

# Enrolled Senate Bill 39

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CHAPTER .....

AN ACT

Relating to appeals; creating new provisions; amending ORS 135.250 and 135.285; and repealing ORS 138.135.

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

**SECTION 1.** (1)(a) A justice, municipal or circuit court may enter an order in a criminal action as defined in ORS 131.005 staying execution of a sentence, or a portion of a sentence, pending the resolution of an appeal.

(b) Except for good cause shown, a motion for an order under this section must be filed in the trial court no later than the filing of a notice of appeal. The trial court retains jurisdiction to enter an order under this section irrespective of whether a notice of appeal has been filed.

(c) Except as otherwise required by this section, the trial court may impose conditions on a stay that the trial court determines are appropriate.

(2) In determining whether to enter an order staying the execution of all of a sentence, or a portion of a sentence, the trial court shall consider the following factors:

- (a) The nature of the offense;
- (b) The severity of the sentence imposed;
- (c) The health of the defendant;
- (d) The character and strength of the evidence;
- (e) The criminal history of the defendant;
- (f) If the sentence, or the portion of the sentence, sought to be stayed includes a term of incarceration, the likelihood that the defendant will:
  - (A) Appear in court at all appropriate times;
  - (B) Comply with any other conditions of release; and
  - (C) Complete, or substantially complete, serving the term of incarceration before the appeal is decided;

(g) The likelihood that an appellate court will reverse the sentence, or the portion of the sentence, sought to be stayed or will reverse the judgment of conviction that includes the sentence, or the portion of the sentence, sought to be stayed; and

(h) If an appellate court has issued a decision reversing the sentence, or a portion of the sentence, sought to be stayed or reversing the judgment of conviction that includes the sentence, or the portion of the sentence, sought to be stayed:

**(A) Whether the reversal or any other relief described in the appellate decision will result in the defendant having completed serving the term of incarceration imposed; and**

**(B) Whether the appellate decision remands the case for a new trial.**

**(3) If the trial court enters an order staying a term of incarceration, the court:**

**(a) May order that the conditions of the release agreement and any posted security stand pending resolution of the appeal or may order an increase or reduction in the amount of security.**

**(b) Shall order that the defendant, as a condition of release:**

**(A) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;**

**(B) Appear at such time and place as the court may direct;**

**(C) Not depart this state without leave of the court; and**

**(D) If the judgment is affirmed, or the judgment is reversed and the case is remanded for a new trial, immediately appear as required by the trial court.**

**(4) If the court enters an order staying the payment of a monetary obligation, the court may order the defendant:**

**(a) To deposit, pending resolution of the appeal, the whole or any part of the monetary obligation with the clerk of the trial court;**

**(b) To file an undertaking with sufficient sureties;**

**(c) To submit to an examination of assets; or**

**(d) To refrain from dissipating the assets of the defendant.**

**SECTION 2.** ORS 135.250 is amended to read:

135.250. (1) If a defendant is released before judgment, the conditions of the release agreement shall be that the defendant will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until the defendant is discharged or the judgment is entered;

(b) Submit to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2)(a) In addition to the conditions listed in subsection (1) of this section, if the defendant is charged with an offense that also constitutes domestic violence, the court shall include as a condition of the release agreement that the defendant not contact the victim of the violence.

(b) Notwithstanding paragraph (a) of this subsection, the court may enter an order waiving the condition that the defendant have no contact with the victim if:

(A) The victim petitions the court for a waiver; and

(B) The court finds, after a hearing on the petition, that waiving the condition is in the best interests of the parties and the community.

(c) If the defendant was provided notice and an opportunity to be heard, the court shall also include in the agreement, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the defendant's ability to possess firearms and ammunition or engage in activities involving firearms.

(d) ORS 107.720 applies to release agreements executed by defendants charged with an offense that constitutes domestic violence, except that proof of service of the release agreement is not required and the agreement may not be terminated at the request of the victim without a hearing.

*[(3) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that the defendant will:]*

*[(a) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;]*

*[(b) Appear at such time and place as the court may direct;]*

*[(c) Not depart this state without leave of the court;]*

*[(d) Comply with such other conditions as the court may impose; and]*

*[(e) If the judgment is affirmed or the judgment is reversed and the cause remanded for a new trial, immediately appear as required by the trial court.]*

**SECTION 3.** ORS 135.285 is amended to read:

135.285. [(1)] If circumstances concerning the defendant's release change, the court, on its own motion or upon request by the district attorney or defendant, may modify the release agreement or the security release.

[(2) *After judgment of conviction in municipal or justice court, the court shall order the original release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary.*]

**SECTION 4. ORS 138.135 is repealed.**

**Passed by Senate March 6, 2013**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 7, 2013**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2013

**Approved:**

.....M.,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2013

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Kate Brown, Secretary of State