**Final Report**

***National Criminal Justice Reform Project Grant***

# 11 July 2022



Oregon Criminal Justice Commission

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The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems.

## Background and Project Description

### In 2017, the Oregon Legislature passed House Bill 2238[1](#_bookmark0), which reconvened the state’s Public Safety Task Force (PSTF). The Legislature charged the PSTF with studying specific issues related to pretrial incarceration, including (i) methods for reducing racial and ethnic disparities in pretrial incarceration, (ii) the possibility of repealing statutes authorizing security release, (iii) the utilization and possible adoption of pretrial risk assessments, and (iv) methods of reducing failure to appear rates in Oregon courts. The Oregon Criminal Justice Commission was tasked with staffing the PSTF and overseeing the drafting of the reports mandated in HB 2238. In 2018, the PSTF filed a preliminary report[2](#_bookmark1) in accordance with a deadline set in HB 2238. The 2018 report identified hurdles in need of attention to complete the work of the PSTF, which primarily focused on data gaps and deficiencies. The intent of the PSTF was to follow-up on this preliminary report with a comprehensive report once more Oregon specific data concerning the state’s pretrial practices were available.

In 2019, the Oregon Criminal Justice Commission (OCJC) was awarded a grant under Phase III of the National Criminal Justice Reform Project (NCJRP), which was designed to build capacity within four states to advance, sustain, and evaluate selected evidence-based criminal justice reforms.

Specifically, the State of Oregon was awarded $275,086.00 to complete the following tasks:

* The OCJC was to partner with researchers at the College of Urban & Public Affairs: Criminology and Criminal Justice Department at Portland State University (PSU) to engage in a mixed methods investigation of current pretrial programs and practices in Oregon.
* Partnering with PSU researchers, the OCJC was to acquire and analyze jail data to assess the pretrial incarceration population in Oregon, focusing on racial and ethnic disparities and the imposition of bail across Oregon’s thirty-six counties.
* Partnering with PSU researchers, the OCJC was to develop and submit an evaluation plan focused on pretrial incarceration trends and release outcomes in counties with existing pretrial programs versus those without pretrial programs.

The support the State of Oregon received via the NCJRP grant was combined with other preexisting efforts regarding pretrial reform, bolstering the state’s ability to make progress on this front. In this final report, all efforts toward pretrial reform are included whether they were directly funded by the NCJRP grant or not. Figure 1 presents a timeline of these combined efforts, while also illustrating those items directly funded under the NCJRP grant.

1 <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/HB2238>

2 <https://www.oregon.gov/cjc/CJC%20Document%20Library/2018_09_15_PublicSafetyTaskForceReport.pdf>


### Figure 1. Pretrial Reform Efforts in Oregon Timeline (2018-2022)

1. **Pretrial Reform Efforts in Oregon (2019-2022)**
	1. “*Effect of Pretrial Detention in Oregon” Report (2019)*

Following the release of the PSTF preliminary report in 2018, it was clear that data and research was needed regarding Oregon’s pretrial system and its effects on defendants, victims, and other stakeholders. To begin to address this need, one of the first efforts to examine the impact of extant pretrial practices in Oregon was initiated in late 2018 and released in early 2019. Pursuant to support from the State of Oregon’s Justice Reinvestment Initiative, researchers from Portland State University partnered with research staff at the OCJC to replicate a study examining Kentucky’s pretrial incarceration system conducted by Lowenkamp, VanNostrand, and Holsinger (2013)[3](#_bookmark2), which found that Kentucky defendants who were detained pretrial were more likely than those who were released to be sentenced to jail or prison and to also receive longer sentences. Titled “Effect of Pretrial Detention in Oregon,”[4](#_bookmark3)[5](#_bookmark4) this study utilized a sample of 3,390 criminal defendants from nine Oregon counties to examine sentencing outcomes and the length of imposed sentences via propensity score modeling techniques.

3 Lowenkamp, C. T., VanNostrand, M., Holsinger, A. M. (2013). Investigating the impact of pretrial detention on sentencing outcomes. New York, NY: The Laura and John Arnold Foundation.

4 <https://www.oregon.gov/cjc/CJC%20Document%20Library/EffectofPretrialDetention.pdf>

5 This report was published in a revised form in 2020: Campbell, CM., Labrecque, RM., Weinerman, M., and Sanchagrin, K. 2020. “Gauging Detention Dosage: Assessing the Impacts of Pretrial Detention on Sentencing Outcomes Using Propensity Score Modeling.” *Journal of Criminal Justice* 70: 101719.

### After controlling for several factors likely to impact sentences and sentence length, including criminal history and charge type/count, the analyses conducted in this study found that detained defendants were more than twice as likely to be incarcerated compared to defendants released prior to disposition. Further, the length of time spent in pretrial detention was associated with an increased likelihood of an incarceration sentence. With regards to sentence length, however, there was no evidence found of a connection between either incarceration or probation sentences length and pretrial detention.

The results of this study were consistent with prior research reporting that defendants detained pretrial were more likely to serve a prison sentence and to be held in custody for longer periods of time compared to defendants that were not detained.[6](#_bookmark5) The CJC funded study, however, moved beyond the regression based methodologies found in many prior studies, which while rigorous in their own right, have been unable to control for selection bias in pretrial decision making processes. In “The Effect of Pretrial Detention in Oregon,” PSU researchers utilized propensity scoring techniques to overcome these shortcomings, confirming the consistent findings in prior work under a more rigorous standard.

While the study described above was being conducted, drafted, and shared with policy makers and legislators, efforts within the Legislature during the 2019 Legislative Session were underway to address one of the most significant data gaps identified in the PSTF’s Preliminary 2018 Report: the lack of accessible, statewide jail data. As a local control state, Oregon does not possess a centralized jail data system. Without access to this data, the OCJC and the PSTF had been unable to complete the work it was given in HB 2238 (2018), as it was impossible to assess the extent to which racial and ethnic disparities existed within Oregon’s pretrial system or to determine the impact of security release practices within the state. To remedy this gap, the Legislature passed HB 3289, which compelled local jails to share a one-time data export with the OCJC.

Shortly following the passage of HB 3289 (2019), the OCJC was awarded its Phase III National Criminal Justice Reform Project grant. In part, the NCJRP grant provided support to CJC staff and local jails to assist in complying with the requirements of HB 3289, as no funding or support was provided legislatively for the efforts required in the bill. Specifically, NCJRP funds were provided to assist the OCJC in creating a method for receiving and standardizing jail data as well as funds for local jurisdictions to support them in creating data exports for submission to the OCJC.

6 Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201-240; Gupta, A., Hansman, C., & Frenchman, E. (2016). The heavy costs of high bail: Evidence from judge randomization. *Journal of Legal Studies*, 45(2), 471-505; Heaton, P., Mayson, S. G., & Stevenson, M. (2017). The downstream consequences of misdemeanor pretrial detention. *Stanford Law Review*, 69, 711-794; Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *Journal of Law and Economics*, 60, 529-557; Oleson, J. C., Lowenkamp, C. T., Cadigan, T. P., VanNostrand, M., & Wooldredge, J. (2014). The effect of pretrial detention in two federal districts. *Justice Quarterly*, 33(6), 1103-1122; Oleson, J. C., Lowenkamp, C. T., Wooldredge, J., VanNostrand, M., & Cadigan, T. P. (2017). The sentencing consequences of federal pretrial supervision. *Crime and Delinquency*, 63(3), 313-333; Sacks, M., & Ackerman, A.

R. (2014). Bail and sentencing: Does pretrial detention lead to harsher punishments? *Criminal Justice Policy Review*, 25(1), 59-77.

