



Task Force on Public Safety

Preliminary Report to the Oregon Legislature

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I. Executive Summary

Introduction

The Oregon Legislature reconvened the Task Force on Public Safety (Task Force)¹ in House Bill (HB) 2238, during the 2017 Regular Session.² The Task Force consists of 13 members, each appointed for two-year terms. Although HB 2238 was effective June 21, 2017, appointments were not completed until spring of 2018. Thus, this iteration of the Task Force did not begin its work until May 2018. HB 2238 directed the Task Force to engage in three endeavors:

- (1) Studying security release in Oregon, focusing on reducing racial and ethnic disparity in pretrial incarceration, including:
 - (A) Repealing statutes authorizing security release in favor of courts, or another entity with delegated authority, making release decisions;
 - (B) Utilizing pretrial release risk assessments; and
 - (C) Methods of reducing failure to appear at court hearings;
- (2) Studying the impact of criminal fines and fees; and
- (3) Reviewing the implementation of the Justice Reinvestment Program.³

Task Force's Work To-Date

Pretrial Incarceration

The Task Force's study of security release in pretrial incarceration is underway. However, given the complexity of issues, the Task Force has concluded that further work must be done before comprehensive recommendations are appropriate. As an initial matter, obtaining jail data from which to study pretrial incarceration is a top priority of the Task Force. The Task Force recommends that Oregon Criminal Justice Commission (CJC) staff explore opportunities for obtaining jail data, including, but not limited to, working with county jails and pretrial services programs, as well as exploring opportunities to aid counties in capturing, maintaining, and improving pretrial incarceration data in the future.

Impacts of Criminal Fines and Fees

The Task Force's review of the impacts of criminal fines and fees is in its infancy. The Legislature's directive to study the "impacts" of criminal fines and fees must be distilled into specific channels of review, i.e., impacts to criminal defendants, their families, and communities; impacts of the imposition, collection, and distribution of fines and fees on circuit, municipal, and justice courts; and impacts to those systems should the manner in which criminal fines and fees are imposed, collected, and distributed change.

Justice Reinvestment Implementation

As the Justice Reinvestment Program, enacted in 2013 as part of the Justice Reinvestment Act, is in its fifth year of operation, that area of the Task Force's work is the most developed. A comprehensive report on the Justice Reinvestment Program was submitted to the Legislature in October 2016.⁴ Accordingly, this report does not replicate that comprehensive review but, rather, provides updates. The content contained in the Task Force's

¹ The Oregon Task Force on Public Safety is also known colloquially as the Public Safety Task Force or "PSTF."

² Enrolled House Bill 2238 (2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2238>.

³ *Id.* at §1(2).

⁴ See *Task Force on Public Safety Justice Reinvestment Report to the Legislature*, Oregon Criminal Justice Commission (2016), available at <https://www.oregon.gov/cjc/Documents/TaskForceonPublicSafetyJusticeReinvestmentReporttotheLegislature.pdf>.

report is organized around the three-percent of grant funds reserved for program studies and the four goals of the Justice Reinvestment Program.

Preliminary Recommendations

General

- The Task Force recommends submission of a second progress report to supplement these initial recommendations.

Pretrial Incarceration

- The Task Force recommends continuing its study of pretrial incarceration. As obtaining jail data from counties is critical to the mission of the Task Force's work, the Task Force recommends continuing its varied efforts to obtain it and improve its completeness, including, but not limited to, working with individual counties on data-tracking methods and data-sharing opportunities, administering a statewide jail survey, and exploring means by which the state may assist counties in tracking, analyzing and improving this data, e.g., by way of technical assistance assist or other means of support.
- The Task Force recommends adding a focus on reducing economic disparity in pretrial incarceration, in addition to racial and ethnic disparity.

Criminal Fines and Fees

- The Task Force recommends continuing its fines and fees work, including creating distinct channels of review, such as impacts to criminal defendants, their families, and communities; imposition and collection impacts on circuit, municipal, and justice courts; and impacts to those systems should the manner in which criminal fines and fees are imposed, collected, and distributed change.
- The Task Force recommends evaluating avenues for providing Oregon judges with additional discretion to consider an individual's ability to pay and waive financial obligations, where appropriate, and evaluating attendant impacts of expansion of those practices.
- The Task Force recommends evaluating the rates at which court-imposed financial obligations are commuted to community service (i.e., at least minimum wage to ensure programs help individuals pay down debts as much as working would).

Justice Reinvestment

- The Task Force recommends allowing three-percent funding for Justice Reinvestment studies to be used to evaluate local programs and treatment service providers to ensure that these services meet evidence-based practices, are effective in meeting the needs of their populations, and that the state's grant-funding investments are used responsibly.

