MUNICIPAL AND JUSTICE COURTS

Legislative Concept 72

Oregon Law Commission

Commissioner:
The Honorable Mary Mertens James

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Introduction

In August 2025, the Oregon Law Commission considered a request from Commission Chair Valerie Sasaki to approve the formation of a municipal and justice courts work group.[1] As described in the proposal, the work group would follow-up on a previous municipal and justice courts work group established by the Commission. The Commission adopted the proposal at its August 8, 2025 meeting and appointed Commissioner and Judge Mary Mertens James as Chair.

The previous work group developed, drafted, and passed House Bill 2460 (2025) to reorganize, streamline, and clarify the statutes governing appeals from municipal and justice courts. Participants in the earlier project expressed an interest in continuing discussions, and the proposal included the expectation that the new work group would propose legislation for the 2027 legislative session.

LC 72, the first of two potential legislative concepts from the work group, includes two concepts:

- Current law allows a justice court to become a court of record but prohibits a justice court within 50-driving miles of the circuit court for the same county from exercising that option. The proposed language would remove the mileage restriction while leaving each county the option to choose whether their justice court(s) should be a court of record or a court not of record.
- Current law does not provide for a waiver process for undertakings. The proposed language clarifies statutory language addressing undertakings in forcible entry and detainer (FED) cases, more commonly known as eviction cases, and money judgements. The proposal amends existing law to clarify the different types of undertakings, provides a predictable cost, and allows a justice court to waive, reduce, or limit an undertaking in specific circumstances.

History of the Project

The work group held its first meeting on October 23, 2025 and met through October 28, 2026. In organizing discussions of specific proposals, the work group considered whether the relevant perspectives were represented and sought additional input when necessary. For example, the undertaking discussions included practitioners who represented both landlord and tenants as well as representatives from the justice courts and the Oregon Judicial Department. The discussion regarding the geographic prohibition on the location of justice courts of record

[1] https://law-olc.uoregon.edu/sites/default/files/pictures/4b.%2008.08.2025%20OLC_Municipal%20and%20Justice%20Courts%20Proposal.pdf

included Justices of the Peace, representatives from the Oregon Judicial Department, and the Association of Oregon Counties among others.

A sub-group first addressed undertakings in civil appeals from justice courts through meetings held between November 2025 and April 2026. On April 16, 2026, the work group approved the undertaking proposal and requested Legislative Counsel to prepare the corresponding statutory language.

Separately another small group examined the geographic restriction that prevents most justice courts from becoming courts of record. On April 16, 2026, the work group approved a proposal which would provide a county with the opportunity to elect for its justice court to become a court of record by removing the 50-driving-mile restriction while leaving the remaining criteria in statute.

Participation:

Chair

The Honorable Mary Mertens James
Senior Judge, Oregon Judicial Department
Commissioner, Oregon Law Commission

Participants

- Steve Arntt, Oregon Public Defense Commission
- Hon. Juliet Britton, City of Beaverton Municipal Court
- Charlie Conrad, League of Oregon Cities
- Hon. Dan Cross, Washington County Justice Court
- Lindsey Detweiler, Oregon Judicial Department
- Tim Dooley, Association of Oregon Counties (AOC)
- Hugh Duvall, The Duvall Law Office
- Melissa Franz, City of Eugene Prosecutor's Office
- Hon. Greg Gill, City of Eugene Municipal Court
- Kathryn Hill, Sieng Enterprises
- Hon. Justin Kidd, Marion County Justice Court
- Monte Ludington, Oregon District Attorneys Association, Lane County District Attorney's Office
- Heather Marek, Oregon Law Center
- Anna McCormack, Warren Allen LLP
- Kimberly McCullough, Oregon Judicial Department
- Jim Nass, Attorney, Oregon Judicial Department (*Retired*)
- Hon. Emily Oberdorfer, City of Tigard Municipal Court, Oregon Judicial Association
- Chris Perdue, Oregon Department of Justice Appellate Division
- Patrick Sieng, Sieng Enterprises
- Hon. Erin Zemper, Bend Municipal Court, Oregon Judicial Association

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- Jared Ramsey, Oregon Law Commission (Legal Research Aide)
- Nora Robison, Oregon Law Commission (Legal Research Aide)

