

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
Senate Committee On Judiciary

MEASURE: SB 391 A
CARRIER: Sen. Prozanski

Fiscal: Has minimal fiscal impact

Revenue: No Revenue Impact

Action Date: 04/02/15

Action: Do Pass With Amendments. (Printed A-Eng.)

Meeting Dates: 02/12, 04/02

Vote:

Yeas: 5 - Burdick, Gelser, Kruse, Prozanski, Thatcher

Prepared By: Jeff Rhoades, Counsel

WHAT THE MEASURE DOES:

Prohibits seizure of deposit for security release in a criminal case without obtaining search warrant or court order. Requires court order for transfer or distribution of property after seizure. States that person designated by magistrate to accept security in criminal case acts as agent of court for that purpose. Requires court clerk to accept security during normal business hours. Specifies that security may be posted in the form of cash, cashier's check, credit card or money order.

ISSUES DISCUSSED:

- Mechanics of security release
- Lack of mechanisms for relief if seizure is unlawful
- Real world examples

EFFECT OF COMMITTEE AMENDMENT:

States that person designated by magistrate to accept security in criminal case acts as agent of court for that purpose. Requires court clerk to accept security during normal business hours. Specifies that security may be posted in the form of cash, cashier's check, credit card or money order.

BACKGROUND:

Current forfeiture law provides in ORS 131.561(2) that "A police officer may seize property without a court order if the police officer has probable cause to believe that the property is subject to criminal forfeiture." In the context of security release deposits, ORS 131.561(2) works in conjunction with ORS 131.558(6), which allows for criminal forfeiture of "all moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct..." ORS 131.558(9) further expands upon this, allowing for forfeiture of all property described in ORS 131.558 that is intended for use in either committing a crime or attempting to do so.

Certain law enforcement agencies have utilized the aforementioned statutes to seize securities release deposits under the theory that what is being used as bail is part of a "criminal enterprise." Oftentimes the security is then transferred into a federal program that allows for disposition of the property in a less cumbersome manner than through state statute. SB 391 A seeks to add an additional layer of judicial oversight onto the process by requiring a warrant or court order prior to seizure of security release deposits.