

**A-Engrossed
Senate Bill 48**

Ordered by the Senate April 23
Including Senate Amendments dated April 23

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Criminal Justice Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Directs Oregon Criminal Justice Commission to study pretrial release and to provide results of study to Legislative Assembly no later than December 31, 2021.]

[Sunsets January 2, 2022.]

[Takes effect on 91st day following adjournment sine die.]

Directs presiding judge in each judicial district to enter standing pretrial release orders. Directs Chief Justice of Supreme Court to establish guidelines for order.

Requires magistrate to make release decision at arraignment or first appearance except in specified circumstances. Requires magistrate to find that release on personal recognizance is unwarranted before considering conditional release, and requires magistrate to find that conditional release is unwarranted before considering security release.

Requires magistrate to set as security amount lowest possible amount necessary to reasonably ensure defendant's appearance. Requires magistrate to make specified findings before requiring defendant to deposit 10 percent of security amount for security release. Authorizes defendant not required to deposit 10 percent of security amount to execute promissory note for security amount. Provides that if defendant does not comply with conditions of release agreement, court may enter order declaring that promissory note is due or security deposit is forfeited for entire security amount or any other amount court deems appropriate.

Repeals minimum bail amounts for persons charged with Ballot Measure 11 (1994) crimes and certain methamphetamine offenses.

A BILL FOR AN ACT

1
2 Relating to pretrial release; creating new provisions; amending ORS 135.240, 135.245, 135.265,
3 135.270, 135.280 and 137.050; and repealing ORS 135.242.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 135.230 to**
6 **135.290.**

7 **SECTION 2. (1) The presiding judge of a judicial district shall enter a standing pretrial**
8 **release order specifying to the sheriff of the county, or to the entity supervising the local**
9 **correctional facility responsible for pretrial incarceration within the judicial district, those**
10 **persons and offenses:**

11 (a) **Subject to release on recognizance;**

12 (b) **Subject to release with special conditions as specified in the order; and**

13 (c) **That are not eligible for release until arraignment.**

14 (2) **The Chief Justice of the Supreme Court, with input from a criminal justice advisory**
15 **committee appointed by the Chief Justice, shall establish release guidelines for the pretrial**
16 **release orders described in this section.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 3.** ORS 135.240 is amended to read:

2 135.240. (1) Except as provided in subsections (2)[,] **and** (4) [*and (5)*] of this section, a defendant
3 shall be released in accordance with ORS 135.230 to 135.290.

4 (2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall
5 be denied when the proof is evident or the presumption strong that the person is guilty.

6 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-
7 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of
8 release as provided in subsection (4) of this section. In determining the issue of release under sub-
9 section (4) of this section, the court may consider any evidence used in making the determination
10 required by this subsection.

11 (3) The magistrate may conduct such hearing as the magistrate considers necessary to determine
12 whether, under subsection (2) of this section, the proof is evident or the presumption strong that the
13 person is guilty.

14 (4)(a) [*Except as otherwise provided in subsection (5) of this section,*] When the defendant is
15 charged with a violent felony, release shall be denied if the court finds:

16 (A) Except when the defendant is charged by indictment, that there is probable cause to believe
17 that the defendant committed the crime; and

18 (B) By clear and convincing evidence, that there is a danger of physical injury or sexual
19 victimization to the victim or members of the public by the defendant while on release.

20 (b) If the defendant wants to have a hearing on the issue of release, the defendant must request
21 the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing,
22 the court must hold the hearing within five days of the request.

23 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
24 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden
25 of producing evidence at the release hearing subject to ORS 40.015 (4).

26 (d) The defendant may be represented by counsel and may present evidence on any relevant is-
27 sue. However, the hearing may not be used for purposes of discovery.

28 (e) If the court determines that the defendant is eligible for release in accordance with this
29 subsection, the court shall set security or other appropriate conditions of release.

30 (f) When a defendant who has been released violates a condition of release and the violation:

31 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
32 custody and shall order the defendant held pending trial without release.

33 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
34 back into custody[,], **and** may order the defendant held pending trial [*and may set a security amount*
35 *of not less than \$250,000*].

