

# APPENDIX A

## LIST OF RECOMMENDATIONS

Rec. #	Description	Implementation Status
1-1 <i>(See page 107 of this report)</i>	Oregon Supreme Court should publish its response to the Task Force recommendations, appoint an implementation committee, require the committee to report annually on implementation progress and publish progress reports.	<ul style="list-style-type: none"> <li>On June 15, 1994, the Chief Justice appointed an eight-person Implementation Committee (IC).</li> <li>This IC report is the annual report on implementation progress.</li> <li>For yearly updates and ongoing monitoring, the IC proposes the establishment of a standing implementation committee.</li> </ul>
2-1 <i>(See page 33 of this report)</i>	Judicial Department should prepare a document and videotape for the public that explains in simple terms the civil and criminal justice system. Both materials should be translated into most common foreign languages.	IC has developed a blueprint for an informational booklet and the SCA is committed to implementing a translation project during the 1995-97 biennium based on IC's recommendation.
2-2 <i>(See page 26 of this report)</i>	<ul style="list-style-type: none"> <li>Commonly used court forms should be translated into other languages.</li> <li>In counties with large numbers of non-English-speaking persons, court signs should be translated.</li> </ul>	The IC has completed a survey of all 36 trial courts and five legal services offices regarding translation efforts, needs and concerns. The IC has developed a forms translation strategy based on the survey. The SCA is committed to using the IC's strategy to undertake a translation effort in the 1995-97 biennium. Regarding court signs, the IC discovered that many courts have Spanish/English "No Weapons" signs and some have bilingual signs of direction. The IC recommends that courts with high numbers of non-English-speaking consumers install translated signs that direct these individuals to bilingual staff or translated information.
2-3 <i>(See page 87 of this report)</i>	Trial courts should increase the number of bilingual and bicultural employees.	<ul style="list-style-type: none"> <li>OJD uses applications with a preference for bilingual ability.</li> <li>OJD authorizes trial courts to pay costs of language classes for staff and judges.</li> <li>See R 3-2 below.</li> </ul>

Rec. #	Description	Implementation Status
2-4 <i>(See page 19 of this report)</i>	<ul style="list-style-type: none"> <li>• Implement interpreter certification program.</li> <li>• Draft an interpreter code of ethics.</li> </ul>	<ul style="list-style-type: none"> <li>• SCA is working with the National Center for State Courts and three other states to develop a shared testing program. In November, the E-Board approved \$40,000 for the program. First test administered in November 1995.</li> <li>• Code of Ethics approved on May 19, 1995.</li> </ul>
2-5 <i>(See page 20 of this report)</i>	Raise interpreter fees to \$32.50/hour for certified interpreters.	Requires internal policy change. SCA supports idea but it is subject to budget.
2-6 <i>(See page 20 of this report)</i>	OSB Committee on Jury Instructions should draft instructions re: use of interpreted testimony.	<ul style="list-style-type: none"> <li>• OSB Comm on Crim JI has drafted instruction for use in criminal context (see UCrJI No. 1001A).</li> <li>• OSB Comm on Civil JI is considering.</li> </ul>
2-7 <i>(See page 21 of this report)</i>	Governmental agencies should provide interpreters in administrative proceedings.	<ul style="list-style-type: none"> <li>• SB 864 (not enacted).</li> <li>• HB 2441, sections 2 - 7 (not enacted).</li> <li>• HB 2284 (not enacted).</li> </ul>
2-8 <i>(See page 22 of this report)</i>	Interpreters should be provided in court supervised arbitration and mediation.	<ul style="list-style-type: none"> <li>• SB 865 (not enacted).</li> <li>• HB 2441, section 1 (not enacted).</li> </ul>
3-1 <i>(See page 82 of this report)</i>	Judicial selection committees should include diversity as a factor in making judicial appointment recommendations to the Governor.	• Judicial selection committees are committed to diversity in the judiciary. Recently, two new minority judges were recommended and elected.
3-2 <i>(See page 87 of this report)</i>	The Judicial Department should seek to reach more minority applicants.	<ul style="list-style-type: none"> <li>• OJD sends job announcements to all Employment Division (ED) offices statewide and to over 100 minority organizations.</li> <li>• OJD will include job notices in the ED's new electronic kiosk system.</li> <li>• OJD is implementing a training program for supervisors to teach them the techniques of community outreach recruitment.</li> <li>• OJD periodically reviews applications and has developed a standardized recruitment manual.</li> </ul>
3-3 <i>(See page 88 of this report)</i>	The Judicial Department should train presiding judges and administrators in how to attract qualified minority applicants.	• See R 3-2 above.

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<p><b>3-4</b> <i>(See page 90 of this report)</i></p>	<p>Judges, administrators and all court personnel must be convinced, through education, of the need for and value of increasing diversity of the work force at all levels.</p>	<p>In April 1995, OJD implemented a four-hour diversity training module for all OJD staff and judges. It offered 16 training sessions at six locations statewide. OJD also provided managers and supervisors specific information on how to manage a diverse work force.</p>
<p><b>3-5</b> <i>(See page 90 of this report)</i></p>	<p>OJD should establish an ongoing cross-cultural awareness training for judges and court staff.</p>	<ul style="list-style-type: none"> <li>• See R 3-4 above.</li> <li>• <b>Oregon Judicial Conference Judicial Education Committee (JEC).</b> JEC provides in-state judicial training or the reimbursement of tuition at out-of-state trainings and is attempting to weave fairness issues into all course offerings to accomplish one of its five goals: to “preserve the integrity and impartiality of the judicial system through eliminating bias and prejudice and the appearance of bias and prejudice.”</li> <li>• <b>The American Inns of Court.</b> Recently, the Portland, Salem, Eugene and Bend chapters conducted programs on issues of racial fairness.</li> <li>• <b>The National Judicial College.</b> Oregon judges attended courses concerning racial fairness in 1992, 1993 and 1994.</li> <li>• <b>Other Judicial Education Organizations.</b> In the last year, Oregon judges attended two national conferences on racial fairness.</li> </ul>
<p><b>3-6</b> <i>(See page 87 of this report)</i></p>	<p>OJD should increase its efforts to train and attract bilingual employees.</p>	<p>See R 2-3 above.</p>
<p><b>3-7</b> <i>(See page 115 of this report)</i></p>	<p>Each court and the OSCA should appoint an ombudsperson to investigate complaints against staff relative to allegations of racial bias.</p>	<ul style="list-style-type: none"> <li>• IC reviewed with the Chief Justice and the SCA and proposed that the SCA appoint one person in the OSCA to serve as an ombudsperson for all trial courts and the OSCA.</li> </ul>
<p><b>3-8</b> <i>(See page 115 of this report)</i></p>	<p>The Chief Justice should appoint an ombudsperson to investigate complaints against judges and administrators relative to allegations of racial bias.</p>	<ul style="list-style-type: none"> <li>• See R 3-7 above.</li> </ul>

Rec. #	Description	Implementation Status
3-9 <i>(See page 87 of this report)</i>	The Chief Justice (CJ) and the State Court Administrator (SCA) should monitor the efforts to diversify court staffing and develop standards to measure the effectiveness of its diversification effort.	The CJ and the SCA were initially more concerned about implementing the necessary diversification programs. Now that implementation efforts are underway, the CJ and the SCA are committed to improving OJD's monitoring efforts. The IC also serves a monitoring role and will work with OJD to develop a formal monitoring system for the "Phase 2" implementation effort.
3-10 <i>(See page 95 of this report)</i>	The Supreme Court, the Chief Justice and the State Court Administrator should adopt a canon for judges and administrative rules for staff that explicitly prohibit the manifestation of racial bias.	<ul style="list-style-type: none"> <li>• <b>Judicial Canon:</b> The Supreme Court is developing a canon for judges that will prohibit the manifestation of racial and gender bias.</li> <li>• <b>Administrative Rules:</b> OJD's personnel policy prohibits discrimination on any basis.</li> </ul>
3-11 <i>(See page 95 of this report)</i>	Canon 2 of the Code of Judicial Conduct should be amended to provide: "A judge should not engage in conduct, on or off the bench, that reflects or implements bias on the basis of race, sex, religion, ethnic or national origin, or sexual orientation (including sexual harassment)."	See R 3-10 above.
4-1 <i>(See pages 45 - 47 of this report)</i>	BPSST and the State Police should ensure that all state, city and county police officers receive cross cultural awareness training. BPSST should make such training a prerequisite to certification.	<ul style="list-style-type: none"> <li>• See chapter two.</li> <li>• BPSST mandates cross cultural training as part of Police Academy curriculum.</li> <li>• The State Police also trains new recruits on cultural issues.</li> <li>• LALEA and BPSST are cooperatively engaged in a community policing project designed to improve the relationship between Hispanic communities and local law enforcement.</li> </ul>
4-2 <i>(See page 89 of this report)</i>	All law enforcement agencies should implement a hiring program designed to attract minority and bilingual police officers.	The State Police and county and city police departments are committed to implementing (or improving an existing one) an aggressive minority recruitment campaign, request information on an applicant's bilingual ability and provide language training or pay for language classes.
4-3 <i>(See pages 109 -12 of this report)</i>	District Attorneys should be required to collect and report to the Criminal Justice Council data on the variable of race in all charging decisions.	<ul style="list-style-type: none"> <li>• SB 866 (not enacted).</li> <li>• See R 4-12 below.</li> </ul>

Rec. #	Description	Implementation Status
<p><b>4-4</b> <i>(See pages 47 - 48 of this report)</i></p>	<p>Legislature should instruct the Criminal Justice Council to develop uniform charging standards that specify, at a bare minimum, that race, religion, nationality, gender, occupation or economic class are improper bases for charging.</p>	<ul style="list-style-type: none"> <li>• The IC drafted legislation, met with the affected entities and determined that strong opposition to a legislative mandate to create such standards made implementation unrealistic at this time.</li> <li>• HB 2441, section 11 (not enacted).</li> <li>• IC proposes that Oregon District Attorneys Association develop their own uniform charging standards.</li> </ul>
<p><b>4-5</b> <i>(See page 111 of this report)</i></p>	<p>The Chief Justice should require trial judges to use uniform pretrial release forms that include defendant's race.</p>	<ul style="list-style-type: none"> <li>• IC met with Chief Justice and SCA.</li> <li>• IC proposes a working group to study issue and link needs with Oregon Criminal Justice Commission.</li> </ul>
<p><b>4-6</b> <i>(See page 110 of this report)</i></p>	<p>The legislature should direct the Criminal Justice Council to study whether a defendant's race affects the outcome of a pretrial release decision.</p>	<ul style="list-style-type: none"> <li>• SB 866 (not enacted).</li> <li>• See R 4-12 below.</li> </ul>
<p><b>4-7</b> <i>(See pages 48 - 49 of this report)</i></p>	<p>Legislature should amend the pretrial release criteria of ORS 135.230(9) to include "the defendant's ability to provide cash, stocks, bonds or real property to secure a promise to appear in court."</p>	<p>The IC analyzed the recommendation and determined that the system was facially neutral and sound and that the problem was better addressed through judicial education efforts.</p>
<p><b>4-8</b> <i>(See page 51 of this report)</i></p>	<p>Judges should be aware of hidden racial stereotypes and refer to race only when necessary to the disposition of the case.</p>	<ul style="list-style-type: none"> <li>• The OJD developed a diversity training module and provided it to all its employees.</li> <li>• Inns of Court have sponsored several symposiums on issues of racial bias in the courts.</li> <li>• The Oregon Supreme Court is considering an amendment to the canons of judicial conduct which would prohibit bias.</li> </ul>
<p><b>4-9</b> <i>(See page 111 of this report)</i></p>	<p>The Chief Justice should require trial judges to use uniform judgment forms that include defendant's race.</p>	<ul style="list-style-type: none"> <li>• IC met with Chief Justice and SCA.</li> <li>• IC reviewed Criminal Justice Council's "Felony Guidelines Sentencing Report."</li> <li>• In 1994, OJD's ISD developed and implemented the Uniform Sentencing Judgment computer system. Four counties are testing program.</li> <li>• IC proposes a working group to study the coordination of data collection needs. The working group's efforts will hopefully streamline the data collection process.</li> </ul>

