

**TESTIMONY IN SUPPORT OF SENATE BILL 98-A
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
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Chair Kropf, Vice-Chairs Wallan and Chotzen, and Members of the Committee:

SB 98-A will improve justice in Oregon by:

- Promoting court proceedings that are accessible and conducted in a mode and manner that best serves the need for justice in our communities;
- Helping to ensure our state's laws are understandable and clear;
- Removing barriers to self-represented litigants accessing justice; and
- Promoting efficient use of court resources and use of modern technology.

More specifically, SB 98-A will do the following:

Sections 1 to 4 allow appellate courts to use modern technology to transmit information to courts and parties in the most appropriate and efficient manner.

Sections 1 to 4 modify several statutes to allow appellate judgments to be sent to courts and parties using modern technology, rather than being confined to the use of physical mail only. This will allow appellate judgments to be sent in the manner that is most appropriate to the courts and individual parties. These changes are made by replacing the term "mail" with the more generic term "send" in four separate statutes related to appellate judgments:

- Section 1: ORS 19.235 indicates that a trial court's authority to proceed with a case ends when an appellate court determination that an order or judgment has been properly appealed to the appellate court has been *mailed* to the trial court and parties.
- Section 2: ORS 34.250 provides that in mandamus proceedings under the Supreme Court's original jurisdiction, if the Supreme Court issues an alternative writ of mandamus and accompanying order, the writ and order shall be *mailed* to the parties and the judge or court whose action is challenged in the petition.
- Section 3: ORS 19.270 provides that an appellate court's jurisdiction over a case ends after the appellate court has issued a judgment and the judgment has been *mailed* to the court from which the appeal was taken, so long as the appellate court has not recalled the judgment or stayed enforcement of the judgment to allow the case to be heard by a higher court or for some other reason.

- Section 4: ORS 19.450 provides that an appellate court judgment is effective when the judgment has been entered and *mailed* to the court from which the appeal was taken and that the appellate court judgment shall simultaneously be mailed to the parties to the appeal.

Section 4 also corrects an omission in the definition of “appellate judgment” under ORS 19.450(1). This statute defines “appellate judgment” to include a “portion of the decision [by the Court of Appeals or Supreme Court] as may be specified by the rule of the Supreme Court.” Yet the Supreme Court and the Court of Appeals each have rules specifying which portions of a decision may be an “appellate judgment.” To clarify this, the statute is being amended to use the phrase “as may be specified by the rule of the Supreme Court *or the Court of Appeals.*” [Emphasis added.]

Section 5 clarifies language about attorney fee awards in contempt proceedings related to family law matters.

More specifically, section 5 clarifies language in ORS 107.445, which relates to attorney fees awarded in contempt proceedings related to marital annulment, dissolution, and separation cases.

First, ORS 107.445 currently refers to a contempt proceeding that occurs “in any suit for marital annulment, dissolution or separation,” yet contempt proceedings are brought as a separate case. Section 5 addresses this by referring to contempt proceedings brought “to enforce” an order or judgment in these marital proceedings.

Second, current law refers to contempt proceedings to enforce judgments only, yet contempt proceedings may be brought to enforce both judgments and orders. Section 5 addresses this by clarifying that attorney fees may be awarded in contempt proceedings brought to enforce “an order or judgment” in these marital proceedings.

Section 6 clarifies that the Tax Court Judge is the administrative head of the Tax Court, allowing for efficient operations of that court.

More specifically, section 6 amends ORS 1.002(10) to clarify that the Tax Court Judge is the administrative head of the Tax Court. As in all the other courts, the Tax Court Judge acts as the administrative head of the Tax Court, but our statutes do not reflect that important aspect of the court's structure.

ORS 1.002(10) declares the Chief Judge of the Court of Appeals and the presiding judge of each circuit court – but not the Tax Court Judge – to be the “administrative heads” over their respective courts. This disparity appears to have resulted from an inadvertent drafting error made during a 1995 amendment to ORS 1.002.

Prior to 1995, ORS 1.002(4) – now codified as ORS 1.002(10) – provided that the Chief Judge of the Court of Appeals, “the presiding judge of each other court of this state having a presiding judge and the judge of each court of this state having one judge and

no presiding judge" were the administrative heads of their respective courts. Under that provision, the Tax Court Judge was the administrative head of the Tax Court because the Tax Court had one judge and no presiding judge.

