

**TESTIMONY ON SB 296-1
CHIEF JUSTICE AUTHORITY DURING EMERGENCIES
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
APRIL 29, 2021**

**PRESENTED BY: ERIN M. PETTIGREW, ACCESS TO JUSTICE COUNSEL FOR
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Chair Bynum, Vice Chairs Noble and Power, and 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 Senate Bill (SB) 296A, a bill brought before you upon request of the Chief Justice of the Oregon Supreme Court. This bill is designed to offer critical flexibility when court access or court operations are impacted due to emergencies. This bill was born of the lessons we learned from the COVID-19 pandemic and has been shaped by consensus input on what our justice system needs in times of emergency. I appreciate your time and consideration of this bill today.

This bill would provide relief to litigants, witnesses, advocates, and the justice system at large during a declared emergency when court access or court services are impacted. This provides a similar pressure valve to what the Legislature provided during the pandemic in House Bill (HB) 4212, Section 6 (2020 1st Special Session), Or Laws 2020, ch 12, § 6. The flexibility granted by HB 4212 has been used very sparingly but has provided individuals with additional time to complete DUII diversion requirements, critical relief from filing deadlines in tax appeals, and the ability to appear remotely when needed.

Still, even when we find ourselves on the other side of this public health emergency, we do not know what other new emergencies lie ahead. We want to be prepared to serve our community members in need of justice services. **We will be better prepared to protect rights, litigants, and the public if this bill passes, because it accomplishes four critical objectives:**

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. SB 296A would make this change by amending ORS 1.002, which describes the authority of the Chief Justice. This flexibility would apply only to circuit court deadlines that apply after a case is initiated, and to tax and appellate court deadlines that apply both before and after case initiation.

During the pandemic, under HB 4212, Section 6(1), the Chief Justice extended deadlines in only one type of circuit court proceeding, but a critical one: DUII diversion. 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 for the Chief Justice 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 other emergency-related issues.

Section 1 relatedly permits the Chief Justice to direct or permit court-appointed visitors in protective person proceedings to conduct interviews of protected persons remotely, 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 this 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 that were commonplace before the virus emerged.

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

Section 3 of SB 296A, which mirrors HB 4212, Section 6(3), provides that, during a declared statewide emergency, the Presiding Judge of a circuit court may order an extension of custody and postponement of the date of trial for in-custody defendants accused of person crimes, when there is evidence of risk of further victimization if the defendant 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 the current emergency. This provision provides courts a small window -- an additional 60 days -- to either set trial or release the individual.

After sharing our draft bill and engaging stakeholders regarding this concept, the Oregon Criminal Defense Lawyers Association (OCDLA) raised some concerns about the scope of the pretrial deadlines provision in Section 3 of SB 296 as introduced. The OCDLA asked OJD to limit Section 3 of SB 296 as introduced -- and only Section 3 -- to only COVID-19 pandemic circumstances and agreed to a sunset for Section 3 of December 31, 2022, which is one year longer than the sunset for a similar provision currently in effect, enacted in HB 4212, Section 6(8) (2020 1st Special Session) (Or Laws 2020, ch 12, § 6(8)).

We understand that any change to what are often called "speedy trial" timelines should be examined carefully, and defense bar advocates wanted to ensure that the flexibility now set out in HB 4212, Section 6(3), is cabined within the emergency we now face. In the interest of ensuring that courts otherwise have flexibility in the event of future emergencies, we agreed to that compromise, and the results were adopted by amendment and are now in SB 296A.

Accordingly, the flexibility with respect to pretrial custody timelines in HB 4212 Section 6(3) will remain limited to the COVID-19 state of emergency, but now will not sunset until December 31, 2022. The remaining provisions in SB 296A were unaffected by the Senate-adopted amendment.

4. Flexibility to Appear for a Citation

Finally, Section 4 of SB 296A 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 declared 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.

We at OJD are grateful for the engagement of public defenders and district attorneys, as well as members of the civil bar, for their work with us on this bill. They worked closely with us last summer for three months to achieve the consensus that resulted in HB 4212, Section 6. They rolled up their sleeves again during this session to find solutions. I have said this before, and it bears repeating: the path to consensus on this bill was challenging for every member of our work group and the constituents and clients they represent. This process truly showed how positive outcomes can be reached, notwithstanding difficult and seemingly irreconcilable tensions between public health, public safety, parties' rights and interests, and statutory intent. We believe that this bill, through that careful and deliberate process, strikes the right balance.

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