

D R A F T

SUMMARY

Digest: The Act changes some rules for criminal cases. (Flesch Readability Score: 71.8).

Modifies the requirements for providing a declaration for the purposes of authenticating records in response to criminal process.

Authorizes a law enforcement agency to use forensic imaging to obtain information from a portable electronic device belonging to a deceased user if the death is the subject of a law enforcement investigation.

Provides that a warrant authorizing the installation or tracking of a mobile tracking device may be issued when an individual has committed a crime.

Authorizes a prosecuting attorney to turn over grand jury recordings to the defense attorney as soon as a decision not to file a motion for a protective order has been made.

Provides that a person released pretrial on a violent felony who violates a condition of release may be held in custody if the violation constitutes a new criminal offense.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to criminal procedures; creating new provisions; amending ORS 132.270, 133.539, 133.619, 135.240, 135.280 and 136.583; and prescribing an effective date.

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

AUTHENTICATION OF RECORDS

SECTION 1. ORS 136.583 is amended to read:

136.583. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and

1 subject to ORS 136.580 (2), criminal process authorizing or commanding the
2 seizure or production of papers, documents, records or other things may be
3 issued to a recipient, regardless of whether the recipient or the papers, doc-
4 uments, records or things are located within this state, if:

5 (a) The criminal matter is triable in Oregon under ORS 131.205 to 131.235;
6 and

7 (b) The exercise of jurisdiction over the recipient is not inconsistent with
8 the Constitution of this state or the Constitution of the United States.

9 (2) Criminal process that authorizes or commands the seizure or pro-
10 duction of papers, documents, records or other things from a recipient may
11 be served by:

12 (a) Delivering a copy to the recipient personally; or

13 (b) Sending a copy by:

14 (A) Certified or registered mail, return receipt requested;

15 (B) Express mail; or

16 (C) Facsimile or electronic transmission, if the copy is sent in a manner
17 that provides proof of delivery.

18 (3) When criminal process is served under subsection (2) of this section,
19 the recipient shall provide the applicant, or if the process is described in
20 ORS 136.447 or 136.580 (2), the court, with all of the papers, documents, re-
21 cords or other things described in the criminal process within 20 business
22 days from the date the criminal process is received, unless:

23 (a) The court, for good cause shown, includes in the process a requirement
24 for production within a period of time that is less than 20 business days;

25 (b) The court, for good cause shown, extends the time for production to
26 a period of time that is more than 20 business days; or

27 (c) The applicant consents to a request from the recipient for additional
28 time to comply with the process.

29 (4) A recipient who seeks to quash or otherwise challenge the criminal
30 process must seek relief from the court that issued the process within the
31 time required for production. The court shall hear and decide the issue as

1 soon as practicable. The consent of the applicant to additional time to com-
2 ply with the process under subsection (3)(c) of this section does not extend
3 the date by which a recipient must seek relief under this subsection.

4 (5) Criminal process issued under this section must contain a notice on
5 the first page of the document that indicates:

6 (a) That the process was issued under this section;

7 (b) The date before which the recipient must respond to the process; and

8 (c) That the deadline for seeking relief is not altered by the applicant's
9 consent to additional time to respond to the process.

10 (6) Upon order of the court or the written request of the applicant, the
11 recipient of the process shall verify the authenticity of the papers, docu-
12 ments, records or other things that the recipient produces in response to the
13 criminal process by providing an affidavit or declaration that [*includes con-*
14 *tact information for*] **identifies** the custodian or other qualified person com-
15 pleting the document and attests to the nature of the papers, documents,
16 records or other things. An affidavit or declaration that complies with this
17 subsection [*may fulfill*] **fulfills** the requirements of ORS 40.460 (6), 40.505 and
18 132.320.

