2) **When a statute authorizes or requires a person to make a personal appearance before a court in a criminal proceeding, the person may appear by being physically present in the court or by simultaneous electronic transmission if:**

- (a) **Simultaneous electronic transmission is authorized by court rule under subsection (3) of this section;**
- (b) **Except as otherwise provided by law, the parties in the proceeding and the court agree to appearance by simultaneous electronic transmission; and**
- (c) **Appearance by simultaneous electronic transmission is not specifically prohibited by statute.**

(3) **In order for a person to appear by simultaneous electronic transmission as provided in this section, court rules must provide for the use of the specific type of simultaneous electronic transmission at the court location and for the type of proceeding in which the person is appearing. Court rules allowing the use of simultaneous electronic transmission may establish requirements for its use.**

(4) **Notwithstanding subsection (2) of this section, a person may not appear before a jury by simultaneous electronic transmission.**

(5) This section does not apply to a hearing under ORS 138.510 to 138.680.

SECTION 5. ORS 135.030 is amended to read:

135.030. (1) When the accusatory instrument charges a crime punishable as a felony, the defendant shall appear in person at the arraignment.

(2) When the accusatory instrument charges a crime punishable as a misdemeanor, the defendant may appear in person or by counsel.

[(3) As used in this section, a defendant appears "in person" if:]

[(a) The defendant is physically present before the court; or]

[(b) The defendant appears before the court by means of simultaneous television transmission allowing the court to observe and communicate with the defendant and the defendant to observe and communicate with the court. However, appearance by simultaneous television transmission shall not be permitted unless the facilities used enable the defendant to consult privately with defense counsel during the proceedings.]

(3) The court may require a defendant to appear at the arraignment by simultaneous electronic transmission as provided in section 4 of this 2005 Act without the agreement of the state or defendant if the type of simultaneous electronic transmission available allows the defendant to observe the court and the court to observe the defendant.

SECTION 6. ORS 135.355 is amended to read:

135.355. (1) Every plea shall be oral and shall be entered in the register of the court in substantially one of the following forms:

(a) "The defendant pleads that defendant is guilty of the offense charged in this accusatory instrument."

(b) "The defendant pleads that defendant is not guilty of the offense charged in this accusatory instrument."

(c) "The defendant pleads no contest to the offense charged in this accusatory instrument."

(2) When a defendant enters a conditional plea of guilty or no contest, the entry in the register of the court shall so indicate.

(3) For purposes of this section, an oral plea includes a plea made orally by means of simultaneous electronic transmission as described in section 4 of this 2005 Act.

SECTION 7. ORS 135.360 is amended to read:

135.360. (1) Except as provided in subsection (2) of this section, a plea of guilty or no contest to a crime punishable as a felony shall in all cases be put in by the defendant in person in open court unless upon an accusatory instrument against a corporation, in which case it may be put in by counsel.

(2) Any circuit judge may, within any county in the own district of the judge other than the county where the accusation is pending, accept pleas of guilty or no contest from persons charged with a crime punishable as a felony and pass sentence thereon upon written request of the accused and the attorney of the accused and upon not less than one day's notice to the district attorney. *[All orders entering]* **Judgments based upon** such pleas and *[such]* sentences *[shall be]* **entered upon the pleas are** as effective as though heard and determined in open court in the county where the accusation is pending. *[and shall be transmitted by the judge]* **Judges accepting the pleas shall transmit the pleas** to the clerk of the court in the county where the accusation is pending, whereupon the *[same shall be filed and entered and]* **clerk shall file and enter the pleas** to become effective from the date of filing *[thereof]*.

(3) A judge may accept a plea of guilty or no contest under subsection (1) of this section by simultaneous electronic transmission, as defined in section 4 of this 2005 Act, without the agreement of the state or the defendant if the plea is entered at arraignment and the type of simultaneous electronic transmission available allows the defendant to observe the court and the court to observe the defendant.

SECTION 8. ORS 135.767 is amended to read:

135.767. (1) Whenever the presence of an inmate in the custody of the Department of Corrections or of the supervisory authority of a county pursuant to a commitment under ORS 137.124 (2) is

necessary in any criminal proceeding under ORS 135.760 to 135.773, the court wherein the inmate is charged with the commission of a crime may:

(a) Issue an order directing the Director of the Department of Corrections or the supervisory authority of a county to surrender the inmate to the sheriff of the county where the inmate is to be tried; or

(b) **Ensure that arrangements for the inmate to appear by simultaneous electronic transmission as described in section 4 of this 2005 Act have been made.**

(2) *[The costs of transportation and maintenance of any inmate removed under this section shall be paid by]* The county where *[the]* an inmate is charged with commission of a crime **shall pay the costs of:**

(a) **Transportation and maintenance of the inmate removed under this section; or**

(b) **Providing for the inmate to appear by simultaneous electronic transmission.**

(3) **If an inmate is transported under this section for a criminal proceeding under ORS 135.760 to 135.773,** at the conclusion of *[any criminal]* the proceeding *[under ORS 135.760 to 135.773]*, notwithstanding the provisions of ORS 137.140, the inmate shall be returned by the sheriff to the custody of the Department of Corrections or the supervisory authority of the county in which the inmate is imprisoned.

