

| | | |
|---------------------------------------|---|---------------------------------|
| In the Matter of Establishing Release |) | CHIEF JUSTICE ORDER |
| Guidelines Governing Presiding |) | No. 22-010 |
| Judge Standing Pretrial Release |) | |
| Orders |) | ORDER ESTABLISHING RELEASE |
| |) | GUIDELINES GOVERNING PRESIDING |
| |) | JUDGE STANDING PRETRIAL RELEASE |
| |) | ORDERS |

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. Section 2 of Oregon Laws 2021, chapter 643, now codified as ORS 135.233, 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. The Oregon Judicial Department (OJD) Criminal Justice Advisory Committee (CJAC) has recommended to the Chief Justice pretrial release guidelines to govern Presiding Judge standing pretrial release orders. 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 CJAC's recommendations and the release guidelines established in this order are based on legislative changes resulting from Oregon Laws 2021, chapter 643, 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 pretrial release orders, with input from CJAC and as required under ORS 135.233(2).

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 Presiding Judge Pretrial Release Order (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. An order entered under this paragraph shall include an operative date of July 1, 2022.
3. 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.
4. This order is effective immediately.

Dated this 7th day of June, 2022.



Martha L. Walters
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 non-person misdemeanor, except those offenses listed in Guideline 2 or 3;
- B. Any non-person 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 non-domestic 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 non-domestic violence Class B felony and any non-domestic 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; and
- F. 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; and
 - ix. 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. 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 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.