HB 2805 (1995) amended various statutes to provide for the administration of judicial districts containing more than one county (and therefore more than one court). To allow for a single presiding judge to act as the administrative head for judicial districts with more than one county/court, the statute needed amendment. The legislature did this by simplifying the language quoted above to "the presiding judge of each judicial district of this state." Unfortunately, this inadvertently removed the Tax Court from the statute's reach.

Section 6 restores the Tax Court to ORS 1.002(10) by explicitly referring to the "judge of the Oregon Tax Court" as the administrative head of the Tax Court. It also clarifies that magistrates¹ of the Oregon Tax Court are responsible and accountable to the judge of the Oregon Tax Court, just as judges of the Court of Appeals are "responsible and accountable" to the Chief Judge and judges of judicial districts are "responsible and accountable" to their presiding judge. This will align the statutes with the Tax Court structure and other statewide courts, ensuring efficient operations and proper administration of the Tax Court.

Sections 6 to 8 modernize outdated references to Supreme Court and Chief Justice rulemaking authority.

In ORS 1.002, the Chief Justice is given broad authority to act as the administrative head of the judicial branch, including rulemaking authority in relation to that exercise. Various statutes grant and refer to the Chief Justice's rulemaking authority. However, a few statutes need to be amended to more consistently provide for and refer to that authority.

Section 7 amends ORS 1.006, which currently grants the Supreme Court rulemaking authority to prescribe standardized forms, content, and format of written documents submitted in civil and criminal proceedings. This statute predates OJD's transition to a unified, statewide court system between 1981 and 1983 and is inconsistent with the broad rulemaking authority provided to the Chief Justice. As amended, ORS 1.006 will allow the Supreme Court to delegate this rulemaking authority to the Chief Justice.

Section 7 also amends ORS 1.006 to delete an outdated provision regarding Supreme Court rules for filing of pleadings by facsimile, a technology generally not used for filing documents with our courts.

Section 6 contains a conforming amendment to ORS 1.002(1)(a) to cross-reference the authority that may be delegated to the Chief Justice under ORS 1.006.

¹ A magistrate is a judicial officer of the Tax Court. See [Oregon Judicial Department : Magistrate Division : About Us : State of Oregon](#).

Section 8 amends ORS 802.530, which relates to court participation in interstate agreements regarding disposition of traffic offenses and contains an outdated reference to rulemaking by the Oregon Supreme Court. As amended, this statute will refer to rulemaking by the Chief Justice.

Section 9 streamlines the process for registering a foreign child custody determination.

Section 9 does this by eliminating an outdated and unnecessary requirement for parents by reducing the number of copies of the determination required to be submitted.

ORS 109.787(1)(c) currently requires a party registering a foreign child custody determination to provide the court with two copies, including a certified copy, of the determination. In our electronic court environment, only a certified copy is needed. In addition, creating and submitting an additional copy creates an unnecessary barrier for parents in these cases, many of whom are unrepresented.

Section 10 streamlines the process for a self-represented litigant seeking a change of venue in civil cases.

Section 10 does this by permitting the litigant to submit a declaration under penalty of perjury, instead of requiring the litigant to secure a notarized signature on an affidavit.

"Affidavit only" requirements create barriers for self-represented litigants because they must secure notarized signatures on affidavits, which adds an additional step, takes additional time, and may require payment of a fee to the notary. In addition, for our interactive online forms that help self-represented litigants more easily file documents in certain types of cases (Guide & File), they must take the additional step of separately uploading the notarized affidavit.

Because of the barriers that "affidavit only" requirements impose on self-represented litigants, OJD has sought a variety of statutory amendments over the last 10 years to allow filing declarations in matters where a notarized affidavit is unnecessary.

Section 10 continues this trend in matters where a litigant seeks to change venue. Under current law, ORS 14.110(1) and (2) require the submission of a notarized affidavit by any litigant who seeks a change of venue, including their reasons for why venue should be changed. As amended, ORS 14.110 will allow a litigant to file an affidavit or a declaration. For self-represented litigants using Guide & File, the declaration may then be completed as part of a single court form, thereby simplifying the form completion and filing process. This will also promote judicial efficiency because the court will have fewer documents to process.

Sections 11 and 12 streamline the process for a self-represented litigant seeking to file a foreign judgment.

Sections 11 and 12 do this by (1) permitting the litigant to submit a declaration under penalty of perjury in lieu of a notarized affidavit, and (2) by eliminating the current “separate statement” requirement.