Report Inquiries

Parties seeking a copy of this report, or with questions about its content, may contact CJC staff Bridget Budbill at 503-373-7511 or bridget.budbill@oregon.gov, or Ross Caldwell at 503-378-6229 or ross.caldwell@oregon.gov. This report will be available online at the [Criminal Justice Commission's website](#).

II. 2017-2019 Task Force on Public Safety Members

Floyd Prozanski, Chair

State Senator, District 4

Jackie Winters

State Senator, District 10

Tawna Sanchez

State Representative, District 43

Ron Noble

State Representative, District 24

Steve Berger

Washington County Community Corrections Director

Lane Borg

Executive Director, Office of Public Defense Services

Hon. John Collins

Judge, Yamhill County

Melissa Erlbaum

Executive Director, Clackamas Women's Services

Beth Heckert

Jackson County District Attorney

Karen Joplin

Commissioner, Hood River County

Jason Myers

Sheriff, Marion County

John Teague

Police Chief, City of Keizer

Hon. Debra Vogt

Judge, Lane County

III. Task Force on Public Safety's Work

The Task Force began meeting in May 2018 and has met four times, in total, at the time of this report. Given the relatively short period within which the Task Force has convened, and the breadth of issues before it, this report should be viewed as a progress report on complex work that is underway.

The Task Force has three areas of inquiry: (1) studying pretrial incarceration; (2) studying the impact of criminal fines and fees; and (3) reviewing the implementation of the Justice Reinvestment program. A status report on each of those facets follows.

A. Pretrial Incarceration

HB 2238 gave the Task Force the broad mandate of “study[ing] security release in Oregon,” while “focusing on reducing racial and ethnic disparity in pretrial incarceration.”⁵ In doing so, the Task Force was directed to study three areas:

- Repealing statutes authorizing security release in favor of courts, or another entity with delegated authority, making release decisions;
- Utilizing pretrial release risk-assessments; and
- Methods of reducing failure to appear at court hearings.⁶

Oregon's Pretrial Work Group and Pretrial Network

Oregon's statewide pretrial reform began in earnest in December 2016, when the Criminal Justice Commission (CJC) won a technical assistance grant from the National Criminal Justice Reform Project to facilitate assessment of the state's current system and the formulation of a state plan to guide future reforms.⁷ Accordingly, a brief overview of the Pretrial Work Group is described here to provide greater context for the Task Force's ongoing work. The Pretrial Work Group is a distinct entity from the Task Force; their work preceded HB 2238.

Pretrial Work Group

The Pretrial Work Group, a team of 20 policy leaders and additional stakeholders, convened to perform a system review of pretrial incarceration, and attendant issues, in Oregon.⁸ The Pretrial Work Group's mission is to “utilize a policy-driven, data-informed strategic planning process to develop a statewide plan that will increase effective collaboration between state and local agencies, resulting in the implementation of improved pretrial practices, policies, and programs.”⁹

Following about a year of work, the Pretrial Work Group drafted the Oregon Pretrial State Plan, which included a set of initial recommendations for Oregon's ongoing statewide pretrial reform efforts. Those recommendations instructed the Pretrial Work Group to do the following:

- (1) Convene and orient the Oregon Task Force on Public Safety;
- (2) Examine Oregon Constitution and statutes pertaining to pretrial justice;
- (3) Examine Oregon pretrial operational and policy issues;
- (4) Develop increased capacity for collection and analysis of Oregon pretrial data and to evaluate the pretrial reform efforts in Oregon;

⁵ HB 2238, §1(2)(a).

⁶ *Id.* at §1(2)(a)(A-C).

⁷ See *Oregon Pretrial Work Group State Plan*, Oregon Pretrial Work Group (2017), available at https://drive.google.com/file/d/10HfF_25LZ6D02axesEWG7tTOPil1XcRG/view?usp=sharing.

⁸ *Id.* at 3.

⁹ *Id.* at 1.

- (5) Recognize Oregon pretrial reform associate counties, consisting of those counties who have engaged, or plan to engage, in local pretrial reform; and
- (6) Create a “County Tool Kit” with guidance and pretrial resources for enhancement of existing pretrial programs and implementation of new programs at the county level.¹⁰

Pretrial Network

Additionally, approximately 14 counties have already begun pretrial services programs, have long-running pretrial services programs, or are in the beginning stages of establishing pretrial services. These counties have organized a network—the Pretrial Network—to collaborate as more counties begin this work or refine work they already perform. The input of the Pretrial Network members has been, and will continue to be, significantly helpful to the Task Force in assessing how counties function with and without pretrial programs, what counties need to operate successful pretrial programs, and other critical information about what the state can do to aid in this effort.

Status of Task Force’s Pretrial Studies

To address the panoply of issues included in a study of security release in Oregon, the Task Force must first unpack the underlying questions and identify sources that will inform its studies.