36 [(5)(a) *Notwithstanding any other provision of law, the court shall set a security amount of not less*
37 *than \$50,000 for a defendant charged with an offense listed in ORS 137.700 or 137.707 unless the court*
38 *determines that amount to be unconstitutionally excessive, and may not release the defendant on any*
39 *form of release other than a security release if:]*

40 [(A) *The United States Constitution or the Oregon Constitution prohibits the denial of release un-*
41 *der subsection (4) of this section;]*

42 [(B) *The court determines that the defendant is eligible for release under subsection (4) of this*
43 *section; or]*

44 [(C) *The court finds that the offense is not a violent felony.*]

45 [(b) *In addition to the security amount described in paragraph (a) of this subsection, the court may*

1 *impose any supervisory conditions deemed necessary for the protection of the victim and the community.*
2 *When a defendant who has been released violates a condition of release and the violation:]*

3 *[(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into*
4 *custody, shall order the defendant held pending trial and shall set a security amount of not less than*
5 *\$250,000.]*

6 *[(B) Does not constitute a new criminal offense, the court may order the defendant to be taken back*
7 *into custody, may order the defendant held pending trial and may set a security amount of not less than*
8 *\$250,000.]*

9 [(6)] (5) For purposes of this section, “violent felony” means a felony offense in which there was
10 an actual or threatened serious physical injury to the victim, or a felony sexual offense.

11 **SECTION 4.** ORS 135.245 is amended to read:

12 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to [*immediate*
13 *security release or to*] be taken before a magistrate without undue delay. [*If the person is not released*
14 *under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person*
15 *of the right of the person to a security release as provided in ORS 135.265.]*

16 [(2) *If a person in custody does not request a security release at the time of arraignment, the*
17 *magistrate shall make a release decision regarding the person within 48 hours after the arraignment.*]

18 **(2) A magistrate shall make a release decision at the time of arraignment or first ap-**
19 **pearance, whichever occurs first, unless good cause to postpone the release decision is**
20 **shown, in which case a release hearing shall be held pursuant to subsection (7) of this sec-**
21 **tion.**

22 (3) If the magistrate, having given priority to the primary release criteria, decides to release a
23 defendant or to set security, the magistrate shall impose the least onerous condition reasonably
24 likely to ensure the safety of the public and the victim and the person’s later appearance and, if the
25 person is charged with an offense involving domestic violence, ensure that the person does not en-
26 gage in domestic violence while on release. A person in custody, otherwise having a right to re-
27 lease, shall be released upon the personal recognizance unless:

28 (a) Release criteria show to the satisfaction of the magistrate that such a release is unwar-
29 ranted; or

30 (b) Subsection (6) of this section applies to the person.

31 (4) Upon a finding that release of the person on personal recognizance is unwarranted, the
32 magistrate shall [*impose either*] **proceed to consider** conditional release [*or security release.*] **under**
33 **ORS 135.260. Only after determining that conditional release is unwarranted, or if otherwise**
34 **required by ORS 135.230 to 135.290, may the magistrate proceed to consider security release**
35 **under ORS 135.265.**

36 (5) At the release hearing:

37 (a) The district attorney has a right to be heard in relation to issues relevant to the release
38 decision; and

39 (b) The victim has the right:

40 (A) Upon request made within the time period prescribed in the notice required by ORS 147.417,
41 to be notified by the district attorney of the release hearing;

42 (B) To appear personally at the hearing; and

43 (C) If present, to reasonably express any views relevant to the issues before the magistrate.

44 (6) If a person refuses to provide a true name under the circumstances described in ORS 135.060
45 and 135.065, the magistrate may not release the person on personal recognizance or on conditional

1 release. The magistrate may release the person on security release under ORS 135.265 except that
2 the magistrate shall require the person to deposit the full security amount set by the magistrate.

3 **(7) After the postponement of a release decision under subsection (2) of this section, upon**
4 **the request of either party, or upon the magistrate's own motion, the magistrate shall make**
5 **a release decision or reconsider the release decision, as applicable, at a release hearing. The**
6 **release hearing must be held within 48 hours of arraignment unless both parties agree, or**
7 **the court finds good cause, to hold the hearing at a later time. Under no circumstances may**
8 **the release hearing be held more than five days after arraignment unless the defendant**
9 **consents to holding the hearing at a later time.**

10 [(7)] (8) This section shall be liberally construed to carry out the purpose of relying upon crim-
11 inal sanctions instead of financial loss to assure the appearance of the defendant.

