OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

March 13, 2023
(SENT BY EMAIL)

The Honorable Janeen Sollman, Co-Chair
The Honorable Paul Evans, Co-Chair
Joint Committee on Ways and Means
Subcommittee on Public Safety
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Re: Responses to Committee Questions – Oregon Judicial Department Budget, SB 5512

Dear Co-Sollman and Co-Chair Evans,

I want to start by thanking you and the members of the subcommittee for your time, patience, wonderful questions, and the attention you all gave to SB 5512, the Oregon Judicial Department's (OJD's) budget bill. I write to respond to questions posed during the SB 5512 Informational Meetings held on March 6-8, 2023, that require further explanation. I hope the following information is helpful and encourage you to let me know if you have additional questions.

Questions asked on March 6, 2023

1. Co-Chair Sollman asked for more information about how the number of judges in a judicial district relates to filings (caseload), workload, and population.

OJD bases its requests for judicial resources on workload, which is a combination of the number of cases filed in the court and the types of cases filed (since some case types take significantly more work by judges than others, see slide 31). Increasing population does tend to increase case filings, but other factors – such as the number of tourists and local charging practices – can also drive caseload and workload. We therefore focus on workload when assessing the need for judicial resources. Appendix I shows population, case filings, judicial workload demand, the number of judges, and OJD's request for additional judicial positions (SB 235 and POP 108).

2. Co-Chair Sollman asked whether other states use alternative methods to U.S. mail to summon jurors.

To the best of our knowledge, no states have completely moved away from the mailed summons. Oregon uses an official State of Oregon envelope, similar to what voters receive, to indicate it is an official document.

One major challenge to using an initial contact other than mailing a summons is that electronic contact information is not part of the data made available to courts when creating lists of potential jurors. Each year, a primary list of potential jurors is populated using voter registration records provided by the Secretary of State and state-issued driver licenses or ID cards provided by the Department of Motor Vehicles. An automated process randomly draws names from the list for each county and those people are available to be summoned by the court for service on both trial juries and grand juries.

When a trial is scheduled, a court's jury coordinator queries the jury system, which randomly pulls names from the available names within the county's jury pool. These potential jurors are generally identified four to six weeks prior to the required service date. This gives the court time to print and mail the summons, and to receive responses. During this time, court staff respond to questions, as well as to requests for deferrals and exemptions.

In Oregon, summons are always sent by U.S. mail. Some courts provide additional information with the summons, including parking permits, information on court etiquette, and driving directions. Others may just provide a simplified one-page letter with a postmarked return postcard for jurors to identify eligibility and availability. Regardless of the format of the mailed summons, all counties provide a link or QR code to their jury website where jurors can complete an online response form. This form confirms their contact information, allows for jurors to sign up for text and/or email reminders, and request a deferral or exemption.

Most states, including Oregon, have moved their summons response forms and juror questionnaires to an online electronic format, which significantly reduces the size and content of the initial summons. In addition, while many states have moved to a simplified summons postcard, states such as Oregon, Washington, Georgia, Texas, Florida, Illinois, and North Dakota, have gone a step further by including QR codes for jurors to scan and connect directly to the response form website. This has been done to provide better electronic access to electronic response forms and local court jury service information.

OJD began a large jury management system upgrade this year, which encourages all OJD courts to switch to a postcard summons. This will simplify the summons and direct jurors to court websites to complete their online response forms and access additional information.

3. Co-Chair Sollman, referring to slide 47 showing protective orders sought and granted, asked for more information on why protective orders may not be granted.

OJD is not able to pull data identifying why protection orders are not granted. Making that kind of determination requires a review of individual cases. OJD can provide information about potential reasons for the denial, as well as data showing the percentage of each type of order that is denied (see table below).

The potential reasons for denial fall into three general categories. Each are described here. We encourage subcommittee members to watch protection order hearings to learn more about how they are conducted and the questions that arise, if interested in getting a better sense of the issues that arise. We are also happy to arrange court visits and conversations with judges and stakeholders on this topic.

- **Individual circumstances do not meet statutory requirements.** While each of Oregon's six protection order types have common themes, each has unique processes and statutory requirements. Some of these requirements include a necessary relationship between the parties as well as set requirements for the type, timing, and number of incidents of abuse that qualify for a protection order. There may be additional requirements, such as proving that the person requesting the order (the petitioner) is in imminent danger, the petitioner has a reasonable fear for their physical safety, and/or the respondent is a credible threat to the petitioner's physical safety.

