

Legal Frameworks Governing Pretrial Release and Detention: Tracking Developments in Oregon

Introduction

In 1972, the Oregon Criminal Law Revision Commission (CLRC), created by the Oregon Legislature in late 1960s, issued a Report calling for reform of Oregon’s existing bail system. The Report recommended that the word “bail” and existing cash bail system be “retired from active use in Oregon’s criminal jurisprudence” and replaced by a “security release” system. The “security release” system eliminates reliance upon private bail bondsmen and instead institutes a process in which the defendant posts financial security with the court clerk equivalent to 10% of the amount set by the court as security.¹

The 1972 Report recommended three other key modifications to Oregon’s statutory bail laws: (1) Use of three kinds of release available to judges: recognizance release, conditional release, and security release to be deposited with the courts; (2) emphasis that release on a defendant’s own recognizance should be presumptive; and (3) creation of release assistance officer positions to which courts may delegate release decision-making authority. The Report also recommended that the release decision “impose the least onerous conditions reasonably likely to assure the person’s later appearance.”²

In 1973, as a part of a comprehensive revision of its Code of Criminal Procedure, the Oregon legislature adopted the recommendations of the CLRC; repealed the pre-existing statutory bail scheme; eliminated reliance upon private bail bondsmen; enacted in its place a “security release” system that provided for recognizance release, conditional release, or security release; included provisions that an individual in custody “shall be released upon his personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted” and that the release decision “impose the least onerous conditions reasonably likely to assure the person’s later appearance.”³ The 1973 legislation also authorized Presiding Judges to appoint release assistance officers (RAOs) who may make recommendations to the court regarding the form of release, or, if they have been delegated release authority by the Presiding Judge, make the release decision.⁴

In 2017, recognizing that its use of pre-trial security release schedules too often results in the pretrial detention of persons based on wealth rather than risks to public safety or of failure to appear, the legislature charged its Public Safety Task Force with studying the current operation of the security release system. With representation from the legislature, judiciary, prosecution, defense, community corrections, and law enforcement, and staffed by the Oregon Criminal Justice Commission, the Task Force studied Oregon’s security release system with a focus on reducing economic, and racial and ethnic, disparities in pretrial incarceration, as well as the use of pretrial risk assessment tools and other related topics.

In its final Report in December 2020 the Task Force recommended that Oregon:

- reduce reliance on security release,
- repeal presumptive minimum security release amounts,
- employ preventive detention law rather than use of high security amounts to achieve detention of bailable defendants,
- employ more pretrial release staff, including RAOs with delegated discretionary judicial authority to make release decisions in appropriate cases, and
- fund implementation of a limited number of pretrial risk assessment tools and require and support local validation of those tools.⁵

Senate Bill 48

The Oregon Criminal Justice Commission introduced Senate Bill (SB) 48 in the Oregon Legislative Assembly in 2021. It was enacted in June 2021 and went into effect on July 1, 2022 “to reduce reliance on security release and provide statewide guidance for local pretrial release orders.”⁶ The Act eliminated statutory mandatory minimum security amounts and the right to release through use of pretrial security schedules. With input from a Criminal Justice Advisory Committee (CJAC) appointed by the Chief Justice of the Supreme Court,⁷ SB 48 directed the Chief Justice to establish statewide pretrial Release Guidelines to:

- “(a) Provide consistent release decision-making structure across the state;
- (b) Reduce reliance on the use of security;
- (c) Include provisions for victim notification and input; and
- (d) Balance the rights of the defendant and presumption of pretrial release against community and victim safety and the risk of failure to appear.”⁸

Presiding Judges in each of Oregon’s 27 judicial districts encompassing the 36 Oregon counties are in turn directed to enter Standing Pretrial Release Orders consistent with the Chief Justice’s Guidelines. The local Pretrial Release Orders specify for the entities responsible for pretrial incarceration within the judicial district those persons and offenses who are: (a) subject to release on recognizance; (b) subject to release with special conditions; or (c) not eligible for release until arraignment.⁹