Focus on reducing racial and ethnic disparity in pretrial incarceration

The overarching goal the Legislature bestowed upon the Task Force’s studies was to reduce racial and ethnic disparity in pretrial incarceration in Oregon. In order to perform an assessment that ultimately targets a reduction in disparities in pretrial incarceration, the Task Force must also review the following matters, among others:

- (1) Obtaining jail data from Oregon jails statewide;
- (2) Defining the “pretrial population” in Oregon jails so that assessments of county jails are performed the same way (e.g., defendants held solely pending a criminal charge versus defendants serving sanctions, as well as jail incarceration versus any secondary housing facilities);
- (3) Reviewing pretrial population data to ascertain the demographic makeup of Oregon’s pretrial population across 36 counties;
- (4) Analyzing demographic pretrial jail data to ascertain whether disparities in pretrial incarceration exists, in what forms, and ways to further assess impacts of disparities (e.g., length of stay, case disposition outcomes, security amounts set); and
- (5) Assessing what information jail data does not include, or ways in which the data is incomplete, and what means may be taken to fill data gaps;
- (6) Assessing any relationship between security release amounts and pretrial length-of-stay or other factors or circumstances that flow from the setting of security release amounts; and
- (7) What resources county jails need to better understand their pretrial populations, perhaps in the form of improved data-tracking methods or data systems.

Repealing statutes authorizing security release

In order to study the repeal of statutes authorizing security release in favor of other types of release decisions, the Task Force must first examine Oregon’s system of security release in the context of Oregon’s legal and historical bail system, Oregon’s Constitutional bail provisions, Oregon’s 1973 bail reform, in which Oregon moved away from commercial bail bonds (also known as commercial sureties), and Oregon’s current statutory framework, in which our contemporary security release system operates. Exemplary questions include,

¹⁰ *Id.* at 12-14.

- (1) What the Oregon Constitution contemplates in its provisions concerning offenses that are “bailable,” Article I, §14 and Article I, §43;¹¹
- (2) Whether those constitutional provisions are adequate to accommodate various forms of pretrial reform, and what circumstances would necessitate amending the Oregon constitution’s bail provisions;
- (3) Statutory and legislative history of bail law and reform in Oregon, and the adoption of a security-release system in 1973;
- (4) What a pretrial release and detention statutory scheme would require if financial security was no longer a basis for obtaining pretrial release;
- (5) Whether the Oregon Constitution and state statutory scheme provides sufficient means for addressing flight risk and/or public safety risk should financial release be restricted or repealed;
- (6) Implications of maintaining a system with financial release resulting in a defendant’s detention based solely on his or her lack of resources, in light of mounting national reform efforts and law suits; and
- (7) Ancillary impacts to removing, or greatly reducing, security release in Oregon’s criminal justice system (i.e., what programs are funded through security release monies; the impacts felt from a reduction in this funding, and alternative funding sources).

Utilizing risk assessments

In order for the Task Force to study using pretrial risk assessments, it must first examine the following matters, among others:

- (1) What pretrial risk assessment tools are designed to do, best-practices for implementation of tools, and how to ensure that tools are only used to provide supplemental information for judges, and/or release assistance officers with delegated authority, to consider in making pretrial release decisions, and not to supplant judicial decision-making;
- (2) How various models are designed, including what factors and data points are employed to calculate risk scores, and how they are locally validated;
- (3) The potential for bias to permeate application of risk-assessment tools and means to ensure tools are validated, re-validated, and calibrated on both general pretrial populations, as well as on sub-populations (e.g., by gender, race) to ensure that tools perform fairly for all pretrial populations;
- (4) What risk scores mean in predicting a pretrial defendant’s likelihood of successfully appearing in court and not reoffending while on release and the appropriate role of risk scores in a defendant’s pretrial process (e.g., as predictive of court appearance and public-safety risk, not evidence as to guilt or innocence of underlying charges); and
- (5) How risk-assessment tools may be applied to specific categories of charges (e.g., in domestic violence cases) and whether or how additional assessment should be performed prior to release decisions being made in these circumstances.

Methods of reducing failure to appear at court hearings

In order for the Task Force to study methods of reducing failure to appear at court hearings, it must first examine the following matters, among others:

- (1) The universe of circumstances that may constitute “failure to appear,” including distinctions between willful failures and unintentional failures, and how appearance rates are tracked locally;
- (2) Obtaining county-level data (e.g., from pretrial services, circuit courts) as to local failure-to-appear rates and establishing what each jurisdiction counts as a “failure to appear” to ensure like-evaluations;
- (3) Examination of best-practices that encourage court appearance and what approaches counties currently take to encourage court appearance; and

¹¹ Article I, §16, of the Oregon Constitution, contemplates excessive bail, not which offenses are themselves bailable; accordingly, the Task Force has not yet begun construction of this constitutional provision yet but will as its work progresses.

