

House Bill 2473

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys Association)

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 changes some rules for criminal cases. (Flesch Readability Score: 71.8).

Modifies the requirements for providing a declaration for the purposes of authenticating records in response to criminal process.

Authorizes a law enforcement agency to use forensic imaging to obtain information from a portable electronic device belonging to a deceased user if the death is the subject of a law enforcement investigation.

Provides that a warrant authorizing the installation or tracking of a mobile tracking device may be issued when an individual has committed a crime.

Authorizes a prosecuting attorney to turn over grand jury recordings to the defense attorney as soon as a decision not to file a motion for a protective order has been made.

Provides that a person released pretrial on a violent felony who violates a condition of release may be held in custody if the violation constitutes a new criminal offense.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to criminal procedures; creating new provisions; amending ORS 132.270, 133.539, 133.619,
3 135.240, 135.280 and 136.583; and prescribing an effective date.

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

AUTHENTICATION OF RECORDS

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8 **SECTION 1.** ORS 136.583 is amended to read:

9 136.583. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and subject to ORS 136.580
10 (2), criminal process authorizing or commanding the seizure or production of papers, documents,
11 records or other things may be issued to a recipient, regardless of whether the recipient or the pa-
12 pers, documents, records or things are located within this state, if:

13 (a) The criminal matter is triable in Oregon under ORS 131.205 to 131.235; and

14 (b) The exercise of jurisdiction over the recipient is not inconsistent with the Constitution of
15 this state or the Constitution of the United States.

16 (2) Criminal process that authorizes or commands the seizure or production of papers, docu-
17 ments, records or other things from a recipient may be served by:

18 (a) Delivering a copy to the recipient personally; or

19 (b) Sending a copy by:

20 (A) Certified or registered mail, return receipt requested;

21 (B) Express mail; or

22 (C) Facsimile or electronic transmission, if the copy is sent in a manner that provides proof of
23 delivery.

24 (3) When criminal process is served under subsection (2) of this section, the recipient shall

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 provide the applicant, or if the process is described in ORS 136.447 or 136.580 (2), the court, with
 2 all of the papers, documents, records or other things described in the criminal process within 20
 3 business days from the date the criminal process is received, unless:

4 (a) The court, for good cause shown, includes in the process a requirement for production within
 5 a period of time that is less than 20 business days;

6 (b) The court, for good cause shown, extends the time for production to a period of time that is
 7 more than 20 business days; or

8 (c) The applicant consents to a request from the recipient for additional time to comply with the
 9 process.

10 (4) A recipient who seeks to quash or otherwise challenge the criminal process must seek relief
 11 from the court that issued the process within the time required for production. The court shall hear
 12 and decide the issue as soon as practicable. The consent of the applicant to additional time to
 13 comply with the process under subsection (3)(c) of this section does not extend the date by which
 14 a recipient must seek relief under this subsection.

15 (5) Criminal process issued under this section must contain a notice on the first page of the
 16 document that indicates:

17 (a) That the process was issued under this section;

18 (b) The date before which the recipient must respond to the process; and

19 (c) That the deadline for seeking relief is not altered by the applicant's consent to additional
 20 time to respond to the process.

21 (6) Upon order of the court or the written request of the applicant, the recipient of the process
 22 shall verify the authenticity of the papers, documents, records or other things that the recipient
 23 produces in response to the criminal process by providing an affidavit or declaration that *[includes*
 24 *contact information for]* **identifies** the custodian or other qualified person completing the document
 25 and attests to the nature of the papers, documents, records or other things. An affidavit or decla-
 26 ration that complies with this subsection *[may fulfill]* **fulfills** the requirements of ORS 40.460 (6),
 27 40.505 and 132.320.

28 (7) A party that intends to offer a paper, document, record or other thing into evidence under
 29 this section must file written notice of that intention with the court and must disclose the affidavit
 30 or declaration sufficiently in advance of offering the paper, document, record or other thing into
 31 evidence to provide the adverse party with an opportunity to challenge the affidavit or declaration
 32 and to have that challenge determined without prejudice to the ability of the moving party to
 33 produce the custodian or other qualified person at trial. A motion opposing admission of the paper,
 34 document, record or other thing into evidence must be filed and determined by the court before trial
 35 and with sufficient time to allow the party offering the paper, document, record or other thing, if
 36 the motion is granted, to produce the custodian of the record or other qualified person at trial,
 37 without creating a hardship on the party or the custodian or other qualified person.