(4) The time during which an inmate is in the custody of the sheriff under this section is part of and shall be counted as time served under the original sentence.

SECTION 9. ORS 137.030 is amended to read:

137.030. *[(1)]* For the purpose of giving judgment, if the conviction is for:

(1) A felony, the defendant shall be personally present. *[: but if it is for]*

(2) A misdemeanor, judgment may be given in the absence of the defendant.

[(2) As used in this section, "personally present" means that a defendant:]

[(a) Is physically present before the court; or]

[(b) Is imprisoned and does not object to appearing before the court by means of simultaneous television transmission allowing the court to observe and communicate with the defendant and the defendant to observe and communicate with the court.]

[(3) Notwithstanding subsection (2) of this section, appearance by simultaneous television transmission shall not be permitted unless the facilities used enable the defendant to consult privately with defense counsel during the proceedings.]

SECTION 10. ORS 137.040 is amended to read:

137.040. If the defendant is in custody, the court shall:

(1) Direct the officer in whose custody the defendant is to bring the defendant before *[it]* **the court** for judgment. *[:]* and the officer shall do so accordingly; or

(2) **Ensure that arrangements for the defendant to appear for judgment by simultaneous electronic transmission as described in section 4 of this 2005 Act have been made.**

SECTION 11. ORS 137.545 is amended to read:

137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice Commission for felonies committed on or after November 1, 1989:

(a) The period of probation shall be such as the court determines and may, in the discretion of the court, be continued or extended.

(b) The court may at any time discharge a person from probation.

(2) At any time during the probation period, the court may issue a warrant and cause a defendant to be arrested for violating any of the conditions of probation. Any probation officer, police officer or other officer with power of arrest may arrest a probationer without a warrant for violating any condition of probation, and a statement by the probation officer or arresting officer setting forth that the probationer has, in the judgment of the probation officer or arresting officer, violated the conditions of probation is sufficient warrant for the detention of the probationer in the county jail until the probationer can be brought before the court or until the probation officer or supervisory personnel impose and the offender agrees to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Such disposition shall be made during the first 36 hours

in custody, excluding Saturdays, Sundays and holidays, unless later disposition is authorized by supervisory personnel. If authorized by supervisory personnel, the disposition shall take place in no more than five judicial days. If the offender does not consent to structured, intermediate sanctions imposed by the probation officer or supervisory personnel in accordance with the rules adopted under ORS 137.595, the probation officer, as soon as practicable, but within one judicial day, shall report such arrest or detention to the court that imposed the probation. The probation officer shall promptly submit to the court a report showing in what manner the probationer has violated the conditions of probation.

(3) Except for good cause shown or at the request of the probationer, the probationer shall be brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a violation or revocation hearing or pending transfer to the jurisdiction of another court where the probation was imposed. In lieu of an order that the probationer be held, the magistrate may release the probationer upon the condition that the probationer appear in court at a later date for a probation violation or revocation hearing. If the probationer is being held on an out-of-county warrant, the magistrate may order the probationer released subject to an additional order to the probationer that the probationer report within seven calendar days to the court that imposed the probation.

(4) When a probationer has been sentenced to probation in more than one county and the probationer is being held on an out-of-county warrant for a probation violation, the court may consider consolidation of some or all pending probation violation proceedings pursuant to rules made and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

(a) Upon the motion of the district attorney or defense counsel in the county in which the probationer is held; or

(b) Upon the court's own motion.

(5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any misdemeanor, the court that imposed the probation, after summary hearing, may revoke the probation and:

(A) If the execution of some other part of the sentence has been suspended, the court shall cause the rest of the sentence imposed to be executed.

(B) If no other sentence has been imposed, the court may impose any other sentence which originally could have been imposed.

(b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that imposed the probationary sentence may revoke probation supervision and impose a sanction as provided by rules of the Oregon Criminal Justice Commission.

(6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar days following the arrest or detention of the probationer, the probationer shall be released from custody.

(7) A defendant who has been previously confined in the county jail as a condition of probation pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon Criminal Justice Commission may be given credit for all time thus served in any order or judgment of confinement resulting from revocation of probation.

(8) In the case of any defendant whose sentence has been suspended but who has not been sentenced to probation, the court may issue a warrant and cause the defendant to be arrested and brought before the court at any time within the maximum period for which the defendant might originally have been sentenced. Thereupon the court, after summary hearing, may revoke the suspension of sentence and cause the sentence imposed to be executed.

(9) If a probationer fails to appear or report to a court for further proceedings as required by an order under subsection (3) of this section, the failure to appear may be prosecuted in the county to which the probationer was ordered to appear or report.

