



SB 48 – Pretrial Release Reform

Key Points

- Oregon’s use of security release (“money bail”) can have inequitable outcomes.
- SB 48 increases consistency and equity in Oregon’s pretrial release system.
- OJD is engaged with justice system partners and the legislature to improve Oregon’s pretrial release system, consistent with OJD’s Strategic Campaign commitment.

SB 48 – Pretrial Release Reform

Oregon has historically been a leader in pretrial reform. Since the late 1970’s, Oregon has been one of only a few states that do not use commercial bail bonds. Consistent with that history of innovation, Oregon’s pretrial release system needs to be revised to ensure it is equitable and just.

Oregon is a “right to bail” state and pretrial release processes are governed by unique Oregon and federal constitutional provisions and Oregon’s statutory scheme (ORS 135.230-135.295). This means that unless a person is charged with murder, treason, or a violent felony and required determinations are made by the court, the person has a right to some form of pretrial release.

When a person is arrested and taken to jail, they may be released by the court in one or more of the following ways:

- Personal recognizance (agree to re-appear with no or few conditions)
- Conditional release (release with conditions); and
- Security release or “money bail” (release with conditions after posting money intended to assure appearance).

The presumption of innocence requires release conditions to be the least onerous possible to insure court appearance and safety of the victim and community after consideration of the statutory release criteria.

Oregon’s use of pretrial security can have inequitable and inconsistent outcomes across the state.

Each circuit court has a presiding judge security schedule that establishes a security amount for each crime, excluding the most serious crimes like murder and treason. Persons who are booked into jail are released immediately if they deposit 10% of the security schedule amount. Because security schedule amounts are initially determined only by crime, those who have money to post security are released immediately and those without the ability to pay will remain in custody, regardless of flight risk or the risk of harm to the victim or the public. The security amount may be later adjusted up or down by a judge depending on individual circumstances.

Pretrial release decisions and programs vary across the state. Courts, local corrections officials, and law enforcement lack consistent standards and guidelines for pretrial release. Instead, pretrial release decisions should be informed by a consistent framework and risk-based analysis that will lead to just and equitable outcomes for individuals accused of crimes while preserving community and victim safety.

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SB 48 – Pretrial Release Reform for Oregon

Senate Bill 48 increases consistency and equity in Oregon’s pretrial release system.

SB 48 will make Oregon’s pretrial release system more consistent across the state and move toward risk-based and data-informed decision making that balances the rights of those accused of a crime with the risk of failure to appear and community and victim safety. The bill will reduce the reliance on security release and promotes the setting of individualized security amounts over crime-based security schedules. SB 48 will modify Oregon law in the following ways.

- SB 48 directs the Chief Justice of the Oregon Supreme Court, with input from the Criminal Justice Advisory Committee, to adopt pretrial release guidelines;
- Presiding judges in each circuit court will utilize those guidelines to develop new presiding judge release orders that will replace current security schedules and, instead, direct who is subject to release from jail on personal recognizance, who must be released with special conditions specified in the order, and who will be held for a release decision by the court at their first appearance;
- SB 48 eliminates statutory, mandatory minimum security amounts;
- SB 48 clarifies that security release should be the last form of release to be considered by the court and only if the court concludes that other forms of release are unwarranted; and
- SB 48 provides for additional victim notification and input during the pretrial process.

OJD has been working with the Criminal Justice Commission and numerous other stakeholders to craft a pretrial release reform bill that will work for Oregon. We anticipate a final amendment to SB 48 that includes the statutory changes described above. SB 48 is a smart first step away from Oregon’s pervasive use of money bail and toward a pretrial system that is risk-based, fair, and consistent across the state.

Questions? For general questions, please contact Erin Pettigrew, OJD’s Access to Justice Counsel for Legislative Affairs and Strategic Planning (Erin.M.Pettigrew@ojd.state.or.us or 971-283-1385).