19 (7) A party that intends to offer a paper, document, record or other thing
20 into evidence under this section must file written notice of that intention
21 with the court and must disclose the affidavit or declaration sufficiently in
22 advance of offering the paper, document, record or other thing into evidence
23 to provide the adverse party with an opportunity to challenge the affidavit
24 or declaration and to have that challenge determined without prejudice to
25 the ability of the moving party to produce the custodian or other qualified
26 person at trial. A motion opposing admission of the paper, document, record
27 or other thing into evidence must be filed and determined by the court before
28 trial and with sufficient time to allow the party offering the paper, docu-
29 ment, record or other thing, if the motion is granted, to produce the custo-
30 dian of the record or other qualified person at trial, without creating a
31 hardship on the party or the custodian or other qualified person.

1 (8) Failure by a party that receives notice under subsection (7) of this
2 section to timely file a motion opposing admission of the paper, document,
3 record or other thing constitutes a waiver of objection to the admission of
4 the evidence on the basis of the insufficiency of the affidavit or declaration
5 unless the court finds good cause to grant relief from the waiver. If the court
6 grants relief from the waiver, the court shall order the trial continued upon
7 the request of the proponent of the evidence and allow the proponent suffi-
8 cient time to arrange for the necessary witness to appear.

9 (9) A recipient of criminal process under this section or any individual
10 that responds to the process is immune from civil and criminal liability for
11 complying with the process and for any failure to provide notice of any dis-
12 closure to a person who is the subject of, or identified in, the disclosure.

13 (10) Nothing in this section limits the authority of a court to issue
14 criminal process under any other provision of law or prohibits a party from
15 calling the custodian of the evidence or other qualified person to testify re-
16 garding the evidence.

17 (11) As used in this section:

18 (a) "Applicant" means:

19 (A) A police officer or district attorney who applies for a search warrant
20 or other court order or seeks to issue a subpoena under this section; or

21 (B) A defense attorney who applies for a court order or seeks to issue a
22 subpoena under this section.

23 (b) "Criminal process" means a subpoena, search warrant or other court
24 order.

25 (c) "Declaration" means a declaration [*under penalty of perjury under*
26 *ORCP 1 E or an unsworn declaration under ORS 194.800 to 194.835, if the*
27 *declarant is physically outside the boundaries of the United States*] **stating**
28 **that the information contained therein is correct that is made under**
29 **penalty of perjury and signed by the custodian of records or other**
30 **qualified person.**

31 (d) "Defense attorney" means an attorney of record for a person charged

1 with a crime who is seeking the issuance of criminal process for the defense
2 of the criminal case.

3 (e) "Recipient" means a business entity or nonprofit entity that has con-
4 ducted business or engaged in transactions occurring at least in part in this
5 state.

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IMAGING OF DIGITAL DEVICES

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9 **SECTION 2.** ORS 133.539 is amended to read:

10 133.539. (1) As used in this section:

11 (a)(A) "Forensic imaging" means using an electronic device to download
12 or transfer raw data from a portable electronic device onto another medium
13 of digital storage.

14 (B) "Forensic imaging" does not include photographing or transcribing
15 information observable from the portable electronic device by normal un-
16 aided human senses.

17 (b) "Location information service" means a global positioning service or
18 other mapping, locational or directional information service.

19 (c) "Portable electronic device" means any device designed to be easily
20 moved from one location to another and that contains electronic data or that
21 enables access to, or use of, an electronic communication service as defined
22 in 18 U.S.C. 2510, remote computing service as defined in 18 U.S.C. 2711 or
23 location information service.

24 (d) "Raw data" means data collected from a source that has not been
25 subsequently altered or manipulated after collection.

26 (2) A law enforcement agency may not use forensic imaging to obtain in-
27 formation contained in a portable electronic device except:

28 (a) Pursuant to a search warrant issued under ORS 133.525 to 133.703;
29 [or]

30 (b) As authorized by lawful consent; **or**

31 (c) **When the user of the device is deceased and the death is the**

1 **subject of a law enforcement investigation.**

2 (3) Information obtained in violation of this section:

3 (a) Is not admissible in and may not be disclosed in a judicial proceeding,
4 administrative proceeding, arbitration proceeding or other adjudicatory pro-
5 ceeding, against either the owner of the portable electronic device or a per-
6 son with a reasonable expectation of privacy in the contents of the device;
7 and

8 (b) May not be used to establish reasonable suspicion or probable cause
9 to believe that an offense has been committed.

