

HOUSE AMENDMENTS TO HOUSE BILL 2282

By COMMITTEE ON JUDICIARY

April 21

- 1 On page 1 of the printed bill, line 2, after “133.069” insert “, 135.030, 135.355”.
- 2 In line 3, delete “135.385” and insert “135.767, 137.030, 137.040, 137.545”.
- 3 On page 2, delete lines 27 through 45.
- 4 On page 3, delete lines 1 through 22 and insert:
- 5 **“SECTION 4. (1) As used in this section:**
- 6 **“(a) ‘Criminal proceeding’ has the meaning given that term in ORS 131.005.**
- 7 **“(b) ‘Parties’ means the State of Oregon and the person being prosecuted.**
- 8 **“(c) ‘Simultaneous electronic transmission’ means television, telephone or any other**
- 9 **form of electronic communication transmission if the form of transmission allows:**
- 10 **“(A) The court and the person making the appearance to communicate with each other**
- 11 **during the proceeding;**
- 12 **“(B) A defendant who is represented by counsel to consult privately with defense counsel**
- 13 **during the proceeding;**
- 14 **“(C) The victim to participate in the proceeding to the same extent that the victim is**
- 15 **entitled to participate when the person making the appearance is physically present in the**
- 16 **court; and**
- 17 **“(D) The public to hear and, if the transmission includes a visual image, to see the ap-**
- 18 **pearance if the public has a right to hear and see the appearance when the person making**
- 19 **the appearance is physically present in the court.**
- 20 **“(2) When a statute authorizes or requires a person to make a personal appearance be-**
- 21 **fore a court in a criminal proceeding, the person may appear by being physically present in**
- 22 **the court or by simultaneous electronic transmission if:**
- 23 **“(a) Simultaneous electronic transmission is authorized by court rule under subsection**
- 24 **(3) of this section;**
- 25 **“(b) Except as otherwise provided by law, the parties in the proceeding and the court**
- 26 **agree to appearance by simultaneous electronic transmission; and**
- 27 **“(c) Appearance by simultaneous electronic transmission is not specifically prohibited by**
- 28 **statute.**
- 29 **“(3) In order for a person to appear by simultaneous electronic transmission as provided**
- 30 **in this section, court rules must provide for the use of the specific type of simultaneous**
- 31 **electronic transmission at the court location and for the type of proceeding in which the**
- 32 **person is appearing. Court rules allowing the use of simultaneous electronic transmission**
- 33 **may establish requirements for its use.**
- 34 **“(4) Notwithstanding subsection (2) of this section, a person may not appear before a jury**
- 35 **by simultaneous electronic transmission.**

1 **“(5) This section does not apply to a hearing under ORS 138.510 to 138.680.**

2 **“SECTION 5.** ORS 135.030 is amended to read:

3 “135.030. (1) When the accusatory instrument charges a crime punishable as a felony, the de-
4 fendant shall appear in person at the arraignment.

5 “(2) When the accusatory instrument charges a crime punishable as a misdemeanor, the de-
6 fendant may appear in person or by counsel.

7 “[(3) *As used in this section, a defendant appears ‘in person’ if:*]

8 “[(a) *The defendant is physically present before the court; or*]

9 “[(b) *The defendant appears before the court by means of simultaneous television transmission al-
10 lowing the court to observe and communicate with the defendant and the defendant to observe and
11 communicate with the court. However, appearance by simultaneous television transmission shall not be
12 permitted unless the facilities used enable the defendant to consult privately with defense counsel dur-
13 ing the proceedings.*]

14 **“(3) The court may require a defendant to appear by simultaneous electronic trans-
15 mission as provided in section 4 of this 2005 Act without the agreement of the state or de-
16 fendant if the type of simultaneous electronic transmission available allows the defendant to
17 observe the court and the court to observe the defendant.**

18 **“SECTION 6.** ORS 135.355 is amended to read:

19 “135.355. (1) Every plea shall be oral and shall be entered in the register of the court in sub-
20 stantially one of the following forms:

21 “(a) ‘The defendant pleads that defendant is guilty of the offense charged in this accusatory in-
22 strument.’

23 “(b) ‘The defendant pleads that defendant is not guilty of the offense charged in this accusatory
24 instrument.’

25 “(c) ‘The defendant pleads no contest to the offense charged in this accusatory instrument.’

26 “(2) When a defendant enters a conditional plea of guilty or no contest, the entry in the register
27 of the court shall so indicate.

28 **“(3) For purposes of this section, an oral plea includes a plea made orally by means of
29 simultaneous electronic transmission as described in section 4 of this 2005 Act.**

30 **“SECTION 7.** ORS 135.360 is amended to read:

31 “135.360. (1) Except as provided in subsection (2) of this section, a plea of guilty or no contest
32 to a crime punishable as a felony shall in all cases be put in by the defendant in person in open
33 court unless upon an accusatory instrument against a corporation, in which case it may be put in
34 by counsel.