* 1. *HB 3289 Jail Data Report (2020)*

HB 3289 tasked the Criminal Justice Commission with creating a report examining several topics, including an investigation of the current practices regarding data systems, data collection, and data availability at each jail facility in the state; census information, death rates, and medical conditions of adults in custody (including mental and behavioral health); and health systems in jails, including the manner, cost, and barriers to adequate provision of health care. Further, the bill also created a Jail Advisory Committee consisting of practitioners, subject matter experts, and advocates from a variety of organizations.

The Criminal Justice Commission completed a survey of Oregon’s local correctional facilities and completed a collection of data from jails’ records management systems during early 2020. Support from the NCJRP project helped to facilitate jails’ compliance with HB 3289, as many local facilities lacked the staff and technology to provide the data specified in the legislation. Via micro-grants, the OCJC was able to assist these smaller jails and obtain data that would not have been submitted absent the financial support. The data received from jails varied widely by the variables included in the submitted dataset, the coding of qualitative variables, and data entry practices.[7](#_bookmark6) A CJC staffer worked to unify the separate jail datasets to the greatest extent possible so that cross comparisons could be performed where appropriate.

As described in detail in the resulting report[8](#_bookmark7), Oregon has 30 county-level jails and 8 municipal jails. In 2019 there were about 175,000 total bookings with a total budget of $365 million, but bookings and budget varied widely across facilities by jail size and location. In addition, the needs of jails and their surrounding communities, and the ability to serve these needs, varied from jail to jail. Many of the areas of improvement identified for jails are shared system-wide, but the underlying causes of these problems as well as the possible solutions vary.

The recommendations that resulted from the analysis of the submitted data and survey responses were broad and focused primarily on issues related to physical and behavioral health. Beyond this report, however, the jail data that was collected also fed into additional projects.

7 For example, CJC received some amount of bail information from a majority of jails, but this information was incomplete or opaque to the point of precluding bail analysis. Some jails, for instance, reported an amount in the “bail amount” field, but provided no indication if this was the bail set by the judge or the amount that was paid. This was particularly problematic where $0 was entered, as it was unclear whether this indicated an individual was held without bail, was recognizance released with no security requirement, or was offered some bail amount greater than

$0 but did not post bail. Different data keeping practices across and within the same jail by staff further confound accurate analysis of these data. Similar issues spanned other data fields, including booking reason, release reason, and housing variables. The demographic, offense type, and jail stay duration data fields were more consistent. These data fields, however, were also confounded by differences in data tracking and recording practices across jails. Some jails, for example, tracked two distinct rows for each of pretrial and sentence stages of an original booking, whereas other jails kept all of that individual’s case information on a single row. In addition, some jails tracked all charge information on a single row while others kept each distinct charge on a separate row.

8 <https://www.oregon.gov/cjc/CJC%20Document%20Library/HB3289ReportSept2020.pdf>

* 1. *Pretrial Programming Cost Benefit Analysis (2020)*

Oregon has long had a patchwork system coordinating pretrial release across the state. Within most of its larger, well-resourced counties along the Interstate 5 corridor, pretrial programs exist to oversee the release and monitoring of pretrial defendants. Across the rest of the state and particularly in the eastern portion of Oregon, little to no programming exists at all. Due to these stark differences, it is clear that if the counties that lack pretrial release capabilities and programming are to institute these services, financial investments are needed. To assist in conversations around investments, the OCJC engaged in research designed to determine whether investments in pretrial programming would be cost effective.[9](#_bookmark8)

This cost-benefit analysis used the best, currently available criminal justice system administrative data for Oregon to estimate the net benefits to society of an expansion of pretrial release programs statewide (for a full description of the methodologies employed, please see appendix B). In particular, this report analyzed the effect of increasing the number of individuals on pretrial release and also implementing an earlier release from pretrial detention for those who are currently held for a lengthy pretrial period. Of about 59,000 cases filed in 2018, the policy evaluated here would release about 9,000 individuals who were not otherwise released and reduce the time detained during the pretrial period for about 22,000 additional individuals. Additional releases pose a change in aggregate costs and benefits to society. Increased costs to society come in the form of additional crimes committed and missed court dates by some individuals that otherwise would have been held during their pretrial period, as well as expenditures for pretrial release evaluation and supervision programs. These additional costs were balanced against avoided costs or “benefits” of income and housing losses that stem from being jailed during the pretrial period and the cost savings of reducing jail populations. All of these costs and benefits were assigned monetary values in this analysis and then aggregated into a single measure of net benefits. The statewide, uniform policy of limiting pretrial detention to 3 days for lower-level crimes resulted in an estimated annual net benefit to society of $68 million, including $51 million savings in the criminal justice system and $17 million in net intangible costs. This statewide net benefit represents net benefits to some sectors of society and net costs to other sectors.

* 1. *Final Report from the Public Safety Task Force (2020)*

The Public Safety Task Force was asked to examine four topics: (i) methods for reducing racial and ethnic disparities in pretrial incarceration, (ii) the possibility of repealing statutes authorizing security release, (iii) the utilization and possible adoption of pretrial risk assessments, and (iv) methods of reducing failure to appear rates in Oregon courts. The PSTF met over a period of two years and filed its final report[10](#_bookmark9) with the Oregon Legislature in December of 2020.

The final PSTF report delved into numerous areas related to pretrial in Oregon. A few key takeaways are included here as they relate to the reforms that followed during the 2021 Legislative Session.

First, Oregon is a “right to bail” state, meaning that the Oregon Constitution provides persons subject

9 <https://www.oregon.gov/cjc/CJC%20Document%20Library/Pretrial%20CB_memo_FINAL.pdf>

10 [https://www.oregon.gov/cjc/CJC%20Document%20Library/PSTFReport%20-%20Final%20Report%20-%2012- 4-2020.pdf](https://www.oregon.gov/cjc/CJC%20Document%20Library/PSTFReport%20-%20Final%20Report%20-%2012-4-2020.pdf)

### to Oregon law with the right to be released pretrial (i.e., the right to be admitted to bail) so long

as the offenses for which a defendant is charged are not subject to preventive detention.[11](#_bookmark10) The right to bail in Oregon means that reform efforts, particularly any desire to end cash bail as a means for release, would be difficult if not impossible without reforms to the Oregon Constitution.

Second, Oregon currently has three forms of pretrial release: (i) release on personal recognizance, (ii) conditional release, and (iii) security/bail release. By statute, an individual in custody “shall be released upon his personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted”[12](#_bookmark11) in cases that do not involve murder, treason, or other violent felonies. In practice, however, many release decisions have been governed by local security schedules, which set going rates for security release. Often these rates are set by crime seriousness and/or crime type, while in a small number of counties crime seriousness is combined with the use of a risk tool. The use of local security schedules has led to a lack of uniformity across the state, as the location of the instant offense can lead to varying security amounts (often by thousands or tens of thousands of dollars).

Third, the most common charges faced by individuals in custody during the pretrial period are misdemeanors, technical violations, public order offenses, drug offenses, and property crimes.

The final PSTF report concluded with a series of aspirational recommendations concerning racial disparities, security release/cash bail and delegated release authority, pretrial risk tools, reductions in failure to appear rates, data collection improvements, victims right’s and domestic violence safety, and pretrial professional development, best practices, standards, and implementation guidance.

* 1. *Preliminary Statewide Pretrial Processes Report (2021)*

The first pretrial quantitative study, “The Effect of Pretrial Detention in Oregon,” provided key, Oregon-specific findings that have been well-regarded and cited by Oregon policymakers and criminal justice staff since it’s release. That said, the nature of the data and research could not say *why* the effects on sentencing exist: why is somebody who is detained pretrial more likely to receive a prison sentence? This was the initial motivation for the second research project, the Pretrial Qualitative Study.[13](#_bookmark12) Through scoping this project eventually morphed into a more general examination of pretrial processes across the state by also focusing on identifying the range of pretrial structures in the state, the focal concerns of decisionmakers, the potential for adopting and developing risk assessment tools, unpacking bail practices, and COVID-19 adaption strategies.

