

**SENATE AMENDMENTS TO  
B-ENGROSSED HOUSE BILL 2651  
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON RULES

June 21

1 On page 1 of the printed B-engrossed bill, line 2, after “ORS” insert “135.240,”.

2 On page 8, after line 42, insert:

3 “**SECTION 9.** If House Bill 2138 becomes law, ORS 135.240, as amended by section 1, chapter  
4 194, Oregon Laws 2007 (Enrolled House Bill 2138), 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 ev-  
10 ident nor the presumption strong that the defendant is guilty, the court shall determine the issue  
11 of release as provided in subsection (4) of this section. In determining the issue of release under  
12 subsection (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 deter-  
15 mine whether, under subsection (2) of this section, the proof is evident or the presumption strong  
16 that the person is guilty.

17 “(4)(a) Except as otherwise provided in subsection (5) of this section, when the defendant is  
18 charged with a violent felony, release shall be denied if the court finds:

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

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

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

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

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

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

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

34 “(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back

1 into custody and shall order the defendant held pending trial without release.

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

5 “(5)(a) *[If the United States Constitution or the Oregon Constitution prohibits application of sub-*  
6 *section (4) of this section, then]* Notwithstanding any other provision of law, the court shall set a  
7 security amount of not less than \$50,000 for a defendant charged with *[a violent felony]* **an offense**  
8 **listed in ORS 137.700 or 137.707 unless the court determines that amount to be unconstitu-**  
9 **tionally excessive**, and may not release the defendant on any form of release other than a security  
10 release[.] **if:**

11 “(A) **The United States Constitution or the Oregon Constitution prohibits the denial of**  
12 **release under subsection (4) of this section;**

13 “(B) **The court determines that the defendant is eligible for release under subsection (4)**  
14 **of this section; or**

15 “(C) **The court finds that the offense is not a violent felony.**

16 “(b) In addition to the security amount **described in paragraph (a) of this subsection**, the  
17 court may impose any supervisory conditions deemed necessary for the protection of the victim and  
18 the community. When a defendant who has been released violates a condition of release and the  
19 violation:

20 “[a] (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken  
21 back into custody, shall order the defendant held pending trial and shall set a security amount of  
22 not less than \$250,000.

23 “[b] (B) Does not constitute a new criminal offense, the court may order the defendant to be  
24 taken back into custody, may order the defendant held pending trial and may set a security amount  
25 of not less than \$250,000.

26 “(6) For purposes of this section, ‘violent felony’ means a felony offense in which there was an  
27 actual or threatened serious physical injury to the victim, or a felony sexual offense.

28 “**SECTION 10. If House Bill 2268 becomes law, section 6 of this 2007 Act (amending ORS**  
29 **813.215) is repealed and ORS 813.215, as amended by section 11, chapter 122, Oregon Laws 2007**  
30 **(Enrolled House Bill 2268), is amended to read:**

31 “813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following  
32 conditions:

33 “[1] (a) **On the date the defendant filed the petition for a driving while under the influ-**  
34 **ence of intoxicants diversion agreement**, the defendant had no charge [of], **other than the**  
35 **charge for the present offense, pending for:**

36 “(A) An offense of driving while under the influence of intoxicants **in violation of:**

37 “(i) **ORS 813.010; or**

38 “(ii) *[Its]* **The statutory counterpart to ORS 813.010 in [any] another jurisdiction**, *other than*  
39 *the charge for the present offense, pending on the date the defendant filed the petition for a driving*  
40 *while under the influence of intoxicants diversion agreement*];

41 “(B) **A driving under the influence of intoxicants offense in another jurisdiction that in-**  
42 **involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled**  
43 **substance, an inhalant or any combination thereof; or**

44 “(C) **A driving offense in another jurisdiction that involved operating a vehicle while**  
45 **having a blood alcohol content above that jurisdiction’s permissible blood alcohol content.**

1           “[(2)] **(b)** The defendant has not been convicted of an offense described in **paragraph (a) of this**  
2 subsection [(1) of this section] within the period beginning 10 years before the date of the commission  
3 of the present offense and ending on the date the defendant filed the petition for a driving while  
4 under the influence of intoxicants diversion agreement.

5           “**(c) The defendant has not been convicted of a felony offense described in ORS 813.010**  
6 **(5)(a).**

7           “[(3)] **(d)** The defendant was not participating in a driving while under the influence of  
8 intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than  
9 a program entered into as a result of the charge for the present offense, in this state or in [*any*  
10 *other*] **another** jurisdiction on the date the defendant filed the petition for a driving while under the  
11 influence of intoxicants diversion agreement.

12           “[(4)] **(e)** The defendant did not participate in a diversion or rehabilitation program described  
13 in **paragraph (d) of this** subsection [(3) of this section], other than a program entered into as a re-  
14 sult of the charge for the present offense, within the period beginning 10 years before the date of  
15 the commission of the present offense and ending on the date the defendant filed the petition for a  
16 driving while under the influence of intoxicants diversion agreement.

17           “[(5)] **(f)** The defendant had no charge of an offense of murder, manslaughter, criminally  
18 negligent homicide or assault that resulted from the operation of a motor vehicle pending in this  
19 state or in [*any other*] **another** jurisdiction on the date the defendant filed the petition for a driving  
20 while under the influence of intoxicants diversion agreement.

21           “[(6)] **(g)** The defendant has not been convicted of an offense described in **paragraph (f) of this**  
22 subsection [(5) of this section] within the period beginning 10 years before the date of the commission  
23 of the present offense and ending on the date the defendant filed the petition for a driving while  
24 under the influence of intoxicants diversion agreement.

25           “[(7)] **(h)** The defendant did not hold a commercial driver license on the date of the commission  
26 of the offense.

27           “[(8)] **(i)** The defendant was not operating a commercial motor vehicle at the time of the offense.

28           “[(9)] **(j)** The present driving while under the influence of intoxicants offense did not involve an  
29 accident resulting in:

30           “[(a)] **(A)** Death of any person; or

31           “[(b)] **(B)** Physical injury as defined in ORS 161.015 to any person other than the defendant.

32           “**(2) For the purposes of subsection (1)(a) of this section, a conviction for a driving of-**  
33 **fense in another jurisdiction based solely on a person under 21 years of age having a blood**  
34 **alcohol content that is lower than the permissible blood alcohol content in that jurisdiction**  
35 **for a person 21 years of age or older does not constitute a prior conviction.”.**