



AGENDA

Marion County Public Safety Coordinating Council

Join Zoom Meeting

Topic: MCPSCC
Time: Oct 11, 2022 04:00 PM Pacific Time
(US and Canada)
Join Zoom Meeting
<https://us06web.zoom.us/j/87230694469>

Date: Tuesday, October 11, 2022
Time: 4:00 p.m. to 6:00 p.m.
Place: Courthouse Square, BOC Office
Staff: Hitesh Parekh, BOC Office
Phone: (503) 588-5212

In Person Meeting At:
Courthouse Square, BOC Office
555 Court St, 5th Floor
BOC Office
Salem 97309

4:00 - 4:15 PM

1. Administrative (Information/Action)

Kevin Cameron, Chair

- Welcome and introductions
- Announcements & upcoming events
- Memberships
- Approve July 12, 2022 MCPSCC meeting minutes
- Reentry Breakfast Meeting: October 27, 2022
- Next Legislative Delegation Breakfast Meeting: December 13, 2022
- Other

4:15 - 4:45 PM

2. Behavioral Health Update

(Information/Discussion/Possible Action)

- Oregon State Hospital Federal Judge Order
- Marion County Crisis Center Update
- Salem Navigation Center Update

*Paige Clarkson, DA
Ryan Matthews, Health & HS
Chris Hoy, City of Salem*

4:45 - 5:30 PM

3. Criminal Justice Advisory Council (CJAC)

(Information/Discussion/Possible Action)

- Status of Defense Attorney Availability
- Senate Bill 48 Modification of Pre-Trial Release Process

Judge Tracy Prall

*Judge Prall/Shannon Wilson
Amy Queen/Tad Larson*

5:30 - 5:45 PM

4. Law Enforcement Assisted Diversion (LEAD) Update

(Information/Discussion/Possible Action)

Sheriff Kast

5:45 - 6:00 PM

5. Emerging Issues/Other Business

(Information/Discussion/Possible Action)

All

6:00 PM

ADJOURN

MARION COUNTY
PUBLIC SAFETY COORDINATING COUNCIL

OCTOBER 11, 2022

MEETING AGENDA PACKET

Note: Information on this page is considered public record and may be made available upon request.

Name: Elizabeth Jeanette Infante

City of residence: Salem

Business information:

Occupation/business Commercial Real Estate Advisor

Business address 4160 Commercial Street SE

City Salem, Oregon Zip code 97302 Business telephone 503-569-9043

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I would like to be considered for the Public Safety Coordinating Council position on
the advisory board (lay or representative designation)

(name of committee, board, council, task force or commission)

The reason I am applying for this appointment is

I have a diverse background stemming from my education and career. I have worked in the criminal justice field to the legal field. My undergraduate education has all been in criminal justice and criminology. I have worked in criminal defense, criminal investigations and the judicial branch. With the diversity and experience I feel I can bring a unbiased view to the board.

The personal and professional interests that prompted me to apply for this appointment are

I have always had a passion for public safety and feel that in order to make a change you must be willing to be part of the change. I have young children growing up in this community, I work in this community and have deep connections here in Marion County. I want to be a part of this community and positive change in anyway I can .

Have you served on any other Marion County board, commission, committee, council, or task force? (If yes, please list)

1. No

2. _____

Please list qualifications and skills you have which you believe would be valuable if you are appointed to this position (include relevant skills, activities, training, and education)

I have a MBA in business from Willamette University. My training and education has taught me to be view every situation through more than one lense. I have learned to dig deeper into situations and not just view the forest as a whole but see the tree's as well. I have also served on boards with the Liberty House and currently sit on the Salem Community Review Board.

What community or school activities, committees or special activities have you participated in?

My children all go to Salem Academy where I have been involved with all sports activities, I am currently on the CRB with City of Salem. While a student at Portland State University I completed a capstone at IKE Box were I worked with at Risk Youth. I was also a intern with the Marion County District Attorneys office in the criminal investigations unit in 2013.

MARION COUNTY PUBLIC SAFETY COORDINATING COUNCIL
MINUTES

July 12, 2022, 4:00 PM
Courthouse Square
Salem, OR

MCPSCC: Joe Budge, Christina McCollum, Mark Caillier, Kevin Cameron, Rob Carney, Paige Clarkson, Jayne Downing, Tamra Goettsch, Chris Hoy, Linda Hukari, Levi Herrera-Lopez; Joe Kast, Rick Lewis, Pete McCallum, Todd McCann, Ed McKenney, Ryan Matthews, Tim Murphy, Tracy Prall, Dave Rash, Mike Runyon, Shaney Starr, Colm Willis, Shannon Wilson, Trevor Womack, Chris Zohner, Hitesh Parekh (recorder).