Researchers interviewed judges, prosecutors, defense attorneys, and court staff regarding case processing during the pretrial period.

11 Preventive detention occurs if a defendant is charged with certain “unbailable” offenses and there is a particular threshold of evidence met finding that a defendant may be held in jail with no means of obtaining release while those charges are pending.

12 William C. Snouffer, An Article of Faith Abolishes Bail in Oregon, 53 Or. L. Rev. 273, 287 (1974). *See also*

135.245(3).

13 <https://www.oregon.gov/cjc/CJC%20Document%20Library/PSU_2021_Pretrial_Processes.pdf>

### The research identified the 3 major forms of pretrial structures at the county level: 1) primarily reliant on bail and law enforcement, 2) reliance on executive branch staff, and 3) court-based release officers or close collaboration between sheriffs and courts. Researchers identified the primary and secondary focal concerns of pretrial decision-making. Primary concerns include history of failure to appears, criminal history, public/victim safety, and crime type. Secondary concerns are residency and community ties. The factors found to be the predominant drivers of more severe sentences following full pretrial detention were: a presumption on the part of judges that an individual was more dangerous due to being fully detained pretrial, a higher likelihood to accept harsher plea deals with longer pretrial detention, and sentencing guidelines that make judges feel as if a prison presumptive case will be a prison sentence from the outset. Interviewees strongly supported the use of risk tools with some fairly consistent hesitancy based primarily on the need for adequate training in using the tool. Interviewees were supportive of a transition away from reliance on cash bail, but voiced concern that without cash bail some moderate- and high-risk defendants may not ever have a chance at release during the pretrial period. Many of these lessons were focal discussion points in the development of SB 48, the major pretrial reform bill passed during the 2021 legislative session.

* 1. *Senate Bill 48 (2021)*

Following the release of the PSFT Final Report in late 2020, the Oregon Governor’s Office tasked OCJC staff with developing a legislative concept to begin more focused discussions related to pretrial reform in the upcoming 2021 Legislative Session. Using the PSTF Final Report and its recommendations, a concept was developed based on the following PSTF recommendations:

* Reduce Reliance on security release (either repeal security release entirely or restrict use to only when no non-monetary conditions would achieve defendant’s appearance in court).
* If security release is retained, repeal presumptive minimum security release amounts in favor of judges determining appropriate security release amounts on a case-by-case basis and to prevent against wealth-based detention.
* Employ preventive detention law (argue at pretrial release hearings whether defendants are releasable vs. detainable) rather than using high security amounts as a proxy for achieving detention for defendants who are legally bailable.
* Support employment of more release assistance officers in judicial districts and empower them to make release decisions in appropriate cases to free up court resources for judges to make individualized pretrial release decisions on more challenging cases.
* Clarify in policy or statute the roles of judicial release assistance officers, with delegated discretionary release authority, and executive branch pretrial staff, with administrative release authority (meaning they may carry out judicial orders but may not use exercise release decision- making discretion).
* To the maximum extent possible, input from the victim shall be sought prior to making a release decision.
* Ensure victims are notified of pretrial events and rights to be heard (including in culturally competent approaches).

After the initial concept was developed, a workgroup was convened by the OCJC to further refine the policy recommendations contained within it. The workgroup (which consisted of approximately twenty members) brought together a variety of stakeholders, including representatives of the Oregon

District Attorneys Association, American Civil Liberties Union, Oregon Department of Justice, Oregon Law Center, Oregon State Sheriffs Association, Oregon Criminal Defense Lawyers Association, Oregon Judicial Department, Clackamas County Women’s Services, the Oregon Governor’s Office, and the Oregon Legislative Policy and Research Office.

The result of this effort was Senate Bill 48[14](#_bookmark13), which contained the following reforms to become operative as of July 1, 2022:

**Section 2**. The Chief Justice of the Oregon Supreme Court is required to create a standing pretrial release order specifying to the releasing authority in a judicial district, those individuals who should be subject to release on recognizance, subject to release with special conditions, and those who should not be released until arraignment (at the earliest). The goal of this section was to end reliance on “security schedules,” which set standardized bail rates for a variety of offenses. Security schedules were criticized because they led to an overreliance on security as the primary form of release and because there was no standardization across judicial districts, which often led highly variable bail amounts for similar offenses across different jurisdictions.

**Sections 3 and 6**. This section clarified the role of judicial release officers while also bolstering victim notification and input during the pretrial process.

**Sections 4 and 7**. This section repealed mandatory minimum security amounts contained in Oregon law. Prior to the passage of SB 48, a mandatory minimum security amount of $50,000 existed for all violent offenses contained within Oregon mandatory minimum sentencing scheme. Further, a mandatory minimum security amount of $250,000 was applied to certain methamphetamine delivery cases.

**Section 5**. The pretrial decision-making process was clarified. First, magistrates are required to make a release decision at arraignment unless good cause to postpone the release decision is shown.

Second, magistrates are required to consider the different types of release in a stepwise fashion and only allowed to proceed to more restrictive forms of release upon finding that a less restrictive form of release is unwarranted.

* 1. *Final Statewide Pretrial Processes Report (2022)*

Following the first quantitative study and years of close collaboration between the Oregon Judicial Department (OJD) and the CJC, OJD developed a pretrial data set made available in 2020 that had previously been unavailable. This data set tracked previously untracked information regarding FTAs, release characteristics, and other pretrial factors at the hearing and case levels. Where for the previous quantitative study utilized fairly limited data that was requested for a smaller set of counties, these new data encompassed information for the pretrial phase for cases throughout the entire state dating back to 2017. Further, these data included information on failure-to-appear events and details on pretrial releases that were not present in prior court data. As a result, PSU researchers

14 https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB48

### sought to leverage this data to update and expand the results from the first quantitative study as well as explore additional pertinent research questions made possible with this more robust data set.

The results of the second quantitative analysis confirmed the results from the first study, but also had much more nuanced findings with broader implications. With the expanded data, the original finding that those detained for the full pretrial period were more likely to receive a prison sentence became more robust. In the original study those detained for the full pretrial period were roughly twice as likely to receive a prison sentence, whereas with more complete data set those fully detained pretrial were about four times more likely to receive a prison sentence. The effect of length of pretrial detention on sentencing was also confirmed and expanded. Researchers found that, on average, each day in pretrial detention increased the odds of receiving a prison sentence by 0.7%. Notably, there are non-linearities in this relationship suggesting there is likely a “first-offer, best-offer” pattern where the first plea offer a defendant receives from the prosecutor may be the best offer.

Researchers also explored specific factors that led to pretrial release decision-making. Researchers confirmed that criminal history and the nature of the current charge(s) were the most powerful predictors of release decisions. To a lesser extent, a county’s use of actuarial risk tools and jail capacity also impacted release decisions. Several extralegal factors also impacted release decisions including documented mental health issues, gender, race/ethnicity, private/public attorney representation, and several county-level socioeconomic factors.

Finally, research focused on the impact that different types of pretrial evaluation and release programs had on outcomes. Researchers found that pretrial evaluation and release structures where release decisions are based in the judiciary, judicial staff collects information to inform these release decisions, and staff monitor pretrial releasees had much higher release rates compared to structures where executive branch agencies were responsible for release and monitoring was not possible.

Similarly, the use of actuarial risk tools also increased the likelihood of release. Judicial-based structures with these higher release rates also had notably lower rearrest odds than executive-based pretrial structures with lower release rates. These findings largely align with and confirm the approach of SB48, which establishes a judicial-based release authority in each county, aims to standardize release criteria and conditions, and will eventually utilize an actuarial risk tool.

