

# House Bill 2682

Sponsored by COMMITTEE ON JUDICIARY

## 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**.

Permits sureties to offer commercial security release.

Directs Director of Department of Consumer and Business Services to adopt rules establishing commercial surety licensing program.

## A BILL FOR AN ACT

1  
2 Relating to commercial security release; creating new provisions; and amending ORS 135.230,  
3 135.245, 135.255, 135.265, 135.270 and 135.280.

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

5 **SECTION 1. (1) As used in sections 1 and 2 of this 2009 Act, "surety" has the meaning**  
6 **given that term in ORS 135.230.**

7 **(2) An insurer may not solicit, negotiate or execute an undertaking of security release**  
8 **for a defendant except through a surety who holds a surety license issued pursuant to sec-**  
9 **tion 2 of this 2009 Act.**

10 **(3) Except as provided in subsection (4) of this section, a person who is not licensed**  
11 **pursuant to section 2 of this 2009 Act may not:**

12 **(a) Solicit, negotiate or execute an undertaking of security release on behalf of an**  
13 **insurer.**

14 **(b) Claim to be or offer to provide the services of a surety.**

15 **(4) An unlicensed individual may act as a surety for a defendant if no consideration is**  
16 **paid, directly or indirectly, by any person in connection with a security release.**

17 **SECTION 2. The Director of the Department of Consumer and Business Services shall**  
18 **establish by rule a program for licensing sureties.**

19 **SECTION 3. ORS 135.230 is amended to read:**

20 135.230. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

21 (1) "Abuse" means:

22 (a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury;

23 (b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical  
24 injury; or

25 (c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

26 (2) "Conditional release" means a nonsecurity release which imposes regulations on the activ-  
27 ities and associations of the defendant.

28 (3) "Domestic violence" means abuse between family or household members.

29 (4) "Family or household members" means any of the following:

30 (a) Spouses.

31 (b) Former spouses.

**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 (c) Adult persons related by blood or marriage.
- 2 (d) Persons cohabiting with each other.
- 3 (e) Persons who have cohabited with each other or who have been involved in a sexually inti-
- 4 mate relationship.
- 5 (f) Unmarried parents of a minor child.
- 6 (5) "Magistrate" has the meaning provided for this term in ORS 133.030.
- 7 (6) "Personal recognizance" means the release of a defendant upon the promise of the defendant
- 8 to appear in court at all appropriate times.
- 9 (7) "Primary release criteria" includes the following:
- 10 (a) The reasonable protection of the victim or public;
- 11 (b) The nature of the current charge;
- 12 (c) The defendant's prior criminal record, if any, and, if the defendant previously has been re-
- 13 leased pending trial, whether the defendant appeared as required;
- 14 (d) Any facts indicating the possibility of violations of law if the defendant is released without
- 15 regulations; and
- 16 (e) Any other facts tending to indicate that the defendant is likely to appear.
- 17 (8) "Release" means temporary or partial freedom of a defendant from lawful custody before
- 18 judgment of conviction or after judgment of conviction if defendant has appealed.
- 19 (9) "Release agreement" means a sworn writing by the defendant stating the terms of the release
- 20 and, if applicable, the amount of security.
- 21 (10) "Release decision" means a determination by a magistrate, using primary and secondary
- 22 release criteria, which establishes the form of the release most likely to ensure the safety of the
- 23 public and the victim, the defendant's court appearance and that the defendant does not engage in
- 24 domestic violence while on release.
- 25 (11) "Secondary release criteria" includes the following:
- 26 (a) The defendant's employment status and history and financial condition;
- 27 (b) The nature and extent of the family relationships of the defendant;
- 28 (c) The past and present residences of the defendant;
- 29 (d) Names of persons who agree to assist the defendant in attending court at the proper time;
- 30 and
- 31 (e) Any facts tending to indicate that the defendant has strong ties to the community.
- 32 (12) "Security release" means a release conditioned on a promise to appear in court at all ap-
- 33 propriate times which is secured by cash, stocks, bonds or real property.
- 34 (13) "Surety" *[is one]* **means a person** who executes a security release and *[binds oneself]* **is**
- 35 **thereby bound** to pay the security amount if the defendant fails to comply with the release agree-
- 36 **ment and who does so:**
- 37 **(a) In exchange for no consideration; or**
- 38 **(b) In exchange for consideration pursuant to sections 1 and 2 of this 2009 Act.**
- 39 **SECTION 4.** ORS 135.245 is amended to read:
- 40 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
- 41 security release or to be taken before a magistrate without undue delay. If the person is not released
- 42 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
- 43 of the right of the person to a security release as provided in ORS 135.265.
- 44 (2) If a person in custody does not request a security release at the time of arraignment, the
- 45 magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

1 (3) If the magistrate, having given priority to the primary release criteria, decides to release a  
 2 defendant or to set security, the magistrate shall impose the least onerous condition reasonably  
 3 likely to ensure the safety of the public and the victim and the person’s later appearance and, if the  
 4 person is charged with an offense involving domestic violence, ensure that the person does not en-  
 5 gage in domestic violence while on release. A person in custody, otherwise having a right to re-  
 6 lease, shall be released upon the personal recognizance unless:

7 (a) Release criteria show to the satisfaction of the magistrate that such a release is unwar-  
 8 ranted; or

9 (b) Subsection (6) of this section applies to the person.