GUESTS: Chad Ball, Mark Daniel, Allan Edinger, Raquel Moore-Green, Tera Hurst, Evan Source, Dori Sumstad, Olcott Thompson, Steve Webster, Ron Williams, Kameron Wolfer

1. ADMINISTRATIVE (INFORMATION/ACTION)

Meeting called to order at 4:05 P.M. by Commissioner Kevin Cameron.

Welcome and introductions

- Introductions

Announcements and upcoming events

- Liberty House *Champions for Children Lunch Event* Scheduled for September 28, 2022. All welcome to attend.

Memberships

- Board of Commissioners want county to be consistent in advisory groups recruiting process and will publicly recruit for any vacant/expired positions.
- Four MCPSCC positions will expire July 31, 2022. Of these, two are at-large, one is a legislator, and the fourth, a victim services position. The victim services position is mandated by the ORS.

Prior meeting minutes

MOTION to approve the April 12, 2022 meeting minutes made by Jayne Downing. Seconded by Ed McKenney. Motion passes.

Reentry breakfast meeting April 28 debrief

- Commissioner Cameron and Community Services Director Tamra Goettsch provided an update on the Marion County Reentry Initiative Breakfast held on April 28.
 - Great turnout and sponsorship- County received nearly \$30,000 in donations which will be used to support victim services.
 - Another breakfast is scheduled for October 27, 2022 which will focus on service providers.
- Also planning a MCPSCC/legislative delegation breakfast in winter.

2. STOP DATA PRESENTATION ANNUAL REPORT

Steve Webster, STOP Program Coordinator, Department of Public Safety Standards and Testing (DPSST) presented this item. ([See PowerPoint presentation.](#)) Summary of presentation:

- House Bill 2355 passed in 2017 and required all Oregon law enforcement agencies to submit data regarding officer-initiated traffic and pedestrian stops to the Oregon Criminal Justice Commission, (CJC) by 2021.

- Commission would then analyze the submitted data for evidence of racial or ethnic disparities on an annual basis and report this data back to local public safety coordinating councils.
- To accomplish this, the CJC, along with the Oregon State Police and the DPSST, created the Oregon Statistical Transparency of Policing (STOP) Program.
- As of December 2021, the STOP Program has received at least one full year of data from 143 law enforcement agencies in the state.
- Agency can also provide advice or technical assistance to any law enforcement agency mentioned in the report.
- The STOP Program identified one agency that had statistically significant results across two of the tests performed on the data: Oregon State Police. Specifically, results indicated that Oregon State Police had disparities regarding citation patterns involving Asian/PI, Black, Latinx, Middle Eastern, and Native American individuals, with search patterns for Latinx and Native individuals, and with arrest patterns for Native American individuals.
- It recommended that the Oregon State Police be examined in greater detail by STOP Program researchers and receive technical assistance from DPSST.

3. MARION COUNTY JAIL CAPACITY INCREASE

Commissioner Cameron and Sheriff Kast presented this item. Summary of presentation:

- Commissioners have been discussing increasing the capacity of the jail for some time:
 - For FY 22-23 “G-Pod” will be funded for an additional 55 beds.
 - Prior to 2020, jail capacity was 415 for several years and G- Pod used by the DPSST for training purposes.
 - Adding 55 beds will increase the jail population to 470 although it will take a while to hire and train individuals to run the pod.
 - Anticipating pod will open in June or July 2023.
 - When COVID-19 first struck in March 2020, jail was down to 270-280 adults in custody, but now it is at a little over 400.
 - With new beds, annual operating cost to county General Fund will be approximately \$2 M.

Summary of Discussion

District Attorney Paige Clarkson said courts struggle with high failure to appear (FTAs) rates.

When people are in custody, county is under obligation to move them through the justice process.

Allowing more jail capacity will decrease the FTA rates, which means less staff needed to arrest those on warrants. Also, if county holds people to their arraignments – these individuals are more willing to return to court. Ultimately, the hope is that this may also alleviate the burden on defense attorneys.

4. STATUS OF DEFENSE ATTORNEY AVAILABILITY IN MARION COUNTY

Shannon Wilson, Executive Director, Public Defender Marion County Inc. provided a history of Oregon public defenders, current local practices, how public defense works, the current crisis, and proposals to remedy the crisis. She said the presentation was a conversation starter. She was not trying to make political comments, just wanted to present the facts. ([See PowerPoint presentation.](#))

- The Supreme Court recognized public defense as a constitutional right under the 6th amendment 60 years ago.
- In 1994, the Oregon State Bar Indigent Task Force indicated concern of increasing caseloads and decreasing quality of representation in the state. The Task Force came up with numbers based on national best practice standards.
 - Oregon still working under these same numbers since 1994.

