

Oregon Senate Bill 48 Overview

Local Public Safety Coordinating Council (LPSCC)

Multnomah County

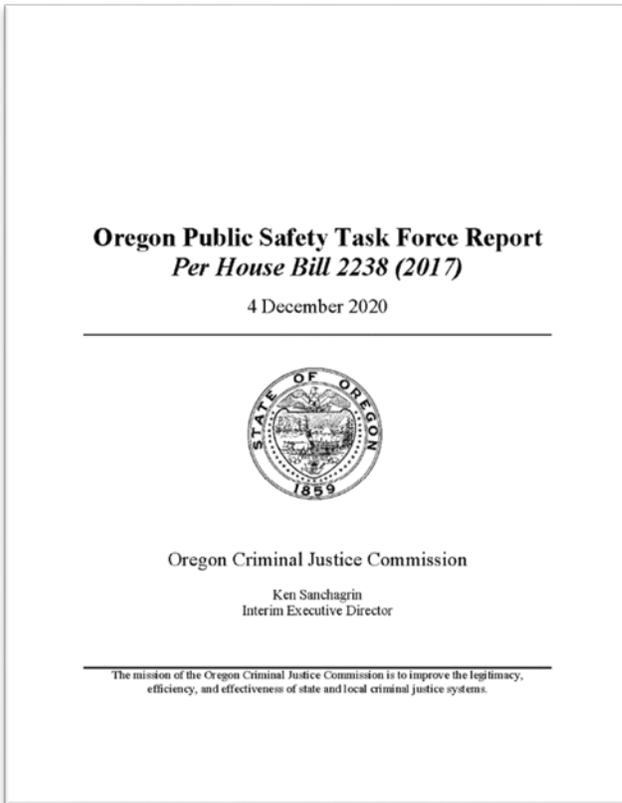
September 25, 2023

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Senate Bill 48

BACKGROUND: THE PUBLIC SAFETY TASK FORCE



- In 2017, the Legislature reconvened the Public Safety Task Force and asked it to study security release Oregon, focusing on:
 - Reducing racial/ethnic disparities in pretrial incarceration;
 - Repealing statutes authorizing security release in favor of courts, or another entity with delegated authority, making release decisions;
 - The utilization of pretrial risk assessments; and
 - Utilizing methods of reducing failure to appear at court hearings.
- In December of 2020, PSTF submitted its final report to the Legislature with recommendations for changes to Oregon’s pretrial framework.

Senate Bill 48-1

BACKGROUND: PSTF RECOMMENDATIONS

- **Racial/Ethnic Disparities in Pretrial Incarceration/Release:**
 - Support jail diversion programs for defendants with behavioral health, housing, and other needs;
 - Encourage increased use of cite in lieu laws for persons who do not pose a public safety risk;
 - Provide resources to jails to improve data collection re: race/ethnicity.
- **Pretrial Risk Assessment Tools:**
 - Fund the implementation of pretrial risk tools statewide; require local validation of risk tools;
 - Require increased transparency in the construction and use of risk tools.
- **Data Improvements:**
 - Support and fund improvements in pretrial data collection;
 - Standardize data definitions and collection requirements for jails and courts;
 - Require routine reports on pretrial metrics and program outcomes.

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BACKGROUND: PSTF RECOMMENDATIONS

- Security Release and Delegated Release Authority:
 - Reduce reliance on security release; if security release is maintained, repeal minimum presumptive security release in favor of case-by-case determinations;
 - Support the use of preventive detention rather than the use of high bail;
 - Employ more release assistance officers with delegated release authority; employ more staff to inform judges' release decisions
 - Clarify the role of release assistance staff who possess delegated release authority.
- Reduce Rates of Failure to Appear:
 - Utilize court reminders system-wide;
 - Improve FTA data tracking and analysis;
 - Consider revisions to court forms;
 - Increase the use of virtual court appearances.