- **Not meeting the statutory standard of proof.** Depending on the type of order, the petitioner must prove the claims by a preponderance of the evidence, or by clear and convincing evidence or probable cause. Upon application, the petition has a hearing with a judge, and the burden of proof is on the petitioner. If the petitioner is not able to prove the required statutory factors by a preponderance of the evidence, the order is denied by the court.

- **The petitioner does not understand the form or the process.** Most petitioners are self-represented at the hearing. While many receive assistance from court staff, district attorney victim assistance staff, or domestic violence service providers, many others do not. OJD makes an effort to use plain language in forms and continues to translate forms into languages other than English, but for many self-represented litigants completing the forms and understanding court processes remains a challenge.

It is important to note that if a protection order is denied, a petitioner can file a new petition.

The following table provides data from 2022 on the number of petitions filed, and number and percentage of petitions initially granted, by each type of form, including Family Abuse Protection Act (FAPA) and Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA).

2022 Filing Numbers			
	Petitions Filed	**Order Initially Granted**	**Percentage Granted**
FAPA	9,994	7,165	72%
Stalking	4,598	2,250	49%
EPPDAPA	3,297	2,381	72%
Sexual Abuse	182	123	68%
Extreme Risk	167	112	67%
Emergency	2	2	100%

4. Representative Grayber asked about murder rates, and whether they are increasing in other states.

OJD currently does not track information about murder rates across the country. However, the Criminal Justice Commission (CJC) does collect, analyze, and report public safety and criminal justice related statistics to federal, state, and local levels of government, and may be better equipped to handle an inquiry on the murder rate in other states.

A Google search reveals that the murder rate has decreased for the United States overall from 2020 to 2022 (CDC), however, murder rates seem to vary in major cities (AH Datalytics). While Portland, Oregon is among the cities with an increased murder rate, it is not among the cities with the highest rate increases from 2021 to 2022.

5. Co-Chair Sollman, Senator Brock Smith, Representative Lewis, and Representative Helfrich all asked questions about how drug case filings were impacted by legislation such as HB 2355 (2017) (reducing PCS from a felony to a misdemeanor) and initiatives such as Ballot Measure 110 (2020) (making personal noncommercial possession of a controlled substance a Class E violation).

The following table shows changes in possession of a controlled substance (PCS) filings between 2016 and 2022. While overall filings were relatively stable between 2016 and 2019, the numbers of felony and misdemeanor filings flipped between 2017 and 2018, when the legislature reduced most PCS crimes from felony to misdemeanor. PCS filings of all case types (felony, misdemeanor, violations) dropped significantly in 2021 and 2022). Note that the blue highlights identify the time period and offense types impacted by HB 2355, the green highlights identify the time period and offense types impacted by BM 110.

Table 2

Oregon Judicial Department
Possession of a Controlled Substance Charges Filed by Degree and Year
January 1, 2016 - December 31, 2022
Prepared by: Business and Fiscal Services Division - 3/7/23

Offense Type and Degree	2016	2017	2018	2019	2020	2021	2022
Possession of a Controlled Substance	**19,996**	**19,401**	**18,089**	**18,757**	**13,951**	**6,729**	**5,056**
Felony Class B	4,168	3,422	2,083	2,325	1,911	536	281
Felony Class C	13,972	10,527	5,950	6,386	4,819	1,499	1,604
Misdemeanor Class A	1,472	5,070	9,648	9,564	6,369	2,527	1,005
Misdemeanor Class B	23	1	28	25	11	15	3
Misdemeanor Class C	340	365	310	307	228	29	
Violation Class A	20	14	64	141	564	150	16
Violation Class E	1	2	6	9	49	1,973	2,147
Grand Total	**19,996**	**19,401**	**18,089**	**18,757**	**13,951**	**6,729**	**5,056**

Note:
HB 2355 effective 8/15/2017 - Reduced Certain PCS Charges from Felony C to Misdemeanor A (highlighted in blue)
BM 110 effective 2/1/2021 - Reduced Certain PCS Charges to Violation E (higlighted in green)

Questions asked on March 7, 2023

1. Co-Chair Evans asked whether, in addition to District Attorneys, the Department of Justice also files criminal cases in circuit court.

