Judgments/ Enforcement of Judgments:

JUDGMENTS REPORT
(HB 2646)

Prepared by
David Heynderickx
Senior Deputy Legislative Counsel

From
The Offices of the Executive Director
David R. Kenagy
and
Assistant Executive Director
Wendy J. Johnson

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Judgments/ Enforcement of Judgments Work Group
Judgments Report

I. History of the Problem

On January 1, 1980, the first set of Oregon Rules of Civil Procedure became effective.[1] ORCP 2 contained a bold and dramatic statement about the effect of the rules on the traditional distinctions between the procedures for actions at law and suits in equity. The rule reads as follows:

> **One form of action.** There shall be one form of action known as a civil action. All procedural distinctions between actions at law and suits in equity are hereby abolished, except for those distinctions specifically provided for by these rules, by statute, or by the Constitution of this state.

Although ORCP 2 seems to be a final and authoritative statement on procedural differences based on the age-old distinction between law and equity, the drafters of the ORCP were well aware that there was a substantial disconnect between the absolute proclamation of the rule and the reality of the thousands of statutes that make up the Oregon Revised Statutes. As part of the legislative package that addressed the implementation of the ORCP, the 1979 Legislative Assembly passed ORS 174.590, a statute that grudgingly concedes that the existence of hundreds of statutes that continue to reflect the old common law distinctions. ORS 174.590 reads as follows:

> References in the statute laws of this state, including provisions of law deemed to be rules of court as provided in ORS 1.745, in effect on or after January 1, 1980, to actions, actions at law, proceedings at law, suits, suits in equity, proceedings in equity, judgments or decrees are not intended and shall not be construed to retain procedural distinctions between actions at law and suits in equity abolished by ORCP 2.

ORCP 1 also provided some escape from the hard rule of ORCP 2. ORCP 1 provides in relevant part:

> These rules govern procedure and practice in all circuit courts of this state, except in the small claims department of circuit courts, for all civil actions and special proceedings whether cognizable as cases at law, in equity, or of statutory origin *except where a different procedure is specified by statute or rule*. (Emphasis added.)

As a legislative drafter, the author of this report is sympathetic to the problem faced by the persons preparing the ORCP in 1979. It would have been a daunting task to amend all of

[1] *See,* ORS 1.725 to 1.760 (governing procedures for adoption of rules of civil procedure by Council on Court Procedures).

those statutes described in ORS 174.590. But the approach reflected in ORCP 1 and ORS 174.590 has led to substantial ambiguity in the statutes that govern the resolution of disputes by the courts of the state. In a few cases, subsequent laws have clarified the application of the ORCP to existing statutory proceedings.[2] In other cases, parties and courts have been left to fend for themselves in determining whether a "different procedure" has been specified by statute or rule.

The law governing judgments is one of the areas in which there are substantial discrepancies between ORCP 2 and other statutes. Many of these statutes date to the earliest days of the state, and reflect the clear distinction between law and equity that existed at that time. "Judgments" were entered in actions at law. "Decrees" were entered in suits in equity. The provisions in ORS chapters 18 and 23 governing "judgments" were understood to apply to the final decisions of courts in actions at law (e.g. tort actions for the recovery of damages), and not to "decrees" entered in suits in equity (e.g. divorce proceedings).

However, the distinctions between judgments and decrees have eroded substantially since the drafting of the Oregon Constitution in 1857. One of the clearest examples of this type of evolution can be found in the history of laws governing the award of support in domestic relations proceedings. At common law, divorce proceedings were an exemplar of suits in equity. The principal relief sought in the proceedings was a declaration of the status of the parties (*i.e.* married or not married). As an adjunct to that relief, courts could award support for dependent children who were placed in the custody of one of the two parents. However, because the relief was granted in equity, the remedies that were available for the enforcement of the support award were equitable in nature. The support award was phrased as an injunction to one of the parties to pay support. If the party failed to comply with the injunction, the spouse entitled to receive the support could seek to have the obligated party held in contempt.[3]

Since 1857 with the drafting of the Oregon Constitution, the importance of prompt and effective enforcement of support obligations has been increasingly recognized. The creation of mechanisms for the enforcement of "judgments" are seen as valuable additions to the remedies available under equity. These remedies include the creation of a lien against the real property of the judgment debtor, and the availability of several writs for enforcing the obligation (e.g. writ of garnishment). The availability of these remedies was eventually achieved by coming to view the support obligation as a "judgment" that existed within the decree, subject to enforcement in the same manner as any other "judgment" entered in an action at law.

Amendments that were made to ORCP 70 in 1989 made very clear the dual nature of divorce decrees that contained support obligations.[4] These amendments declared that awards of money constituted "money judgments."[5] The amendments then required that every "money judgment" contain certain information in a separate section of the judgment clearly labeled as a "money judgment." While there was no question that these requirements applied to child support

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[2] *See, e.g.,* ORS 419B.800 (ORCP does not apply to juvenile dependency proceedings).
[3] Contempt proceedings under ORS 33.015 to 33.155 remain, of course, one of the principal judicial remedies for enforcing support obligations.
[4] Or. Laws 1989, ch. 768, § 1.
[5] ORCP 70 A(2)(a).

awards in divorce decrees, ORCP 70 A was further amended in 1993 to include a requirement that the label of the separate section indicate if an award was for a child support obligation.[6]

It is easy to see the conceptual confusion that arises from the hybrid nature of divorce decrees that now contain "money judgments." Is there a "judgment" within the "decree?" If so, what exactly does the term "judgment" mean? The confusion was great enough that many family law practitioners began to ignore clear language of ORS chapter 107 dictating that marital relationships were ended by the entry of a decree and began to label the final decision of the court in divorce proceedings a "judgment." As a result of legislation passed in 1999, many (but not all) of the statutes in ORS chapter 107 were amended to change "decree" to "judgment."[7] As a result of the changes, some statutes in ORS chapter 107 refer to judgments in one subsection and to decrees in another.[8] The situation with domestic relation cases is emblematic of the problems that have been created by the imperfect implementation of the grand synthesis of law and equity proclaimed by ORCP 2. But it is only one of many problems that have arisen in the laws governing judgments and decrees.

II. Statement of the Problems Addressed by the Proposed Bill

As will be seen from the section-by-section comments to this bill proposal, a myriad of problems has arisen in the laws governing judgments and decrees:

A. Obsolete terminology. Most of the statutes governing judgments were written at a time when the courts of the state kept paper records of court proceedings. There was a large book called the register, and another large book that was called the docket. All filings and decisions in a case were entered in the register. The docket played a special role, since judgments that were entered in the docket created judgment liens. The circuit courts of this state now maintain all records by computers. But many laws in ORS chapter 18 and 23 continue to reflect the assumption that hard copy ledgers exist with entries made in hand by the court administrator.[9]

Also, as noted in Part I of this report, the use of the term "decree" is obsolete.