* 1. *Release of Oregon Chief Justice’s Model Pretrial Release Order (2022)*

The implementation of SB 48 began immediately following the closure of the 2021 Legislative Session. The Chief Justice of the Oregon Supreme Court assembled the Chief Justice’s Criminal Justice Advisory Council (CJAC) to perform the work ordered in Section 2 of the bill. The CJAC deliberated over the intervening months before submitting its recommendations to the Chief Justice in early 2022. On April 29, 2022, the Oregon Chief Justice released the finalized pretrial release guidelines, submitting her order to all presiding judges across the state. Broadly, the order specified that Circuit Courts may no longer use security schedules to triage defendants. Instead, the model order specifies which defendants are to be released on recognizance or conditional release based on crime type/seriousness. All other defendants are to be held until arraignment, at which time a release decision must be made consistent with SB 48. The full order is included in Appendix A with this report.

Following the release of these guidelines, presiding judges will work with local stakeholders, including their Local Public Safety Coordinating Councils, to craft local orders and to implement them consistent with the guidance provided by the Chief Justice. At the same time, the Oregon Judicial Department is expanding its pretrial release capabilities thanks to $2.2M in funding provided in SB 48. These funds will allow the Judicial Department to hire release assistance officers in counties that currently have no pretrial programming.

* 1. *Validation of Local County Risk Tools*

The quantitative and qualitative analyses conducted by Portland State University Researchers uncovered the importance of pretrial risk tools in decisions to release or detain defendants.

Specifically, the investigations on county-by-county pretrial decisions and protocol emphasized the fact that many release authorities rely heavily on the locally used risk tool to help create grids to release low risk defendants. In the handful of jurisdictions that are relying on a risk tool to make both types of release decisions (emergency releases and setting security), counties have expressed that the tool they are using has not been—but needs to be—validated. While some counties use a pretrial- specific tool such as the Oregon-specific Public Safety Checklist[15](#_bookmark14) (PSC, a static, post-conviction risk tool), others use the Virginia Pretrial Risk Assessment Instrument (VPRAI) for release decisions and emergency release matrices specific to pretrial holds. The validation of the PSC and the VPRAI is critical for release decisions at the jail, pre-arraignment, and arraignment decision-points to ensure the tools used are accurate in predicting risk. Nine counties indicated that they were willing to participate in a validation of the risk tools they relied on in the jurisdiction for release decisions. With this knowledge the OCJC requested to reallocate a portion of its NCJRP funding to hire Portland State University Researchers to conduct these local validation studies.

The data used in the validation studies for the PSC were compiled by merging information from the Oregon Judicial Department (OJD) data management system (Odyssey) with arrest information from the Law Enforcement Data System (LEDS). VPRAI data was collected directly from county pretrial services. Unfortunately, these two datasets could not always be merged due to various data issues and identifying appropriate dates. As a result, the PSU researchers were not able to provide PSC validation on the same dataset as the VPRAI validation. The data collection process took several months as many counties found that extracting and providing the data was far more difficult than they initially anticipated. Preliminary results indicate that the PSC and VPRAI have a number of strengths in their predictive accuracy for pretrial populations. However, in many counties, there are clear weaknesses as it relates to subpopulations and overall accuracy for pretrial outcomes (e.g., failure to appear). At the time of writing this report, PSU researchers are finalizing the reporting for each participating county. The anticipated completion of the validation series is early June, 2022.

15 The Public Safety Checklist was developed for community supervision and identifies an individual’s risk to recidivate. It considers numerous factors, including age at first arrest; the number of prior person, property, and statutory crime arrests in the last five years; any prior theft conviction, any prior incarceration, and prior revocation, the number of DOC custody cycles, the type of current offense (person, property, statutory); age; and gender. While it was not designed to be used a pretrial risk tool, some jurisdictions have elected to use it as such.

## Lessons Learned

* 1. *Ensure the proper foundation is laid before engaging in reform efforts.*

Pretrial reform has been a hot topic across the United States in recent years. As other states have enacted reform that ranges from incremental to sweeping, advocates and policymakers in Oregon desired to follow suit, passing HB 2238 in 2017 with an eye toward initiating reform efforts by the 2019 Legislative Session. This effort, particularly on the accelerated timetable contemplated in HB 2238, however, was premature, as the state faced several foundational hurdles that stood in the way of moving forward in a practical manner toward reform. The two chief hurdles Oregon faced were (i) a lack of understanding concerning the degree to which pretrial reform was going to be difficult given the status of security/bail in the Oregon Constitution, and (ii) the unavailability of essential data regarding pretrial processes in the courts as well as data on booking, security/bail amounts, and releases in local jails.

On top of these gaps in knowledge, there was also a dearth of deep understanding of the pretrial process in Oregon from a statutory standpoint. Oregon’s statutory framework is complex and was built over time in a piecemeal manner, which led to a haphazard collection of statutory provisions. Only after significant effort by the Public Safety Task Force and focused efforts by the Senate Bill 48 workgroup, were these complexities understood. It is essential, therefore, that policymakers understand the landscape before engaging in reform efforts, as momentum can easily be lost during the process.

* 1. *Maintaining focus when wider reform discussions are occurring*.

Following the murder of George Floyd in the summer of 2020, the criminal justice reform landscape in Oregon changed, making way for a multitude of reform efforts that previously would not have been possible. During the 2021 Legislative Session, the Oregon Legislature considered multiple bills that would have reformed Oregon’s mandatory minimum sentencing scheme, passed nine bills related to police reform and oversight, and considered pretrial reform via Senate Bill 48. Throughout this busy session, Senate Bill 48 was often an afterthought, as the reforms it proposed were highly technical in nature and because the bandwidth of legislators, policymakers, advocates, and citizens was insufficient to track, manage, and push the large number of bills under consideration. While timing is rarely perfect for any effort, the timing for Senate Bill 48 led to significant difficulties in getting the traction needed and legislative champions lined up to ensure a smooth pathway for the bill. Against the odds, it was passed during the final days of the session.

**Appendix A**

**Oregon Chief Justice’s Pretrial Release Order**

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| In the Matter of Establishing ReleaseGuidelines Governing Presiding Judge Standing Pretrial Release Orders | ))))))) | CHIEF JUSTICE ORDERNo. 22-010ORDER 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:
	1. 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.
	2. 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:
	1. Circuit courts will no longer utilize security schedules that apply immediately upon a defendant’s arrest;
	2. 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
	3. 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


#### ATTACHMENT A

**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:

* 1. Any non-person misdemeanor, except those offenses listed in Guideline 2 or 3;
	2. Any non-person Class C felony, except those offenses listed in Guideline 2 or 3;
	3. Any driving while suspended offense defined in ORS 811.182, except for aggravated driving while suspended as defined in ORS 163.196; and
	4. 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:

1. Any non-domestic violence person misdemeanor, as defined in OAR 213-003- 0001(15);
2. Any driving under the influence of intoxicants (DUII) offense, as defined in ORS 813.010 and ORS 813.011; and
3. 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:

1. Any violent felony, as defined in ORS 135.240, and any offense in ORS 137.700;
2. Any Class A felony;
3. 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;
4. Any domestic violence felony or misdemeanor, as defined in ORS 135.230;
5. 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
6. Any of the following offenses:
	1. 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;
	2. Failure to appear, as defined in ORS 162.195 and ORS 162.205;
	3. Felon in possession of a firearm, as defined in ORS 166.270;
	4. Fleeing or attempting to elude, as defined in ORS 811.540;
	5. Resisting arrest, as defined in ORS 162.315;
	6. Giving false information to a peace officer, as defined in ORS 807.620 and ORS 162.385;
	7. 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;
	8. Fugitive from justice, as defined in ORS 133.747; and
	9. 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:

1. 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.
2. 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.

## Appendix B

**Cost-Benefit Analysis of Pretrial Release in Oregon**

1

**Cost-Benefit Analysis of Pretrial Release in Oregon**

# October 2020



Oregon Criminal Justice Commission

Ken Sanchagrin, JD PhD Interim Executive Director

The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems.

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Thanks to Tristan Nighswander, PhD, Assistant Professor of Economics at Reed College for reviewing the methodology employed in this analysis and providing invaluable feedback and insights.