The Department of Justice (DOJ) has limited independent authority to file criminal cases in circuit court, but DOJ prosecutors may be cross-designated as deputy district attorneys to either assist in cases or file cases. Specific examples include prosecuting cases as directed by the Governor (ORS 180.070), prosecuting election law violations (ORS 260.345), prosecuting organized crime and public corruption cases, and acting as resource prosecutors in specific case types (DUII, domestic violence, bias crimes, elder abuse, environment and cultural resource crimes, and wildlife/anti-poaching). The DOJ presentation provided to this committee on February 27, 2023, contains additional information regarding DOJ's programs. (*See* meeting link.)

2. Co-Chair Sollman asked how cases involving domestic violence are handled during the pretrial phase of a case and asked specifically how OJD was promoting statewide consistency in the handling of domestic violence cases, pretrial.

OJD is promoting consistency in domestic violence cases a number of ways:

- The provisions of Chief Justice Order (CJO) 22-010, which, as directed by ORS 135.233, provides a consistent pretrial release decision-making structure.

- POP 101 includes a request for funding for a validated, risk assessment tool. Considerations regarding persons accused of domestic violence crimes would be included in that risk tool.

- OJD is implementing a statewide pretrial case management system. That will provide data on what is – or is not – working to reduce additional offenses, violations of release conditions, or failures to appear in court (FTAs), and inform changes and improvements.

- Judges, release assistance officers, and court staff are receiving training on domestic violence considerations and dynamics, to help improve their services and decisions. That includes a training that was presented by DOJ in December 2022, and an upcoming training in May 2023 on strangulation cases. Additional training later this year is planned to address potential lethality and risk factors in domestic violence cases, as well as best practices in speaking with victims, improving data collection on domestic violence cases and conditions of release that are effective in ensuring victim safety, transparent communication with system partners, and development of accessible community resources for victim safety.

The pretrial guidelines in CJO 22-010 establish which charges are subject to release on the person's own recognizance (Guideline 1), release with conditions (Guideline 2), or held in custody until arraignment (Guideline 3). The CJO places domestic violence offenses (felony or misdemeanor) in the hold until arraignment category (Guideline 3). The guidelines in the CJO apply to all circuit courts and must be followed in the local presiding judge's pretrial release order (PRO).

When a defendant appears at arraignment, a judge will consider the statutory release criteria and determine the appropriate type of pretrial release for that individual, either recognizance release, conditional release, or security (bail) release. If the defendant is charged with a violent felony and preventative detention is requested by the state, the court will consider the evidence, hear arguments, and determine whether there is clear and convincing evidence to deny pretrial release.

Each PRO includes overriding circumstances focused on person-specific characteristics that may permit moving a person to a different Guideline level. The vast majority are used to move people from Guideline 1 (release on recognizance) to Guideline 2 (release with conditions) or to Guideline 3 (hold to arraignment). Examples of common overriding circumstances which move a person to Guideline 3 (hold until arraignment) include: a direct threat of violence to a victim, law enforcement officer, or anyone else connected to the case; any violation of a court order, including an active restraining order; or two or more failures to appear in court (FTAs) within the last year. In certain situations, individuals can also be moved from Guideline 3 to Guideline 1 or 2. Overriding circumstances that could be used move a person from Guideline 3 to Guideline 2 or 1 are very limited, such as situations where a person with limited criminal history is charged with giving false information to a police officer.

No PRO includes an overriding circumstance allowing movement of an individual charged with a domestic violence offense out of the Guideline 3 into a lower guideline category. Any need to consider release of a person charged with a domestic violence offense would need to be heard by a judge. The conditions of release set at arraignment are intended to balance the right to release that flows from the presumption of innocence with the safety of the victim and the community, and the likelihood of the defendant to make all their court appearances and refrain from criminal conduct while on release. The ability to set conditions depends to some degree on the availability of resource in the community. At the time of arraignment, eligible cases may be scheduled for a preventative detention hearing by motion of the district attorney. The preventative detention framework was not changed by Senate Bill 48.

Judges make release decisions based on primary and secondary release criteria. ORS 135.230 (9) and (11). By law, release conditions must be the least onerous possible to ensure public and victim safety and return to court.

Senate Bill 48 also established a new requirement for victim contact by court release assistance officers (RAOs) prior to initial arraignment. This new statutory requirement ensures that victim's position on release is documented by the RAO and shared with the court, and it informs the victim of the date, time, and location of the arraignment hearing. This provision was included in SB 48 at the request of domestic violence and victim advocates.

