Enrolled
House Bill 2399

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of Attorney General Ellen Rosenblum)

CHAPTER .....

AN ACT

Relating to crime; creating new provisions; and amending ORS 133.545, 138.261, 138.560, 138.625, 138.650, 164.115 and 192.603.

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

SECTION 1. ORS 138.261 is amended to read:

138.261. (1) When a defendant is charged with a felony and is in custody pending an appeal under ORS 138.045 (1)(a)**, (b)** or (d), the Court of Appeals and the Supreme Court shall decide the appeal within the time limits prescribed by this section.

(2)(a) Pursuant to rules adopted by the Court of Appeals, the Court of Appeals shall ensure that the appeal is fully briefed no later than 90 days after the date the transcript is settled under ORS 19.370.

(b) Notwithstanding paragraph (a) of this subsection, the Court of Appeals may allow more than 90 days after the transcript is settled to fully brief the appeal if it determines that the ends of justice served by allowing more time outweigh the best interests of the public, the parties and the victim of the crime.

(3) The Court of Appeals shall decide the appeal no later than 180 days after the date of oral argument or, if the appeal is not orally argued, the date that the State Court Administrator delivers the briefs to the Court of Appeals for decision. Any reasonable period of delay incurred by the Court of Appeals on its own motion or at the request of one of the parties is excluded from the 180-day period within which the Court of Appeals is required to issue a decision if the Court of Appeals determines that the ends of justice served by a decision on a later date outweigh the best interests of the public, the parties and the victim of the crime.

(4)(a) In determining whether to allow more than 90 days after the transcript is settled to fully brief the appeal or more than 180 days after oral argument or delivery of the briefs to decide the appeal, the Court of Appeals shall consider whether:

(A) The appeal is unusually complex or presents novel questions of law so that the prescribed time limit is unreasonable; and

(B) The failure to extend the time limit would likely result in a miscarriage of justice.

(b) If the Court of Appeals decides to allow additional time to fully brief the appeal or to decide the appeal, the Court of Appeals shall state the reasons for doing so in writing and shall serve a copy of the writing on the parties.

(5) If the Supreme Court allows review of a decision of the Court of Appeals on an appeal described in subsection (1) of this section, the Supreme Court shall issue its decision on review no later than 180 days after the date of oral argument or, if the review is not orally argued, the date

the State Court Administrator delivers the briefs to the Supreme Court for decision. Any reasonable period of delay incurred by the Supreme Court on its own motion or at the request of one of the parties is excluded from the 180-day period within which the Supreme Court is required to issue a decision if the Supreme Court determines that the ends of justice served by a decision on a later date outweigh the best interests of the public, the parties and the victim of the crime.

(6) In an appeal by the state under ORS 138.045 (2), the Supreme Court shall issue its decision no later than one year after the date of oral argument or, if the appeal is not orally argued, the date that the State Court Administrator delivers the briefs to the Supreme Court for decision.

(7)(a) In determining whether to allow more than 180 days after oral argument or delivery of the briefs to decide the review, the Supreme Court shall consider whether:

(A) The review is unusually complex or presents novel questions of law so that the prescribed time limit is unreasonable; and

(B) The failure to extend the time limit would likely result in a miscarriage of justice.

(b) If the Supreme Court decides to allow additional time to decide the review, the Supreme Court shall state the reasons for doing so in writing and shall serve a copy of the writing on the parties.

(8) Failure of the Court of Appeals or the Supreme Court to decide an appeal or review within the time limits prescribed in this section is not a ground for dismissal of the appeal or review.

(9) Any delay sought or acquiesced in by the defendant does not count against the state with respect to any statutory or constitutional right of the defendant to a speedy trial.

SECTION 2. 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 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 must pay the filing fee established under ORS 21.135 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**, post-prison supervision** or conditional pardon shall be deemed to be imprisoned in the institution from which the person [*is so*] **was** 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 the proceedings 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 3. ORS 138.625 is amended to read:

138.625. (1) A petitioner in a post-conviction relief proceeding may not compel a victim to testify, either by deposition, hearing or otherwise, unless the petitioner moves for an order of the court allowing a subpoena.

