

Senate Bill 1040

Sponsored by Senator BONHAM

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 limits pretrial release for people charged with some drug crimes. The Act goes into effect when the Governor signs it. (Flesch Readability Score: 76.4).

Limits pretrial release of defendants charged with unlawful delivery of a controlled substance involving a substantial quantity to security release.

Requires the Oregon Department of Administrative Services to reimburse counties for the costs of pretrial incarceration of such persons. Appropriates moneys to the department for the reimbursement.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to pretrial incarceration; creating new provisions; amending ORS 135.233, 135.235, 135.245
3 and 135.265; and declaring an emergency.

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

5 **SECTION 1.** ORS 135.233 is amended to read:

6 135.233. (1)(a) The presiding judge of a judicial district shall enter a standing pretrial release
7 order specifying to the sheriff of the county, or to the entity supervising the local correctional fa-
8 cility responsible for pretrial incarceration within the judicial district, those persons and offenses:

9 [(a)] (A) Subject to release on recognizance;

10 [(b)] (B) Subject to release with special conditions as specified in the order; and

11 [(c)] (C) That are not eligible for release until arraignment.

12 **(b) The standing pretrial release order described in this section may allow for release on**
13 **recognizance or conditional release for defendants who are not charged with unlawful deliv-**
14 **ery of a controlled substance involving a substantial quantity as described in ORS 475.900**
15 **(1)(a), but must specify that defendants who are charged with unlawful delivery of a con-**
16 **trolled substance involving a substantial quantity as described in ORS 475.900 (1)(a) are not**
17 **eligible for release until arraignment and may be released only on security release.**

18 (2) The Chief Justice of the Supreme Court, with input from a criminal justice advisory com-
19 mittee appointed by the Chief Justice, shall establish release guidelines for the pretrial release or-
20 ders described in this section to:

21 (a) Provide consistent release decision-making structure across the state;

22 [(b) *Reduce reliance on the use of security;*]

23 [(c)] (b) Include provisions for victim notification and input; and

24 [(d)] (c) Balance the rights of the defendant and presumption of pretrial release against com-
25 munity and victim safety and the risk of failure to appear.

26 **SECTION 2.** ORS 135.235 is amended to read:

27 135.235. (1) A presiding judge for a judicial district may appoint release assistance officers under

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 personnel plan established by the Chief Justice of the Supreme Court.

2 (2) A release assistance officer shall, except when impracticable, interview every person de-
3 tained pursuant to law and charged with an offense. If the person is charged with a person felony
4 or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal
5 Justice Commission, or with contempt of court for violating a court order protecting or prohibiting
6 contact with another person, the release assistance officer shall make reasonable efforts to contact
7 the victim prior to submitting a report or making a release decision under subsection (3) of this
8 section. If the release assistance officer is able to contact the victim:

9 (a) Information regarding the victim's position on release, including whether special release
10 conditions should be imposed, must be included in the report described in subsection (3) of this
11 section, and considered by the release assistance officer if the officer makes the release decision;
12 and

13 (b) If the information is available, the release assistance officer shall inform the victim of the
14 location, date and time of the defendant's arraignment or other first appearance.

15 (3) The release assistance officer shall verify release criteria information and may either:

16 (a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation
17 of the release criteria and **either** a recommendation for the form of release **or, for a defendant**
18 **charged with unlawful delivery of a controlled substance involving a substantial quantity as**
19 **described in ORS 475.900 (1)(a), the amount of security;** or

20 (b) **For a defendant who is not charged with unlawful delivery of a controlled substance**
21 **involving a substantial quantity as described in ORS 475.900 (1)(a), and** if delegated release
22 authority by the presiding judge for the judicial district, make the release decision.

23 (4) As used in this section, "victim" means an individual that the charging instrument indicates
24 is the victim of the alleged offense or the person protected by the court order, whether or not the
25 individual is specifically named, so long as the release assistance officer is able to confirm the
26 identity of the individual.

27 **SECTION 3.** ORS 135.245 is amended to read:

28 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to be taken
29 before a magistrate without undue delay.

30 (2)(a) A magistrate shall make a release decision at the time of arraignment or other first ap-
31 pearance after the defendant is taken into custody unless good cause to postpone the release deci-
32 sion is shown, in which case a release hearing shall be held pursuant to subsection (7) of this
33 section.

34 (b) The district attorney shall make reasonable efforts to inform the victim of the location, date
35 and time of the arraignment or other first appearance and to determine if the victim is present at
36 the arraignment or appearance. If the victim is present, the victim has the right to reasonably ex-
37 press any views relevant to the issues at the appearance.

38 (c) As used in this subsection, "good cause" includes circumstances in which:

39 (A) The district attorney plans to seek preventative detention; or

40 (B) There is a reasonable belief that additional evidence exists and would be relevant to the
41 release decision, but is not currently available.

42 (3) **For a defendant who is not charged with unlawful delivery of a controlled substance**
43 **involving a substantial quantity as described in ORS 475.900 (1)(a):**

44 (a) If the magistrate, having given priority to the primary release criteria, decides to release
45 [a] the defendant or to set security, the magistrate shall impose the least onerous condition rea-

1 sonably likely to ensure the safety of the public and the victim and the person's later appearance
 2 and, if the person is charged with an offense involving domestic violence, ensure that the person
 3 does not engage in domestic violence while on release. A person in custody, otherwise having a
 4 right to release, shall be released upon the personal recognizance unless:

5 [(a)] (A) Release criteria show to the satisfaction of the magistrate that such a release is un-
 6 warranted; or

7 [(b)] (B) Subsection (6) of this section applies to the person.