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#### Introduction

Pretrial release decisions are facing increased scrutiny, both in Oregon and nationwide. One inherent challenge in making these decisions is how to identify which arrested individuals to release prior to trial and which individuals to hold until trial. Historically, judges have decided which release options to offer each individual. Risk tools that evaluate an individual’s likelihood of recidivating or missing a court date may also be part of this decision process and, arguably, may increase the level of objectivity in release decisions. Some criminal justice system professionals and researchers criticize these risk tools, however, because of systemic biases intrinsic to the underlying data the tools rely upon. Regardless of the exact method of evaluation, underlying each release decision is a judgment of the likelihood that the individual will fail to appear for their court date and the likelihood that the individual will commit a crime while released during the pretrial period, each posing direct costs to society. This decision calculus also considers the personal and family costs stemming from a pretrial jail stay for the presumed innocent individual. Pretrial release decision-makers cannot accurately and objectively account for every factor at each decision hearing, but instead do their best with the information available, the policy guidance provided, and the existing resource constraints. Policymakers should consider these factors in addition to the costs of jail and pretrial supervision programs, respectively. This cost-benefit analysis provides an additional, system-level context for these release decisions and for the policy that is the foundation of these release decisions.

This cost-benefit analysis uses the best, currently available criminal justice system administrative data for Oregon to estimate the net benefits to society of an expansion of pretrial release programs in the state. In particular, we analyze the effect of increasing the number of individuals on pretrial release and also implementing an earlier release from pretrial detention for those who are currently held for a lengthy pretrial period. Of about 59,000 cases filed in 2018, the policy evaluated here would release about 9,000 individuals who were not otherwise released and reduce the time detained during the pretrial period for about 22,000 additional individuals. Additional releases pose a change in aggregate costs and benefits to society. Increased costs to society come in the form of additional crimes committed and missed court dates by some individuals that otherwise would have been held during their pretrial period, as well as expenditures for pretrial release evaluation and supervision programs. These additional costs are balanced against avoided costs or “benefits” of income and housing losses that stem from being jailed during the pretrial period and the cost savings of reducing jail populations. All of these costs and benefits are assigned monetary values in this analysis and then aggregated into a single measure of net benefits. The statewide, uniform policy of limiting pretrial detention to 3 days for lower-level crimes results in an estimated annual net benefit to society of $68 million, including $51 million savings in the criminal justice system and $17 million in net intangible costs. This statewide net benefit represents net benefits to some sectors of society and net costs to other sectors.

The following Section 2 summarizes the data used in this analysis. Section 3 details the methods and assumptions underlying the cost-benefit analysis. Section 4 described the results of the analysis in more detail. Section 5 discusses these results and describes several important caveats that should be considered when using these findings in policy settings.

#### Data Description

The Oregon Judicial Department (OJD) keeps hearing-level information on criminal cases. Since 2017, the pretrial period for each case has been identifiable in these data. Hearings during the years 2017-2019 were used to develop recidivism and Failure to Appear (FTA) rate estimates and to create cost-benefit

estimates for a single year, 2018.[1](#_bookmark15) Law Enforcement Data Systems (LEDS) data were linked to the OJD data to identify arrest dates, where possible. Either the case filed date or the arrest date was used as the start of the pretrial period, whichever occurred earlier. The end of the pretrial period is the disposition date. There are several challenges and shortcomings of these data. We discuss these challenges in more detail in the Methodology/Assumptions section.

After cleaning and correcting for missing and incorrect information in the hearing level data and collapsing to the case level, the base 2017-2019 data set has 169,667 observations. For recidivism and FTA rate calculations, we trim these data to 118,646 observations, the subset of individuals actually released during their pretrial period. FTA and recidivism rates are calculated for subgroups by jail size, Public Safety Checklist (PSC) risk score category, and most serious originating crime. For the cost- benefit analysis, we trim the original dataset to cases with file dates in 2018 (59,427 obs.), remove any cases for which there was a forced release (1,532 obs.)[2](#_bookmark16), remove any additional cases that included a domestic violence case modifier (4,725 obs.)[3](#_bookmark17), and finally remove all additional cases for which the most serious charged offense was a Misdemeanor Class C or Violation charge (6,240.)[4](#_bookmark18), resulting in a final dataset for the cost-benefit calculations of 46,930 observations.

#### Methodology/Assumptions

Cost-benefit analysis requires several assumptions regarding both the costs and the benefits that would be incurred with a policy change and compares these to the costs and benefits under the status quo. This section summarizes the sources used to estimate these costs and benefits in this analysis. All dollar figures are updated from their sources to 2019 dollars.

The policy change considered in this analysis would increase the rate of pretrial release from all Oregon jails. Specifically, individuals who are detained for the full pretrial period under the status quo would instead be released after 3 days of detention if their most serious charge was a non-person misdemeanor charge, drug charge, failure to appear charge, and/or was a crime that is the focus of Justice Reinvestment[5](#_bookmark19). Pretrial program administrators report that a 3-day limit for pretrial detention is the best practice and that a 3-day limit is an attainable goal of many established pretrial programs, when given adequate resources. In the cost-benefit analysis, individuals with this set of most-serious charges who are already released have their pretrial detention period reduced to 3 days if their detention period is longer

1 Based on a case filed date of 2018. A single, annual estimate was selected for the analysis as it facilitates extrapolation and since including a buffer year before and after the year of the analysis allows for the inclusion of arrest dates prior to 2018 and case events that occur in 2019 for cases that were initiated in 2018. A set of cases including those initiated in 2019 would have incomplete information for a greater proportion of cases that had not yet concluded at the end of 2019 and thus those cases would have been omitted from the analysis.

2 Individuals that are force released are selected for force release through an evaluation process by jail staff and do not incur jail stay costs after release. These are also individuals who are lowest risk and thus may be the most likely to be pretrial released under the policy change. Forced releases are thus omitted from the analysis as it is unclear how their costs will differ under the policy change, but the net benefits will be different than the population who were not force released.

3 District Attorney’s offices include a “constitutes domestic violence” identifier on each such charge in the OJD data.

4 A shortcoming of the hearing-level data is that jail stay information is missing. Where an individual was booked and had a release event, analysts can discern that they were in jail, but without a release event the individual may have never been booked in jail. Instead, they may have been cite-and-released or book-and-released. In these data, these individuals appear identical to those that are never pretrial released. Therefore, to minimize both over-counting and under-counting, the analyst must make an assumption regarding which cases were likely to have never entered jail. Identifying Class C Misdemeanors and Violations likely errs on the side of undercounting the population likely to be impacted by the policy change, and thereby lowers net benefits, since some of these individuals are assuredly held in jail on these minor offenses.

5 These include Burglaries (except Burglary I), Computer crimes, Extortion, Failure to Appear, Forgery, Motor Vehicle Theft, Robbery III, Drug, and Theft charges. For more information see <https://www.oregon.gov/cjc/jri/Pages/default.aspx>

than 3 days.[6](#_bookmark20) Importantly, cases for which at least one charge included a domestic violence modifier were omitted from this policy change. Each individual that is released or released earlier under the new policy represents a change in costs to the criminal justice system, to the individual, to their family, and to society.

Increased and earlier pretrial releases result in reduced jail detention costs and increased pretrial supervision costs. Criminal justice system costs are derived from several sources. Jail costs are derived from Vera’s survey of jails, where the median average cost to house an inmate[[1]](#footnote-1) for one day is $116.57.[7](#_bookmark21) Pretrial Supervision costs are based on the Washington State Institute for Public Policy’s (WSIPP) calculations of probation and parole supervision costs and are $3,557 per case.[8](#_bookmark22) In addition to these costs, increased pretrial release leads to increased potential to miss court dates. Each FTA is estimated to cost

$95.35.[9](#_bookmark23) The CJC checked with several stakeholders and criminal justice system partners to ensure that these cost estimates are close to actuals in Oregon. Ideally, these figures would instead be based on actual data from Oregon’s system, but the requisite data to develop these figures was not available for the current analysis.

