

SB 48-A5
(LC 440)
5/26/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Oregon Criminal Justice Commission)

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 48**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the
2 rest of the line and delete line 3 and insert “135.235, 135.240, 135.245 and
3 135.247 and section 1, chapter _____, Oregon Laws 2021 (Enrolled House Bill
4 3273); and repealing ORS 135.242.”.

5 Delete lines 7 through 16 and delete pages 2 through 7 and insert:

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

11 **“(a) Subject to release on recognizance;**

12 **“(b) Subject to release with special conditions as specified in the**
13 **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**
16 **criminal justice advisory committee appointed by the Chief Justice,**
17 **shall establish release guidelines for the pretrial release orders de-**
18 **scribed in this section to:**

19 **“(a) Provide consistent release decision-making structure across the**
20 **state;**

21 **“(b) Reduce reliance on the use of security;**

1 “(c) Include provisions for victim notification and input; and
2 “(d) Balance the rights of the defendant and presumption of pretrial
3 release against community and victim safety and the risk of failure
4 to appear.

5 “**SECTION 3.** ORS 135.235 is amended to read:

6 “135.235. (1) *[If directed by the]* A presiding judge for a judicial district[,
7 a release assistance officer, and release assistance deputies who shall be re-
8 sponsible to the release assistance officer, shall be appointed] **may appoint**
9 **release assistance officers** under a personnel plan established by the Chief
10 Justice of the Supreme Court.

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

21 “(a) **Information regarding the victim’s position on release, includ-**
22 **ing whether special release conditions should be imposed, must be in-**
23 **cluded in the report described in subsection (3) of this section, and**
24 **considered by the release assistance officer if the officer makes the**
25 **release decision; and**

26 “(b) **If the information is available, the release assistance officer**
27 **shall inform the victim of the location, date and time of the**
28 **defendant’s arraignment or other first appearance.**

29 “(3) The release assistance officer shall verify release criteria information
30 and may either:

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

4 “(b) If delegated release authority by the presiding judge for the judicial
5 district, make the release decision.

6 **“(4) As used in this section, ‘victim’ means an individual that the
7 charging instrument indicates is the victim of the alleged offense or
8 the person protected by the court order, whether or not the individual
9 is specifically named, so long as the release assistance officer is able
10 to confirm the identity of the individual.**

11 **“SECTION 4.** ORS 135.240 is amended to read:

12 “135.240. (1) Except as provided in subsections (2)[,] **and** (4) [*and* (5)] of
13 this section, a defendant shall be released in accordance with ORS 135.230
14 to 135.290.

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

18 “(b) When the defendant is charged with murder or aggravated murder
19 and the proof is not evident nor the presumption strong that the defendant
20 is guilty, the court shall determine the issue of release as provided in sub-
21 section (4) of this section. In determining the issue of release under sub-
22 section (4) of this section, the court may consider any evidence used in
23 making the determination required by this subsection.

24 “(3) The magistrate may conduct such hearing as the magistrate considers
25 necessary to determine whether, under subsection (2) of this section, the
26 proof is evident or the presumption strong that the person is guilty.

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

30 “(A) Except when the defendant is charged by indictment, that there is

1 probable cause to believe that the defendant committed the crime; and

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

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

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

13 “(d) The defendant may be represented by counsel and may present evi-
14 dence on any relevant issue. However, the hearing may not be used for pur-
15 poses of discovery.

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

19 “(f) When a defendant who has been released violates a condition of re-
20 lease and the violation:

21 “(A) Constitutes a new criminal offense, the court shall cause the de-
22 fendant to be taken back into custody and shall order the defendant held
23 pending trial without release.