12 **SECTION 5.** ORS 135.265 is amended to read:

13 135.265. (1)(a) If the defendant is not released on personal recognizance under ORS 135.255, or
14 granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional
15 release, the magistrate shall set a security amount *[that will reasonably assure the defendant's ap-*
16 *pearance]*. **In determining the security amount, the magistrate shall consider the defendant's**
17 **financial circumstances and ability to pay. The magistrate shall set as the security amount**
18 **the lowest amount necessary to reasonably ensure the defendant's appearance.** *[The defendant*
19 *shall execute the security release in the amount set by the magistrate.]*

20 **(b) After setting the security amount under paragraph (a) of this subsection, the**
21 **magistrate shall further order that the defendant be required to deposit a sum of money**
22 **equal to 10 percent of the security amount if the magistrate determines, by clear and con-**
23 **vincing evidence, that the defendant, if released without such security deposit, will present**
24 **a risk of:**

25 **(A) Failing to appear in court as required with the intent to avoid apprehension or delay**
26 **adjudication;**

27 **(B) Physical injury to or sexual victimization of the victim or a member of the public;**
28 **or**

29 **(C) Substantial harm to the property of another.**

30 (2) The defendant shall execute a release agreement and **either execute a promissory note,**
31 **due on demand, to the clerk of the court in the amount of the security set by the magistrate,**
32 **or deposit with the clerk [of the court before which the proceeding is pending] a sum of money equal**
33 **to 10 percent of the security amount, if such security deposit is required under subsection (1)(b)**
34 **of this section or under ORS 135.270. [but] In no event shall [such] a required deposit be less than**
35 **\$25. If applicable,** the clerk shall issue a receipt for the sum deposited. Upon **executing the**
36 **promissory note or depositing [this] the sum,** the defendant shall be released from custody subject
37 to the condition that the defendant appear to answer the charge in the court having jurisdiction on
38 a day certain and thereafter as ordered by the court until discharged or final order of the court.
39 Once *[security has been given and]* a charge is pending or is thereafter filed in or transferred to a
40 court of competent jurisdiction the latter court shall continue the *[original]* security **release** in that
41 court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been
42 performed and the defendant has been discharged from all obligations in the cause, the clerk of the
43 court shall **destroy the promissory note or, if applicable,** return to the person shown by the re-
44 ceipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has
45 been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more

1 than \$750, of the amount deposited. The interest that has accrued on the full amount deposited shall
 2 also be retained by the clerk. The amount retained by the clerk of a circuit court shall be paid over
 3 as directed by the State Court Administrator for deposit in the General Fund. The amount retained
 4 by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk
 5 of a municipal court shall be deposited in the municipal corporation treasury. At the request of the
 6 defendant the court may order whatever amount is repayable to defendant from such security
 7 amount to be paid to defendant's attorney of record.

8 **(3) If a security deposit is required under subsection (1)(b) of this section or under ORS**
 9 **135.270**, instead of the [*security deposit provided for in subsection (2) of this section*] **sum of money**
 10 **equal to 10 percent of the security amount**, the defendant may deposit with the clerk of the court
 11 an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated
 12 in this state with equity not exempt owned by the defendant or sureties worth double the amount
 13 of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be
 14 justified by affidavit. The magistrate may further examine the sufficiency of the security as the
 15 magistrate considers necessary.

16 **SECTION 6.** ORS 135.270 is amended to read:

17 135.270. (1) When a security amount has been set by a magistrate for a particular offense [*or*]
 18 for a defendant's release **prior to the release decision, the defendant must deposit a sum of**
 19 **money equal to 10 percent of the security amount as described in ORS 135.265.** Any person
 20 designated by the magistrate may take the security and release the defendant to appear in accord-
 21 ance with the conditions of the release agreement. The person designated by the magistrate shall
 22 give a receipt to the defendant for the security so taken and within a reasonable time deposit the
 23 security with the clerk of the court having jurisdiction of the offense.

24 (2) If a magistrate has designated a person to take security and release defendants under sub-
 25 section (1) of this section, the clerk of the court shall continue to accept the security release de-
 26 posits described in ORS 135.265 during the normal business hours of the court.

27 **SECTION 7.** ORS 135.280 is amended to read:

28 135.280. (1) Upon failure of a person to comply with any condition of a release agreement or
 29 personal recognizance, the court having jurisdiction may, in addition to any other action provided
 30 by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, condi-
 31 tional or security release.

32 (2) A warrant issued under subsection (1) of this section by a municipal judge may be executed
 33 by any peace officer authorized to execute arrest warrants.

