

House Bill 2473

Sponsored by Representative WALLAN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs court clerk to provide, upon request, certified copy of any record available on electronic records management system of Judicial Department.

Authorizes witness to appear by simultaneous electronic transmission in probation violation proceeding without consent from opposing party or permission from court.

Provides that crimes of failure to appear in the first degree and failure to appear in the second degree include when person does not appear by means other than personal appearance after being ordered to so appear by court.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the use of technology by courts; amending ORS 7.130, 137.545, 162.195 and 162.205; and
3 prescribing an effective date.

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

5 **SECTION 1.** ORS 7.130 is amended to read:

6 7.130. Whenever requested, the clerk or court administrator shall furnish to any person a cer-
7 tified copy of any portion of the records or files **that are either** in the custody of the clerk or court
8 administrator, **or accessible to a clerk or court administrator through an electronic records**
9 **management system of the Judicial Department.** [*No person other than the*] **Only a** clerk or
10 court administrator or a representative designated by [*the*] **a** clerk or court administrator is entitled
11 to make such copy, or to have the use of the records or files for such purpose. Whenever requested,
12 [*the*] **a** clerk or court administrator shall search the records and files, and give a certificate thereof
13 according to the nature of the inquiry.

14 **SECTION 2.** ORS 137.545 is amended to read:

15 137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice
16 Commission for felonies committed on or after November 1, 1989:

17 (a) The period of probation shall be as the court determines and may, in the discretion of the
18 court, be continued or extended.

19 (b) The court may at any time discharge a person from probation.

20 (2) At any time during the probation period, the court may issue a warrant and cause a de-
21 fendant to be arrested for violating any of the conditions of probation. Any parole and probation
22 officer, police officer or other officer with power of arrest may arrest a probationer without a war-
23 rant for violating any condition of probation, and a statement by the parole and probation officer
24 or arresting officer setting forth that the probationer has, in the judgment of the parole and pro-
25 bation officer or arresting officer, violated the conditions of probation is sufficient warrant for the
26 detention of the probationer in the county jail until the probationer can be brought before the court
27 or until the parole and probation officer or supervisory personnel impose and the offender agrees
28 to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Dis-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 position shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holi-
 2 days, unless later disposition is authorized by supervisory personnel. If authorized by supervisory
 3 personnel, the disposition shall take place in no more than five judicial days. If the offender does
 4 not consent to structured, intermediate sanctions imposed by the parole and probation officer or
 5 supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and
 6 probation officer, as soon as practicable, but within one judicial day, shall report the arrest or de-
 7 tention to the court that imposed the probation. The parole and probation officer shall promptly
 8 submit to the court a report showing in what manner the probationer has violated the conditions
 9 of probation.

10 (3) Except for good cause shown or at the request of the probationer, the probationer shall be
 11 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
 12 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
 13 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
 14 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
 15 the probationer upon the condition that the probationer appear in court at a later date for a pro-
 16 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
 17 the magistrate may order the probationer released subject to an additional order to the probationer
 18 that the probationer report within seven calendar days to the court that imposed the probation.

19 (4) When a probationer has been sentenced to probation in more than one county and the
 20 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
 21 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
 22 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

23 (a) Upon the motion of the district attorney or defense counsel in the county in which the
 24 probationer is held; or

25 (b) Upon the court's own motion.

26 (5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any
 27 misdemeanor, the court that imposed the probation, after summary hearing, may revoke the pro-
 28 bation and:

29 (A) If the execution of some other part of the sentence has been suspended, the court shall cause
 30 the rest of the sentence imposed to be executed.

31 (B) If no other sentence has been imposed, the court may impose any other sentence which or-
 32 iginally could have been imposed.

33 (b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that
 34 imposed the probationary sentence may revoke probation supervision and impose a sanction as
 35 provided by rules of the Oregon Criminal Justice Commission.

36 (6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar
 37 days following the arrest or detention of the probationer, the probationer shall be released from
 38 custody.

39 (7) A defendant who has been previously confined in the county jail as a condition of probation
 40 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon
 41 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
 42 of confinement resulting from revocation of probation.

43 (8) In the case of any defendant whose sentence has been suspended but who has not been sen-
 44 tenced to probation, the court may issue a warrant and cause the defendant to be arrested and
 45 brought before the court at any time within the maximum period for which the defendant might or-

iginally have been sentenced. Thereupon the court, after summary hearing, may revoke the suspension of sentence and cause the sentence imposed to be executed.

(9) If a probationer fails to appear or report to a court for further proceedings as required by an order under subsection (3) of this section, the failure to appear may be prosecuted in the county to which the probationer was ordered to appear or report.

(10) The probationer may admit or deny the violation by being physically present at the hearing or by means of simultaneous electronic transmission as described in ORS 131.045.

(11) A witness testifying in a probation violation hearing may appear by simultaneous electronic transmission as defined in ORS 131.045 without written consent from the opposing party or permission from the court. A party intending to offer such testimony shall notify the opposing party and the court of the intent, in writing, at least 48 hours before the hearing. The notice to the opposing party must include the name and telephone number of the witness and a description of the general nature of the witness's testimony.

[(11)] (12) The victim has the right:

(a) Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified of any hearing before the court that may result in the revocation of the defendant's probation for a felony or person Class A misdemeanor. The notification shall be provided by:

(A) The district attorney if the defendant is not supervised by the supervisory authority or if the defendant is supervised by the supervisory authority and the district attorney initiates a request with the court for a probation violation or revocation hearing.

(B) The supervisory authority if the defendant is supervised by the supervisory authority and the supervisory authority initiates a request with the court for a probation violation or revocation hearing.

(b) To appear personally at the hearing.

(c) If present, to reasonably express any views relevant to the issues before the court.

[(12)] (13) As used in this section:

(a) "Person Class A misdemeanor" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(b) "Supervisory authority" has the meaning given that term in ORS 144.087.

SECTION 3. ORS 162.195 is amended to read:

162.195. (1) A person commits the crime of failure to appear in the second degree if the person knowingly fails to appear as required after:

(a) Having by court order been released from custody or a correctional facility under a release agreement or security release upon the condition that the person will subsequently appear [*personally*] in connection with a charge against the person of having committed a misdemeanor; or

(b) Having been released from a correctional facility subject to a forced release agreement under ORS 169.046 in connection with a charge against the person of having committed a misdemeanor.

(2) Failure to appear in the second degree is a Class A misdemeanor.

SECTION 4. ORS 162.205 is amended to read:

162.205. (1) A person commits the crime of failure to appear in the first degree if the person knowingly fails to appear as required after:

(a) Having by court order been released from custody or a correctional facility under a release agreement or security release upon the condition that the person will subsequently appear [*personally*] in connection with a charge against the person of having committed a felony; or

(b) Having been released from a correctional facility subject to a forced release agreement under

1 ORS 169.046 in connection with a charge against the person of having committed a felony.

2 (2) Failure to appear in the first degree is a Class C felony.

3 **SECTION 5. This 2023 Act takes effect on the 91st day after the date on which the 2023**
4 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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