

Senate Bill 129

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Hardy Myers for Attorney General's Restitution Reform Task Force)

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**.

Requires court to consider likely amount of restitution award in determining security amount and in deciding whether to refund security amount. Requires court to apply security amount to criminal judgment before refund. Provides for application of forfeited security amount to criminal judgment.

A BILL FOR AN ACT

1
2 Relating to security release of defendant; amending ORS 135.265 and 135.280.

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

4 **SECTION 1.** ORS 135.265 is amended to read:

5 135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or
6 granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional
7 release, the magistrate shall set a security amount that will reasonably assure the defendant's ap-
8 pearance. **In determining the appropriate security amount, the magistrate shall consider the**
9 **amount of restitution that is likely to be awarded in the case.** The defendant shall execute the
10 security release in the amount set by the magistrate.

11 (2) The defendant shall execute a release agreement and deposit with the clerk of the court
12 before which the proceeding is pending a sum of money equal to 10 percent of the security amount,
13 but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum de-
14 posited. Upon depositing this sum the defendant shall be released from custody subject to the con-
15 dition that the defendant appear to answer the charge in the court having jurisdiction on a day
16 certain and thereafter as ordered by the court until discharged or final order of the court. Once
17 security has been given and a charge is pending or is thereafter filed in or transferred to a court
18 of competent jurisdiction the latter court shall continue the original security in that court subject
19 to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the
20 defendant has been discharged from all obligations in the cause, the clerk of the court shall return
21 to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85
22 percent of the sum which has been deposited and shall retain as security release costs 15 percent,
23 but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued on
24 the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of
25 a circuit court shall be paid over as directed by the State Court Administrator for deposit in the
26 Criminal Fine and Assessment Account created under ORS 137.300. The amount retained by a jus-
27 tice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a
28 municipal court shall be deposited in the municipal corporation treasury. At the request of the de-
29 fendant the court may order whatever amount is repayable to defendant from such security amount

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 to be paid to defendant's attorney of record. **Prior to ordering the return of an amount deposited**
 2 **as security, the court shall inquire whether an award of restitution against the defendant is**
 3 **likely in the case. If the court determines that an award of restitution is likely, the court**
 4 **may refund the deposit only to the extent that the amount of the refund exceeds the de-**
 5 **fendant's likely eventual monetary obligations in the case, including the award of restitution.**

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

12 **SECTION 2.** ORS 135.280 is amended to read:

13 135.280. (1) Upon failure of a person to comply with any condition of a release agreement or
 14 personal recognizance, the court having jurisdiction may, in addition to any other action provided
 15 by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, condi-
 16 tional or security release.

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

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

36 (4) After entry of a judgment for the state, the court[, *upon a motion filed under ORS 25.715,*]
 37 may order:

38 (a) That a portion of the security amount be applied to **any unsatisfied monetary obligation,**
 39 **as described in ORS 137.295, that is appropriate for inclusion in the criminal judgment; or**

40 (b) **Upon a motion filed under ORS 25.715, that a portion of the security amount be ap-**
 41 **plied to** any unsatisfied child support award owed by the defendant and to provide security for child
 42 support payments in accordance with ORS 25.230. The portion of the security amount that may be
 43 applied to the child support award:

44 [(a)] (A) Is limited to the amount deposited under ORS 135.265;

45 [(b)] (B) May not exceed the percentage of the amount designated for distribution to the General

1 Fund had the deposit been transferred to the Criminal Fine and Assessment Account as provided in
2 subsection (5) of this section; and

3 [(c)] (C) Does not reduce the money award in the judgment entered under subsection (3) of this
4 section that is owed to the state.

5 (5) When judgment is entered in favor of the state, or any political subdivision of the state, on
6 any security given for a release, the judgment may be enforced as a judgment in a civil action. If
7 entered in circuit court, the judgment shall be entered in the register, and the clerk of the court
8 shall note in the register that the judgment creates a judgment lien. The district attorney, county
9 counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff
10 to be executed by levy on the deposit or security amount made in accordance with ORS 135.265, or
11 may collect the judgment as otherwise provided by law. The proceeds of any execution or collection
12 shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corpo-
13 ration wherein the security was taken if the offense was defined by an ordinance of a political
14 subdivision of this state, or paid into the treasury of the county wherein the security was taken if
15 the offense was defined by a statute of this state and the judgment was entered by a justice court,
16 or paid over as directed by the State Court Administrator for deposit in the Criminal Fine and As-
17 sessment Account created under ORS 137.300, if the offense was defined by a statute of this state
18 and the judgment was entered by a circuit court. The provisions of this section shall not apply to
19 base fine amounts deposited upon appearance under ORS 153.061.