The goals of SB 48 include, to:

- re-establish pretrial decision-making authority in the judiciary;
- create more consistent, fair, and equitable pretrial practices across Oregon;
- promote public safety and increase the likelihood of appearance;
- take a risk-based approach to ensuring appearance and public and victim safety rather than rely on financial ability to post security;
- support individually determined and prompt release decisions based on the circumstances of the specific person;
- reduce the negative social and other impacts of unnecessary detention on the accused, family and community;
- enhance victim rights, safety, notice, and input;
- maximize efficiency and best use of resources;
- protect constitutional rights regarding pretrial release;
- and ensure that release conditions are available to all defendants without regard to ability to pay.¹⁰

In the words of one state legislator, “SB 48 now bases the decision to release a suspect before their trial date on their danger level to society. It completely removes the previous bail system, which based a suspect’s pretrial release on money. That means that some very dangerous people were allowed out without any kind of conditions simply because they were able to make bail. That also meant that some people who weren’t dangerous but were poor or didn’t have family connections, stayed in jail. Sometimes for a very long time.”¹¹

Below, we first set forth the relevant provisions of Oregon’s State Constitution regarding pretrial detention, and then set forth and describe the Chief Justice’s Order and relevant Oregon statutory provisions that define the Pretrial Release and Detention Process. We next describe the continued use of Security Release, consideration of Risk of Failure to Appear, and Use of Pretrial Risk Assessment tools. We close with comments on the Early Implementation of SB 48 during the first few months that Oregon’s new pretrial detention framework has been in place.

The Oregon Constitution on Pretrial Detention

“Article 1, Section 43: Rights of Victim and Public to Protection From Accused Person During Criminal Proceedings; Denial of Pretrial Release.

(1) To ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal proceedings, the following rights are hereby granted to victims in all prosecutions for crimes: ...

(b) The right to have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim and the public, as well as the likelihood that the criminal defendant will appear for trial. Murder, aggravated murder and treason shall not be bailable when the proof is evident or the presumption strong that the person is guilty. Other violent felonies shall not be bailable when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release. ...

(2) This section applies to proceedings pending or commenced on or after the effective date of this section. Nothing in this section abridges any right of the criminal defendant guaranteed by the Constitution of the United States, including the rights to be represented by counsel, have counsel appointed if indigent, testify, present witnesses, cross-examine witnesses or present information at the release hearing.

(3) ...

(b) "Violent felony" means a felony in which there was actual or threatened serious physical injury to a victim or a felony sexual offense."¹²

The Pretrial Detention and Release Process

Oregon’s statutory provisions regarding Pretrial Release are found at Oregon Revised Statutes (ORS) Sections 135.230-135.295.¹³ The most pertinent provisions are set forth and discussed below.

Release Guidelines

ORS Section 135.233

“(1) The presiding judge of a judicial district shall enter a standing pretrial release order specifying to the sheriff of the county, or to the entity supervising the local correctional facility responsible for pretrial incarceration within the judicial district, those persons and offenses:

- (a) Subject to release on recognizance;
- (b) Subject to release with special conditions as specified in the order; and
- (c) That are not eligible for release until arraignment.

(2) The Chief Justice of the Supreme Court, with input from a criminal justice advisory committee appointed by the Chief Justice, shall establish release guidelines for the pretrial release orders described in this section to

- (a) Provide consistent release decision-making structure across the state;
- (b) Reduce reliance on the use of security;
- (c) Include provisions for victim notification and input; and
- (d) Balance the rights of the defendant and presumption of pretrial release against community and victim safety and the risk of failure to appear.”