Since all individuals charged with domestic violence offenses are held for a judicial release decision, the court is able to gather more information to make an informed release decision and apply appropriate conditions of release in these cases.

SB 48, CJO guidelines, and PROs establish a consistent, risk-based approach to pretrial release decision making. Security (cash bail) is not an effective indicator of risk. Predetermined security schedules (eliminated by SB 48) did not weigh individual factors and permitted those who could afford to post security a right to release without consideration of risk. The structure of SB 48, and the elimination of an "immediate" right to security release, emphasizes a risk-based approach and requires the court to individualize the imposition of security on a case-by-case basis.

OJD is also emphasizing training for judges, RAOs, and court staff on domestic violence. There is a 2-day training on strangulation scheduled for May 17 and May 19. In 2023, training is also planned on the potential lethality and risk factors in domestic violence cases, as well as best practices in speaking with victims, improving data collection on domestic violence cases and conditions of release that are effective in ensuring victim safety, transparent communication with system partners, and development of accessible community resources for victim safety. This training plan builds on the domestic violence training provided in December 2022 by DOJ to pretrial release officers and staff, which covered a wide range of topics including power and control dynamics, resources for serving marginalized survivors, and considerations for trauma-informed victim contact.

3. Senator Gorsek asked for additional clarity on the process for holding individuals charged with domestic violence offenses in custody during the pretrial phase of the case.

CJO 22-010 establishes pretrial release guidelines for PROs in every circuit court. Those guidelines require all individuals charged with a misdemeanor or felony domestic violence offense to be held for a judicial determination. At this time, no courts have PROs that identify a person-specific overriding circumstance that would direct release in a domestic violence case prior to review by a judge.

When the defendant appears at arraignment, a judge will determine the appropriate type of pretrial release (recognizance release, conditional release, or security release) for that individual, or, if the defendant is charged with a violent felony and preventative detention is requested by the state, determine whether pretrial release will be denied. Under ORS 135.245(2), a release decision must be made at arraignment, unless the court finds good cause to postpone the release decision. The court must hold a release hearing within 48 hours of arraignment unless the parties agree, or the court finds good cause to extend, that time period.

Release can be denied only if (1) the charged offense is murder, treason, and the court finds that "the proof is evident or the presumption is strong that the person is guilty," or (2) the charged offense is a violent felony and the court finds both that there is probable cause to believe that defendant committed the crime, and the state proves by clear and convincing evidence that there is a danger of physical injury or sexual victimization to the victim or members of the public by the defendant while on release.

4. Representative Lewis asked whether presiding judge pretrial release orders (PROs) are consistent, statewide.

The PROs are consistent in most respects, but are authorized by CJO 22-010 to have limited, objective, locally determined "overriding circumstances" that allow moving some people from one release Guideline to another. These "overriding circumstances" are adopted after consulting with local public safety partners and allow consideration of local conditions and circumstances. The structure of those circumstances is prescribed in Guideline 4 of the CJO.

The CJO was issued pursuant to ORS 135.233, which directs the Chief Justice to adopt guidelines in part to provide a consistent release decision-making structure across the state. This statute also directs that local PROs comply with the Chief Justice's guidelines. The Chief Justice's guidelines have been adopted in all circuit courts, and are contained in every PRO.

5. Representative Grayber asked about the number of Veteran Treatment Courts (VTCs) in Oregon.

There are currently five VTCs operating within OJD in Columbia, Klamath, Lane, Marion, and Washington counties. These programs operate under OJD's specialty court umbrella. OJD is aware of a few other programs serving veterans in Oregon (e.g., Deschutes County has a multidisciplinary team that supports a veteran-specific program through their district attorney's office, Malheur County operates a VTC in their justice court, etc.), but these programs are not OJD VTCs.

OJD is interested in strengthening and expanding our VTC program. In June 2022, the Office of the State Court Administrator was awarded a grant from the U.S. Department of Justice, Bureau of Justice Assistance (BJA) to enhance, support, and strengthen VTCs across Oregon through a strategic planning process which emphasizes the much-needed work to identify and support justice-involved veterans through technical assistance from the Center for Justice Innovation (CJI). This aligns with OJD's Strategic Campaign Commitment 1.5 which focuses on expansion of specialty courts, including VTCs, to increase access across the state of Oregon. The strategic planning work includes completing a needs assessment, compiling this information to develop recommendations, and hosting a two-day strategic planning session with a multidisciplinary group of state and local representatives supporting veterans.

