

SB 48-2
(LC 440)
4/6/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 48**

1 In line 2 of the printed bill, after “release;” delete the rest of the line and
2 insert “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 Delete lines 4 through 11 and insert:

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

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

12 **“(a) Subject to release on recognizance;**

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

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

16 **“(2) The Chief Justice of the Supreme Court, with input from a**
17 **criminal justice advisory committee appointed by the Chief Justice,**
18 **shall establish release guidelines for the pretrial release orders de-**
19 **scribed in this section.**

20 **“SECTION 3. ORS 135.240 is amended to read:**

21 **“135.240. (1) Except as provided in subsections (2)[,] and (4) [and (5)] of**

1 this section, a defendant shall be released in accordance with ORS 135.230
2 to 135.290.

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

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

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

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

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

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

23 “(b) If the defendant wants to have a hearing on the issue of release, the
24 defendant must request the hearing at the time of arraignment in circuit
25 court. If the defendant requests a release hearing, the court must hold the
26 hearing within five days of the request.

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

1 “(d) The defendant may be represented by counsel and may present evi-
2 dence on any relevant issue. However, the hearing may not be used for pur-
3 poses of discovery.

4 “(e) If the court determines that the defendant is eligible for release in
5 accordance with this subsection, the court shall set security or other appro-
6 priate conditions of release.

7 “(f) When a defendant who has been released violates a condition of re-
8 lease and the violation:

9 “(A) Constitutes a new criminal offense, the court shall cause the de-
10 fendant to be taken back into custody and shall order the defendant held
11 pending trial without release.

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

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

20 “[*(A) The United States Constitution or the Oregon Constitution prohibits*
21 *the denial of release under subsection (4) of this section;*]

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

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

25 “[*(b) In addition to the security amount described in paragraph (a) of this*
26 *subsection, the court may impose any supervisory conditions deemed necessary*
27 *for the protection of the victim and the community. When a defendant who has*
28 *been released violates a condition of release and the violation:*]

29 “[*(A) Constitutes a new criminal offense, the court shall cause the defend-*
30 *ant to be taken back into custody, shall order the defendant held pending trial*

1 *and shall set a security amount of not less than \$250,000.]*

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

5 *“[(6)] (5) For purposes of this section, ‘violent felony’ means a felony of-*
6 *fense in which there was an actual or threatened serious physical injury to*
7 *the victim, or a felony sexual offense.*

8 **“SECTION 4.** ORS 135.245 is amended to read:

9 *“135.245. (1) Except as provided in ORS 135.240, a person in custody has*
10 *the right to [immediate security release or to] be taken before a magistrate*
11 *without undue delay. [If the person is not released under ORS 135.270, or*
12 *otherwise released before arraignment, the magistrate shall advise the person*
13 *of the right of the person to a security release as provided in ORS 135.265.]*

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

17 **“(2) A magistrate shall make a release decision at the time of**
18 **arraignment or first appearance, whichever occurs first, unless good**
19 **cause to postpone the release decision is shown, in which case a re-**
20 **lease hearing shall be held pursuant to subsection (7) of this section.**

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

29 *“(a) Release criteria show to the satisfaction of the magistrate that such*
30 *a release is unwarranted; or*

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

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

8 “(5) At the release hearing:

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

11 “(b) The victim has the right:

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

15 “(B) To appear personally at the hearing; and

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

18 “(6) If a person refuses to provide a true name under the circumstances
19 described in ORS 135.060 and 135.065, the magistrate may not release the
20 person on personal recognizance or on conditional release. The magistrate
21 may release the person on security release under ORS 135.265 except that the
22 magistrate shall require the person to deposit the full security amount set
23 by the magistrate.

24 “(7) **After the postponement of a release decision under subsection**
25 **(2) of this section, upon the request of either party, or upon the**
26 **magistrate’s own motion, the magistrate shall make a release decision**
27 **or reconsider the release decision, as applicable, at a release hearing.**
28 **The release hearing must be held within 48 hours of arraignment un-**
29 **less both parties agree, or the court finds good cause, to hold the**
30 **hearing at a later time. Under no circumstances may the release**

1 **hearing be held more than five days after arraignment unless the de-**
2 **fendant consents to holding the hearing at a later time.**

3 “[7] (8) This section shall be liberally construed to carry out the purpose
4 of relying upon criminal sanctions instead of financial loss to assure the
5 appearance of the defendant.

6 **“SECTION 5.** ORS 135.265 is amended to read:

7 “135.265. (1)(a) If the defendant is not released on personal recognizance
8 under ORS 135.255, or granted conditional release under ORS 135.260, or fails
9 to agree to the provisions of the conditional release, the magistrate shall set
10 a security amount [*that will reasonably assure the defendant’s appearance*].