- In 2001, SB 145 passed and created the Public Defense Services Commission (PDSC) replacing State Public Defenders.
- In 2007, the Public Defender of Marion County (PDMC) was established to meet the need for more attorneys in Marion County.
- In 2018, the Oregon Legislature ordered a study be done on the entire system, called the 6th Amendment Study.
 - The study showed that the way people were being paid to represent low-income clients was unconstitutional.
 - Paying on a per-case basis (which incentivized attorneys to take on as many cases as possible to make more money).
- In 2020, the funding model was changed based on the 6th Amendment Study.
 - Full-time equivalent attorneys will get paid a certain amount of money but expected to handle a certain number of cases.
- In 2022, Chief Justice Walters ordered the Office of Public Defense Services (OPDS) to address the public defender crises.
- There are more people who qualify for public counsel in Marion County compared to Washington or Clackamas.
 - Per capita, Marion County needs more defense attorneys than other counties in the state.
- There is a huge disparity in the yearly salary range of PDMC attorneys compared to other government funded attorneys in the state.
 - This has prevented PDMC from staying competitive in hiring and retaining attorneys.
- PDMC is currently dealing with excessive caseloads.
 - The American Bar Association (ABA), Oregon Project study showed that overwhelming caseloads forced even excellent public defenders to cut corners and spend less time than they should on every client's case.
- The shortage of public defenders in a national crisis.
- According to the ABA, Oregon is deficient 1,296 public defenders.
- Presiding Judge Prall has made strong efforts toward settling cases prior to trial.
- PDMC is working on creating a work group to explore a holistic defense model.
 - Holistic defense model would resolve cases more effectively and reduce recidivism by also addressing underlying challenges and needs that may lead to criminal activity.
- PDMC is looking for people to participate in the work group.

Summary of Discussion

Marion County's numbers may look high: During COVID-19, while most counties shut down the adjudication process involving the courts, Marion County continued serving justice sending individuals to the state's penitentiaries. Also, the per capita income levels for the three comparative counties is higher- and there has been a proven direct correlation between crime and poverty. Over the years both the District Attorneys' Office and defense attorneys have lost lawyers and staff after working for a few years. New attorneys cannot handle Measure II cases. Very hard to recruit attorneys, defense bar pays \$55 reimbursement rate per hour- compared to the state. There is mass disparity between pay scales.

5. CRIMINAL JUSTICE ADVISORY COUNCIL (CJAC)

For this item, the MCPSCC temporarily took on the role of the Criminal Justice Advisory Council, chaired by Marion County Circuit Court Presiding Judge Tracy Prall. Summary of presentation:

- Judge Prall said that due to underfunding, the county has been dealing with a shortage of defense attorneys since last August.
 - This has a profound impact on public safety, and the shortage needs to be addressed.
 - Circuit courts are dealing with this daily, trying to ensure the right people are in custody and have lawyers.
 - Very troubling, currently there are 19 adults in custody without lawyers, although this number has been as high as 35.
 - Multnomah County has more than 600.
 - So mostly a large county problem.
- Legislature is going to have to deal with this.
- By mid-August, county is going to see a lack of attorneys for in-custody adults.

7. MEASURE 110-HEALTH JUSTICE RECOVERY ALLIANCE

Mr Ron Williams, chair of the Measure 110 Oversight and Accountability Council and Outreach Director, introduced his co-presenters Tera Hurst, Executive Director of the Health Justice Recovery Alliance and Dori Sumstad, Behavioral Health Resource Network Outreach Director, Health Justice Recovery Alliance. Summary of presentation:

- On November 3, 2020, Oregon voters passed Measure 110, approving two changes in how the state deals with the use of illegal drugs.
- First, the measure reduced penalties for drug possession, making Oregon the first state to decriminalize the personal possession of illegal drugs.
- Secondly, the anticipated savings achieved from the current cost of enforcing criminal drug possession penalties were to be combined with marijuana sales revenue to fund a new drug addiction treatment and recovery grant program.

Health resource networks are now being established in every county.

- Organization is not connected to government but is an advocacy organization for 75 organizations and meets with 20-30 providers across the state to ensure state is implementing what voters intended.
- \$302 M invested in harm reduction and recovery for this biennium, which is five times more than what Oregon spends on non-Medicaid funding for these services.
- Expanding access to a variety of services, including low-barrier treatment, harm reduction, and overdose treatment as well as housing. Want to move substance abuse from being a criminal justice issue to a health care issue-which is what the voters wanted.
- First \$30 M was invested at the end of the 2021 legislative session and now 16,000 individuals have been served in 26 different counties in the state.
- Majority of services were harm reduction and overdose prevention services, but also housing, peer support services, and low barrier treatment access.
- Very important from someone in recovery to connect with a peer.
- Having this connection is the start to a relationship that could be life and death for a client.
- The intent of the oversight and accountability council is to oversee and approve grants and funding to implement behavioral health resource networks in every county.