The Oregon Chief Justice entered an Order Establishing Release Guidelines for Local Presiding Judge Pretrial Release Orders (PROs) in June 2022.¹⁴

The Chief Justice’s Order places every Oregon felony and misdemeanor offense into one of three release guideline categories. The State Court Administrator is directed to maintain the Release Guidelines Categorization List of all offenses and their release category.¹⁵ Guideline 1 consists of most non-person misdemeanor and Class C non-person felonies. Guideline 2 consists of most person misdemeanor, Class B, and Class C person felonies; Guideline 3 consists of most Class A felonies, sex crimes, and domestic violence cases.

Guideline 1 cases are presumptively released on general conditions; Guideline 2 cases are presumptively released on court-ordered conditions; and Guideline 3 cases are presumptively held for arraignment.

Guideline 4 authorizes the corrections facility, or judicial pre-trial release assistance officer, to consider objective, person-specific (including risk assessment score) and nondiscretionary “overriding” circumstances to authorize either conditional release or hold for arraignment. The first three offense Guidelines are established by the Chief Justice Order and are not subject to local variation. Guideline 4 provides local flexibility.

The Chief Justice’s Order requires that any conditions of release imposed be available within the county, be the least onerous condition necessary to ensure both public and victim safety and that the defendant returns to court as required, and not contingent upon the defendant’s ability to pay.

Release Assistance Officers

As noted earlier, although the Legislature had authorized the hiring of RAOs in 1973, many of Oregon’s 27 judicial districts lost their RAOs during budget cuts between 2000 and 2017, and therefore few had RAOs to whom they could delegate release authority. Recent legislation authorized the hiring of 40 additional RAOs and the state judiciary is requesting an additional 40 RAOs in its 2023 budget request. In one county RAOs are available 16 hours/day, seven days/week.

ORS section 135.235

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

(2) A release assistance officer shall, except when impracticable, interview every person detained pursuant to law and charged with an offense. If the person is charged with a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission, or with contempt of court for violating a court order protecting or prohibiting contact with another person, the release assistance officer shall make reasonable efforts to contact the victim prior to submitting a report or making a release decision under subsection (3) of this section. If the release assistance officer is able to contact the victim: (a) Information regarding the victim’s position on release, including whether special release conditions should be imposed, must be included in the report described in subsection (3) of this section, and considered by the release assistance officer if the officer makes the release decision; and (b) If the information is available, the release assistance officer shall inform the victim of the location, date and time of the defendant’s arraignment or other first appearance.¹⁶

(3) The release assistance officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding judge for the judicial district, make the release decision.”

Pretrial Release and Detention

“ORS section 135.240 ...

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

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

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

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

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

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

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

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

(d) The defendant may be represented by counsel and may present evidence on any relevant issue. However, the hearing may not be used for purposes of discovery.

(e) If the court determines that the defendant is eligible for release in accordance with this subsection, the court shall set security or other appropriate conditions of release.

(f) When a defendant who has been released violates a condition of release and the violation:

(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into custody and shall order the defendant held pending trial without release.

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

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

ORS Section 135.245

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

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

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

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

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

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

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

(a) Release criteria show to the satisfaction of the magistrate that such a release is unwarranted;
or

(b) Subsection (6) of this section applies to the person.

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

(5) At the release hearing:

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

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

(B) To appear personally at the hearing; and

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

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

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

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

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

Use of Security Release

One of the key provisions of SB 48 is the elimination of the use of pre-arraignment security release. If the defendant remains in custody at arraignment, the court now may consider security release only if the court finds that neither recognizance release nor release on non-monetary conditions is warranted.¹⁷

The court is directed to set a security amount that will reasonably assure the defendant's appearance. There is no legal authority in Oregon prohibiting setting the amount of security at a level the defendant is financially unable to pay.¹⁸

The elimination of use of pre-arraignment security schedules does not prohibit judges from setting security at or after arraignment if the court finds that neither recognizance release nor release on non-monetary conditions is warranted, but it has resulted in more individualized consideration of risk by the judge and increased use of Oregon's preventive detention statute. Shortages in the availability of appointed defense counsel, however, sometimes result in delay in the conduct of preventive detention hearings.