(2) A copy of the motion for a subpoena under this section must be served on the counsel for the defendant.

(3) The court may not grant an order allowing a subpoena under this section unless the petitioner can demonstrate good cause by showing that:

(a) The victim's testimony is material to the post-conviction relief proceeding;

(b) The testimony is favorable to the petitioner; and

(c) The testimony was not introduced at trial.

(4) If the court grants an order allowing a subpoena under this section, upon a request by the victim for no personal contact between the parties, the court may allow the victim to appear by telephone or other communication device approved by the court.

(5) If contacted by the [*defense*] **petitioner** or any agent of the [*defense*] **petitioner**, the victim must be clearly informed by the [*defense*] **petitioner** or other contacting agent, either in person or in writing, of the identity and capacity of the person contacting the victim, that the victim does not have to talk to the [*defendant's*] **petitioner's** attorney, or other agents of the [*defendant*] **petitioner**, or provide other discovery unless the victim wishes, and that the victim may have a district attorney, assistant attorney general or other attorney or advocate present during any interview or other contact.

(6) As used in this section, "victim" has the meaning given that term in ORS 135.970.

SECTION 4. ORS 138.650 is amended to read:

138.650. (1) Either the petitioner or the defendant may appeal to the Court of Appeals within 30 days after the entry of a judgment on a petition pursuant to ORS 138.510 to 138.680. The manner of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall be the same as that provided by law for appeals in criminal actions, except that:

(a) The trial court may provide that the transcript contain only such evidence as may be material to the decision of the appeal; and

(b) With respect to ORS 138.081 (1), if petitioner appeals, petitioner shall cause the notice of appeal to be served on the attorney for defendant, and, if defendant appeals, defendant shall cause the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of record, on petitioner.

(2)(a) Upon motion of the petitioner, the Court of Appeals shall grant the petitioner leave to file a notice of appeal after the time limit described in subsection (1) of this section if:

(A) The petitioner, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the petitioner personally; and

(B) The petitioner shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) The request for leave to file a notice of appeal after the time limit described in subsection (1) of this section shall be filed no later than 90 days after entry of the judgment from which the petitioner seeks to appeal and shall be accompanied by the notice of appeal sought to be filed. A request for leave under this subsection may be filed by mail. The date of filing shall be the date of mailing if the request is mailed as provided in ORS 19.260.

(c) The Court of Appeals may not grant relief under this subsection unless the defendant has received notice of and an opportunity to respond to the petitioner's request for relief.

(3) A party cross-appealing shall serve and file the notice of cross-appeal:

(a) Within 10 days of the expiration of the time allowed in subsection (1) of this section; or

(b) If the petitioner's notice of appeal is filed pursuant to subsection (2) of this section, within 10 days of the expiration of the time allowed in subsection (2) of this section.

[*(3)*] **(4)** An appeal under this section taken by the defendant stays the effect of the judgment. If the petitioner is incarcerated, the trial court may stay the petitioner's sentence pending the

defendant's appeal and order conditional release or security release, in accordance with ORS 135.230 to 135.290, only if:

(a) The post-conviction court's judgment vacates the judgment of conviction or reduces the sentence or sentences imposed upon conviction;

(b) The petitioner has completed any other sentence of incarceration to which the petitioner is subject; and

(c) The petitioner otherwise would be entitled to immediate release from incarceration under the court's judgment.

(5) In an appeal under this section or to the United States Supreme Court, the Attorney General shall represent the defendant.

SECTION 5. ORS 164.115 is amended to read:

164.115. For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, including, but not limited to, a check, draft or promissory note, shall be considered the amount due or collectible thereon or thereby.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) The value of a gambling chip, token, imitation currency or similar device is its face value.

(4) The value of the wildlife listed in ORS 496.705 is the amount of damages as specified in ORS 496.705.

(5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than [*$50*] **$100** in a case of theft, and less than $500 in any other case.

(6) The value of single theft transactions may be added together if the thefts were committed:

(a) Against multiple victims by similar means within a 30-day period; or

(b) Against the same victim, or two or more persons who are joint owners, within a 180-day period.