Additional time on pretrial release also increases the potential for those released to commit crimes, which incur both criminal justice system costs and other intangible costs to society. Crime cost figures for each of several major categories of crimes are presented in Table 1 and have been converted from the original sources to 2019 dollars.

**Table 1. Crime Costs (2019$)**

|  |  |  |
| --- | --- | --- |
| **Crime Category** | **Criminal Justice System Costs** | **Victim and Other Intangible Costs** |
| Aggravated Assault | $10,286 | $117,103 |
| Assault IV1 | $10,286 | $19,987 |
| Burglary | $4,912 | $2,779 |
| Drug Non-Possession | $23,109 | $4,616 |
| Drug Possession | $29 | $5 |
| Motor Vehicle Theft | $4,603 | $8,219 |
| Murder | $467,027 | $10,225,558 |
| Other Crimes2 | $5,321 | $4,616 |
| Property | $5,786 | $1,063 |
| Rape/Sexual Assault | $31,519 | $255,083 |
| Robbery | $16,459 | $33,904 |

1Based on estimates for Aggravated Assault, less the adjusted risk of homicide as summarized in

McCollister et al 2010.

2Average costs of Arson, Vandalism, Forgery and Counterfeiting, Embezzlement, and Fraud.

3Average of Larceny/Theft and Stolen Property.

6 Detention times in this analysis are estimated based on arrest and court data. At time of writing, statewide jail data are inconsistent and do not yield the requisite information to reliably complete this analysis and, further, was determined to be less reliable then estimates based on court data.

7 The low cost among these jails was $51.52, the high was $617.52, and the mean was $139.36, all updated to 2019 dollars. See Christian Henrichson, Joshua Rinaldi, and Ruth Delaney, “The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration” (Vera Institute of Justice, May 2015).

Analysts also explored Oregon administrative information and the OSJCC survey of jails for 2019 as alternative measures of the cost of jailing one person one day. Analysts calculated the total number of bed days available per year and divided the budget by this figure, averaging for each group of jails. These figures by jail group varied from a low of $109.88 to a high of $243.42, but included a smaller set of costs than the figures presented by Vera and so were not used in the primary analysis.

8 “Benefit-Cost Technical Documentation.” Washington State Institute for Public Policy, December 2019.

9 Based on estimates from Alan Tomkins et al., “An Experiment in the Law: Studying a Technique to Reduce Failure to Appear in Court,” *Court Review: The Journal of the American Judges Association* 395 (2012): 12.This represents that highest estimate calculated by those researchers, where the low estimate was $58.81. Ideally, this value would be calculated using a method close to that employed by Tomkins, but based instead on Oregon administrative data. This detailed administrative data was not available at time of writing.

In Table 1, for all crime categories excluding drug possession and drug non-possession, criminal justice system costs include “...police protection costs, legal and adjudication costs, and corrections costs” at the local, state, and federal levels. Victim and other intangible costs consist of a variety of other costs outside the criminal justice system. Victim costs specifically include “...medical expenses, cash losses, property theft or damage, and lost earnings” as well as the cost of post-victimization counseling, and a risk-of- homicide cost. Other non-criminal justice system costs include crime career costs (i.e., productivity losses due to engaging in criminal activity instead of working), and pain-and-suffering costs to victims, including for injuries such as “...gunshot wounds, broken bones, knife wounds, being knocked unconscious, bruises and/or cuts, rape-related injuries.”[10](#_bookmark24) The costs for drug possession and drug non- possession are similarly calculated, with possession defined as “drug law violation” costs[11](#_bookmark25) and non- possession defined as “felony drug” costs[12](#_bookmark26).

Crime rates for additional pretrial releases are based on recidivism rates for prior pretrial releases and only measured during their pretrial release period. We measure both arrest and conviction recidivism rates for those released during the pretrial period from 2017-2019. We measure these rates for each subgroup by jail group (mega, large, medium, or small), PSC risk level (low, medium, high, none)[13](#_bookmark27), and the most serious originating crime category[14](#_bookmark28) for a total of 128 groups. Total recidivism rates are then estimated by the most-serious, subsequent outcome crime that occurs during the pretrial release period. These recidivating, outcome crime categories conform to those used in the crime valuation literature (Table 1).[15](#_bookmark29)

Arrest recidivism rates are used to estimate the expected value of criminal justice system costs for each individual. Regardless of whether a conviction results from these arrests, we assume that the criminal justice system costs for that type of crime are realized for that arrest. This may, thus, overestimate these costs since not all of these arrests will incur the full range of criminal justice system costs used in these calculations. Conviction rates are used to estimate the victim and other intangible costs. In contrast to the overestimation that is likely with the arrest recidivism, here convictions do not fully account for all crimes committed, since not all crimes committed are prosecuted or convicted. Thus these figures may be an underestimate of the victim and intangible costs. These estimates, however, represent the best available information.

FTA rates are calculated using the same groupings as those used for recidivism rates—jail group, PSC risk level, and most serious originating crime and are calculated based on hearing-level data from OJD. Here FTA rates are calculated by which cases had at least one FTA event[16](#_bookmark30). When an individual FTAs, however, the hearing data shows that they are likely to FTA more than once on a case (2.28 times on average). Thus we generate rates based on an FTA/no-FTA binary measure, but assume that those who FTA do so 2.28 times. Both the FTA rate and number of FTAs are based on actual data for those released during the pretrial period in Oregon, and thus may misestimate the theoretical FTA rate of those who are not currently released pretrial.[17](#_bookmark31)

10 Kathryn E. McCollister, Michael T. French, and Hai Fang, “The Cost of Crime to Society: New Crime-Specific Estimates for Policy and Program Evaluation,” *Drug and Alcohol Dependence* 108, no. 1–2 (April 2010): 98–109.

11 See Andrew S. Rajkumar and Michael T. French, “Drug Abuse, Crime Costs, and the Economic Benefits of Treatment,”

*Journal of Quantitative Criminology* 13, no. 3 (September 1997): 291–323.

12 See “Benefit-Cost Technical Documentation.” Washington State Institute for Public Policy, December 2019.

13 For more details regarding the Public Safety Checklist risk calculations see <https://risktool.ocjc.state.or.us/psc/>

14 Based on the Uniform Crime Categories used by the FBI: Person, Felony-Weapon, DUI/DWI/ Felony-Drug, Property, Motor Vehicle, Misdemeanor-Drug, and Other.

15 For more information regarding how recidivism is measured in Oregon see the CJC’s recidivism dashboards <https://www.oregon.gov/CJC/SAC/Pages/Recidivism-dashboard.aspx>

16 Including both charged and non-charged FTAs.

17 Stakeholders have reported that, due to errors in processing, some individuals may FTA while in jail in Oregon. It remains unclear the frequency of these events. These occurrences and their related costs are omitted from the cost-benefit analysis.

When an individual is jailed this poses several risks to their, and potentially their family’s, economic and physical well-being. An individual that is jailed for an extended time may lose their employment or face additional difficulties in finding employment after release. Adjusted to a per-person value, researchers have found that those released pretrial have $1,042 higher expected formal sector earnings than those detained during the pretrial period.[18](#_bookmark32) Families may also face eviction after a lengthy jail stay,[19](#_bookmark33) where the average cost of an intra-state move is $1,264. Landlords also incur significant costs in lost rent and the hours spent finding replacement tenants, making the cost of completing an eviction $1,767.[20](#_bookmark34) There are several other categories of intangible costs related to pretrial detention that have been identified in the prior literature[21](#_bookmark35), including the loss of healthcare, the value of housing security, the impact that a parent’s jail time has on children, and the possibility that time in jail *increases* future criminal justice system involvement, all other things equal. These factors are beyond the scope of the current analysis, but are considerations in policy discussions.

