

Senate Bill 48-Enrolled

Brief Overview for the Oregon Pretrial Justice Network



Oregon Criminal Justice Commission
26 August 2021

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BACKGROUND: PRETRIAL LEGAL FRAMEWORK

Personal Recognizance

Release of the individual upon the promise of that person to appear in court.

Conditional Release

Release imposing regulations on the activities and associations of the individual.

Security (“Bail”) Release

Promise to appear in court secured by cash, stocks, bonds, or real property.
An immediate payment of 10% is required prior to release.

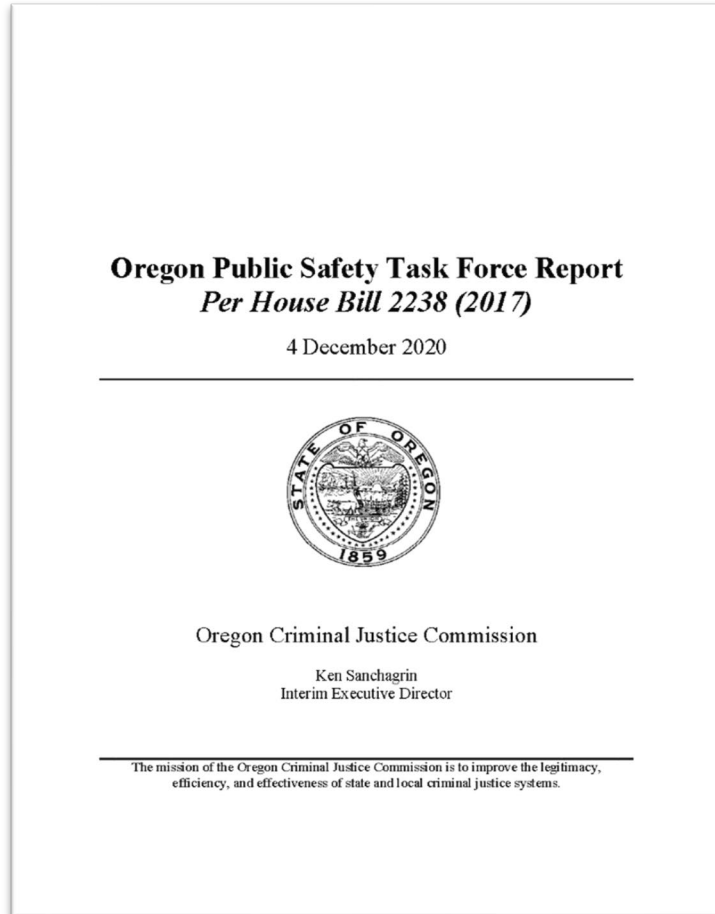
Preventative Detention

Offenses that are not bailable per the Oregon Constitution (i.e., murder, treason, and violent felonies).

- The Oregon Constitution provides a **right to bail** except for murder/treason (Art. I §14) or when the defendant is charged with a violent felony (Art. I §43), so long as certain evidentiary thresholds are met. **Preventative detention** is often referred to as a “no bail” hold.
- Otherwise, courts must consider whether to release the defendant on **personal recognizance, conditional release, or security release** (e.g., cash bail).
- When determining the form of release, the court considers the **primary and secondary release criteria** (e.g., danger to victim/public, nature of the charge, prior FTAs and criminal history, ties to the community). ORS 135.230(7), (11).

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BACKGROUND: THE PUBLIC SAFETY TASK FORCE



- In 2017, the Legislature reconvened the Public Safety Task Force (PSTF) and asked the PSTF to study security release (e.g., cash bail).
 - The PSTF was to focus on racial/ethnic disparities,
 - Examine the possibility of repealing statutes authorizing security release,
 - Study the utilization of pretrial risk assessments, and
 - Examine methods of reducing failure to appear at court hearings.
- In December of 2020, the PSTF submitted its final report to the Legislature, which included policy and legislative recommendations.

