

B-Engrossed
Senate Bill 48

Ordered by the Senate June 7
Including Senate Amendments dated April 23 and June 7

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 Governor Kate Brown for Oregon Criminal Justice Commission)

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.

Directs presiding judge in each judicial district to enter standing pretrial release orders. Directs Chief Justice of Supreme Court to establish guidelines for order.

Directs release assistance officers to make reasonable efforts to contact victim concerning release when defendant is charged with certain offenses.

Requires magistrate to make release decision at arraignment or first appearance except in specified circumstances. **Directs district attorney to make reasonable efforts to inform victim of time and place of appearance.** Requires magistrate to find that release on personal recognizance is unwarranted before considering conditional release, and requires magistrate to find that conditional release is unwarranted before considering security release.

[Requires magistrate to set as security amount lowest possible amount necessary to reasonably ensure defendant's appearance. Requires magistrate to make specified findings before requiring defendant to deposit 10 percent of security amount for security release. Authorizes defendant not required to deposit 10 percent of security amount to execute promissory note for security amount. Provides that if defendant does not comply with conditions of release agreement, court may enter order declaring that promissory note is due or security deposit is forfeited for entire security amount or any other amount court deems appropriate.]

Repeals minimum bail amounts for persons charged with Ballot Measure 11 (1994) crimes and certain methamphetamine offenses.

Authorizes court to receive copy of booking photo as part of pretrial release process.

A BILL FOR AN ACT

1
2 Relating to pretrial release; creating new provisions; amending ORS 135.235, 135.240, 135.245 and
3 135.247 and section 1, chapter _____, Oregon Laws 2021 (Enrolled House Bill 3273); and re-
4 pealing ORS 135.242.

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

6 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 135.230 to**
7 **135.290.**

8 **SECTION 2. (1) The presiding judge of a judicial district shall enter a standing pretrial**
9 **release order specifying to the sheriff of the county, or to the entity supervising the local**
10 **correctional facility responsible for pretrial incarceration within the judicial district, those**
11 **persons and offenses:**

12 (a) **Subject to release on recognizance;**

13 (b) **Subject to release with special conditions as specified in the order; and**

14 (c) **That are not eligible for release until arraignment.**

15 (2) **The Chief Justice of the Supreme Court, with input from a criminal justice advisory**
16 **committee appointed by the Chief Justice, shall establish release guidelines for the pretrial**
17 **release orders described in this section to:**

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 (a) Provide consistent release decision-making structure across the state;
- 2 (b) Reduce reliance on the use of security;
- 3 (c) Include provisions for victim notification and input; and
- 4 (d) Balance the rights of the defendant and presumption of pretrial release against com-
- 5 munity and victim safety and the risk of failure to appear.

6 **SECTION 3.** ORS 135.235 is amended to read:

7 135.235. (1) *[If directed by the]* A presiding judge for a judicial district, *a release assistance of-*
8 *ficer, and release assistance deputies who shall be responsible to the release assistance officer, shall*
9 *be appointed* **may appoint release assistance officers** under a personnel plan established by the
10 Chief Justice of the Supreme Court.

11 (2) *[The]* A release assistance officer shall, except when impracticable, interview every person
12 detained pursuant to law and charged with an offense. **If the person is charged with a person**
13 **felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon**
14 **Criminal Justice Commission, or with contempt of court for violating a court order protect-**
15 **ing or prohibiting contact with another person, the release assistance officer shall make**
16 **reasonable efforts to contact the victim prior to submitting a report or making a release**
17 **decision under subsection (3) of this section. If the release assistance officer is able to con-**
18 **tact the victim:**

19 (a) **Information regarding the victim's position on release, including whether special re-**
20 **lease conditions should be imposed, must be included in the report described in subsection**
21 **(3) of this section, and considered by the release assistance officer if the officer makes the**
22 **release decision; and**

23 (b) **If the information is available, the release assistance officer shall inform the victim**
24 **of the location, date and time of the defendant's arraignment or other first appearance.**

25 (3) The release assistance officer shall verify release criteria information and may either:

26 (a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation
27 of the release criteria and a recommendation for the form of release; or

28 (b) If delegated release authority by the presiding judge for the judicial district, make the re-
29 lease decision.

30 (4) **As used in this section, "victim" means an individual that the charging instrument**
31 **indicates is the victim of the alleged offense or the person protected by the court order,**
32 **whether or not the individual is specifically named, so long as the release assistance officer**
33 **is able to confirm the identity of the individual.**

34 **SECTION 4.** ORS 135.240 is amended to read:

35 135.240. (1) Except as provided in subsections (2)[,] **and** (4) *[and (5)]* of this section, a defendant
36 shall be released in accordance with ORS 135.230 to 135.290.

37 (2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall
38 be denied when the proof is evident or the presumption strong that the person is guilty.

39 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-
40 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of
41 release as provided in subsection (4) of this section. In determining the issue of release under sub-
42 section (4) of this section, the court may consider any evidence used in making the determination
43 required by this subsection.

