

In the Matter of Establishing)	CHIEF JUSTICE ORDER
Release Guidelines Governing)	No. 24-014
Presiding Judge Standing Pretrial)	
Release Orders)	ORDER ESTABLISHING RELEASE
)	GUIDELINES GOVERNING PRESIDING
)	JUDGE STANDING PRETRIAL RELEASE
)	ORDERS AND SUPERSEDING CJO 23-
)	019

I HEREBY FIND THAT:

1. The 2021 Legislative Assembly enacted Oregon Laws 2021, chapter 643, initially introduced as Senate Bill 48 (2021) by the Oregon Criminal Justice Commission, to reduce reliance on security release and provide statewide guidance for local pretrial release orders.
2. ORS 135.233, which codified Section 2 of Senate Bill 48, requires the following:
 - a. The presiding judge of a judicial district shall enter a standing pretrial release order, specifying to the sheriff of the county, or to the entity supervising the local correctional facility responsible for pretrial incarceration within the judicial district, both the persons who are, and the offenses that are:
 - (1) Subject to release on recognizance;
 - (2) Subject to release with special conditions as specified in the order; and
 - (3) Not eligible for release until arraignment.
 - b. The Chief Justice, with input from a Chief Justice-appointed criminal justice advisory committee, shall establish release guidelines for presiding judge standing pretrial release orders described in subparagraph 2.a. of these findings, to:
 - (1) Provide a consistent release decision-making structure across the state;
 - (2) Reduce reliance on the use of security;
 - (3) Include provisions for victim notification and input; and

- (4) Balance the rights of the defendant and presumption of pretrial release against community and victim safety, and the risk of failure to appear.
3. In 2021, the Chief Justice’s Criminal Justice Advisory Committee (CJAC) made recommendations to the Chief Justice for the initial version of the Pretrial Release Guidelines to govern Presiding Judge standing Pretrial Release Orders (PRO). The CJAC recommendations were developed by the CJAC’s Pretrial Subcommittee, which included representatives from courts, district attorneys and defense attorneys, appellate attorneys, community-based service providers and legal service providers for crime victims, law enforcement, community corrections, state and local government, and the Oregon State Bar.
4. The Pretrial Release Guidelines established in this order are based on legislative changes resulting from Senate Bill 48, effective July 1, 2022, including the following:
 - a. Circuit courts will no longer utilize security schedules that apply immediately upon a defendant’s arrest;
 - b. Instead, in accordance with a standing pretrial release order as described in paragraph 2 of these findings, either a judicial district’s pretrial release program or the local correctional facility (i.e., the sheriff or the entity supervising the local correctional facility) will determine immediate release; and
 - c. If a defendant remains in custody at arraignment, the court may consider security release if the court concludes that recognizance release and conditional release are unwarranted.
5. This order establishes the release guidelines for Presiding Judge standing PRO, with input from CJAC and as required under ORS 135.233(2).
6. Following adoption of the Pretrial Release Guidelines in Chief Justice Order (CJO) 22-010, the CJAC’s Pretrial Subcommittee reviewed implementation of the guidelines and made additional recommendations to the Chief Justice regarding categorization of bias crimes. In early 2023, a majority of CJAC members approved a recommendation on how Bias Crime in the First Degree should be classified under the guidelines. The Chief Justice adopted that recommendation in CJO 23-019, which was issued in May 2023.
7. The Chief Justice requested in January 2024 that the CJAC Pretrial Subcommittee and the Oregon Judicial Department’s (OJD) Criminal Law Committee provide court and public safety stakeholder considerations on modifying the classification of offenses involving the delivery or manufacture of a controlled substance. Additionally, the Chief Justice consulted with Presiding

Judges on the classification of these offenses under the Pretrial Release Guidelines.


8. The 2024 Legislative Assembly enacted Oregon Laws 2024, chapter 70, initially introduced as House Bill 4002 (2024), an omnibus bill intended to respond to the state's addiction and mental health crisis. Section 26 requires the Chief Justice, with input from a criminal justice advisory committee, to reevaluate and update the release guidelines for the pretrial release orders established under ORS 135.233 for persons arrested for or charged with delivery or manufacture of a controlled substance.
9. This order supersedes CJO 23-019 to address the classification of offenses involving delivery or manufacture of controlled substances and controlled substance offenses involving minors. This order amends Guideline 3 (Hold for Arraignment) to add offenses involving the delivery or manufacture of a controlled substance with a crime seriousness score of 8 or higher under Oregon's Felony Sentencing Guidelines or that involve a minor, to the list of offenses where the Presiding Judge PRO directs the sheriff or entity supervising the local correctional facility to hold the person for arraignment, first appearance, or a release decision under ORS 135.235(3)(b). Otherwise, the guidelines established by CJO No. 23-019 remain the same.

