

House Bill 4142

Sponsored by Representative BOICE, Senator SMITH DB, Representatives WRIGHT, HIEB, OSBORNE, OWENS; Representatives BREESE-IVERSON, MANNIX, NERON, RESCHKE, STOUT, Senators FINDLEY, HANSELL, LINTHICUM, THATCHER, WEBER (Presession filed.)

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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act restricts pretrial release for persons who commit a new felony sex crime while on pretrial release for a felony sex crime. The Act goes into effect when the Governor signs it. (Flesch Readability Score: 61.9).

Provides that when a person is charged with committing a new felony sex crime while on pretrial release for a felony sex crime, the person is only eligible for release after a hearing during which the court determines whether security release may be denied, and if security release is allowed, the person must deposit the full security amount set by the court.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to pretrial release for felony sex crimes; amending ORS 135.230, 135.233, 135.240 and
3 135.280; and declaring an emergency.

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

5 **SECTION 1.** ORS 135.230 is amended to read:

6 135.230. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

7 (1) "Abuse" means:

8 (a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury;

9 (b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical
10 injury; or

11 (c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

12 (2) "Conditional release" means a nonsecurity release which imposes regulations on the activ-
13 ities and associations of the defendant.

14 (3) "Domestic violence" means abuse between family or household members.

15 (4) "Family or household members" means any of the following:

16 (a) Spouses.

17 (b) Former spouses.

18 (c) Adult persons related by blood or marriage.

19 (d) Persons cohabiting with each other.

20 (e) Persons who have cohabited with each other or who have been involved in a sexually inti-
21 mate relationship.

22 (f) Unmarried parents of a minor child.

23 (5) "Magistrate" has the meaning provided for this term in ORS 133.030.

24 (6) "Personal recognizance" means the release of a defendant upon the promise of the defendant
25 to appear in court at all appropriate times.

26 (7) "Primary release criteria" includes the following:

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 (a) The reasonable protection of the victim or public;
- 2 (b) The nature of the current charge;
- 3 (c) The defendant's prior criminal record, if any, and, if the defendant previously has been re-
- 4 leased pending trial, whether the defendant appeared as required;
- 5 (d) Any facts indicating the possibility of violations of law if the defendant is released without
- 6 regulations; and
- 7 (e) Any other facts tending to indicate that the defendant is likely to appear.
- 8 (8) "Release" means temporary or partial freedom of a defendant from lawful custody before
- 9 judgment of conviction or after judgment of conviction if defendant has appealed.
- 10 (9) "Release agreement" means a sworn writing by the defendant stating the terms of the release
- 11 and, if applicable, the amount of security.
- 12 (10) "Release decision" means a determination by a magistrate, using primary and secondary
- 13 release criteria, which establishes the form of the release most likely to ensure the safety of the
- 14 public and the victim, the defendant's court appearance and that the defendant does not engage in
- 15 domestic violence while on release.
- 16 (11) "Secondary release criteria" includes the following:
- 17 (a) The defendant's employment status and history and financial condition;
- 18 (b) The nature and extent of the family relationships of the defendant;
- 19 (c) The past and present residences of the defendant;
- 20 (d) Names of persons who agree to assist the defendant in attending court at the proper time;
- 21 and
- 22 (e) Any facts tending to indicate that the defendant has strong ties to the community.
- 23 (12) "Security release" means a release conditioned on a promise to appear in court at all ap-
- 24 propriate times which is secured by cash, stocks, bonds or real property.
- 25 **(13) "Sex crime" has the meaning given that term in ORS 163A.005.**
- 26 [(13)] (14) "Surety" is one who executes a security release and binds oneself to pay the security
- 27 amount if the defendant fails to comply with the release agreement.
- 28 **SECTION 2.** ORS 135.233 is amended to read:
- 29 135.233. (1) The presiding judge of a judicial district shall enter a standing pretrial release order
- 30 specifying to the sheriff of the county, or to the entity supervising the local correctional facility
- 31 responsible for pretrial incarceration within the judicial district, those persons and offenses:
- 32 (a) Subject to release on recognizance;
- 33 (b) Subject to release with special conditions as specified in the order; and
- 34 (c) That are not eligible for release until arraignment.
- 35 **(2) A standing pretrial release order described in subsection (1) of this section must**
- 36 **provide that a person who is charged with committing a new felony sex crime while on any**
- 37 **form of pretrial release for a felony sex crime is, on the new charge, only eligible for release**
- 38 **pursuant to a hearing described in ORS 135.240 (4).**
- 39 [(2)] (3) The Chief Justice of the Supreme Court, with input from a criminal justice advisory
- 40 committee appointed by the Chief Justice, shall establish release guidelines for the pretrial release
- 41 orders described in this section to:
- 42 (a) Provide consistent release decision-making structure across the state;
- 43 (b) Reduce reliance on the use of security;
- 44 (c) Include provisions for victim notification and input; and
- 45 (d) Balance the rights of the defendant and presumption of pretrial release against community

1 and victim safety and the risk of failure to appear.

