



News from the State Courts

Oregon Judicial Department
May 23, 2024

Chief Justice order requires more people arrested for serious drug crimes to be held in jail until court appearance

(Salem, Ore.) – Oregon Supreme Court Chief Justice Meagan A. Flynn issued an order yesterday that will hold in custody more people charged with the most serious drug-related crimes after arrest until appearing before a judge.

“This order allows more people charged with drug crimes that pose the greatest risk to public health and safety to be held until a judge determines whether they can be released with conditions to ensure public safety and future court appearances,” Flynn said. “It also will allow local presiding judges to tailor additional requirements to address local public safety priorities and resources.”

Under the order, persons arrested for the most serious crimes involving delivery (sale or other transfer) or manufacture of controlled substances, or a controlled substance offense involving minors, will be held in custody between arrest and appearance before a judge. The first appearance typically happens on the first court day after the weekend or no more than 36 hours after arrest. The judge then will decide whether the person will be released, typically with conditions to ensure public safety and their later appearance in court, or remain in jail subject to posting monetary security.

The order also permits the presiding judge for each circuit court to update their presiding judge release orders to include person-specific overriding circumstances for all offenses involving the delivery and manufacture of a controlled substance, in order to address public safety concerns particular to their communities. Those circumstances may include whether the person possessed a substantial quantity of controlled substances or engaged in a commercial drug offense, possessed a particular type of controlled substance, used a firearm, or has prior arrests or a history of failing to appear in court.

Chief Justice Flynn initiated the review of the pretrial release guidelines in January 2024. The legislature passed House Bill 4002 in March 2024, which expanded the conduct subject to crimes involving delivery of a controlled substance, increased penalties for many types of controlled substance offenses, and directed the Chief Justice to evaluate placement of delivery and manufacture offenses in the pretrial release guidelines. The Chief Justice received recommendations from a criminal justice advisory committee and presiding judges throughout the state before issuing today’s order. Today’s order and a complete list of offenses in the pretrial release guidelines are available at courts.oregon.gov/programs/pretrial.

The changes modify the pretrial release guidelines originally developed after passage of Senate Bill 48 (2021). That bill moved Oregon away from automatic security (bail) release before arraignment based on charges and toward risk-based release decisions with conditions to ensure appearance at court hearings and protect community and victim safety. Under the old system, individuals who could afford to post bail were released before arraignment,

regardless of risk of failure to appear or to commit new crimes. Those who could not afford to post bail remained in jail, again regardless of risk.

Oregon's pretrial release guidelines list offenses in three categories:

1. Release on recognizance (which includes basic conditions of release);
2. Release with court-imposed conditions (which includes a range of possible additional conditions); and
3. Hold for arraignment.

A fourth guideline allows individual circuit courts the flexibility to move a particular defendant from one category to another based on a set of objective, person-specific "overriding circumstances." In addition to circumstances relating to drug crimes, these can include:

- A score from a risk assessment tool;
- Prior criminal record;
- Outstanding warrants;
- A threat of violence to a victim, law enforcement officer, or anyone else connected with the case; or
- Prior failure to appear or other violations of conditions of release.

The drug offenses moved into the "hold until arraignment" category by yesterday's order are classified as crime seriousness category 8 in Oregon's Felony Sentencing Guidelines and carry a presumptive prison sentence or are controlled substance offenses involving minors. Other offenses already in the "hold until arraignment" category include all Class A felonies and violent felonies, sex crimes, and crimes relating to domestic violence and firearms.

#