

Senate Bill 48-A Engrossed and Dash-5

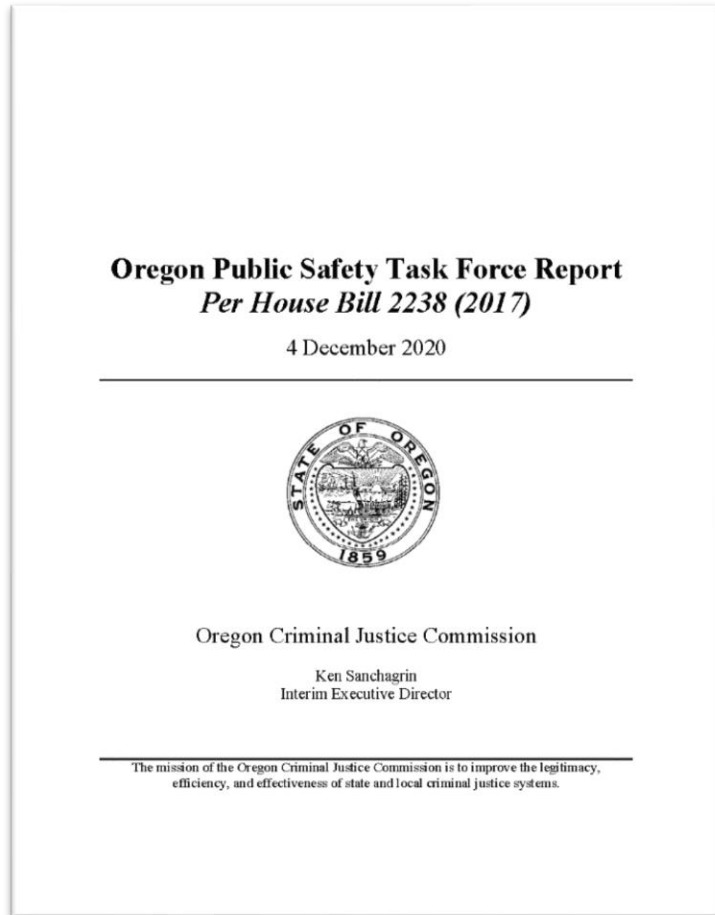
Brief Overview for the Senate Committee on Rules



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Senate Bill 48-A Engrossed

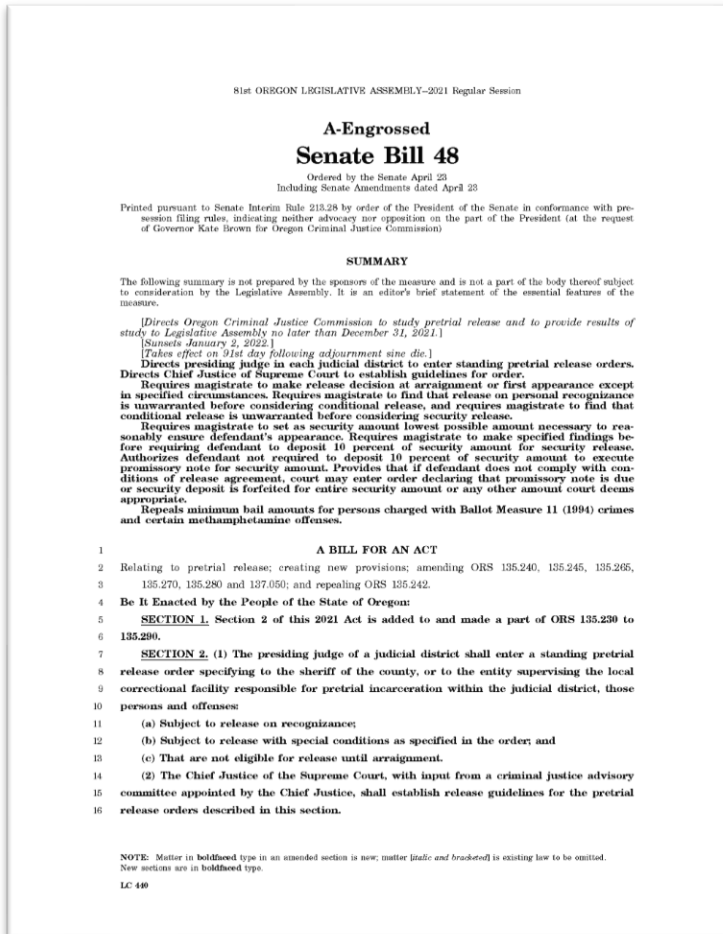
BACKGROUND: THE PUBLIC SAFETY TASK FORCE



- In 2017, the Legislature reconvened the Public Safety Task Force, and asked the PSTF to study security release (bail).
 - The PSTF was to focus on racial/ethnic disparities,
 - Examine the possibility of repealing statutes authorizing security release,
 - Study the utilization of pretrial risk assessments, and
 - Examine methods of reducing failure to appear at court hearings.
- In December of 2020, PSTF submitted its final report to the Legislature, which included policy and legislative recommendations.