11 **In determining the security amount, the magistrate shall consider the**
12 **defendant’s financial circumstances and ability to pay. The magistrate**
13 **shall set as the security amount the lowest amount necessary to rea-**
14 **sonably ensure the defendant’s appearance.** [*The defendant shall execute*
15 *the security release in the amount set by the magistrate.*]

16 **“(b) After setting the security amount under paragraph (a) of this**
17 **subsection, the magistrate shall further order that the defendant be**
18 **required to deposit a sum of money equal to 10 percent of the security**
19 **amount if the magistrate determines, by clear and convincing evi-**
20 **dence, that the defendant, if released without such security deposit,**
21 **will present a risk of:**

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

24 **“(B) Physical injury to or sexual victimization of the victim or a**
25 **member of the public; or**

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

27 **“(2) The defendant shall execute a release agreement and either execute**
28 **a promissory note, due on demand, to the clerk of the court in the**
29 **amount of the security set by the magistrate, or deposit with the clerk**
30 [*of the court before which the proceeding is pending*] a sum of money equal

1 to 10 percent of the security amount, **if such security deposit is required**
2 **under subsection (1)(b) of this section or under ORS 135.270.** [*but*] In
3 no event shall [*such*] **a required** deposit be less than \$25. **If applicable,** the
4 clerk shall issue a receipt for the sum deposited. Upon **executing the**
5 **promissory note or** depositing [*this*] **the** sum, the defendant shall be re-
6 leased from custody subject to the condition that the defendant appear to
7 answer the charge in the court having jurisdiction on a day certain and
8 thereafter as ordered by the court until discharged or final order of the
9 court. Once [*security has been given and*] a charge is pending or is thereafter
10 filed in or transferred to a court of competent jurisdiction the latter court
11 shall continue the [*original*] security **release** in that court subject to ORS
12 135.280 and 135.285. When conditions of the release agreement have been
13 performed and the defendant has been discharged from all obligations in the
14 cause, the clerk of the court shall **destroy the promissory note or, if ap-**
15 **plicable,** return to the person shown by the receipt to have made the deposit,
16 unless the court orders otherwise, 85 percent of the sum which has been de-
17 posited and shall retain as security release costs 15 percent, but not less than
18 \$5 nor more than \$750, of the amount deposited. The interest that has ac-
19 crued on the full amount deposited shall also be retained by the clerk. The
20 amount retained by the clerk of a circuit court shall be paid over as directed
21 by the State Court Administrator for deposit in the General Fund. The
22 amount retained by a justice of the peace shall be deposited in the county
23 treasury. The amount retained by the clerk of a municipal court shall be
24 deposited in the municipal corporation treasury. At the request of the de-
25 fendant the court may order whatever amount is repayable to defendant from
26 such security amount to be paid to defendant's attorney of record.

27 “(3) **If a security deposit is required under subsection (1)(b) of this**
28 **section or under ORS 135.270,** instead of the [*security deposit provided for*
29 *in subsection (2) of this section*] **sum of money equal to 10 percent of the**
30 **security amount,** the defendant may deposit with the clerk of the court an

1 amount equal to the security amount in cash, stocks, bonds, or real or per-
2 sonal property situated in this state with equity not exempt owned by the
3 defendant or sureties worth double the amount of security set by the
4 magistrate. The stocks, bonds, real or personal property shall in all cases be
5 justified by affidavit. The magistrate may further examine the sufficiency of
6 the security as the magistrate considers necessary.

7 **“SECTION 6.** ORS 135.270 is amended to read:

8 “135.270. (1) When a security amount has been set by a magistrate for a
9 particular offense [*or*] for a defendant’s release **prior to the release deci-**
10 **sion, the defendant must deposit a sum of money equal to 10 percent**
11 **of the security amount as described in ORS 135.265.** Any person desig-
12 nated by the magistrate may take the security and release the defendant to
13 appear in accordance with the conditions of the release agreement. The per-
14 son designated by the magistrate shall give a receipt to the defendant for the
15 security so taken and within a reasonable time deposit the security with the
16 clerk of the court having jurisdiction of the offense.

17 “(2) If a magistrate has designated a person to take security and release
18 defendants under subsection (1) of this section, the clerk of the court shall
19 continue to accept the security release deposits described in ORS 135.265
20 during the normal business hours of the court.

21 **“SECTION 7.** ORS 135.280 is amended to read:

22 “135.280. (1) Upon failure of a person to comply with any condition of a
23 release agreement or personal recognizance, the court having jurisdiction
24 may, in addition to any other action provided by law, issue a warrant for the
25 arrest of the person at liberty upon a personal recognizance, conditional or
26 security release.