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BACKGROUND: CURRENT PRETRIAL PROCESS

Current Practice



- Prior to first appearance, defendants are given a bail amount based on Presiding Judge Order (often called “security” or “bail” schedules). If a defendant has the means, they can be released on security without a consideration of victim or community safety or the risk of failure to appear.
- While judges may make release decisions at first appearance, in current practice, judges have discretion as to whether these decisions will be made at that time.
- While preventative detention is an option, it is used relatively rarely, and high bail amounts are often used in its place.

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BACKGROUND: SB 48 DEVELOPMENT

81st OREGON LEGISLATIVE ASSEMBLY—2021 Regular Session

A-Engrossed Senate Bill 48

Ordered by the Senate April 23
Including Senate Amendments dated April 23

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject
to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the
measure.

*[Directs Oregon Criminal Justice Commission to study pretrial release and to provide results of
study to Legislative Assembly no later than December 31, 2021.]*

[Sunset January 2, 2022.]
[Takes effect on 91st day following adjournment sine die.]

Directs presiding judge in each judicial district to enter standing pretrial release orders.
Directs Chief Justice of Supreme Court to establish guidelines for order.

**Requires magistrate to make release decision at arraignment or first appearance except
in specified circumstances. Requires magistrate to find that release on personal recognizance
is unwarranted before considering conditional release, and requires magistrate to find that
conditional release is unwarranted before considering security release.**

**Requires magistrate to set as security amount lowest possible amount necessary to reasonably
ensure defendant's appearance. Requires magistrate to make specified findings before
requiring defendant to deposit 10 percent of security amount for security release.
Authorizes defendant not required to deposit 10 percent of security amount to execute
promissory note for security amount. Provides that if defendant does not comply with
conditions of release agreement, court may enter order declaring that promissory note is due
or security deposit is forfeited for entire security amount or any other amount court deems
appropriate.**

**Repeals minimum bail amounts for persons charged with Ballot Measure 11 (1994) crimes
and certain methamphetamine offenses.**

A BILL FOR AN ACT

1 Relating to pretrial release; creating new provisions; amending ORS 135.240, 135.245, 135.265,
2 135.270, 135.280 and 137.050; and repealing ORS 135.242.

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

4 **SECTION 1.** Section 2 of this 2021 Act is added to and made a part of ORS 135.230 to
5 135.290.

6 **SECTION 2.** (1) The presiding judge of a judicial district shall enter a standing pretrial
7 release order specifying to the sheriff of the county, or to the entity supervising the local
8 correctional facility responsible for pretrial incarceration within the judicial district, those
9 persons and offenses:

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

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

NOTE: Matter in boldfaced type in an amended section is new; matter *(italic and bracketed)* is existing law to be omitted.
New sections are in boldfaced type.

LC 440

- Staff from CJC, the OJD, and the Governor's Office drafted the initial substantive amendment to SB 48.
- In March, a public hearing was held in Senate Judiciary and a workgroup was convened. In April, SB 48 was referred to Senate Rules.
- The SB 48 Workgroup consisted of approximately 20 individuals, including representatives from:

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

Oregon Criminal Justice Commission

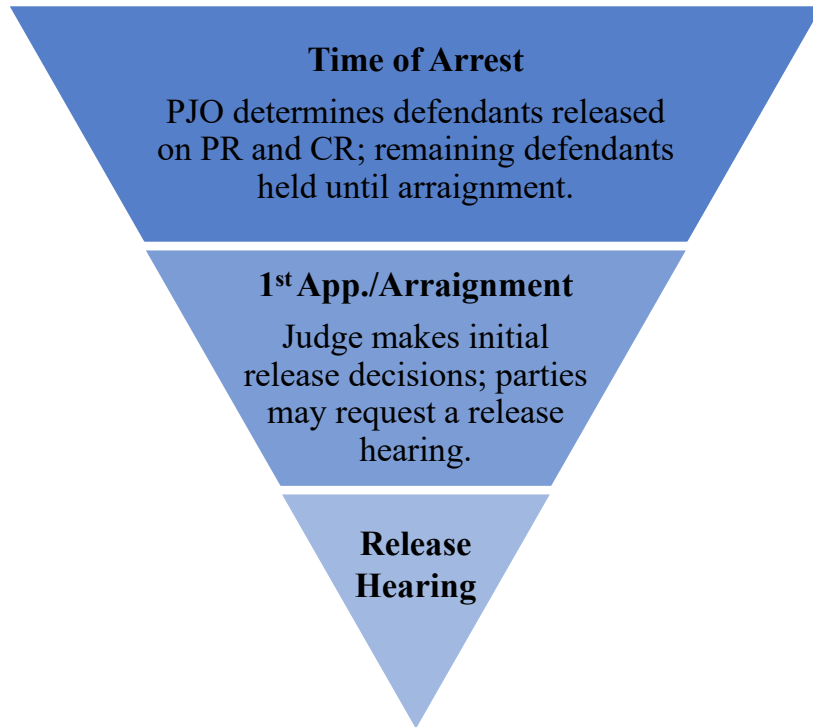
Clackamas Women's Services

Governor's Office

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OVERVIEW OF CHANGES

Provides statewide guidance as to the types of defendants who should be released without bail and clarification to existing pretrial release statutes.



- The Chief Justice, with input from the Criminal Justice Advisory Committee, will create state-level guidance for pretrial release orders.
- Local Presiding Judges will adopt pretrial release orders that will replace current security schedules and specify which persons or offenses:
 - Are subject to recognizance release,
 - Are subject to conditional release, and
 - Those who should be held until arraignment.
- Existing statutes will be amended to clarify the pretrial process.
 - Requires judges must make a release decision at first appearance unless there is good cause for delay.
 - Specifies the stepwise release decision process, starting with evaluation of recognizance release and conditional release before considering security release.

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OVERVIEW OF CHANGES

Eliminates statutory pretrial security release (“bail”) amounts in favor of case-by-case analysis by a judge.

- Currently, two statutory provisions mandate minimum security amounts for defendants.
 - ORS 135.240 provides for \$50,000 minimum security amounts for Measure 11 defendants, and
 - ORS 135.242 provides for \$250,000 minimum security amount for certain methamphetamine offenses if the prosecutor can demonstrate that the defendant will fail to appear, commit a new crime, or poses a threat to the public.
- SB 48-Enrolled eliminates statutory minimums security amounts and requires a case-by-case determination by the judge.

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OVERVIEW OF CHANGES

Balances the rights of the defendant and presumption of pretrial release with the risk of failure to appear, and community and victim safety.

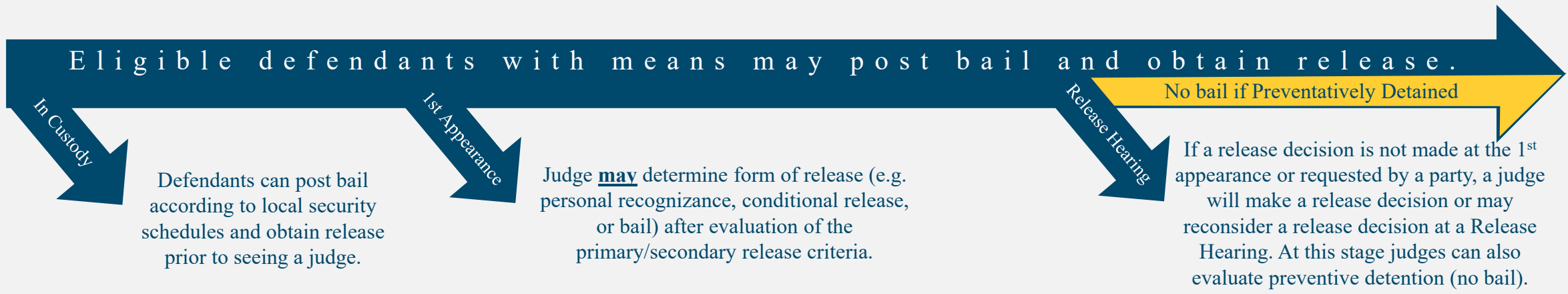
- Reduces reliance on the use of security;
- Increases consistency and equity in Oregon’s pretrial release system; and
- Includes provisions for victim notification and input at first appearance and arraignment.
 - Requires RAOs to contact victims of person felonies and misdemeanors and, if contact is made to:
 - Obtain information regarding the victim’s position on release, including whether special conditions should be imposed, shall be included in the report to the court and considered by the release assistance officer if making a release decision, and
 - If the information is available, inform the victim of the location, date, and time of arraignment or first appearance.
 - Requires the district attorney to make reasonable efforts to inform the victim of the location, date, and time of arraignment or first appearance and to determine if the victim is present at the arraignment or other first appearance.
 - Allows victims present at the arraignment or first appearance to reasonably express view relevant to the issues at the hearing.