B. Lack of statutory organization. Some of the laws governing judgments appear in ORS chapter 18. Some appear in ORS chapter 23. Chapter 18 is confusing, because it also contains many laws that fall under the general rubric of "tort reform." Some of the provisions on writs of execution appear at the very beginning of ORS chapter 23; others at the end of the chapter.

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[6] Or. Laws, 1993, ch. 763, § 3.
[7] Or. Laws, 1999, ch. 659.
[8] *See, e.g. ORS* 107.115. Subsection (1) of this statute details the effect of a decree of dissolution of marriage, but subsection (2) indicates that the marriage relationship is terminated when the judge signs a judgment of dissolution of marriage.
[9] *See, e.g. ORS* 18.400 (1), which states that the "officer having custody of the docket" must indicate that satisfaction of a judgment must be noted in the docket "over the signature" of that officer. The court computer system does not accommodate an electronic "signature" at this time.

C. Lack of clarity on what is an "appealable" judgment. An embarrassingly large number of appellate cases have been generated over the years by confusion relating to the appealability of decisions rendered by a court. To some degree, these cases arise because of lack of clear statutory guidelines for the form of judgments. More significantly, the existing laws fail to make an unequivocal statement as to what a "judgment" is.

D. Judgments labeled as judgments that are not really judgments. The existing law allows documents to be filed with the court that are denominated "judgments," but do not operate as judgments. Confusion can easily arise as to the effect of these documents. The Work Group suspected that many such documents are docketed by the court administrator and create liens, even though the document does not become enforceable until entry of the general judgment in the case.

E. Inaccurate statutory language on "expiration" of judgments. ORS 18.360 currently indicates that most judgments "expire" at the end of ten years if not renewed. If a judgment is renewed, the judgment "expires" 10 years after the renewal is entered. This language is not accurate. For example, a judgment that convicts a person of a crime does not "expire" at the end of 10 years. The language of ORS 18.360 should only address the ability to enforce the money award portion of a judgment, either by judgment lien or other remedy.

F. Obsolete writ of execution procedure. Many of the statutes that govern the procedure for writs of execution do not reflect what actually occurs. Many of these laws were written when a sheriff knew all of the people in the county. These statutes contemplate that a judgment creditor can simply give a writ of execution to the sheriff, who will then go and look for property to apply against the judgment debt. Under these laws, the sheriff is directed to seize all of this property and to make decisions about which property to first apply to the debt.

This statutory structure no longer reflects reality. Sheriffs will not look for property of the judgment debtor. Instead, the sheriff will require that the judgment creditor provide specific instructions on the nature of the property to be seized and a specific location where the sheriff is to look for the property. The sheriff does not make decisions about which property will first be applied to retire the judgment debt.

The existing law also contains an antiquated and unused series of statutes that call for the creation of a "sheriff's jury" to decide third-party claims to property seized on execution. Nobody in the Work Group had ever heard of a sheriff's jury being formed.

G. Confusion in statutes between "execution" and "writs of execution." "Execution" has generally been considered a comprehensive term for the various types of judgment remedies available to a person to enforce a money award.[10] A "writ of execution" is one of those remedies. However, there is confusion in the statutes between the two terms, and some circuit courts have held that a writ of garnishment is not a form of "execution" for the purpose of some statutes.

[10] For instance, all of the statutes relating to property that is exempt from judgment remedies use the phrase "exempt from execution."

III. Problems Deferred with this Proposed Bill

The Work Group decided to delay work on the majority of the statutes that govern sheriff sales under writs of execution.[11] These statutes contain some of the most archaic language in the Oregon Revised Statutes, and are in serious need of rewriting. However, the revision of these statutes is complicated by the fact that they perform multiple functions. Sale of property after foreclosure of mortgages, trust deeds and other property liens are governed by these statutes.[12] The Work Group decided to defer work on these laws until a broader representation of real property practitioners was available.

As noted in Part I of this report, the elimination of decrees by the proposed bill is part of an ongoing effort to merge the procedural rules for actions at law and suits in equity. The Oregon Revised Statutes still has hundreds of laws that refer to "suits in equity," usually reflecting a drafter's attempt to be comprehensive in referring to judicial proceedings (e.g. "in all actions at law and suits in equity …"). The Work Group also deferred this project to another day.

IV. Work Group

Many members of the Work Group for the 2003 Session had participated in the Oregon Law Commission Work Group that produced the law revising the statutes governing writs of garnishment for the 2001 Legislative Session.[13] Additional members were added to ensure that the many different areas of practice that would be affected by the proposed bill would have input in the drafting of the proposal. The Work Group met 14 times, usually for three hours each meeting, at the Oregon State Bar offices or at the Oregon State Capitol.

The Work Group was chaired by Commissioner Representative Max Williams, who also chaired the Work Group for the garnishment revision project. Other members, interested parties, and staff of the Work Group included:

MEMBERS:

Cleve Abbe	Oregon Title Insurance
Gary Blacklidge	Greene & Markley PC
Thom Brown	Cosgrave Vergeer & Kester PC
Justice Wallace P. Carson, Jr.	Oregon Supreme Court
Thomas Christ	Cosgrave Vergeer & Kester PC
Mark Comstock	Garrett Hemann Robertson Jennings Comstock & Trethewy PC
Jeffrey Hasson	Law Offices of Jeffrey Hasson
Randall Jordan	Department of Justice
Jaqui Koch	Koch & Deering
Jim Markee	Oregon Collector's Association
Janet McGalliard	U.S. Bank Nation Association

[11] ORS 23.450 *et seq.*
[12] *See, e.g.*, ORS 88.080 (sale and redemption after foreclosure of mortgage governed by ORS 23.410 to 23.600).
[13] Or. Laws, 2001, ch. 249.

Greg Mowe	Stoel Rives LLP
David Nebel	Oregon Law Center
Ronelle Shankle	Department of Justice
Ken Sherman	Sherman Sherman Murch & Johnnie LLP
Rep. Lane Shetterly	Shetterly Irick Shetterly & Ozias
Bradd Swank	State Court Administrator's Office
Irene Taylor	Public Defender's Office (Salem)

INTERESTED PARTIES:

Jean Fogarty	Department of Justice
Susan Grabe	Oregon State Bar
Prof. Maury Holland	University of Oregon
Tim Martinez	Oregon Bankers Association
Jack Munro	Oregon Land Title
Jim Nass	Appellate Legal Counsel, Oregon Supreme Court

STAFF:

David Heynderickx	Legislative Counsel
Wendy Johnson	Oregon Law Commission
David Kenagy	Oregon Law Commission
Craig Prins	Judiciary Committee Counsel
William Taylor	Judiciary Committee Counsel

Throughout the Work Group process that produced the proposed bill, as well as the lengthy meetings that produced the garnishment revision bill last session, the leadership of Representative Williams has been truly outstanding. The Chair and the Work Group have devoted a tremendous amount of time and effort to these projects. By their very nature, law improvement efforts of this type are of little interest to non-attorneys, but have immense significance for practitioners. The huge number of hours contributed by the Work Group members should not be forgotten; many hours of work came from public and private practitioners whose only interest was the betterment of the law. The Work Group had one of the largest memberships of any of the Oregon Law Commission Work Groups. The wide range of experiences and viewpoints was essential to arriving at the final product.