38 (8) Failure by a party that receives notice under subsection (7) of this section to timely file a
 39 motion opposing admission of the paper, document, record or other thing constitutes a waiver of
 40 objection to the admission of the evidence on the basis of the insufficiency of the affidavit or decla-
 41 ration unless the court finds good cause to grant relief from the waiver. If the court grants relief
 42 from the waiver, the court shall order the trial continued upon the request of the proponent of the
 43 evidence and allow the proponent sufficient time to arrange for the necessary witness to appear.

44 (9) A recipient of criminal process under this section or any individual that responds to the
 45 process is immune from civil and criminal liability for complying with the process and for any failure

1 to provide notice of any disclosure to a person who is the subject of, or identified in, the disclosure.

2 (10) Nothing in this section limits the authority of a court to issue criminal process under any
3 other provision of law or prohibits a party from calling the custodian of the evidence or other
4 qualified person to testify regarding the evidence.

5 (11) As used in this section:

6 (a) "Applicant" means:

7 (A) A police officer or district attorney who applies for a search warrant or other court order
8 or seeks to issue a subpoena under this section; or

9 (B) A defense attorney who applies for a court order or seeks to issue a subpoena under this
10 section.

11 (b) "Criminal process" means a subpoena, search warrant or other court order.

12 (c) "Declaration" means a declaration [*under penalty of perjury under ORCP 1 E or an unsworn*
13 *declaration under ORS 194.800 to 194.835, if the declarant is physically outside the boundaries of the*
14 *United States*] **stating that the information contained therein is correct that is made under**
15 **penalty of perjury and signed by the custodian of records or other qualified person.**

16 (d) "Defense attorney" means an attorney of record for a person charged with a crime who is
17 seeking the issuance of criminal process for the defense of the criminal case.

18 (e) "Recipient" means a business entity or nonprofit entity that has conducted business or en-
19 gaged in transactions occurring at least in part in this state.

20
21 **IMAGING OF DIGITAL DEVICES**

22
23 **SECTION 2.** ORS 133.539 is amended to read:

24 133.539. (1) As used in this section:

25 (a)(A) "Forensic imaging" means using an electronic device to download or transfer raw data
26 from a portable electronic device onto another medium of digital storage.

27 (B) "Forensic imaging" does not include photographing or transcribing information observable
28 from the portable electronic device by normal unaided human senses.

29 (b) "Location information service" means a global positioning service or other mapping,
30 locational or directional information service.

31 (c) "Portable electronic device" means any device designed to be easily moved from one location
32 to another and that contains electronic data or that enables access to, or use of, an electronic
33 communication service as defined in 18 U.S.C. 2510, remote computing service as defined in 18 U.S.C.
34 2711 or location information service.

35 (d) "Raw data" means data collected from a source that has not been subsequently altered or
36 manipulated after collection.

37 (2) A law enforcement agency may not use forensic imaging to obtain information contained in
38 a portable electronic device except:

39 (a) Pursuant to a search warrant issued under ORS 133.525 to 133.703; [or]

40 (b) As authorized by lawful consent; **or**

41 **(c) When the user of the device is deceased and the death is the subject of a law**
42 **enforcement investigation.**

43 (3) Information obtained in violation of this section:

44 (a) Is not admissible in and may not be disclosed in a judicial proceeding, administrative pro-
45 ceeding, arbitration proceeding or other adjudicatory proceeding, against either the owner of the

1 portable electronic device or a person with a reasonable expectation of privacy in the contents of
2 the device; and

3 (b) May not be used to establish reasonable suspicion or probable cause to believe that an of-
4 fense has been committed.

5 (4) A portable electronic device that has been forensically imaged pursuant to subsection (2) of
6 this section may be returned as described in ORS 133.633 and 133.643.

