

CONTEMPT PROCEEDINGS

33.015 Definitions for ORS 33.015 to 33.155. For the purposes of ORS 33.015 to 33.155:

- (1) “Confinement” means custody or incarceration, whether actual or constructive.
- (2) “Contempt of court” means the following acts, done willfully:
 - (a) Misconduct in the presence of the court that interferes with a court proceeding or with the administration of justice, or that impairs the respect due the court.
 - (b) Disobedience of, resistance to or obstruction of the court’s authority, process, orders or judgments.
 - (c) Refusal as a witness to appear, be sworn or answer a question contrary to an order of the court.
 - (d) Refusal to produce a record, document or other object contrary to an order of the court.
 - (e) Violation of a statutory provision that specifically subjects the person to the contempt power of the court.
- (3) “Punitive sanction” means a sanction imposed to punish a past contempt of court.
- (4) “Remedial sanction” means a sanction imposed to terminate a continuing contempt of court or to compensate for injury, damage or costs resulting from a past or continuing contempt of court. [1991 c.724 §1; 2005 c.22 §23]

33.020 [Repealed by 1991 c.724 §32]

33.025 Nature of contempt power; entity defendants. (1) The power of a court to impose a remedial or punitive sanction for contempt of court is an inherent judicial power. ORS 33.015 to 33.155 establish procedures to govern the exercise of that power.

- (2) An entity is liable for contempt if:
 - (a) The conduct constituting contempt is engaged in by an agent of the entity while acting within the scope of employment and on behalf of the entity;
 - (b) The conduct constituting contempt consists of an omission to discharge a specific duty of affirmative performance imposed on an entity by a court; or
 - (c) The conduct constituting contempt is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by a high managerial agent of an entity, the board of directors of a corporation, a manager or member of a limited liability company or a partner in a partnership, acting within the scope of employment and on behalf of the entity.
- (3) The high managerial agents of an entity, the board of directors of a corporation, the managers and members of a limited liability company and the partners in a partnership are subject to the contempt powers of a court for contempt by an entity if those persons engage in, authorize, solicit, request, command or knowingly tolerate the conduct constituting contempt.
- (4) As used in this section:
 - (a) “Agent” means a person who is authorized to act on behalf of an entity.
 - (b) “Entity” has the meaning given that term in ORS 63.001.
 - (c) “High managerial agent” means an officer of an entity who exercises authority with respect to the formulation of policy or the supervision in a managerial capacity of subordinate employees, or any other agent in a position of comparable authority.
 - (d) “Manager” and “member” have the meaning given those terms in ORS 63.001.
 - (e) “Partnership” has the meaning given that term in ORS 67.005. [1991 c.724 §2; 2017 c.153 §1]

33.030 [Repealed by 1991 c.724 §32]

33.035 Appointed counsel. Whenever ORS 33.015 to 33.155 provide for appointed counsel, appointment of counsel and payment of counsel and related expenses shall be made as follows:

(1) For contempt of a circuit court, the Oregon Tax Court, the Court of Appeals or the Supreme Court, appointment and payment of counsel shall be made as provided in ORS 135.055, 151.216 and 151.219.

(2) For contempt of a justice court, municipal court or other public body not described in subsection (1) of this section, payment for and appointment of counsel shall be made as otherwise provided by law for the court or public body. [1991 c.724 §3; 2001 c.962 §63]

33.040 [Amended by 1955 c.648 §2; 1961 c.210 §5; repealed by 1991 c.724 §32]

33.045 Types of sanctions. (1) A court may impose either remedial or punitive sanctions for contempt.

(2) Confinement may be remedial or punitive. The sanction is:

(a) Remedial if it continues or accumulates until the defendant complies with the court's order or judgment.

(b) Punitive if it is for a definite period that will not be reduced even if the defendant complies with the court's order or judgment.

(3) A fine may be remedial or punitive. A fine is:

(a) Punitive if it is for a past contempt.

(b) Remedial if it is for continuing contempt and the fine accumulates until the defendant complies with the court's judgment or order or if the fine may be partially or entirely forgiven when the defendant complies with the court's judgment or order.

(4) Any sanction requiring payment of amounts to one of the parties to a proceeding is remedial.