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<b>4-10</b> <i>(See page 111 of this report)</i>	All counties should be required to submit sentencing guidelines reports timely and in a complete manner.	See R 4-9 above.
<b>4-11</b> <i>(See page 51 of this report)</i>	The Sentencing Guidelines Board should again consider amendments to the sentencing guidelines that establish a five-year sunset period for consideration of prior criminal history.	<ul style="list-style-type: none"> <li>• The CJC Legislative Subcommittee examined the recommendation and two draft decay models and determined not to pursue implementation.</li> <li>• The IC reviewed the recommendation, discussed it with the affected entities and decided not to pursue legislative action.</li> <li>• HB 2441, section 13 (not enacted).</li> </ul>
<b>4-12</b> <i>(See page 110 of this report)</i>	The Criminal Justice Council should continue to study and report on racial disparities in sentencing.	<ul style="list-style-type: none"> <li>• HB 2704 (now law) abolished the Criminal Justice Council and established the Oregon Criminal Justice Commission (OCJC). The OCJC's specific duties are not yet known, but IC proposes that the Chief Justice consult with the OCJC to ensure that sentencing studies continue and that OCJC implement other related data collection efforts.</li> </ul>
<b>4-13</b> <i>(See page 109 - 112 of this report)</i>	The Department of Corrections and the Criminal Justice Council should study whether race affects parole and other post-prison decisions.	<ul style="list-style-type: none"> <li>• SB 866 (not enacted).</li> <li>• See R 4-12 above.</li> <li>• The DOC conducted studies in February 1994 and March 1995 that showed race was a significant factor in determining an offender's likelihood of being revoked to prison.</li> </ul>
<b>4-14</b> <i>(See page 54 of this report)</i>	The Department of Corrections should examine the entrance requirements of its educational, vocational and treatment programs to determine whether the requirements operate in a manner that systematically disfavors any racial or ethnic group.	<ul style="list-style-type: none"> <li>• DOC is committed to addressing the issues identified by the Task Force.</li> <li>• On November 16, 1995, the DOC published a report entitled <i>Racial/Ethnic Issues in Oregon Corrections: An Update</i>.</li> <li>• DOC examined the entrance requirements and determined that the treatment and educational program requirements did not disfavor any racial group; however, it also concluded that the English-only nature of its vocational programs disfavored non-English-speaking inmates. It planned to meet with inmate minority groups to discuss the requirement and any others the groups felt were unfair and develop possible solutions.</li> <li>• The Prison Reform and Inmate Work Act of 1994 will change the nature of educational and vocational training programs. Vocational programs will be scaled back and educational programs will focus on work, rather than college preparation. DOC is committed to ensuring equal opportunity in its inmate work program.</li> </ul>

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<p><b>4-15</b> <i>(See page 89 of this report)</i></p>	<p>The Department of Corrections (DOC) should develop a program designed for employees to enhance retention and promotional opportunities of minorities.</p>	<ul style="list-style-type: none"> <li>• The DOC is implementing five innovative recruitment techniques and initiating 4 new programs to improve job retention and promotional opportunities for minorities.</li> <li>• The DOC recently has appointed two minorities as superintendents of two of Oregon’s nine correctional facilities.</li> </ul>
<p><b>5-1</b> <i>(See pages 59 - 62 of this report)</i></p>	<p>The Commission should continue to develop and implement a comprehensive plan to reduce minority overrepresentation. The plan should focus on the following six areas: community-based alternatives, diversion programs, alternatives to confinement, after-care programs, cross-cultural training for juvenile justice personnel and the development of a systemic ongoing monitoring process.</p>	<p>The Commission has a comprehensive plan to reduce minority youth overrepresentation in secure facilities that includes a process and impact evaluation of three completed pilot projects, the funding of three new projects, a state-wide cross-cultural training program for all juvenile justice personnel, a study on how to improve system-wide data collection and a completed report with recommendations regarding the treatment of Native American youth in the system.</p>
<p><b>5-2</b> <i>(See page 23 of this report)</i></p>	<p>Interpreters should be provided to all non-English-speaking parents and care-givers in juvenile proceedings and for all encounters with juvenile system.</p>	<ul style="list-style-type: none"> <li>• SB 865 (not enacted).</li> <li>• HB 2441, sections 8 - 10 (not enacted).</li> </ul>
<p><b>5-3</b> <i>(See page 63 of this report)</i></p>	<p>The Commission, CSD and juvenile departments should develop a list of experts who are minorities or can evaluate the cultural background of minority youth and their families to be made available to juvenile court staff and practitioners.</p>	<p>The IC met with the Commission and NAPTI. The Commission agreed to pursue implementation of the recommendation but the contact person subsequently obtained a new job and left the state. Consequently, implementation is pending.</p>
<p><b>6-1</b> <i>(See page 28 of this report)</i></p>	<p>The Chief Justice should ask the appropriate body to consider a rule that would permit courts to accept foreign language documents if accompanied by certified English translations.</p>	<ul style="list-style-type: none"> <li>• SB 192, section 1 (Governor signed on June 5, 1995 and became effective on September 9).</li> </ul>
<p><b>6-2</b> <i>(See page 37 of this report)</i></p>	<p>OSB should translate “Tel-Law” tapes and other informational material into foreign languages and make these available in county courthouses.</p>	<ul style="list-style-type: none"> <li>• “Tel-Law” tapes: OSB currently provides Spanish and Vietnamese translations of tapes. It offer 96 English, 26 Spanish and 10 Vietnamese selections. The general “Tel-Law” information pamphlet provides information on how to use the tapes in all three languages. OSB plans to translate two additional tapes.</li> <li>• Informational material: OSB is planning to translate the “On Your Own” booklet and the “Handbook for Jurors” into Spanish and Vietnamese.</li> </ul>
<p><b>6-3</b> <i>(See page 36 of this report)</i></p>	<p>Legislature should amend the Oregon workers’ compensation laws to require employers to post notices and provide forms in foreign languages if necessary and to extend notice provisions if such notices are not posted.</p>	<ul style="list-style-type: none"> <li>• SB 867 (not enacted).</li> <li>• HB 2440 (not enacted).</li> </ul>

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6-4 <i>(See page 41 of this report)</i>	The OSB should engage in an intense public relations campaign in minority communities re: the civil justice system.	In February 1995, the bar's PS&I Committee developed an action plan concerning how best to implement the recommendation.
6-5 <i>(See page 91 of this report)</i>	The Oregon State Bar (OSB) and the Supreme Court should require all lawyers to certify completion of at least three hours of cross-cultural diversity training during each MCLE reporting period.	In January 1995, the OSB's MCLE Committee reviewed R 6-5 and concluded that a mandatory requirement was not appropriate; however, it also decided to include language in the MCLE rules that highlights the importance of cultural awareness training and encourages attorneys to take at least three credit hours. The OSB will publish the policy statement in the 1996 bar directory.
6-6 <i>(See page 112 of this report)</i>	The State Court Administrator should develop forms asking all civil litigants in all cases to provide information, including race, for demographic statistical and record-keeping purposes.	<ul style="list-style-type: none"> <li>• IC met with the Chief Justice and the SCA and were asked to analyze R 6-6.</li> <li>• IC characterized R 6-6 as low priority because the problem relating to bias in civil system could be effectively addressed by public education efforts and diversification of juries.</li> <li>• IC reviewed ORS 18.425 as possible means to collect data and concluded that a racial checkbox could be added to "Civil Action Data Form" without much additional work.</li> </ul>
7-1 <i>(See page 121 of this report)</i>	Pursuant to ORS 10.215(1), the Chief Justice should increase the number of minorities on the source list and implement changes permissible under existing law.	<ul style="list-style-type: none"> <li>• IC discussed with the Chief Justice and the SCA, independently reviewed the source list issue and determined that implementation was not necessary because the lack of minority representation on juries more directly related to the summons process and juror experience.</li> </ul>
7-2 <i>(See page 121 of this report)</i>	The 1995 Legislative Assembly should consider legislation to change the method of selecting persons to be included in the "source list" for possible jury service in order to include more minorities in the jury pool.	<ul style="list-style-type: none"> <li>• See R 7-1 above.</li> </ul>
7-3 <i>(See page 124 of this report)</i>	The Chief Justice, presiding judges, State Court Administrator and trial court administrators should shorten jury terms and implement one-trial/one-day practices wherever practicable.	<ul style="list-style-type: none"> <li>• Multnomah and Marion County Courts will implement one-trial/one-day practices in October 1995 and early 1996 respectively.</li> <li>• SCA encourages all trial courts to implement similar system and will provide assistance.</li> </ul>
7-4 <i>(See page 125 of this report)</i>	ORS 10.060 should be amended to increase juror compensation.	<ul style="list-style-type: none"> <li>• SB 189 (not enacted).</li> </ul>

Rec. #	Description	Implementation Status
<p>7-5 <i>(See page 122 of this report)</i></p>	<p>The Judicial Department should promulgate guidelines for stricter enforcement of excuse and deferral rules. Excuses should be the exception not the rule and if granted, service should be deferred rather than excused altogether.</p>	<ul style="list-style-type: none"> <li>• The IC reviewed the summons process and recommended improvements with the Chief Justice and the SCA and concluded that while a stricter process is necessary, improvements to the juror experience took priority.</li> <li>• The IC also proposed that trial courts inexpensively tighten the summons process by sending the public a message of compliance.</li> </ul>
<p>7-6 <i>(See page 123 of this report)</i></p>	<p>The State Court Administrator or trial court administrators should implement a follow-up procedure to contact jurors who do not respond to the subpoena.</p>	<ul style="list-style-type: none"> <li>• See R 7-5 above.</li> </ul>
<p>7-7 <i>(See page 126 of this report)</i></p>	<p>The Oregon State Bar, in cooperation with the State Court Administrator, should lead an intensive public relations and education effort regarding the importance of jury service.</p>	<ul style="list-style-type: none"> <li>• In February 1995, the OSB’s Public Service &amp; Information Committee developed an implementation strategy that emphasized wider distribution of its “Handbook for Jurors.”</li> <li>• The IC proposes the development of a short public service announcement for radio and that Marion and Multnomah counties implement recommendation H of the MBA 1993 Jury Pool Report.</li> </ul>
<p>7-8 <i>(See page 129 of this report)</i></p>	<p>Every potential juror should receive an orientation (perhaps by videotape) that not only describes the jury process, but that also includes a succinct statement regarding the necessity of revealing bias.</p>	<ul style="list-style-type: none"> <li>• Courts generally use three orientation tools: SCA Juror Orientation videotape, verbal orientation by court clerk and OSB’s “Handbook for Jurors.”</li> <li>• The IC concluded that while the tools effectively communicated the importance and logistics of jury service, none specifically addressed the necessity of disclosing bias.</li> <li>• The IC proposed that the “Handbook for Jurors” should be rewritten at an eighth-grade reading level and should contain a statement on a juror’s duty to disclose bias during voir dire.</li> <li>• The IC also proposed that the SCA postpone the addition of a similar statement to the video until the current Chief Justice retires and his introductory statement will need revision.</li> </ul>
<p>7-9 <i>(See page 131 of this report)</i></p>	<p>The oath given to potential jurors should include a specific reference to the duty to disclose to the court, during the jury selection process, a juror’s racial bias and the duty to decide the case free of bias.</p>	<ul style="list-style-type: none"> <li>• The IC proposed a rule governing the substance of the juror oath on voir dire be added to chapter six of the Uniform Trial Court Rules.</li> </ul>

Rec. #	Description	Implementation Status
7-10 <i>(See page 131 of this report)</i>	Prior to voir dire, when requested by a party or in the court's discretion, a judge should conduct an initial voir dire of potential jurors to determine if any of the potential jurors are racially biased.	<ul style="list-style-type: none"> <li>The IC supports the flexibility and discretion inherent in the current system and encourages judges to be aware of potentially biased jurors and exercise their authority to question them if necessary.</li> </ul>
7-11 <i>(See page 133 of this report)</i>	The legislature should amend ORCP 57 D to establish a specific, actual cause to challenge a juror based on any statement made by the prospective juror that showed prejudice on part of the juror based on race or ethnicity.	<ul style="list-style-type: none"> <li>Senate Bill 868 (signed by the Governor on July 19, 1995 and became effective on September 9, 1995).</li> </ul>
7-12 <i>(See page 133 of this report)</i>	The Judicial Department should propose legislation designed to amend ORCP 57 to prohibit explicitly the use of peremptory challenges solely on the basis of race or ethnicity.	<ul style="list-style-type: none"> <li>Senate Bill 869 (signed by the Governor on July 17, 1995 and became effective on September 9, 1995).</li> </ul>
7-14 <i>(See page 97 of this report)</i>	The Oregon State Bar (OSB) and the Supreme Court should develop disciplinary rules making it unethical to use peremptory challenges solely on the basis of race.	In March 1995, the OSB's Legal Ethics Committee developed a draft rule that would make it professional misconduct to exercise a peremptory challenge "for reasons judicially determined to be constitutionally impermissible." After comment and review by other groups, the Committee will seek the Board of Governor's approval in August 1995.
7-15 <i>(See page 95 of this report)</i>	The Oregon State Bar (OSB) should develop a rule of professional responsibility prohibiting lawyers from manifesting, by words or conduct, bias based upon race, sex or socioeconomic status.	In March 1995, the OSB's Legal Ethics Committee developed a draft rule that would prohibit the manifestation of bias or prejudice based on "race, color, creed, gender, national origin or sexual orientation." After comment and review by other groups, the Committee will seek the Board of Governor's approval in August 1995.
8-1 <i>(See page 71 of this report)</i>	Oregon law schools should intensify their efforts to recruit more minority students, especially Hispanic students.	<ul style="list-style-type: none"> <li>All Oregon law schools target minority students for recruitment using the CRS, personnel contacts and participation in law forums in regions with many minorities.</li> <li>Each school recruits from colleges in the Southwest that enroll many Hispanic students.</li> <li>Willamette hosted an event to encourage Hispanic youth to pursue a legal career.</li> </ul>
8-2 <i>(See page 73 of this report)</i>	Organizations that provide funding for minority scholarships should increase their efforts to provide funds to Oregon law schools.	For years, the Oregon Law Foundation (OLF) has had a minority law student scholarship program. OLF hopes to increase the fund by improving its collection system and implementing an active contribution program.