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BACKGROUND: SB 48 DEVELOPMENT



- Staff from CJC, the OJD, and the Governor’s Office drafted the initial substantive amendment to SB 48.
- In March, 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

American Civil Liberties Union

Oregon Department of Justice

Oregon Law Center

Oregon State Sheriffs Association

Oregon Criminal Defense Lawyers Association

Oregon Judicial Department

Oregon Criminal Justice Commission

Clackamas Women’s Services

Governor’s Office

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BACKGROUND: CURRENT PRETRIAL PROCESS

Personal Recognizance

Release of the individual upon the promise of that person to appear in court.

Conditional Release

Release imposing regulations on the activities and associations of the individual.

Security (“Bail”) Release

Promise to appear in court secured by cash, stocks, bonds, or real property. An immediate payment of 10% is required prior to release.

Preventive Detention

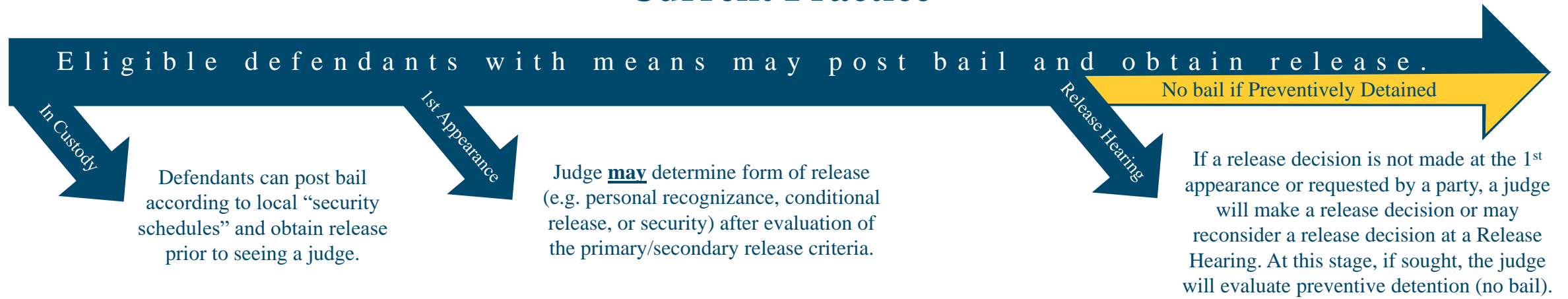
Offenses that are not bailable per the Oregon Constitution (i.e. murder, treason, and violent felonies).

- The Oregon Constitution provides a **right to bail** except for murder/treason (Art. I §14) or when the defendant is charged with a violent felony (Art. I §43), so long as certain evidentiary thresholds are met. **Preventive detention** is often referred to as a “no bail” hold.
- Otherwise, courts must consider whether to release the defendant on **personal recognizance, conditional release, or security release** (e.g., bail).
- When determining the form of release, the court considers the **primary and secondary release criteria** (e.g., danger to victim/public, nature of the charge, prior FTAs and criminal history, ties to the community).

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BACKGROUND: CURRENT PRETRIAL PROCESS

