

**TESTIMONY ON HB 4120
BEFORE THE SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110
IMPLEMENTATION
FEBRUARY 21, 2022**

**PRESENTED BY: ERIN M. PETTIGREW, ACCESS TO JUSTICE COUNSEL FOR
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Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Erin M. Pettigrew of the Office of Legislative Affairs at the Oregon Judicial Department (OJD). I am here to testify in support of House Bill 4120, a bill brought to you at the request of Chief Justice Martha Walters and OJD. The bill received unanimous support in the House Committee on Judiciary and passed out of the House with 55 votes in support.

The purpose of House Bill 4120 is to reduce barriers for those seeking services from our courts and to facilitate access. The bill has five parts, each designed to increase participation in our state system of justice.

First, Sections 1 and 2 amend ORS 153.021 and ORS 153.051 to give courts the discretion to waive a minimum fine for a violation when the court determines that justice requires a reduction. Currently, state law does not permit reductions of violation fines to an amount that is less than minimum statutorily prescribed amounts, even if good cause exists to do so. For many of our community members, violation debt is simply not payable, and their inability to pay presents an insurmountable barrier in accomplishing their goals. While judges are given broad authority to reduce fines for felonies and misdemeanors pursuant to ORS 137.286, they are currently restricted when it comes to violations. This change would bring consistency and fairness across these three statutes.

Second, Section 3 amends ORS 30.643 to allow fee waiver or deferral requests from adults in custody to be accompanied by a true and correct copy of the person's trust account statement, instead of requiring a certified copy of a trust account statement as current law requires. Removing the certified copy requirement will eliminate an unnecessary procedural barrier for adults in custody seeking filing fee waivers or deferrals in civil cases.

Third, Sections 4, 5, and 6 clarify filing fees that apply in protective proceedings and small estate matters. These changes specify that only a single fee is required when filing a petition in a protective proceeding that requests multiple fiduciaries or protective orders. The proposed change would also clarify that no filing fee applies to an amended small estate affidavit. These statutory changes will eliminate confusion regarding applicable filing fees in those cases.

Fourth, Section 7 removes the affidavit requirement in ORS 34.365 and instead permits a court to accept a petition for habeas corpus without a filing fee if the petition is supported by a declaration under penalty of perjury stating that the person is unable to pay the fee. That change removes an unnecessary barrier in habeas corpus matters and brings ORS 34.365 in conformance with other statutes and rules that permit using a declaration under penalty of perjury in lieu of an affidavit.

Finally, Section 8 amends ORS 1.002 to give the Chief Justice authority to direct or permit remote appearances in any court proceeding where warranted, notwithstanding any statute providing otherwise, and not depending on any declared state of emergency. As you know, throughout the COVID-19 pandemic, OJD has kept our state courts open, continuing to serve the public even while the pandemic has impacted our communities. To facilitate access to our courts when in-person appearances could impact public health, in 2020 the Chief Justice sought authority to permit alternative modes of proceedings, notwithstanding numerous statutes that appear to require in-person appearances at the courthouse. Instead of changing each of those dozens of statutes, she instead asked the Oregon Legislative Assembly to grant the Chief Justice general authority to permit appearances by remote means, during a declared state of emergency, resulting in the enactment of both Section 6 of HB 4212 (First Special Session, 2020) and SB 296 (2021).

We have learned during the pandemic that remote proceedings can increase access to justice. From busy parents in need of child care, to vulnerable older adults with disabilities, to individuals living in rural communities with limited access to public transit – many Oregonians across the state benefit from being able to engage with our courts from alternative locations such as homes, schools, libraries, work, or other places where they can feel safe and do not face a variety of barriers to physically accessing the courthouse. This flexibility has proved to increase participation and furthers fairness and equity for all. HB 4120 allows your courts to continue to provide these options to participate without relying on a declared emergency.

It is important to note that your courts will continue to serve people where they are, and that includes keeping courts open for in-person proceedings. HB 4120 ensures that a presiding judge may permit in-person appearances based on constitutional protections or other considerations, even when the Chief Justice has directed that a proceeding may be conducted, or an appearance may be made, by remote means.

Thank you for considering House Bill 4120. We hope that you agree that this bill will increase procedural fairness and access to justice for Oregonians statewide.