

House Bill 2138

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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**.

Bars pretrial release of defendant charged with violent felony if defendant presents danger of physical injury or sexual victimization to victim or public if released.

A BILL FOR AN ACT

1
2 Relating to pretrial release; amending ORS 135.240.

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

4 **SECTION 1.** ORS 135.240 is amended to read:

5 135.240. (1) Except as provided in subsections (2), (4) and (5) of this section, a defendant shall
6 be released in accordance with ORS 135.230 to 135.290.

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

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

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

17 (4)(a) Except as otherwise provided in subsection (5) of this section, when the defendant is
18 charged with [*a crime listed in ORS 137.700 or 137.707, other than attempt or conspiracy to commit*
19 *murder or attempt or conspiracy to commit aggravated murder*] **a violent felony**, release shall be
20 denied [*unless the court determines by clear and convincing evidence that the defendant will not commit*
21 *new criminal offenses while on release.*] **if the court finds:**

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

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

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

29 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
30 court shall [*determine whether probable cause exists to believe the defendant has committed an offense*
31 *listed in ORS 137.700 or 137.707, other than attempt or conspiracy to commit murder or attempt or*

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 *conspiracy to commit aggravated murder, and, if so, whether the defendant would commit new crimes*
 2 *while on release*] **make the inquiry set forth in paragraph (a) of this subsection.** The state has
 3 the burden of producing evidence at the release hearing subject to ORS 40.015 (4).

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

6 (e) If the court determines that the defendant [*will not commit new crimes while on release*] **is**
 7 **eligible for release in accordance with this subsection,** the court shall set security or other ap-
 8 propriate conditions of release. [*If the court does not determine that the defendant will not commit new*
 9 *crimes while on release, the court shall deny release.*]

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

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

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

16 (5) If the United States Constitution or the Oregon Constitution prohibits application of sub-
 17 section (4) of this section, then notwithstanding any other provision of law, the court shall set a
 18 security amount of not less than \$50,000 for a defendant charged with [*an offense listed in ORS*
 19 *137.700 or 137.707*] **a violent felony** and may not release the defendant on any form of release other
 20 than a security release. In addition to the security amount, the court may impose any supervisory
 21 conditions deemed necessary for the protection of the victim and the community. When a defendant
 22 who has been released violates a condition of release and the violation:

23 (a) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
 24 custody, shall order the defendant held pending trial and shall set a security amount of not less than
 25 \$250,000.

26 (b) Does not constitute a new criminal offense, the court may order the defendant to be taken
 27 back into custody, may order the defendant held pending trial and may set a security amount of not
 28 less than \$250,000.

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

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