Current Practice

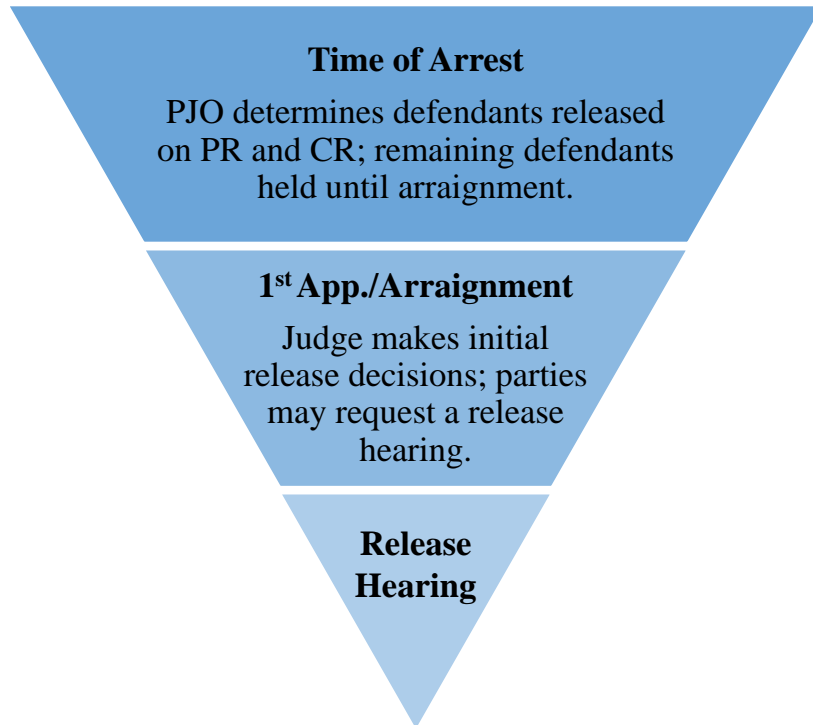


- Prior to first appearance, defendants are given a bail amount based on presiding judges’ orders (often called “security” or “bail” schedules). If a defendant has the means, they can be released on security without a consideration of victim or community safety or the risk of failure to appear.
- While judges may make release decisions at first appearance, in current practice, judges have discretion as to whether these decisions will be made at that time.
- While preventive detention is an option, it is used relatively rarely, and high bail amounts are often used in its place.

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PROPOSED CHANGES IN DASH-5 AMENDMENT

Provides statewide guidance as to the types of defendants who should be released without bail and clarification to existing pretrial release statutes.



- The Chief Justice will create state-level guidance for pretrial release orders, while local Presiding Judges will adopt pretrial release orders that will replace current security schedules. The order will specify which persons or offenses:
 - Are subject to recognizance release,
 - Are subject to conditional release, and
 - Those who should be held until arraignment.
- Existing statutes will be amended to clarify the pretrial process.
 - Clarifying that judges must make a release decision at first appearance unless there is good cause for delay.
 - Specifying a stepwise process through the release decision from recognizance release to conditional release before considering security release.

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PROPOSED CHANGES IN DASH-5 AMENDMENT

Eliminates statutory pretrial security release (“bail”) amounts in favor of case-by-case analysis by a judge.

- Currently, two statutory provisions mandate minimum security amounts for defendants.
 - ORS 135.240 provides for \$50,000 minimum security amounts for Measure 11 defendants, and
 - ORS 135.242 provides for \$250,000 minimum security amount for certain methamphetamine offenses if the prosecutor can demonstrate that the defendant will fail to appear, commit a new crime, or poses a threat to the public.
- SB 48-A Engrossed proposes that these minimums be eliminated in favor of a case-by-case determination by the judge.

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PROPOSED CHANGES IN DASH-5 AMENDMENT

Balances the rights of the defendant and presumption of pretrial release with the risk of failure to appear, and community and victim safety.

- Reduces reliance on the use of security;
- Increases consistency and equity in Oregon’s pretrial release system; and
- Includes provisions for victim notification and input at first appearance and arraignment.
 - Requires RAOs to contact victims of person felonies and misdemeanors and, if contact is made to:
 - Obtain information regarding the victim’s position on release, including whether special conditions should be imposed, shall be included in the report to the court and considered by the release assistance officer if making a release decision, and
 - If the information is available, inform the victim of 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 arraignment or other first appearance.
 - Allows victims present at the arraignment or first appearance to reasonably express view relevant to the issues at the hearing.

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PROPOSED CHANGES IN DASH-5 AMENDMENT

Moves Oregon toward risk-based and data-informed decision making in the pretrial release system.

Current Practice

Eligible defendants with means may post bail and obtain release.

In Custody

Defendants can post bail according to local security schedules and obtain release prior to seeing a judge.

1st Appearance

Judge may determine form of release (e.g. personal recognizance, conditional release, or bail) after evaluation of the primary/secondary release criteria.

Release Hearing

No bail if Preventively Detained

If a release decision is not made at the 1st appearance or requested by a party, a judge will make a release decision or may reconsider a release decision at a Release Hearing. At this stage judges can also evaluate preventive detention (no bail).

SB 48

Δ's not released per PJO are detained for RAO evaluation or hearing with judge.

In Custody

PJO releases certain qualifying defendants on personal recog or conditional release. Non-qualifying defendants are not eligible for bail unless assigned security by RAO. Otherwise, held until first appearance.

1st Appearance

Judge must make a release decision (e.g. personal recog, conditional release, or bail) after evaluation of the primary/secondary release criteria, unless good cause is found to set over the release decision.

Release Hearing

No bail if Preventively Detained

If good cause is found at 1st appearance or a request made by a party or judge, the judge will make a release decision or may reconsider a release decision. At this stage, if sought, the judge will evaluate preventive detention (no bail).