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<p><b>8-3</b></p> <p><i>(See page 71 of this report)</i></p>	<p>Law schools should commit more of the money they obtain from their fund raising efforts to programs targeting minority students and applicants.</p>	<p>All Oregon law schools are committed to R 8-3 but face financial challenges. Each school uses money for minority scholarships and programs. Northwestern dedicated funds to employ a full time director for its minority program and develop a summer law camp for minority middle school youth.</p>
<p><b>8-4</b></p> <p><i>(See page 67 of this report)</i></p>	<p>Law schools should increase their efforts to enlarge to pool of Oregon minorities interested in a legal career.</p>	<ul style="list-style-type: none"> <li>• All schools participate in the annual Minority Law Day and recruit from local colleges.</li> <li>• Northwestern and UOSL operate programs in which law students teach law to high school youth.</li> <li>• In 1995, Northwestern operated a summer law camp for local middle school minorities.</li> <li>• UOSL organizes and participates in a “professional school” career fair and operates a mentoring program between minority law and undergraduate students. Two minority law professors taught college courses.</li> <li>• Willamette facilitated the participation of law schools in the James DePreist Multi-cultural College Fair for high school students and hosted “Project Summit—A Program to Encourage Hispanic Youth to Pursue a Legal Career.”</li> </ul>
<p><b>8-5</b></p> <p><i>(See page 74 of this report)</i></p>	<p>Law schools should address the lower graduation rates among minority law students.</p>	<p>Each law school recognizes this as a problem and is realigning its academic support program to address it. See R 8-6 above.</p>

Rec. #	Description	Implementation Status
<p><b>8-6</b> <i>(See page 74 of this report)</i></p>	<p>Law schools should guarantee academic support for all minority students who need it, including bar courses.</p>	<ul style="list-style-type: none"> <li>• All three law schools promote mentoring relationships between minority students and professors.</li> <li>• Northwestern provides three related services: (1) an eight-day Summer Institute; (2) a first-year skills building program; and (3) a Bar Support Program.</li> <li>• UOSL provides two services: (1) a week-long summer orientation; and (2) a first-year skills building program. UOSL is strategizing on how to provide second- and third-year academic support.</li> <li>• Willamette offers three services: (1) a three-day summer orientation; (2) a first year skills building program; and (3) an Academic Circles Program. Willamette is also collaborating with the bar and the other two Oregon schools to provide all minority law students with more academic and bar support.</li> </ul>
<p><b>8-7</b> <i>(See page 71 of this report)</i></p>	<p>Each law school should consider weighing bilingual skills in the admissions process.</p>	<p>Each law school appreciates the growing need for bilingual skills in the practice of law and is considering R 8-7. UOSL is developing a strategy to weigh bilingual ability in the admissions process. Its Director of Admissions contacted Law Services to discuss the possibility of obtaining information on an applicant's bilingual ability via the LSAT.</p>
<p><b>8-8</b> <i>(See page 78 of this report)</i></p>	<p>Law professors should attempt to weave more legal issues affecting minorities into their curriculum.</p>	<p>The deans from each law school agree with R 8-8. Each school provides courses addressing racial bias in the law; however, they are also attempting to institutionalize cross-cultural issues into their law school's culture so that bias issues are a natural part of all courses.</p>
<p><b>8-9</b> <i>(See page 78 of this report)</i></p>	<p>Law schools should offer more lectures focusing on how cultural differences affect legal rights and should require attendance by nonminority faculty and students.</p>	<ul style="list-style-type: none"> <li>• See R 8-8 above.</li> <li>• UOSL plans to provide a series of "Cultural Enhancement Lectures" and offer two courses of special concern to minority students.</li> </ul>

Rec. #	Description	Implementation Status
<p><b>8-10</b> <i>(See page 77 of this report)</i></p>	<p>Minority alumni from all Oregon law schools should be encouraged to support minority law students.</p>	<ul style="list-style-type: none"> <li>• <b>Law Schools.</b> All schools encourage mentoring relationships with minority alumni and students. The schools encourage their minority students to participate in the OSB’s mentoring program and help facilitate the OWLs program. Northwestern hosted a minority law student reception and is considering the development of a minority alumni newsletter. UOSL publishes a directory of minority lawyers in Oregon and distributes it to minority law students and attorneys. Willamette runs a mentoring program and hosted a luncheon with incoming minority law students and alumni.</li> <li>• <b>The OSB.</b> The OSB coordinates a Professional Partnership Mentoring Program that links minority law students with practicing attorneys.</li> <li>• <b>Oregon Women Lawyers.</b> OWLS coordinates a mentoring program in Portland, Eugene and Salem. The program established over 330 mentoring relationships.</li> </ul>
<p><b>9-1</b> <i>(See page 67 of this report)</i></p>	<p>The Oregon State Bar, other bar organizations and attorneys should expose junior and high school minority students to the legal profession and the academic requirements.</p>	<ul style="list-style-type: none"> <li>• The Classroom Law Project is an organization designed to educate grade, middle and high school students in civics studies. Because the Project involves legal issues and works with a diverse group of youth, it exposes many minority students to the legal profession.</li> <li>• The OSB helps the Classroom Law Project coordinate its mock trial competition.</li> <li>• The OSB New Lawyers Division conducts presentations of the “Drop Out Prevention” video to local high school students.</li> <li>• Northwestern and UOSL offer classes for law students in which the students teach law to high school students.</li> <li>• Northwestern conducted a summer law camp for minority middle school students.</li> <li>• Willamette hosted a program called “Project Summit —A Program to Encourage Hispanic Youth to Pursue a Legal Career.”</li> <li>• The Minority Law Student Associations at each Oregon law school coordinate mentoring programs with local middle schools.</li> </ul>

Rec. #	Description	Implementation Status
<p><b>9-2</b> <i>(See page 67 of this report)</i></p>	<p>Law schools should encourage law students and faculty to volunteer in programs that encourage minority high school youth to consider a legal career.</p>	<p>The deans from each law school have distributed copies of the Task Force report to, and discussed it with, all faculty. Also, each school's minority student affairs committee has discussed the report and developed strategies to address the relevant recommendations. (See also R 9-1 above.)</p>
<p><b>9-3</b> <i>(See page 82 of this report)</i></p>	<p>Law firms, state agencies and other employers of lawyers should evaluate their hiring practices to avoid bias in the hiring process. The Oregon State Bar (OSB) should have a program to assist these organizations in ensuring that their hiring practices are free of racial bias.</p>	<p>Oregon's legal employers (public and private) have demonstrated a commitment to R 9-3. For example, over 30 public and private legal employers have participated in the OSB's minority law student employment programs. Also, in December 1994, nine of Portland's largest private law firms met with the IC and made a pledge to increase their firm's diversity at all levels. Part of these efforts includes a constant review of hiring practices to avoid bias. The OJD continuously reviews its hiring process to avoid bias and has accordingly enacted a policy to ensure uniform hiring practices statewide, trained supervisors in how to conduct bias-free recruitment and ensured that OJD applications are free of any requests for potentially discriminatory information. The Oregon Department of Justice likewise reviews its hiring practices and recently enacted three process improvements.</p>
<p><b>9-4</b> <i>(See page 100 of this report)</i></p>	<p>The Oregon State Bar (OSB) and other bar-related organizations should implement plans to involve more minority lawyers in positions of responsibility.</p>	<p>The following six groups have taken specific action to improve the diversity of bar committee positions or their groups:</p> <ul style="list-style-type: none"> <li>• The Oregon State Bar</li> <li>• The Multnomah Bar Association</li> <li>• Oregon Criminal Defense Lawyers Association</li> <li>• The Three Minority Lawyer Associations</li> <li>• The Lane County Bar Association</li> <li>• Oregon Women Lawyers</li> </ul>

# APPENDIX B

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## LIST OF TRANSLATED FORMS

<b>TRIAL COURT</b>	<b>FORMS (all in Spanish unless otherwise indicated)</b>
<b>Coos County</b>	<ul style="list-style-type: none"><li>• Petition to Enter Plea of Guilty and Order Entering Plea</li><li>• Not Guilty Plea and Attorney Election</li><li>• List of References for DUII Diagnosis</li><li>• Instructions and Directions for DUII Victim’s Panel</li><li>• Petition and Diversion Agreement</li><li>• DUII Diversion—Notice to Petitioner</li><li>• DUII Diversion—General Information</li><li>• Department of Corrections—Conditions of Supervision Re: DUII</li><li>• Minor Traffic Citation Instructions</li><li>• Traffic Infraction Information Sheet</li><li>• Traffic Violations Bureau—No Contest Plea and Waiver</li><li>• Traffic Violations Bureau—Guilty Plea and Waiver</li><li>• Deferred Adjudication of Safety Belt Offense</li><li>• Restraining Order</li><li>• Petition for Restraining Order to Prevent Abuse</li><li>• Conditional Release Agreement</li><li>• Fine Payment Schedule</li><li>• Notice to Appear</li><li>• Bail Release Agreement</li><li>• Court Referral for Community Service</li><li>• Condition of Bench Probation</li><li>• Department of Corrections—Conditions of Supervision (General)</li><li>• Notice to Anyone Posting Money For Release of a Defendant</li></ul>
<b>Douglas County</b>	<ul style="list-style-type: none"><li>• Felony or Misdemeanor Conditional Release Agreement/Felony Security Release Agreement (corresponding video also available in Spanish)</li></ul>
<b>Hood River County</b>	<ul style="list-style-type: none"><li>• Advice of Rights</li><li>• Affidavit of Indigence</li><li>• DUII Diversion Information</li><li>• Petition for DUII Diversion</li><li>• Affidavit of Eligibility for DUII Diversion</li><li>• Payment Schedule</li><li>• Notice of Constitutional Rights</li></ul>