V. Section by Section Comments of the Proposed Bill

Section 1. Definitions. The Work Group spent more time on section 1 than any other section of the proposed bill. In large part, this was attributable to issues relating to defining "judgment" and the consequences of that definition on determining which types of judicial decisions are appealable. Looking at the various terms:

1. "Action," "civil action," and "criminal action." The definition provided by the proposed bill contemplates that only proceedings in which a judgment may be rendered are considered actions for the purposes of the bill. There are many statutory proceedings that currently do not result in the entry of a judgment. Good examples are proceedings under the

Family Abuse Prevention Act.[14] These proceedings usually end with entry of an order (i.e. a family abuse restraining order). The Work Group discussed whether the proposed bill should mandate that the final decision of a court in a proceeding should always be denominated a "judgment." There was concern however about the large number of changes in existing laws and accepted procedures that this would entail. The Work Group concluded that this would involve too many changes in existing laws and procedures.

The definition for "criminal action" is borrowed from ORS 131.005. The term refers to any action in which a person is accused of committing a felony, misdemeanor or violation.

"Civil action" is defined by what it is not (*i.e.* a criminal action). Because "action" is defined to only include those proceedings in which a judgment can be rendered, the full definition of "civil action" can be phrased as "a proceeding in which a judgment can be rendered that is not a criminal action."

2. "Money award," "support award" and "child support award." "Money award" replaces the term "money judgment." As noted in Part I of this report, "money judgment" creates many conceptual difficulties. Frequently, the "money judgment" is only one part of a larger judgment that contains provisions that do not relate to awards of money. The newly defined "money award" makes it clear that the award of money may only constitute part of the judgment. In most other respects, the same rules that govern "money judgments" under the existing law will also apply to "money awards" under the proposed bill.

"Support award" includes child support and spousal support. A "child support award" is a specific type of support award, and consequently a specific type of money award. The statutory references include all of the many types of proceedings that can result in a judicial or administrative award of support for a child.

3. "Claim." The provisions of the proposed bill apply to judgments in both criminal and civil actions. The definition of "claim" eliminates the need to refer to "claim or charge" throughout the proposed bill because it encompasses both.

4. "Execution." The definition of "execution" includes only the enforcement of money awards, and the enforcement of judgments for delivery of specific real or personal property, by writs and other remedies. The term is important for a number of purposes, but is crucial to the definition of "judgment remedies." For instance, section 18 of the bill addresses expiration of "judgment remedies," and consequently addresses expiration of the ability of a judgment creditor to enforce a judgment by execution. The Work Group decided not to include within this definition methods of enforcing portions of a judgment that are not money awards. For instance, if a judgment sentences a person to life imprisonment and a $10,000 fine, the incarceration portion of the sentence can continue to be enforced until the death of the defendant, but the ability to enforce the money award is governed by the sections of the bill addressing judgment remedies.

[14] ORS 107.700 *et seq.*

5. "Judgment", "judgment document, "general judgment, "limited judgment" and "supplemental judgment." One of the biggest problems addressed by the Work Group were the questions that frequently arise on appeal relating to whether a judgment is "final." Oregon cases have long held that only a "final" judgment may be appealed.[15] In general, this rule reflects an aversion for piecemeal, or interlocutory appeals.[16] The finality requirement has been construed by the Oregon Supreme Court to require that all claims in the case be resolved before an appeal can be taken from a decision of the court.[17]

The principal exception to the requirement of a final judgment is provided by ORCP 67 B. This rule allows a court to decide that for the purposes of a single claim or defendant that there is "no just reason for delay" and to allow an immediate appeal even though other claims remain unresolved. This determination must be expressly set out in the judgment document.

The problem with this arrangement is that many documents labeled as "judgments" purport to adjudicate less than all of the claims in the case but do not contain the required ORCP 67 B language. These documents, signed by the judge, are presumably entered by the clerk and docketed if they contain a money judgment. This situation arises most commonly after motions for summary judgment under ORCP 47. The name of this motion understandably leads practitioners to believe that the product of a successful motion is a "judgment." In reality, a successful motion should produce an order granting summary judgment. The party may then submit a judgment document, but the court's decision constitutes a "judgment" only if the judgment document contains the magic language from ORCP 67 B.

The combination of ORCP 67 B and the judicial rule requiring a decision on all claims in the proceedings before an appeal can be taken has produced strange results. One of the strangest is what has become known as the "seriatim judgment" rule announced in *Zidel vs. Jones*.[18] In *Zidel*, a party submitted a document labeled as a judgment that did not include the magic ORCP 67 B language. Consistent with the language of ORCP 67 B, the *Zidel* court held that the document was not a judgment. At the end of the case, a judgment document was submitted that resolved all issues except the issue decided by the earlier "judgment." The question on appeal was whether there was a final judgment (i.e. whether the final document constituted an appealable judgment). The *Zidel* court held that while the earlier document, standing on its own did not constitute an appealable judgment, the court would look at all documents labeled as "judgments" to determine whether a final judgment had been entered. Thus, even documents that were not judgments when entered could become part of the judgment when combined with other documents resolving the remaining issues in the case.

The new definitions proposed by this bill are designed to bring a clear statement about the effect of any document that is being filed with the court. A "judgment" is defined to have two distinct requirements. First, a judgment has to be a "concluding decision of a court on one or more claims in one or more actions." Second, a "judgment" must be "reflected in a judgment document."

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[15] *See, e.g., Propp vs. Long,* 313 Or 218 (1992).
[16] *See, e.g., David M. Scott Construction vs. Farrell*, 284 Or 563 (1979).
[17] *Industrial Leasing Corp. vs. Van Dyke*, 285 Or 375 (1979).
[18] 301 Or 79 (1986).

There is much confusion in existing law between the "judgment" of a court and the document that reflects that judgment. The bill attempts to correct this problem by carefully delineating between the "judgment" (that is, the decision of the court in the abstract), and the "judgment document" (that is, the writing that reflects that decision). As the definition of "judgment" clearly indicates, whatever the decision of the court may have been in the abstract, it is the judgment document that controls. A "judgment document" is defined to be a writing in the form provided by section 4 of the bill that incorporates a court's judgment.

"General judgment" replaces what has commonly been referred to as a "final judgment."[19] Many members of the Work Group were concerned about the continued use of the term "final" because of the different meanings ascribed to the word, both in the statutes and in common parlance. In many statutes, "final" means that a judgment is appealable. In other statutes, "final" means that all appellate rights have been exhausted. Some Work Group members argued that under the common meaning of the word, the decision of the trial court is not "final," it is simply ready for appeal. "General judgment" was felt to be more descriptive, encompassing the truly important aspect to this particular set of decisions as reflected in the judgment document, to-wit: Resolution of all issues that had not been previously decided by earlier judgments in the case.