SECTION 6. ORS 192.603 is amended to read:

192.603. **(1) As used in this section:**

(a) "Account information" means, whether or not the financial institution has an account under a particular customer's name, the number of customer account items dishonored or that created overdrafts, dollar volume of dishonored items and items that when paid created overdrafts, a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates and amounts of deposits and debits to a customer's account, copies of deposit slips and deposited items, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed.

(b) "Secure electronic message" means an electronic message that is encrypted or otherwise transmitted in a manner that is reasonably calculated to prevent accidental, unlawful or unauthorized disclosure or access to parties not authorized to receive or access the electronic message.

[*(1)*] **(2)** When a police or sheriff's department or district attorney's office in this state requests account information from a financial institution to assist in a criminal investigation, the financial institution shall supply a statement setting forth the requested account information with respect to a customer **or a customer** account specified by the police or sheriff's department or district attorney's office, for a period of up to three months prior to and three months following the date of occurrence of the account transaction giving rise to the criminal investigation. The disclosure

statement required under this subsection may include only account information as defined in subsection [*(2)*] **(1)** of this section. **If the police or sheriff's department or district attorney's office makes the request by sending a secure electronic message to the financial institution, the financial institution shall respond to the request in a secure electronic message.** The police or sheriff's department or district attorney's office requesting the information shall, within 24 hours of making the request, confirm the request in a written or **secure** electronic message delivered or mailed to the financial institution, setting forth the nature of the account information sought, the time period for which account information is sought, and that the information has been requested pursuant to a criminal investigation.

[*(2) As used in this section, "account information" means, whether or not the financial institution has an account under a particular customer's name, the number of customer account items dishonored or which created overdrafts, dollar volume of dishonored items and items which when paid created overdrafts, a statement explaining any credit arrangement between the financial institution and the customer to pay overdrafts, dates and amounts of deposits and debits to a customer's account, copies of deposit slips and deposited items, the account balance on such dates, a copy of the customer's signature card and the dates the account opened or closed.*]

SECTION 7. 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 subsections (2), (3) and (4) 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.

(4) 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 that:

(a) The search relates to one of the following offenses involving a victim who was 65 years of age or older at the time of the offense:

(A) Criminal mistreatment in the first degree as described in ORS 163.205 (1)(b)(D) or (E);

(B) Identity theft;

(C) Aggravated identity theft;

(D) Computer crime;

(E) Fraudulent use of a credit card;

(F) Forgery in any degree;

(G) Criminal possession of a forged instrument in any degree;

(H) Theft in any degree; or

(I) Aggravated theft in the first degree;

(b) The objects of the search consist of financial records; and

(c) The person making application for the search warrant is not able to ascertain at the time of the application the proper place of trial for the offense described in paragraph (a) of this subsection.

(5) 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.

(6) 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.

(7) Instead of the written affidavit described in subsection (6) of this section, the judge may take an oral statement under oath. The oral statement shall be recorded and a copy of the recording submitted to the judge who took the oral statement. In such cases, the judge shall certify that the recording of the sworn oral statement is a true recording of the oral statement under oath and shall retain the recording as part of the record of proceedings for the issuance of the warrant. The recording shall constitute an affidavit for the purposes of this section. The applicant shall retain a copy of the recording and shall provide a copy of the recording to the district attorney if the district attorney is not the applicant.

(8)(a) In addition to the procedure set out in subsection (7) 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. **If the affiant swears to the affidavit by telephone, the affidavit may be signed electronically.** 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 (5) 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.

SECTION 8. (1) The amendments to ORS 164.115 by section 5 of this 2019 Act apply to crimes committed on or after the effective date of this 2019 Act.

(2) The amendments to ORS 138.261 by section 1 of this 2019 Act apply to appeals taken on or after the effective date of this 2019 Act for which the time limit in ORS 138.071 has not expired.

(3) The amendments to ORS 138.650 by section 4 of this 2019 Act apply to proceedings in which the notice of appeal is filed on or after the effective date of this 2019 Act.

Passed by House April 23, 2019

Repassed by House June 5, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

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Peter Courtney, President of Senate

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Kate Brown, Governor

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Bev Clarno, Secretary of State