The participants listed above provided valuable insights, subject matter expertise, and a nuanced understanding of the appeals process for municipal and justice courts. Without the participation of justices of the peace, municipal court judges, prosecutors, criminal defense practitioners, representatives from the Oregon Judicial Department, the Oregon Department of Justice, the Oregon Public Defense Commission, cities, counties, legal aid providers, and appellate and civil practitioners, as well as the support of the Legislative Policy and Research Office and the Office of Legislative Counsel, LC 72 would not have been completed. While each participant's expertise informed the final product, LC 72 and the accompanying report are the product of the Oregon Law Commission. Participation should not be understood to be an endorsement of each policy change in the bill.

Overview of Municipal and Justice Courts

Municipal and justice courts are distinct from the Oregon Judicial Department's unified court system. Each justice court is established by the county in which it is located; while a municipal court is established by the city in which it is located.[2] Municipal and justice courts are oftentimes located in population centers throughout a county to provide greater accessibility to Oregonians who do not live near a circuit court. Although municipal and justice court judges are not required to be attorneys, many are. Further, many cases in municipal and justice court involve self-represented litigants.[3]

[2] Oregon Judicial Department, Other Courts, https://www.courts.oregon.gov/courts/Pages/other-courts.aspx, (last visited November 6, 2024).
[3] Kidd, Justin, The Role of Justice Courts, Oregon State Bar Bulletin, June 2023, pages 34 and 35, https://www.co.marion.or.us/JC/Documents/FromTheBench_Bulletin_June2023.pdf (last visited November 16, 2026).

Municipal courts and justice courts are referred to throughout the report as "local courts."

Beyond the type of establishing entity, a significant distinction is whether a local court is a court of record or a court not of record. Decisions from a local court of record are appealed directly to the Court of Appeals. When a local court is a court not of record, an appeal goes instead to the circuit court in the county where the local court is situated, where the challenged matter is litigated anew to create a record on which an appeal is possible.

Justice Courts

There are 27 justice courts not of record listed with the Oregon Judicial Department in Oregon and no justice courts of record.[4] Justice courts have criminal jurisdiction within their county, concurrent with the circuit court.[5] For example, justice courts have jurisdiction over traffic, boating, wildlife, violations of county codes and ordinances and other violations occurring in their county. Justice courts do not have jurisdiction over felonies or offenses created by a city charter or ordinance unless a city and county have agreed under ORS 51.037.[6] In misdemeanor cases that may result in a loss of liberty, a defendant is entitled to a public defender.

In addition to violations and misdemeanors, justice courts have jurisdiction over certain civil actions where the money or damages claimed does not exceed $10,000. (Justice courts do not have jurisdiction over civil actions involving title to real property, false imprisonment, libel, slander or malicious prosecution.) Justice courts also have jurisdiction in forcible entry and detainer (FED) cases, more commonly known as eviction cases. In addition, a Justice of the Peace judge may perform weddings.

Municipal Courts

There are 118 municipal courts in Oregon.[7] Municipal courts have concurrent jurisdiction with circuit and justice courts over violations and misdemeanors committed or triable in the city in which the court is located.[8] They do not have jurisdiction over felonies. Further, municipal courts do not have jurisdiction over civil actions. Currently, there are twelve municipal courts of record.[9]

[4] Oregon Judicial Department, Other Courts, Municipal and Justice Courts – Court Registry (https://www.courts.oregon.gov/courts/Pages/other-courts.aspx, last visited November 11, 2026).
[5] ORS 51.050(1).
[6] ORS 51.050(3).
[7] Oregon Judicial Department, Other Courts, Municipal and Justice Courts – Court Registry (https://www.courts.oregon.gov/courts/Pages/other-courts.aspx, last visited November 11, 2026).
[8] ORS 221.339.
[9] Oregon Judicial Department, Other Courts, Municipal and Justice Courts – Court Registry (https://www.courts.oregon.gov/courts/Pages/other-courts.aspx, last visited November 11, 2026).

Statement of the Problem Area and Objectives of the Proposal

During its review, the work group identified areas in which Oregon law governing municipal and justice courts may require clarification or revision: the 50-driving-mile restriction on justice courts becoming courts of record and undertakings in civil appeals from justice courts.