Risk of Failure to Appear

Although SB 48 does not explicitly authorize use of preventive detention to address risk of flight or failure to appear, as noted above Article 1, section 43 (1) (b) of the Oregon Constitution includes "the right to have decisions by the court regarding the pretrial release of a criminal defendant based upon the principle of reasonable protection of the victim and the public, as well as the likelihood that the criminal defendant will appear for trial."

ORS section 135.250 requires that the conditions of a defendant's release include 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; and (c) not depart this state without leave of the court...."

In addition, Guideline 2 of the Chief Justice's June 7, 2022 Order Establishing Release Guidelines requires that any release condition imposed on the defendant "be the least onerous condition necessary to ensure both public and victim safety, and that the defendant returns to court as required."

Use of Pretrial Risk Assessment

There is apparently no specific provision in Oregon statutes regarding the use of pre-trial risk assessment instruments. As noted earlier, however, the Public Safety Task Force 2020 Report to the Oregon Legislature recommended that Oregon fund implementation of a limited number of pretrial risk assessment tools and require and support local validation of those tools.

Guideline 4 of the Chief Justice’s June 7, 2022 Order Establishing Release Guidelines provides that in specifying person-specific criteria that constitute overriding circumstances that require the correctional authority to either conditionally release the defendant or hold the defendant for arraignment, the Pretrial Release Order (PRO) may include criteria that include a score from a risk assessment tool adopted in a manner consistent with the Guidelines.¹⁹ Guideline 4 also provides that each judicial district “should identify and consider using a risk assessment tool to assist with release determinations,” and provides that the PRO “may direct the entity supervising the local correctional facility as to the appropriate use of the risk assessment score.” A judicial district may use risk assessment tools “to inform decisions about which type of release is appropriate for a defendant, or in setting the conditions of release.” If a judicial district uses a risk assessment tool, the Presiding Judge “shall review the selected tool to ensure that it is reliable and unbiased, and the selected tool shall be validated at least every five years or following significant changes to the population or laws and policies related to arrest/citation, detention, and sentencing.”

Guideline 2 of the Chief Justice’s Order authorizes local Presiding Judges to specify in a local PRO whether criteria resulting from a risk assessment that is reliable, unbiased, and validated consistent with the Guidelines may be used by the local correctional authority in determining appropriate pretrial release conditions and, if so, to direct the sheriff or entity supervising the local correctional authority as to how and when certain release conditions must be imposed.²⁰

Oregon court officials advised that at this early stage of implementation about one third of Oregon’s 36 counties are currently using one of a variety of pretrial risk assessment tools. Most use a modified Virginia Pretrial Risk Assessment Instrument (VPRAI); Multnomah County will soon use the Arnold Foundation Public Safety Assessment (PSA); and a couple of counties utilize the Oregon Public Safety Checklist, which is a tool designed to assess risk of recidivism that was developed by the Oregon Department of Corrections and has been validated for pretrial risk in Yamhill County. Researchers at Portland State University have conducted a feasibility study regarding development of a new Oregon risk assessment tool called the Oregon Pretrial Risk Assessment Instrument (ORPRAI), which is now under construction using Oregon data. The goal is to make this new tool available for use across the state and validate it in each jurisdiction that chooses to use it.

Implementation and Early Results

The principal effect of the changes in Oregon is that pre-arraignment release decisions are made pursuant to prescribed, written, risk-based Judicial Guidelines rather than dependent upon a defendant’s financial ability to post financial security in a prescribed amount upon arrest.