7 (5) Subsection (2) of this section does not apply to:

8 (a) A correctional facility, youth correction facility or state hospital, as those terms are defined
9 in ORS 162.135, when the facility or state hospital obtains information from a portable electronic
10 device in an otherwise lawful manner.

11 (b) A parole and probation officer, juvenile community supervision officer as defined in ORS
12 420.905, community corrections agency or agency that supervises youths or adjudicated youths,
13 when the officer or agency obtains information from a portable electronic device in an otherwise
14 lawful manner.

15
16 **MOBILE TRACKING DEVICE WARRANTS**

17
18 **SECTION 3.** ORS 133.619 is amended to read:

19 133.619. (1) A warrant authorizing the installation or tracking of a mobile tracking device shall
20 be executed as provided in this section.

21 (2) The officer need not inform any person of the existence or content of the warrant prior to
22 its execution.

23 (3) Except as provided in subsection (4) of this section, the officer need not deliver or leave a
24 receipt for things seized or observations made under authority of the warrant.

25 (4) Within five days of the execution of the warrant, or, in the case of an ongoing investigation,
26 within such additional time as the issuing judge may allow upon application, the officer shall mail
27 a receipt for things seized or observations made under authority of the warrant to the following:

28 (a) If the mobile tracking device has been affixed to a vehicle, to the registered owner; and

29 (b) To such other persons as the court may direct in the warrant.

30 (5) The receipt provided for in subsection (4) of this section must include the dates and times
31 during which the officer monitored or attempted to monitor the mobile tracking device.

32 (6) A warrant authorizing the installation or tracking of a mobile tracking device shall be issued
33 only when based upon the submission of an affidavit or oral statement as described in ORS 133.545,
34 which affidavit or statement demonstrates that probable cause exists to believe that an individual
35 is committing, **has committed** or is about to commit:

36 (a) A particular felony of murder, kidnapping, arson, robbery or other crime dangerous to life
37 and punishable as a felony;

38 (b) A crime punishable as a felony arising under ORS 475.752, 475.806 to 475.894, 475C.005 to
39 475C.525 or 475C.770 to 475C.919;

40 (c) The crime of unlawfully transporting metal property under ORS 164.857 or a crime described
41 in ORS 165.118;

42 (d) Bribery, extortion, burglary or unauthorized use of a motor vehicle punishable as a felony;

43 (e) A violation of a criminal provision of the wildlife laws as described in ORS 496.002;

44 (f) A violation of a criminal provision of the commercial fishing laws as described in ORS
45 506.001;

1 (g) A violation of ORS 704.020, 704.021, 704.030 or 704.065; or

2 (h) A conspiracy to commit a crime listed in this subsection.

3 (7) A court may authorize the installation or tracking of a mobile tracking device for a period
 4 not to exceed 30 days. Upon application, the court may grant one or more extensions for a period
 5 not to exceed 30 days per extension.

6
 7 **GRAND JURY RECORDINGS**

8
 9 **SECTION 4.** ORS 132.270 is amended to read:

10 132.270. (1) Audio recordings and the notes or report of a shorthand reporter produced pursuant
 11 to ORS 132.250 and 132.260 are confidential and may not be released except as described in this
 12 section.

13 (2) When an indictment resulting from grand jury proceedings is indorsed “a true bill,” the audio
 14 recording or the notes or report of a shorthand reporter of the grand jury proceedings may be re-
 15 leased only in the following manner:

16 (a) The prosecuting attorney may access a copy of the audio recording or the notes or report
 17 of a shorthand reporter at any time.