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

28 “[*(5)(a) Notwithstanding any other provision of law, the court shall set a*
29 *security amount of not less than \$50,000 for a defendant charged with an of-*
30 *fense listed in ORS 137.700 or 137.707 unless the court determines that amount*

1 to be unconstitutionally excessive, and may not release the defendant on any
2 form of release other than a security release if:]

3 “[A] The United States Constitution or the Oregon Constitution prohibits
4 the denial of release under subsection (4) of this section;]

5 “[B] The court determines that the defendant is eligible for release under
6 subsection (4) of this section; or]

7 “[C] The court finds that the offense is not a violent felony.]

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

12 “[A] Constitutes a new criminal offense, the court shall cause the defend-
13 ant to be taken back into custody, shall order the defendant held pending trial
14 and shall set a security amount of not less than \$250,000.]

15 “[B] Does not constitute a new criminal offense, the court may order the
16 defendant to be taken back into custody, may order the defendant held pending
17 trial and may set a security amount of not less than \$250,000.]

18 “[6] (5) For purposes of this section, ‘violent felony’ means a felony of-
19 fense in which there was an actual or threatened serious physical injury to
20 the victim, or a felony sexual offense.

21 **“SECTION 5.** ORS 135.245 is amended to read:

22 “135.245. (1) Except as provided in ORS 135.240, a person in custody has
23 the right to [*immediate security release or to*] be taken before a magistrate
24 without undue delay. [*If the person is not released under ORS 135.270, or*
25 *otherwise released before arraignment, the magistrate shall advise the person*
26 *of the right of the person to a security release as provided in ORS 135.265.]*

27 “[2] *If a person in custody does not request a security release at the time*
28 *of arraignment, the magistrate shall make a release decision regarding the*
29 *person within 48 hours after the arraignment.]*

30 **“(2)(a) A magistrate shall make a release decision at the time of**

1 arraignment or other first appearance after the defendant is taken
2 into custody unless good cause to postpone the release decision is
3 shown, in which case a release hearing shall be held pursuant to sub-
4 section (7) of this section.

5 “(b) The district attorney shall make reasonable efforts to inform
6 the victim of the location, date and time of the arraignment or other
7 first appearance and to determine if the victim is present at the
8 arraignment or appearance. If the victim is present, the victim has the
9 right to reasonably express any views relevant to the issues at the
10 appearance.

11 “(c) As used in this subsection, ‘good cause’ includes circumstances
12 in which:

13 “(A) The district attorney plans to seek preventative detention; or

14 “(B) There is a reasonable belief that additional evidence exists and
15 would be relevant to the release decision, but is not currently avail-
16 able.

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

25 “(a) Release criteria show to the satisfaction of the magistrate that such
26 a release is unwarranted; or

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

28 “(4) Upon a finding that release of the person on personal recognizance
29 is unwarranted, the magistrate shall [*impose either*] **proceed to consider**
30 conditional release [*or security release.*] **under ORS 135.260. Only after**

1 **determining that conditional release is unwarranted, or if otherwise**
2 **required by ORS 135.230 to 135.290, may the magistrate proceed to**
3 **consider security release under ORS 135.265.**

4 “(5) At the release hearing:

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

7 “(b) The victim has the right:

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

11 “(B) To appear personally at the hearing; and

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

14 “(6) If a person refuses to provide a true name under the circumstances
15 described in ORS 135.060 and 135.065, the magistrate may not release the
16 person on personal recognizance or on conditional release. The magistrate
17 may release the person on security release under ORS 135.265 except that the
18 magistrate shall require the person to deposit the full security amount set
19 by the magistrate.

20 **“(7)(a) After the postponement of a release decision under sub-**
21 **section (2) of this section, upon the request of either party, or upon**
22 **the magistrate’s own motion, the magistrate shall make a release de-**
23 **cision or reconsider the release decision, as applicable, at a release**
24 **hearing. The release hearing must be held within 48 hours of**
25 **arraignment or other first appearance after the defendant is taken**
26 **into custody unless both parties agree, or the court finds good cause,**
27 **to hold the hearing at a later time. Under no circumstances may the**
28 **release hearing be held more than five days after arraignment or other**
29 **first appearance after the defendant is taken into custody unless the**
30 **defendant consents to holding the hearing at a later time.**

1 **“(b) A hearing held under this subsection may not be used for pur-**
2 **poses of discovery.**

3 “[(7)] (8) This section shall be liberally construed to carry out the purpose
4 of relying upon criminal sanctions instead of financial loss to [assure] **en-**
5 **sure** the appearance of the defendant.