Early results of the rollout of SB 48 are mixed. Oregon is only halfway through the initial rollout of SB 48 and, as noted earlier, the judiciary’s 2023 budget request for 40 additional RAOs is pending. Although there is no systematic evaluation data available at this early juncture, anecdotal evidence indicates reductions in pre-arraignment custody rates in a few counties but limited impact or higher rates in other, especially rural, counties. Variable pre-arraignment release rates are attributed in part to variations in availability of pre-trial supervision and monitoring resources and release assistance officers; in implementation of the “overriding circumstances” criteria under Guideline 4; and the varying on-going impacts of COVID-19 on local jail populations.

Despite “reasonable efforts” by RAOs and District attorneys to contact the victim to gather the victim’s input on release, and to provide notification of arraignment time and place, in accord with the ORS Sections 135.235 (2) and 135.245 (2)(b), actual contact and notification is often a challenge due to the short period of time between arrest and arraignment, especially for those defendants detained until arraignment.²¹

The Oregon Judicial Department (OJD) has acquired a new statewide pretrial case management system to manage individuals subject to pretrial release agreements and to collect consistent pretrial release program data. The new software is scheduled to be installed in all 36 Oregon circuit courts by September 2023 and will be integrated with the OJD’s statewide case management system. The data collected will “measure what matters” to help guide the development and implementation of court based pretrial programs across Oregon in adherence to the goals and objectives of SB 48. The resulting data will likely also be used by the legislature to measure the effectiveness of the SB 48 reforms and help identify areas that warrant further legislation and pretrial program funding.

The legislative process leading to the passage of SB 48, summarized above in the early sections of this Brief, was thorough, and SB 48 passed the Oregon Legislature with the support of more than two thirds of the members of both houses.²² The bill also enjoyed broad support from the judiciary²³ and OJD has worked effectively to inform the media and public regarding the new law.²⁴ Collaboration among judges and judicial leaders, and with other criminal justice stakeholders, has been high. The continued leadership of trial court presiding judges is viewed as critical.

About this Brief

This brief was created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. For more information, see www.safetyandjusticechallenge.org. The brief was authored by Judge Roger K. Warren (ret.) in collaboration with Dr. Jennifer K. Elek as part of the National Center for State Courts’ work on the Safety and Justice Challenge. The authors wish to express their appreciation to Oregon Senior Judge John L. Collins and to David Factor, the Oregon Judicial Department’s Criminal Program Manager, for their invaluable assistance in preparing this Brief. Any points of view or opinions expressed in this brief do not necessarily represent the official position of the Oregon Judicial Department, MacArthur Foundation, or National Center for State Courts.

Endnotes

¹ See Appendix A2 on pp.46-49 in Oregon Criminal Justice Commission (December 4, 2020). *Oregon Public Safety Task Force Report*. Available at <https://oaccd.net/wp-content/uploads/2021/09/PSTF-Report-Final-Report.pdf>.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*; see Recommendations 5.5 and 6.6 at pp. 31-32 and 37. Judge John Collins, Circuit Court Judge (25th Judicial District, Yamhill County) and Judge Debra Vogt, Circuit Court Judge (2nd Judicial District, Lane County) represented the Oregon Judicial Department on the Task Force.

⁶ See Oregon State Legislature (2021 Regular Session). *SB 48 Enrolled*. Available at <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB48>.

⁷ *Ibid.*, see Section 2 (2). The CJAC recommendations were developed by its Pretrial Subcommittee consisting of representatives from courts, district attorneys and defense attorneys, appellate attorneys, community-based service providers, legal services providers for crime victims, law enforcement, community corrections, state and local government, and the Oregon State Bar. Chief Justice Order 22-010 Order Establishing Release Guidelines Governing Presiding Judge Standing Pretrial Release Orders June 7, 2022.

⁸ The goals of SB 48 are consistent with the Oregon Judicial Department's 2020-2022 Strategic Campaign. The Campaign's Initiative 1.6 identifies the Department's commitment to ensure Oregon has an effective and consistent statewide pretrial release system. https://www.courts.oregon.gov/about/Documents/2020-21-Strategic-Campaign_WebCopy.pdf.