The strategic planning process began in September 2022 and focused on gathering information to inform the needs assessment, particularly related to operations, assets, barriers, and opportunities throughout the state. CJI gathered existing VTC program information and conducted interviews with active VTC team members and other individuals supporting veterans to compile a statewide report with recommendations for future steps. The report will be shared with strategic planning attendees in a remote town hall on April 18, 2023. Following the town hall, on April 25th and 26th, CJI will lead a two-day, onsite workshop to co-create an action plan to address CJI's recommendations for expansion and enhancement of VTCs. The collaborative action plan will serve as a road map for improvement efforts targeting areas such as justice-involved veteran identification, regional VTC possibilities, transfers, training needs, and sustainability. Through this technical assistance grant, CJI can also provide up to $200,000 to support initial implementation of the action plan, to be spent by September 30, 2024. If additional funds are needed to support continued efforts, OJD can explore applying for the statewide BJA Veterans Treatment Court Grant in fiscal year 2024.

6. Co-Chair Evans asked whether people may be held in custody for nonpayment of fines, fees, or restitution.

In Oregon circuit courts jail is not generally used as a sanction when a person has satisfied all terms of probation except payment of court-imposed financial obligations. Constitutional principles of due process and equal protection limit when unpaid fines and fees may result in a person spending additional time in jail. For example, generally, courts may not automatically convert unpaid fines and fees to a period of incarceration solely because the person cannot

afford to pay, and courts may not revoke probation merely because a defendant is unable to pay fines and fees unless the court makes specific determinations.

Judges impose a variety of legislatively-authorized financial obligations as the result of a conviction for an offense. That may include a statutory fine, restitution or compensatory fine, and other fees (including public defense costs). State law requires judges to consider a defendant's ability to pay when imposing a fine in a criminal case, and, as a result of legislation passed in 2022, judges have increased discretion to reduce fines in violation cases. A defendant's ability to pay is not considered when imposing a restitution amount, but Oregon law prohibits a judge from revoking probation solely because of nonpayment of restitution.

Courts also have discretion to sentence someone to community service instead of jail and/or financial obligations, and some jurisdictions may have programs to allow defendants to 'work off' their financial obligations.

Courts do request payment in full at the time of sentencing, but people usually prefer and agree to payment plans. It is possible for a probation sentence to be extended because of nonpayment, but generally Oregon courts rely on other legal remedies – including having the person perform community service in lieu of a fine, referring to a private collections company, garnishment, or intercepting state income-tax refunds – to collect fines and fees.

7. Representative Lewis asked whether tax refunds may be intercepted when fines, fees, or restitution is not paid.

Yes, pursuant to ORS 1.197(3), OJD assigns eligible debt to the Oregon Department of Revenue (DOR) for purposes of tax offset. OJD sends eligible cases to DOR by an automated data interface.

8. Representative Nguyen asked whether juveniles pay fines, fees, or restitution.

Youth who are found in the jurisdiction of the juvenile court for committing an act that would be a crime if committed by an adult no longer pay fines or fees. The passage of SB 817 (2021) removed court authority to impose fines or fees on adjudicated youth or their parents. In addition, the bill eliminated all outstanding obligations to pay fines and fees. The juvenile court does still have the authority to impose restitution, to compensate the victim for the cost of their loss or damage caused by the youth, if the court makes the findings required by statute.

9. Co-Chair Evans, referring to slide 118 (graphic showing Oregon's judges are the lowest paid in the country, when adjusted for cost of living), asked what is judicial compensation in Oregon when PERS is included, and does it change the "lowest in the country" statistic.

The judicial compensation information in that slide is collected by the National Center for State Courts (NCSC) and includes only salary – not retirement, health care, or other benefits. The annual salary for a circuit court judge is $163,476, and the cost-adjusted salary reported by NCSC is $137,275. The PERS contribution is 7%, or $11,433 annually. A separate 2013 study reviewed judicial benefits in 10 Western states and found that Oregon circuit court judges were compensated at or near the bottom based on compensation and based on retirement benefits. When compensation and retirement benefits are combined and adjusted for the location specific cost of living, Oregon is ranked last of the states reviewed. Oregon circuit court judicial total compensation was significantly less than the average and median of all states reviewed total judicial compensation package.