The 50-Mile Restriction on Justice Courts of Record

ORS 51.025 generally allows any justice court to become a court of record if specific criteria are met. These include a requirement that a county pass an ordinance creating a court of record, the entry of an order by the Oregon Supreme Court acknowledging the declaration filed with the court which includes a statement that the county has met certain requirements, contact information for the justice court, and the date on which the court will commence operations.[10]

These requirements include the provision of a court reporter or an audio recording device, the adoption of appeal provisions under ORS chapters 19 and 138, and a requirement that any justice of the peace must be a licensee of the Oregon State Bar. LC 72 does not change any of these existing requirements.

ORS 51.025(7), however, prohibits a justice court from becoming a court of record if it is located within 50 driving miles of the circuit court for the same county.[11] Municipal courts may become courts of record by satisfying substantially similar requirements, but they are not subject to a distance restriction.[12]

The geographic restriction disqualifies nearly every justice court in Oregon. A justice court that cannot become a court of record must send its appeals to a circuit court for a new proceeding, while appeals from a justice court of record proceeds directly to the Court of Appeals on the existing record.[13]

The work group found no stated legislative reason for using distance from the circuit court to decide whether a justice court may become a court of record.

Undertakings in Civil Appeals from Justice Courts

ORS 55.305 requires an appellant in a civil appeal from a justice court, oftentimes an eviction, to file an undertaking promising to pay the costs and disbursements awarded against the appellant on appeal within five days after filing the notice of appeal.[14] To stay enforcement of a money judgment, the appellant must also promise to pay the justice court judgment to the extent the

[10] ORS 51.025.
[11] ORS 51.025(7).
[12] ORS 221.342.
[13] ORS 55.150.
[14] ORS 55.305.

circuit court affirms it, and a tenant who seeks to remain in possession of real property during the appeal must deposit the property's fair market rental value each month.[15]

The current statute uses the single term "undertaking" for both the mandatory promise to pay appellate costs and the additional security used to stay enforcement of the eviction, even though the two serve different purposes. The arrangement can make it difficult for self-represented appellants to determine whether one or two undertakings are required, and which requirements apply to each.

ORS 55.305 also does not state the amount of security required for the undertaking for costs but instead refers to whatever costs and disbursements "may be awarded" against the appellant.[16] The absence of a stated amount has produced uncertainty about what justice courts may require, including whether the amount should include attorney fees or other costs.

Neither the law preceding HB 2460 nor the statute enacted through HB 2460 authorizes a justice court to waive, reduce, or limit an undertaking because of indigence or other good cause. Circuit courts, by contrast, may waive, reduce, or limit an undertaking in civil appeals upon a showing of good cause, including indigence, and their decisions may be reviewed by the appellate court.[17] Without a comparable process in justice court, an appellant who cannot satisfy an undertaking may lose a meaningful opportunity to pursue an appeal even if a notice of appeal has been filed.

The statute's deadlines also do not form a consistent procedural sequence because the appellant must file the undertaking within five days, while the respondent has 14 days after service to object to it.[18] The five-day period is particularly short for an appellant who must decide whether to appeal, determine the required security, and obtain the money, bond, or surety necessary to support the undertaking.

SECTION-BY-SECTION EXPLANATION

Justice Courts of Record

Section 1

ORS 51.025 governs the process for a justice court to become a court of record. LC 72, Section 1 amends ORS 51.025 by removing Subsection (7), the requirement that a court of record must be located more than 50 driving miles from the circuit court located within the same county as the justice court. Oregon's 36 counties will have the opportunity to determine whether its justice court(s) should be a court of record or a court not of record.

[15] ORS 55.305(3), (5).
[16] ORS 55.305(2).
[17] ORS 19.310; ORS 19.360.
[18] ORS 55.305(2), (4)(b).

The proposal accommodates concerns about equipment, staffing, transcription, prosecutorial resources, and appellate workload by making court of record status optional and leaving the operational decision with the county. It also preserves the existing requirement that a justice court that becomes a court of record must be led by a judge who is a licensee of the Oregon State Bar.