44 (3) The magistrate may conduct such hearing as the magistrate considers necessary to determine
45 whether, under subsection (2) of this section, the proof is evident or the presumption strong that the

1 person is guilty.

2 (4)(a) *[Except as otherwise provided in subsection (5) of this section,]* When the defendant is
3 charged with a violent felony, release shall be denied if the court finds:

4 (A) Except when the defendant is charged by indictment, that there is probable cause to believe
5 that the defendant committed the crime; and

6 (B) By clear and convincing evidence, that there is a danger of physical injury or sexual
7 victimization to the victim or members of the public by the defendant while on release.

8 (b) If the defendant wants to have a hearing on the issue of release, the defendant must request
9 the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing,
10 the court must hold the hearing within five days of the request.

11 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
12 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden
13 of producing evidence at the release hearing subject to ORS 40.015 (4).

14 (d) The defendant may be represented by counsel and may present evidence on any relevant is-
15 sue. However, the hearing may not be used for purposes of discovery.

16 (e) If the court determines that the defendant is eligible for release in accordance with this
17 subsection, the court shall set security or other appropriate conditions of release.

18 (f) When a defendant who has been released violates a condition of release and the violation:

19 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
20 custody and shall order the defendant held pending trial without release.

21 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
22 back into custody[, **and** may order the defendant held pending trial *[and may set a security amount*
23 *of not less than \$250,000]* **or may make a new release decision.**

24 *[(5)(a) Notwithstanding any other provision of law, the court shall set a security amount of not less*
25 *than \$50,000 for a defendant charged with an offense listed in ORS 137.700 or 137.707 unless the court*
26 *determines that amount to be unconstitutionally excessive, and may not release the defendant on any*
27 *form of release other than a security release if:]*

28 *[(A) The United States Constitution or the Oregon Constitution prohibits the denial of release un-*
29 *der subsection (4) of this section;]*

30 *[(B) The court determines that the defendant is eligible for release under subsection (4) of this*
31 *section; or]*

32 *[(C) The court finds that the offense is not a violent felony.]*

33 *[(b) In addition to the security amount described in paragraph (a) of this subsection, the court may*
34 *impose any supervisory conditions deemed necessary for the protection of the victim and the community.*
35 *When a defendant who has been released violates a condition of release and the violation:]*

36 *[(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into*
37 *custody, shall order the defendant held pending trial and shall set a security amount of not less than*
38 *\$250,000.]*

39 *[(B) Does not constitute a new criminal offense, the court may order the defendant to be taken back*
40 *into custody, may order the defendant held pending trial and may set a security amount of not less than*
41 *\$250,000.]*

42 *[(6)]* (5) For purposes of this section, “violent felony” means a felony offense in which there was
43 an actual or threatened serious physical injury to the victim, or a felony sexual offense.

44 **SECTION 5.** ORS 135.245 is amended to read:

45 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to *[immediate*

1 security release or to] be taken before a magistrate without undue delay. [If the person is not released
2 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
3 of the right of the person to a security release as provided in ORS 135.265.]

4 [(2) If a person in custody does not request a security release at the time of arraignment, the
5 magistrate shall make a release decision regarding the person within 48 hours after the arraignment.]

6 **(2)(a) A magistrate shall make a release decision at the time of arraignment or other
7 first appearance after the defendant is taken into custody unless good cause to postpone the
8 release decision is shown, in which case a release hearing shall be held pursuant to sub-
9 section (7) of this section.**

10 **(b) The district attorney shall make reasonable efforts to inform the victim of the lo-
11 cation, date and time of the arraignment or other first appearance and to determine if the
12 victim is present at the arraignment or appearance. If the victim is present, the victim has
13 the right to reasonably express any views relevant to the issues at the appearance.**

14 **(c) As used in this subsection, “good cause” includes circumstances in which:**

15 **(A) The district attorney plans to seek preventative detention; or**

16 **(B) There is a reasonable belief that additional evidence exists and would be relevant to
17 the release decision, but is not currently available.**

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

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

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

27 (4) Upon a finding that release of the person on personal recognizance is unwarranted, the
28 magistrate shall [*impose either*] **proceed to consider** conditional release [*or security release.*] **under
29 ORS 135.260. Only after determining that conditional release is unwarranted, or if otherwise
30 required by ORS 135.230 to 135.290, may the magistrate proceed to consider security release
31 under ORS 135.265.**

32 (5) At the release hearing:

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

35 (b) The victim has the right:

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

38 (B) To appear personally at the hearing; and

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

40 (6) If a person refuses to provide a true name under the circumstances described in ORS 135.060
41 and 135.065, the magistrate may not release the person on personal recognizance or on conditional
42 release. The magistrate may release the person on security release under ORS 135.265 except that
43 the magistrate shall require the person to deposit the full security amount set by the magistrate.