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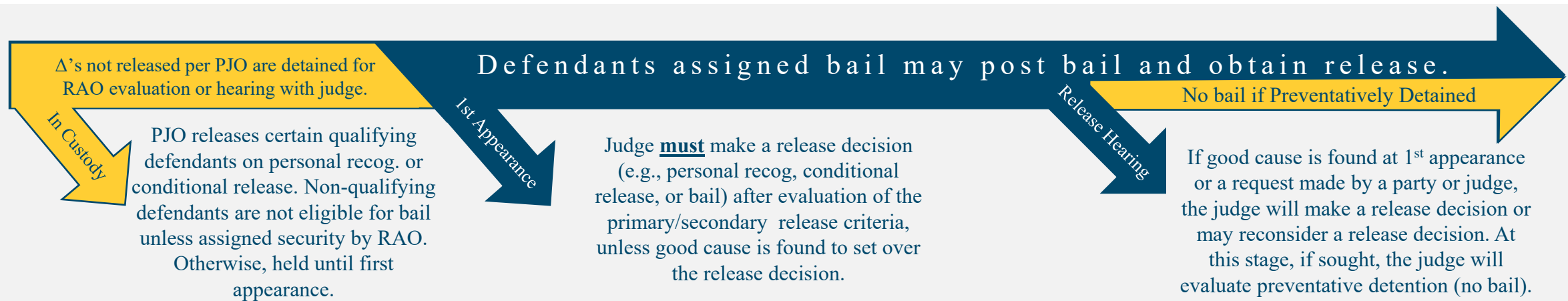
OVERVIEW OF CHANGES

Moves Oregon toward risk-based and data-informed decision making in the pretrial release system.