18 (b) When the defendant has been arraigned on the indictment and is represented by an attorney,
 19 the *[district]* **prosecuting attorney shall make an expedited determination on whether to file a**
 20 **motion for a protective order under subsection (4)(a)(A) of this section, including whether**
 21 **to file an order on behalf of a victim or witness. If the prosecuting attorney decides not to**
 22 **file a motion for a protective order and the decision is made within 10 days after the**
 23 **arraignment on the indictment, the prosecuting attorney shall file a certification of the de-**
 24 **cision with the court and shall immediately provide a copy of the audio recordings, or the**
 25 **notes or report of a shorthand reporter, to the defense attorney. If the prosecuting attorney**
 26 **has not filed a certification under this paragraph within 10 days after the arraignment, or**
 27 **decides to file a motion for a protective order, the prosecuting attorney shall:**

28 (A) Provide a copy to the defense attorney of all audio recordings, or the notes or report of a
 29 shorthand reporter, related to an indictment after 10 days have passed since the defendant’s
 30 arraignment on the indictment, **if a** *[and no]* motion described in subsection (4) of this section has
 31 **not** been filed; or

32 (B) Provide a copy of the audio recordings, or the notes or report of a shorthand reporter, to
 33 the defense attorney in accordance with the court’s ruling on the motion described in subsection (4)
 34 of this section, if a motion has been filed.

35 (c) Unless the court orders otherwise for good cause shown, the prosecuting attorney and the
 36 defense attorney may not copy, disseminate or republish the audio recording, the notes or report
 37 of a shorthand reporter, or a transcript prepared from the audio recording, notes or report, released
 38 pursuant to this subsection, except to provide a copy to an agent of the prosecuting attorney or
 39 defense attorney for the limited purpose of case preparation. Unless a court orders otherwise for
 40 good cause shown, in consulting with the defendant the defense attorney may not disclose to the
 41 defendant:

42 (A) Any personal identifiers of a victim, witness or grand juror obtained from the audio re-
 43 cording, report, notes or transcript; or

44 (B) Any portion of the audio recording, report, notes or transcript that contains any personal
 45 identifiers of a victim, witness or grand juror.

1 (d) The defense attorney may not provide a copy of the audio recording, notes or report, or a
 2 transcript prepared from the audio recording, notes or report, to the defendant.

3 (e) When the defendant has been arraigned but is not represented by an attorney, the defendant
 4 may request by motion that the court issue an order allowing the defendant access to review the
 5 contents of the audio recording or the notes or report of the shorthand reporter. A copy of the
 6 motion must be provided to the prosecuting attorney. The prosecuting attorney may request a
 7 hearing on the motion within 10 days after receiving a copy. At the hearing, or in response to re-
 8 ceiving the motion, the court shall appoint counsel for the defendant for the limited purpose of re-
 9 viewing the audio recording, notes or report and may set reasonable conditions on the review of the
 10 audio recording, notes or report.

11 (3)(a) When a grand jury inquires into the conduct of a public servant as defined in ORS 162.005
 12 for acts occurring in the performance of the public servant's duties, and an indictment resulting
 13 from the grand jury proceedings is indorsed "not a true bill":

14 (A) The public servant or the prosecuting attorney may file a motion requesting a court order
 15 releasing all or a portion of a transcript of the grand jury proceedings. A copy of the motion must
 16 be served on the opposing party. In deciding whether to issue such an order, the court shall deter-
 17 mine whether the public interest in disclosure outweighs the interest in maintaining the secrecy of
 18 the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions
 19 on copying, disseminating or republishing the transcript.

20 (B) A member of the public may file a motion requesting a court order for production and re-
 21 lease of a transcript of the grand jury proceedings. A copy of the motion must be served on the
 22 prosecuting attorney and the public servant's attorney, or the public servant if the public servant
 23 is not represented by an attorney. The person filing the motion is responsible for the cost of
 24 producing the transcript and a court order for production and release of the transcript must be
 25 conditioned on receipt of payment. In deciding whether to issue such an order, the court shall de-
 26 termine whether the public interest in disclosure outweighs the interest in maintaining the secrecy
 27 of the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions
 28 on copying, disseminating or republishing the transcript.

29 (b) The release of any transcript under this subsection may not include:

30 (A) The release of any personal identifiers of a victim or witness; or

31 (B) The release of the name or any personal identifiers of a grand juror.

