



Public Safety Task Force

Pretrial Recommendations per HB 2238 (2017)

Ken Sanchagrin
Interim Executive Director

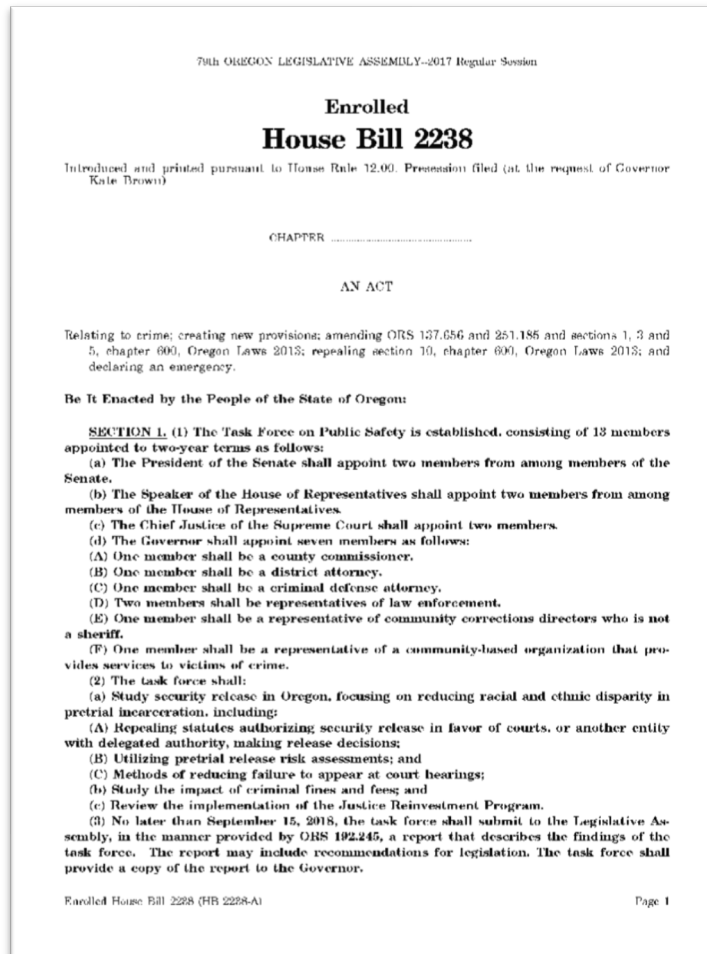
Bridget Budbill
Legislative Director
Office of Public Defense Services
10 December 2020

Public Safety Task Force

BACKGROUND AND CURRENT OPERATIONS

HB 2238 (2017)

RECONVENING THE PUBLIC SAFETY TASK FORCE (PSTF)



The Oregon Legislature tasked the PSTF with studying:

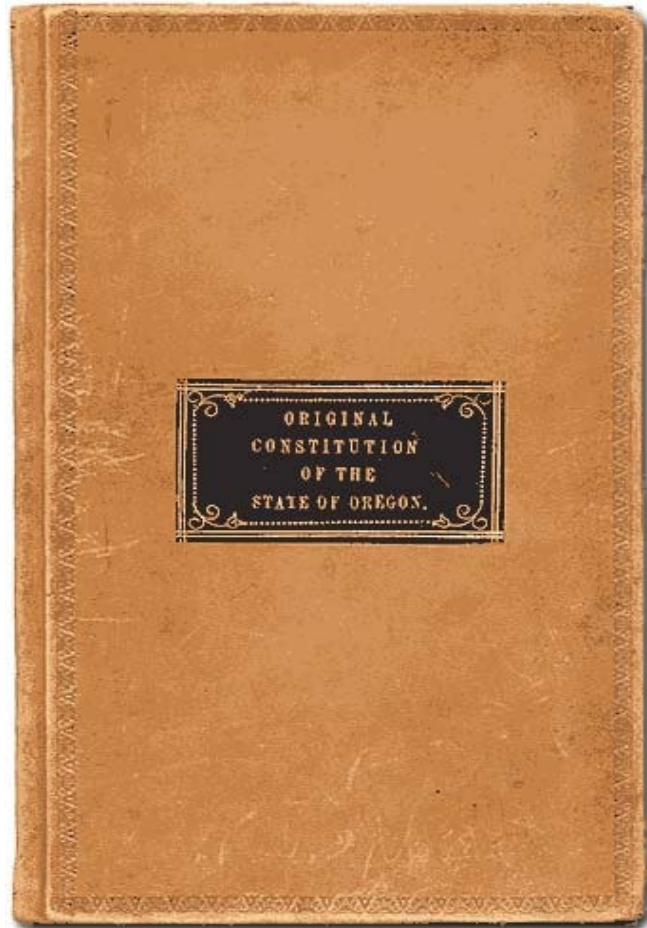
- Security release in Oregon, focusing on reducing racial and ethnic disparity in pretrial incarceration, including:
 - Repealing statutes authorizing security release in favor of courts, or another entity with delegated authority, making release decisions;
 - Using pretrial risk assessments; and
 - Methods of reducing failure to appear at court hearings.

