

OREGON STATE BAR
LEGISLATIVE PROPOSAL
Instructions

The Public Affairs Committee invites practice sections of the bar to submit Legislative Proposals for consideration by the Committee and the Board of Governors as part of the bar's Law Improvement Program. Law improvement legislation includes proposals to clarify statutory ambiguities, to modify unforeseen "glitches" in major legislation passed in previous sessions, and to codify case law as necessary.

Please submit this completed form to the Public Affairs Committee at pubaff@osbar.org. See *OSB Bylaws, Chapter 12, Legislation and Public Policy*.

Two primary criteria for Public Affairs Committee approval of a section or committee proposal are:

- (1) whether the proposal represents a consensus of the interests within a particular group, and
- (2) whether the proposal is balanced public interest response to the issues at hand.

Once approved, the bar's Public Affairs Department staff will work with the section to refine the proposal and advance it through the legislative process. Public Affairs staff assist sections and committees by notifying the legislative liaison of upcoming hearings, sending updates on the status of legislation, assisting sections in preparing for and giving testimony before a committee, acquainting legislators and staff with proposals, and dealing with technical aspects of the legislative process. For this purpose it is helpful for the section to designate a Legislative Liaison and perhaps a backup designee as well.

If you have questions or need information, feel free to contact program staff directly at 1-800-452-8260 or 503-620-0222, Dominique Rossi, ext. 317; Avery Pickard, ext. 378; or Matt Shields, ext. 358. Please let us know if your committee or section has specific needs or requests. We look forward to working with you.

Law Improvement Proposal form begins on the next page. Click on the shaded area to fill in your response.

OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part I – Legislative Summary

Re: Supporting amendments to ORS 24.105

Section Submitting: Indian Law Section

Legislative Liaison(s)

Name: Naomi Stacy, Anne Norloff, Amanda Marshall, Gage Hansen

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1. Does Proposal amend current law?

Yes ☒ No ☐

Additional Notes:

2. Problem that Proposals Seeks to Address

Please describe the effect in practice of the statutory error or ambiguity. Include any situational examples that may be helpful and include references to specific legal and/or statutory language that is relevant.

ORS 24.105, through its reference to ORS 426.180, disallows tribal members in Oregon (who are also State of Oregon citizens) from direct access to an appropriate level of service when they are subject to tribal court orders for involuntary civil commitments, or who are unable to aid and assist in their own defense. Amending the language recognizes that tribes are the best mental health authority for their jurisdiction. It also has the ability to increase cross-jurisdictional cooperation between Tribes and neighboring counties to better address mental health issues affecting residents.

3. Proposed Solution

Please detail the proposed amendment to statutory or administrative language (or other proposed solution) that may adequately address the problem. It may be helpful to reference where in statute the proposed change might be incorporated, and the way in which proposed amendment avoided unintended consequences. Also include any alternative solutions that may be considered as well (i.e., changes in procedural or administrative rules).

Strike the language after ORS 24.105 (2) "or as provided in ORS 426.180" and replace with language that specifically allows for recognition of tribal court orders related to civil commitments and defendant restoration services. Move language regarding the other exception listed at ORS 24.105 to ORS 24.105 (3), with a reference to an opt-in deference for tribes to recognize these other statutory exceptions (such as for child support enforcement). Tribes can still choose to use the affidavit method under ORS 426.180, if they so choose.

4. Alternative Solutions

If it is possible that a non-legislative solutions (such as changes in procedural or administrative rules or an education or awareness effort) exists, please detail any such alternatives.

5. History of Activity Relating to Proposal

Please detail to the best of the section's knowledge any prior discussion (within section or section subcommittee, with the Court or other agencies, with policymakers or other stakeholder groups), workgroup activity, or prior introduced legislation or rulemaking efforts around this policy concept and/or the proposed solution.

In 2017-2019, there was an effort to propose legislation that would resolve this issue but those efforts were not successful. In 2021, full faith and credit was extended, through amendment to ORS 24.105, to all tribal court orders, judgments and decrees but ORS 24.105 also listed an exception for orders for involuntary civil commitments and for those unable to aid and assist in their own defense, through its reference to the process at ORS 426.180

6. Impacted Constituencies

Please discuss those constituencies that would be most impacted by this change and in what ways those groups would be impacted. Which stakeholders might support the proposal, and which stakeholders might oppose it?

Proponents' Main Arguments

This amendment would impact citizens needing serious mental health illness levels of care who are subject to a tribal court order for civil commitment or defendants found unable to aid and assist in their own defense. Tribal governments, courts and reservation communities bear the public safety risk of untreated serious mental illness when denied access to those levels of services under the state law.

Opponents' Main Arguments

Oregon's services are under-resourced and remain under timelines imposed by the Oregon Advocacy Center v. Oregon (Mink/Bowman) 2025 order issued by Judge Mossman, Federal District Court of Oregon.

7. Impact of Proposal

Please detail any broader positive impacts the proposed change would bring about- related, for example, to improved client service in the relevant practice area, enhanced consumer and/or access to justice features, court efficiency, etc. Please also include any potential negative impacts of proposed change. Please list the primary positive and negative impacts below.

Positive Impacts

Direct recognition of tribal court orders will allow better access to levels of care and a continuum of care and services for Tribal members residing in the State of Oregon.

Negative Impacts

OREGON STATE BAR LEGISLATIVE PROPOSAL Part II – Legislative Language

Please provide your legislative language below:

ORS 24.105 Definition for ORS 24.105 to 24.125, 24.135 and 24.155 to 24.175. In ORS 24.105 to 24.125, 24.135 and 24.155 to 24.175, “foreign judgment” means:

- (1) Any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state; and
 - (2) Any judgment, decree or order of a tribal court of a federally recognized Indian tribe, *including when a tribal court order pertains to State and local services related to involuntary civil commitments or defendant restoration services.*
- (2)(a) *A Tribal Court judgment, decree, or order that explicitly provides for a process by reference to another Oregon statute is presumed to be valid pursuant to the statute referenced; a tribal judgment, decree, or order with such a provision is also a valid "foreign judgment" pursuant to this section in any instance in which the statute referenced is determined to be inapplicable to the judgment, decree, or order issued.*