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

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

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

7 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-
8 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of
9 release as provided in subsection (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 making the determination
11 required by this subsection.

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

15 (4)(a) When the defendant is charged with a violent felony, release shall be denied if the court
16 finds:

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

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

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

24 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
25 court shall make the inquiry set forth in paragraph (a) of this subsection. **The state may not**
26 **stipulate to the setting of security or release, and shall request that the court proceed with**
27 **making the inquiry, if the defendant is charged with committing a new felony sex crime while**
28 **on any form of pretrial release for a felony sex crime.** The state has the burden of producing
29 evidence at the release hearing subject to ORS 40.015 (4).

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

32 (e) If the court determines that the defendant is eligible for release in accordance with this
33 subsection, the court shall set security or other appropriate conditions of release. **If the defendant**
34 **is charged with committing a new felony sex crime while on any form of pretrial release for**
35 **a felony sex crime, the court may only release the defendant on security release, and shall**
36 **require the defendant to deposit the full security amount set by the court.**

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

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

40 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
41 back into custody and may order the defendant held pending trial or may make a new release de-
42 cision.

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

45 **SECTION 4.** ORS 135.280 is amended to read:

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

5 **(b) If the person's failure to comply is being charged with committing a new felony sex**
 6 **crime while on any form of pretrial release for a felony sex crime, the court shall revoke the**
 7 **defendant's release status and issue a warrant for the arrest of the person, and upon arrest**
 8 **the person shall be held in custody pending a hearing described in ORS 135.240 (4).**

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

11 (3) If the defendant does not comply with the conditions of the release agreement, the court
 12 having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice
 13 of the order of forfeiture shall be given forthwith by personal service, by mail or by such other
 14 means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of
 15 the sureties the order of forfeiture. If, within 30 days after the court declares the forfeiture, the
 16 defendant does not appear or satisfy the court having jurisdiction that appearance and surrender
 17 by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter
 18 judgment for the state, or appropriate political subdivision thereof, against the defendant and, if
 19 applicable, the sureties for the entire security amount set under ORS 135.265 and the costs of the
 20 proceedings. At any time before or after entry of the judgment, the defendant or the sureties may
 21 apply to the court for a remission of the forfeiture or to modify or set aside the judgment. The court,
 22 upon good cause shown, may remit the forfeiture or any part thereof or may modify or set aside the
 23 judgment as in other criminal cases, except the portion of the security deposit that the court or-
 24 dered to be applied to child support under subsection (4) of this section, as the court considers
 25 reasonable under the circumstances of the case. The court shall adopt procedures to ensure that the
 26 amount deposited under ORS 135.265 is available for a reasonable period of time for disposition un-
 27 der subsection (4) of this section.

28 (4) After entry of a judgment for the state, the court, upon a motion filed under ORS 25.715,
 29 may order that a portion of the security deposit be applied to any unsatisfied child support award
 30 owed by the defendant and to provide security for child support payments in accordance with ORS
 31 25.230. The portion of the security deposit that may be applied to the child support award:

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

33 (b) May not exceed 66 percent of the entire security amount set under ORS 135.265 if the deposit
 34 has been made under ORS 135.265 (3); and

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

37 (5) When judgment is entered in favor of the state, or any political subdivision of the state, on
 38 any security given for a release, the judgment may be enforced as a judgment in a civil action. If
 39 entered in circuit court, the judgment shall be entered in the register, and the clerk of the court
 40 shall note in the register that the judgment creates a judgment lien. The district attorney, county
 41 counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff
 42 to be executed by levy on the deposit or security amount made in accordance with ORS 135.265, or
 43 may collect the judgment as otherwise provided by law. The proceeds of any execution or collection
 44 shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corpo-
 45 ration wherein the security was taken if the offense was defined by an ordinance of a political

1 subdivision of this state, or paid into the treasury of the county wherein the security was taken if
2 the offense was defined by a statute of this state and the judgment was entered by a justice court,
3 or paid over as directed by the State Court Administrator for deposit in the Criminal Fine Account,
4 if the offense was defined by a statute of this state and the judgment was entered by a circuit court.
5 The provisions of this section shall not apply to amounts deposited upon appearance under ORS
6 153.061.

7 (6) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is,
8 by virtue of the judgment alone and without requiring further execution, forfeited to and may be
9 kept by the state or its appropriate political subdivision. Except as provided in subsection (4) of this
10 section, the clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the
11 judgment and shall cause the amount on deposit to be transferred to the revenue account of the
12 state or political subdivision thereof entitled to receive the proceeds of execution under this section.

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

24 **SECTION 5. This 2024 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect**
26 **on its passage.**