Undertakings in Civil Appeals

For undertakings in civil appeals from justice courts, LC 72, Section 2 through Section 5 seeks to clarify the nature and amount of a required security with predictable rules that distinguish an undertaking for appellate costs from a supersedeas undertaking that stays enforcement of a judgment. The proposal establishes a fixed $400 undertaking for costs while allowing the justice court to waive, reduce, or limit the amount for good cause, including the appellant's indigence.

In an action for possession of rental property, the proposal seeks to preserve the parties' positions on appeal by requiring payment of the property's monthly fair rental value and prohibiting waste, rather than requiring the tenant to secure rent or damages accrued before judgment. Those provisions serve the shared objectives of giving justice courts an administrable formula, giving self-represented litigants understandable notice of what must be filed, protecting access to appellate review, and protecting the prevailing party from additional loss while enforcement is stayed.

Section 2

Section 2 of LC 72 amends ORS 55.305 which addresses undertaking for costs and disbursements and supersedeas undertakings to stay proceedings. ORS 55.305 was codified in House Bill 2460 (2025) and was based in part on statutory language previously found in ORS 53.040, ORS 53.030, and ORS 53.070 and in part on new language crafted by the previous iteration of the work group. For additional information on ORS 55.305, please see the Oregon Law Commission's report on Municipal and Justice Courts Appeals Processes (2025) (https://law-olc.uoregon.edu/sites/default/files/pictures/HB%202460B%20OLC%20MJC%20Report%20Final%20Post%20Session.pdf), page 52, addressing Section 25 of HB 2460.

Section 2 of LC 72 **i**ncorporates a waiver process for both money judgements and supersedeas undertakings other than those for possession of real property, into current ORS 55.305.

Subsection (1) updates and clarifies definitions including "surety," "security," "undertaking," "undertaking for costs," and "supersedeas undertaking." This work group, along with the previous work group, prioritized greater clarity in the statutory scheme for pro se litigants, practitioners, and court staff both by streamlining definitions and, as far as possible, grouping definitions into one area of the statute. Of note, the definition of "surety" incorporates existing criteria found in the Oregon Rules of Civil Procedure (ORCP) 82 which governs "Security; Bonds and Undertakings; Justification of Sureties."

Subsection (2)(a) identifies a flat fee of $400 for costs for an undertaking. Previously the statute referred more generally to the costs of an undertaking as "all costs and disbursements" which required an appellant to search through a number of statutes to determine the amount owed. Further, anecdotally there were inconsistencies in how this phrase was interpreted by judges.

After review, the group determined that $400 was the equivalent of "all costs and disbursements." Work group members expressed a strong interest in stating a flat amount to provide greater clarity to appellants, court staff, and practitioners; while the inclusion of Subsection (5) and the opportunity to file for a waiver would provide necessary flexibility if necessary.

Subsection (2)(b) requires the appellant to file for undertaking of costs with a justice court within five days after filing a notice of appeal.[19] The five-day period, however, may be extended by a circuit court for good cause.

The work group discussed at some length the amount of time that an appellant would have to file an undertaking or a request for a waiver or reduction. Although five days was considered a quick turnaround, a competing timeline, specifically the speed at which appeals from justice courts to circuit courts typically move was also raised. Unlike an appeal from a circuit court to the Court of Appeals, which may take months to resolve, appeals from justice court to circuit court are typically resolved in a matter of days or weeks. This is particularly true of FED cases which are subject to statutory deadlines.

The group ultimately decided to maintain the five-day period for the following three reasons. Eviction/FED cases are designed to move quickly through the court system and lengthening the amount of time to file an undertaking of costs could create parallel or intersecting hearings further down the process. Second, identifying a flat fee for the costs of an undertaking provided greater clarity for litigants. And finally, the circuit court continues to have the ability to extend the period of time to file the undertaking for costs if needed.

Subsection (3) addresses both enforcement of a money judgement (Subsection (3)(a)) and enforcement of a judgement for real property (Subsection (3)(b)). Subsection (3) replaces existing language by directing an appellant to either file a supersedeas undertaking which is defined in Subsection 1(c) or meet the specific requirements for a supersedeas undertaking for real property found in Subsection (6).

