

# House Bill 2135

Sponsored by Representative MANNIX (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**.

Limits pretrial release of defendants charged with felony or Class A misdemeanor to security release.

Requires Oregon Department of Administrative Services to reimburse counties for costs of pre-trial incarceration of persons charged with felonies. Appropriates moneys to department for reimbursement.

## A BILL FOR AN ACT

1  
2 Relating to pretrial incarceration; creating new provisions; and amending ORS 135.233, 135.235,  
3 135.245 and 135.265.

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

5 **SECTION 1.** ORS 135.233 is amended to read:

6 135.233. (1)(a) The presiding judge of a judicial district shall enter a standing pretrial release  
7 order specifying to the sheriff of the county, or to the entity supervising the local correctional fa-  
8 cility responsible for pretrial incarceration within the judicial district, those persons and offenses:

9 [(a)] (A) Subject to release on recognizance;

10 [(b)] (B) Subject to release with special conditions as specified in the order; and

11 [(c)] (C) That are not eligible for release until arraignment.

12 **(b) The standing pretrial release order described in this section may allow for release on**  
13 **recognizance or conditional release for defendants who are not charged with felonies or Class**  
14 **A misdemeanors, but must specify that defendants charged with a felony or Class A**  
15 **misdemeanor are not eligible for release until arraignment and may be released only on se-**  
16 **curity release.**

17 (2) The Chief Justice of the Supreme Court, with input from a criminal justice advisory com-  
18 mittee appointed by the Chief Justice, shall establish release guidelines for the pretrial release or-  
19 ders described in this section to:

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

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

22 [(c)] (b) Include provisions for victim notification and input; and

23 [(d)] (c) Balance the rights of the defendant and presumption of pretrial release against com-  
24 munity and victim safety and the risk of failure to appear.

25 **SECTION 2.** ORS 135.235 is amended to read:

26 135.235. (1) A presiding judge for a judicial district may appoint release assistance officers under  
27 a personnel plan established by the Chief Justice of the Supreme Court.

28 (2) A release assistance officer shall, except when impracticable, interview every person de-  
29 tained pursuant to law and charged with an offense. If the person is charged with a person felony  
30 or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal

**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 Justice Commission, or with contempt of court for violating a court order protecting or prohibiting  
 2 contact with another person, the release assistance officer shall make reasonable efforts to contact  
 3 the victim prior to submitting a report or making a release decision under subsection (3) of this  
 4 section. If the release assistance officer is able to contact the victim:

5 (a) Information regarding the victim’s position on release, including whether special release  
 6 conditions should be imposed, must be included in the report described in subsection (3) of this  
 7 section, and considered by the release assistance officer if the officer makes the release decision;  
 8 and

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

11 (3) The release assistance officer shall verify release criteria information and may *[either]*:

12 (a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation  
 13 of the release criteria and **either** a recommendation for the form of release **or, for a defendant**  
 14 **charged with a felony or Class A misdemeanor, the amount of security;** or

15 (b) **For a defendant who is not charged with a felony or Class A misdemeanor, and** if de-  
 16 legated release authority by the presiding judge for the judicial district, make the release decision.

17 (4) As used in this section, “victim” means an individual that the charging instrument indicates  
 18 is the victim of the alleged offense or the person protected by the court order, whether or not the  
 19 individual is specifically named, so long as the release assistance officer is able to confirm the  
 20 identity of the individual.

21 **SECTION 3.** ORS 135.245 is amended to read:

22 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to be taken  
 23 before a magistrate without undue delay.

24 (2)(a) A magistrate shall make a release decision at the time of arraignment or other first ap-  
 25 pearance after the defendant is taken into custody unless good cause to postpone the release deci-  
 26 sion is shown, in which case a release hearing shall be held pursuant to subsection (7) of this  
 27 section.

28 (b) The district attorney shall make reasonable efforts to inform the victim of the location, date  
 29 and time of the arraignment or other first appearance and to determine if the victim is present at  
 30 the arraignment or appearance. If the victim is present, the victim has the right to reasonably ex-  
 31 press any views relevant to the issues at the appearance.

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

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

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

36 (3) **For a defendant not charged with a felony or Class A misdemeanor:**

37 (a) If the magistrate, having given priority to the primary release criteria, decides to release  
 38 *[a]* **the** defendant or to set security, the magistrate shall impose the least onerous condition rea-  
 39 sonably likely to ensure the safety of the public and the victim and the person’s later appearance  
 40 and, if the person is charged with an offense involving domestic violence, ensure that the person  
 41 does not engage in domestic violence while on release. A person in custody, otherwise having a  
 42 right to release, shall be released upon the personal recognizance unless:

43 *[(a)]* (A) Release criteria show to the satisfaction of the magistrate that such a release is un-  
 44 warranted; or

45 *[(b)]* (B) Subsection (6) of this section applies to the person.