35 “(2) Any circuit judge may, within any county in the own district of the judge other than the
36 county where the accusation is pending, accept pleas of guilty or no contest from persons charged
37 with a crime punishable as a felony and pass sentence thereon upon written request of the accused
38 and the attorney of the accused and upon not less than one day’s notice to the district attorney.
39 [*All orders entering*] **Judgments based upon** such pleas and [*such*] sentences [*shall be*] **entered**
40 **upon the pleas are** as effective as though heard and determined in open court in the county where
41 the accusation is pending. [*and shall be transmitted by the judge*] **Judges accepting the pleas shall**
42 **transmit the pleas** to the clerk of the court in the county where the accusation is pending,
43 whereupon the [*same shall be filed and entered and*] **clerk shall file and enter the pleas to** become
44 effective from the date of filing [*thereof*].

45 **“(3) A judge may accept a plea of guilty or no contest under subsection (1) of this section**

1 **by simultaneous electronic transmission, as defined in section 4 of this 2005 Act, without the**
2 **agreement of the state or the defendant if the plea is entered at arraignment and the type**
3 **of simultaneous electronic transmission available allows the defendant to observe the court**
4 **and the court to observe the defendant.**

5 **“SECTION 8.** ORS 135.767 is amended to read:

6 “135.767. (1) Whenever the presence of an inmate in the custody of the Department of Cor-
7 rections or of the supervisory authority of a county pursuant to a commitment under ORS 137.124
8 (2) is necessary in any criminal proceeding under ORS 135.760 to 135.773, the court wherein the
9 inmate is charged with the commission of a crime may:

10 **“(a)** Issue an order directing the Director of the Department of Corrections or the supervisory
11 authority of a county to surrender the inmate to the sheriff of the county where the inmate is to
12 be tried; **or**

13 **“(b) Ensure that arrangements for the inmate to appear by simultaneous electronic**
14 **transmission as described in section 4 of this 2005 Act have been made.**

15 **“(2)** *[The costs of transportation and maintenance of any inmate removed under this section shall*
16 *be paid by]* The county where *[the]* **an** inmate is charged with commission of a crime **shall pay the**
17 **costs of:**

18 **“(a) Transportation and maintenance of the inmate removed under this section; or**

19 **“(b) Providing for the inmate to appear by simultaneous electronic transmission.**

20 **“(3) If an inmate is transported under this section for a criminal proceeding under ORS**
21 **135.760 to 135.773,** at the conclusion of *[any criminal]* **the** proceeding *[under ORS 135.760 to*
22 *135.773],* notwithstanding the provisions of ORS 137.140, the inmate shall be returned by the sheriff
23 to the custody of the Department of Corrections or the supervisory authority of the county in which
24 the inmate is imprisoned.

25 **“(4)** The time during which an inmate is in the custody of the sheriff under this section is part
26 of and shall be counted as time served under the original sentence.

27 **“SECTION 9.** ORS 137.030 is amended to read:

28 “137.030. *[(1)]* For the purpose of giving judgment, if the conviction is for:

29 **“(1)** A felony, the defendant shall be personally present.*[: but if it is for]*

30 **“(2)** A misdemeanor, judgment may be given in the absence of the defendant.

31 *“[(2) As used in this section, ‘personally present’ means that a defendant:]*

32 *“[(a) Is physically present before the court; or]*

33 *“[(b) Is imprisoned and does not object to appearing before the court by means of simultaneous*
34 *television transmission allowing the court to observe and communicate with the defendant and the de-*
35 *fendant to observe and communicate with the court.]*

36 *“[(3) Notwithstanding subsection (2) of this section, appearance by simultaneous television trans-*
37 *mission shall not be permitted unless the facilities used enable the defendant to consult privately with*
38 *defense counsel during the proceedings.]*

39 **“SECTION 10.** ORS 137.040 is amended to read:

40 “137.040. If the defendant is in custody, the court shall:

41 **“(1)** Direct the officer in whose custody the defendant is to bring the defendant before *[it]* **the**
42 **court** for judgment $[:]$ and the officer shall do so accordingly; **or**

43 **“(2) Ensure that arrangements for the defendant to appear for judgment by simultaneous**
44 **electronic transmission as described in section 4 of this 2005 Act have been made.**

45 **“SECTION 11.** ORS 137.545 is amended to read:

1 “137.545. (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Jus-
2 tice Commission for felonies committed on or after November 1, 1989:

3 “(a) The period of probation shall be such as the court determines and may, in the discretion
4 of the court, be continued or extended.

5 “(b) The court may at any time discharge a person from probation.

