

HB 2473 A -A4 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 5/12, 5/19

WHAT THE MEASURE DOES:

The measure is a criminal law omnibus bill that amends statutes relating to the authentication of public records for admission into evidence at trial, discovery of grand jury recordings by the prosecution, repeal of certain provisions relating to the crime of harassment, and drawing blood for the purpose of conducting a chemical analysis for alcohol content. The measure takes effect on the 91st day following adjournment sine die.

Detailed Summary

SECTION 1: AUTHENTICATION OF RECORDS

Modifies the requirements under ORS 136.583 for providing a declaration for the purposes of authenticating records in response to criminal process. Provides that, upon order of the court or the written request of the applicant, the recipient of the process shall verify the authenticity of the papers by providing an affidavit or declaration that identifies the custodian rather than provides their contact information. States that an affidavit or declaration that complies with this subsection fulfills the requirements of ORS 40.460 (6), 40.505, and 132.320.

SECTION 2: GRAND JURY RECORDINGS

Amends timing requirements for when a prosecutor shall provide grand jury recordings to a defense attorney under ORS 132.270. Authorizes a prosecuting attorney to provide grand jury recordings to the defense attorney immediately when a decision not to file a motion for a protective order has been made and certified to the court.

SECTION 3: HARASSMENT

Removes the act of "publicly insulting another person by abusive words or gestures in a manner intended and likely to provoke a violent response" from the conduct constituting the crime of *harassment* under ORS 166.065.

SECTION 4: PHLEBOTOMISTS

Adds a phlebotomist to persons authorized to withdraw blood for the purposes of conducting a chemical analysis of blood for alcohol content under ORS 813.160. Defines phlebotomist for purposes of provision.

SECTION 5: APPLICABILITY

Provides that sections 2 through 4 of measure become operative on January 1, 2026, and apply to criminal proceedings based on conduct occurring on or after January 1, 2026.

SECTION 6: EFFECTIVE DATE

Declares an emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A4 The amendment amends ORS 161.566 to allow a district attorney to elect to treat a misdemeanor as a Class A violation at anytime during the pendency of a criminal case.

The amendment also amends ORS 161.570 to allow a district attorney to elect to treat a Class C nonperson felony as a Class A misdemeanor at anytime during the pendency of a criminal case.

BACKGROUND:

SECTION 1: AUTHENTICATION OF RECORDS

Criminal process authorizing or commanding the seizure or production of documents, records, or other things may be issued to a recipient, regardless of whether the requested items or recipient of process are located within this state. Oregon statute requires the recipient of the process to produce the materials, to provide, along with the materials requested, an affidavit or declaration as to their authenticity, and to include in the affidavit the contact information for the custodian. House Bill 2473 A removes the requirement that the contact information for the custodian be provided and instead requires the affidavit to include the identity of the custodian of the produced materials.

SECTION 2: GRAND JURY RECORDINGS

After an indictment has been issued from grand jury proceedings, the audio recording of the grand jury proceedings may be released only in the manner prescribed in ORS 132.270. Currently, a district attorney may only provide a copy to the defense attorney of all audio recordings after 10 days have passed since the defendant's arraignment and no protective order concerning the recording has been requested. House Bill 2473 A allows a prosecuting attorney, within 10 days after the arraignment, to file with the court a certification of the decision not to seek a protective order for the recording and to immediately provide a copy of the audio recordings to the defense attorney.

SECTION 3: HARASSMENT

Under ORS 166.065(1)(a), a person commits the crime of harassment if the person intentionally harasses or annoys another person by (A) subjecting such other person to offensive physical contact; or (B) publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response. In 2008, the Oregon Supreme Court held that the crime in subsection (B) violates the protections on freedom of speech enshrined in article 1, section 8, of the Oregon Constitution, declaring that it "criminalizes a harm that results only from a kind of expression—public insults through words or gestures," a harm against which "the Oregon Constitution does not permit the criminal law to shield individuals when that harm is caused by another's speech." *State v. Johnson*, 345 Or. 190, 197.

House Bill 2473 A removes this provision from the harassment statute.

SECTION 4: PHLEBOTOMISTS

House Bill 2473 A adds a phlebotomist to persons authorized to withdraw blood for the purposes of conducting a chemical analysis of blood for alcohol content under ORS 813.160 and defines phlebotomist for purposes of the provision.