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

7 “135.247. (1) When a release assistance officer [*or a release assistance*
8 *deputy*] makes a release decision under ORS 135.235 involving a defendant
9 charged with a sex crime or a crime constituting domestic violence, the re-
10 lease assistance officer [*or deputy*] shall include in the decision an order that
11 the defendant be prohibited from contacting or attempting to contact the
12 victim, either directly or through a third party, while the defendant is in
13 custody. The release assistance officer [*or deputy*] shall provide the defendant
14 with a written copy of the order.

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

21 “(3) Except as provided in subsection (4) of this section, an order de-
22 scribed in subsection (1) or (2) of this section:

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

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

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

1 “(5) An order described in subsection (1) or (2) of this section shall not
2 limit contact with the victim by the defense attorney, or an agent of the
3 defense attorney other than the defendant, in the manner prescribed by ORS
4 135.970 (2).

5 “(6) As used in this section:

6 “(a) ‘Domestic violence’ has the meaning given that term in ORS 135.230.

7 “(b) ‘Sex crime’ has the meaning given that term in ORS 163A.005.

8 **“SECTION 7. ORS 135.242 is repealed.**

9 **“SECTION 8.** If House Bill 3273 becomes law, section 1, chapter _____,
10 Oregon Laws 2021 (Enrolled House Bill 3273), is amended to read:

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

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

16 “(a) To the person depicted in the booking photo;

17 “(b) To another law enforcement agency, or to a law enforcement officer
18 employed by another law enforcement agency, for a law enforcement purpose;

19 “(c) To the public, if the law enforcement agency determines that there
20 is a law enforcement purpose for the release, including but not limited to
21 assistance with the apprehension of a fugitive or a suspect in a criminal in-
22 vestigation, or the identification of additional criminal activity;

23 “(d) To a state mental hospital upon the admission to the hospital of the
24 person depicted in the booking photo;

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

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

29 **“(g) To the court, if the booking photo is part of a pretrial release
30 report or is provided to the court as part of the pretrial release process**

1 **for the purposes of confirming the identity of a defendant; or**

2 “[g] **(h)** Upon the conviction of the person depicted in the booking
3 photo, if the conviction results from the arrest during which the booking
4 photo was obtained.

5 “(3) As used in this section:

6 “(a) ‘Booking photo’ means a photograph of a person taken by a law
7 enforcement agency for identification purposes when the person is booked
8 into custody.

9 “(b) ‘Law enforcement agency’ has the meaning given that term in ORS
10 131.915.

11 “(c) ‘Law enforcement officer’ means an officer, deputy, member or em-
12 ployee of a law enforcement agency.

13 **“SECTION 9. (1) Section 2 of this 2021 Act, the amendments to ORS**
14 **135.235, 135.240, 135.245 and 135.247 by sections 3 to 6 of this 2021 Act**
15 **and the repeal of ORS 135.242 by section 7 of this 2021 Act become op-**
16 **erative July 1, 2022.**

17 **“(2) The Judicial Department may take any action before the oper-**
18 **ative date specified in subsection (1) of this section that is necessary**
19 **to enable the department to exercise, on or after the operative date**
20 **specified in subsection (1) of this section, all the duties, functions and**
21 **powers conferred on the department by section 2 of this 2021 Act, the**
22 **amendments to ORS 135.235, 135.240, 135.245 and 135.247 by sections 3**
23 **to 6 of this 2021 Act and the repeal of ORS 135.242 by section 7 of this**
24 **2021 Act.”.**

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