10 (4) A portable electronic device that has been forensically imaged pursu-
11 ant to subsection (2) of this section may be returned as described in ORS
12 133.633 and 133.643.

13 (5) Subsection (2) of this section does not apply to:

14 (a) A correctional facility, youth correction facility or state hospital, as
15 those terms are defined in ORS 162.135, when the facility or state hospital
16 obtains information from a portable electronic device in an otherwise lawful
17 manner.

18 (b) A parole and probation officer, juvenile community supervision officer
19 as defined in ORS 420.905, community corrections agency or agency that
20 supervises youths or adjudicated youths, when the officer or agency obtains
21 information from a portable electronic device in an otherwise lawful manner.

22

23 **MOBILE TRACKING DEVICE WARRANTS**

24

25 **SECTION 3.** ORS 133.619 is amended to read:

26 133.619. (1) A warrant authorizing the installation or tracking of a mobile
27 tracking device shall be executed as provided in this section.

28 (2) The officer need not inform any person of the existence or content of
29 the warrant prior to its execution.

30 (3) Except as provided in subsection (4) of this section, the officer need
31 not deliver or leave a receipt for things seized or observations made under

1 authority of the warrant.

2 (4) Within five days of the execution of the warrant, or, in the case of
3 an ongoing investigation, within such additional time as the issuing judge
4 may allow upon application, the officer shall mail a receipt for things seized
5 or observations made under authority of the warrant to the following:

6 (a) If the mobile tracking device has been affixed to a vehicle, to the
7 registered owner; and

8 (b) To such other persons as the court may direct in the warrant.

9 (5) The receipt provided for in subsection (4) of this section must include
10 the dates and times during which the officer monitored or attempted to
11 monitor the mobile tracking device.

12 (6) A warrant authorizing the installation or tracking of a mobile track-
13 ing device shall be issued only when based upon the submission of an affi-
14 davit or oral statement as described in ORS 133.545, which affidavit or
15 statement demonstrates that probable cause exists to believe that an indi-
16 vidual is committing, **has committed** or is about to commit:

17 (a) A particular felony of murder, kidnapping, arson, robbery or other
18 crime dangerous to life and punishable as a felony;

19 (b) A crime punishable as a felony arising under ORS 475.752, 475.806 to
20 475.894, 475C.005 to 475C.525 or 475C.770 to 475C.919;

21 (c) The crime of unlawfully transporting metal property under ORS
22 164.857 or a crime described in ORS 165.118;

23 (d) Bribery, extortion, burglary or unauthorized use of a motor vehicle
24 punishable as a felony;

25 (e) A violation of a criminal provision of the wildlife laws as described
26 in ORS 496.002;

27 (f) A violation of a criminal provision of the commercial fishing laws as
28 described in ORS 506.001;

29 (g) A violation of ORS 704.020, 704.021, 704.030 or 704.065; or

30 (h) A conspiracy to commit a crime listed in this subsection.

31 (7) A court may authorize the installation or tracking of a mobile track-

1 ing device for a period not to exceed 30 days. Upon application, the court
2 may grant one or more extensions for a period not to exceed 30 days per
3 extension.

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GRAND JURY RECORDINGS

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7 **SECTION 4.** ORS 132.270 is amended to read:

8 132.270. (1) Audio recordings and the notes or report of a shorthand re-
9 porter produced pursuant to ORS 132.250 and 132.260 are confidential and
10 may not be released except as described in this section.

11 (2) When an indictment resulting from grand jury proceedings is indorsed
12 “a true bill,” the audio recording or the notes or report of a shorthand re-
13 porter of the grand jury proceedings may be released only in the following
14 manner:

15 (a) The prosecuting attorney may access a copy of the audio recording
16 or the notes or report of a shorthand reporter at any time.

