

# Senate Bill 496

Sponsored by Senator BONAMICI (Pre-session filed.)

## 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**.

Authorizes sentencing court to enter order staying sentence or portion of sentence imposed in criminal case pending resolution of appeal.

### A BILL FOR AN ACT

Relating to staying execution of a sentence during the pendency of an appeal; creating new provisions; amending ORS 135.285; and repealing ORS 138.135 and 138.145.

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

**SECTION 1. (1) At any time after a defendant is sentenced for a crime in a justice, municipal or circuit court, the sentencing court may enter an order staying execution of the sentence, or a portion of the sentence, pending the resolution of an appeal. Notwithstanding the filing of a notice of appeal, a motion for an order under this section must be filed in the trial court. The trial court has jurisdiction to enter an order under this section and may impose conditions on the stay that the court determines are appropriate.**

**(2) In determining whether to enter an order staying the execution of all of, or a portion of, a sentence, the trial court shall consider, among other factors the court considers relevant:**

**(a) The nature of the offense;**

**(b) The severity of the sentence imposed;**

**(c) The health of the defendant;**

**(d) The character and strength of the evidence;**

**(e) The criminal history of the defendant;**

**(f) The likelihood that the appellate court will reverse the conviction or the sentence, or the portion of the sentence, sought to be stayed; and**

**(g) If the sentence, or the portion of the sentence, sought to be stayed includes a term of incarceration:**

**(A) The likelihood that the defendant will appear in court at all appropriate times;**

**(B) The likelihood that the defendant will comply with any other conditions of release; and**

**(C) The likelihood that a term of incarceration will be completed or substantially completed before the appeal is decided.**

**(3) If the sentencing court enters an order staying a term of incarceration, the court may:**

**(a) Order the conditions of the original release agreement and, if security has been posted, the security to stand pending appeal; 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       **(b) Increase or reduce the amount of security or impose other conditions of release.**

2       **(4) If the sentencing court enters an order staying the payment of a monetary obligation,**  
3 **the court may order the defendant:**

4       **(a) To deposit, pending appeal, the whole or any part of the monetary obligation with the**  
5 **clerk of the trial court;**

6       **(b) To file an undertaking with sufficient sureties;**

7       **(c) To submit to an examination of assets; or**

8       **(d) To refrain from dissipating the assets of the defendant.**

9       **(5)(a) The court to which an appeal is taken has jurisdiction, on motion of a party to the**  
10 **appeal, to review the decision of the sentencing court regarding the stay. The decision re-**  
11 **garding the stay is reviewable by the appellate court regardless of whether the party seeking**  
12 **review has filed a notice of appeal or cross-appeal.**

13       **(b) If an appellate court reverses a judgment of conviction and the reversal is appealed**  
14 **to a higher appellate court, the trial court shall, on motion of the defendant, release the**  
15 **defendant on reasonable conditions, subject to an order by the higher appellate court issued**  
16 **under paragraph (a) of this subsection.**

17       **SECTION 2.** ORS 135.285 is amended to read:

18       135.285. [(1)] If circumstances concerning the defendant's release change, the court, on its own  
19 motion or upon request by the district attorney or defendant, may modify the release agreement or  
20 the security release.

21       [(2) *After judgment of conviction in municipal or justice court, the court shall order the original*  
22 *release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce*  
23 *the release agreement and the security. If a defendant appeals after judgment of conviction in circuit*  
24 *court for any crime other than murder or treason, release shall be discretionary.]*

25       **SECTION 3.** **ORS 138.135 and 138.145 are repealed.**

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