- (4) Examination of what resources could be provided to counties to aid in improving court appearance, including consideration of supporting established pretrial services operations and/or supporting new programs.

Pretrial Subcommittee Work

To facilitate its work, the Task Force created two subcommittees: (1) a statutory subcommittee; and (2) a data and evaluation subcommittee, to perform deeper examinations of issues and report back for discussion by the full Task Force.

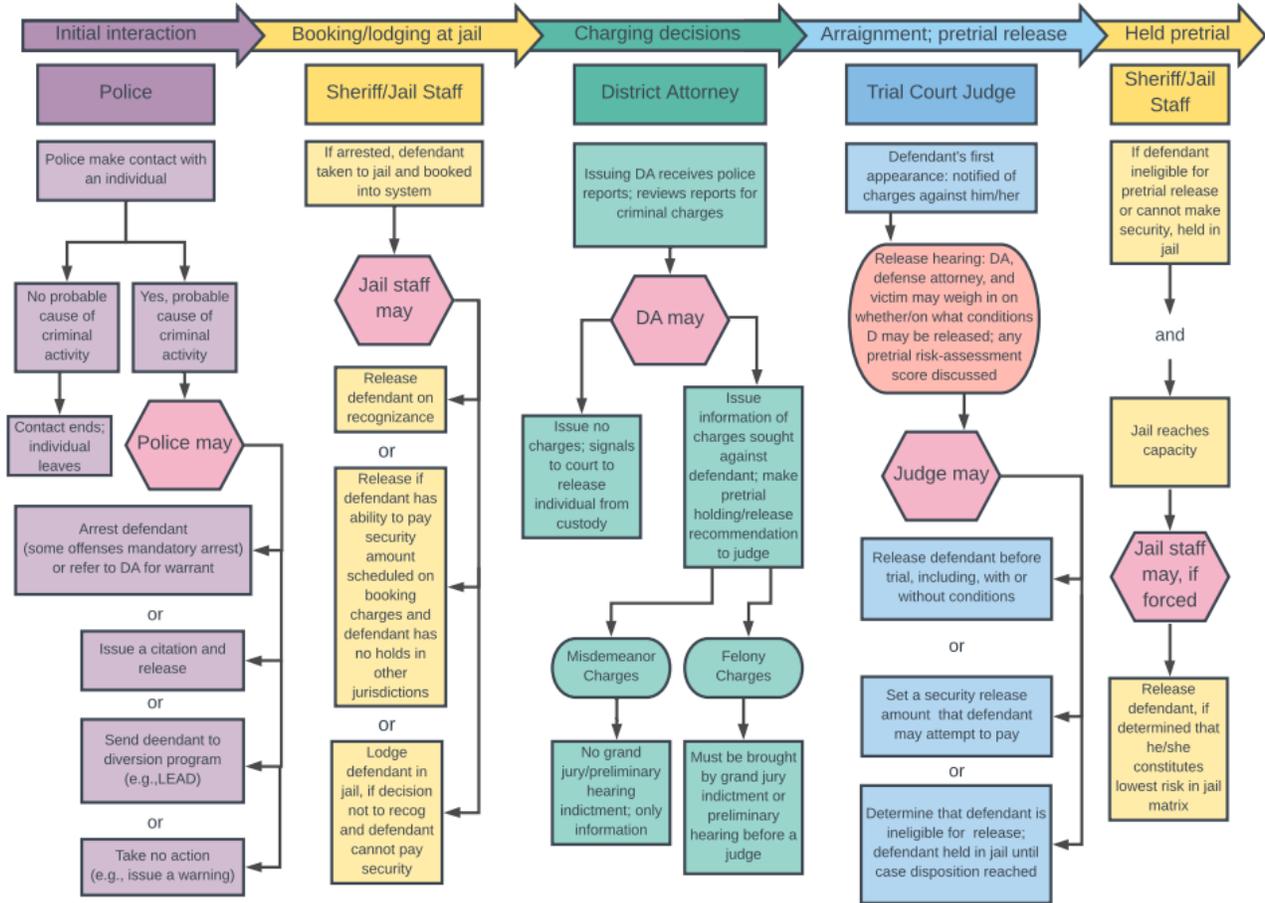
Statutory Subcommittee

The statutory subcommittee has begun its review of Oregon bail laws, including examining historical origins of Oregon's constitutional bail provisions, bail laws in Oregon pre- and post-1973 bail reforms, and more recent constitutional and statutory amendments implicating pretrial release, in order to assess the lay of the legal landscape. Thus far, this committee has drafted tools for use in framing legal issues and guiding its analysis, including a flowchart to aid in examining the parameters of a defendant's constitutional right to bail in Oregon, as well as a pretrial discretionary thresholds flowchart to aid in ensuring the Task Force looks at all pretrial decision-making points that contribute to a defendant's release or detention. This committee has also taken a historical and legal look at the original meanings of "bail" and "bailable" in Oregon to assess the original meanings of those terms in Oregon law.