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

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

37 **SECTION 3.** ORS 135.280, as amended by section 5, chapter 700, Oregon Laws 2005, is amended
38 to read:

39 135.280. (1) Upon failure of a person to comply with any condition of a release agreement or
40 personal recognizance, the court having jurisdiction may, in addition to any other action provided
41 by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, condi-
42 tional or security release.

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

45 (3) If the defendant does not comply with the conditions of the release agreement, the court

1 having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice
 2 of the order of forfeiture shall be given forthwith by personal service, by mail or by such other
 3 means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of
 4 the sureties the order of forfeiture. If, within 30 days after the court declares the forfeiture, the
 5 defendant does not appear or satisfy the court having jurisdiction that appearance and surrender
 6 by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter
 7 judgment for the state, or appropriate political subdivision thereof, against the defendant and, if
 8 applicable, the sureties for the entire security amount set under ORS 135.265 and the costs of the
 9 proceedings. At any time before or after entry of the judgment, the defendant or the sureties may
 10 apply to the court for a remission of the forfeiture or to modify or set aside the judgment. The court,
 11 upon good cause shown, may remit the forfeiture or any part thereof or may modify or set aside the
 12 judgment as in other criminal cases, except the portion of the security amount that the court or-
 13 dered to be applied to child support under subsection (4)(b) of this section, as the court considers
 14 reasonable under the circumstances of the case. The court shall adopt procedures to ensure that the
 15 amount deposited under ORS 135.265 is available for a reasonable period of time for disposition un-
 16 der subsection (4) of this section.

17 (4) After entry of a judgment for the state, the court[, *upon a motion filed under ORS 25.715,*]
 18 may order:

19 (a) That a portion of the security amount be applied to **any unsatisfied monetary obligation,**
 20 **as described in ORS 137.295, that is appropriate for inclusion in the criminal judgment; or**

21 (b) **Upon a motion filed under ORS 25.715, that a portion of the security amount be ap-**
 22 **plied to** any unsatisfied child support award owed by the defendant and to provide security for child
 23 support payments in accordance with ORS 25.230. The portion of the security amount that may be
 24 applied to the child support award:

25 [(a)] (A) Is limited to the amount deposited under ORS 135.265;

26 [(b)] (B) May not exceed 66 percent of the entire security amount set under ORS 135.265; and

27 [(c)] (C) Does not reduce the money award in the judgment entered under subsection (3) of this
 28 section that is owed to the state.

29 (5) When judgment is entered in favor of the state, or any political subdivision of the state, on
 30 any security given for a release, the judgment may be enforced as a judgment in a civil action. If
 31 entered in circuit court, the judgment shall be entered in the register, and the clerk of the court
 32 shall note in the register that the judgment creates a judgment lien. The district attorney, county
 33 counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff
 34 to be executed by levy on the deposit or security amount made in accordance with ORS 135.265, or
 35 may collect the judgment as otherwise provided by law. The proceeds of any execution or collection
 36 shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corpo-
 37 ration wherein the security was taken if the offense was defined by an ordinance of a political
 38 subdivision of this state, or paid into the treasury of the county wherein the security was taken if
 39 the offense was defined by a statute of this state and the judgment was entered by a justice court,
 40 or paid over as directed by the State Court Administrator for deposit in the Criminal Fine and As-
 41 sessment Account created under ORS 137.300, if the offense was defined by a statute of this state
 42 and the judgment was entered by a circuit court. The provisions of this section shall not apply to
 43 base fine amounts deposited upon appearance under ORS 153.061.

44 (6) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is,
 45 by virtue of the judgment alone and without requiring further execution, forfeited to and may be

1 kept by the state or its appropriate political subdivision. Except as provided in subsection (4) of this
2 section, the clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the
3 judgment and shall cause the amount on deposit to be transferred to the revenue account of the
4 state or political subdivision thereof entitled to receive the proceeds of execution under this section.

5 (7) The stocks, bonds, personal property and real property shall be sold in the same manner as
6 in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court
7 costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment
8 shall be paid into the treasury of the municipal corporation wherein the security was taken if the
9 offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury
10 of the county wherein the security was taken if the offense was defined by a statute of this state
11 and the judgment was entered by a justice court, or deposited in the General Fund available for
12 general governmental expenses if the offense was defined by a statute of this state and the judgment
13 was entered by a circuit court. The balance shall be returned to the owner. The real property sold
14 may be redeemed in the same manner as real estate may be redeemed after judicial or execution
15 sales in civil actions.

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