(5) Any sanction imposed by a court for contempt is in addition to any civil remedy or criminal sanction that may be available as a result of the conduct constituting contempt. In any civil or criminal proceedings arising out of the conduct constituting contempt, the court shall take into consideration any contempt sanctions previously imposed for the same act. [1991 c.724 §4]

33.050 [Repealed by 1991 c.724 §32]

33.055 Procedure for imposition of remedial sanctions. (1) Except as otherwise provided in ORS 161.685, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding or, with leave of the court, participate in the proceeding, by filing a motion requesting that defendant be ordered to appear:

(a) A party aggrieved by an alleged contempt of court.

(b) A district attorney.

(c) A city attorney.

(d) The Attorney General.

(e) Any other person specifically authorized by statute to seek imposition of sanctions for contempt.

(3) If the alleged contempt is related to another proceeding, a motion to initiate a proceeding to impose remedial sanctions must be filed in accordance with rules adopted under ORS 33.145.

(4) The person initiating a proceeding under this section shall file supporting documentation or affidavits sufficient to give defendant notice of the specific acts alleged to constitute contempt.

(5)(a) The court may issue an order directing the defendant to appear. Except as otherwise provided in paragraph (b) of this subsection, the defendant shall be personally served with the order to appear in the manner provided in ORCP 7 and 9. The court may order service by a method other than personal service or issue an arrest warrant if, based upon motion and supporting affidavit, the court finds that the defendant cannot be personally served.

(b) The defendant shall be served by substituted service if personal service is waived under ORS 107.835. If personal service is waived under ORS 107.835, the defendant shall be served by the method specified in the waiver.

(6) The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. The defendant may waive the opportunity for a hearing by stipulated order filed with the court.

(7) A defendant has no right to a jury trial and, except as provided in this section, has only those rights accorded to a defendant in a civil action.

(8) A defendant is entitled to be represented by counsel. A court shall not impose on a defendant a remedial sanction of confinement unless, before the hearing is held, the defendant is:

(a) Informed that such sanction may be imposed; and

(b) Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.

(9) If the defendant is not represented by counsel when coming before the court, the court shall inform the defendant of the right to counsel, and of the right to appointed counsel if the defendant is entitled to, and financially eligible for, appointed counsel under subsection (8) of this section.

(10) Inability to comply with an order of the court is an affirmative defense.

(11) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(12) Proceedings under this section are subject to rules adopted under ORS 33.145. Proceedings under this section are not subject to the Oregon Rules of Civil Procedure except as provided in subsection (5) of this section or as may be provided in rules adopted under ORS 33.145. [1991 c.724 §5; 1993 c.448 §7; 2001 c.962 §77; 2005 c.22 §24; 2017 c.252 §1]

33.060 [Amended by 1981 c.781 §1; 1983 c.561 §1; repealed by 1991 c.724 §32]

33.065 Procedure for imposition of punitive sanctions. (1) Except as otherwise provided in ORS 161.685, proceedings to impose punitive sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive sanction:

(a) A city attorney.

(b) A district attorney.

(c) The Attorney General.

(3) If a city attorney, district attorney or Attorney General who regularly appears before the court declines to prosecute a contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is authorized to practice law in this state, and who is not counsel for an interested party, to prosecute the contempt. The court shall allow reasonable compensation for the appointed attorney's attendance, to be paid by:

(a) The Oregon Department of Administrative Services, if the attorney is appointed by the Supreme Court, the Court of Appeals or the Oregon Tax Court;

(b) The city where the court is located, if the attorney is appointed by a municipal court; and

(c) The county where the prosecution is initiated, in all other cases.

(4) The prosecutor may initiate proceedings on the prosecutor's own initiative, on the request of a party to an action or proceeding or on the request of the court. After the prosecutor files an accusatory instrument, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(5) Except as otherwise provided by this section, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding, and all proceedings on the accusatory instrument shall be in the manner prescribed for criminal proceedings.

(6) Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. This subsection does not affect any right to a jury that may otherwise be created by statute.

(7) Inability to comply with an order of the court is an affirmative defense. If the defendant proposes to rely in any way on evidence of inability to comply with an order of the court, the defendant shall, not less than five days before the trial of the cause, file and serve upon the city attorney, district attorney or Attorney General prosecuting the contempt a written notice of intent to offer that evidence. If the defendant fails to file and serve the notice, the defendant shall not be permitted to introduce evidence of inability to comply with an order of the court at the trial of the cause unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice, or to file the notice within the time allowed, is made to appear.