1        [(4)] (b) Upon a finding that release of the person on personal recognizance is unwarranted, the  
 2 magistrate shall proceed to consider conditional release under ORS 135.260. Only after determining  
 3 that conditional release is unwarranted, or if otherwise required by ORS 135.230 to 135.290, may the  
 4 magistrate proceed to consider security release under ORS 135.265.

5        **(4) For a defendant charged with a felony or Class A misdemeanor, the magistrate may**  
 6 **not release the defendant on personal recognizance or conditional release and, after consid-**  
 7 **ering the primary release criteria, shall set a security amount under ORS 135.265.**

8        (5) At the release hearing:

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

11        (b) The victim has the right:

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

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

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

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

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

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

29        (8) This section shall be liberally construed to carry out the purpose of relying upon criminal  
 30 sanctions instead of financial loss to ensure the appearance of the defendant.

31        **SECTION 4.** ORS 135.265 is amended to read:

32        135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, [or]  
 33 **is not** granted conditional release under ORS 135.260, [or] fails to agree to the provisions of the  
 34 conditional release, **or does not qualify for release on personal recognizance or conditional**  
 35 **release due to being charged with a felony or Class A misdemeanor**, the magistrate shall set  
 36 a security amount that will reasonably assure the defendant's appearance. The defendant shall exe-  
 37 cute the security release in the amount set by the magistrate.

38        (2) The defendant shall execute a release agreement and deposit with the clerk of the court  
 39 before which the proceeding is pending a sum of money equal to 10 percent of the security amount,  
 40 but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum de-  
 41 posited. Upon depositing this sum the defendant shall be released from custody subject to the con-  
 42 dition that the defendant appear to answer the charge in the court having jurisdiction on a day  
 43 certain and thereafter as ordered by the court until discharged or final order of the court. Once  
 44 security has been given and a charge is pending or is thereafter filed in or transferred to a court  
 45 of competent jurisdiction the latter court shall continue the original security in that court subject

1 to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the  
 2 defendant has been discharged from all obligations in the cause, the clerk of the court shall return  
 3 to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85  
 4 percent of the sum which has been deposited and shall retain as security release costs 15 percent,  
 5 but not less than \$5 nor more than \$750, of the amount deposited. The interest that has accrued on  
 6 the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of  
 7 a circuit court shall be paid over as directed by the State Court Administrator for deposit in the  
 8 General Fund. The amount retained by a justice of the peace shall be deposited in the county  
 9 treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal  
 10 corporation treasury. At the request of the defendant the court may order whatever amount is re-  
 11 payable to defendant from such security amount to be paid to defendant's attorney of record.

12 (3) Instead of the security deposit provided for in subsection (2) of this section the defendant  
 13 may deposit with the clerk of the court an amount equal to the security amount in cash, stocks,  
 14 bonds, or real or personal property situated in this state with equity not exempt owned by the de-  
 15 fendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds,  
 16 real or personal property shall in all cases be justified by affidavit. The magistrate may further ex-  
 17 amine the sufficiency of the security as the magistrate considers necessary.

18 **SECTION 5. (1) The state shall reimburse each county for the costs of pretrial**  
 19 **incarceration of persons charged with felonies as provided in this section. The reimburse-**  
 20 **ment shall cover the costs of incarceration for each day that a person charged with a felony**  
 21 **is in the custody of the supervisory authority of the county, from the date of the person's**  
 22 **arrest until the resolution of the criminal charge.**

23 (2) At the end of each month, the county shall submit to the Oregon Department of Ad-  
 24 ministrative Services a written request for reimbursement for the cost of incarcerating  
 25 persons described in subsection (1) of this section.

26 (3) The department shall reimburse a county that submits a request under subsection (2)  
 27 of this section within seven days of receiving the request. The reimbursement shall occur  
 28 at the rate of \$100 per person per day of incarceration or the actual daily cost of  
 29 incarcerating a person, whichever is higher.

30 **SECTION 6. In addition to and not in lieu of any other appropriation, there is appropri-**  
 31 **ated to the Oregon Department of Administrative Services, for the biennium beginning July**  
 32 **1, 2023, out of the General Fund, the amount of \$\_\_\_\_\_ , for distribution to counties**  
 33 **for reimbursement of pretrial incarceration costs under section 5 of this 2023 Act.**

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