17 (b) When the defendant has been arraigned on the indictment and is re-
18 presented by an attorney, the [*district*] **prosecuting** attorney shall **make an**
19 **expedited determination on whether to file a motion for a protective**
20 **order under subsection (4)(a)(A) of this section, including whether to**
21 **file an order on behalf of a victim or witness. If the prosecuting at-**
22 **torney decides not to file a motion for a protective order and the de-**
23 **cision is made within 10 days after the arraignment on the indictment,**
24 **the prosecuting attorney shall file a certification of the decision with**
25 **the court and shall immediately provide a copy of the audio re-**
26 **cordings, or the notes or report of a shorthand reporter, to the defense**
27 **attorney. If the prosecuting attorney has not filed a certification under**
28 **this paragraph within 10 days after the arraignment, or decides to file**
29 **a motion for a protective order, the prosecuting attorney shall:**

30 (A) Provide a copy to the defense attorney of all audio recordings, or the
31 notes or report of a shorthand reporter, related to an indictment after 10

1 days have passed since the defendant's arraignment on the indictment, **if a**
2 [*and no*] motion described in subsection (4) of this section has **not** been filed;
3 or

4 (B) Provide a copy of the audio recordings, or the notes or report of a
5 shorthand reporter, to the defense attorney in accordance with the court's
6 ruling on the motion described in subsection (4) of this section, if a motion
7 has been filed.

8 (c) Unless the court orders otherwise for good cause shown, the prose-
9 cuting attorney and the defense attorney may not copy, disseminate or re-
10 publish the audio recording, the notes or report of a shorthand reporter, or
11 a transcript prepared from the audio recording, notes or report, released
12 pursuant to this subsection, except to provide a copy to an agent of the
13 prosecuting attorney or defense attorney for the limited purpose of case
14 preparation. Unless a court orders otherwise for good cause shown, in con-
15 sulting with the defendant the defense attorney may not disclose to the de-
16 fendant:

17 (A) Any personal identifiers of a victim, witness or grand juror obtained
18 from the audio recording, report, notes or transcript; or

19 (B) Any portion of the audio recording, report, notes or transcript that
20 contains any personal identifiers of a victim, witness or grand juror.

21 (d) The defense attorney may not provide a copy of the audio recording,
22 notes or report, or a transcript prepared from the audio recording, notes or
23 report, to the defendant.

24 (e) When the defendant has been arraigned but is not represented by an
25 attorney, the defendant may request by motion that the court issue an order
26 allowing the defendant access to review the contents of the audio recording
27 or the notes or report of the shorthand reporter. A copy of the motion must
28 be provided to the prosecuting attorney. The prosecuting attorney may re-
29 quest a hearing on the motion within 10 days after receiving a copy. At the
30 hearing, or in response to receiving the motion, the court shall appoint
31 counsel for the defendant for the limited purpose of reviewing the audio re-

1 cording, notes or report and may set reasonable conditions on the review of
2 the audio recording, notes or report.

3 (3)(a) When a grand jury inquires into the conduct of a public servant as
4 defined in ORS 162.005 for acts occurring in the performance of the public
5 servant's duties, and an indictment resulting from the grand jury proceedings
6 is indorsed "not a true bill":

7 (A) The public servant or the prosecuting attorney may file a motion re-
8 questing a court order releasing all or a portion of a transcript of the grand
9 jury proceedings. A copy of the motion must be served on the opposing party.
10 In deciding whether to issue such an order, the court shall determine
11 whether the public interest in disclosure outweighs the interest in main-
12 taining the secrecy of the grand jury proceedings. If the court orders dis-
13 closure, the court may set reasonable conditions on copying, disseminating
14 or republishing the transcript.