Senate Bill 48-1

BACKGROUND: PSTF RECOMMENDATIONS

- **Victims Rights and Domestic Violence Safety:**
 - Allow for victim's voices to be heard by allowing additional time for gathering information, improved victim notification, by seeking their input into release decisions, and providing flexibility for providing testimony (in-person or remote).
 - Employ the use of DV specific release assessments;
 - Ensure that protective order hearings do not overlap with arraignments.
 - Provide all system actors with domestic violence training.
- **Professional Development, Best Practices, and Standards:**
 - Develop/employ trainings for staff on pretrial legal requirements and program practices;
 - Develop/employ community outreach to educate the public on pretrial processes and programs;
 - Create a pretrial services practice advisory council to guide program implementation and compliance;
 - Adopt statewide best practices and data collection standards for pretrial programs.

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BACKGROUND: BILL DEVELOPMENT

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

**A-Engrossed
Senate Bill 48**
Ordered by the Senate April 23
Including Senate Amendments dated April 23

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Criminal Justice Commission)

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.

[Directs Oregon Criminal Justice Commission to study pretrial release and to provide results of study to Legislative Assembly no later than December 31, 2021.]
[Sunset January 2, 2022.]
[Takes effect on 91st day following adjournment sine die.]

Directs presiding judge in each judicial district to enter standing pretrial release orders.
Directs Chief Justice of Supreme Court to establish guidelines for order.
Requires magistrate to make release decision at arraignment or first appearance except in specified circumstances. Requires magistrate to find that release on personal recognizance is unwarranted before considering conditional release, and requires magistrate to find that conditional release is unwarranted before considering security release.
Requires magistrate to set as security amount lowest possible amount necessary to reasonably ensure defendant's appearance. Requires magistrate to make specified findings before requiring defendant to deposit 10 percent of security amount for security release. Authorizes defendant not required to deposit 10 percent of security amount to execute promissory note for security amount. Provides that if defendant does not comply with conditions of release agreement, court may enter order declaring that promissory note is due or security deposit is forfeited for entire security amount or any other amount court deems appropriate.
Repeals minimum bail amounts for persons charged with Ballot Measure 11 (1994) crimes and certain methamphetamine offenses.

A BILL FOR AN ACT

1 Relating to pretrial release; creating new provisions; amending ORS 135.240, 135.245, 135.265,
2 135.270, 135.280 and 137.050; and repealing ORS 135.242.
3
4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** Section 2 of this 2021 Act is added to and made a part of ORS 135.230 to
6 135.290.

7 **SECTION 2.** (1) The presiding judge of a judicial district shall enter a standing pretrial
8 release order specifying to the sheriff of the county, or to the entity supervising the local
9 correctional facility responsible for pretrial incarceration within the judicial district, those
10 persons and offenses:
11 (a) Subject to release on recognizance;
12 (b) Subject to release with special conditions as specified in the order; and
13 (c) That are not eligible for release until arraignment.
14 (2) The Chief Justice of the Supreme Court, with input from a criminal justice advisory
15 committee appointed by the Chief Justice, shall establish release guidelines for the pretrial
16 release orders described in this section.

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.

LC 48

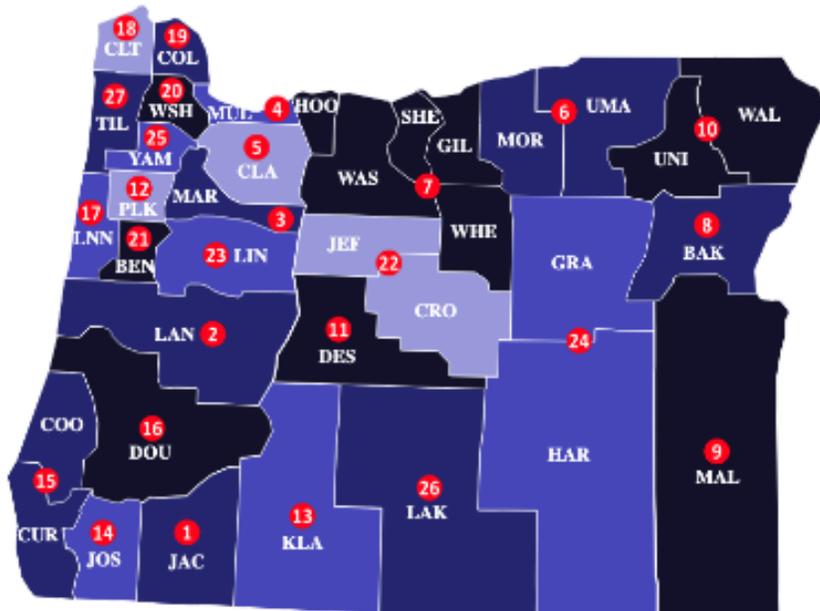
- In early 2021, staff from CJC, the OJD, and the Governor’s Office collaborated on initial substantive amendment ideas for SB 48.
- In March 2021, a public hearing was held in Senate Judiciary and a workgroup was convened. In April, SB 48 was referred to Senate Rules.
- The SB 48 Workgroup consisted of approximately 20 individuals, including representatives from:

Oregon District Attorneys Association	Oregon Criminal Defense Lawyers Association
American Civil Liberties Union	Oregon Judicial Department
Oregon Department of Justice	Oregon Criminal Justice Commission
Oregon Law Center	Clackamas Women’s Services
Oregon State Sheriffs Association	Governor’s Office

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OVERVIEW

Goal 1: Provide statewide guidance as to the types of defendants who should be released with or without bail.



Source: Oregon Public Safety Task Force Report (2020)

- The Chief Justice, with input from the CJAC, creates state-level guidance for pretrial release orders.
- Locally, Presiding Judges adopt standing pretrial release orders specifying which persons or offenses:
 - Are subject to recognizance release,
 - Are subject to conditional release, and
 - Those who should be held until arraignment.

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OVERVIEW

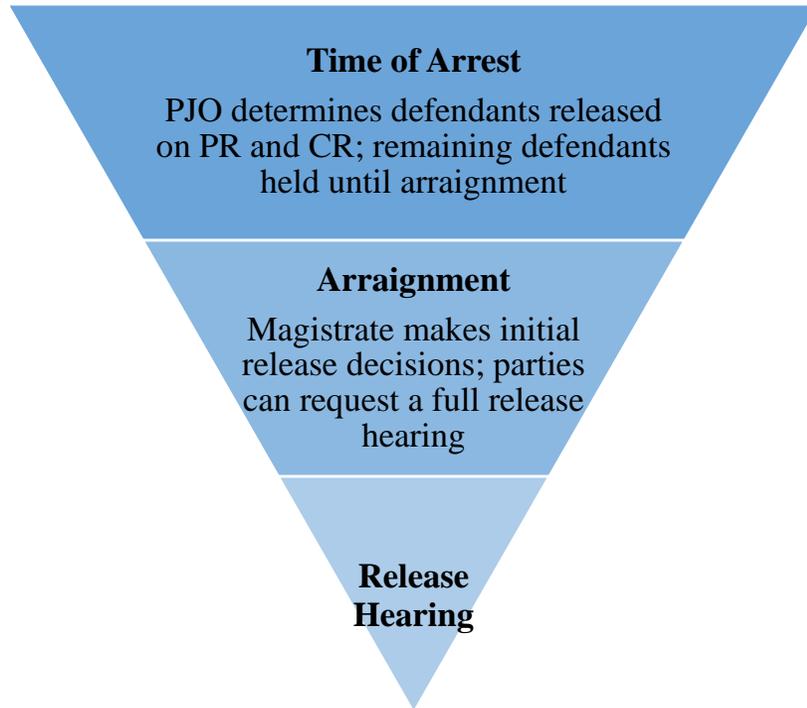
Goal 2: Eliminate statutory pretrial security release (“bail”) amounts in favor of case-by-case analysis by judges.

- ORS 135.240 required \$50,000 minimum security amounts for Measure 11 defendants;
- ORS 135.242 required \$250,000 minimum security amount for certain methamphetamine offenses if the prosecutor could demonstrate that the defendant will fail to appear, commit a new crime, or posed a threat to the public.

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OVERVIEW

Goal 3: Clarify existing statutes to emphasize the preference for non-monetary release while also maintaining current statutory release tools.