34 (3) If the defendant does not comply with the conditions of the release agreement, the court
 35 having jurisdiction [*shall*] **may enter an order declaring that the promissory note is due for** the
 36 entire security amount [*to be forfeited*] **or any other amount that the court deems appropriate,**
 37 **or, if a security deposit was required under ORS 135.265 or 135.270, that the entire security**
 38 **amount or any other amount that the court deems appropriate is forfeited.** Notice of the order
 39 [*of forfeiture*] shall be given forthwith by personal service, by mail or by such other means as are
 40 reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties
 41 the order [*of forfeiture*]. If, within 30 days after the court [*declares the forfeiture*] **enters the order,**
 42 the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender
 43 by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter
 44 judgment for the state, or appropriate political subdivision thereof, against the defendant and, if
 45 applicable, the sureties for the entire security amount set under ORS 135.265 **or described in ORS**

1 **135.270** and the costs of the proceedings. At any time before or after entry of the judgment, the
 2 defendant or the sureties may apply to the court for a remission of the [*forfeiture*] **order** or to modify
 3 or set aside the judgment. The court, upon good cause shown, may remit the [*forfeiture*] **order** or
 4 any part thereof or may modify or set aside the judgment as in other criminal cases, except the
 5 portion of the security deposit that the court ordered to be applied to child support under subsection
 6 (4) of this section, as the court considers reasonable under the circumstances of the case. The court
 7 shall adopt procedures to ensure that the amount deposited under ORS 135.265 is available for a
 8 reasonable period of time for disposition under subsection (4) of this section.

9 (4) After entry of a judgment for the state, the court, upon a motion filed under ORS 25.715,
 10 may order that a portion of [*the*] **any** security deposit be applied to any unsatisfied child support
 11 award owed by the defendant and to provide security for child support payments in accordance with
 12 ORS 25.230. The portion of the security deposit that may be applied to the child support award:

13 (a) Is limited to the amount deposited under ORS 135.265 (2);

14 (b) May not exceed 66 percent of the entire security amount set under ORS 135.265 **or described**
 15 **in ORS 135.270** if the deposit has been made under ORS 135.265 (3); and

16 (c) Does not reduce the money award in the judgment entered under subsection (3) of this sec-
 17 tion that is owed to the state.

18 (5) When judgment is entered in favor of the state, or any political subdivision of the state, on
 19 any security [*given*] for a release, the judgment may be enforced as a judgment in a civil action. If
 20 entered in circuit court, the judgment shall be entered in the register, and the clerk of the court
 21 shall note in the register that the judgment creates a judgment lien. The district attorney, county
 22 counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff
 23 to be executed by levy on the deposit or security amount made in accordance with ORS 135.265, or
 24 may collect the judgment as otherwise provided by law. The proceeds of any execution or collection
 25 shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corpo-
 26 ration wherein the security was taken if the offense was defined by an ordinance of a political
 27 subdivision of this state, or paid into the treasury of the county wherein the security was taken if
 28 the offense was defined by a statute of this state and the judgment was entered by a justice court,
 29 or paid over as directed by the State Court Administrator for deposit in the Criminal Fine Account,
 30 if the offense was defined by a statute of this state and the judgment was entered by a circuit court.
 31 The provisions of this section shall not apply to amounts deposited upon appearance under ORS
 32 153.061.

33 (6) [*When the*] **If a** judgment of forfeiture is entered, [*the*] **any** security deposit or deposit with
 34 the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to
 35 and may be kept by the state or its appropriate political subdivision. Except as provided in sub-
 36 section (4) of this section, the clerk shall reduce, by the value of the deposit so forfeited, the debt
 37 remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue
 38 account of the state or political subdivision thereof entitled to receive the proceeds of execution
 39 under this section.

40 (7) The stocks, bonds, personal property and real property shall be sold in the same manner as
 41 in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court
 42 costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment
 43 shall be paid into the treasury of the municipal corporation wherein the security was taken if the
 44 offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury
 45 of the county wherein the security was taken if the offense was defined by a statute of this state

1 and the judgment was entered by a justice court, or deposited in the General Fund available for
2 general governmental expenses if the offense was defined by a statute of this state and the judgment
3 was entered by a circuit court. The balance shall be returned to the owner. The real property sold
4 may be redeemed in the same manner as real estate may be redeemed after judicial or execution
5 sales in civil actions.

6 **SECTION 8.** ORS 137.050 is amended to read:

7 137.050. (1) If the defendant has been released on a release agreement or security [*deposit*] **re-**
8 **lease** and does not appear for judgment when personal attendance is required by the court, the
9 court may order **that the promissory note is due or that the** [*a forfeiture of the*] security deposit
10 **is forfeited**, as provided in ORS 135.280. In addition, if the defendant fails to appear as required by
11 the release agreement or security deposit, the court may direct the clerk to issue a bench warrant
12 for the defendant's arrest.

13 (2) At any time after the making of the order for the bench warrant, the clerk, on the applica-
14 tion of the district attorney, shall issue such warrant, as by the order directed, whether the court
15 is sitting or not.

16 **SECTION 9.** ORS 135.242 is repealed.
17 _____