10. Representative Helfrich asked about the total the cost of the Multnomah County Courthouse.

Multnomah County states the total cost of construction for the Multnomah County Courthouse was $324.5 million. The state provided $125 million in construction funds, and another $12.3 million for state court fixtures and furnishings and costs of state bond issuance. (For additional information, see the 2023-2025 Chief Justice Recommended Budget.)

11. Co-Chair Evans asked whether there is a constitutional or statutory prohibition on reducing judicial compensation.

Yes. The Oregon Constitution prohibits reducing judicial compensation during a judge's term of office. Because judicial salaries are set in statute (ORS chapter 292), they cannot be reduced administratively.

The Oregon Constitution, Article VII Section 1 states, "The judges of the supreme and other courts shall be elected by the legal voters of the state or of their respective districts for a term of six years, and shall receive such compensation as may be provided by law, which compensation shall not be diminished during the term for which they are elected." This and similar provisions in other constitutions were enacted as a means to protect judicial independence.

ORS 292.416 establishes the salary of circuit court judges. Because judicial salaries are set in statute, OJD cannot administratively decrease them, even if the OJD budget is reduced overall (e.g., "across-the-board" budget reductions).

Questions asked on March 8, 2023

1. Representative Helfrich asked when a judge will excuse a juror due to employment reasons, and how often that happens.

Judges may excuse a prospective juror from service. Prospective jurors can ask to defer their service to a later time or be excused from the current summons.

The table included below shows the reason given by prospective jurors excused between 2017 and 2022. Hardship excusals related to employment nearly doubled from 2019 to 2022, but was not the leading reason to request being excused.

Eligibility

Eligibility for jury service is set by ORS 10.030 and ensures that jury service may not be denied or limited on the basis of race, religion, sex, sexual orientation, national origin, age, income, occupation, or any other factor that discriminates against any specific group in Oregon.

Any person is eligible for jury service if they:

- Are at least 18 years old.
- Are a United States citizen.
- Live in the county that summoned them to serve.
- Have not previously served on any state or federal jury within the last two years.
- Have not been convicted of a felony within the 15 years prior to summons.*
- Have not been convicted of a misdemeanor involving violence or dishonesty within the 5 years prior to summons.*

**Starred eligibility requirements are not applicable to civil trials.*

A person is not eligible to act as a juror if they have been convicted of a felony and sentenced to a term of incarceration and have not yet been released or had their conviction set aside (ORS 137.281).

If a person has been summoned and they are not eligible to serve at the time of service, they are disqualified and dismissed from service.

Deferment and Exemption

Deferment of jury service is defined by ORS 10.055. Requests for deferment to the court may be allowed for good cause.

A person is exempt from jury service if they are an active member of the Oregon National Guard and the Oregon Air National Guard (ORS 399.215). A person who is blind, hard of hearing, or

speech impaired, or who has a physical disability is not ineligible to act as a juror and may not be excluded on the basis of their disability alone.

Excusal

Excusal from jury duty is defined in ORS 10.050 and allows for the following excusal reasons:

- The juror is 70 years of age or older.
- The juror is a woman who is breast-feeding a child.
- The juror is the sole caregiver for a child/dependent during the court's normal hours of operation and/or they are unable to afford day care of make other dependent care.
- Upon proof of undue hardship or extreme inconvenience to the person, their family, employer, or the public.
- Upon a judge's motion, a juror whose presence on the jury would substantially impair the progress of the action on trial or prejudice towards the case's parties.

For caregiving and hardship requests, the judge or clerk of court must carefully consider and weigh both the public need for representative juries and the individual circumstances offered as a justification for excuse from jury service.

Please see the following table for jurors who were granted excusals and the respective reason by year.

Statewide Juror Excusals						
	2017	**2018**	**2019**	**2020**	**2021**	**2022**
70 Years of Age or Older	5151	6190	6335	5660	7816	12338
Breast-feeding	352	392	459	368	565	978
Hardship/Inconvenience - Employment	262	361	527	512	757	930
Hardship/Inconvenience - Language	64	89	114	138	263	330
Hardship/Inconvenience - Medical	1194	1500	1786	2050	2502	3363
Hardship/Inconvenience - Military Service	104	112	140	134	152	253
Hardship/Inconvenience - No Transportation	24	89	85	24	48	108
Hardship/Inconvenience - Other	147	156	212	319	534	602
Hardship/Inconvenience - Student	192	244	291	214	270	417
Judicial Motion	0	6	3	56	33	42
Sole Caregiver for a Child/Dependent	282	416	437	480	1623	2909
Grand Totals	**7772**	**9555**	**10389**	**9955**	**14563**	**22270**

2. Co-Chair Sollman asked why counties differ in whether individuals accused of domestic violence offenses are held in custody or released.