8 [(4)] (b) Upon a finding that release of the person on personal recognizance is unwarranted, the
 9 magistrate shall proceed to consider conditional release under ORS 135.260. Only after determining
 10 that conditional release is unwarranted, or if otherwise required by ORS 135.230 to 135.290, may the
 11 magistrate proceed to consider security release under ORS 135.265.

12 **(4) For a defendant charged with unlawful delivery of a controlled substance involving a**
 13 **substantial quantity as described in ORS 475.900 (1)(a), the magistrate may not release the**
 14 **defendant on personal recognizance or conditional release and, after considering the primary**
 15 **release criteria, shall set a security amount under ORS 135.265.**

16 (5) At the release hearing:

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

19 (b) The victim has the right:

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

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

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

24 (6) If a person refuses to provide a true name under the circumstances described in ORS 135.060
 25 and 135.065, the magistrate may not release the person on personal recognizance or on conditional
 26 release. The magistrate may release the person on security release under ORS 135.265 except that
 27 the magistrate shall require the person to deposit the full security amount set by the magistrate.

28 (7)(a) After the postponement of a release decision under subsection (2) of this section, upon the
 29 request of either party, or upon the magistrate's own motion, the magistrate shall make a release
 30 decision or reconsider the release decision, as applicable, at a release hearing. The release hearing
 31 must be held within 48 hours of arraignment or other first appearance after the defendant is taken
 32 into custody unless both parties agree, or the court finds good cause, to hold the hearing at a later
 33 time. Under no circumstances may the release hearing be held more than five days after
 34 arraignment or other first appearance after the defendant is taken into custody unless the defendant
 35 consents to holding the hearing at a later time.

36 (b) A hearing held under this subsection may not be used for purposes of discovery.

37 (8) This section shall be liberally construed to carry out the purpose of relying upon criminal
 38 sanctions instead of financial loss to ensure the appearance of the defendant.

39 **SECTION 4.** ORS 135.265 is amended to read:

40 135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, [or]
 41 **is not** granted conditional release under ORS 135.260, [or] fails to agree to the provisions of the
 42 conditional release, **or does not qualify for release on personal recognizance or conditional**
 43 **release due to being charged with unlawful delivery of a controlled substance involving a**
 44 **substantial quantity as described in ORS 475.900 (1)(a),** the magistrate shall set a security
 45 amount that will reasonably assure the defendant's appearance. The defendant shall execute the

1 security release in the amount set by the magistrate.

2 (2) The defendant shall execute a release agreement and deposit with the clerk of the court
 3 before which the proceeding is pending a sum of money equal to 10 percent of the security amount,
 4 but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum de-
 5 posited. Upon depositing this sum the defendant shall be released from custody subject to the con-
 6 dition that the defendant appear to answer the charge in the court having jurisdiction on a day
 7 certain and thereafter as ordered by the court until discharged or final order of the court. Once
 8 security has been given and a charge is pending or is thereafter filed in or transferred to a court
 9 of competent jurisdiction the latter court shall continue the original security in that court subject
 10 to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the
 11 defendant has been discharged from all obligations in the cause, the clerk of the court shall return
 12 to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85
 13 percent of the sum which has been deposited and shall retain as security release costs 15 percent,
 14 but not less than \$5 nor more than \$750, of the amount deposited. The interest that has accrued on
 15 the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of
 16 a circuit court shall be paid over as directed by the State Court Administrator for deposit in the
 17 General Fund. The amount retained by a justice of the peace shall be deposited in the county
 18 treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal
 19 corporation treasury. At the request of the defendant the court may order whatever amount is re-
 20 payable to defendant from such security amount to be paid to defendant's attorney of record.

21 (3) Instead of the security deposit provided for in subsection (2) of this section the defendant
 22 may deposit with the clerk of the court an amount equal to the security amount in cash, stocks,
 23 bonds, or real or personal property situated in this state with equity not exempt owned by the de-
 24 fendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds,
 25 real or personal property shall in all cases be justified by affidavit. The magistrate may further ex-
 26 amine the sufficiency of the security as the magistrate considers necessary.

27 **SECTION 5. (1) The state shall reimburse each county for the costs of pretrial**
 28 **incarceration of persons charged with unlawful delivery of a controlled substance involving**
 29 **a substantial quantity as described in ORS 475.900 (1)(a) as provided in this section. The re-**
 30 **imbursement shall cover the costs of incarceration for each day that the charged person is**
 31 **in the custody of the supervisory authority of the county, from the date of the person's ar-**
 32 **rest until the resolution of the criminal charge.**

33 **(2) At the end of each month, the county shall submit to the Oregon Department of Ad-**
 34 **ministrative Services a written request for reimbursement for the cost of incarcerating**
 35 **persons described in subsection (1) of this section.**

36 **(3) The department shall reimburse a county that submits a request under subsection (2)**
 37 **of this section within seven days of receiving the request. The reimbursement shall occur**
 38 **at the rate of \$100 per person per day of incarceration or the actual daily cost of**
 39 **incarcerating a person, whichever is higher.**

40 **SECTION 6. In addition to and not in lieu of any other appropriation, there is appropri-**
 41 **ated to the Oregon Department of Administrative Services, for the biennium beginning July**
 42 **1, 2025, out of the General Fund, the amount of \$_____ , for distribution to counties**
 43 **for reimbursement of pretrial incarceration costs under section 5 of this 2025 Act.**

44 **SECTION 7. This 2025 Act being necessary for the immediate preservation of the public**
 45 **peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect**

1 **on its passage.**

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