15 (B) A member of the public may file a motion requesting a court order
16 for production and release of a transcript of the grand jury proceedings. A
17 copy of the motion must be served on the prosecuting attorney and the public
18 servant's attorney, or the public servant if the public servant is not repres-
19 ented by an attorney. The person filing the motion is responsible for the cost
20 of producing the transcript and a court order for production and release of
21 the transcript must be conditioned on receipt of payment. In deciding
22 whether to issue such an order, the court shall determine whether the public
23 interest in disclosure outweighs the interest in maintaining the secrecy of
24 the grand jury proceedings. If the court orders disclosure, the court may set
25 reasonable conditions on copying, disseminating or republishing the tran-
26 script.

27 (b) The release of any transcript under this subsection may not include:

28 (A) The release of any personal identifiers of a victim or witness; or

29 (B) The release of the name or any personal identifiers of a grand juror.

30 (4)(a) A motion for a protective order concerning an audio recording, the
31 notes or report of a shorthand reporter or a transcript of grand jury pro-

1 ceedings may be filed as follows:

2 (A) **Except when the prosecuting attorney has filed a certification**
3 **of the decision to not file a motion for a protective order under sub-**
4 **section (2)(b) of this section,** the prosecuting attorney may file a motion
5 for a protective order within 10 days after the defendant's arraignment on
6 the indictment. The motion may be filed on behalf of a victim or a witness.
7 The prosecuting attorney shall inform the victim of the ability to seek a
8 protective order.

9 (B) The prosecuting attorney may file a motion for a protective order
10 within 10 days after receiving a motion described in subsection (2)(e) of this
11 section.

12 (C) The prosecuting attorney, the public servant who is the subject of an
13 indictment indorsed "not a true bill" or the public servant's attorney may
14 file a motion for a protective order within 10 days of receiving a motion
15 described in subsection (3)(a) of this section.

16 (b) If the motion for a protective order requests that a portion of the
17 audio recording, notes, report or transcript be redacted, the motion must be
18 accompanied by a specific description, including the date and time, of the
19 portion of the audio recording, notes, report or transcript to be redacted.

20 (c) In response to a motion filed under this subsection, the court may
21 order that the access of the person requesting release to a copy of the audio
22 recording, notes, report or transcript be denied, restricted or deferred, or may
23 make any other order, upon a finding of substantial and compelling circum-
24 stances. In deciding whether to grant the motion and enter a protective order
25 under this paragraph, the court may consider the following:

26 (A) Protection of witnesses and others from physical harm, threats of
27 harm, bribes, economic interference, reprisal and other forms of intimidation;

28 (B) Maintenance of secrecy regarding informants, as required for effective
29 investigation of criminal activity;

30 (C) Confidential information recognized under law, including the pro-
31 tection of confidential relationships and privileges and the contents of con-

1 fidential records unrelated to a crime alleged in the indictment; and

2 (D) Any other relevant considerations.

3 (d) The court may permit the evidence of substantial and compelling cir-
4 cumstances described in paragraph (c) of this subsection to be made in the
5 form of a written statement to be inspected by the court only or by oral
6 testimony given on the record.

7 (5)(a) Except as provided in paragraph (b) of this subsection, when grand
8 jury proceedings do not result in an indictment indorsed as either “a true
9 bill” or “not a true bill,” the audio recording or notes or report of the
10 shorthand reporter produced pursuant to ORS 132.250 and 132.260 may not
11 be disclosed or released.

12 (b) When subsequent grand jury proceedings occur inquiring into the
13 same criminal episode as the grand jury proceedings described in paragraph
14 (a) of this subsection, and the subsequent proceedings result in an indictment
15 indorsed as “a true bill,” the prosecuting attorney shall provide notice to the
16 person charged in the indictment of the occurrence of the earlier grand jury
17 proceedings. After the person is arraigned on the indictment [*and the time*
18 *period described in subsection (2)(b) of this section has passed*], the audio re-
19 cording or the notes or report of the shorthand reporter produced during the
20 earlier grand jury proceedings may be obtained in the manner set forth in
21 subsection (2) of this section.

22 (c) As used in this subsection, “criminal episode” has the meaning given
23 that term in ORS 131.505.