All individuals arrested for statutorily defined domestic violence crimes are directed to be held until arraignment under CJO 22-010. At arraignment, the judge makes a release decision, based on evidence presented to the court. Any differences are the result of judicial decisions.

See the answer to Question 2 (March 7, 2023), above, for a detailed description of how cases involving domestic violence are handled during the pretrial phase of a case.

3. Senator Gorsek asked how 'cite-in-lieu' fits within the pretrial statutory scheme.

'Cite-in-lieu' is used to describe a situation where a person receives a citation in lieu of arrest, as provided in ORS 133.055. When an officer gives a person a cite-in-lieu, pretrial orders do not apply because the person has not been arrested.

ORS 133.055 governs a peace officer's authority to issue a citation in lieu of arrest. That statute provides that, instead of arrest, "[a] peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment." Generally, a peace officer's authority to issue a citation in lieu of arrest does not apply to domestic violence offenses. *See* ORS 133.055(2). SB 48 did not amend the cite-in-lieu statutes or require any changes to the cite-in-lieu process.

4. Co-Chair Evans and Representative Lewis asked whether the Chief Justice Orders require that individuals charged with domestic violence offenses are held in custody until arraignment, and whether the circuit courts comply with the Chief Justice Order.

All persons charged with the crimes defined by statute as domestic violence felonies or misdemeanors are held until a judicial determination has been made.

Section 2 of SB 48, now codified as ORS 135.233, requires the presiding judge of each judicial district to enter a standing pretrial release order that specifies 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 and the offenses: (1) subject to release on recognizance, (2) subject to release with special conditions as specified in the order, and (3) those not eligible for release until arraignment. Section 2 of SB 48 also requires the Chief Justice, with input from a Chief Justice-appointed criminal justice advisory committee, to establish release guidelines for those presiding judge pretrial release orders.

The CJO 22-010, required by SB 48, Guideline 3 (hold until arraignment) is listed on page 5 and includes any violent felony and any domestic violence felony or misdemeanor (as defined in ORS 135.230).

5. Co-Chair Sollman and Representative Helfrich asked about the difference between misdemeanor and felony strangulation.

Under ORS 163.187 the crime of strangulation can be a Class C felony or a Class A misdemeanor. Sections (3) and (4) distinguish the two. Misdemeanor strangulation involves knowingly impeding breathing or blood circulation. The crime is increased to a felony if additional factors are present – including the offense is witnessed by a child, the victim is a child or family/household member, or a weapon is used or threatened to be used.

> **163.187 Strangulation.** (1) A person commits the crime of strangulation if the person knowingly impedes the normal breathing or circulation of the blood of another person by:
>
> (a) Applying pressure on the throat, neck or chest of the other person; or
>
> (b) Blocking the nose or mouth of the other person.
>
> (2) Subsection (1) of this section does not apply to legitimate medical or dental procedures or good faith practices of a religious belief.
>
> (3) Strangulation is a Class A misdemeanor.
>
> (4) Notwithstanding subsection (3) of this section, strangulation is a Class C felony if:
>
> (a) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or the victim;
>
> (b) The victim is under 10 years of age;
>
> (c) The victim is a family or household member, as defined in ORS 135.230, of the person;
>
> (d) During the commission of the crime, the person used, attempted to use or threatened to use a dangerous or deadly weapon, as those terms are defined in ORS 161.015, unlawfully against another;
>
> (e) The person has been previously convicted of violating this section or ORS 163.160, 163.165, 163.175, 163.185 or 163.190, or of committing an equivalent crime in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current crime;
>
> (f) The person has at least three previous convictions for violating this section or ORS 163.160, 163.165, 163.175, 163.185 or 163.190 or for committing an equivalent crime in another jurisdiction, in any combination; or
>
> (g) The person commits the strangulation knowing that the victim is pregnant.
>
> (5) For purposes of subsection (4)(a) of this section, a strangulation is witnessed if the strangulation is seen or directly perceived in any other manner by the child.
>
> (6) The Oregon Criminal Justice Commission shall classify strangulation committed under the circumstances described in subsection (4)(c) of this section as crime category 5 of the sentencing guidelines grid of the commission. [2003 c.577 §2, 2011 c.666 §1; 2012 c.82 §1; 2015 c.639 §1; 2018 c.84 §1]

6. Co-Chair Evans asked whether pretrial staff have delegated release authority.

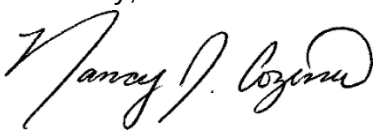
Yes, pretrial staff that are OJD employees (called Release Assistance Officers or RAOs) may have delegated authority through a presiding judge order (PJO).