- Jackson County**
- DUII Victim’s Impact Panel Instructions
  - DUII Diversion Information and Petition
  - Diversion Fees
  - Back of Traffic Citation (lists offender’s alternatives)
  - Collections Affidavit
  - Notice to Person Posting Security
  - Cover Letter for Additional Information (Indigence Verification Office)
  - Telephone # to Call to Find Out if Attorney Request Approved or Denied
  - Advice of Rights Re: Repayment of Court Appointed Attorney Fees
  - Petition to Enter Plea of Guilty and Order
- Jefferson County**
- Jury Letter
  - Notice of Bail Posted
  - Security Release
- Juvenile Court —  
Multnomah County**
- Victim Letter (Spanish and Vietnamese)
  - Restitution Information Request (Spanish and Vietnamese)
  - Standard Conditions of Probation/Contract and Order (Spanish and Vietnamese)
  - Court Referral Interview Notice Form (Spanish and Vietnamese)
  - Formal Probation or Contract Interview Notice Form (Spanish)
  - Probation Violation Petition (Spanish)
  - Citation—Notice to Appear in Juvenile Court (Spanish)
  - Detained Juvenile Grievance Form (Spanish)
  - Employment Referral Form (Spanish)
  - Notice of Appointment with Juvenile Counselor (Spanish)
  - Conditions of Special Disciplinary Program (Spanish)
  - Order and Disposition (Vietnamese)
  - Application for Expunction (Vietnamese)
  - Agreement for Release and Exchange of Information (Vietnamese)
  - Probation Violation Order and Disposition (Vietnamese)
  - Petition to Make an Admission (Vietnamese)
  - Statement of Lawyer (Vietnamese)
- Informational and Other Material**
- “A Handbook for Detained Juveniles” (Spanish and Vietnamese)
  - “A Guide for Detained Juveniles” (Spanish)
  - “Offense Specific Case Management Interview Outline” (Spanish)
  - “20 Offense Factors of Delinquent Behavior” (Spanish)
  - “Lack of Life Goals” (Spanish)
  - “Case Summary” (Spanish)
  - “Case Plan” (Spanish)
  - “Public Emergency Exit” (Spanish)
  - “Guidelines for Visiting Juveniles in Detention” (Spanish)
  - “Basic Rules and Expectations” (Spanish)
  - “Strip Search” (Spanish)
  - “Admissions Courtroom—Juvenile Detention Facility” (Spanish)

- “Phrases for Admission” (Spanish)
  - “Group Rules” (Spanish)
  - “An Explanation of Rights to Record Expungement” (Vietnamese)
  - “What Happens at the Juvenile Court” (Vietnamese)
  - “Types of Documents Needed for Proof of Statement” (Vietnamese)
  - “Instructions to Parents Regarding Children in Detention” (Vietnamese)
  - “Instructions to Plaintiff” (Vietnamese)
- Malheur County**
- Petitioner’s Waiver of Personal Service
  - Petition For Restraining Order to Prevent Abuse
  - Restraining Order
  - Petitioner’s Motion and Order of Dismissal
  - Respondent’s Request for Hearing
  - Affidavit of Proof of Service
- Marion County**
- Advice of Rights
  - Petition to Enter “Guilty” or “No Contest” Plea
  - Petition For Restraining Order to Prevent Abuse
  - Restraining Order
  - Affidavit of Income and Assets; Request for Delay in Initiation of Collection Proceedings
  - Acknowledgment of Payment Obligation
  - Notice of Right to Appeal
  - Information Notice of Decision not to File Charges
  - Instructions for National Traffic Safety Institute’s (NC) Diversion Program
  - Registration Form for NTSI’s Program
  - Information Sheet on Consequences of DUUI Prosecution, Diversion Program and Petition for Diversion Agreement
  - Information Sheet Listing Spanish DUUI Evaluators
  - Notice—DUUI Victim Panel
- Polk County**
- DUUI Diversion Information
- Wallowa County**
- Uniform Petition and Diversion Agreement
- Yamhill County**
- Eligibility to Receive a Restraining Order
  - Petition for Restraining Order to Prevent Abuse
  - Restraining Order
  - Swearing In Oath
  - DUUI Information
  - Affidavit Requesting Permission to Enter DUUI Diversion Program
  - Security Release Agreement
  - Affidavit of Income & Assets (Handwritten Spanish version that court reads to defendant to help complete English version.)



# APPENDIX C

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## THE CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE OREGON COURTS

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of Establishing a ) Code of Professional Responsibility) ) for Interpreters in Oregon Courts )	ORDER NO. 95-042
)	ESTABLISHING CODE
)	OF PROFESSIONAL
)	RESPONSIBILITY FOR
)	INTERPRETERS IN OREGON
)	COURTS

The Oregon Supreme Court, on February 21, 1992, established the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System (Order No. 92-022).

The Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, in May 1994, published its final report and recommendations.

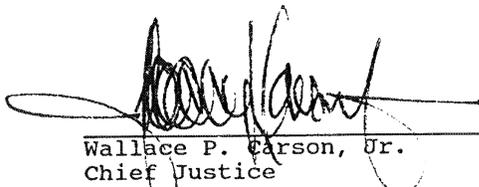
Recommendation Number 2-4 of the May 1994 Report suggested that the Chief Justice appoint a committee to draft the court interpreters code of ethics (code). ORS 45.291.

On June 15, 1994, the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System Implementation Committee (Implementation Committee) was appointed (Order No. 95-017, March 15, 1995, nunc pro tunc).

The Implementation Committee, working with the Oregon Judicial Department State Court Administrator's Office, published in the December 5, 1995, Oregon Appellate Court Advance Sheets, a draft of the proposed code requesting comments. Upon receipt of the comments, a new draft was submitted to the Implementation Committee, in addition to those parties having made prior comment, requesting further comment. The final code now has been forwarded to the Chief Justice for approval.

IT HEREBY IS ORDERED that the Code of Professional Responsibility for Interpreters in Oregon Courts, a copy of which is attached as a part of this order, is adopted and becomes effective immediately.

DATED this 19<sup>th</sup> day of May 1995.

  
\_\_\_\_\_  
Wallace P. Carson, Jr.  
Chief Justice

May 3, 1995

**CODE OF PROFESSIONAL RESPONSIBILITY  
FOR INTERPRETERS IN THE OREGON COURTS****PREAMBLE**

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings because of limited English proficiency or a speech or hearing impairment. It is essential that the resulting communications barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.<sup>1</sup> An interpreter is sworn in as an officer of the court. As an officer of the court, an interpreter is a neutral and impartial participant who assists the court in ensuring that court proceedings and court support services are accessible and function efficiently and effectively. The court interpreter is a skilled professional, therefore, who fulfills an essential role in the administration of justice. At a minimum, an interpreter must be a "qualified interpreter," under ORS 45.275 (7)-(8), to serve in the courts in Oregon. However, ORS 45.288 requires the court to give preference for appointments to an interpreter certified under ORS 45.291. In other words, the court is required by ORS 45.288 to appoint a certified interpreter if a certified interpreter is available, able, and willing to serve. If no certified interpreter is available, able, and willing to serve, an interpreter still must meet the statutory requirements for qualification contained in ORS 45.275 (7)-(8) and ORS 45.288(3)-(4), and state his or her qualifications on the record as in ORS 45.275 (7).

**APPLICABILITY**

This code shall guide all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the courts. Ensuring equal access to the communication, however, may on occasion conflict with this code. When unique situations necessitate an exception to the rules in order to ensure effective communication, the court may so allow.

For clarification of this code, the following definitions should be kept in mind. Interpreting is rendering an oral statement from one language into an oral statement to another language. Sight translation is rendering written material into oral form. Translation is rendering written material from one language into written form in another language.

Violations of this code may result in the interpreter being deleted from a court's list of qualified and/or certified interpreters.

**1. ACCURACY AND COMPLETENESS**

**The interpreter shall render a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written, and without explanation.**

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<sup>1</sup> A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence would understand.

### Commentary

The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by a non-English speaking person, and 2) to place the non-English speaking person on an equal footing with those who understand English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

Therefore, the interpreter is obligated to apply the interpreter's best skills and judgment to faithfully preserve the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral translations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent, should be interpreted. This includes apparent misstatements.

The interpreter should never interject his or her own words, phrases, or expressions. If the need arises to explain an interpreting problem, (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. The interpreter of an oral language should convey the emotional emphasis of the speaker, but it may be in a slightly diminished form. If the witness weeps during questioning, the interpreter should not weep. Imitating the weeping might appear to mock the witness. Sadness can be conveyed by tone of voice alone. The judge and jury can see a witness' emotions for themselves even if they do not understand the target language.

A sign language interpreter, however, must employ all of the visual cues that the language he or she is interpreting requires--including facial expressions and body language, in addition to sign language. A sign language interpreter, therefore, should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the interpreter's duty to correct, in a timely fashion, any error of interpretation discovered by the interpreter during the proceeding. The interpreter should demonstrate professionalism by objectively analyzing any challenge to his or her performance.

## 2. REPRESENTATIONS OF QUALIFICATIONS

**The interpreter shall accurately and completely represent his or her certifications, training, and pertinent experience. The court should reassess the interpreter's qualifications each time the interpreter is engaged to interpret in court for a non-English speaking party or witness.**

### Commentary

Acceptance of a case by the interpreter implies the interpreter's linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins

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**The interpreter shall accurately and completely represent his or her certifications, training, and pertinent experience. The court should reassess the interpreter's qualifications each time the interpreter is engaged to interpret in court for a non-English speaking party or witness.**

### Commentary

Acceptance of a case by the interpreter implies the interpreter's linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins

causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that the interpreter present a complete and truthful account of the interpreter's training, certification, and experience prior to appointment so the court can fairly evaluate the interpreter's qualifications for delivering interpreting services.

### 3. IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST—COURT OR PROCEEDING INTERPRETER

**The interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias or conflict of interest. The interpreter shall disclose to the judge any real bias or interest in the parties or witnesses in a case, or any situation or relationship that may be perceived by the court, any of the parties, or any witnesses as a bias or interest in the parties or witnesses in a case.**

#### Commentary

When appointed by the court to act as a proceeding interpreter, the interpreter's "clients" are all of the parties and witnesses in the court case. Because of this, it is important that the interpreter have no real or perceived interest in any of the parties or witnesses beyond the professional interest of interpreting for the non-English speaking parties and witnesses in the court case.

Any condition that interferes with the objectivity of the interpreter constitutes a conflict of interest. Before providing services in a matter, the court interpreter must disclose to all parties and the court any prior involvement in the case or with the parties or witnesses, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure shall not include privileged or confidential information. If, after this disclosure on the record, all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may interpret in the case.

The following are circumstances that are presumed to create actual or perceived conflicts of interest for the interpreter where the interpreter needs to declare the conflict of interest before appointment on the record and let the court determine if the interpreter should serve in the case:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity in the case at issue for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest from which the interpreter may benefit from, that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for the case.

The interpreter should not serve in any manner in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve as the court or proceeding interpreter, as well as the attorney in the same case.

During the proceeding, the interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. The Interpreter should maintain professional relationships with the non-English speaking parties and witnesses, and should limit his or her involvement in the proceedings to that of interpretation. The interpreter should discourage a non-English speaking party's or witness' personal dependence on the interpreter.

The interpreter should refrain from conversations with parties, witnesses, jurors, attorneys, or with friends or relatives of any party in or near the courtroom, except in the discharge of their official functions. It is especially important that the interpreter, who is often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in the court that may convey an appearance of a special relationship or partiality to any court participant.

An example of conversation that would be within the interpreter's official duties would be: communicating with the non-English speaking party or witness in an informal setting where the interpreter would listen to accent, rhythm, and the choice of words of the non-English speaking party to determine if the interpreter can adequately interpret for the non-English speaking party or witness.

The interpreter should strive for professional detachment. The interpreter should avoid all verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions.

Should the interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge on the record to the judge and the parties in the case. This disclosure shall not include privileged or confidential information. If all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may continue to interpret in the case.

**4. IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST--INTERPRETER APPOINTED TO WORK WITH STATE-PAID, APPOINTED ATTORNEY**

An interpreter appointed to work with a state-paid, appointed attorney shall refrain from conduct that may give an appearance of *personal* bias or conflict of interest. The interpreter so appointed may appear to have the natural professional bias that occurs because the interpreter is part of the appointed legal team. Interpreters appointed to work with an appointed attorney shall disclose to the attorney any real bias or interest in the parties or witnesses in a case, or any situation or relationship that may be perceived by the court, any of the parties, or any witnesses as a personal bias or interest in the parties or witnesses in a case. The appointed attorney shall either petition the court for the appointment of a different interpreter to the case, thereby releasing the interpreter from the interpreter's obligation in the case, or the attorney shall bring the situation to the attention of the court and opposing party, on the record. If the attorney fails to bring the conflict to the attention of the court, the interpreter must notify the court of a potential conflict of interest. This disclosure shall not include privileged or confidential information. If all of the parties agree that the interpreter may serve on the case, the interpreter may remain appointed to the case.

Commentary

Any condition that interferes with the objectivity of the interpreter constitutes a conflict of interest. Before accepting appointment to a case, the interpreter must disclose to all parties and the court any prior involvement in the case or with the parties or witnesses, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure shall not include privileged or confidential information. If, after this disclosure on the record, all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may interpret in the case.

The following are circumstances that are presumed to create actual or perceived conflicts of interest for the interpreter where the interpreter needs to declare the conflict of interest before appointment on the record and let the court determine if the interpreter should serve in the case:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The interpreter has served in an investigative capacity in the case at issue for any party involved in the case;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;

4. The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest from which the interpreter may benefit from, that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of counsel or law firm for the case.