As explained in the section above, “affidavit only” requirements create barriers for self-represented litigants. Self-represented litigants also face barriers when they are required to file multiple documents when a single submission will suffice. Yet, under current law, ORS 24.125 requires self-represented litigants seeking to file a foreign judgment to secure a notarized signature on an affidavit and then file the affidavit with a separate statement containing certain information.

Section 12 simplifies this process by allowing litigants seeking to file a foreign judgment to file a single affidavit or declaration containing the information currently required to be filed in a separate statement. Section 12 also clarifies that the declaration must follow the form set out in ORCP 1(E), helping to direct litigants to the information they need to properly submit a declaration.

Similar to section 10 above, this will simplify the process for self-represented litigants using Guide & File by allowing the declaration and “separate statement” information to be contained in a single court form. It will also promote judicial efficiency by reducing the number of documents for the court to process.

Section 11 contains a conforming amendment in ORS 5.125, which sets out the fees for filing a foreign judgment under ORS 24.125, by adding a reference to the declaration filing option.

Section 13 improves the custody and parenting time process for self-represented litigants by eliminating confusing statutory wording that can unnecessarily cause anxiety.

Section 13 replaces misleading and confusing wording in Oregon's custody and parenting time statutes, creating greater clarity for self-represented litigants and lessening anxiety in what are often difficult and stressful situations.

Under current law, ORS 107.097 provides that a party in a custody or parenting time dispute may apply to the court for a temporary “protective order of restraint” and sets out requirements and durational limits for such an order. That wording is often confusing to self-represented litigants because it is often incorrectly understood as referring to a traditional restraining order that prohibits one person from being physically near or contacting another person.

However, the real purpose of such an order is to maintain the current custody or parenting time arrangements until the dispute is resolved. This is why the statute

describes the content of the order as a description of the “status quo,” and courts and attorneys commonly refer to these orders as “status quo orders.”

Section 13 will replace the language naming the order in ORS 107.097 a “protective order of restraint” with “prejudgment status quo order.” This will make it clear to self-represented litigants that the purpose of the order is to preserve the status quo until a final judgment is obtained, no longer inaccurately suggesting that a more traditional physical restraining order may be issued. It will also help self-represented litigants distinguish between pre- and post-judgment orders.

Sections 14 to 15 allow courts and prospective jurors to communicate about eligibility and requests to be excused from jury service online, rather than being required to use regular mail or personal delivery.

This is done by amending two statutes:

- Section 14: ORS 10.050 sets out the circumstances where a prospective juror may request to be excused from jury service and where a court shall excuse such person from acting as a juror. Currently, this statute specifies that communications between the prospective juror and the court may be made by means of telephone communication or mail. Section 14 adds the ability for such communication to occur by “other method prescribed by the court.” This will allow requests for excusal to be made online.
- Section 15: ORS 10.245 directs presiding judges to provide prospective jurors with a juror eligibility form when they are served with a summons to report for jury service. Current law specifies that the form is to be sent by mail and returned by mail or personal delivery. Section 15 replaces the mailing and personal service requirements by allowing a court to provide “a method” for the juror to complete and return the form. This will clarify that an eligibility form may be submitted online.

Sections 16 to 19 replace confusing language in family law and support enforcement statutes with language that will be more easily understood by self-represented litigants.

Sections 16 through 19 simplify the language in Oregon's family law and support enforcement statutes by replacing “auxiliary court” with the more easily understood “additional court.” The term “auxiliary” is unfamiliar to many self-represented litigants who participate in family law and support enforcement proceedings. Replacing “auxiliary” with the more understandable term “additional” will help these individuals understand the legal process and the court forms they must fill out if they wish to ask that an additional court have jurisdiction in their proceeding.

Section 16 replaces “auxiliary court” with “additional court” in ORS 107.449, which allows a party to move for an order allowing an additional court to obtain jurisdiction over marital dissolution, annulment, or separation proceedings.

Section 17 replaces “auxiliary court” with “additional court” in ORS 25.091, which allows an additional court to obtain jurisdiction over child support judgments issued in multiple counties.

Section 18 replaces “auxiliary court” with “additional court” in ORS 25.100, which allows a party to move for an order allowing an additional court to enforce a child or spousal support order.

Section 19 replaces “auxiliary court” with “additional court” in ORS 25.110, which specifies which courts may enforce and modify a child or spousal support order.