44 **(7)(a) After the postponement of a release decision under subsection (2) of this section,
45 upon the request of either party, or upon the magistrate’s own motion, the magistrate shall**

1 **make a release decision or reconsider the release decision, as applicable, at a release hearing.**
2 **The release hearing must be held within 48 hours of arraignment or other first appearance**
3 **after the defendant is taken into custody unless both parties agree, or the court finds good**
4 **cause, to hold the hearing at a later time. Under no circumstances may the release hearing**
5 **be held more than five days after arraignment or other first appearance after the defendant**
6 **is taken into custody unless the defendant consents to holding the hearing at a later time.**

7 **(b) A hearing held under this subsection may not be used for purposes of discovery.**

8 [(7)] (8) This section shall be liberally construed to carry out the purpose of relying upon crim-
9 inal sanctions instead of financial loss to [assure] **ensure** the appearance of the defendant.

10 **SECTION 6.** ORS 135.247 is amended to read:

11 135.247. (1) When a release assistance officer [*or a release assistance deputy*] makes a release
12 decision under ORS 135.235 involving a defendant charged with a sex crime or a crime constituting
13 domestic violence, the release assistance officer [*or deputy*] shall include in the decision an order
14 that the defendant be prohibited from contacting or attempting to contact the victim, either directly
15 or through a third party, while the defendant is in custody. The release assistance officer [*or*
16 *deputy*] shall provide the defendant with a written copy of the order.

17 (2) When a defendant who is charged with a sex crime or a crime that constitutes domestic vi-
18 olence is arraigned, the court shall enter an order continuing an order issued under subsection (1)
19 of this section or, if no such order has been entered, enter an order prohibiting the defendant from
20 contacting or attempting to contact the victim, either directly or through a third party, while the
21 defendant is in custody.

22 (3) Except as provided in subsection (4) of this section, an order described in subsection (1) or
23 (2) of this section:

24 (a) Shall apply at any time during which the defendant is held in custody on the charge; and

25 (b) Shall remain valid until the defendant is sentenced for the crime, the charge is dismissed or
26 the defendant is acquitted of the crime.

27 (4) Upon petition of the victim, the court may enter an order terminating an order entered under
28 subsection (1) or (2) of this section if the court finds, after a hearing on the petition, that termi-
29 nating the order is in the best interests of the parties and the community.

30 (5) An order described in subsection (1) or (2) of this section shall not limit contact with the
31 victim by the defense attorney, or an agent of the defense attorney other than the defendant, in the
32 manner prescribed by ORS 135.970 (2).

33 (6) As used in this section:

34 (a) "Domestic violence" has the meaning given that term in ORS 135.230.

35 (b) "Sex crime" has the meaning given that term in ORS 163A.005.

36 **SECTION 7. ORS 135.242 is repealed.**

37 **SECTION 8.** If House Bill 3273 becomes law, section 1, chapter_____, Oregon Laws 2021
38 (Enrolled House Bill 3273), is amended to read:

39 **Sec. 1.** (1) Notwithstanding ORS 192.311 to 192.478, a law enforcement agency may not release
40 a booking photo except as provided in subsection (2) of this section.

41 (2) A law enforcement agency may release a booking photo described in subsection (1) of this
42 section:

43 (a) To the person depicted in the booking photo;

44 (b) To another law enforcement agency, or to a law enforcement officer employed by another
45 law enforcement agency, for a law enforcement purpose;

1 (c) To the public, if the law enforcement agency determines that there is a law enforcement
2 purpose for the release, including but not limited to assistance with the apprehension of a fugitive
3 or a suspect in a criminal investigation, or the identification of additional criminal activity;

4 (d) To a state mental hospital upon the admission to the hospital of the person depicted in the
5 booking photo;

6 (e) To a party in a criminal proceeding resulting from the arrest during which the booking photo
7 was obtained;

8 (f) To the victim of the offense for which the person depicted in the booking photo was arrested;
9 [or]

10 **(g) To the court, if the booking photo is part of a pretrial release report or is provided**
11 **to the court as part of the pretrial release process for the purposes of confirming the iden-**
12 **tity of a defendant; or**

13 [(g)] (h) Upon the conviction of the person depicted in the booking photo, if the conviction re-
14 sults from the arrest during which the booking photo was obtained.

15 (3) As used in this section:

16 (a) “Booking photo” means a photograph of a person taken by a law enforcement agency for
17 identification purposes when the person is booked into custody.

18 (b) “Law enforcement agency” has the meaning given that term in ORS 131.915.

19 (c) “Law enforcement officer” means an officer, deputy, member or employee of a law enforce-
20 ment agency.

21 **SECTION 9. (1) Section 2 of this 2021 Act, the amendments to ORS 135.235, 135.240,**
22 **135.245 and 135.247 by sections 3 to 6 of this 2021 Act and the repeal of ORS 135.242 by section**
23 **7 of this 2021 Act become operative July 1, 2022.**

24 **(2) The Judicial Department may take any action before the operative date specified in**
25 **subsection (1) of this section that is necessary to enable the department to exercise, on or**
26 **after the operative date specified in subsection (1) of this section, all the duties, functions**
27 **and powers conferred on the department by section 2 of this 2021 Act, the amendments to**
28 **ORS 135.235, 135.240, 135.245 and 135.247 by sections 3 to 6 of this 2021 Act and the repeal of**
29 **ORS 135.242 by section 7 of this 2021 Act.**

30