- Network consists of a set of providers working together to create a comprehensive set of services that are evidence based and trauma informed, with peer support, recovery services, housing, and harm reduction services.
- There is a real time dash-board on the council’s web site to see where counties are in the process, who has received the funds, and the types of services that have been provided. Marion County is receiving \$20 M in funding
- Will have referral agreements for those in crisis. Just need to sign in once. Even though people may not like the law, still need to provide the services to people. Grant is 18 months long. Things are moving along. Withing 20 days of the contracts being signed, money will flow.

8. SALEM NAVIGATION CENTER UPDATE

Representative Chris Hoy and Marion County Health and Human Services Director Ryan Matthews presented this item. Summary of presentation:

- The Salem Navigation Center is a new low-barrier proposed center in Salem to assist those individuals seeking to end homelessness.
- Goal is that the center will provide 50 low barrier shelter beds with case management and access to basic needs.
- City is going out to bid on a general contractor.
- Bids will be opened in a week after which, contractor will be selected and construction is anticipated to take 4.5 months.
- City and county working together: City has approved \$5M for the project; Marion County \$3M.
- Still working out operational details.
- The next meeting with all stakeholders is on August 30.

Q: Who is going to staff this facility?

A: Has not been discussed yet. The meeting on August 30 will be to discuss this.

Q: There are many providers in the county that are neither county or state employees who can provide comparable staffing services to the Marion County Health and Human Services Department. Advocate that the county look more broadly for service providers.

6. FOLLOW UP ON VICTIMS OF SEX TRAFFICKING SERVICES

Commissioner Cameron said that this item is a follow up to the District Attorney’s presentation on sex trafficking at the April council meeting.

Center for Hope and Safety

Ms. Jayne Downing, executive director, Center for Hope and Safety gave a very broad overview of how the Center worked with the victims of human trafficking.

- Research showed that Oregon is on the top 5 for human trafficking.
- The Center has served victims of human trafficking since it opened and offers some extensive programs for them.
- Center didn’t always recognize them as victims- often presented as being in a bad relationship.
- Today the Center can recognize them much better and offer improved services.
- Center staff and volunteers are trained to recognize these dynamics to be able to understand what is going on.
- A core team also receives additional intensive training to recognize and respond.
- Case management for victims of human trafficking involves much more intensive case management on a day to day basis.
- Must train the individual on the most basic kinds of things such as how to wash clothes.

- Some may even have children they are trying to raise while they are being trafficked.
- Some must get away from gangs, so supporting them in this way too.
- They can call Center through a crisis line, or when the FBI goes in on an operation.
- Our services are confidential.
- Victims of human trafficking have huge issues with trust.

Liberty House

Kevin Wolfer, Multi-Disciplinary Team (MDT) Leader, Liberty House Child Advocacy Center for Marion and Polk counties said the Center has staff specially trained to provide specialized child abuse pediatric medical assessments to look for signs of non-accidental trauma.

- Staff trained in best practices for conducting in depth child forensic interviews and responding to human trafficking.
- Part of services involves family support- reaching out to care givers to deal with run-away youth- have those risk factors there to be part of the assessment services we provide.
- Also have a “hope and wellness” department which provides trauma informed therapy to help child heal from the things they went through.
- Liberty House collaborates with other agencies such as the FBI to ensure services are provided for victims.
- Also allow FBI into child clinic which is child focused so they can interview the child there.
- Also participate on the Marion County Human Trafficking Task Force.
- Liberty House is facilitating a community led project called “I respect and protect”.
- Project helps kids and adults manage social media issues.

ADJOURNED

Judge orders Oregon State Hospital to discharge some patients earlier

By Ben Botkin

Sept. 4, 2022 6 a.m.

Facing a backlog of incoming patients, a federal judge ordered the state psychiatric hospital to set new deadlines for patient treatment lengths, based more on the severity of criminal charges against them than on their treatment progress

Oregon State Hospital must limit how long it treats patients who need care before they can defend themselves against criminal charges, a federal judge has ordered recently.

The new order requires the state hospital to treat and restore patients on strict deadlines, based on the severity of the charges rather than their treatment progress.

While disability rights advocates lauded the ruling as a move that will help patients avoid additional jail time as they wait for admission to the hospital, it drew criticism from county prosecutors, with one calling it the result of a “complete failure of leadership.” Limiting treatment of these patients — in some cases to 90 days — say district attorneys, could result in premature discharges that pose a public safety risk to their communities.

Most people, statistically, will finish their treatment within those new deadlines. Advocates hope this encourages more investments in community mental health programs and resources, so that the criminal justice system isn’t the safety net. The idea is that if there are [more community resources](#), people can get help before they get arrested.