Moving forward, this committee will continue to consider Oregon's statutory framework in light of the questions before the Task Force. A few of the questions to be explored include,

- (1) If financial security release were to be removed from statute, or greatly restricted in its use, what changes would be necessary to conditional release and recognizance release laws to provide for adequate monitoring, if required, of pretrial defendants?
- (2) If financial security release were to be removed from statute, or greatly restricted in its use, under what circumstances should pretrial release be revoked (e.g., willful failure-to-appear, or any failure-to-appear, any violation or only certain violations of requisite seriousness)?
- (3) To whom may judges delegate release decisions, and what limitations, if any, should be placed on delegation authority?

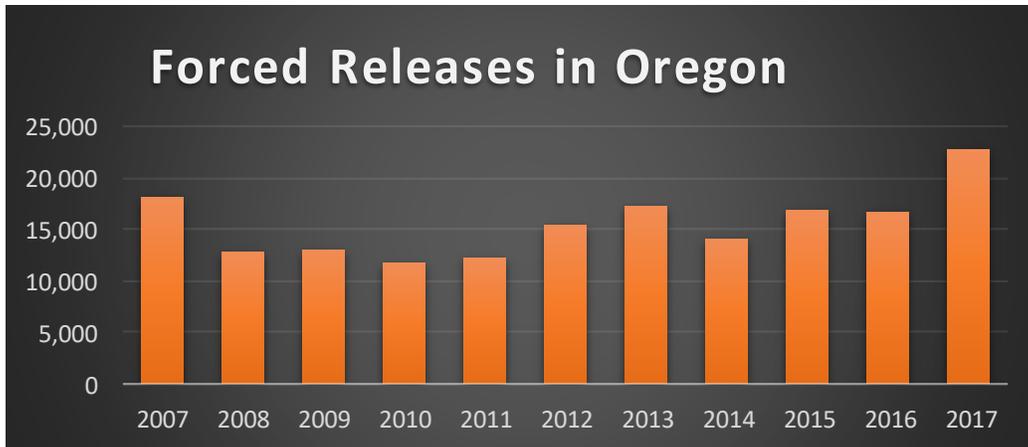
Pretrial Release Decision Discretionary Thresholds



Statutory Subcommittee Flowchart on Discretionary Thresholds in Pretrial Incarceration

Data and Evaluation Subcommittee

The data and evaluation subcommittee has begun its assessment of the requisite data, systems, and tools the Task Force will need to understand and evaluate to make recommendations about Oregon’s pretrial system. Thus far, this committee has developed a jail survey, to be administered as part of an annual jail survey, that will provide the Task Force will valuable county-level information, including, among other things: jail snapshots, including demographic data on pretrial jail populations statewide; pretrial populations in jails, which includes a common definition of “pretrial” to ensure all counties define the population same way; the data systems in use at respective jails; whether and to what extent pretrial services exist in each county; how many forced-releases a given jail is required to make in a given period due to overcrowding; and a request for holistic information, such as the most significant problems in managing jail populations in a given jail.



Data from the Oregon Sheriff's Jail Command Council showing forced-releases of defendants in Oregon jails from 2007-2017

The data and evaluation subcommittee has also begun work in learning how pretrial risk-assessment tools are built, validated, and re-validated over time. One aspect of this work has included examining the avenues by which tools may import biases from other aspects of the criminal justice system in scoring. To address potential bias in risk-assessment tools, this committee has begun, and will continue, studying the development of tools, as well as protocols and evidence-based procedures for evaluating, validating, and calibrating tools on local populations and subpopulations to ensure they operate fairly. Additionally, this committee has just begun investigating pretrial risk-assessment tools or tool modules intended for specific populations of defendants accused of certain types of crimes, e.g., domestic violence offenses.

Moving forward, this committee will continue to investigate matters such as,

- (1) Means for obtaining jail data from all Oregon counties;
- (2) Addressing data gaps in jail data;
- (3) Investigating development, assessment, validation, and re-validation of risk-assessment tools as well as guarding against potential bias in tool construction and scoring outcomes;
- (4) Increasing input from counties with long-standing and/or relatively new pretrial services programs;
- (5) Outreach to and input from counties without pretrial services as to interest and/or needs, with a focus on developing resources for urban, rural, and frontier counties and their respective populations;
- (6) Effective evaluation of failure-to-appear data, including development of common definitions for various statuses, to assess court appearance in Oregon counties;
- (7) Effective evaluation of public safety rates (the rate at which a defendant released pretrial is charged with a new crime), including a look at the types of new charges acquired;
- (8) Ways in which pretrial services may allow for more effective jail management, including reducing the number of forced-releases; and
- (9) Pretrial risk-assessments for defendants charged with specific types of crimes, such as domestic violence offenses.