I HEREBY ORDER AS FOLLOWS:

1. The release guidelines set out in Attachment A are established for the purposes required under Oregon Laws 2021, chapter 643, and apply to any standing PRO required under ORS 135.233(1).
2. Each Presiding Judge of a circuit court shall enter a standing PRO as required under ORS 135.233(1) that complies with the guidelines set out in Attachment A. Presiding Judges shall review the changes to the Pretrial Release Guidelines adopted in this order and, if their PRO is inconsistent, update their PRO no later than June 21, 2024.
3. When a Presiding Judge amends or modifies their PRO, they shall provide a copy of the order to OJD's Statewide Pretrial Release Coordinator.
4. The State Court Administrator is authorized to determine the release guideline category into which each Oregon felony and misdemeanor falls, in accordance with Attachment A, and shall create a list setting out that determination ("Release Guidelines Categorization List"). The State Court Administrator shall regularly update the Release Guidelines Categorization List and make it publicly available on the OJD website. The Release Guidelines Categorization List is intended to be available as a tool to assist the sheriff of the county, or the entity supervising the local correctional facility, with the application of the release guidelines established in this order.

5. This order supersedes CJO 23-019, dated May 30, 2023.
6. This order is effective immediately.

Dated this 22nd day of May, 2024.



Meagan A. Flynn
Chief Justice

**CHIEF JUSTICE RELEASE GUIDELINES GOVERNING PRESIDING JUDGE
STANDING PRETRIAL RELEASE ORDERS (ORS 135.233)**

**Creation and Effect of Standing Pretrial Release Order (PRO); Required
Methodology**

A Presiding Judge shall create and enter a standing Pretrial Release Order (PRO) that directs the entity supervising the local correctional facility to determine whether a defendant will be released on recognizance, released on conditions, or held for arraignment in accordance with Guidelines 1, 2, and 3, set out below. A PRO also may direct the entity supervising the local correctional facility to hold a defendant for arraignment or release a defendant on conditional release based on objective, nondiscretionary, person-specific criteria (“overriding circumstances”), as provided in the PRO and consistent with Guideline 4, also set out below.

The methodology just described creates a two-step decision-making process: (1) identifying the offenses in accordance with Guidelines 1, 2, and 3; and then, if applicable, (2) identifying any “overriding circumstances.”

In addition to the offenses described in Guidelines 1, 2, and 3, a PRO may direct the entity supervising the local correctional facility whether to release on recognizance, release on conditions, or hold for arraignment persons arrested on warrants, contempt charges, and probation violations.

Each Presiding Judge should work closely with the court’s local public safety stakeholders to create the PRO for the judicial district and should structure the PRO to utilize already-established local pretrial release resources.

Once entered, a PRO provides release direction to the entity supervising the local correctional facility. A PRO does not have the effect of delegating judicial release decision-making authority.

The State Court Administrator maintains a Release Guidelines Categorization List of all Oregon misdemeanor and felony crimes, with each crime organized by release guideline category, as set out in this attachment, that is publicly available on the Oregon Judicial Department website. The Release Guidelines Categorization List is intended to be available as a tool to assist the sheriff of the county, or the entity supervising the local correctional facility, with the application of these guidelines.

Guideline 1

A PRO shall direct the entity supervising the local correctional facility to release on recognizance, on a release agreement with the general conditions in ORS 135.250, all defendants charged with the following offenses:

- A. Any nonperson misdemeanor, except those offenses listed in Guideline 2 or 3;
- B. Any nonperson Class C felony, except those offenses listed in Guideline 2 or 3;
- C. Any driving while suspended offense defined in ORS 811.182, except for aggravated driving while suspended as defined in ORS 163.196; and
- D. Any other offense that is not included in Guideline 2 or 3.

Guideline 2

A PRO shall direct the entity supervising the local correctional facility to release on court-imposed conditions all defendants charged with the following offenses:

- A. Any nondomestic violence person misdemeanor, as defined in OAR 213-003-0001(15);
- B. Any driving under the influence of intoxicants (DUII) offense, as defined in ORS 813.010 and ORS 813.011; and
- C. Any nondomestic violence Class B felony and any nondomestic violence person Class C felony as defined in OAR 213-003-0001(14), except for those offenses included in Guideline 3.

A PRO shall include specific conditions of release consistent with ORS 135.260. Any release condition imposed should be available for a defendant's compliance within the county and should be the least onerous condition necessary to ensure both public and victim safety, and that the defendant returns to court as required.

A PRO shall specify if the release conditions provided in the PRO will apply to every person charged with a specific offense or, instead, to individual defendants based on either criteria provided in the PRO or resulting from a risk assessment that is conducted consistent with the law and that is reliable, unbiased, and validated consistent with these Guidelines.

If a PRO directs or permits the sheriff or the entity supervising the local correctional facility to use a risk assessment tool to determine which conditions of release are

appropriate for a specific defendant, then the PRO shall direct the sheriff or entity supervising the local correctional facility as to how and when certain release conditions must be imposed.

Courts must strive to ensure that release conditions are available to all defendants and not contingent upon a defendant's ability to pay.

