

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

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Action: Do Pass  
Vote: 3 - 0 - 2  
Yeas: Beyer, Kruse, Burdick  
Nays: 0  
Exc.: Prozanski, Walker  
Prepared By: Darian Stanford, Counsel  
Meeting Dates: 5/7

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**WHAT THE MEASURE DOES:** Attempts to reconcile statutory provisions relating to pretrial release of certain defendants with Oregon constitutional provisions. Bars pretrial release of defendant charged with violent felony if defendant presents danger of physical injury or sexual victimization to victim or public.

**ISSUES DISCUSSED:**

- Lack of reason that it took so long to reconcile statute and constitution

**EFFECT OF COMMITTEE AMENDMENT:** No amendment.

**BACKGROUND:** Article I, section 43(1)(b) of the Oregon Constitution requires courts to base pretrial release decisions on the “reasonable protection of the victim and the public” in addition to the likelihood that the defendant will appear for trial. In relevant part, it states that there should be no bail for “violent felonies” if the court determines that (1) there is probable cause that the defendant committed the crime; and (2) there is clear and convincing evidence that releasing the defendant presents a danger to the victim or the public.

ORS 135.240 also addresses the pretrial release of defendants. Presently, its provisions appear to conflict with the Oregon Constitution in at least two ways. The Constitution addresses release for any “violent felony,” but the statute only applies to nineteen specific felonies and does not include felonies such as third-degree assault, third-degree rape, assaulting a public safety officer, intimidation, or encouraging sexual abuse of a child. Also, the constitution establishes a narrower standard of review for a court to decide to release a defendant—whether the defendant poses a danger of physical injury or sexual victimization to the public. The statute has a broader standard—whether the defendant will commit *any* new criminal offenses.

HB 2138 attempts to reconcile the statute with the Constitution. It adopts the constitutional phrase “violent felony,” which it defines as a felony involving “actual or threatened serious physical injury to the victim, or a felony sexual offense.” Under HB 2138, the court should deny pretrial release of a defendant charged with a violent felony if: (1) there is probable cause to believe that the defendant committed the crime; and (2) there is clear and convincing evidence that, if released, the defendant poses a danger of physical injury or sexual victimization to the victim or to the public.