Preliminary report (2018) pretrial highlights:

- Obtaining data from which to study pretrial incarceration is a top priority
- PSTF added focus on reducing economic disparity in pretrial incarceration

Oregon Pretrial

OREGON BAIL LEGAL FRAMEWORK



Oregon bail brief timeline:

- **1859** – Constitution takes effect upon Oregon statehood
 - Art. I, §14 (offenses bailable except murder/treason if proof of guilt evident or presumption strong) and Art. I, §16 (excessive bail)
- **1973** – “First-wave” reforms
 - Bondsman industry effectively eliminated in favor of security release deposited with courts; created delegated release authority
 - Redrafted criminal code; created ORS 135 pretrial release provisions
- **1999** – Victim’s rights constitutional amendments –
 - Art. I, § 43: additional category of nonbailable offenses (violent felonies) if clear/convincing evidentiary threshold met
 - Art. I, § 42: provides victims right to be heard at pretrial release hearings

Oregon Pretrial

RELEASE FORMS

■ **Statutory:**

- Recognizance release – ORS 135.230(6) – release based on promise to return to court at all required events
- Conditional release – ORS 135.230(2) – non-security release imposing regulations on activities/associations of defendants
- Security release – ORS 135.230(12) – release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds, or real property
 - Judges may set security release amounts, and defendants (or persons on their behalf) may deposit 10 percent to obtain release
 - Some offenses carry statutory minimum security release amounts that a judge may depart from under certain circumstances
 - Courts retain 15% of deposited security release – retained security release is used to pay for, including but not limited to, outstanding restitution, child support, unpaid fines/fees, etc.

■ **Constitutional:**

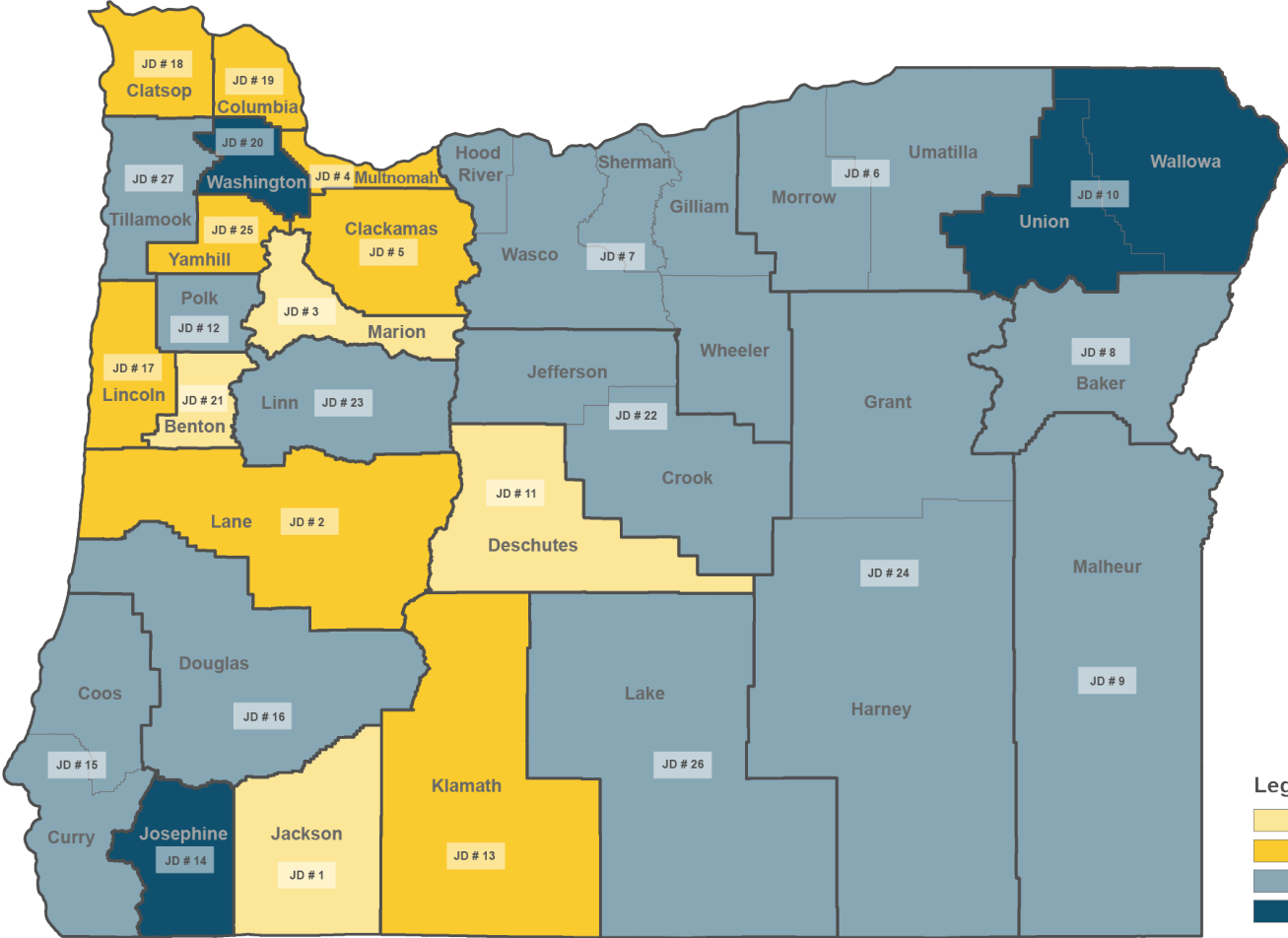
- Sufficient sureties – Art. I, § 14, of the Oregon Constitution – persons (sureties) may put forth something on a defendant's behalf to ensure the court that the sureties will secure the defendant's appearance in court

