

TESTIMONY ON SB 296-1
Chief Justice Authority During Emergencies
BEFORE THE SENATE COMMITTEE ON VETERANS AND EMERGENCY
PREPAREDNESS

FEBRUARY 23, 2021

**PRESENTED BY: ERIN M. PETTIGREW, ACCESS TO JUSTICE COUNSEL FOR
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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 and the -1 amendment, a bill brought before you upon request of the Chief Justice of the Oregon Supreme Court. This bill is designed to offer critical flexibility where court access or court operations are impacted due to emergencies. Thank you for the opportunity.

In the interest of time, I will focus my comments on the -1 amendment to SB 296 and the process that lead up to that amendment. My testimony and the testimony of the Chief Justice on the introduced bill is on OLIS, together with a one-pager on the bill. My contact information can be found on the one-pager that is available to you in the "Testimony" tab of the bill.

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 -- and only Section 3 -- to just COVID-19 pandemic circumstances and agreed to a sunset of 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 (2020 1st Special Session) (Or Laws 2020, ch 12, § 6).

We understand that any changes to what are often called "speedy trial" timelines should be examined carefully, and defense bar advocates want 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 are now before you in the -1 amendment.

The -1 amendment makes the Chief Justice's authority originally granted in Section 6 of HB 4212 permanent, and applicable during any period of statewide emergency, as defined in the bill, with the following exceptions:

The -1 amendment amends Section 3, which addresses certain pretrial custody timelines. That provision as introduced mirrored Section 6(3) of HB 4212. (The -1 amendment relatedly removes the text of Section 2 as introduced, which would have made Section 3 part of ORS chapter 136.) Section 3 of the -1 amendment instead

extends the sunset on HB 4212, Section 6, until December 31, 2022 (from December 31, 2021).

Accordingly, the flexibility with respect to pretrial custody timelines in HB 4212 Section 6(3) will sunset on December 31, 2022 and will remain limited to the COVID-19 state of emergency. The remaining provisions in SB 296 are not affected by the -1 amendment.

I want to note that, should a new state of emergency arise where gathering of large numbers of jurors is impeded, or where there are courthouse access issues, such as flood or fire or earthquakes, the strict timelines found in Oregon statutes for pretrial custody may again be an issue because this amendment would remove that negotiated flexibility for emergencies other than the COVID-19 pandemic, and remove it altogether at the close of 2022. Should such emergencies occur, our courts may either be forced to find alternative means of holding jury trials once again under emergency circumstances, or release individuals who cannot be tried within the timelines provided. This may again require legislative intervention in an emergency session.

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 closely with us last summer for three months to achieve the consensus that resulted in HB 4212, Section 6. I want to acknowledge how challenging this was for every member of that 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.