#### Results

The cost-benefit models are estimated by jail group and also summarized for the state as a whole. The American Jail Association categorizes jail size by bed capacity, where mega jails have 1000+ bed capacity, large 250-999, medium 50-249, and small 1-49. Following these guidelines, Oregon’s county level jails are categorized based on the 2019 operational capacity of each jail[22](#_bookmark36) and are described in Table 2.

**Table 2. Jail Categories by Operational Capacity**

|  |  |
| --- | --- |
| **Jail Category** | **Jails** |
| Mega – 1000+ beds | Multnomah1 |
| Large – 250-999 beds | Clackamas, Columbia, Deschutes, Douglas, Jackson, Lane, Marion, Washington, Yamhill |
| Medium – 50-249 beds | Clatsop, Coos, Crook, Jefferson, Josephine, Klamath, Lincoln, Linn, Malheur, NORCOR, Polk, Tillamook, Umatilla |
| Small – 10-49 beds | Baker, Benton, Curry, Grant, Harney2, Lake, Union |

1Multnomah County has two detention centers; both are included in these data.

2Harney County did not submit a response to the OSJCC Survey.

18 A 16.1% increase in average formal sector earnings compared to those detained. In addition, the probability of having any income is 23.2% higher for the released group. The researchers also found additional, longer-term impacts that are not included here. See Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” *American Economic Review* 108, no. 2 (February 2018): 201–40.

19 This may occur due to economic constraints following the lost wages during incarceration, housing situations that preclude arrest and/or incarceration events, or other factors.

20 Michael McLaughlin et al., “The Economic Burden of Incarceration in the U.S.” (St. Louis: Concordance Institute for Advancing Social Justice, July 2016). Prior research shows that about 10% report that their families face eviction because of their incarceration, see Saneta deVuono-powell et al., “Who Pays? The True Cost of Incarceration on Families” (Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015).

21 See, for example, McLaughlin et al., “The Economic Burden of Incarceration in the U.S.”

22 Oregon Sheriffs’ Jail Command Council. 2019 Jail Statistics by County. We do not include a municipal jail category in this

Table 3 presents the results of the cost-benefit analysis in 2019 dollars for a single year. A shift away from jail and towards release and pretrial supervision, as described in the Methodology/Assumptions section, represents a net benefit to society of about $68 million dollars, including $51 million dollars in reduced criminal justice system costs. Additional pretrial supervision, FTA, and crime processing results in an increase in costs of about $210 million, but these are more than balanced out by a reduction of jail costs of $261 million. Importantly, these figures represent annualized estimates of total spending related to jails, rather than direct budgetary savings and thus cannot be directly compared to annual/biennial jail budgets. For example, jail capital improvements are expensive, but only occur intermittently and an annual jail budget does not necessarily reflect these costs. These estimates account for these large but intermittent capital improvement costs and other costs related to jail administration that are not necessarily included in annual jail budgets.

Similarly, the intangible benefits related to increased retention of housing and increased likelihood to obtain and/or retain employment (Intangible Total – Total Benefits, ~$53 million) are larger than the monetized victim and other intangible crime costs (Intangible Total – Total Costs, ~$35 million).

Notably, however, these intangible crime costs are an area that saw significant differences across the jail groups. The recidivism rates for the Medium and Small jails were higher than those for the Mega and Large jails, resulting in higher predicted crime costs relative to the other cost categories. For small jails these high intangible crime costs led to negative net benefits for that group.

Table 4 presents several figures underlying the cost-benefit calculations. The table summarizes the number of individuals that would be released who otherwise would not have been released at all (9,101), the number of individuals with shortened pretrial detention periods (22,173), as well as the predicted increase in crime counts as a result of the increased releases during the pretrial period. Importantly, the crime counts presented here overestimate the increase in crime that would result from additional releases and should be considered upper bound estimates. The recidivism figures are applied to both new releases as well as those with shortened pretrial detention periods. At time of writing it remains unclear what effect an increase in time on pretrial release has on recidivism rates for those that are already released.

This, further, suggests that the crime costs presented in Table 3 are overestimates and should be considered an upper bound. This caveat similarly applies to the intangible housing and employment benefits and the pretrial program costs. Prior research, however, shows that increasing the length of the pretrial detention period increases the likelihood of more severe criminal justice outcomes[23](#_bookmark37) and economic outcomes,[24](#_bookmark38) whereas comparable research regarding the effect of pretrial release length on crime rates was not found.

23 See, for example, Christopher M. Campbell et al., “Gauging Detention Dosage: Assessing the Impact of Pretrial Detention on Sentencing Outcomes Using Propensity Score Modeling,” *Journal of Criminal Justice* 70 (September 2020): 101719; Christopher T Lowenkamp, Marie VanNostrand, and Alexander Holsinger, “Investigating the Impact of Pretrial Detention on Sentencing Outcomes,” November 2013, 21.

24 See, for example, Dobbie, Goldin, and Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment.”

**Table 3. Cost-Benefit Results, Annual (2019$)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Category** | **Mega** | **Large** | **Medium** | **Small** | **All** |
| **System Benefits** | Avoided Jail Costs | $38,077,007 | $134,964,279 | $78,495,673 | $9,394,726 | $260,931,686 |
| **Intangible Benefits** | Housing Benefits | $1,635,818 | $6,255,222 | $3,530,880 | $492,413 | $11,914,333 |
| Employment Benefits | $5,622,183 | $21,498,729 | $12,135,371 | $1,692,387 | $40,948,670 |
| **System Costs** | Pretrial Supervision | ($19,188,558) | ($73,375,339) | ($41,418,121) | ($5,776,129) | ($139,758,148) |
| Failure to Appear | ($405,353) | ($1,216,248) | ($748,462) | ($79,475) | ($2,449,538) |
| **Criminal Justice System Crime Costs** | Murder | ($66,718) | ($2,141,593) | ($1,991,894) | ($36,732) | ($4,236,938) |
| Assault (Agg, I, II, III) | ($274,738) | ($1,061,463) | ($680,564) | ($87,024) | ($2,103,789) |
| Assault IV | ($546,338) | ($2,269,310) | ($1,319,054) | ($179,729) | ($4,314,430) |
| Robbery | ($695,937) | ($1,394,675) | ($451,914) | ($88,978) | ($2,631,504) |
| Sexual Assault/Rape | ($150,031) | ($781,607) | ($321,051) | ($57,190) | ($1,309,878) |
| Property | ($1,361,383) | ($6,612,544) | ($3,589,358) | ($453,809) | ($12,017,094) |
| Drug Possession | ($4,054) | ($20,465) | ($13,664) | ($1,221) | ($39,404) |
| Drug Non- Possession | ($3,320,347) | ($5,999,163) | ($3,932,817) | ($357,800) | ($13,610,127) |
| Motor Vehicle Theft | ($531,917) | ($1,014,378) | ($438,329) | ($37,498) | ($2,022,121) |
| Burglary I | ($189,893) | ($744,031) | ($378,976) | ($52,578) | ($1,365,478) |
| Other | ($2,084,440) | ($13,996,108) | ($7,403,448) | ($746,613) | ($24,230,609) |
| **Victim and Other Intangible Crime Costs** | Murder | $0 | ($4,172,797) | ($6,543,788) | ($7,134,297) | ($17,850,882) |
| Assault (Agg, I, II, III) | ($423,682) | ($1,917,377) | ($1,298,623) | ($283,904) | ($3,923,586) |
| Assault IV | ($240,525) | ($683,784) | ($447,654) | ($50,006) | ($1,421,969) |
| Robbery | ($317,522) | ($631,980) | ($292,214) | ($41,211) | ($1,282,928) |
| Sexual Assault/Rape | ($166,726) | ($2,158,351) | ($1,010,287) | ($166,208) | ($3,501,572) |
| Property | ($138,200) | ($378,059) | ($215,746) | ($30,351) | ($762,357) |
| Drug Possession | ($160) | ($433) | ($276) | ($37) | ($906) |
| Drug Non- Possession | ($36,840) | ($160,979) | ($108,134) | ($15,366) | ($321,318) |
| Motor Vehicle Theft | ($220,961) | ($640,448) | ($333,723) | ($60,870) | ($1,256,002) |
| Burglary I | ($17,886) | ($62,268) | ($49,885) | ($10,131) | ($140,169) |
| Other | ($699,331) | ($2,474,132) | ($1,616,746) | ($217,221) | ($5,007,429) |
| **Criminal Justice System Total** | Total Costs | ($28,819,708) | ($110,626,925) | ($62,687,651) | ($7,954,776) | ($210,089,061) |
| Total Benefits | $38,077,007 | $134,964,279 | $78,495,673 | $9,394,726 | $260,931,686 |
| **Net Benefits****- CJ** | **$9,257,299** | **$24,337,354** | **$15,808,022** | **$1,439,949** | **$50,842,624** |
| **Intangible Total** | Total Costs | ($2,261,833) | ($13,280,607) | ($11,917,077) | ($8,009,602) | ($35,469,119) |
| Total Benefits | $7,258,001 | $27,753,950 | $15,666,251 | $2,184,800 | $52,863,002 |
| **Net Benefits****- Intangible** | **$4,996,169** | **$14,473,343** | **$3,749,174** | **($5,824,802)** | **$17,393,883** |
| **Total** | **Net Benefits****- All** | **$14,253,468** | **$38,810,697** | **$19,557,196** | **($4,384,853)** | **$68,236,508** |