B. Impacts of Criminal Fines and Fees

The Public Safety Task Force is also tasked with studying the impact of criminal fines and fees,¹² and its review of this subject is in its infancy. Among other things, the Task Force must distill questions from the Legislature's broad directive to study the "impacts" of criminal fines and fees into discrete channels of review, such as impacts to criminal defendants, their families, and communities; imposition, collection, and distribution practices of circuit, municipal, and justice courts; and impacts to those systems should the manner in which criminal fines and fees are imposed, collected, and distributed change.

To date, the Task Force has begun this work with a helpful overview of the imposition, collection, and distribution of all fines and fees by state circuit courts provided by Oregon Judicial Department (OJD) staff. The OJD tracks fines and fees imposed in state circuit courts and provided the data in this section to the Task Force.

Although the Task Force's specific mandate is to study impacts of *criminal* fines and fees, the Task Force has opted to first consider the myriad ways in which Oregon courts impose, collect, and distribute *all* fines and fees to allow for a thorough understanding of Oregon's court fines and fees systems. To that end, Task Force members have discussed, as an example, the links between Oregon's traffic fine structure's disproportionate impact on low-income people, and the ways in which that impact may have direct and indirect paths into the criminal justice system. Put differently, as isolating the study of fines and fees to only criminal fines and fees may not allow for a complete evaluation of the systems in question, the Task Force began its study broadly.

Imposition and Collection of Fines and Fees in Oregon Circuit Courts

Court Ordered Fines and Fees

Oregon's circuit courts adjudicate all types of offenses, including felonies, misdemeanors, and violations. Statutes authorize or require these courts to impose different kinds of financial obligations as part of a sentence and govern how these fines and fees can be collected. These obligations may include the following:

- Victim compensation, including restitution and compensatory fines;
- Costs (court-appointed attorney, extradition, etc.);
- Fines (\$200 minimum, maximum \$125,000 - \$500,000);
- Mandatory state assessments;
- Collection fees, as applicable; or
- Interest (currently not added).

These financial obligations are recorded in the judgment and may come with long duration periods (20 years if no restitution, 50 years with restitution) and can be difficult to collect for many reasons. As an example, an individual's ability to pay a fine or fee is not always a statutory consideration in the imposition of fines and fees. There are also other financial obligations not imposed by the court, such as jail or supervision fees.

Collection of Fines and Fees

Revenue collected by courts is distributed to victims, counties, cities, and the state based on the type of offense, the type of obligation imposed, and payment priorities defined in statute. Payment plans may be employed to accommodate persons unable to pay fines and fees in-full, along with other opportunities for relief discussed below.

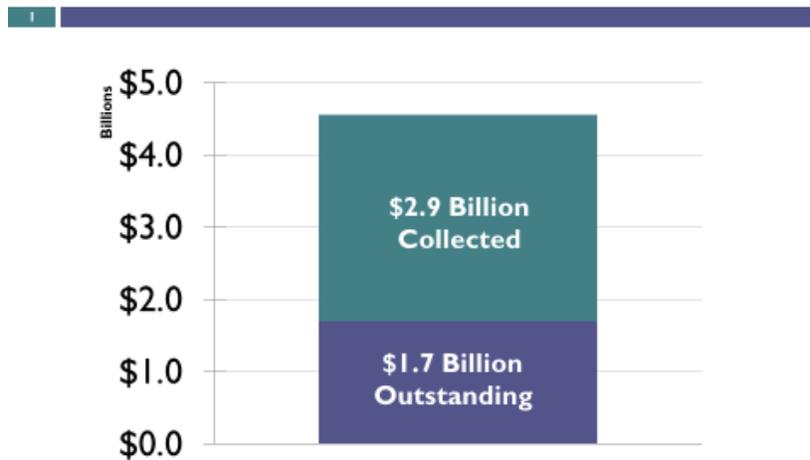
¹² HB 2238, §1(2)(b).

Since 1988, Oregon circuit courts have:

- Imposed \$4.7 billion in fines, fees, restitution, and other financial obligations, in 18.5 million cases
- Collected \$2.9 billion in 16.7 million cases
- Written off \$200 million in expired judgments
- Received payment in full in 90 percent of individual cases