Current Practice

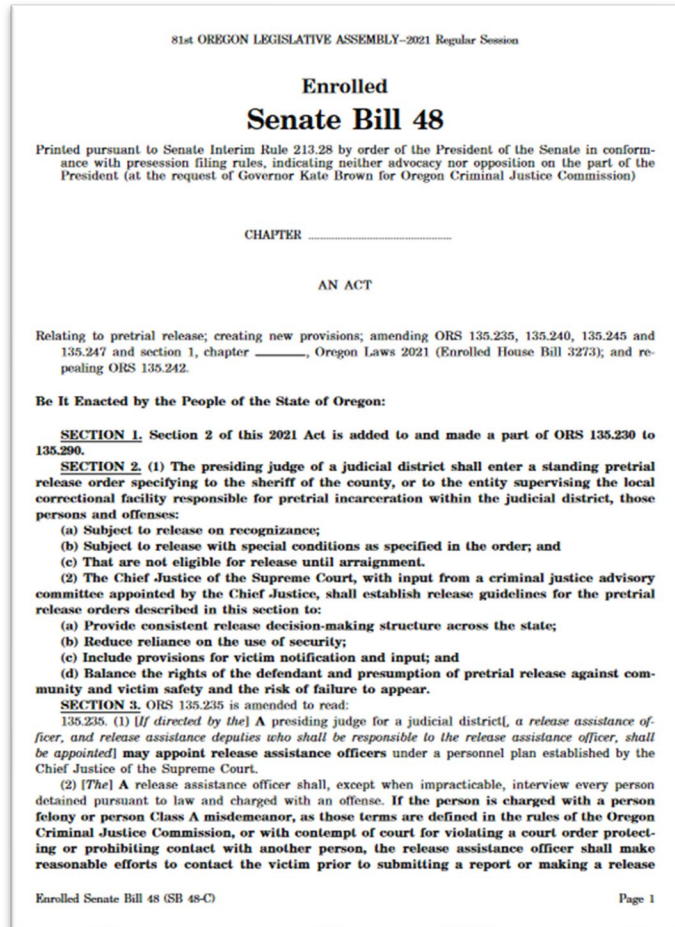


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OVERVIEW OF IMPLEMENTATION



SB 48-Enrolled becomes operative on July 1, 2022.

- OJD, however, may take any action prior to the operative date.

Funding:

- SB 48-Enrolled: \$2,210,910.0 for OJD
 - 3 central staff will develop judicial orders and work with counties.
 - 10 analyst positions will support pretrial program development work required by SB 48.
- HB 5006, Sect. 35: Emergency Board
 - \$2.5 million allocated to OJD for implementation of SB 48.

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OVERVIEW OF IMPLEMENTATION

Criminal Justice Advisory Committee - Pretrial Subcommittee

- Currently meeting on a monthly basis with the mission to develop recommendations to the Chief Justice based on the guiding principles of SB 48.
 - Provide consistent release decision-making structure across the state.
 - Reduce reliance on the use of security,
 - Include provisions for victim notification and input, and
 - Balance the rights of the defendant and presumption of pretrial release against community and victim safety and the risk of failure to appear.
- November 2021:
 - Finalize guideline recommendations and forward to CJAC.



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OVERVIEW OF IMPLEMENTATION

Criminal Justice Advisory Committee - Pretrial Subcommittee

Discussion Topics

- | | |
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| <ul style="list-style-type: none">▪ Offenses subject to form of release<ul style="list-style-type: none">▪ <i>e.g.</i> ROR, conditions, hold until arraignment▪ Conditions of release<ul style="list-style-type: none">▪ General v. Special Conditions▪ Current practices▪ Non-Compliance▪ Consistency in resources | <ul style="list-style-type: none">▪ Risk Assessment Tool Selection and Use<ul style="list-style-type: none">▪ Validation▪ Effect of score on presumptive form of release▪ DV offenses▪ Security and Preventative Detention▪ Warrants, PVs, and Restraining Orders (2022) |
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OVERVIEW OF IMPLEMENTATION

Criminal Justice Advisory Committee - Pretrial Subcommittee

Personal Recognizance

- Non-person misdemeanor
- Non-person Class C felony
- Driving while suspended ORS 811.182 (Class B felony and Class A misdemeanor)
- Other offenses subject to the citation in lieu of arrest under ORS 133.055

Conditional Release

- Person misdemeanor
- Person Class C felony
- Person Class B felony or any person felony

Not Eligible for Release Until Arraignment

- Ballot Measure 11 offenses
- Violent felony, as defined in ORS 135.240
- Domestic violence felony or misdemeanor

Note: Initial consideration of potential crime types and correlating forms of release.

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OVERVIEW OF IMPLEMENTATION

- OJD is requested to submit a report by February 1, 2022, regarding the Chief Justice release guidelines.
- The report is to also address:
 - How the guidelines accomplish the intended objectives of SB 48 and
 - Provide a fiscal estimate related to:
 - Chief Justice release guidelines and
 - Continued Legislative investment in the state's pretrial release programs and activities.



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Questions

