



May 27, 2021

Re: [Senate Bill 48 A](#)

Dear Chair Wagner, Vice Chair Girod, and members of the Senate Committee on Rules:

The Office of Public Defense Services (OPDS) seeks to move our criminal legal systems towards practices that support improved outcomes for clients, their families and communities, and all Oregonians. Though the agency is neutral on Senate Bill (SB) 48 A, we seek to provide you with information to aid in your consideration of this bill.

(1) SB 48 A decreases the likelihood that poor defendants will sit in jail unable to pay cash bail

The United States Supreme Court has long established that, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” [United States v. Salerno](#), 481 US 739, 755 (1987). SB 48 A’s proposed changes, such as making clear that courts must consider recognizance release first before considering other forms of release and removing statutory minimum security release amounts for non-mandatory minimum offenses, will make pretrial release decisions more individualized to the cases at hand and decrease the likelihood that nonviolent, poor defendants will sit in jail while loved ones try to come up with funds to achieve their freedom.

Between 70 and 80 percent of Oregonians charged with crimes qualify for public defense services, which tells us that most persons accused of crimes in Oregon’s criminal legal system are poor. The impact of sitting in jail pretrial versus timely obtaining release is significant. Persons who are released pretrial are much more likely to maintain jobs, housing, and family stability, among other benefits.

(2) Oregonians detained pretrial are more likely to get sentenced to incarceration, even if otherwise “low risk” for recidivating

A 2019 [Oregon study](#) on the effects of pretrial detention showed that similarly situated (controlling for factors such as criminal history, charge type, and count) defendants who were detained pretrial were more than *twice* as likely to be incarcerated as part of their sentence, compared to defendants who were released



prior to case disposition.¹ The results of this study also indicate that the longer a defendant spends in pretrial detention, the greater the likelihood that a defendant receives a sentence of incarceration. These findings were consistent across sentenced defendants who were rated as low-, medium-, and high-risk to recidivate.

Accordingly, the steps taken within SB 48 A to decrease the likelihood that poor Oregonians will be detained pretrial for lack of resources will likely have major downstream impacts on individuals, families, communities, and the state's criminal legal system, including that fewer low-risk poor people will be incarcerated pending trial and that fewer low-risk poor people will be sentenced to incarceration in local and state facilities. Costs saved, such as bed days avoided, by local and state agencies, are costs usually readily calculable. The "human" costs saved – those impacts felt acutely by individuals – of decreasing the likelihood of unnecessary incarceration, such as avoiding a lost job, maintaining custody of one's children, and avoiding the trauma of being imprisoned, are not easily describable in numeric terms.

The OPDS appreciates the opportunity to submit this information for your consideration. Please reach out with any questions.

Sincerely,

Bridget

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¹ "[Effect of Pretrial Detention in Oregon](#)," Criminal Justice Policy Research Institute, Portland State University, 13-15, 2019.