The Chief Justice and CJAC are also responsible for addressing release procedures not fully addressed in the legislation including pre-adjudication release procedures on bench warrants (e.g., FTA warrants, contempt warrants), warrants based on indictment, complaint and affidavit for arrest, or probation violations.)

⁹ See SB 48, Section 2 (1) in n.6, *supra*.

¹⁰ See, *Oregon Public Safety Task Force Report*, n.1, *supra*; Pretrial Release-Oregon Senate Bill 48, available at <https://www.courts.oregon.gov/programs/pretrial/Pages/default.aspx>; SB 48/Pretrial Release FAQ, available at [Pretrial Reform - Why.pdf](https://www.courts.oregon.gov/programs/pretrial/Pages/default.aspx).

¹¹ Gemei, C. (September 26th, 2022). *Ripple Effect: How Senate Bill 48 changes Oregon's pretrial release system*. Available at <https://ktvl.com/news/ripple-effect/ripple-effect-senate-bill-48s-major-changes-to-oregons-pretrial-release-system-pam-marsh-bail-bond-felony-misdemeanor-recognizance-conditional-judge-failuretoappear-court-republican-democrat-jackson-county-jail>.

¹² See Oregon State Legislature (2021). *Constitution of Oregon, 2021 edition*. Available at https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx.

¹³ *Ibid.*; see Chapter 135 on Arraignment and Pretrial Provisions, also available at https://www.oregonlegislature.gov/bills_laws/ors/ors135.html.

¹⁴ See Oregon Judicial Department (June 2022). *Chief Justice Order No. 22-010, Order Establishing Release Guidelines Governing Presiding Judge Standing Pretrial Release Orders*. Available at https://www.courts.oregon.gov/rules/Documents/CJO_2022-010.pdf.

¹⁵ The Release Guidelines Categorization List is publicly available on the Oregon Judicial Department's website at https://www.courts.oregon.gov/programs/pretrial/Documents/ReleaseGuidelinesCategorizationList_FeloniesMisdemeanors.pdf.

¹⁶ If the RAO is unable to contact the victim, the RAO puts a note in the file to that effect.

¹⁷ ORS section 135.265

¹⁸ *Delany v. Shobe*, 218 Or 626, 629, 346 P2d 126 (1959). Contra, e.g., the California Supreme Court opinion *In re Humphrey*, 11 Cal.5th 135 (2021) (Conditioning pretrial release from custody solely on whether an arrestee can afford bail is an unconstitutional violation of the arrestee’s state and federal substantive due process rights to pretrial liberty.) Guideline 2 of the Chief Justice’s Release Guidelines contains a provision that “courts must strive to ensure that release conditions are available to all defendants and not contingent upon a defendant’s ability to pay.” This provision is interpreted by Oregon authorities to apply solely to explicit pre-arraignment conditions of release set by the releasing authority not to the court’s use of security release to detain an individual.

¹⁹ See n.13, *supra*.

²⁰ See n.13, *supra*.

²¹ The Chief Justice’s Release Guidelines do not include provisions regarding victim notification and input, as prescribed by ORS Section 135.233 (2)(c); this may be attributable to the same challenge.

²² See n.6, *supra*.

²³ See, e.g., Collins, J. (July 1, 2022). Collins: Pre-trial justice for all the norm in our nation. Yamhill Valley News Register. Available at <https://newsregister.com/article?articleTitle=collins-pre-trial-justice-for-all-the-norm-in-our-nation--1656706337--43638-->

²⁴ Oregon Judicial Branch (n.d.). *Pretrial Programs*. Available at <https://www.courts.oregon.gov/programs/pretrial/Pages/default.aspx>. There has been at least some law enforcement resistance. See Klamath County Sheriff’s Office (June 18, 2022). Press release: *KCSO advises community regarding SB48; criminal releases*. Available at <https://www.klamathfallsnews.org/news/kcso-advises-community-regarding-sb48-criminal-releases>.