Guideline 3

A PRO shall direct the sheriff or entity supervising the local correctional facility to hold for arraignment, first appearance, or a release decision under ORS 135.235(3)(b), all defendants charged with the following offenses:

- A. Any violent felony, as defined in ORS 135.240, and any offense in ORS 137.700;
- B. Any Class A felony;
- C. Any sex crime (whether designated or not), as defined in ORS 163A.005, including any luring a minor, purchasing sex with a minor, and first-degree invasion of personal privacy, and any attempt to commit luring a minor, purchasing sex with a minor, and first-degree invasion of personal privacy;
- D. Any domestic violence felony or misdemeanor, as defined in ORS 135.230;
- E. Any felony stalking as described in ORS 163.732, any violation of a stalking protective order as described in ORS 163.750, and felony strangulation as described in ORS 163.187;
- F. The following Class B felony-controlled substance offenses:
 - i. Manufacture of hydrocodone within 1,000 feet of a school, as defined in ORS 475.808;
 - ii. Delivery of hydrocodone within 1,000 feet of a school, as defined in ORS 475.812;
 - iii. Unlawful delivery of a Schedule III controlled substance to a minor, as defined in ORS 475.906(2);
 - iv. Causing another person to ingest a controlled substance, as defined in ORS 475.908(1);

- v. Applying a Schedule III controlled substance to the body of a minor, as defined in ORS 475.910(2);
 - vi. Manufacture of methamphetamine, as defined in ORS 475.886; and
 - vii. Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance, as defined in ORS 475.962;
- G. The following felony- and misdemeanor-controlled substance offenses involving minors:
- i. Using a minor in a controlled substance offense, as defined in ORS 167.262;
 - ii. Unlawful delivery of a Schedule IV controlled substance to a minor, as defined in ORS 475.906(3);
 - iii. Unlawful delivery of a Schedule V controlled substance to a minor, as defined in ORS 475.906(4);
 - iv. Applying a Schedule IV controlled substance to the body of a minor, as defined in ORS 475.910(3); and
 - v. Applying a Schedule V controlled substance to the body of a minor, as defined in ORS 475.910(4); and
- H. Any of the following offenses:
- i. Possession of a firearm or dangerous weapon in a public building or court facility, as defined in ORS 166.370; and unlawful possession of machine guns, certain short-barreled firearms, and firearm silencers, as defined in ORS 166.272;
 - ii. Failure to appear, as defined in ORS 162.195 and ORS 162.205;
 - iii. Felon in possession of a firearm, as defined in ORS 166.270;
 - iv. Fleeing or attempting to elude, as defined in ORS 811.540;
 - v. Resisting arrest, as defined in ORS 162.315;
 - vi. Giving false information to a peace officer, as defined in ORS 807.620 and ORS 162.385;

- vii. Escape in any degree, as defined in ORS 162.145, ORS 162.155, and ORS 162.165; and unauthorized departure, as defined in ORS 162.175;
- viii. Fugitive from justice, as defined in ORS 133.747;
- ix. Bias crime in the first degree, as defined in ORS 166.165; and
- x. Tampering with a witness, as defined in ORS 162.285.

Guideline 4

In addition to the offense-specific categories described in Guidelines 1, 2, and 3, a PRO also may identify person-specific overriding circumstances that, if present, will require a sheriff or entity supervising the local correctional facility to either (1) release the defendant on conditional release; or (2) hold the defendant for arraignment. If a PRO identifies overriding circumstances, the following apply:

- A. The PRO must specify objective, nondiscretionary, person-specific criteria that constitute overriding circumstances. That criteria may include a score from a risk assessment tool that is adopted in a manner consistent with these Guidelines.
- B. Overriding circumstances should not be used to move entire offenses to a new guideline category but may apply to a narrower subset of factual circumstances that may constitute an offense.
- C. The PRO may direct that, if a defendant has been held due to overriding circumstances, a representative of the entity determining the hold shall either (1) appear at arraignment to report to the court the overriding circumstances for the hold; or (2) provide the information in writing to the court at or before arraignment.

Each judicial district should consider inclusion of overriding circumstances specific to persons charged with an offense involving the delivery or manufacture of a controlled substance. An overriding circumstance may include, but is not limited to, whether the person possessed a particular type of controlled substance, meets the criteria for a substantial quantity or commercial drug offense, used a firearm, or has prior arrests or a history of failing to appear in court.

Each judicial district should identify and consider using a risk assessment tool to assist with release determinations, as provided in the judicial district's PRO. The PRO may direct the entity supervising the local correctional facility as to the appropriate use of the risk assessment score.

A judicial district may use risk assessment tools to inform decisions about which type of release is appropriate for a defendant or in setting the conditions of release. If a judicial district uses a risk assessment tool, the Presiding Judge shall review the selected tool, to ensure that it is reliable and unbiased, and the selected tool shall be validated at least every five years or following significant changes to the population or laws and policies related to arrest/citation, detention, and sentencing.