(10)(a) *If requested by the probationer and agreed to by the court,* The probationer may admit or deny the violation *[without]* **by** being physically present at the hearing *[if the probationer appears before the court]* **or** by means of simultaneous *[television]* **electronic** transmission *[allowing the court*

to observe and communicate with the defendant and the defendant to observe and communicate with the court] **as described in section 4 of this 2005 Act.**

[(b) Notwithstanding paragraph (a) of this subsection, appearance by simultaneous television transmission shall not be permitted unless the facilities used enable the defendant to consult privately with defense counsel during the proceedings.]

(11)(a) The victim has the right:

(A) Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified by the district attorney of any hearing before the court that may result in the revocation of the defendant's probation;

(B) To appear personally at the hearing; and

(C) If present, to reasonably express any views relevant to the issues before the court.

(b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.

SECTION 12. An action taken by a court before the effective date of this 2005 Act based upon an appearance made by simultaneous electronic transmission, as defined in section 4 of this 2005 Act, is validated except that:

(1) Validation by this section applies only with respect to the issue of the authority to allow the appearance by simultaneous electronic transmission.

(2) This section does not validate an action:

(a) If a valid objection was made at the time and the objection is preserved; or

(b) For which there remains time to raise a valid objection on appeal or by post-conviction relief and the objection is raised before the time expires.

SECTION 13. ORS 18.048 is amended to read:

18.048. (1) If a judgment document in a criminal action contains a money award, whether by reason of a fine, restitution, forfeiture of security under ORS 135.280, a fee, an assessment, costs and disbursements or any other monetary obligation, and the judgment is for conviction of a felony or misdemeanor, the court administrator shall note in the register that the judgment creates a judgment lien if the judgment document complies with this section. If the judgment is for conviction of a violation as described in ORS 153.008, the court administrator shall note in the register that the judgment creates a judgment lien only if the court has ordered that the judgment create a judgment lien.

(2) As a condition of creating a judgment lien, the judgment document for a judgment in a criminal action that includes a money award must contain a separate section setting forth the money award, must meet the requirements of ORS 18.038 and must contain the following information:

(a) A listing of the specific amounts awarded as fines, assessments, costs, restitution and any other monetary obligations imposed in the sentence as part of the money award. If the court is unable to determine the full amount of restitution at the time of sentencing, the court may include the amount that can be determined or may establish a maximum amount.

(b) If restitution or a compensatory fine is ordered, the name and address of the person to whom the court should disburse payments, unless the victim requests that this information be exempt from disclosure in the public record.

(c) A statement that, subject to amendment of a judgment under ORS 137.107, money required to be paid as a condition of probation remains payable after revocation of probation only if the amount is included in the money award portion of the judgment document, even if the amount is referred to in other parts of the judgment document.

(d) Unless immediate payment is required, the specific terms of payment imposed or allowed by the court.

(e) If payment of all or part of a monetary obligation is suspended, a statement specifying the nature and amount of the suspended obligations.

(3) The requirements of this section and ORS 18.038 do not apply to a judgment document if the action was commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court

has used the space on the citation for the entry of a judgment. The exemption provided by this subsection does not apply if any indictment, information or complaint other than a uniform citation is filed in the action.

(4) A judgment in a criminal action that contains a money award is a judgment in favor of the state and may be enforced only by the state.

(5) A judgment in a criminal action that includes a money award, but does not contain a separate section clearly labeled as a money award, does not create a judgment lien but may be enforced by any other judgment remedy.

SECTION 14. Section 15 of this 2005 Act is added to and made a part of ORS 133.055 to 133.076.

SECTION 15. (1) Notwithstanding ORS 133.065, a peace officer, following procedures established by court rule, may file a criminal citation with or without a form of complaint with the court by electronic means, without an actual signature of the officer, in lieu of filing a duplicate paper copy of the citation. A peace officer who files a criminal citation under this section is deemed to certify the citation and any complaint included with the citation by that filing and has the same rights, responsibilities and liabilities in relation to the citation and any complaint included with the citation as an officer has in relation to citations and complaints that are filed with the court in paper form and are certified by actual signature.

(2) A court may allow electronic filing of criminal citations as described under subsection (1) of this section. Procedures established to allow electronic filing of criminal citations under this section shall be established by court rule and shall include procedures necessary to ensure that:

(a) An electronically filed criminal citation with or without a form of complaint includes all information required on a uniform citation adopted by the Supreme Court under ORS 1.525.

(b) An electronically filed criminal citation with or without a form of complaint is verifiable as being filed by a specific peace officer.

(c) Members of the public can obtain copies of and review a criminal citation with or without a form of complaint that is electronically filed and maintained under this section in the same manner as the manner used for those filed on paper.

(3) For a criminal citation with a form of complaint issued under ORS 133.069, the district attorney's review required by ORS 133.069 and, if necessary, amendments for legal sufficiency, must be completed before the electronic filing of the citation with the form of complaint is made with a court under this section.

SECTION 16. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House April 27, 2005

Repassed by House June 29, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State