

# House Bill 3034

Sponsored by Representative MATTHEWS; Representatives GARRETT, SCHAUFLEER, SHIELDS, J SMITH, STIEGLER, THATCHER, WHISNANT

## 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 deposit of five percent of security amount, but not less than \$5, in cases of security release.

Directs payment of deposited amount to law enforcement agency that apprehends and presents to court defendant who forfeits security.

## A BILL FOR AN ACT

Relating to security release; amending ORS 135.265 and 135.280.

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

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

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

(2)(a) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending:

(A) A sum of money equal to 10 percent of the security amount, but in no event [*shall such deposit be*] less than \$25; **and**

(B) **A sum of money equal to five percent of the security amount, but in no event less than \$5.**

(b) The clerk shall issue a receipt for the [*sum*] **sums** deposited.

(c) Upon depositing [*this sum*] **the sums**, the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court.

(d) Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285.

(e) When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise[.]:

(A) 85 percent of the sum [*which has been deposited*] **described in paragraph (a)(A) of this subsection** and shall retain as security release costs 15 percent, but not less than \$5 [*nor*] **or** more than \$200, of the amount deposited; **and**

(B) **100 percent of the sum described in paragraph (a)(B) of this subsection.**

(f) The interest that has accrued on the full amount deposited shall [*also*] be retained by the clerk.

**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       **(g) The total amount retained under paragraphs (e)(A) and (f) of this subsection shall be**  
 2       **directed by the clerk as follows:**

3       **(A)** The amount retained by the clerk of a circuit court shall be paid over as directed by the  
 4 State Court Administrator for deposit in the Criminal Fine and Assessment Account created under  
 5 ORS 137.300.

6       **(B)** The amount retained by a justice of the peace shall be deposited in the county treasury.

7       **(C)** The amount retained by the clerk of a municipal court shall be deposited in the municipal  
 8 corporation treasury.

9       **(h)** At the request of the defendant, the court may order whatever amount is repayable to **the**  
 10 defendant from such security amount to be paid to **the** defendant's attorney of record.

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

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

18       135.280. (1) Upon failure of a person to comply with any condition of a release agreement or  
 19 personal recognizance, the court having jurisdiction may, in addition to any other action provided  
 20 by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, condi-  
 21 tional or security release.

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

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

41       (4) After entry of a judgment for the state, the court, upon a motion filed under ORS 25.715,  
 42 may order that a portion of the security amount be applied to any unsatisfied child support award  
 43 owed by the defendant and to provide security for child support payments in accordance with ORS  
 44 25.230. The portion of the security amount that may be applied to the child support award:

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

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

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

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

19 (6)(a) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk  
 20 is, by virtue of the judgment alone and without requiring further execution, forfeited to and, **except**  
 21 **as provided in paragraph (b) of this subsection**, may be kept by the state or its appropriate pol-  
 22 itical subdivision.

23 **(b) The sum described in ORS 135.265 (2)(a)(B) shall be paid over to any law enforcement**  
 24 **agency of this state that apprehends and presents to the court the defendant who has for-**  
 25 **feited security.**

26 (c) Except as provided in subsection (4) of this section, the clerk shall reduce, by the value of  
 27 the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit  
 28 to be transferred to the revenue account of the state or political subdivision thereof entitled to re-  
 29 ceive the proceeds of execution under this section.

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