The interpreter should not serve in any manner in which payment for the interpreter's services is contingent upon the outcome of the case.

The interpreter appointed to work with an appointed attorney is to interpret what is spoken by the non-English speaking party in private conferences and conversations between the appointed attorney and the non-English speaking party. In a case where the court has appointed the attorney and the interpreter, the interpreter may also sit at the counsel table and interpret the proceeding for the non-English speaking person in a simultaneous interpretation mode.

An interpreter who is also an attorney may prepare a case without the aid of an additional interpreter; however, it is not required. An attorney who is also an interpreter may not act as the attorney and the interpreter for the non-English speaking party in court during a proceeding.

Though appointed as a member of the legal team, the interpreter should avoid any conduct or behavior that presents the appearance of any personal favoritism toward any of the parties. The interpreter should maintain professional relationships with the appointed attorney and the non-English speaking party, and should limit their involvement with the non-English speaking party to that of interpretation. The interpreter should discourage a non-English speaking party's personal dependence on the interpreter and should defer all questions the party may have to the appointed attorney.

Though a member of the appointed legal team, the interpreter must not take on the role of advocate for the non-English speaking party. Despite the fact that the interpreter is a member of the legal team, the interpreter must still interpret everything that is said in court to the non-English speaking party and to interpret everything that is said by the non-English speaking party. For example, if in a criminal case the defendant becomes angry during the proceeding and starts to shout obscenities at a witness who is testifying, it is the interpreter's duty to interpret for the court participants everything that the defendant is saying, even if what is being said by the defendant is not helpful to the defense effort.

An interpreter appointed to a case should not perform bilingual paralegal, investigative, or clerical work on the same case. The interpreter shall not claim paralegal, investigative, or clerical work as interpretation in any billings.

During the course of the proceedings, the interpreter should refrain from conversations with parties, witnesses, jurors, attorneys, or with friends or relatives of any party in or

near the courtroom, except in the discharge of their official functions. It is especially important that the interpreter, who is often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in the court that may convey an appearance of a special relationship or partiality to any of the court participants other than that of the professional relationship of interpreting for the appointed attorney and the non-English speaking party.

An example of conversation that would be within the interpreter's duties would be: communicating with the non-English speaking party prior to appointment to the case in an informal setting where the interpreter would listen to accent, rhythm, and the choice of words of the non-English speaking party to determine if the interpreter can adequately interpret for the non-English speaking party.

The interpreter should strive for professional detachment. The interpreter should avoid all verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions.

Should the interpreter become aware that a proceeding participant views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the appointed attorney. The appointed attorney shall either petition the court for the appointment of a different interpreter to the case thereby releasing the interpreter from the interpreter's obligation in the case, or the attorney shall bring the situation to the attention of the court and opposing party, on the record. If the attorney fails to bring the conflict to the attention of the court, the interpreter must notify the court of a potential conflict of interest. This disclosure shall not include privileged or confidential information. If all of the parties agree that the interpreter may serve on the case, the interpreter may remain on the case.

## 5. PROFESSIONAL Demeanor

**The interpreter shall conduct himself or herself in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.**

### Commentary

The interpreter should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, the interpreter should speak at a rate and volume that enables the interpreter to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. The interpreter should work without drawing undue or inappropriate attention to himself or herself. The interpreter should dress in a manner that is consistent with the dignity of the court proceedings.

The interpreter should avoid obstructing the view of any individual involved in the proceeding. An interpreter who uses sign language or other visual modes of communication must, however, be positioned so that the sign language, facial

expressions and whole body movement are visible to the person for whom the interpreter is interpreting.

The interpreter is encouraged to avoid personal or professional conduct that could discredit the court.

## 6. CONFIDENTIALITY

**The interpreter shall understand the rules of privileged and other confidential information and shall protect the confidentiality of all privileged and other confidential information.**

### Commentary

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his or her duties. It is especially important that the interpreter understand and uphold the attorney-client privilege that requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

The interpreter must also refrain from repeating or disclosing case information obtained by the interpreter in the course of employment.

In the event that the interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to the criminal presiding judge or a judge who is not involved in the proceeding (if the presiding judge is involved in the proceeding). At that point, it will become that judge's responsibility to determine what action, if any, should be taken regarding the situation.

## 7. RESTRICTION OF PUBLIC COMMENT

**The interpreter shall not publicly discuss, report, or offer an opinion concerning a matter in which the interpreter is or has been engaged, even when that information is not privileged or required by law to be confidential.**

## 8. SCOPE OF PRACTICE

**The interpreter shall limit himself or herself to interpreting or performing sight translating and shall not give legal advice, express personal opinions to individuals for whom the interpreter is interpreting, or engage in any other activities that may be construed to constitute a service other than interpreting or translating.**

### Commentary

Because the interpreter is responsible only for enabling others to communicate, the interpreter should limit himself or herself to the activity of interpreting or translating only. The interpreter should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

The interpreter may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing his or her duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting the interpreter's own interpreting errors, or notifying the court of reservations about his or her ability to satisfy an assignment competently. In such instances, the interpreter should make it clear that the interpreter is speaking for himself or herself.

The interpreter may convey legal advice only when the interpreter is interpreting legal advice that an attorney is giving. The interpreter should not explain the purpose of forms, services, or otherwise act as a counselor or advisor unless the interpreter is interpreting for someone who is acting in that official capacity.

The interpreter should not personally perform acts that are the official responsibility of other court officials, including, but not limited to, court clerks, pretrial release investigators, indigence verification specialists, or probation counselors.

An interpreter appointed to a case should not perform bilingual paralegal, investigative, or clerical work on the same case. The interpreter shall not claim paralegal, investigative, or clerical work as interpretation in any billings.

## 9. ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

**The interpreter shall assess at all times his or her ability to deliver interpretation services. When the interpreter has any reservation about his or her ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the court.**

### Commentary

If the communication mode or language of the non-English speaking person cannot be readily interpreted or becomes difficult to readily interpret, the interpreter should notify the court immediately.

The interpreter should notify the court of any environmental or physical limitation that impedes or hinders the interpreter's ability to deliver interpreting services adequately, e.g., the courtroom is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret. A sign language interpreter must ensure that he or she can both see and convey the full range of visual language elements that are necessary for

communication, including facial expressions and body movement, as well as sign language.

The interpreter should notify the court of the need to take periodic breaks in order to maintain mental and physical alertness and to prevent interpreter fatigue. The interpreter should recommend and encourage the court to use more than one interpreter in a lengthy proceeding or trial.

Even a competent and experienced interpreter may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter, e.g., the unscheduled testimony of an expert witness. When such instances occur, the interpreter should request a brief recess in order to familiarize himself or herself with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, the interpreter should inform the judge.

The interpreter is encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables the interpreter to more closely match his or her professional qualifications, skills, and experience to potential assignments, and more accurately assess the interpreter's ability to competently satisfy those assignments.

The interpreter should refrain from accepting a case if the interpreter feels the language and subject matter of that case may exceed his or her skills or capacities. The interpreter should feel no compunction about notifying the court if the interpreter feels unable to perform competently due to lack of familiarity with terminology, preparation or difficulty in understanding a witness or defendant.

The interpreter should notify the presiding officer of any personal bias he or she may have involving any aspect of the proceedings, including any bias as to the subject matter of the case, or bias against any of the parties in the case.

## 10. DUTY TO REPORT ETHICAL VIOLATIONS

**The interpreter shall report to the court any actions by any persons that may impede the interpreter's compliance with any law, any provision of this code, or any other official policy governing court interpreting and sight translating.**

### Commentary

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to the court's interpreter coordinator, the trial court administrator or trial court clerk, or the judge to resolve the situation.

## 11. PROFESSIONAL DEVELOPMENT

**The interpreter shall continually improve his or her skills and knowledge and advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.**

### Commentary

The interpreter must continually strive to increase his or her knowledge of the languages in which the interpreter works professionally, including past and current trends in technical, vernacular, and regional terminology, as well as their application within court proceedings.

The interpreter should keep informed of all statutes, rules of courts, and policies of the judiciary that relate to the performance of the interpreter's professional duties.

The interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.



# APPENDIX D

68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

## A-Engrossed Senate Bill 189

Ordered by the Senate April 24  
Including Senate Amendments dated April 24

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Judicial Department)

### 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.

Increases juror fees in district and circuit courts from \$10 per day to [~~\$40~~] **\$20** per day. Provides that [*public*] employees who receive salary or wages during jury service not be paid juror fees. Modifies rate of payment for mileage payable to jurors. Allows payment of parking fees. **Allows payment of [ ] lodging expenses, dependent care expenses and other reasonable expenses of jurors, subject to availability of funds.**

Takes effect January 1, 1996.

### A BILL FOR AN ACT

1  
2 Relating to jurors; creating new provisions; amending ORS 10.060, 10.065 and 10.075; and prescribing  
3 an effective date.

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

5 **SECTION 1.** ORS 10.060 is amended to read:

6 10.060. [*(1) The fees of jurors shall be as follows:*]

7 [*(a) For each day's required attendance upon a court of record, \$10.*]

8 [*(b) For each juror sworn in the justice court, or upon an inquest, \$10.*]

9 [*(2) In addition to the fees and mileage prescribed in subsection (1) of this section and ORS 10.065,*  
10 *the governing body of a county may provide by ordinance for reimbursement by the county of jurors*  
11 *for mileage and other expenses incurred in serving as jurors.*]

12 (1) **The fee of jurors in courts other than district and circuit courts is \$10 for each day's**  
13 **required attendance.**

14 (2) **The fee of jurors in district and circuit courts is \$20 for each day's required attend-**  
15 **ance.**

16 (3) **A juror shall not be paid the juror's fee provided for in subsection (2) of this section**  
17 **if the juror is paid a wage or salary by the juror's employer for the days that the juror is**  
18 **required to attend a district or circuit court.**

19 (4) **In addition to the fees and mileage prescribed in subsection (1) of this section and**  
20 **ORS 10.065 for service in a court other than a district or circuit court, the governing body**  
21 **of a city or county may provide by ordinance for an additional juror fee and for reimburse-**  
22 **ment by the city or county of jurors for mileage and other expenses incurred in serving as**  
23 **jurors in courts other than district or circuit courts.**

24 **SECTION 2.** ORS 10.065 is amended to read:

25 10.065. (1) [*Every juror whose fees are prescribed in ORS 10.060*] **In addition to the fees pre-**

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.

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1 **scribed in ORS 10.060, a juror** who is required to travel from the juror's usual place of abode in  
 2 order to execute or perform service as a juror~~, in addition to the fees prescribed in ORS 10.060, shall~~  
 3 ~~be entitled to~~ **in a court other than a district or circuit court shall be paid** mileage at the rate  
 4 of eight cents a mile for travel in going to and returning from the place where the service is per-  
 5 formed. [*Such juror shall be entitled to such mileage for each day's attendance upon court.*]

6 **(2) In addition to the fees prescribed in ORS 10.060, a juror who is required to travel from**  
 7 **the juror's usual place of abode in order to execute or perform service as a juror in a district**  
 8 **or circuit court shall be paid mileage for travel in going to and returning from the place**  
 9 **where the service is performed and shall be paid for any reasonable parking fees incurred**  
 10 **by the juror for each day's required attendance at the court. The mileage payment may be**  
 11 **based on actual costs of travel or on the rate established by the State Court Administrator**  
 12 **as a travel mileage allowance, but in no event may the mileage payment be less than 10 cents**  
 13 **per mile. Mileage paid to a juror shall be based on the shortest practicable route between the**  
 14 **juror's residence and the place where court is held.**

15 **(3) In addition to the fees prescribed in ORS 10.060, a juror serving in district or circuit**  
 16 **court may be paid for lodging expenses, dependent care expenses and other reasonable ex-**  
 17 **penses that arise by reason of jury service. The State Court Administrator shall establish**  
 18 **policies and procedures on eligibility, authorization and payment of expenses under this**  
 19 **subsection. Payment of expenses under this subsection is subject to availability of funds for**  
 20 **the payment.**

21 **(4) A juror shall be paid the mileage, parking fees and other expenses provided for in this**  
 22 **section for each day's attendance at court.**

23 **SECTION 3.** ORS 10.075 is amended to read:

24 10.075. (1) The per diem fees, [*and*] **parking fees, mileage and other expenses** due to [*each*  
 25 *grand juror and each trial*] **a person serving as a juror** in the circuit or district court shall be paid  
 26 by the state from funds available for the purpose. Payment shall be made upon a certified statement,  
 27 prepared by the clerk of court, showing the number of days each juror has served and the amount  
 28 due each juror for mileage, **parking fees and other expenses.**

29 (2) If a [*grand jury or a trial*] jury in the circuit or district court is provided food, drink, lodging  
 30 or transportation by order of the circuit or district court, the cost thereof shall be paid by the state  
 31 from funds available for the purpose.