Section 20 replaces the requirement for OJD to produce bound volumes of court opinions with a requirement to produce physical copies of court opinions, allowing for more flexibility in how OJD publishes opinions in the future.

Over the years, our bound volume sales have steadily dropped while our costs have increased. Currently, only 64 individuals or organizations outside of OJD have purchased at least one of our last five bound volumes. Producing such a small number of bound volumes imposes a high cost per volume, creates challenges for our publishers, and will ultimately become unsustainable.

Meanwhile, OJD provides a free, web-based digital database of advance sheets and court opinions. Our opinions are also available in a variety of legal research databases, which is the primary way the public, attorneys, and judges access our opinions.

While we don’t currently have a plan or timeline for stopping bound volume production and distribution, creating flexibility in the statutes will allow us the flexibility to make changes in the future.

Note that this section was amended in the Senate to ensure that even if/when we stop producing bound volumes, we will continue to produce physical copies of the opinions. Section 20(5) was also added to require us to ensure that a physical copy of court opinions will be maintained at the Oregon State Law Library and each accredited law school in the state.

Section 21 clarifies terminology and corrects cross-references in a statute that directs OJD to set aside certain eviction cases.

Section 21 is a technical fix to ORS 105.164, which directs OJD to automatically set aside certain eviction cases. This technical fix will help to streamline the set-aside process for OJD and aligns statutory language with legislative intent.

HB 2001 (2023), codified as ORS 105.164, directs OJD to set aside and seal certain eviction cases, including cases where parties have entered into a stipulated agreement, any money award has expired or been satisfied or discharged, a judgment was entered

pursuant to the stipulated judgment, and twelve months have passed from the date of the judgment.

The intent of HB 2001 was to set aside and seal cases twelve months after a judgment *of dismissal* has been entered (which happens, in the context of a stipulated agreement, after the parties have complied with the agreement). The language of HB 2001, however, was not clear that it is a judgment of dismissal that triggers the twelve-month period.

In addition, there are other types of dismissals that don't get the benefit of a set aside under the language of HB 2001 which are arguably more (or at least equally) worthy of a set aside, and include:

- Tenant wins at trial and gets a judgment dismissing the case.
- Landlord and tenant reach an agreement, and landlord dismisses the case (very similar to a stipulated judgment but they don't use that mechanism to record the agreement; for example, tenant could have just paid their back rent instead of being put on a payment plan).
- Multiple parties to an eviction with different outcomes for each person. Some have the case dismissed against them (limited judgment of dismissal) and others may get a stipulated judgment that they comply with and then the case is dismissed. The person who got the limited judgment of dismissal does not get their part sealed, but the person who got the stipulated judgment does get it sealed.
- Landlord does not comply with notice or other statutory requirements, and tenant gets a dismissal.

Including these additional types of dismissals aligns with the intent of HB 2001. In addition, for the purpose of processing set asides, it creates a significant workload for the court to have to dig into the cases with dismissals to determine which followed a stipulated agreement and which did not. Simply directing the court to set aside cases twelve months after a dismissal will significantly streamline our process and make automation possible.

For these reasons, we have sought an amendment to Section 21(1)(b)(B) as follows:

The judgment was a judgment of dismissal or otherwise in favor of the defendant and at least 12 months have passed from the date of the entry of the judgment.

Section 22 provides operative dates for sections 1 to 5 and 9 to 20a.

Section 22 provides that, for most sections of the bill, the provisions will become operative on January 1, 2026.

Section 23 relates to captions in the bill.

Section 23 clarifies that the captions contained in this bill are provided for convenience and will not become part of the Oregon Revised Statutes.

Section 24 contains an emergency clause.

Section 24 contains an emergency clause, which will cause this law to go into effect immediately upon passage. Note, the operative date mentioned above (for most sections of the bill) is January 1, 2026, but OJD will need to perform some preparatory work prior to the operative date. The emergency clause will allow OJD to begin that work immediately.

In addition, the sections that do not have an operative date will become effective and operative immediately upon passage:

- Sections 6 through 8 (clarifying the Tax Court Judge is the administrative head of the Tax Court; Supreme Court and Chief Justice rulemaking), which will help with the efficient administration of OJD.
- Section 21 (Setting Aside Old Judgments in FED Cases), for which work is already in progress and the emergency clause will allow that work to continue without delay.

Thank you for your time and attention. I would be glad to answer questions.