"Limited judgment" is defined to be any judgment entered before a general judgment that resolves less than all issues in a case. The term specifically includes judgments entered under ORCP 67 B.[20] However, to avoid the problems that have arisen because of the "magic language" requirement of ORCP 67 B, that rule is amended by the bill to eliminate the requirement that the judgment document expressly state that there is no just reason for delay. (See discussion of section 5 of the bill, infra.). By reason of the amendments to ORS 19.250 in the bill, a limited judgment is appealable upon entry in the same manner as a general judgment.

"Supplemental judgment" is defined to be any judgment that by law may be entered after entry of a general judgment. Examples of this type of judgment are the existing supplemental judgment for attorney fees provided for in ORCP 68 C(5)(b) and changes to dissolution judgments that are currently entered as modifications.

6. "Judgment remedies," "judgment lien" and "support arrearage lien." "Judgment remedies" are defined to include execution and judgment liens. The definition is particularly important in the context of expiration and extension of judgment remedies under sections 18 and 19 of the bill.

"Judgment liens" are defined as the effect of a judgment on real property in the county in which the judgment is entered and in any county in which the judgment is recorded (see sections 14 and 15 of the bill). The use of the term "effect" is important. The lien effect of support awards has long constituted a conundrum. Judgments that do not include support awards have an easily understandable lien effect (immediate attachment to real property owned by the judgment debtor at the time the judgment is entered; subsequent attachment when property is thereafter

[19] *See, e.g.,* ORCP 67 G.
[20] But see discussion of amendments to ORCP.

acquired). The lien effect is easy to understand because the amount of the judgment is fixed when the judgment is entered.

Support awards, by contrast, have a more amorphous lien effect. Until the judgment debtor misses a payment, there is no judgment amount for which a lien may attach. So long as there are no missed payments, the judgment debtor may freely convey or encumber real property. If a judgment debtor misses a payment, and has real property in the county where the judgment was entered or recorded at the time the payment is missed, the lien attaches at that time, and the property can only be transferred or encumbered subject to the lien for the missed payment.

By defining "judgment lien" to mean the effect of a judgment on real property as described in sections 14 and 15 of the bill, the bill clarifies that the judgment lien for a judgment without a support award and a judgment with a support award have markedly different natures. The lien for a support award creates a "cloud" on any property owned by the judgment debtor, and thereby puts title companies and other interested persons on notice that a support arrearage lien might have attached to the property. This lien does not however prevent conveyance or encumbrance of the property free of the judgment lien. If individual support arrearage liens have attached to property, any conveyance or encumbrance will be subject to those liens, but not to any support arrearage lien that may arise after the property is conveyed or encumbered. The judgment lien for judgments without support awards is radically different. Once the judgment lien arises, the full amount of the judgment must be paid before the property of the judgment debtor that is subject to the lien can be conveyed free of the lien.

The 1993 Legislative Assembly addressed this problem in part with the passage of ORS 25.700, which followed then-existing case law in stating that each installment payment that came due and was not paid constituted a separate judgment. The Work Group opted to abandon this concept for two reasons. First, the separate judgment concept was irreconcilable with the definition of a judgment reflected in the bill. For example, one of the key aspects of a judgment is that it is appealable when entered. No one would argue that a judgment debtor could appeal each "separate judgment" that arose by reason of a missed installment. Second, the Work Group felt that the problems addressed by ORS 25.700 could be resolved in the bill by addressing the lien effect and enforceability of support awards instead of resorting to the legal fiction of calling each missed payment a separate judgment.[21] The draft uses the term "support arrearage liens" for those individual liens that arise from the failure of a judgment debtor to timely make an installment payment under a support award.

Section 2. Application. Consistent with the approach now found in ORS chapter 18 and 23, sections 1 to 44 of the bill apply to circuit courts, justice courts, municipal courts and county courts exercising judicial functions, unless otherwise specifically provided in the bill.

Section 3. Preparation of judgment document. Subsection (1) of this section is new. The language provides options for preparing a judgment document in civil actions, starting from the assumption that the court will generally indicate that one of the parties prepare the judgment. For criminal actions, subsection (2) incorporates language from ORS 137.071 (1).

[21] *See* section 18 (5) of the bill.

Section 4. Form of judgment document generally. Most of this section comes from ORCP 70 A (1). The section is generally applicable to both civil and criminal judgments.

Subsection (1) would seem to be self-evident, and the requirement that a judgment be labeled as a judgment has been in the law for many years. Nevertheless, the requirement continues to be a problem. Judges on occasion still sign documents designated "judgment orders" or other variations on a simple judgment. The requirement that a judgment be designated a judgment is as significant under the bill as under existing law.

Subsection (2) contains what is probably the single most significant change in judgment procedure made by the bill. This subsection requires that every judgment document indicate whether the judgment is a limited judgment, a general judgment or a supplemental judgment. Every judgment must comply with this requirement. As will be seen in the comments on sections 8 and 13 of the bill, the Work Group was very concerned about the consequences of this provision, but felt that this additional requirement was necessary to ensure that the parties, the trial court and the appellate courts had clear direction with respect to whether a given judgment document was intended to be what is now commonly referred to as a "final" judgment. If the judgment document is intended to end the case at the trial court level, the title must tell the court and all of the parties that a general judgment is intended. If the judgment document will resolve less than all of the issues in the case, and the intent is that others will later be addressed in a subsequent judgment document, the title must indicate that the judgment is a limited judgment. Any judgment entered after the entry of a general judgment (other than a "corrected judgment" under section 12 of the bill) must be designated as a supplemental judgment.

The danger posed by this requirement is that parties might inadvertently submit a general judgment when only a limited judgment was intended. The Work Group was aware that there will be occasions when the person preparing the judgment document would be quite happy if a general judgment was entered, ending the case, instead of a limited judgment. Or, a practitioner preparing a judgment document after a motion for summary judgment might think that the judgment is a "general" judgment from the client's point of view. The Work Group was also concerned about the period of time immediately following the effective date of the bill, when practitioners will still be learning the difference between a limited and a general judgment. Because of these concerns, a special section on correcting mislabeled judgments was included in section 13 of the bill.

Section 5. Civil judgments with money awards. Section 5 is closely based on ORCP 70 A(2). Consistent with that rule, the existence of a separate money award in the judgment document will determine whether the judgment creates a judgment lien. *See*, ORS 18.320 (court administrator will only docket a judgment if the judgment has the separate section required by ORCP 70 A).

The second sentence of subsection (1) is also important. If a judgment document does not contain the separate money award section the judgment can still be enforced by judgment remedies, however the judgment does not create a judgment lien. Again, this is implicit in ORS 18.320 (failure to include money judgment section does not prevent entry of the judgment in the register, it only prevents docketing).