- Emphasize that only after finding a less restrictive release type of release is unwarranted should the judge move on to the next release type.
- Release decisions made at first appearance unless there is good cause for delay.

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OVERVIEW

Goal 4: Balance the rights of the defendant and presumption of pretrial release with the risk of FTA and community and victim safety.

- SB 48 included provisions for victim notification and input at first appearance and arraignment:
 - Release assistance officers required to contact victims of person crimes; when contact is made, the RAO:
 - Must obtain information regarding the victim's position on release, including whether special conditions should be imposed. This information shall be included in the report submitted to the court and considered by an RAO if making a release decision.
 - If the information is available, inform the victim as to the location, date, and time of arraignment or first appearance.
 - Requires the district attorney to make reasonable efforts to inform the victim of the location, date, and time of arraignment or first appearance and to determine if the victim is present at the proceeding;
 - Allows victims to reasonably express their views relevant to the issues at hand at arraignment or first appearance.

Chief Justice Order 22-010

Development

Criminal Justice Advisory Committee (CJAC) – Pretrial Subcommittee

- Nine meetings between May and December 2021
- Subcommittee membership was representative of the members on the full Committee
- Developed workplan that identified issues for discussion and timelines for recommendations
- Subcommittee considered and drafted recommendations and provided them to full committee
- The full committee approved the recommendations and sent them to the Chief Justice in December 2021



Chief Justice Order 22-010/23-019

Contents

Findings

- CJO is based on Senate Bill 48 (2021), effective July 1, 2022
- Circuit courts will no longer use security schedules that apply immediately upon a defendant's arrest.
- CJO establishes the release guidelines for Presiding Judge pretrial release orders (PROs), with input from a CJAC and as required by ORS 135.233(2).

Order

- Release Guidelines are established by Attachment A to the CJO.
- Directs each Presiding Judge to enter a standing pretrial release order that complies with the guidelines set out in Attachment A. An order entered pursuant to the CJO must include an operative date of July 1, 2022, or July 1, 2022, in CJO 23-019.



Chief Justice Order 23-019

Attachment A: CJ release guidelines governing pretrial release orders

- CJO 23-019 superseded CJO 22-010 in May 2023.
- PROs must direct the entity supervising the local correctional facility to determine whether a defendant will be released on recognizance, released on conditions, or held for arraignment in accordance with Guidelines 1, 2, and 3.
- PROs provide release direction and do not have the effect of delegating judicial release decision-making authority.
- 2-step decision-making process:
 1. Identify offense category
 2. Identify any “overriding circumstances,” if applicable.



Chief Justice Order 23-019

Overriding circumstances

Step 1:

- A PRO must specify release or hold until arraignment based on offense as specified in the CJO Guidelines 1-3.

Step 2:

- Pursuant to CJO Guideline 4, a PRO *may* identify person-specific overriding circumstances that, if present, will require a sheriff or entity supervising the local correctional facility to either
 - (1) release the defendant on conditional release; or
 - (2) hold the defendant for arraignment.
- If a PRO contains overriding circumstances, the order must specify objective, nondiscretionary, person-specific criteria that constitute overriding circumstances.



Presiding Judge Release Orders

- Each judicial district has a PRO that first took effect on July 1, 2022, and replaced the judicial district's prior security schedule. The PROs were updated on July 1, 2023.
- PROs govern the time between arrest and arraignment.
- For defendants who are held for arraignment, a judge must make a release decision at arraignment or find good cause to postpone the decision for up to a maximum of five days in accordance with the pretrial release statutes.



Release Decision Framework

Statutory Scheme

- Changes to ORS 135.233 to ORS 135.290
- Release Assistance Officers ORS 135.235
- A court must release a defendant on personal recognizance, conditional release, or security release. If the defendant is charged with murder, treason or a violent felony and the court makes the required findings, the court shall deny release. See ORS 135.240(2); ORS 135.240(4).

Constitutional Provisions

- Article I, sections 14, 16, and 43, of the Oregon Constitution
- Eighth and Fourteenth Amendments to the United States Constitution



Questions?

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