

**TESTIMONY ON SB 296**  
***Chief Justice Authority During Emergencies***  
**BEFORE THE SENATE COMMITTEE ON VETERANS AND EMERGENCY**  
**PREPAREDNESS**

**FEBRUARY 4, 2021**

**PRESENTED BY: ERIN M. PETTIGREW, ACCESS TO JUSTICE COUNSEL FOR  
LEGISLATIVE AFFAIRS, OREGON JUDICIAL DEPARTMENT**

Chair Manning, Vice-Chair Thomsen, Members of the Committee, my name is Erin M. Pettigrew, Access to Justice Counsel at the Oregon Judicial Department (OJD). I am here to testify in support of SB 296. Thank you for the opportunity.

As the Chief Justice mentioned, I work for OJD in developing sound policies that work for courts and the people and communities that we serve, while holding access to justice as a core value. I will be addressing the particulars of the bill, and a proposed amendment.

In the interest of time, I will keep my comments very brief, but we welcome your comments and questions. My contact information can be found on the one-pager that is available to you in the "Testimony" tab of the bill. Please feel free to reach out to me at any time.

**A. What the Bill Would Accomplish**

This bill would provide relief to litigants, witnesses, advocates and the justice system at large in an emergency where court access or court services are impacted, as House Bill (HB) 4212, Section 6 (2020 1st Special Session), Or Laws 2020, ch 12, § 6, has provided during the pandemic. As Chief Justice Walters mentioned, that option has been used very sparingly. But we do not know what emergencies lie ahead and we want to be prepared. **We will be better prepared to protect rights and litigants if this bill passes as it accomplishes four critical things:**

**1. Flexibility with Mandatory Filing Deadlines**

Should the Chief Justice find good cause to do so, strict statutory deadlines could be suspended or extended to allow court participants the chance to fully exercise their rights in court, notwithstanding emergency conditions that may stand in their way. It would make this change by amending ORS 1.002, which describes the authority of the Chief Justice. During the pandemic, under HB 4212, Section 6(1), this was only extended to one type of circuit court proceeding, but a critical one: DUII diversion deadlines. The Chief Justice also used her authority to extend timelines for tax appeals, which very often are filed by self-represented litigants. In both instances, the extensions applied even to timelines that had run before the date of the Chief Justice's order, so long as they fell within the time of the declared state of emergency. We seek the same

scope of authority in this bill, so that timelines that already may have run can be extended by Chief Justice Order, based on a finding of good cause.

Section 1 defines "period of statewide emergency" as the period of time during which any of the following declarations issued by the Governor are in effect (and continuing for 60 days after the declaration or extension is no longer in effect): a state of emergency under ORS 401.165; a public health emergency under ORS 433.441; or a catastrophic disaster under Article X-A, section 1, of the Oregon Constitution.

## **2. Flexibility to Order Remote Appearances**

Many statutes envision in-person appearances for court proceedings. Should public health or safety be imperiled by requiring individuals to appear in court, Section 1 would provide the flexibility to order that court appearances take place remotely, or provide that flexibility as an option, if court cannot be safely held in person due to public health or building issues.

Section 1 relatedly permits the Chief Justice to direct or permit that court-appointed visitors in protective person proceedings to conduct interviews of protected persons, notwithstanding ORS 125.150(3), which requires such interviews to be conducted "personally at the place where the [person] is located."

As an example of that flexibility in action during the pandemic, pursuant to HB 4212, Section 6(4), the Chief Justice ordered that a Presiding Judge could direct or permit any category of arraignment to be conducted by remote means. This prevented mass, in-person arraignments which were commonplace before the virus emerged.

## **3. Limited Flexibility for Pretrial Custody Timelines for Those Accused of Person Crimes**

Section 3 of SB 296, which mirrors HB 4212, Section 6(3), provides that the Presiding Judge of a circuit court may order an extension of custody and postponement of the date of trial for in-custody defendants where individuals are accused of person crimes, and where there is evidence of risk of further victimization if the individual is released. This provision was designed to apply to those criminal defendants who are accused of misdemeanor and felony person crimes, as the tight mandatory timelines for jury trials set out in ORS 136.290 and ORS 136.295 have proved very challenging during this emergency. This provision provides courts and litigants a small window -- an additional 60 days -- to either set trial or release the individual.

Under Section 3, the Presiding Judge may not extend custody and postpone the defendant's trial date if, in doing so, the defendant would be held in custody before trial for more than a total of 180 days, unless the court holds a hearing and determines that the defendant should be denied release pursuant to the factors laid out in ORS 135.240. In addition, in a state of emergency, a person charged with a person crime could be

held up to an additional 60 days if the court makes particularized findings of dangerousness to the community, that release conditions would not mitigate the danger, and that the circumstances are connected to the emergency, as described in the bill.

#### **4. Flexibility to Appear for a Citation**

Section 4 of SB 296 provides the same authority as set out in HB 4212, Section 6(2), to extend the time to appear on a criminal citation. Section 4 also provides that the date specified for a person to appear pursuant to a criminal citation may be more than 30 days after the date the citation was issued. During a statewide emergency, the Presiding Judge of a circuit court may postpone the date of appearance for all of those criminally cited for all proceedings within the jurisdiction of the court.

#### **B. Proposed Amendment**

We are grateful for the engagement of the public defenders, district attorneys, as well as members of the civil bar for their work with us on this bill. They worked with us last summer for three months to achieve the consensus that resulted in HB 4212, Section 6.

This past month, the Oregon Criminal Defense Lawyers Association (OCDLA) raised some concerns about the scope of the pretrial deadlines provision in this new bill. The OCDLA asked to limit Section 3 of SB 296 -- and only Section 3 -- to just pandemic circumstances and agreed to a sunset of Section 3 of December 31, 2022.

We understand that any changes to what are often called “speedy trial” timelines should be examined carefully; defense bar advocates want to ensure that that flexibility now set out in HB 4212, Section 6, is cabined within the emergency we now face.

OJD has agreed to that modification to the bill, and we will reach out to you with that proposed language for an amendment, which has been agreed upon between OCDLA and OJD. The amendment also will eliminate two definitions of terms that were in an earlier LC draft but no longer appear in the bill.

I am happy to answer any questions you may have. Thank you.