6 “(2) At any time during the probation period, the court may issue a warrant and cause a de-
7 fendant to be arrested for violating any of the conditions of probation. Any probation officer, police
8 officer or other officer with power of arrest may arrest a probationer without a warrant for violat-
9 ing any condition of probation, and a statement by the probation officer or arresting officer setting
10 forth that the probationer has, in the judgment of the probation officer or arresting officer, violated
11 the conditions of probation is sufficient warrant for the detention of the probationer in the county
12 jail until the probationer can be brought before the court or until the probation officer or supervi-
13 sory personnel impose and the offender agrees to structured, intermediate sanctions in accordance
14 with the rules adopted under ORS 137.595. Such disposition shall be made during the first 36 hours
15 in custody, excluding Saturdays, Sundays and holidays, unless later disposition is authorized by su-
16 pervisory personnel. If authorized by supervisory personnel, the disposition shall take place in no
17 more than five judicial days. If the offender does not consent to structured, intermediate sanctions
18 imposed by the probation officer or supervisory personnel in accordance with the rules adopted un-
19 der ORS 137.595, the probation officer, as soon as practicable, but within one judicial day, shall re-
20 port such arrest or detention to the court that imposed the probation. The probation officer shall
21 promptly submit to the court a report showing in what manner the probationer has violated the
22 conditions of probation.

23 “(3) Except for good cause shown or at the request of the probationer, the probationer shall be
24 brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and
25 Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a
26 violation or revocation hearing or pending transfer to the jurisdiction of another court where the
27 probation was imposed. In lieu of an order that the probationer be held, the magistrate may release
28 the probationer upon the condition that the probationer appear in court at a later date for a pro-
29 bation violation or revocation hearing. If the probationer is being held on an out-of-county warrant,
30 the magistrate may order the probationer released subject to an additional order to the probationer
31 that the probationer report within seven calendar days to the court that imposed the probation.

32 “(4) When a probationer has been sentenced to probation in more than one county and the
33 probationer is being held on an out-of-county warrant for a probation violation, the court may con-
34 sider consolidation of some or all pending probation violation proceedings pursuant to rules made
35 and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

36 “(a) Upon the motion of the district attorney or defense counsel in the county in which the
37 probationer is held; or

38 “(b) Upon the court’s own motion.

39 “(5)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any
40 misdemeanor, the court that imposed the probation, after summary hearing, may revoke the pro-
41 bation and:

42 “(A) If the execution of some other part of the sentence has been suspended, the court shall
43 cause the rest of the sentence imposed to be executed.

44 “(B) If no other sentence has been imposed, the court may impose any other sentence which
45 originally could have been imposed.

1 “(b) For defendants sentenced for felonies committed on or after November 1, 1989, the court
2 that imposed the probationary sentence may revoke probation supervision and impose a sanction as
3 provided by rules of the Oregon Criminal Justice Commission.

4 “(6) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar
5 days following the arrest or detention of the probationer, the probationer shall be released from
6 custody.

7 “(7) A defendant who has been previously confined in the county jail as a condition of probation
8 pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon
9 Criminal Justice Commission may be given credit for all time thus served in any order or judgment
10 of confinement resulting from revocation of probation.

11 “(8) In the case of any defendant whose sentence has been suspended but who has not been
12 sentenced to probation, the court may issue a warrant and cause the defendant to be arrested and
13 brought before the court at any time within the maximum period for which the defendant might ori-
14 ginally have been sentenced. Thereupon the court, after summary hearing, may revoke the sus-
15 pension of sentence and cause the sentence imposed to be executed.

16 “(9) If a probationer fails to appear or report to a court for further proceedings as required by
17 an order under subsection (3) of this section, the failure to appear may be prosecuted in the county
18 to which the probationer was ordered to appear or report.

19 “(10)[(a) *If requested by the probationer and agreed to by the court,*] The probationer may admit
20 or deny the violation [*without*] **by** being physically present at the hearing [*if the probationer appears*
21 *before the court*] **or** by means of simultaneous [*television*] **electronic** transmission [*allowing the court*
22 *to observe and communicate with the defendant and the defendant to observe and communicate with the*
23 *court*] **as described in section 4 of this 2005 Act.**

24 “[*(b) Notwithstanding paragraph (a) of this subsection, appearance by simultaneous television*
25 *transmission shall not be permitted unless the facilities used enable the defendant to consult privately*
26 *with defense counsel during the proceedings.*]

27 “(11)(a) The victim has the right:

28 “(A) Upon request made within the time period prescribed in the notice required by ORS
29 147.417, to be notified by the district attorney of any hearing before the court that may result in the
30 revocation of the defendant’s probation;

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

32 “(C) If present, to reasonably express any views relevant to the issues before the court.

33 “(b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection
34 or failure of the victim to appear at the hearing does not affect the validity of the proceeding.

35 “**SECTION 12. An action taken by a court before the effective date of this 2005 Act based**
36 **upon an appearance made by simultaneous electronic transmission, as defined in section 4**
37 **of this 2005 Act, is validated except that:**

38 “(1) **Validation by this section applies only with respect to the issue of the authority to**
39 **allow the appearance by simultaneous electronic transmission.**

40 “(2) **This section does not validate an action:**

41 “(a) **If a valid objection was made at the time and the objection is preserved; or**

42 “(b) **For which there remains time to raise a valid objection on appeal or by post-**
43 **conviction relief and the objection is raised before the time expires.”.**

44 In line 23, delete “7” and insert “13”.