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

30 “(3) If the defendant does not comply with the conditions of the release

1 agreement, the court having jurisdiction [*shall*] **may** enter an order declar-
2 ing **that the promissory note is due for** the entire security amount [*to be*
3 *forfeited*] **or any other amount that the court deems appropriate, or, if**
4 **a security deposit was required under ORS 135.265 or 135.270, that the**
5 **entire security amount or any other amount that the court deems**
6 **appropriate is forfeited.** Notice of the order [*of forfeiture*] shall be given
7 forthwith by personal service, by mail or by such other means as are rea-
8 sonably calculated to bring to the attention of the defendant and, if appli-
9 cable, of the sureties the order [*of forfeiture*]. If, within 30 days after the
10 court [*declares the forfeiture*] **enters the order**, the defendant does not ap-
11 pear or satisfy the court having jurisdiction that appearance and surrender
12 by the defendant was, or still is, impossible and without fault of the de-
13 fendant, the court shall enter judgment for the state, or appropriate political
14 subdivision thereof, against the defendant and, if applicable, the sureties for
15 the entire security amount set under ORS 135.265 **or described in ORS**
16 **135.270** and the costs of the proceedings. At any time before or after entry
17 of the judgment, the defendant or the sureties may apply to the court for a
18 remission of the [*forfeiture*] **order** or to modify or set aside the judgment.
19 The court, upon good cause shown, may remit the [*forfeiture*] **order** or any
20 part thereof or may modify or set aside the judgment as in other criminal
21 cases, except the portion of the security deposit that the court ordered to
22 be applied to child support under subsection (4) of this section, as the court
23 considers reasonable under the circumstances of the case. The court shall
24 adopt procedures to ensure that the amount deposited under ORS 135.265 is
25 available for a reasonable period of time for disposition under subsection (4)
26 of this section.

27 “(4) After entry of a judgment for the state, the court, upon a motion filed
28 under ORS 25.715, may order that a portion of [*the*] **any** security deposit be
29 applied to any unsatisfied child support award owed by the defendant and
30 to provide security for child support payments in accordance with ORS

1 25.230. The portion of the security deposit that may be applied to the child
2 support award:

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

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

7 “(c) Does not reduce the money award in the judgment entered under
8 subsection (3) of this section that is owed to the state.

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

28 “(6) [*When the*] **If a** judgment of forfeiture is entered, [*the*] **any** security
29 deposit or deposit with the clerk is, by virtue of the judgment alone and
30 without requiring further execution, forfeited to and may be kept by the

1 state or its appropriate political subdivision. Except as provided in sub-
2 section (4) of this section, the clerk shall reduce, by the value of the deposit
3 so forfeited, the debt remaining on the judgment and shall cause the amount
4 on deposit to be transferred to the revenue account of the state or political
5 subdivision thereof entitled to receive the proceeds of execution under this
6 section.

7 “(7) The stocks, bonds, personal property and real property shall be sold
8 in the same manner as in execution sales in civil actions and the proceeds
9 of such sale shall be used to satisfy all court costs, prior encumbrances, if
10 any, and from the balance a sufficient amount to satisfy the judgment shall
11 be paid into the treasury of the municipal corporation wherein the security
12 was taken if the offense was defined by an ordinance of a political subdivi-
13 sion of this state, or paid into the treasury of the county wherein the secu-
14 rity was taken if the offense was defined by a statute of this state and the
15 judgment was entered by a justice court, or deposited in the General Fund
16 available for general governmental expenses if the offense was defined by a
17 statute of this state and the judgment was entered by a circuit court. The
18 balance shall be returned to the owner. The real property sold may be re-
19 deemed in the same manner as real estate may be redeemed after judicial or
20 execution sales in civil actions.

21 **“SECTION 8.** ORS 137.050 is amended to read:

22 “137.050. (1) If the defendant has been released on a release agreement or
23 security [*deposit*] **release** and does not appear for judgment when personal
24 attendance is required by the court, the court may order **that the**
25 **promissory note is due or that the** [*a forfeiture of the*] security deposit **is**
26 **forfeited**, as provided in ORS 135.280. In addition, if the defendant fails to
27 appear as required by the release agreement or security deposit, the court
28 may direct the clerk to issue a bench warrant for the defendant’s arrest.

29 “(2) At any time after the making of the order for the bench warrant, the
30 clerk, on the application of the district attorney, shall issue such warrant,

1 as by the order directed, whether the court is sitting or not.

2 **SECTION 9. ORS 135.242 is repealed.**

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