The order on Aug. 29 from Judge Michael Mosman marks a milestone stemming from a 20-year-old federal case. Both the current and historic case are centered on the same issue: The state-run psychiatric hospital’s inability to admit patients in a timely fashion after a judge determines they need treatment before they can aid in their own defense. These cases are called “aid-and-assist” cases.

The order is the culmination of a renewed push to get patients in and out of the hospital faster. Changing the hospital’s discharge policies is intended to help aid-and-assist patients avoid lengthy stays in jail while they wait to be admitted into Oregon State Hospital.

When the patients’ admission to the hospital is delayed, they can sit in jail for a month or longer with delayed proceedings and no conviction yet on pending charges.

The judge’s move is intended to bring the hospital in compliance with a prior 2002 court order that requires it to admit an aid-and-assist patient within seven days of receiving a court order. The 62 aid-and-assist patients who were admitted to the state hospital during May of this year had an average wait time of 31 days, according to [a report by Dr. Debra Pinals](#), an outside neutral party with a behavioral health background hired as part of a legal settlement between the state and Disability Rights Oregon. The hospital could come into compliance with the seven-day requirement as early as February 2023 with the changes.

The move paves the way for the crowded hospital to discharge about 100 patients back to county mental health providers, which would help it to admit those who are waiting for treatment sooner, officials at the Oregon Health Authority said. This week, more than 75 aid-and-assist patients are waiting for admission to Oregon State Hospital for treatment.

“We have an end in sight to this constitutional crisis and that is promising,” said Emily Cooper, legal director of Disability Rights Oregon, a federal watchdog and advocacy group that sued Oregon over the issue along with the Metropolitan Public Defender.

The order is based on Pinals’ recommendations to the state hospital and advocates.

The deadlines to treat and restore patients are:

- For patients facing only a misdemeanor charge, the hospital will have up to 90 days or the maximum sentence allowed, whichever is shorter.
- For patients facing a felony, the state hospital will have up to six months, or up to a year if it’s a violent felony.

Time limits to help more patients

- Aid-and-assist patients make up the bulk of Oregon State Hospital’s population. The state hospital currently has 409 aid-and-assist patients and a total capacity of 705 beds between its main hub in Salem and a satellite campus in Junction City.
- Historically, most aid-and-assist patients are finished with treatment in less than six months. But outliers, sometimes treated for a year or longer, take up resources, Pinals’ report said.
- Since 2012, 15.5% of aid-and-assist patients stayed longer than six months, the report said. That’s 909 patients who accounted for 321,375 inpatient bed days across a decade. Had a six-month limit been in place during that time, the hospital would have had the equivalent of about 40 more beds each year for more patients, the report said.
- Meanwhile, as people wait for treatment in jails, they’re often in solitary confinement while presumed innocent, Cooper said, calling the extra wait times a “dire” situation.
- “Jails try really hard, but they’re designed to punish, not treat,” Cooper said.
- Under the new order, when the state hospital fails to restore the patient to competency within the time limit, it will send the patient back to their county. Counties will get 30 days notice to plan the patient’s placement.
- In an email, agency spokesperson Amber Shoebriidge said the approximately 100 patients eligible for discharge will be sent back to their counties in a staggered fashion during the next six months. Community mental health providers in counties will determine where they go.
- “I look forward to working with our community partners to find the best solutions for people returning to the community,” OHA Director Patrick Allen said in a prepared statement.

A 20-year fight

The original order in 2002, that required Oregon State Hospital to admit patients within seven days of receiving the court order, was called the Mink ruling.

Disability Rights Oregon, which had brought the original lawsuit forward as the Oregon Advocacy Center, went to court again in 2019 when the state failed to comply with the ruling. In June of that year, the federal court ordered the state to comply with the Mink ruling within 90 days.

The state accomplished that goal, but requested latitude in court when COVID-19 hit in 2020, saying it needed the flexibility to prevent the spread of the virus. Disability Rights Oregon opposed that on constitutional grounds. By 2021, the state and Disability Rights Oregon negotiated an interim settlement agreement, which resulted in Pinal's recommendations and ongoing reports.

The latest step is promising, but not the final one, Cooper said. Pinal's report makes other recommendations, such as more investments in community mental health programs and alternatives to the state hospital.

"I think it's reasonable to expect it's going to take many steps and many dollars to get out of this problem," Cooper said. "At the end of the day, I firmly believe and I stand behind Dr. Pinal's report."

County district attorneys displeased

The case has attracted the attention of counties that run the criminal justice systems and jails that aid-and-assist patients flow through.