10 (4) Upon a finding that release of the person on personal recognizance is unwarranted, the  
 11 magistrate shall impose either conditional release or security release.

12 (5)(a) At the release hearing:

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

15 (B) The victim has the right:

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

18 (ii) To appear personally at the hearing; and

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

20 (b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection  
 21 or failure of the victim to appear at the hearing does not affect the validity of the proceeding.

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

27 (7) This section shall be liberally construed to carry out the purpose of relying upon criminal  
 28 sanctions instead of financial loss to assure the appearance of the defendant.

29 **SECTION 5.** ORS 135.255 is amended to read:

30 135.255. (1) The defendant shall not be released from custody unless:

31 (a) The defendant files with the clerk of the court in which the magistrate is presiding a release  
 32 agreement duly executed by the defendant containing the conditions ordered by the releasing  
 33 magistrate; or

34 (b) **The defendant deposits or causes a surety to deposit for the defendant’s benefit** secu-  
 35 rity in the amount specified by the magistrate in accordance with ORS 135.230 to 135.290.

36 (2) A failure to appear as required by the release agreement shall be punishable as provided in  
 37 ORS 162.195 or 162.205.

38 (3) “Custody” for purposes of a release agreement does not include temporary custody under the  
 39 citation procedures of ORS 133.055 to 133.076.

40 **SECTION 6.** ORS 135.265 is amended to read:

41 135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or  
 42 granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional  
 43 release, the magistrate shall set a security amount that will reasonably assure the defendant’s ap-  
 44 pearance. The defendant shall execute the security release in the amount set by the magistrate.

45 (2) The defendant shall execute a release agreement and deposit with the clerk of the court

1 before which the proceeding is pending **or cause a surety to deposit for the defendant's benefit**  
 2 a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be  
 3 less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum **or**  
 4 **causing this sum to be deposited**, the defendant shall be released from custody subject to the  
 5 condition that the defendant appear to answer the charge in the court having jurisdiction on a day  
 6 certain and thereafter as ordered by the court until discharged or final order of the court. Once  
 7 security has been given and a charge is pending or is thereafter filed in or transferred to a court  
 8 of competent jurisdiction the latter court shall continue the original security in that court subject  
 9 to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the  
 10 defendant has been discharged from all obligations in the cause, the clerk of the court shall return  
 11 to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85  
 12 percent of the sum which has been deposited and shall retain as security release costs 15 percent,  
 13 but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued  
 14 on the full amount deposited shall also be retained by the clerk. The amount retained by the clerk  
 15 of a circuit court shall be paid over as directed by the State Court Administrator for deposit in the  
 16 Criminal Fine and Assessment Account created under ORS 137.300. The amount retained by a justice  
 17 of the peace shall be deposited in the county treasury. The amount retained by the clerk of a mu-  
 18 nicipal court shall be deposited in the municipal corporation treasury. At the request of the de-  
 19 fendant, the court may order whatever amount is repayable to **the** defendant **personally** from  
 20 *[such]* **the** security amount to be paid to **the** 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 7.** ORS 135.270 is amended to read:

28 135.270. When a security amount has been set by a magistrate for a particular offense or for a  
 29 defendant's release, any person designated by the magistrate may take the security and release the  
 30 defendant to appear in accordance with the conditions of the release agreement. The person desig-  
 31 nated by the magistrate shall give a receipt to the defendant **and, if applicable, to a surety acting**  
 32 **on behalf of the defendant** for the security so taken and within a reasonable time deposit the se-  
 33 curity with the clerk of the court having jurisdiction of the offense.

34 **SECTION 8.** ORS 135.280 is amended to read:

35 135.280. (1) Upon failure of a person to comply with any condition of a release agreement or  
 36 personal recognizance, the court having jurisdiction may, in addition to any other action provided  
 37 by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, condi-  
 38 tional or security release.

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

41 (3) If the defendant does not comply with the conditions of the release agreement, the court  
 42 having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice  
 43 of the order of forfeiture shall be given forthwith by personal service, by mail or by such other  
 44 means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of  
 45 the sureties the order of forfeiture. If, within 30 days after the court declares the forfeiture, the

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

13 (4) After entry of a judgment for the state, the court, upon a motion filed under ORS 25.715,  
14 may order that a portion of the security amount be applied to any unsatisfied child support award  
15 owed by the defendant and to provide security for child support payments in accordance with ORS  
16 25.230. The portion of the security amount that may be applied to the child support award:

17 (a) Is limited to the amount deposited under ORS 135.265;

18 (b) May not exceed 66 percent of the entire security amount set under ORS 135.265; and

19 (c) Does not reduce the money award in the judgment entered under subsection (3) of this sec-  
20 tion that is owed to the state.

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

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

42 (7) The stocks, bonds, personal property and real property shall be sold in the same manner as  
43 in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court  
44 costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment  
45 shall be paid into the treasury of the municipal corporation wherein the security was taken if the

1 offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury  
2 of the county wherein the security was taken if the offense was defined by a statute of this state  
3 and the judgment was entered by a justice court, or deposited in the General Fund available for  
4 general governmental expenses if the offense was defined by a statute of this state and the judgment  
5 was entered by a circuit court. The balance shall be returned to the owner **of the security**. The  
6 real property sold may be redeemed in the same manner as real estate may be redeemed after judi-  
7 cial or execution sales in civil actions.

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