24 (6) The district attorney of each county may establish a fee for the cost
25 of providing a copy of any audio recording, or the notes or report of a
26 shorthand reporter, of a grand jury proceeding to a person requesting a copy
27 under this section.

28 (7) An audio recording, the notes or report of a shorthand reporter or a
29 transcript of a grand jury proceeding obtained pursuant to this section and
30 ORS 132.250 and 132.260:

31 (a) May not be used as evidence in any subsequent proceeding, except as

1 permitted under ORS 40.375, 40.380, 40.450, 40.460 or 40.465.

2 (b) May not be used to challenge the indorsement of an indictment “a true
3 bill” or the proceedings that led to the indorsement.

4 (c) May be used as evidence in a prosecution for perjury or false swearing
5 committed by a witness while giving testimony during the grand jury pro-
6 ceeding or during trial.

7 (d) May be used as evidence in a proceeding for contempt of court against
8 a person alleged to have violated the terms of a court order concerning the
9 audio recording, notes, report or transcript.

10 (e) May be submitted to the court and used as evidence for a hearing on
11 a protective order described in subsection (4) of this section.

12 (8) The release of audio recordings, shorthand reporter notes or reports
13 or transcripts of grand jury proceedings under this section does not affect
14 discovery obligations under ORS 135.805 to 135.873.

15 (9) As used in this section:

16 (a) “Personal identifiers” means:

17 (A) In relation to a witness or a grand juror, the person’s address, tele-
18 phone number, driver license, vehicle registration information, Social Secu-
19 rity number, date of birth and the identifying number of the person’s
20 depository account at a financial institution, as defined in ORS 706.008, or
21 credit card account.

22 (B) In relation to a victim, the victim’s address, electronic mail address,
23 telephone number, driver license, vehicle registration information, Social
24 Security number, date of birth, any user names or other identifying infor-
25 mation associated with the victim’s social media accounts and the identifying
26 number of the victim’s depository account at a financial institution, as de-
27 fined in ORS 706.008, or credit card account.

28 (b) “Social media” has the meaning given that term in ORS 659A.330.

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30

PRETRIAL RELEASE

31

1 **SECTION 5.** ORS 135.240 is amended to read:

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

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

7 (b) When the defendant is charged with murder or aggravated murder and
8 the proof is not evident nor the presumption strong that the defendant is
9 guilty, the court shall determine the issue of release as provided in sub-
10 section (4) of this section. In determining the issue of release under sub-
11 section (4) of this section, the court may consider any evidence used in
12 making the determination required by this subsection.

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

16 (4)(a) When the defendant is charged with a violent felony, release shall
17 be denied if the court finds:

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

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

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

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

31 (d) The defendant may be represented by counsel and may present evi-

1 dence on any relevant issue. However, the hearing may not be used for pur-
2 poses of discovery.

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

6 (f) When a defendant [*who*] **is charged with a violent felony**, has been
7 released, **regardless of whether the court conducted the inquiry or**
8 **made the findings described in paragraph (a) of this subsection, and**
9 violates a condition of release [*and the violation*]:

10 (A) **That** constitutes a new criminal offense, the court shall cause the
11 defendant to be taken back into custody and shall order the defendant held
12 pending trial without release.

13 (B) **That** does not constitute a new criminal offense, the court may order
14 the defendant to be taken back into custody and may order the defendant
15 held pending trial or may make a new release decision.

16 (C) **The state may request that the court proceed with the inquiry**
17 **described in paragraph (a) of this subsection and deny release.**

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

21 **SECTION 6.** ORS 135.280 is amended to read:

22 135.280. (1) Upon failure of a person to comply with any condition of a
23 release agreement or personal recognizance, the court having jurisdiction
24 may, in addition to any other action provided by law, issue a warrant for the
25 arrest of the person at liberty upon a personal recognizance, conditional or
26 security release. **After the person is returned to custody, the court may**
27 **make a new release decision except as otherwise provided in ORS**
28 **135.240.**