Subsection (4)(b) was modified to provide the same amount of time, five days, for a respondent to object to the sufficiency of an undertaking. This time period parallels the amount

[19] Under ORS 55.160, a notice of appeal from the justice court to the circuit court must be filed within 30 days of a judgement.

of time provided for an appellant to file an undertaking or waiver. Further, the justice court may also extend that period of time for good cause.

Subsection (5) is new and allows the justice court to "waive, reduce, or limit" an undertaking for costs in Subsection (2)(a) to less than $400 as well as the supersedeas undertaking found in Subsection (3)(a) In order to reduce the undertaking or supersedeas undertaking, the litigant must make a showing of good cause. After discussion, the work group specifically identified "indigence" as one example of good cause. Any waiver, reduction or limitation must be just and equitable.

Similar to the timelines found in Subsection 2(b) and Subsection (4), Subsection (5) also provides a five-day timeline to file to waive, reduce, or limit the undertaking to the appellant and the respondent has five days to respond to that motion. In both situations, the justice court, for good cause may extend the time to file a motion or response.

Further, the Justice Court itself must decide the matter within five days after the expiration of the respondent's opportunity to file a response or as soon as practicable.

Subsection (6) expands on the work done by the previous iteration of the work group to provide parameters to the supersedeas undertaking process during the period of appeal.

Under **Subsection (6)(a),** a supersedeas undertaking is the equivalent of the fair market rental value of the real property during the period of appeal. The intent of the work group was to maintain the status quo and that this amount would not include past rent or the cost of damages in the amount of the undertaking.

Further, if the tenant on appeal files a supersedeas undertaking that is not sufficient to cover the fair market rental value of the real property during the period of the appeal, the tenant is required to do two things: promise to deposit the monthly fair market rental value of the real property and promise not to commit waste or allow waste to be committed during the period of possession.

Subsection (6)(c) is amended to not only allow the landlord to enforce the justice court judgement if the supersedeas undertaking is not paid, but also if the tenant commits waste or allows waste to be committed.

Subsection (6)(d) is amended to provide explicit authority to the justice court to disburse the money deposited by the tenant in accordance with the circuit court's judgment, and to determine entitlement consistent with the circuit court's judgement and the purpose of the undertaking.

Subsection 6(e) defines waste for the purposes of Subsections (6)(a), (6)(c) and (6)(e) is based on existing language in ORS 19.335 which governs undertakings in appeals from a circuit court to the Court of Appeals.

The principal competing positions on the undertaking proposal concerned whether a circuit court should be authorized to review the amount of an undertaking before deciding the underlying appeal. Some work group participants argued that a review was important because an erroneous undertaking could force a tenant from a residence, cause substantial upheaval, or prevent an indigent appellant from obtaining meaningful appellate review. Other participants emphasized the expedited nature of possession cases, the costs and delays of an additional appeal, the burden on circuit courts, the availability of an initial objection before the justice court, and the supersedeas undertaking's protection of both parties.

Ultimately the work group approved the proposal without a separate interlocutory appeal process because the clearer standards, good-cause authority, and expedited underlying appeal supplied meaningful safeguards without creating a second appellate proceeding that might delay or outlast the case itself. The work group treated later reconsideration as contingent on evidence that the absence of interlocutory review had become an actual barrier, rather than as an issue deferred from the present proposal.

Section 3

Section 3 of LC 72 directs Legislative Counsel to incorporate Section 4 as part of ORS 55.160 to ORS 55.355 which encompasses all of Oregon Revised Chapter 55 and generally governs appeals in Justice Courts.

Section 4

Subsection (1) directs the State Court Administrator to create a model form for costs under ORS 55.305(2)/Section 2(2) of this Act and for supersedeas undertakings under ORS 55.305(3) and (6)/Section 2(3) and (6) of this Act.

Under **Subsection (2)** Justice Court clerks are required to provide, upon request, a copy of the undertaking form created in Section 4(1) to parties that request the form.

Section 5

Subsection (1) identifies an operative date for LC 72 as July 1, 2028. After discussion in the work group regarding the process for creating a model form,

Subsection (2) provides authority for the Oregon Judicial Department to take action prior to the operative date to enable the department to fulfill the duties, functions, and powers necessary to create a model form.

Amendment Notes

--- END OF REPORT --