32 (4)(a) A motion for a protective order concerning an audio recording, the notes or report of a
 33 shorthand reporter or a transcript of grand jury proceedings may be filed as follows:

34 (A) **Except when the prosecuting attorney has filed a certification of the decision to not**
 35 **file a motion for a protective order under subsection (2)(b) of this section,** the prosecuting
 36 attorney may file a motion for a protective order within 10 days after the defendant's arraignment
 37 on the indictment. The motion may be filed on behalf of a victim or a witness. The prosecuting at-
 38 torney shall inform the victim of the ability to seek a protective order.

39 (B) The prosecuting attorney may file a motion for a protective order within 10 days after re-
 40 ceiving a motion described in subsection (2)(e) of this section.

41 (C) The prosecuting attorney, the public servant who is the subject of an indictment indorsed
 42 "not a true bill" or the public servant's attorney may file a motion for a protective order within 10
 43 days of receiving a motion described in subsection (3)(a) of this section.

44 (b) If the motion for a protective order requests that a portion of the audio recording, notes,
 45 report or transcript be redacted, the motion must be accompanied by a specific description, includ-

1 ing the date and time, of the portion of the audio recording, notes, report or transcript to be
 2 redacted.

3 (c) In response to a motion filed under this subsection, the court may order that the access of
 4 the person requesting release to a copy of the audio recording, notes, report or transcript be denied,
 5 restricted or deferred, or may make any other order, upon a finding of substantial and compelling
 6 circumstances. In deciding whether to grant the motion and enter a protective order under this
 7 paragraph, the court may consider the following:

8 (A) Protection of witnesses and others from physical harm, threats of harm, bribes, economic
 9 interference, reprisal and other forms of intimidation;

10 (B) Maintenance of secrecy regarding informants, as required for effective investigation of
 11 criminal activity;

12 (C) Confidential information recognized under law, including the protection of confidential re-
 13 lationships and privileges and the contents of confidential records unrelated to a crime alleged in
 14 the indictment; and

15 (D) Any other relevant considerations.

16 (d) The court may permit the evidence of substantial and compelling circumstances described in
 17 paragraph (c) of this subsection to be made in the form of a written statement to be inspected by
 18 the court only or by oral testimony given on the record.

19 (5)(a) Except as provided in paragraph (b) of this subsection, when grand jury proceedings do
 20 not result in an indictment indorsed as either “a true bill” or “not a true bill,” the audio recording
 21 or notes or report of the shorthand reporter produced pursuant to ORS 132.250 and 132.260 may not
 22 be disclosed or released.

23 (b) When subsequent grand jury proceedings occur inquiring into the same criminal episode as
 24 the grand jury proceedings described in paragraph (a) of this subsection, and the subsequent pro-
 25 ceedings result in an indictment indorsed as “a true bill,” the prosecuting attorney shall provide
 26 notice to the person charged in the indictment of the occurrence of the earlier grand jury pro-
 27 ceedings. After the person is arraigned on the indictment [*and the time period described in subsection*
 28 *(2)(b) of this section has passed*], the audio recording or the notes or report of the shorthand reporter
 29 produced during the earlier grand jury proceedings may be obtained in the manner set forth in
 30 subsection (2) of this section.

31 (c) As used in this subsection, “criminal episode” has the meaning given that term in ORS
 32 131.505.

33 (6) The district attorney of each county may establish a fee for the cost of providing a copy of
 34 any audio recording, or the notes or report of a shorthand reporter, of a grand jury proceeding to
 35 a person requesting a copy under this section.

36 (7) An audio recording, the notes or report of a shorthand reporter or a transcript of a grand
 37 jury proceeding obtained pursuant to this section and ORS 132.250 and 132.260:

38 (a) May not be used as evidence in any subsequent proceeding, except as permitted under ORS
 39 40.375, 40.380, 40.450, 40.460 or 40.465.

40 (b) May not be used to challenge the indorsement of an indictment “a true bill” or the pro-
 41 ceedings that led to the indorsement.

42 (c) May be used as evidence in a prosecution for perjury or false swearing committed by a wit-
 43 ness while giving testimony during the grand jury proceeding or during trial.

44 (d) May be used as evidence in a proceeding for contempt of court against a person alleged to
 45 have violated the terms of a court order concerning the audio recording, notes, report or transcript.

1 (e) May be submitted to the court and used as evidence for a hearing on a protective order de-
 2 scribed in subsection (4) of this section.

