

**TESTIMONY ON HB 2473
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
FEBRUARY 22, 2023**

**PRESENTED BY: NANCY COZINE, STATE COURT ADMINISTRATOR
OREGON JUDICIAL DEPARTMENT**

Chair Kropf, Vice-Chairs Wallan and Andersen, and Members of the Committee:

My name is Nancy Cozine, and I serve as Oregon's State Court Administrator. While the Oregon Judicial Department (OJD) is taking no position on this bill, I do want to acknowledge that the aim of this bill aligns with OJD's commitment to increasing efficiencies in court processes and our current efforts to examine and make changes to the process for certification of court records. OJD appreciates Representative Wallan and the Oregon District Attorneys Association (ODAA) for bringing forth these legislative ideas in an effort to modernize how courts and litigants interact with new technology.

The rollout of the Odyssey Case Management System actually began in Yamhill County in 2012 but wasn't complete until June 2016. Once the system was installed statewide, OJD focused on creating consistency across the state. This has been a long and continuous process. As an example, when Odyssey first rolled out, documents were not available to all court users. Electronic documents then became available to court users as each court went live with Odyssey, and statewide in 2016 when implementation was completed. And even now, some documents that are confidential require special permission to access.

While modernization is a critical goal, some provisions of HB 2473 give us pause, especially Section 1, which amends ORS 7.130. Current law specifies that "the clerk or court administrator," defined under ORS 7.010 as the office of the clerk or court administrator, may certify court records. The seal that is applied to a document to establish that it is indeed a certified copy is available only to individuals in the court who have specific authority to certify court records. Staff in these positions are specifically trained to make sure that the document being certified and delivered is the document that is needed. This procedure is used to ensure that certified court records are indeed verified copies of the originals, and that they will satisfy the needs of the person requesting the documents. To Representative Tran's question about potential forgeries, each court has a unique seal that helps recipients have confidence that the document is one that has been appropriately generated through the certification process.

Section 1 of HB 2473 states that "a" rather than "the" clerk or court administrator may certify a court record. As drafted, OJD is concerned that the phrase "a clerk or court administrator" could be read to mean that any OJD employee with the title of clerk, and there are many, could be asked to certify records. This type of broad authority would make appropriate training difficult for courts and could damage the court's ability to preserve the integrity of the records certification process.

To Representative Chaichi's question as to the role of the clerk or administrator in the certification process, they play a vital role, as they often work directly with the requester to clarify the request and correctly identify the document(s) actually being sought. As mentioned by Oregon's Criminal Defense Lawyers Association (OCDLA), some criminal cases involve various forms of judgments, which requires a more in-depth understanding of the interplay and impact of those documents. This is even more true in domestic relations cases where it is

common to have many judgments over the course of years. The expertise of those staff members to efficiently and effectively identify the necessary documents actually being sought is an important and valued service those staff members provide.

Additionally, it is important to note that certified court records are provided to litigants in all kinds of case types and for many purposes. OJD data indicate that the most common requests for certified court records are provided in domestic relations, landlord-tenant, and small claims cases. Specific examples include:

- Protective Orders
- Divorce Judgments
- Custody Orders
- Child Support Orders
- Name or Gender Change Judgments
- Adoption Judgments and Records
- Eviction Judgments
- Small Claims Judgments
- Guardianship Judgments

Of significance, in most of these case types it is not an attorney requesting the record for use in a court proceeding, rather it is a self-represented litigant who needs to present a certified court record to another state or agency. As the custodian of court records, the trial court administrator ensures that the document provided is a true and accurate copy – a certified copy – of the court record. These copies are used by litigants to register kids in school, travel with children, enforce custody or protective orders out-of-state, secure passports and other official identification, and to address other critical needs. Reduced controls on how certified court records are created could increase the chances of altered documents being presented as certified court records and could decrease the reliability of Oregon court records within and outside the state.

OJD's Law and Policy Committee has been actively examining possible mechanisms to offer a new electronic process to modernize access to certified court records, but that Committee's work is not yet complete. The intent is to make certified records more easily accessible while maintaining reliability and taking into account all case types and uses of certified court records.

That said, OJD believes there are several possible approaches to allowing the use of court records in court proceedings that would meet the goals of the proponents of the bill, address OJD's concerns, improve efficiencies, and preserve the integrity of the certified court record process.

We are grateful to Chair Kropf for moving this conversation forward and remain very interested in working with stakeholders to make sure that Oregon selects the most reliable, efficient, and effective approach.

Also, although ODAA testified it is no longer pursuing the proposals outlined in Sections 2, 3, and 4 of the bill, we have some observations and suggestions to support implementation if those concepts do become of interest.

Section 2:

Section 2(11) expressly allows any witness to appear remotely for a probation violation hearing without approval by the court, provides that a witness must provide written notice to the parties and the court 48 hours before the hearing, and specifies that the parties need to provide the name and telephone numbers of the witnesses.

Understanding these goals, OJD would propose modifying that concept to make simultaneous electronic transmission appearances the default but allowing the court to order a non-remote hearing when appropriate and provide that parties need to give notice three judicial days before a hearing as opposed to 48 hours. This change accounts for weekends and gives sufficient time for a court to review the notices prior to hearings. Lastly, OJD would ask that the statute require parties also provide the email addresses of participants to the court, rather than just names and telephone numbers, so that the court may provide, via email, information to witnesses about how to appear by remote means.

Sections 3 and 4:

Sections 3 and 4 delete the word “personally” from the failure to appear criminal statutes.

Currently, an individual can be ordered to either (1) appear or (2) “appear personally.” If an individual is not directed to “appear personally,” their attorney can appear for them. If they are ordered to “appear personally,” the individual must appear for the hearing and cannot do so through counsel. The word “personally” in the failure to appear statutes is a way to ensure that a person commits the offense of failure to appear only if the person was directed not to appear solely through counsel and then does not appear. Personal appearance includes people who are ordered to appear physically in-person or through simultaneous electronic transmission. ORS 131.045(2).

OJD is concerned there may be some unintended consequences by deleting the term “personally,” which may unintentionally end the practice of allowing attorneys to appear on behalf of their clients for certain court appearances.

As mentioned earlier in my testimony, OJD would be glad to continue discussions and work collaboratively with stakeholders on any aspect of the bill and assist in the crafting of any amendments that may be forthcoming to best effectuate the aims of the proponents and ensure an implementable solution that does not diminish the integrity of the court certification process.

Thank you for your time.