Section 6. Criminal judgments with money awards. The language of this section comes from ORS 137.071, 137.073 and 137.180. The requirements parallel the requirements of civil judgments. Consistent with ORS 137.073, the principal exceptions to the requirements are judgments entered on uniform citation forms.

Section 7. Duties of judge with respect to form of judgment. Note that consistent terminology has been used throughout the bill for the various acts that are performed in achieving a completed judgment. A judge renders a judgment. That is, the court decides one or more issues. The judge signs a judgment document, and files the document with the court administrator. As seen in section 9, the court administrator notes in the register that the document has been filed, at which point the judgment is deemed entered. There is much confusion in the existing law in the terminology used for these different acts, and it is hoped that these terms will become standardized for these various functions.

The most significant provision in this section is the last sentence of subsection (1). As can been seen, this sentence eliminates the requirement of ORCP 67 B that "magic words" appear in the judgment document to acquire an appealable judgment. Instead, the judge is charged with making the required determination (no just reason for delay) and by the very act of signing a "limited judgment" attests to having made that determination.

This provision highlights one of the advantages of requiring that a judgment be labeled as a limited or general judgment. Judges are busy individuals, and they are required to sign numerous documents every day. Under ORCP 67 B, it is questionable whether all judges now look carefully at the language of every judgment document to see whether the judgment authorizes immediate appeal. With the strict division between limited and general judgments, and the requirement that each judgment be labeled as one of the three types of judgments, every judge should be able to quickly determine what type of judgment is being requested.

The removal of the "magic words" requirement is not intended to change the existing case law relating to the duties of the trial court in deciding whether to make disposition of the claim immediately enforceable and appealable.[22]

Section 8. Duty of clerk with respect to form of judgment. Subsection (2) of this section is the most significant provision of this proposed bill. The Work Group debated at length the manner of enforcing the requirement that a judgment be designated as either a limited, general or supplemental judgment. Subsection (2) prohibits the clerk from entering the judgment unless the judgment document reflects one of the three designations. The clerk is directed to return such judgment documents to the judge for insertion of the appropriate designation.

The language also requires that the clerk return to the judge any document labeled as a "decree." It is anticipated that it may take some period of time before all practitioners realize that decrees no longer exist, and the documents reflecting final court decisions in all cases must be designated as judgments.

[22] *See, e.g., May vs. Josephine Memorial Hospital,* 297 Or. 525 (1984);

While this procedure may result in delay in the entry of some judgments, the approach reflected in subsection (2) seemed to provide the most effective enforcement mechanism with the least possibility of giving rise to malpractice claims.

Section 9. Entry of judgments. As already noted, subsection (1) of this section establishes a uniform meaning for "entry" of a judgment. "Entry" means that the court administrator has noted in the register that a judgment document has been filed with the court administrator.

Subsection (2) reflects the shift from "docketing" of a judgment to a simple notation in the register that the judgment creates a judgment lien.

While the bill repeals ORS 7.040 (requiring that circuit courts maintain dockets), the courts will still need to maintain a separate record that allows title companies and other interested persons to find the details of judgments that create judgment liens. Subsections (3) and (4) require this separate record and list some of the information that must be reflected in the separate record.

Sources for the language in this section are ORCP 70 B and ORS 7.040 and 18.320.

Section 10. Notice to attorneys. The provisions of this section are based on ORCP 70 B. Consistent with the requirement that a judgment must be designated as either a limited, general or supplemental judgment, the notice will inform the attorney (or unrepresented party) of what the register will reflect as to the nature of the judgment. Instead of indicating whether the judgment was docketed, the notice will indicate whether a judgment lien was created.

Section 11. Effect of entry of judgment. This section reflects substantial changes in existing law relating to the effect of entry of a judgment.

Subsection (1) makes general statements about the effect of entry of a judgment. The most important of these statements is that upon entry, a judgment can be appealed and enforced. This provision is consistent with one of the Work Group's fundamental decisions: There should never be "judgments" that are entered in the register but that are not appealable and enforceable. This does not mean that an appellate court must entertain an appeal from anything that has been labeled as a judgment and entered in the register.[23] For instance, if a malicious party labeled a grocery list as a general judgment, an oblivious judge signed the document, and the clerk entered it in the register, the appellate court is not somehow compelled to entertain an appeal from a non-decision by the court.[24]

Subsection (2) addresses the problem of incorporation in the general judgment of earlier written decisions of the court that did not constitute judgments. Examples of these types of

[23] See amendments to ORS 19.205 in the proposed bill.

[24] Note that this is true in many less dramatic situations. If an appellate court cannot determine from the judgment document what the trial court decided, nothing in the bill would compel the appellate court to somehow engage in a meaningless review.

decisions are orders granting ORCP 21 motions and motions for summary judgment for which a limited judgment is not entered. Under subsection (2), these earlier decisions are incorporated in the general judgment and become appealable at the time the general judgment is entered.

The language in subsection (2)(c) that requires that the writing "reflects an express determination by the court that the decision be final" is not intended to impose some new requirement of magic language in orders of the court. Most orders as they are currently written will meet this test. For instance, a simple order that indicates that the court is granting a defendant's ORCP 21 motion to strike the sole claim that exists in a complaint against the defendant should be adequate to establish that the order reflects an express determination that the decision be final as to that defendant.

Subsection (3) is related to subsection (2), and constitutes a change in the law on the effect of the entry of a general judgment. This subsection reverses the longstanding judicial rule that any claim not resolved by a decision of the trial court is presumed not to have been decided. Consistent with the definition provided by section 1 of the bill, a judgment document that is designated a general judgment resolves all remaining claims. Any claim not mentioned in the judgment document is dismissed with prejudice unless: (a) The claim was resolved by the entry of a limited judgment; (b) A decision on the claim is incorporated in the general judgment under the provisions of subsection (2); or (c) The claim can be decided by a supplemental judgment.

Although subsection (3) changes the law relating to the effect of entry of a judgment, it was noted in the Work Group proceedings that most practitioners probably believe that the language of subsection (3) reflects the existing law. Many practitioners have been surprised to have a case remanded by an appellate court to the trial court when the appellate court *sua sponte* discovers that the record is lacking any decision by the trial court on one of the claims that dropped out of the case early in the proceedings. Subsection (3), in combination with the definition of "general judgment," provides a clear rule: If you make a claim in the action, and you think you prevailed on the claim, you must be sure that it is somehow incorporated in the general judgment or it will be dismissed with prejudice.

Section 12. Corrections to judgments. The language of section 12 does not have an existing statutory counterpart. To some degree section 12 reflects existing case law. In one respect it changes existing case law.