3 (8) The release of audio recordings, shorthand reporter notes or reports or transcripts of grand
 4 jury proceedings under this section does not affect discovery obligations under ORS 135.805 to
 5 135.873.

6 (9) As used in this section:

7 (a) "Personal identifiers" means:

8 (A) In relation to a witness or a grand juror, the person's address, telephone number, driver li-
 9 cense, vehicle registration information, Social Security number, date of birth and the identifying
 10 number of the person's depository account at a financial institution, as defined in ORS 706.008, or
 11 credit card account.

12 (B) In relation to a victim, the victim's address, electronic mail address, telephone number,
 13 driver license, vehicle registration information, Social Security number, date of birth, any user
 14 names or other identifying information associated with the victim's social media accounts and the
 15 identifying number of the victim's depository account at a financial institution, as defined in ORS
 16 706.008, or credit card account.

17 (b) "Social media" has the meaning given that term in ORS 659A.330.

18
 19 **PRETRIAL RELEASE**
 20

21 **SECTION 5.** ORS 135.240 is amended to read:

22 135.240. (1) Except as provided in subsections (2) and (4) of this section, a defendant shall be
 23 released in accordance with ORS 135.230 to 135.290.

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

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

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

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

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

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

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

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

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

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

5 (f) When a defendant [*who*] **is charged with a violent felony**, has been released, **regardless**
 6 **of whether the court conducted the inquiry or made the findings described in paragraph (a)**
 7 **of this subsection, and** violates a condition of release [*and the violation*]:

8 (A) **That** constitutes a new criminal offense, the court shall cause the defendant to be taken
 9 back into custody and shall order the defendant held pending trial without release.

10 (B) **That** does not constitute a new criminal offense, the court may order the defendant to be
 11 taken back into custody and may order the defendant held pending trial or may make a new release
 12 decision.

13 (C) **The state may request that the court proceed with the inquiry described in paragraph**
 14 **(a) of this subsection and deny release.**

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

17 **SECTION 6.** ORS 135.280 is amended to read:

18 135.280. (1) Upon failure of a person to comply with any condition of a release agreement or
 19 personal recognizance, the court having jurisdiction may, in addition to any other action provided
 20 by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, condi-
 21 tional or security release. **After the person is returned to custody, the court may make a new**
 22 **release decision except as otherwise provided in ORS 135.240.**

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

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

42 (4) After entry of a judgment for the state, the court, upon a motion filed under ORS 25.715,
 43 may order that a portion of the security deposit be applied to any unsatisfied child support award
 44 owed by the defendant and to provide security for child support payments in accordance with ORS
 45 25.230. The portion of the security deposit that may be applied to the child support award:

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

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

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

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

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

27 (7) The stocks, bonds, personal property and real property shall be sold in the same manner as
28 in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court
29 costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment
30 shall be paid into the treasury of the municipal corporation wherein the security was taken if the
31 offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury
32 of the county wherein the security was taken if the offense was defined by a statute of this state
33 and the judgment was entered by a justice court, or deposited in the General Fund available for
34 general governmental expenses if the offense was defined by a statute of this state and the judgment
35 was entered by a circuit court. The balance shall be returned to the owner. The real property sold
36 may be redeemed in the same manner as real estate may be redeemed after judicial or execution
37 sales in civil actions.

38
39 **APPLICABILITY**

40
41 **SECTION 7. The amendments to ORS 132.270, 135.240 and 135.280 by sections 4 to 6 of this**
42 **2025 Act apply to criminal proceedings based on conduct occurring on or after the effective**
43 **date of this 2025 Act.**

44
45 **CAPTIONS**

1 **SECTION 8.** The unit captions used in this 2025 Act are provided only for the convenience
2 of the reader and do not become part of the statutory law of this state or express any leg-
3 islative intent in the enactment of this 2025 Act.

4

5

EFFECTIVE DATE

6

7 **SECTION 9.** This 2025 Act takes effect on the 91st day after the date on which the 2025
8 regular session of the Eighty-third Legislative Assembly adjourns sine die.

9