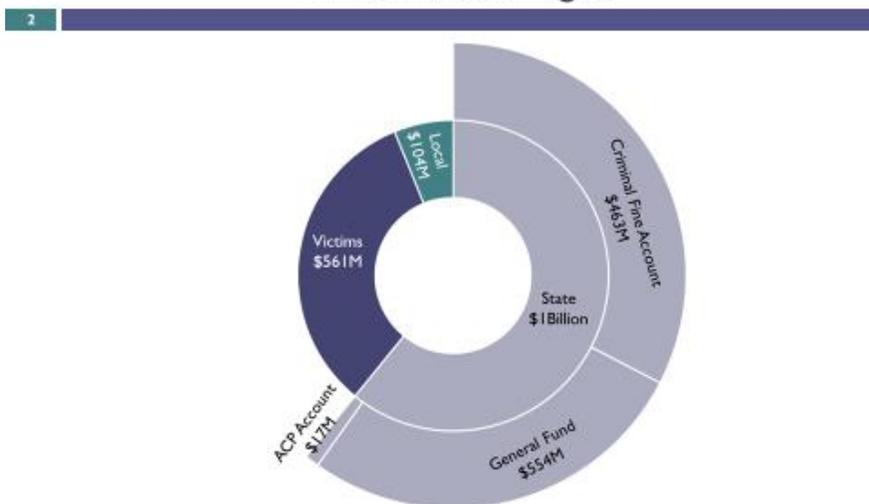
The **figure below** depicts the total fines and fees imposed by Oregon circuit courts that OJD has collected and what the state is still owed since 1988.

OJD's Outstanding Debt



The **figure below** depicts that, of the outstanding \$1.7 billion unpaid fines and fees, more than half (\$913.7 million) comes from felony cases, and more than 60 percent (\$561 million) is owed to crime victims.

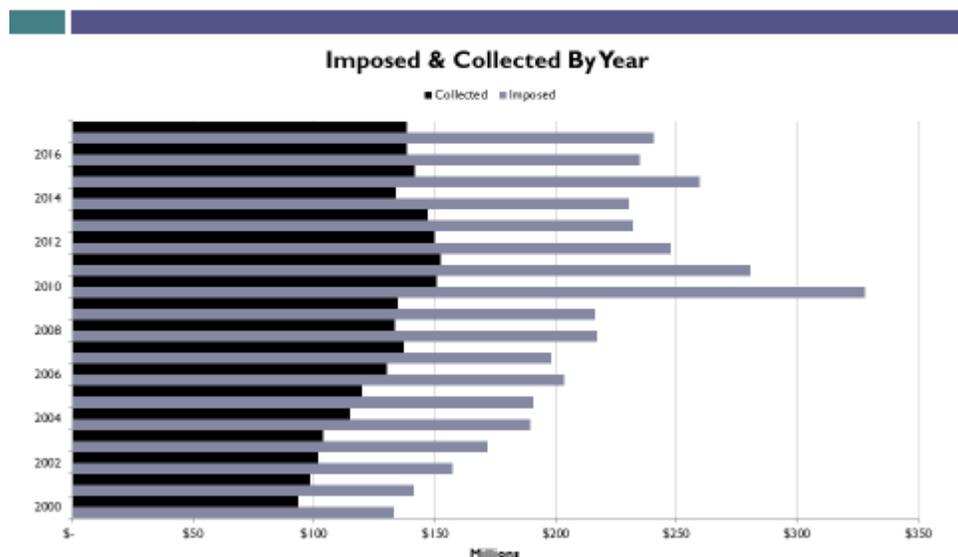
\$1.7 Billion Outstanding Debt Where would it go?



Data: Circuit Court Fines & Fees 1988-2017 | Source: Oregon Judicial Department

The **figure below** shows the amount of fines and fees imposed and collected by Oregon circuit courts by year.

Fines & Fees Over Time



Collection Process

When someone is found guilty and sentenced in a criminal proceeding, he or she has the option to pay in-full or set up a payment plan. There is no collection activity or interest while the individual is incarcerated unless the court explicitly finds that a person has an ability to make payments while incarcerated.

Recently, changes were made to collection practices in Senate Bill 844 (2017).¹³ This bill allows the Oregon Department of Corrections (DOC) to collect unprotected funds from an inmate's trust account to pay outstanding criminal judgments.¹⁴

If an offender's payments are current, his or her case stays with the court, but if payments are delinquent, the following collection actions may occur:

- Sending a demand letter;
- License suspension in some cases (per statute, mostly for traffic offenses);
- Third-party collections (Department of Revenue and private firms);
- State income tax refund offset; and/or
- Garnishment of wages.

¹³ Enrolled Senate Bill 844 (2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB844/Enrolled>.

¹⁴ Protected funds, or funds not subject to collection, include disability benefits for veterans, moneys received from a Native American tribe or tribal government; moneys dedicated for medical, dental or optical expenses or emergency trips; railroad retirement benefits; or moneys paid as compensation to an inmate in certain prison work programs. *Id.* at SB 844 §1(e). A review of collection policies and practices administered by DOC per SB 844 recently began following questions raised about whether collection of funds intended to be protected was taking place.

When an incarcerated offender is released, the Board of Parole/Post-Prison Supervision may send a schedule of payment to the court, or the offender may contact the court to set up a payment plan on his or her own volition. If payments are delinquent, automated collection actions are initiated against the offender.