Three district attorneys — Clackamas County DA John Wentworth, Marion County DA Paige Clarkson, and Washington County DA Kevin Barton — joined together in asking the judge in this case to let them appear in federal court about the issue, given the impacts for Oregon communities.

"Any judicial remedy will directly impact the role of prosecution, and the role of prosecution will in turn impact the effectiveness of any judicial remedy," stated their motion.

In a separate statement, the district attorneys said they are concerned the reduced treatment times for defendants will lead to their premature discharge from the state hospital.

In an interview, Washington County District Attorney Kevin Barton said the changes at the state hospital create uncertainty for counties and prosecutors. For example, Barton said, he does not know how many of the roughly 100 people slated for release statewide will return to Washington County or who those people are.

“One of my big criticisms is the lack of transparency and coordination and information to allow for safety, planning and a smooth rollout,” he said. “A lot of people are left in the dark.”

The primary concern is cases involving people with serious charges like rape, murder, sodomy and sexual abuse, Barton said.

“Those are the ones that keep me up at night,” he said.

His main concern is about where people will go, especially if they face a pending violent felony charge, Barton said, adding the system also needs to remember the rights of crime victims.

“How do you treat them in the community in a non-secure facility and make sure the victim is safe and the people around them are safe. How do you keep people safe?” he asked.

Barton said he agrees with the plaintiffs that defendants should not endure lengthy waits in jail without a timely admission to the state hospital. “I see this as a complete failure of leadership,” Barton said. He pointed to an Oregon Health Authority letter sent to officials about the changes to the treatment lengths. That letter says the hospital has had an “unprecedented increase” in admissions since 2018.

“They’ve had plenty of time,” Barton said. “They’ve known about this for years now.”

Barton said the hospital needs to increase its beds and staffing to address the problem.

At this stage, it’s unclear if the prosecutors’ input will change how the judge rolls the plan out. The federal judge allowed the outside expert’s recommendations to start, but also granted a request from counties to provide the court with legal information about the issue in a brief.

That brief is due by Sept. 28, and then the plaintiffs and defendants in the case can respond by Oct. 11.

Enrolled Senate Bill 48

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Criminal Justice Commission)

CHAPTER

AN ACT

Relating to pretrial release; creating new provisions; amending ORS 135.235, 135.240, 135.245 and 135.247 and section 1, chapter _____, Oregon Laws 2021 (Enrolled House Bill 3273); and repealing ORS 135.242.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 135.230 to 135.290.

SECTION 2. (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, those persons and offenses:

- (a) Subject to release on recognizance;**
- (b) Subject to release with special conditions as specified in the order; and**
- (c) That are not eligible for release until arraignment.**

(2) The Chief Justice of the Supreme Court, with input from a criminal justice advisory committee appointed by the Chief Justice, shall establish release guidelines for the pretrial release orders described in this section to:

- (a) Provide consistent release decision-making structure across the state;**
- (b) Reduce reliance on the use of security;**
- (c) Include provisions for victim notification and input; and**
- (d) Balance the rights of the defendant and presumption of pretrial release against community and victim safety and the risk of failure to appear.**

SECTION 3. ORS 135.235 is amended to read:

135.235. (1) [If directed by the] A presiding judge for a judicial district[, a release assistance officer, and release assistance deputies who shall be responsible to the release assistance officer, shall be appointed] may appoint release assistance officers under a personnel plan established by the Chief Justice of the Supreme Court.

(2) [The] A release assistance officer shall, except when impracticable, interview every person detained pursuant to law and charged with an offense. If the person is charged with a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission, or with contempt of court for violating a court order protecting or prohibiting contact with another person, the release assistance officer shall make reasonable efforts to contact the victim prior to submitting a report or making a release

decision under subsection (3) of this section. If the release assistance officer is able to contact the victim:

(a) Information regarding the victim's position on release, including whether special release conditions should be imposed, must be included in the report described in subsection (3) of this section, and considered by the release assistance officer if the officer makes the release decision; and

(b) If the information is available, the release assistance officer shall inform the victim of the location, date and time of the defendant's arraignment or other first appearance.

(3) The release assistance officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding judge for the judicial district, make the release decision.

(4) As used in this section, "victim" means an individual that the charging instrument indicates is the victim of the alleged offense or the person protected by the court order, whether or not the individual is specifically named, so long as the release assistance officer is able to confirm the identity of the individual.

SECTION 4. ORS 135.240 is amended to read:

135.240. (1) Except as provided in subsections (2)[,] **and** (4) [*and* (5)] of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(b) When the defendant is charged with murder or aggravated murder and the proof is not evident nor the presumption strong that the defendant is guilty, the court shall determine the issue of release as provided in subsection (4) of this section. In determining the issue of release under subsection (4) of this section, the court may consider any evidence used in making the determination required by this subsection.