The provisions of subsection (2) relating to the time for appeal of a corrected judgment reflect existing case law insofar as the language conditions a new appeal period on whether the correction affects a substantial right of a party.[25] Subsection (3) creates a new rule however with respect to corrections that occur after the appeal period on the original judgment expires. If the correction occurs before the original appeal period expires, the parties receive another full appeal period from the date of entry of the corrected judgment for any provision in the judgment. If the correction occurs after the original appeal period expires, the parties receive another full appeal period only for the corrected provisions of the judgment and other portions of the judgment affected by the correction.

[25] *Mullinax and Mullinax*, 292 Or 416 (1982).

Section 13. Corrections of designation of judgment as general judgment. As noted in the commentary on section 1 of the bill, the Work Group was concerned about practitioners inadvertently designating a limited judgment as a general judgment. Section 13 provides for a special motion for relief from an error of this type. The heart of the section is subsection (1)(b), which indicates that the moving party must show that the designation was made "under circumstances that indicate that the moving party did not reasonably understand that the claims that were not expressly decided by the judgment would be dismissed."

The Work Group was concerned about the possible misuse of this provision. However, the Work Group also recognized that during the implementation period for the proposal there will be cases in which there are misunderstandings about the significance of designating a judgment as a general judgment. Finally, there was concern because ORCP 71 (relating to correction and vacation of judgments) does not apply to criminal actions, and the Work Group wanted to provide a clear avenue for any prosecutor that mistakenly prepares a general judgment that inadvertently dismissed unadjudicated counts against a defendant.

Section 14. Judgment liens. The lien effect of judgments is one of the most complicated issues in the law. The Work Group spent a very large amount of time addressing the language that now appears in sections 14 and 15 of the bill.

Subsection (1) establishes the general rule that if a judgment includes a money award and complies with the separate section requirements of either section 5 (civil judgments) or section 6 (criminal judgments), the court administrator will note in the register that the judgment creates a judgment lien. The subsection then lists the three existing exceptions to this rule and a "catch-all" exception for other laws that provide for an exemption.[26]

Subsection (2) states the general rule about the lien effect of judgments. The provisions of subsections (2)(a) and (b) are intended to maintain the existing law on the lien effect of regular judgments, as reflected in ORS 18.350. For instance, the language in these paragraphs indicates that the lien attaches to "all real property" of the debtor. The equivalent language in ORS 18.350 has been generally interpreted to exclude equitable interests in property from the lien effect of a judgment. The bill is not intended to change this interpretation.

Subsections (2)(c) and 3(c) as written are intended to change the existing law as interpreted by the courts. The Work Group is still reviewing these sections and the Group expects they will be amended further during session.

Subsection (3) establishes the lien effect of the support award portion of a judgment. It is important to note that these rules only apply to the support award portion of the judgment. To the extent a judgment also contains money awards that are not support awards including lump sum awards for arrearages, those money awards are governed by subsection (2). As discussed in the commentary on section 1, subsection (3) is designed to describe the nature of a support award judgment's lien effect (lien for support award creates a "cloud" on property owned by the

[26] The Work Group was not aware of any other exceptions, but felt it was prudent to allow for future statutory exceptions to the general rule.

judgment debtor, and thereby puts title companies and other interested persons on notice that support arrearage lien might have attached to the property).

Subsection (4) makes a clear statement about the ability of judgment debtor under the support award portion of a judgment to convey or encumber real property free of the judgment lien (i.e. the cloud), but not free of individual support arrearage liens that have attached to the property.

Except for the provisions of sections 14 (2)(c) and (3)(c), and sections 15 (2)(c) and (3)(c), nothing in sections 14 and 15 is intended to change in any way the current law relating to priority of a judgment lien as opposed to other liens and encumbrances.

Section 15. Establishing judgment lien in other counties. This section largely mirrors section 14, and addresses the lien effect of judgments that are recorded in the County Clerk Lien Record for counties other than the county in which the original judgment was entered. All comments on equivalent provisions of section 14 are applicable to section 15. Subsection (4) establishes rules for extending judgment liens created under section 15.

Section 16. Elimination of judgment lien by appeals. ORS 18.350 (2) currently provides that a judgment lien automatically expires if a supersedeas bond is filed as part of an appeal of the judgment. This has resulted in cases in which a bond was filed and the lien eliminated, with a subsequent failure of the bond because of failure of the appellant to pay premiums.

Section 16 eliminates the automatic expiration of the lien, and instead authorizes the appellant to make a motion for elimination of the lien upon filing of a supersedeas bond and upon providing such additional security as may be required by the court.

Section 17. Judgment lien based on judgment for support entered in another state. This section is taken largely verbatim from ORS 18.320.

Section 18. Expiration of judgment remedies. ORS 18.360 currently provides that judgments expire after a specific period of time. As discussed in Part II of this report, judgments do not actually expire. Only the ability to enforce those judgments expires (generally in 10 years after entry of the judgment). Section 18 reflects this general concept, and segregates out specific types of judgment remedies in circumstances in which the general 10-year rule does not apply.

The general rule appears in subsection (3). All judgment remedies as defined in section 1 of the bill expire 10 years after entry of the judgment unless a certificate of extension is filed under section 19. Subsection (4) continues the existing rule that judgment remedies for a criminal judgment expire 20 years after the entry of the judgment, and cannot be extended. (See section 19.)

Subsection (5) reflects the rule enunciated in ORS 25.700 that judgment remedies for child support awards expire 25 years after entry of the judgment that first establishes the support obligation. This language contemplates that a general judgment of dissolution of marriage might not contain a child support award (e.g. because joint custody is awarded). However, a

supplemental judgment might include such an award, and the 25-year period commences with the entry of the supplemental judgment. However, the language also contemplates that the period is tied to the obligation for a particular child, not to the particular debtor. Thus, the 25-year period is not affected by a change of custody in a supplemental judgment that switches the support obligation to the other parent.

Subsection (6) is new law that attempts to bring spousal support into conformity to the greatest extent possible with the 25-year period currently provided for child support. The 25-year period for child support is premised on the fact that child support can never be awarded for a period of longer than 21 years. Spousal support is not limited in this manner. Because spousal support is not subject to ORS 25.700, it is probable that spousal support remains subject to the old judicially created rule that each unpaid installment constitutes a judgment. As such, those judgments and the liens arising out of them can be renewed for up to 10 years.

However, spousal support awards are also subject to ORS 107.126 (1). This provision indicates that no award of spousal support continues to have lien effect after 10 years from the docketing of the judgment unless the judgment is renewed under ORS 18.360. As a result of this rule, it is quite probable under the existing law that the lien effect of most spousal support judgments expire 10 years after the docketing of the original judgment. In other words, all liens attributable to unpaid installments during the first 10 years expire and an unpaid installment that occurs after the expiration of the 10-year period does not create a lien.

Subsection (6) and the provisions of section 21 provide a compromise on spousal support. First, all payments that come due during the first 25 years after the obligation is established are enforceable by execution for 25 years after entry of the judgment, or for 10 years after the installment payment is not made, whichever is longer. The judgment lien of the spousal support portion of the judgment, and any support arrearage liens arising under that lien, expires 25 years after the judgment is entered, unless the lien is extended under section 21.