Oregon Pretrial

OREGON'S CURRENT PRETRIAL OPERATIONS

- Release assistance officers employed by Oregon's circuit courts
 - Employees of Oregon Judicial Department
 - Judges may delegate release decision-making authority to these staff, when they deem appropriate
 - Officers provide information to court and may provide pretrial monitoring
- County sheriff or departments of community justice pretrial release programs
 - Employees of counties
 - Community corrections staff provide information to court and may provide pretrial monitoring/supervision
 - Many county-led programs funded in-part or in-full by the Justice Reinvestment Program
- “Hybrid”
 - Judicial release assistance officers work in a shared office space with jail command staff through agreement
- No dedicated pretrial release staff

Oregon Pretrial Operations by County and Judicial District



- Legend**
- Developing Pretrial Program
 - Established Pretrial Program
 - No Pretrial Program or Release Assistance Officers
 - Release Assistance Officers

PSTF Report
Oregon Pretrial Operations

Public Safety Task Force

REPORT AND RECOMMENDATIONS

Public Safety Task Force

BACKGROUND

- The PSTF established three subcommittees:
 - The **Statutory Subcommittee**, to examine the legal framework of Oregon's pretrial processes along with the practical and legal consequences of proposed changes.
 - The **Data & Evaluation Subcommittee**, which examined existing pretrial data, data gaps, and existing pretrial programs.
 - The **Domestic Violence & Victim's Right's Subcommittee**, which considered the procedural and safety concerns of victims during the pretrial period.
- **Preliminary Report (2018):**
 - Identified significant data deficiencies and other hurdles faced by the Task Force.
 - Added economic disparity as a topic of inquiry.
- **Final Report (December 2020)**

Recommendations

RACIAL AND ECONOMIC DISPARITY IN PRETRIAL RELEASE

- Support robust jail diversion programs for defendants with behavioral health, housing, and other related concerns in a manner that does not impact public safety.
- Encourage the increased use of preexisting “cite in lieu of custody” laws for persons who do not pose public safety risks.
- Provide resources and require jails and courts to improve data collection regarding race and ethnicity.

Recommendations

SECURITY RELEASE/CASH BAIL 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 high bail.
- Employ more release assistance officers with delegated release authority.
- Employ more pretrial release staff to inform judges' release decisions.
- Clarify the role of release assistance staff who have delegated release authority.

Recommendations

PRETRIAL RISK ASSESSMENT TOOLS

- Fund the implementation of a limited number of pretrial risk tools statewide.
- Require local validation of pretrial risk tools; provide funding for validation.
- Require public-facing transparency in the use of pretrial risk tools.

Recommendations

REDUCE FAILURE TO APPEAR

- Utilize court reminders system-wide (NOTE: OJD will begin sending text message hearing reminders in 2021).
- Improve FTA data tracking and analysis.
- Consider revisions to court forms.
- Increase the use of virtual court appearances.

Recommendations

DATA IMPROVEMENT

- Support and fund pretrial data improvements.
- Standardize data definitions and collection requirements for jails and courts.
- Require routine joint jail, CJC, and OJD reports on pretrial metrics and program outcomes.

Recommendations

VICTIM'S RIGHTS AND DOMESTIC VIOLENCE SAFETY

- Allow for victim's voices to be heard and their safety protected.
 - Allow adequate time for information gathering.
 - Ensure victims are notified of pretrial events and their right to be heard in culturally competent approaches.
 - Seek input from the victim prior to making a release decision.
 - Allow for either remote or in-person victim testimony.
- Ensure that release assistance officers follow the judge's instructions.
- Employ domestic violence-specific safety/risk assessments.
- Ensure that protective order hearings do not overlap with arraignments.
- Provide all system actors with domestic violence training.

Recommendations

PRETRIAL PROFESSIONAL DEVELOPMENT, BEST PRACTICES, AND STANDARDS

- Employ trainings for staff, judges, attorneys, and victim service providers on pretrial legal requirements and pretrial program practices.
- Establish means for community outreach and education on pretrial processes and program purposes.
- Appoint or create a pretrial services practice advisory council to guide program compliance and implementation.
- Adopt statewide best-practices and data collection standards for pretrial programs.

Questions



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