32 [*(3) This section does not apply to mileage and other expenses of jurors reimbursed by a county*  
 33 *as provided in ORS 10.060 (2).*]

34 **SECTION 4.** The amendments to ORS 10.060, 10.065 and 10.075 by sections 1, 2 and 3 of  
 35 **this Act apply only to jurors summoned on or after the effective date of this Act.**

36 **SECTION 5.** This Act takes effect January 1, 1996.  
 37

68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

## B-Engrossed Senate Bill 192

Ordered by the House May 15  
Including Senate Amendments dated March 16 and House Amendments  
dated May 15

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Judicial Department)

### 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.

Revises laws relating to courts and administration of justice. **Requires that State Court Administrator conduct study and report to Legislative Assembly.**

### A BILL FOR AN ACT

1  
2 Relating to administration of justice; creating new provisions; and amending ORS 1.150, 1.820, 2.111,  
3 8.120, 8.225, 10.215, 19.078, 21.110, 21.112, 21.605, 24.115, 45.275, 46.221, 46.274, 52.630, 105.130,  
4 107.755, 107.765, 107.785, 138.560, 305.480, 305.485, 419B.265, 419B.271 and 419C.258.

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

6 **SECTION 1.** ORS 1.150 is amended to read:

7 1.150. (1) **Except as provided in subsection (2) of this section,** every writing in any action,  
8 suit or proceeding in a court of justice of this state, or before a judicial officer, shall be in English;  
9 but common abbreviations may be used.

10 (2) **A writing in an action, suit or proceeding in a court of justice of this state, or before**  
11 **a judicial officer, may be submitted in English and accompanied by a translation into a for-**  
12 **foreign language that is certified by the translator to be an accurate and true translation of the**  
13 **English writing. If the writing requires a signature, either the English or the foreign lan-**  
14 **guage writing may be signed.**

15 (3) **If a writing is submitted in English and accompanied by a translation under sub-**  
16 **section (2) of this section, a copy of the writing and the translation must be provided to the**  
17 **other parties in the proceeding in the manner provided by the statutes and rules relating to**  
18 **service, notice and discovery of writings in civil and criminal proceedings in courts of justice**  
19 **of this state and before judicial officers.**

20 (4) **The State Court Administrator may establish policies and procedures governing the**  
21 **implementation of subsection (2) of this section.**

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## A-Engrossed Senate Bill 864

Ordered by the Senate May 1  
Including Senate Amendments dated May 1

Sponsored by COMMITTEE ON JUDICIARY

### 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.

Requires appointment of interpreter for non-English speaking parties and witnesses in contested case proceedings before administrative agencies. Specifies when fees may be charged for appointment. Requires certification of interpreters for contested case proceedings.

*[Requires Oregon Department of Administrative Services to create interpreter certification program if funding available. Establishes Agency Interpreter Certification Account.]*

*[Appropriates moneys to department to establish certification program.]*

### A BILL FOR AN ACT

1 Relating to interpreters; creating new provisions; and amending ORS 183.418.

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

3 **SECTION 1.** ORS 183.418 is amended to read:

4 183.418. *[(1) When a non-English speaking person is a party to a contested case, the non-English*  
5 *speaking person is entitled to a qualified interpreter to interpret the proceedings to the non-English*  
6 *speaking person and to interpret the testimony of the non-English speaking person to the agency.]*

7 *[(2)(a) Except as provided in paragraph (b) of this subsection, the agency shall appoint the qualified*  
8 *interpreter for the non-English speaking person; and the agency shall fix and pay the fees and expenses*  
9 *of the qualified interpreter if:]*

10 *[(A) The non-English speaking person makes a verified statement and provides other information*  
11 *in writing under oath showing the inability of the non-English speaking person to obtain a qualified*  
12 *interpreter, and provides any other information required by the agency concerning the inability of the*  
13 *non-English speaking person to obtain such an interpreter; and]*

14 *[(B) It appears to the agency that the non-English speaking person is without means and is unable*  
15 *to obtain a qualified interpreter.]*

16 *[(b) If the non-English speaking person knowingly and voluntarily files with the agency a written*  
17 *statement that the non-English speaking person does not desire a qualified interpreter to be appointed*  
18 *for the non-English speaking person, the agency shall not appoint such an interpreter for the non-*  
19 *English speaking person.]*

20 **(1) An agency shall appoint a qualified language interpreter whenever it is necessary:**

21 **(a) To interpret the proceedings to a non-English speaking party;**

22 **(b) To interpret the testimony of a non-English speaking party or witness; or**

23 **(c) To assist the agency in performing the duties and responsibilities of the agency.**

24 **(2) No fee shall be charged to any person for the appointment of an interpreter under this**  
25 **section for the purpose of interpreting the testimony of a non-English speaking party or**  
26

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.

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1 witness or for the purpose of assisting the agency in performing the duties and responsibil-  
2 ities of the agency. No fee shall be charged to an indigent party for the appointment of an  
3 interpreter for the purpose of interpreting the proceedings to a non-English speaking party.  
4 In no event shall a fee be charged to any person for the appointment of an interpreter if the  
5 appointment is made for the purpose of determining if the party is indigent or non-English  
6 speaking.

7 (3) A party shall be considered indigent for the purposes of this section if:

8 (a) The party who requests a foreign language interpreter makes a verified statement  
9 and provides other information in writing under oath showing the inability of the party to  
10 obtain a qualified interpreter, and provides any other information required by the agency  
11 concerning the inability of the party to obtain such an interpreter; and

12 (b) It appears to the agency that the party is without means and is unable to obtain a  
13 qualified interpreter.

14 (4) The agency shall fix and pay fair compensation to an interpreter appointed under this  
15 section.

16 (5) If a party or witness is dissatisfied with the interpreter selected by the agency, the  
17 party or witness may use any interpreter certified under ORS 45.291 or who has otherwise  
18 been approved by the agency. However, if the substitution of another interpreter will delay  
19 the proceeding, good cause must be shown for the substitution. Any party may object to use  
20 of any interpreter for good cause. Unless the agency has substituted interpreters for cause,  
21 the party using any interpreter other than the interpreter originally appointed by the agency  
22 shall bear any additional costs beyond the amount required to pay the original interpreter.

23 (6) Any person serving as an interpreter for the agency in a contested case proceeding  
24 shall state or submit the person's qualifications on the record unless waived or otherwise  
25 stipulated to by the parties or counsel for the parties. An interpreter for the agency shall  
26 swear or affirm under oath to make a true and impartial translation of the proceedings in  
27 an understandable manner using the interpreter's best skills and judgment in accordance  
28 with the standards and ethics of the interpreter profession.

29 [(3)] (7) As used in this section:

30 (a) "Interpret" means the act of orally repeating the statements of a non-English  
31 speaking person in oral English and orally repeating the statements of an English speaking  
32 person in a foreign language. "Interpret" does not mean translating a document written in  
33 a foreign language into a document written in English or translating a document written in  
34 English into a document written in a foreign language.

35 [(a)] (b) "Non-English speaking [person]" means that a person [who], by reason of place of birth  
36 or culture, speaks a language other than English and does not speak English with adequate ability  
37 to communicate effectively in the proceedings.

38 [(b)] (c) "Qualified interpreter" means a person who is readily able to communicate with the  
39 non-English speaking person, [translate] interpret the proceedings for the non-English speaking  
40 person, and accurately interpret and repeat [and translate] the statements of the non-English  
41 speaking person [to the agency] in oral English, and the statements of other persons in the  
42 language spoken by the non-English speaking person. "Qualified interpreter" does not include  
43 any person who is unable to interpret and repeat fluently the dialect, slang or specialized  
44 vocabulary used by the party or witness.

45 SECTION 2. The amendments to ORS 183.418 by section 1 of this Act apply to any con-

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1 tested case hearing commenced on or after the effective date of this Act.

2 **SECTION 3.** (1) Except as provided by this section, whenever an agency is required to  
3 appoint an interpreter for any person in a contested case proceeding, the agency shall ap-  
4 point a qualified interpreter who has been certified under ORS 45.291 or who has otherwise  
5 been approved by the agency. If no certified interpreter is available, able or willing to serve,  
6 the agency may appoint any other qualified interpreter. Upon request of a party or witness,  
7 the agency, in its discretion, may appoint a qualified interpreter who has not been certified  
8 to act as an interpreter in lieu of a certified interpreter in any proceeding.

9 (2) The requirements of this section apply to appointments of interpreters for disabled  
10 persons, as defined in ORS 183.421, and for “non-English speaking” persons, as defined in  
11 ORS 183.418.

12 (3) The agency may not appoint any person under this section, ORS 183.418 or 183.421 if:

13 (a) The person has a conflict of interest with any of the parties or witnesses in the pro-  
14 ceeding;

15 (b) The person is unable to understand the party or witness, or cannot be understood by  
16 the party or witness; or

17 (c) The person is unable to work cooperatively with the person in need of an interpreter  
18 or the counsel for that person.

19 (4) For the purposes of this section, “qualified interpreter” means a person who meets  
20 the requirements of ORS 183.421 for a disabled person or a person who meets the require-  
21 ments of ORS 183.418 for a “non-English speaking” person.  
22

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68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

# Senate Bill 865

Sponsored by COMMITTEE ON JUDICIARY

## 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.

Requires appointment of interpreters for non-English speaking parties and certain other persons in juvenile proceedings and in matters referred to mediation or mandatory arbitration. Modifies grounds for appointment and provisions on when charge may be made for interpreter services.

### A BILL FOR AN ACT

1 Relating to interpreters; creating new provisions; and amending ORS 45.275, 419B.115 and 419C.285.

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

3 **SECTION 1.** ORS 45.275 is amended to read:

4 45.275. (1) In any civil or criminal proceeding in which an indigent person who is in need of an  
5 interpreter is a party, **including matters referred to mediation under ORS 36.180 to 36.210 and**  
6 **matters referred to arbitration under ORS 36.400 to 36.425**, the court shall appoint a qualified  
7 interpreter whenever it is necessary:

8 (a) To interpret the proceedings to a non-English speaking party;

9 (b) To interpret the testimony of a non-English speaking party **or witness**; or

10 (c) *[To interpret the testimony of any non-English speaking witness testifying on behalf of the in-*  
11 *digent party]* **To assist the court in performing the duties and responsibilities of the court.**

12 (2) *[No fee shall be charged to an indigent party for the appointment of an interpreter under this*  
13 *section.]* **No fee shall be charged to any person for the appointment of an interpreter under**  
14 **this section for the purpose of interpreting the testimony of a non-English speaking party**  
15 **or witness or for the purpose of assisting the court in performing the duties and responsi-**  
16 **bilities of the court. No fee shall be charged to an indigent party for the appointment of an**  
17 **interpreter for the purpose of interpreting the proceedings to a non-English speaking party.**

18 No fee shall be charged to any person for the appointment of an interpreter if appointment is made  
19 to determine whether the person is indigent or non-English speaking for the purposes of this section.

20 (3) A party shall be considered indigent for the purposes of this section if:

21 (a) The party makes a verified statement and provides other information in writing under oath  
22 showing financial inability to pay for a qualified interpreter, and provides any other information  
23 required by the court concerning the inability to pay for such an interpreter; and

24 (b) It appears to the court that the party is in fact indigent and unable to pay for a qualified  
25 interpreter.

26 (4) Fair compensation for the services of an interpreter appointed under this section shall be  
27 paid:

28 (a) By the county, subject to the approval of the terms of the contract by the governing body  
29 of the county, in a proceeding in a county or justice court.

30 (b) By the city, subject to the approval of the terms of the contract by the governing body of  
31

**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.

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1 the city, in a proceeding in a municipal court.

2 (c) By the state in a proceeding in a circuit or district court. Amounts payable by the state shall  
3 be from funds available to the court other than the State Court Indigent Defense Account estab-  
4 lished by ORS 151.465, except that fees of an interpreter necessary for the purpose of communication  
5 between appointed counsel and a client or witness in a criminal case shall be payable from that  
6 account.

