



March 18, 2021

Re: [Senate Bill 48, -1 amendment](#)

Dear Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation:

The Office of Public Defense Services (OPDS) seeks to move our criminal and juvenile 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 and the -1 amendment, which substantively replaces the original bill, we seek to provide you with information to aid in your consideration of this bill. Specifically, we address SB 48's -1 amendment in light of two points: (1) the potential impacts of adding an "unsecured" security release option to Oregon pretrial operations; and (2) an Oregon study showing that defendants detained pretrial are twice as likely to receive sentences of incarceration, even if they are otherwise considered a "low-risk" to recidivate.

(1) SB 48's -1 amendment 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's -1 amendment provides that, should a judge determine that security release (Oregon's "cash bail" system) is the appropriate means of release under the circumstances, a defendant may obtain release from any pretrial incarceration without having to deposit the security release amount required *prior* to release. Presently, defendants given security release must post 10 percent of the security release amount to obtain release. Even 10 percent of a set security release will be too expensive for some defendants to obtain release.

The -1 amendment's proposed change to how security release functions in Oregon would greatly decrease the likelihood that nonviolent, poor defendants will sit in jail while loved ones try to come up with funds or sit in jail indefinitely should the defendant simply not have resources at all. Under the proposed changes, any defendant released on a promise to pay security release would still be subject to any and all release conditions a judge deems appropriate to ensure appearance and public safety.



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.

Additionally, the Oregon Court of Appeals has also noted “the stark demarcation that exists between in-custody and out-of-custody defendants” in the context of who will appear shackled in court. [Larsen v. Nooth](#), 292 Or App 524, 535-36 (2018) (James, J., concurring). Describing it as an “uncomfortable reality,” Judge James noted that “the base characteristic shared amongst those who are restrained in court is not necessarily violence, or security concern, or risk of disruption—it is poverty” and that “[i]t is the access to wealth, and the ability to post bail, that is the most essential predictor of who will, and who will not, be shackled in Oregon.”

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

An [Oregon Criminal Justice Commission 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 (in either state prisons or local jails) 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.

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,”](#) Oregon Criminal Justice Commission, 13-15, 2019.