**Table 4. Predicted Releases and Recidivating Crime**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Mega** | **Large** | **Medium** | **Small** | **All** |
| Hypothetical Bookings Released | New Releases | 1,564 | 4,916 | 2,315 | 306 | 9,101 |
| Shortened Pretrial Detention | 1,657 | 12,309 | 7,176 | 1,031 | 22,173 |
| Predicted Increase in Crime | Murder | 0.0 | 0.4 | 0.6 | 0.7 | 1.7 |
| Assault (Agg I, II, III) | 3.6 | 16.4 | 11.1 | 2.4 | 33.5 |
| Assault IV | 12.0 | 34.2 | 22.4 | 2.5 | 71.1 |
| Robbery | 9.4 | 18.6 | 8.6 | 1.2 | 37.8 |
| Rape/Sexual Assault | 0.7 | 8.5 | 4.0 | 0.7 | 13.7 |
| Property | 130.0 | 355.7 | 203.0 | 28.6 | 717.2 |
| Drug Possession | 33.5 | 90.6 | 57.7 | 7.7 | 189.5 |
| Drug Non-Possession | 8.0 | 34.9 | 23.4 | 3.3 | 69.6 |
| Burglary I | 6.4 | 22.4 | 17.9 | 3.6 | 50.4 |
| Motor Vehicle Theft | 26.9 | 77.9 | 40.6 | 7.4 | 152.8 |
| Other | 151.5 | 536.0 | 350.2 | 47.1 | 1,084.8 |

#### Discussion

The $68 million dollar net benefit associated with increased pretrial release is a large figure that requires context and several caveats. First, we reemphasize that this figure is not an estimate of the budgetary cost savings that local or state governments would realize. Several costs/benefits are included in $68 million that are either intangible, are borne by individuals outside of government, or are annualized costs of large, intermittent expenditures. Further, the Criminal Justice System Net Benefits are not a complete representation of the expected impact on government budgets. Pretrial evaluation and supervision programs have significant startup costs and jail budgets do not adjust on a per person basis; the figures presented here incorporate estimates of capital, staff, and other longer-term expenses, which are costs that cannot adjust as quickly as the number of participants may.

Rather, these figures estimate that Oregonians would likely experience a net, societal gain with this policy change that has a monetized value of $68 million. This $68 million accounts for the pain and suffering of victims of additional crimes, to the extent that the economic research suggests it is possible to monetize these impacts. Nevertheless, the increase in expected crime presented in Table 4 would include an increase in victimization in Oregon, assuming no additional mitigating policies are implemented. These victims may not agree with the valuation of crime used in this analysis, in method or value. While, on net, this policy change leads to a significant net benefit to Oregon using the best possible estimates at the time of analysis, policymakers should concurrently consider how to minimize recidivism rates, minimize the risk of releasing individuals likely to commit violent crimes, and increase funding for victim services to offset these impacts. In sum, while changing pretrial detention policies resources should concurrently be dedicated to the development of reliable and equitable pretrial risk evaluation tools, training of additional pretrial evaluation and supervision staff, and standardization of evaluation and supervision processes.

In the group of small jails, victim costs are relatively larger than the expected intangible benefits related to increased releases. This is due to smaller jails releasing a higher proportion of individuals that then go on to commit relatively more severe crimes in the recidivism data used in this analysis. The reason for this difference was not identified at the time of writing, but smaller jails may, for example, have a larger population of high-risk individuals or may have fewer risk evaluation resources. Regardless of the reason for this difference, it suggests that if a statewide release program is implemented jails will require additional guidance and technical assistance in both evaluating and effectively supervising individuals on

pretrial release, and that this issue is particularly salient in small jail jurisdictions. The pretrial supervision costs used in this analysis assume a uniform cost structure to these programs across the state, but there may be lower or higher administrative costs across jurisdictions especially where pretrial evaluation programs have not existed in the past and when comparing small and large programs.

This analysis also presumes that the recidivism and FTA rates of individuals currently held during the pretrial period would be the same as for those currently released, when controlling for PSC risk score, jail group size, and original crime category. Future individuals may, all these factors equal, have a different recidivism rate than those currently released pretrial and/or more robust pretrial supervision programs may impact these recidivism rates, and thus this assumption may not hold. A large policy change such as reducing pretrial detention also incorporates a system-wide increase in pretrial supervision, which, if implemented effectively, may reduce recidivism and FTA rates for all released individuals, on average.

Other policy changes not considered here may also change the level of crime committed by released individuals. For example, expediting case processing times would reduce the time on pretrial release and thus reduce the window in which crimes might be committed during the pretrial period.

This cost-benefit analysis also omits several factors that are identified in the literature as benefits of increasing pretrial release: The children of jailed individuals tend to have economic repercussions from their parent’s involvement in the criminal justice system. Housing and employment security has an intrinsic value unto itself, beyond the measurable costs of moving and lost rent. Jail stays may have life of crime impacts, where additional crime and personal costs are incurred *because* an individual spends time in jail. Jailed individuals may lose health insurance coverage, which poses costs both to the individual and, potentially, to society should the individual not reacquire health insurance upon release and then have a hospital visit. These factors are beyond the scope of the current analysis and thus are not estimated here, but the estimates of intangible benefits of increased pretrial release used in this analysis should be considered underestimates due to these omissions.[25](#_bookmark39)

Finally, the policy analyzed here is modelled as though pretrial releases would drastically and quickly increase statewide, shifting resources demanded by the jail system towards pretrial supervision services. This is, obviously, not how policy implementation occurs, but is a necessary presumption in the current analysis and does not influence the overall conclusion that increasing pretrial releases from Oregon’s current levels for low-level crimes provides a net benefit to society. Nevertheless, policymakers should remember that there are significant logistical and economic challenges involved with a policy change of this scale. For example, the societal benefits of a policy change may be significantly delayed in practice and there would be large startup costs related to pretrial program costs that would decrease and become more regular over time. Thus, the results of this analysis are best used as context for considering the societal benefits of a similar policy change, rather than in a budgetary framework.

25 For a more complete discussion of the full range of costs and benefits see McLaughlin et al., “The Economic Burden of Incarceration in the U.S.”

1. NCJRP supports person-first language; this is the word used in this report. [↑](#footnote-ref-1)