(3) The magistrate may conduct such hearing as the magistrate considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty.

(4)(a) [*Except as otherwise provided in subsection (5) of this section,*] When the defendant is charged with a violent felony, release shall be denied if the court finds:

(A) Except when the defendant is charged by indictment, that there is probable cause to believe that the defendant committed the crime; and

(B) 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.

(b) If the defendant wants to have a hearing on the issue of release, the defendant must request the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing, the court must hold the hearing within five days of the request.

(c) At the release hearing, unless the state stipulates to the setting of security or release, the court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden of producing evidence at the release hearing subject to ORS 40.015 (4).

(d) The defendant may be represented by counsel and may present evidence on any relevant issue. However, the hearing may not be used for purposes of discovery.

(e) If the court determines that the defendant is eligible for release in accordance with this subsection, the court shall set security or other appropriate conditions of release.

(f) When a defendant who has been released violates a condition of release and the violation:

(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into custody and shall order the defendant held pending trial without release.

(B) Does not constitute a new criminal offense, the court may order the defendant to be taken back into custody[,], **and** may order the defendant held pending trial [*and may set a security amount of not less than \$250,000*] **or may make a new release decision.**

[(5)(a) Notwithstanding any other provision of law, the court shall set a security amount of not less than \$50,000 for a defendant charged with an offense listed in ORS 137.700 or 137.707 unless the court determines that amount to be unconstitutionally excessive, and may not release the defendant on any form of release other than a security release if:]

[(A) The United States Constitution or the Oregon Constitution prohibits the denial of release under subsection (4) of this section;]

[(B) The court determines that the defendant is eligible for release under subsection (4) of this section; or]

[(C) The court finds that the offense is not a violent felony.]

[(b) In addition to the security amount described in paragraph (a) of this subsection, the court may impose any supervisory conditions deemed necessary for the protection of the victim and the community. When a defendant who has been released violates a condition of release and the violation:]

[(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into custody, shall order the defendant held pending trial and shall set a security amount of not less than \$250,000.]

[(B) Does not constitute a new criminal offense, the court may order the defendant to be taken back into custody, may order the defendant held pending trial and may set a security amount of not less than \$250,000.]

[(6)] (5) For purposes of this section, “violent felony” means a felony offense in which there was an actual or threatened serious physical injury to the victim, or a felony sexual offense.

SECTION 5. ORS 135.245 is amended to read:

135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to *[immediate security release or to]* be taken before a magistrate without undue delay. *[If the person is not released under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person of the right of the person to a security release as provided in ORS 135.265.]*

[(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.]

(2)(a) A magistrate shall make a release decision at the time of arraignment or other first appearance after the defendant is taken into custody unless good cause to postpone the release decision is shown, in which case a release hearing shall be held pursuant to subsection (7) of this section.

(b) The district attorney shall make reasonable efforts to inform the victim of the location, date and time of the arraignment or other first appearance and to determine if the victim is present at the arraignment or appearance. If the victim is present, the victim has the right to reasonably express any views relevant to the issues at the appearance.

(c) As used in this subsection, “good cause” includes circumstances in which:

(A) The district attorney plans to seek preventative detention; or

(B) There is a reasonable belief that additional evidence exists and would be relevant to the release decision, but is not currently available.

(3) If the magistrate, having given priority to the primary release criteria, decides to release a defendant or to set security, the magistrate shall impose the least onerous condition reasonably likely to ensure the safety of the public and the victim and the person’s later appearance and, if the person is charged with an offense involving domestic violence, ensure that the person does not engage in domestic violence while on release. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless:

(a) Release criteria show to the satisfaction of the magistrate that such a release is unwarranted; or

(b) Subsection (6) of this section applies to the person.

(4) Upon a finding that release of the person on personal recognizance is unwarranted, the magistrate shall *[impose either]* **proceed to consider conditional release [or security release.] under ORS 135.260. Only after determining that conditional release is unwarranted, or if otherwise**

required by ORS 135.230 to 135.290, may the magistrate proceed to consider security release under ORS 135.265.

(5) At the release hearing:

(a) The district attorney has a right to be heard in relation to issues relevant to the release decision; and

(b) The victim has the right:

(A) Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified by the district attorney of the release hearing;

(B) To appear personally at the hearing; and

(C) If present, to reasonably express any views relevant to the issues before the magistrate.

(6) If a person refuses to provide a true name under the circumstances described in ORS 135.060 and 135.065, the magistrate may not release the person on personal recognizance or on conditional release. The magistrate may release the person on security release under ORS 135.265 except that the magistrate shall require the person to deposit the full security amount set by the magistrate.