(8) The court may impose a remedial sanction in addition to or in lieu of a punitive sanction.

(9) In any proceeding for imposition of a punitive sanction, proof of contempt shall be beyond a reasonable doubt. [1991 c.724 §6; 2001 c.962 §78]

33.070 [Amended by 1973 c.836 §321; repealed by 1991 c.724 §32]

33.075 Compelling attendance of defendant. (1) If a person served with an order to appear under ORS 33.055 fails to appear at the time and place specified in the order, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(2) A person against whom a complaint has been issued under ORS 33.065 may be cited to appear in lieu of custody as provided in ORS 133.055. If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(3) When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the sheriff shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings.

(4) The defendant shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in ORS 135.230 to 135.290, to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant.

(5) The sheriff shall return the warrant and the security deposit, if any, given to the sheriff by the defendant by the return day specified in the warrant.

(6) When a warrant for contempt issued under subsection (2) of this section has been returned after having been served and the defendant does not appear on the return day, the court may do either or both of the following:

(a) Issue another warrant.

(b) Proceed against the security deposited upon the arrest.

(7) If the court proceeds against the security under subsection (6) of this section and the sum specified is recovered, the court may award to any party to the action any or all of the money recovered as remedial damages. [1991 c.724 §7; 1993 c.196 §3; 2011 c.597 §119]

33.080 [Amended by 1973 c.836 §322; repealed by 1991 c.724 §32]

33.085 Compelling testimony of witness. (1) Upon the motion of the person initiating the proceeding, the court may compel the testimony of a witness as provided under ORS 136.617 in a contempt proceeding under ORS 33.055 or 33.065.

(2) In any case where the person initiating the proceeding is not represented by the district attorney, county counsel or Attorney General, the person initiating the proceeding shall serve a notice of intent to compel testimony on the district attorney of the county where the contempt proceeding is pending and on the Attorney General. The notice shall be served not less than 14 calendar days before any hearing on the motion to compel testimony.

(3) The notice required by this section shall identify the witness whose testimony the person initiating the proceeding intends to compel and include, if known, the witness' name, date of birth, residence address and Social Security number, and other pending proceedings or criminal charges involving the witness. The notice shall also include the case name and number of the contempt proceeding and the date, time and place set for any hearing scheduled as provided in ORS 136.617.

(4) If the person initiating the proceeding fails to serve the required advance notice or fails to serve the notice within the time required, the court shall grant a continuance for not less than 14 calendar days from the date the notice is served to allow the district attorney and Attorney General opportunity to be heard on the matter of compelling testimony. The court may compel testimony under this subsection only after the full notice period and opportunity to be heard, unless before that time the district attorney and Attorney General waive in writing any objection to the motion to compel.

(5) In any hearing on a motion to compel testimony under this section, the district attorney of the county in which the contempt proceeding is pending and the Attorney General each may appear to present evidence or arguments to support or oppose the motion.

(6) In lieu of compelling testimony under this section, the court may continue the contempt proceeding until disposition of any criminal action that is pending against the witness whose testimony is sought and that charges the witness with a crime. [1991 c.724 §7a]

33.090 [Amended by 1973 c.836 §323; repealed by 1991 c.724 §32]

33.095 [1975 c.516 §2; 1981 c.898 §38; 1987 c.803 §15; 1989 c.171 §5; repealed by 1991 c.724 §32]

33.096 Summary imposition of sanction. A court may summarily impose a sanction upon a person who commits a contempt of court in the immediate view and presence of the court. The sanction may be imposed for the purpose of preserving order in the court or protecting the authority and dignity of the court. The provisions of ORS 33.055 and 33.065 do not apply to summary imposition of sanctions under this section. [1991 c.724 §8]

33.100 [Repealed by 1991 c.724 §32]

33.105 Sanctions authorized. (1) Unless otherwise provided by statute, a court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for loss, injury or costs suffered by the party as the result of a contempt of court.

(b) Confinement for so long as the contempt continues, or six months, whichever is the shorter period.

(c) An amount not to exceed \$500 or one percent of the defendant's annual gross income, whichever is greater, for each day the contempt of court continues. The sanction imposed under this paragraph may be imposed as a fine or to compensate a party for the effects of the continuing contempt.