7 (5) Where a party or witness is dissatisfied with the interpreter selected by the court, the party  
8 or witness may use any certified interpreter. However, if the substitution of another interpreter will  
9 delay the proceeding, good cause must be shown for the substitution. Any party may object to use  
10 of any interpreter for good cause. Unless the court has substituted interpreters for cause, the party  
11 using any interpreter other than the interpreter originally appointed by the court shall bear any  
12 additional costs beyond the amount required to pay the original interpreter.

13 (6) A court acting in its sole discretion and the interests of justice may order that the reason-  
14 able costs of providing the services of an interpreter in civil proceedings, including depositions, be  
15 taxed as costs if the prevailing party is unable to pay and requires interpreter's services and the  
16 nonprevailing party is financially able to pay those costs. The procedure for seeking costs under this  
17 subsection shall be as provided in ORCP 68 C(4).

18 (7) Any person serving as an interpreter for the court in a civil or criminal proceeding shall  
19 state or submit the person's qualifications on the record unless waived or otherwise stipulated to  
20 by the parties or counsel for the parties. An interpreter for the court shall swear or affirm under  
21 oath to make a true and impartial translation of the proceedings in an understandable manner using  
22 the interpreter's best skills and judgment in accordance with the standards and ethics of the inter-  
23 preter profession.

24 (8) For the purposes of this section:

25 (a) **"Interpret" means the act of orally repeating the statements of a non-English**  
26 **speaking person in oral English, and orally repeating the statements of an English speaking**  
27 **person in a foreign language. "Interpret" does not mean translating a document written in**  
28 **a foreign language into a document written in English, or translating a document written in**  
29 **English into a document written in a foreign language.**

30 [(a)] (b) "Non-English speaking [person]" means that a person [who], by reason of place of birth  
31 or culture, speaks a language other than English and does not speak English with adequate ability  
32 to communicate effectively in the proceedings.

33 [(b)] (c) "Qualified interpreter" means a person who is readily able to communicate with the  
34 non-English speaking person, [translate] **interpret** the proceedings and accurately repeat and  
35 [translate] **interpret** the statements of the non-English speaking person into oral English, and the  
36 statements of other persons into the language spoken by the non-English speaking person. "Quali-  
37 fied interpreter" does not include any person who is unable to interpret [or translate] **and repeat**  
38 **fluently the dialect, slang or specialized vocabulary used by the party or witness.**

39 **SECTION 2.** ORS 419B.115 is amended to read:

40 419B.115. (1) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500, are:

- 41 (a) The minor child;
- 42 (b) The legal parents or guardian;
- 43 (c) The state;
- 44 (d) The juvenile department;
- 45 (e) A court appointed special advocate, if appointed;

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- 1 (f) The Children's Services Division or other child-caring agency if the agency has temporary  
2 custody of the child; and
- 3 (g) An intervenor under ORS 109.119 (1) to (4).
- 4 (2) The rights of the parties include, but are not limited to:
- 5 (a) The right to notice of the proceeding and copies of the pleadings;
- 6 (b) The right to appear with counsel and to have counsel appointed as otherwise provided by  
7 law;
- 8 (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- 9 (d) The right of appeal; and
- 10 (e) The right to request a hearing.
- 11 (3)(a) Persons who are not parties under subsection (1) of this section may petition the court for  
12 rights of limited participation. The petition must be filed and served on all parties no later than two  
13 weeks before a proceeding in the case in which participation is sought. The petition must state:
- 14 (A) The reason the participation is sought;
- 15 (B) How the person's involvement is in the best interest of the child or the administration of  
16 justice;
- 17 (C) Why the parties cannot adequately present the case; and
- 18 (D) What specific relief is being sought.
- 19 (b) If the court finds that the petition is well founded, the court may grant rights of limited  
20 participation as specified by the court.
- 21 (c) Persons petitioning for rights of limited participation are not entitled to court-appointed  
22 counsel.
- 23 **(4) Interpreters for parties and persons granted rights of limited participation shall be**  
24 **appointed in the manner specified by ORS 45.275 and 45.285. In addition, interpreters shall**  
25 **be appointed for any person who has had extended personal involvement with the child.**
- 26 **SECTION 3.** ORS 419C.285 is amended to read:
- 27 419C.285. (1) At the adjudication stage of a delinquency proceeding, the parties to the proceed-  
28 ing are the child and the state, represented by the district attorney or the juvenile department. At  
29 the dispositional stage of a delinquency proceeding, the following are also parties:
- 30 (a) The parents or guardian of the child;
- 31 (b) A court appointed special advocate, if appointed;
- 32 (c) The Children's Services Division or other child care agency, if the child is temporarily  
33 committed to the agency; and
- 34 (d) An intervenor under ORS 109.119 (1) to (4).
- 35 (2) The rights of the parties include, but are not limited to:
- 36 (a) The right to notice of the proceeding and copies of the pleadings;
- 37 (b) The right to appear with counsel and to have counsel appointed if otherwise provided by law;
- 38 (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- 39 (d) The right to appeal; and
- 40 (e) The right to request a hearing.
- 41 (3)(a) Persons who are not parties under subsection (1) of this section may petition the court for  
42 rights of limited participation. The petition must be filed and served on all parties no later than two  
43 weeks before a proceeding in the case in which participation is sought. The petition must state:
- 44 (A) The reason the participation is sought;
- 45 (B) How the person's involvement is in the best interest of the child or the administration of

## SB 865

1 justice;

2 (C) Why the parties cannot adequately present the case; and

3 (D) What specific relief is being sought.

4 (b) If the court finds that the petition is well founded, the court may grant rights of limited  
5 participation as specified by the court.

6 (c) Persons petitioning for rights of limited participation are not entitled to court-appointed  
7 counsel.

8 (4) Interpreters for parties and persons granted rights of limited participation shall be  
9 appointed in the manner specified by ORS 45.275 and 45.285. In addition, interpreters shall  
10 be appointed for any person who has had extended personal involvement with the child.

11 **SECTION 4.** The amendments to ORS 45.275 by section 1 of this Act apply to any pro-  
12 ceeding commenced on or after the effective date of this Act. The amendments to ORS  
13 419B.115 and 419C.285 by sections 2 and 3 of this Act apply to all proceedings in juvenile court  
14 commenced on or after the effective date of this Act.  
15

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68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

A-Engrossed
Senate Bill 866

- Ordered by the Senate April 28
Including Senate Amendments dated April 28

Sponsored by COMMITTEE ON JUDICIARY

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.

Requires Criminal Justice Council to collect data on [influence of] race of individuals charged with crimes and report any racial bias in charging [decisions] process. Requires council to [determine and] report on extent that race of defendant affects pretrial release decisions. Requires council to [determine and] report whether race, ethnicity or cultural differences of inmates play role in revocation of parole or post-prison supervision, in probation status or in correction administrative processes.

A BILL FOR AN ACT

- 1 Relating to criminal procedure; amending ORS 137.655.
2 Be It Enacted by the People of the State of Oregon:
3 SECTION 1. ORS 137.655 is amended to read:
4 137.655. The Oregon Criminal Justice Council shall:
5 (1) Study and make recommendations concerning the functioning of the various parts of the
6 criminal justice system, including study and recommendations concerning implementation of com-
7 munity corrections programs;
8 (2) Study and make recommendations concerning the coordination of the various parts of the
9 criminal justice system;
10 (3) Conduct research and evaluation of programs, methods and techniques employed by the se-
11 veral components of the criminal justice system;
12 (4) Study and make recommendations concerning the capacity, utilization and type of state and
13 local prison and jail facilities and alternatives to the same including the appropriate use of existing
14 facilities and programs, and the desirability of additional or different facilities and programs;
15 (5) Study and make recommendations concerning methods of reducing risk of future criminal
16 conduct by offenders;
17 (6) Collect, evaluate and coordinate information and data related to or produced by all parts of
18 the criminal justice system;
19 (7) Accept gifts and grants and disburse them in the performance of its responsibilities;
20 (8) Study the application of the aggravated murder statutes to identify the frequency with which
21 particular aggravating factors are alleged and proved;
22 (9) Determine whether there is gender or racial bias in the application of the death penalty;
23 (10) Collect data on the race of individuals who are charged with crimes, and report if
24 there is racial bias in the charging process;
25 (11) Report on the extent to which the race of the defendant affects pretrial release de-
26

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.

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A-Eng. SB 866

1 **cisions, including decisions on whether the defendant is released on personal recognizance**  
2 **and decisions on conditions of release;**

3 **(12) Report whether the race, ethnicity or cultural differences of inmates play a role in**  
4 **revocation of parole or post-prison supervision, in probation status or in correction admin-**  
5 **istrative processes, including decisions on granting or denying earned time credits;**

6 [(10)] **(13)** If so designated by the Governor, be the agency responsible for the administration  
7 of the Drug Control and System Improvement Grant Program as set forth in 42 U.S.C. §3757;

8 [(11)] **(14)** Issue annual state corrections population forecasts, including expected populations  
9 of prisons, jails and community corrections caseloads, to be used by:

10 (a) The Department of Corrections in preparing budget requests;

11 (b) The State Sentencing Guidelines Board in considering amendments to sentencing guidelines;  
12 and

13 (c) Any other state agency concerned with the effect of offender populations or policy develop-  
14 ment on budgeting;

15 [(12)] **(15)** Serve as the state's criminal justice grants authorization clearinghouse as directed;

16 [(13)] **(16)** Conduct joint studies by agreement with other state agencies, boards or commissions  
17 on any matters within the jurisdiction of the council;

18 [(14)] **(17)** Assess quarterly the impact of sentencing guidelines, and make recommendations to  
19 the Legislative Assembly regarding proposed changes in the criminal code, criminal procedures and  
20 any aspects of sentencing that may impede the implementation and effectiveness of the sentencing  
21 guidelines;

22 [(15)] **(18)** Assist in maintaining the quality and reliability of data from established criminal  
23 justice information systems and promote the development of criminal justice information systems;

24 [(16)] **(19)** Be a depository of federal criminal justice analytical and statistical information, be  
25 a center for dissemination of the information to Oregon state and local government agencies and  
26 provide Oregon criminal justice analytical and statistical information to federal agencies; and

27 [(17)] **(20)** Report annually to the Chief Justice of the Supreme Court, the President of the Sen-  
28 ate, the Speaker of the House of Representatives and the Governor.

29

68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

## Senate Bill 867

Sponsored by COMMITTEE ON JUDICIARY

### 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**.

Requires employer to post translated notices of workers' rights under workers' compensation laws in certain circumstances. Extends period for filing workers' compensation claim if employer fails to comply with posting requirement. Requires providing translated claim form in specified instances.

### A BILL FOR AN ACT

1  
2 Relating to workers' compensation; creating new provisions; and amending ORS 656.056 and 656.265.

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

4 **SECTION 1.** ORS 656.056 is amended to read:

5 656.056. (1) All subject employers shall display in a conspicuous manner about their works, and  
6 in a sufficient number of places reasonably to inform their workers of the fact, printed notices fur-  
7 nished by the Director of the Department of Consumer and Business Services stating that they  
8 are subject to this chapter and the manner of their compliance with this chapter.

9 (2) **A subject employer who knows or should know that the primary language of any of**  
10 **the employees of the subject employer is not English must post the notices required by**  
11 **subsection (1) of this section in the language or languages of the employees who do not speak**  
12 **English as a primary language. A subject employer need not comply with the provisions of**  
13 **this subsection unless the director has printed and made available the notices required by**  
14 **this subsection.**

15 [(2)] (3) No employer who is not currently a subject employer shall post or permit to remain on  
16 or about the place of business or premises of the employer any notice that the employer is subject  
17 to, and complying with, this chapter.

18 **SECTION 2.** ORS 656.265 is amended to read:

19 656.265. (1) Notice of an accident resulting in an injury or death shall be given immediately by  
20 the worker or a dependent of the worker to the employer, but not later than 30 days after the ac-  
21 cident. The employer shall acknowledge forthwith receipt of such notice.

22 (2) The notice need not be in any particular form. However, it shall be in writing and shall ap-  
23 prise the employer when and where and how an injury has occurred to a worker. A report or  
24 statement secured from a worker, or from the doctor of the worker and signed by the worker, con-  
25 cerning an accident which may involve a compensable injury shall be considered notice from the  
26 worker and the employer shall forthwith furnish the worker a copy of any such report or statement.