(7)(a) After the postponement of a release decision under subsection (2) of this section, upon the request of either party, or upon the magistrate's own motion, the magistrate shall make a release decision or reconsider the release decision, as applicable, at a release hearing. The release hearing must be held within 48 hours of arraignment or other first appearance after the defendant is taken into custody unless both parties agree, or the court finds good cause, to hold the hearing at a later time. Under no circumstances may the release hearing be held more than five days after arraignment or other first appearance after the defendant is taken into custody unless the defendant consents to holding the hearing at a later time.

(b) A hearing held under this subsection may not be used for purposes of discovery.

[(7)] (8) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to [assure] **ensure** the appearance of the defendant.

SECTION 6. ORS 135.247 is amended to read:

135.247. (1) When a release assistance officer [or a release assistance deputy] makes a release decision under ORS 135.235 involving a defendant charged with a sex crime or a crime constituting domestic violence, the release assistance officer [or deputy] shall include in the decision an order that the defendant be prohibited from contacting or attempting to contact the victim, either directly or through a third party, while the defendant is in custody. The release assistance officer [or deputy] shall provide the defendant with a written copy of the order.

(2) When a defendant who is charged with a sex crime or a crime that constitutes domestic violence is arraigned, the court shall enter an order continuing an order issued under subsection (1) of this section or, if no such order has been entered, enter an order prohibiting the defendant from contacting or attempting to contact the victim, either directly or through a third party, while the defendant is in custody.

(3) Except as provided in subsection (4) of this section, an order described in subsection (1) or (2) of this section:

(a) Shall apply at any time during which the defendant is held in custody on the charge; and

(b) Shall remain valid until the defendant is sentenced for the crime, the charge is dismissed or the defendant is acquitted of the crime.

(4) Upon petition of the victim, the court may enter an order terminating an order entered under subsection (1) or (2) of this section if the court finds, after a hearing on the petition, that terminating the order is in the best interests of the parties and the community.

(5) An order described in subsection (1) or (2) of this section shall not limit contact with the victim by the defense attorney, or an agent of the defense attorney other than the defendant, in the manner prescribed by ORS 135.970 (2).

(6) As used in this section:

(a) "Domestic violence" has the meaning given that term in ORS 135.230.

(b) "Sex crime" has the meaning given that term in ORS 163A.005.

SECTION 7. ORS 135.242 is repealed.

SECTION 8. If House Bill 3273 becomes law, section 1, chapter _____, Oregon Laws 2021 (Enrolled House Bill 3273), is amended to read:

Sec. 1. (1) Notwithstanding ORS 192.311 to 192.478, a law enforcement agency may not release a booking photo except as provided in subsection (2) of this section.

(2) A law enforcement agency may release a booking photo described in subsection (1) of this section:

(a) To the person depicted in the booking photo;

(b) To another law enforcement agency, or to a law enforcement officer employed by another law enforcement agency, for a law enforcement purpose;

(c) To the public, if the law enforcement agency determines that there is a law enforcement purpose for the release, including but not limited to assistance with the apprehension of a fugitive or a suspect in a criminal investigation, or the identification of additional criminal activity;

(d) To a state mental hospital upon the admission to the hospital of the person depicted in the booking photo;

(e) To a party in a criminal proceeding resulting from the arrest during which the booking photo was obtained;

(f) To the victim of the offense for which the person depicted in the booking photo was arrested; [or]

(g) To the court, if the booking photo is part of a pretrial release report or is provided to the court as part of the pretrial release process for the purposes of confirming the identity of a defendant; or

[~~(g)~~] **(h)** Upon the conviction of the person depicted in the booking photo, if the conviction results from the arrest during which the booking photo was obtained.

(3) As used in this section:

(a) "Booking photo" means a photograph of a person taken by a law enforcement agency for identification purposes when the person is booked into custody.

(b) "Law enforcement agency" has the meaning given that term in ORS 131.915.

(c) "Law enforcement officer" means an officer, deputy, member or employee of a law enforcement agency.

SECTION 9. (1) Section 2 of this 2021 Act, the amendments to ORS 135.235, 135.240, 135.245 and 135.247 by sections 3 to 6 of this 2021 Act and the repeal of ORS 135.242 by section 7 of this 2021 Act become operative July 1, 2022.

(2) The Judicial Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on or after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by section 2 of this 2021 Act, the amendments to ORS 135.235, 135.240, 135.245 and 135.247 by sections 3 to 6 of this 2021 Act and the repeal of ORS 135.242 by section 7 of this 2021 Act.

SECTION 10. Notwithstanding any other provision of law, the General Fund appropriation to the Judicial Department by section 1 (2), chapter _____, Oregon Laws 2021 (Enrolled House Bill 5012), for the biennium beginning July 1, 2021, for operations, is increased by \$2,210,910, for the purpose of implementing this 2021 Act.

Passed by Senate June 23, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 25, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State