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

1 (3) If the defendant does not comply with the conditions of the release
2 agreement, the court having jurisdiction shall enter an order declaring the
3 entire security amount to be forfeited. Notice of the order of forfeiture shall
4 be given forthwith by personal service, by mail or by such other means as
5 are reasonably calculated to bring to the attention of the defendant and, if
6 applicable, of the sureties the order of forfeiture. If, within 30 days after the
7 court declares the forfeiture, the defendant does not appear or satisfy the
8 court having jurisdiction that appearance and surrender by the defendant
9 was, or still is, impossible and without fault of the defendant, the court shall
10 enter judgment for the state, or appropriate political subdivision thereof,
11 against the defendant and, if applicable, the sureties for the entire security
12 amount set under ORS 135.265 and the costs of the proceedings. At any time
13 before or after entry of the judgment, the defendant or the sureties may ap-
14 ply to the court for a remission of the forfeiture or to modify or set aside
15 the judgment. The court, upon good cause shown, may remit the forfeiture
16 or any part thereof or may modify or set aside the judgment as in other
17 criminal cases, except the portion of the security deposit that the court or-
18 dered to be applied to child support under subsection (4) of this section, as
19 the court considers reasonable under the circumstances of the case. The
20 court shall adopt procedures to ensure that the amount deposited under ORS
21 135.265 is available for a reasonable period of time for disposition under
22 subsection (4) of this section.

23 (4) After entry of a judgment for the state, the court, upon a motion filed
24 under ORS 25.715, may order that a portion of the security deposit be applied
25 to any unsatisfied child support award owed by the defendant and to provide
26 security for child support payments in accordance with ORS 25.230. The
27 portion of the security deposit that may be applied to the child support
28 award:

29 (a) Is limited to the amount deposited under ORS 135.265 (2);

30 (b) May not exceed 66 percent of the entire security amount set under
31 ORS 135.265 if the deposit has been made under ORS 135.265 (3); and

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

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

22 (6) When the judgment of forfeiture is entered, the security deposit or
23 deposit with the clerk is, by virtue of the judgment alone and without re-
24 quiring further execution, forfeited to and may be kept by the state or its
25 appropriate political subdivision. Except as provided in subsection (4) of this
26 section, the clerk shall reduce, by the value of the deposit so forfeited, the
27 debt remaining on the judgment and shall cause the amount on deposit to
28 be transferred to the revenue account of the state or political subdivision
29 thereof entitled to receive the proceeds of execution under this section.

30 (7) The stocks, bonds, personal property and real property shall be sold
31 in the same manner as in execution sales in civil actions and the proceeds

1 of such sale shall be used to satisfy all court costs, prior encumbrances, if
2 any, and from the balance a sufficient amount to satisfy the judgment shall
3 be paid into the treasury of the municipal corporation wherein the security
4 was taken if the offense was defined by an ordinance of a political subdivi-
5 sion of this state, or paid into the treasury of the county wherein the secu-
6 rity was taken if the offense was defined by a statute of this state and the
7 judgment was entered by a justice court, or deposited in the General Fund
8 available for general governmental expenses if the offense was defined by a
9 statute of this state and the judgment was entered by a circuit court. The
10 balance shall be returned to the owner. The real property sold may be re-
11 deemed in the same manner as real estate may be redeemed after judicial or
12 execution sales in civil actions.

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APPLICABILITY

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16 **SECTION 7. The amendments to ORS 132.270, 135.240 and 135.280 by**
17 **sections 4 to 6 of this 2025 Act apply to criminal proceedings based on**
18 **conduct occurring on or after the effective date of this 2025 Act.**

19

20

CAPTIONS

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22 **SECTION 8. The unit captions used in this 2025 Act are provided**
23 **only for the convenience of the reader and do not become part of the**
24 **statutory law of this state or express any legislative intent in the**
25 **enactment of this 2025 Act.**

26

27

EFFECTIVE DATE

28

29 **SECTION 9. This 2025 Act takes effect on the 91st day after the date**
30 **on which the 2025 regular session of the Eighty-third Legislative As-**
31 **sembly adjourns sine die.**