27 (3) Notice shall be given to the employer by mail, addressed to the employer at the last-known  
28 place of business of the employer, or by personal delivery to the employer or to a foreman or other  
29 supervisor of the employer. If for any reason it is not possible to so notify the employer, notice may  
30 be given to the Director of the Department of Consumer and Business Services and referred to

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.

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1 the insurer or self-insured employer.

2 (4) Failure to give notice as required by this section bars a claim under this chapter unless:

3 (a) The employer had knowledge of the injury or death, or the insurer or self-insured employer  
4 has not been prejudiced by failure to receive the notice; or

5 (b) The insurer or self-insured employer has begun payments as required under this chapter; or

6 (c) The notice is given within one year after the date of the accident and the worker or bene-  
7 ficiaries of the worker establish in a hearing that the worker had good cause for failure to give  
8 notice within 30 days after the accident; or [.]

9 (d) **The notice is given within one year after the date of the accident and the worker or**  
10 **beneficiaries of the worker establish in a hearing that the worker’s primary language is not**  
11 **English, that the employer knew or should have known that the worker’s primary language**  
12 **was not English and that the employer failed to comply with ORS 656.056 (2).**

13 (5) The issue of failure to give notice must be raised at the first hearing on a claim for com-  
14 pensation in respect to the injury or death.

15 (6) The director shall promulgate and prescribe uniform forms to be used by workers in report-  
16 ing their injuries to their employers. These forms shall be supplied by all employers to injured  
17 workers upon request of the injured worker or some other person on behalf of the worker.

18 (7) **The director shall adopt official translations of the forms promulgated under sub-**  
19 **section (6) of this section for all languages spoken as a primary language by a substantial**  
20 **number of workers in the state. If an employer knows or should know that the primary**  
21 **language of an employee of the employer is not English, the employer must supply a trans-**  
22 **lated form in the language spoken by the employee as a primary language if the injured**  
23 **worker or some other person on behalf of the worker requests a form for reporting an in-**  
24 **jury.**

25 (8) Nothing [contained in this section, however, shall defeat] in subsections (6) and (7) of this  
26 section defeats the claim of any worker who does not use the suggested form but otherwise sub-  
27 stantially complies with this section.

28 **SECTION 3. The amendments to ORS 656.265 by section 2 of this Act, extending the pe-**  
29 **riod during which an injured worker or beneficiaries of the worker may file a claim if the**  
30 **employer fails to comply with ORS 656.056 (2), apply only to injuries or deaths that occur on**  
31 **or after the effective date of this Act.**

32

68th OREGON LEGISLATIVE ASSEMBLY--1995 Regular Session

## A-Engrossed Senate Bill 868

Ordered by the Senate April 27  
Including Senate Amendments dated April 27

Sponsored by COMMITTEE ON JUDICIARY

### 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.

Allows challenge to juror for cause [*in certain circumstances if juror makes statement that shows prejudice against racial or ethnic group*] **based on actual bias on part of juror in reference to action, party to action, sex of party or racial group.**

#### A BILL FOR AN ACT

1 Relating to jurors; creating new provisions; and amending ORCP 57 D.

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

3 **SECTION 1.** ORCP 57 D is amended to read:

4 **D. Challenges.**

5 D(1) **Challenges for cause; grounds.** Challenges for cause may be taken on any one or more of  
6 the following grounds:

7 D(1)(a) The want of any qualifications prescribed by ORS 10.030 for a person eligible to act as  
8 a juror.

9 D(1)(b) The existence of a mental or physical defect which satisfies the court that the challenged  
10 person is incapable of performing the duties of a juror in the particular action without prejudice to  
11 the substantial rights of the challenging party.

12 D(1)(c) Consanguinity or affinity within the fourth degree to any party.

13 D(1)(d) Standing in the relation of guardian and ward, physician and patient, master and servant,  
14 landlord and tenant, or debtor and creditor, to the adverse party; or being a member of the family  
15 of, or a partner in business with, or in the employment for wages of, or being an attorney for or a  
16 client of, the adverse party; or being surety in the action called for trial, or otherwise, for the ad-  
17 verse party.

18 D(1)(e) Having served as a juror on a previous trial in the same action, or in another action  
19 between the same parties for the same cause of action, upon substantially the same facts or trans-  
20 action.

21 D(1)(f) Interest on the part of the juror in the outcome of the action, or the principal question  
22 involved therein.

23 D(1)(g) [*Actual bias, which is the existence of a state of mind on the part of the juror, in reference*  
24 *to the action, or to either party, which satisfies the court, in the exercise of a sound discretion, that the*  
25 *juror cannot try the issue impartially and without prejudice to the substantial rights of the party*  
26 *challenging.*] **Actual bias on the part of a juror. Actual bias is the existence of a state of mind**  
27 **on the part of a juror that satisfies the court, in the exercise of sound discretion, that the**  
28

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.

LC 3733

A-Eng. SB 868

1 juror cannot try the issue impartially and without prejudice to the substantial rights of the  
 2 party challenging the juror. Actual bias may be in reference to: (i) the action; (ii) either  
 3 party to the action; (iii) the sex of the party, the party's attorney, a victim or a witness; or  
 4 (iv) a racial or ethnic group that the party, the party's attorney, a victim or a witness is a  
 5 member of, or is perceived to be a member of. A challenge for actual bias may be taken for the  
 6 cause mentioned in this paragraph, but on the trial of such challenge, although it should appear that  
 7 the juror challenged has formed or expressed an opinion upon the merits of the cause from what the  
 8 juror may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge,  
 9 but the court must be satisfied, from all the circumstances, that the juror cannot disregard such  
 10 opinion and try the issue impartially.

11 D(2) Peremptory challenges; number. A peremptory challenge is an objection to a juror for  
 12 which no reason need be given, but upon which the court shall exclude such juror. Either party shall  
 13 be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff  
 14 or defendant in the case or where cases have been consolidated for trial, the parties plaintiff or  
 15 defendant must join in the challenge and are limited to a total of three peremptory challenges, ex-  
 16 cept the court, in its discretion and in the interest of justice, may allow any of the parties, single  
 17 or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

18 D(3) Conduct of peremptory challenges. After the full number of jurors have been passed for  
 19 cause, peremptory challenges shall be conducted as follows: the plaintiff may challenge one and then  
 20 the defendant may challenge one, and so alternating until the peremptory challenges shall be ex-  
 21 hausted. After each challenge, the panel shall be filled and the additional juror passed for cause  
 22 before another peremptory challenge shall be exercised, and neither party is required to exercise a  
 23 peremptory challenge unless the full number of jurors are in the jury box at the time. The refusal  
 24 to challenge by either party in the order of alternation shall not defeat the adverse party of such  
 25 adverse party's full number of challenges, and such refusal by a party to exercise a challenge in  
 26 proper turn shall conclude that party as to the jurors once accepted by that party, and if that par-  
 27 ty's right of peremptory challenge be not exhausted, that party's further challenges shall be con-  
 28 fined, in that party's proper turn, to such additional jurors as may be called. The court may, for good  
 29 cause shown, permit a challenge to be taken to any juror before the jury is completed and sworn,  
 30 notwithstanding the juror challenged may have been theretofore accepted, but nothing in this sub-  
 31 section shall be construed to increase the number of peremptory challenges allowed.

32 **SECTION 2. The amendments to ORCP 57 D by section 1 of this Act apply only to jurors**  
 33 **sworn on or after the effective date of this Act.**

34



## A-Eng. SB 869

1 graph, but on the trial of such challenge, although it should appear that the juror challenged has  
2 formed or expressed an opinion upon the merits of the cause from what the juror may have heard  
3 or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be  
4 satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue  
5 impartially.

6 D(2) Peremptory challenges; number. A peremptory challenge is an objection to a juror for  
7 which no reason need be given, but upon which the court shall exclude such juror. Either party shall  
8 be entitled to three peremptory challenges, and no more. Where there are multiple parties plaintiff  
9 or defendant in the case or where cases have been consolidated for trial, the parties plaintiff or  
10 defendant must join in the challenge and are limited to a total of three peremptory challenges, ex-  
11 cept the court, in its discretion and in the interest of justice, may allow any of the parties, single  
12 or multiple, additional peremptory challenges and permit them to be exercised separately or jointly.

13 D(3) Conduct of peremptory challenges. After the full number of jurors have been passed for  
14 cause, peremptory challenges shall be conducted **by written ballot or outside the presence of the**  
15 **jury** as follows: the plaintiff may challenge one and then the defendant may challenge one, and so  
16 alternating until the peremptory challenges shall be exhausted. After each challenge, the panel shall  
17 be filled and the additional juror passed for cause before another peremptory challenge shall be  
18 exercised, and neither party is required to exercise a peremptory challenge unless the full number  
19 of jurors are in the jury box at the time. The refusal to challenge by either party in the order of  
20 alternation shall not defeat the adverse party of such adverse party's full number of challenges, and  
21 such refusal by a party to exercise a challenge in proper turn shall conclude that party as to the  
22 jurors once accepted by that party, and if that party's right of peremptory challenge be not ex-  
23 hausted, that party's further challenges shall be confined, in that party's proper turn, to such addi-  
24 tional jurors as may be called. The court may, for good cause shown, permit a challenge to be taken  
25 to any juror before the jury is completed and sworn, notwithstanding the juror challenged may have  
26 been theretofore accepted, but nothing in this subsection shall be construed to increase the number  
27 of peremptory challenges allowed.

28 D(4) Challenge of peremptory challenge exercised on basis of race, ethnicity or sex.

29 **D(4)(a) A party may not exercise a peremptory challenge on the basis of race, ethnicity**  
30 **or sex. Courts shall presume that a peremptory challenge does not violate this paragraph,**  
31 **but the presumption may be rebutted in the manner provided by this section.**

32 **D(4)(b) If a party believes that the adverse party is exercising a peremptory challenge**  
33 **on a basis prohibited under paragraph (a) of this subsection, the party may object to the**  
34 **exercise of the challenge. The objection must be made before the court excuses the juror.**  
35 **The objection must be made outside of the presence of potential jurors. The party making**  
36 **the objection has the burden of establishing a prima facie case that the adverse party chal-**  
37 **lenged the potential juror on the basis of race, ethnicity or sex.**

38 **D(4)(c) If the court finds that the party making the objection has established a prima**  
39 **facie case that the adverse party challenged a prospective juror on the basis of race,**  
40 **ethnicity or sex, the burden shifts to the adverse party to show that the peremptory chal-**  
41 **lenge was not exercised on the basis of race, ethnicity or sex. If the adverse party fails to**  
42 **meet the burden of justification as to the questioned challenge, the presumption that the**  
43 **challenge does not violate paragraph (a) of this subsection is rebutted.**

44 **D(4)(d) If the court finds that the adverse party challenged a prospective juror on the**  
45 **basis of race, ethnicity or sex, the court shall disallow the peremptory challenge.**

## A-Eng. SB 869

1       **SECTION 2.** ORS 136.230 is amended to read:

2       136.230. (1) If the trial is upon an accusatory instrument in which one or more of the crimes  
3 charged is punishable with imprisonment in a Department of Corrections institution for life or is a  
4 capital offense, both the defendant and the state are entitled to 12 peremptory challenges, and no  
5 more. In any other trial, both are entitled to six.

6       (2) Peremptory challenges shall be taken in writing by secret ballot as follows:

7       (a) The defendant may challenge two jurors and the state may challenge two, and so alternating,  
8 the defendant exercising two challenges and the state two until the peremptory challenges are ex-  
9 hausted.

10       (b) After each challenge the panel shall be filled and the additional juror passed for cause before  
11 another peremptory challenge is exercised. Neither party shall be required to exercise a peremptory  
12 challenge unless the full number of jurors is in the jury box at the time.

13       (c) The refusal to challenge by either party in order of alternation does not prevent the adverse  
14 party from exercising that adverse party's full number of challenges, and such refusal on the part  
15 of a party to exercise a challenge in proper turn concludes that party as to the jurors once accepted  
16 by that party. If that party's right of peremptory challenge is not exhausted, that party's further  
17 challenges shall be confined, in that party's proper turn, to such additional jurors as may be called.

18       (3) Notwithstanding subsection (2) of this section, the defendant and the state may stipulate to  
19 taking peremptory challenges orally.

20       **(4) Peremptory challenges are subject to ORCP 57 D(4).**

21       **SECTION 3.** The amendments to ORCP 57 D and ORS 136.230 by sections 1 and 2 of this  
22 Act apply only to jurors sworn on or after the effective date of this Act.

23





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