The net result of this arrangement is that payments that come due under spousal support awards after the first 15 years are only enforceable by execution for 10 years. They cannot be extended. (See section 19 (5)). This is shorter than the time available under the existing law, since those remedies can be renewed under ORS 18.360.

However, the bill gives the support obligee something the obligee currently doesn't have: Lien effect for 25 years without the need to renew. And as will be seen in section 21, the bill provides the ability to continue the lien effect after the expiration of the 25-year period.

Subsection (7) is taken from ORS 18.360 (3).

Section 19. Extension of judgment remedies. Current law requires that a motion for the renewal of a judgment be made to extend judgment remedies. An order of renewal must be entered within the initial 10-year period or the ability to enforce the judgment expires. The requirement of an order has created problems because judges sometimes are slow to sign the order and deliver it to the court administrator.

Subsection (1) eliminates the requirement of an order and instead requires that a certificate of extension be filed before the expiration of judgment remedies. This change will make it easier for practitioners to be sure that the extension meets the deadlines of section 18. However, it also raises the possibility of a gap in the title record when an extension is filed within the 10-year period but is not entered until after the 10-year period has expired.

Subsection (1)(a) to (c) provide that a practitioner makes certain certifications by filing a certificate of extension (e.g. that judgment remedies for the judgment have not expired under section 18).

Subsection (3) states the general rule that judgment remedies may be extended only once. The only exception is found in section 20 for spousal support awards.

Subsections (5) and (6) state the general rule that judgment remedies for support awards and money awards in criminal actions cannot be extended.

Section 20. Extension of judgment lien for spousal support. As noted in the commentary to section 18, the judgment lien of the spousal support portion of the judgment, and any support arrearage liens arising under that lien, expires 25 years after the judgment is entered, unless the lien is extended under this section. At any time more than 15 years after entry of the judgment that establishes the support obligation,[27] a judgment creditor may file a certificate of extension, the effect of which is extend the judgment lien of the judgment for 10 years from the date the certificate is filed. As a result of this extension: (a) Any installment arrearage lien that arose before the certificate is filed is given a full 10-year lifespan and does not expire 25 years after the entry of the judgment that establishes the support obligation; and (b) Installment arrearage liens can arise after the expiration of the 25-year period, but will only survive to the 10-year anniversary of the filing of the certificate unless another certificate is filed within the 10-year period as authorized by subsection (2) of this section.

The filing of the certificate of extension under this section has no significance for judgment remedies other than the judgment lien. All installments that come due more than 15 years after entry of the judgment that establishes the support obligation can be enforced by other judgment remedies for 10 years after the installment is not paid, without regard to whether a certificate of extension is filed under this section.

The Work Group rejected allowing extension of individual installment arrearage liens beyond the 10-year period provided by subsection (1) because of the complexity and confusion that would be generated by that approach.

Subsection (2) allows certificates of extension to continue to be filed for spousal support awards for so long as the judgment lien has not expired and any installments remain to be paid under the judgment.

[27] Any filing before the 15th anniversary would have no effect in any event. Note that the comments under section 18 relating to the effect of the language relating to what is the "judgment that first establishes" a child support obligation, applies with equal force to the equivalent language for spousal support obligations.

Section 21. Spousal support judgments entered before January 1, 2004. There was substantial disagreement within the Work Group with respect to the lien effect of spousal support awards under the existing law. The one clear rule is found in ORS 107.126 (1), and is carried forward in subsection (1) of this section: The judgment lien for a spousal support award, and any support arrearage lien arising under that judgment lien, expires 10 years after entry of the judgment that first establishes the obligation unless a renewal (or certificate of extension under the new law) is filed within that 10-year period.

Subsection (2) is a savings clause for pre-2004 judgments. The language was designed to preserve the *status quo* with respect to the expiration and extension of judgment remedies for those judgments.

Section 22. Child support judgments entered before January 1, 1994. Section 22 performs the same function for child support awards that section 21 performs for spousal support awards. The only difference is that the date is tied to the effective date of ORS 25.700 (January 1, 1994).

Section 23. Release of lien. Although it is fairly common practice for practitioners to give lien releases under the current law, there is no specific statutory authorization for the practice. Section 23 provides that authorization, prescribes certain requirements for release of lien documents, and describes the effect of a release of lien.

Section 24. Assignment of judgment. This section incorporates provisions from ORS 18.400 relating to assignments. The Work Group agreed that assignments should be acknowledged by a notary (compare release of liens and satisfactions which need only to be witnessed by a notary).

Section 25. Satisfaction of money awards. This section establishes requirements for satisfaction documents and the effect of those documents. Subsection (3) incorporates the provision currently found in ORS 18.350 (3) that imposes a duty on a judgment creditor to provide a satisfaction document for all amounts credited against the money award.

Section 26. Satisfaction of support awards payable to Department of Justice. This section is based on the provisions of ORS 18.400 (4), (5)(a) and (6).

Section 27. Alternate method for satisfaction of support awards payable to Department of Justice. This section is based on the provisions of ORS 18.400 (5)(b).

Section 28. Motion to satisfy money award. This section is based on ORS 18.405 and 18.410. The Work Group made extensive changes in subsection (4) on the manner in which a motion under this section must be served. The changes were made to indicate that service on the judgment creditor and the judgment debtor may be made as provided in ORCP 9 if the motion is filed within one year after entry of the judgment. If the motion is filed more than one year after entry of the judgment, the motion may either be served as provided in ORCP 7, or by certified mail, returned receipt request. The court may waive service if it is shown that the person cannot be found after diligent effort.

Section 29. Execution. As noted in Part II of this report, considerable confusion exists in the statutes relating to the difference between execution in the broad sense and writs of execution. The definition of "execution" provided by section 1 of the bill should eliminate most of this confusion. Section 29 sets forth the general rule for execution (*i.e.* judgments may be enforced by execution upon entry of the judgment).

Section 30. Enforcement of judgment by circuit court for county where judgment debtor resides. The provisions of this section are based on ORS 23.030 (3) to (8).

Section 31. Debtor examination. This section is based on ORS 23.710 and 23.730. The major change from existing law relates to the requirements imposed on judgment debtors as a condition of requiring a debtor to appear for examination. ORS 23.710 (1) requires that there be an "unsatisfied execution"[28] or service of a demand for payment. Section 31 (1) sets out three different optional preconditions for a debtor examination.

Section 32. Conduct of debtor examination. This section is based on ORS 23.720 (1).

Section 33. Written interrogatories. This section is based on ORS 23.720 (2).

Section 34. Writs of execution generally. A writ of execution may only be issued for a judgment that includes a money award or a judgment that requires the delivery of specific real or personal property (e.g. on claim and delivery). Subsection (1)(b) points out the differences between the use of a writ of execution and a writ of garnishment for seizure of personal property (a writ of execution is used for property in the possession of the debtor; a writ of garnishment is used for property of the debtor that is in the possession of third parties[29]).