The term "release assistance officer" appears in two Oregon statutes, ORS 135.235 and ORS 135.247. Those two statutes establish the RAO role within the Judicial Department. ORS 135.235(1) states that a presiding judge may direct the appointment of a release assistance officer who is "appointed under a personnel plan established by the Chief Justice of the Supreme Court." For a person to be an RAO under ORS 135.235 and ORS 135.247, and have delegated authority, that person must be an OJD employee.

RAOs are primarily responsible for gathering information to inform judicial release decisions, and for the management and monitoring of the pretrial population. They contact victims in specific case types to inform them of the time and place of arraignment in support of the victim's right to be heard at a release hearing, gather victim input regarding their position on release, interview defendants in custody, provide written reports to the court, appear at arraignment to provide information for the judge, or if delegated authority by the court in a presiding judge order, may authorize release of an individual, with specific conditions, prior to arraignment.

Thank you for the opportunity to respond to your questions. We would be happy to follow up with further information upon request.

Sincerely,



Nancy J. Cozine
State Court Administrator

NC:jm/23eNC005jm
ec: John Borden, Legislative Fiscal Office

APPENDIX I

Table 1

Oregon Judicial Department
Population, Case Filings, Judges, and Workload by Judicial District
Prepared by: Business and Fiscal Services Division - 3/7/2023

Judicial District	Court	Population	% of Population	Average Annual Case Filings 2017-2019	Judicial FTE Demand Based on Caseload Converted to Workload*	Number of Judges	POP 108/SB 235 Request
8	Baker	16,860	0.40%	966	1	1	
21	Benton	93,976	2.20%	7,540	3	3	
5	Clackamas	425,316	9.97%	20,781	14	11	1
18	Clatsop	41,428	0.97%	9,203	3	3	
19	Columbia	53,014	1.24%	3,801	3	3	
15	Coos, Curry	88,816	2.08%	18,070	6	6	
22	Crook, Jefferson	50,371	1.18%	9,147	4	3	
11	Deschutes	203,390	4.77%	18,454	9	9	
16	Douglas	111,694	2.62%	11,541	7	5	1
7	Gilliam, Hood River, Sherman, Wasco, Wheeler**	55,872	1.31%	10,519	3	4	
24	Grant, Harney	14,763	0.35%	998	1	1	
1	Jackson	223,827	5.25%	26,649	16	10	1
14	Josephine	88,728	2.08%	15,085	6	5	1
13	Klamath	69,822	1.64%	12,329	6	5	
26	Lake	8,177	0.19%	1,491	1	1	
2	Lane	382,647	8.97%	32,361	17	15	1
17	Lincoln	50,903	1.19%	8,017	4	3	
23	Linn	130,440	3.06%	13,601	7	5	
9	Malheur	31,995	0.75%	2,519	3	2	
3	Marion	347,182	8.14%	32,019	17	15	
4	Multnomah	820,672	19.23%	426,662	39	38	
12	Polk	88,916	2.08%	9,656	4	3	
27	Tillamook	27,628	0.65%	2,037	2	2	
6	Umatilla, Morrow	93,158	2.18%	13,929	5	5	
10	Union, Wallowa	33,728	0.79%	4,121	2	2	
20	Washington	605,036	14.18%	29,064	20	15	2
25	Yamhill	108,261	2.54%	10,671	5	4	
		4,266,620	100.00%	751,231	204	179	7

*Caseload is converted to workload by assignment of a judicial weight to each case type that is equivalent to the judge time needed to resolve the case.
For example: Felonies take up more judicial time to resolve than violations. Some jurisdictions have lower filings, but higher workload based on the types of cases filed in the jurisdiction.

**Judicial District 7: Although, the workload formula states a need for 3 judges and they have 4, both the size of the district and number of courthouses (5), factors not included in the workload model, increase the actual need.