(d) An order designed to insure compliance with a prior order of the court, including probation.

(e) Payment of all or part of any attorney fees incurred by a party as the result of a contempt of court.

(f) A sanction other than the sanctions specified in paragraphs (a) to (e) of this subsection if the court determines that the sanction would be an effective remedy for the contempt.

(2) Unless otherwise provided by statute, a court may impose one or more of the following punitive sanctions for each separate contempt of court:

(a) A fine of not more than \$500 or one percent of the defendant's annual gross income, whichever is greater.

(b) Forfeiture of any proceeds or profits obtained through the contempt.

(c) Confinement for not more than six months.

(d) Probation or community service.

(3) In a summary proceeding under ORS 33.096, a court may impose one or more of the following sanctions for each separate contempt of court:

(a) A punitive fine of not more than \$500;

(b) Confinement as a punitive sanction for not more than 30 days; or

(c) Probation or community service.

(4) The court may impose a punitive sanction for past conduct constituting contempt of court even though similar present conduct is a continuing contempt of court. [1991 c.724 §9]

33.110 [Repealed by 1991 c.724 §32]

33.115 Referral to another judge. A judge may be disqualified from a contempt proceeding as provided for in other cases under ORS 14.210 to 14.270. ORS 14.260 (3) shall not apply to a motion to disqualify a judge in a contempt proceeding. The judge to whom the contempt is referred shall assume authority over and conduct any further proceedings relating to the contempt. [1991 c.724 §10; 1995 c.658 §121]

33.125 Appeal. (1) The imposition of a sanction for contempt shall be by a judgment.

(2) A judgment in a proceeding for imposition of a remedial sanction may be appealed in the same manner as from a judgment in an action at law. An appeal from a judgment imposing a punitive sanction shall be in the manner provided for appeals in ORS chapter 138. Appeals from judgments imposing sanctions for contempt in municipal courts and justice courts shall be in the manner provided by law for appeals from those courts.

(3) If a proceeding to impose remedial sanctions is related to another proceeding as described in ORS 33.055 (3) and the court determines, before entry of judgment in the related proceeding, that the defendant is in contempt, the court may suspend impositions of sanctions and entry of judgment on the contempt until entry of judgment in the related proceeding.

(4) An appeal from a contempt judgment shall not stay any action or proceeding to which the contempt is related. [1991 c.724 §11; 2003 c.576 §233; 2005 c.568 §28; 2017 c.252 §2]

33.130 [Repealed by 1991 c.724 §32]

33.135 Limitations of actions. (1) Except as provided in subsection (5) of this section, proceedings under ORS 33.055 to impose remedial sanctions for contempt and under ORS 33.065 to impose punitive sanctions for contempt shall be commenced within two years of the act or omission constituting the contempt.

(2) For the purposes of this section, a proceeding to impose remedial sanctions shall be deemed commenced as to each defendant when the motion provided for in ORS 33.055 is filed.

(3) Proceedings to impose punitive sanctions are subject to ORS 131.135, 131.145 and 131.155.

(4) The time limitations imposed by subsection (1) of this section shall not act to bar proceedings to impose sanctions for an act or omission that constitutes a continuing contempt at the time contempt proceedings are commenced. The willful failure of an obligor, as that term is defined in ORS 110.503, to pay a support obligation after that obligation becomes a judgment is a contempt without regard to when the obligation became a judgment.

(5) Proceedings to impose remedial or punitive sanctions for failure to pay a support obligation by an obligor, as defined in ORS 110.503, shall be commenced within 10 years of the act or omission constituting contempt. [1991 c.724 §12; 2005 c.560 §15; 2015 c.298 §88]

33.140 [Repealed by 1991 c.724 §32]

33.145 Rules. The Supreme Court may adopt rules to carry out the purposes of ORS 33.015 to 33.155. [1991 c.724 §13]

33.150 [Repealed by 1991 c.724 §32]

33.155 Applicability. ORS 33.015 to 33.145 apply to every court and judicial officer of this state, including municipal, county and justice courts. Rules adopted by the Supreme Court apply to those courts, but the application of such rules to municipal, county and justice courts does not confer any supervisory or administrative authority on the Supreme Court or the State Court Administrator with respect to those courts. [1991 c.724 §14]