Section 35. Issuance of writs of execution. This section substantially changes the existing law on the directions given to a sheriff in a writ of execution.[30] As mentioned in Part II of this report, the existing law contemplates that a sheriff will make an active search for property of the debtor in the county, and then apply that property against the debt pursuant to a specific priority. Section 35 recognizes that sheriffs no longer actively search for property of the debtor. If the writ of execution is not directed to the seizure or sale of specific property identified in the judgment, the writ will merely direct to the sheriff to sell such property as may be identified by the judgment creditor in instructions provided to the sheriff. If property is seized or sold, the sheriff makes no determination on the manner in which the property or proceeds will be applied.

The Work Group intended subsection (5) to retain the requirement of ORS 23.030 (1)(b) that, in case of executions against real property, a judgment creditor must file a certified copy of the writ or a lien record abstract for the writ in the County Clerk Lien Record for each county in which the real property is located. But the bill as written requires recording for all writs. The Work Group anticipates an amendment to conform to existing law.

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[28] This is one of the statutes in which there is dispute as to which type of "execution" is meant. Some courts will accept a response to a writ of garnishment; others construe this reference to mean an unsatisfied writ of execution.
[29] *See*, ORS 18.602.
[30] *See*, ORS 23.050.

Subsection (5) also addresses cases in which the judgment does not create a judgment lien against the subject real property. In those cases, this subsection establishes that the recording has the effect of a notice of pendency with respect to the effect of the execution sale.

Section 36. Issuance of writs by district attorney or Division of Child Support. This section is based on ORS 23.050 (2).

Section 37. Sheriff's duties. Existing law contains many confusing provisions references to the sheriff "levying" on property. For the purpose of personal property, this almost certainly means seizure. Less clear is the meaning of "levy" in the context of real property. And very unhelpful is the statutory directive that property be levied on "in like manner and with like effect as similar property is attached."[31]

The proposed bill eliminates references to a "levy" on property. For the purpose of the timelines that commenced based on when a "levy" occurred, the bill substitutes seizure of personal property or notice of an execution sale under ORS 23.450 for real property.[32]

Subsection (3) reflects the existing law on distribution of property and proceeds by the sheriff.[33]

Section 38. Return on writ of execution. This section is based on ORS 23.060. The last sentence of this section is new law. The provision allows a judgment creditor to give the sheriff additional time to make a return on the writ when the normal 60 day period is inadequate to finish a sale.

Section 39. Notice to judgment debtor. This section is based on ORS 23.425. Existing law makes use of the challenge to garnishment form provided by ORS 18.850 for debtors that wish to claim an exemption. This is an awkward fit, since much of the language of the garnishment form is inapplicable to writs of execution. The bill addresses this problem by creating a challenge to execution form in section 42.

Section 40. Challenge to writ of execution. Under this section a debtor may make a challenge to writ of execution only to present claims of exemption.

The existing law has an antiquated and unused series of statutes that call for the creation of a "sheriff's jury" to decide third-party claims to property seized on execution.[34] These statutes are repealed by the bill, and consistent with the use of the challenge to garnishment form in ORS 18.850, section 40 indicates that a third-party claiming an interest in property that is seized on execution may use the challenge to execution form to assert that interest.

The timing for the filing of a challenge to execution is driven to a large degree by the existing laws on when a sale will occur. ORS 23.160 (the general statute on exempt property)

[31] ORS 23.410 (4).
[32] *See* section 39 of the bill (timing for sheriff's notice to debtor).
[33] *See* ORS 23.410 (5) and (6).
[34] *See* ORS 23.320 to 23.350.

indicates that a judgment debtor must "select and reserve" the exemptions before the sale of the property. Subsection (4) reflects this requirement.

Section 41. Notice of challenge to execution. This section is based on the analogous provision for challenges to garnishment.[35]

Section 42. Form of challenge to execution. The form is based on the statutory forms for challenges to garnishment and notices of exemption,[36] with provisions that are inapplicable to executions removed.

Section 43. Hearing on challenge to execution. This section is based on the analogous statute for challenges to garnishment.[37]

Section 44. Sanctions. This section is based on the analogous statute for challenges to garnishment.[38]

Sections 45 to 76. These sections allow the existing statutes on garnishment to become part of the new ORS chapter 18. Almost all of the amendments are simply to change references from "clerk of the court" to "court administrator," consistent with the defined term in section 1 of the bill.

Sections 77 to 79. These sections allow the existing statutes on execution sales to become part of the new ORS chapter 18.

Sections 80 to 82. These sections allow the existing statutes on exemptions and other miscellaneous provisions to become part of the new ORS chapter 18.

Sections 83 to 88. Conforms provisions of law governing appeals in ORS chapter 19 and the ORCP to sections 1 to 44 of the bill.

Sections 89 and 90. Conforms provisions of law governing the lien effect of small claims judgments to sections 1 to 44 of the bill.

Sections 91 to 95. Conforms laws on justice and municipal courts to sections 1 to 44 of the bill.

Sections 96 to 155. Conforms laws on domestic relations (ORS chapters 107, 108 and 109) to sections 1 to 44 of the bill. Of particular significance in these sections is the elimination of "modification" of judgments. A modification of a support award must be done by a supplemental judgment under the bill.

[35] *See* ORS 18.702.
[36] *See* ORS 18.845 and 18.850.
[37] *See* ORS 18.710.
[38] ORS 18.715 (1).

Note also that the amendments to ORS 107.095 make it clear that preliminary support awards are limited judgments and may be enforced by judgment remedies under sections 29 to 44 of the bill. The Work Group discussed whether these preliminary orders should be appealable. The Work Group decided that these judgments would be the one exception to the rule that any document designated as a judgment is appealable.

If a limited judgment is entered for support pending entry of a general judgment, the general judgment may include a lump sum award for unpaid support. A lump sum award of this type is not a support award as defined by section 1 of the bill, which indicates that support awards are for amounts paid in installments. This means that for purpose of the lien effect of these awards, sections 14 (2) and 15 (2) govern, not sections 14 (3) and 15 (3). However, as specifically provided by section 18 (5), the 25-year enforcement period applies to these lump sum payments.

Sections 156 to 158. Conforms laws on criminal judgments to sections 1 to 44 of the Act.

Sections 159 to 166. Adjusts laws to reflect repeal of ORCP 70 and elimination of "money judgments."

Sections 167 to 217. Adjusts laws to reflect elimination of the circuit court docket.

Sections 218 to 562. Changes statutory references of "decrees" to "judgments."

Section 563. Provides a savings clause to make it clear that the change from "decrees" to "judgments" does not affect legal rights attendant to suits in equity under existing law (e.g. scope of review).

Sections 564 to 569. Provides for miscellaneous conforming amendments.

Section 570. Repeals replaced statutory provisions.