Collection fees may include the statutory Payment Schedule Assessment Fee (PSAS), which may range from an additional 31 to 128 percent of the original fine amount. There may also be a statutory Collection Referral Assessment Fee (CRAS) applied when an account is sent to third-party collections. The CRAS adds an additional 28-percent fee. If the original court-imposed obligations are not paid in-full within 60 days, and these additional fees are added, an offender may owe at least double the original fine amount.

Relief Available

Generally, sentencing courts lose jurisdiction over a case when the judgment is issued, and there is limited specific statutory authority to amend a judgment. Reasonable and fair payment plans, based on income, create incentives to stay out of collections and avoid additional fees. During any period of probation or post-prison supervision, courts may waive unpaid portions of fines if the offender establishes financial hardship that prevents the defendant from completing an alcohol or drug program that was required as a condition of supervision.¹⁵

Additionally, Senate Bill 55 (2015)¹⁶ allowed the Chief Justice to create criteria for accepting settlement offers on debts but excludes judgments with restitution. As a result, OJD is developing policies and business practices for courts and third-party collectors. There are also license reinstatement opportunities if the individual establishes a new payment plan or is enrolled in a Bureau of Labor and Industries-approved apprenticeship or pre-apprenticeship program. At sentencing, community service may also be used in lieu of fines. Post-sentencing, some court costs and fees can be converted to community service through county community-service exchange programs.

Fines & Fees Concerns Relating to Public Safety

There are several important public safety concerns relating to fines and fees, such as holding offenders accountable and compensating victims of crime. In Oregon, crime victims have a constitutional right to prompt restitution from the offender.¹⁷ Additionally, the legislature uses fee and fine revenue to support public safety programs, as well as other programs and services. There are also costs to administer systems, such as community service, which are often part of an offender's sentence. Those administration costs are often paid for with funds from fines and fees.

These concerns must be balanced against an offender's ability to pay, the potential destabilizing effect fines and fees may have on an offender, and the impact on successful re-entry into the community for incarcerated offenders. There is currently a national conversation around the intersection between court imposition of fines and fees and revenue generation, as well as avenues of inquiry in Oregon, concerning, among other things, whether, how, and to what extent courts and other programs should be funded by fines and fees. These inquiries must also include consideration of adequate court funding so that courts have the resources required to fulfill their constitutional mandates.

¹⁵ ORS 137.286(5).

¹⁶ Enrolled Senate Bill 55 (2015), available at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB55/Enrolled>.

¹⁷ See Article I, §42(1)(d), of the Oregon Constitution.

Justice and Municipal Courts

As noted, all data discussed in this report is limited to state circuit courts. OJD does not maintain information on cases, nor related fines or fees, in municipal or justice courts. CJC staff has begun outreach and research into this channel of fines and fees and will report further to the Task Force in the future.

C. Justice Reinvestment Implementation

Given that the Justice Reinvestment grant program is in its fifth year of operation, that facet of the Task Force's work is the most clearly delineated. In July 2013, the Oregon Legislature passed HB 3194, known as the Justice Reinvestment Act,¹⁸ in response to a nearly 50 percent increase in Oregon's rate of incarceration between 2000 and 2010. Justice Reinvestment is an approach to spending resources more effectively and has been implemented, in different versions, in more than 30 states. In Oregon, the goals of the program are to (1) decrease prison use, (2) reduce recidivism, (3) increase public safety, and (4) hold offenders accountable. The program depends on funding for county Justice Reinvestment programs every biennium in order to operate.

Oregon's Justice Reinvestment Program is currently composed of two grant programs (the Formula Grant and the Supplemental Grant, discussed below), Short-Term Transitional Leave, and some sentencing changes. HB 3194 also created this Task Force and required that this group oversee the implementation of Justice Reinvestment¹⁹ and submit a report in October 2016.²⁰ The 2016 report reviewed the impact of the Grant Program, Short-Term Transitional Leave, and the sentencing changes from HB 3194 in great detail and included recommendations to the Legislature, with continuing the work of the Task Force among them.

This report does not seek to replicate all the work done in the 2016 Task Force report but rather to provide an update on the Grant Program, Short-Term Transition Leave, and a few other programs related to Justice Reinvestment. This report is organized around the three percent of grant funds reserved for program studies (known as "3-percent studies") and the four goals of Justice Reinvestment.

Three Percent Reserved for Program Studies

Up to three percent of the Justice Reinvestment Grant funds may be used to study county programs. Described below are the studies funded by Grant Program funds in the 2015-17 and 2017-19 biennia.

2015-2017 Biennium Funding Cycle

416 Prison Diversion Program Random-Control Trial

The 416 Prison Diversion Program was designed as an alternative sentencing program for repeat felony property offenders with identifiable substance abuse problems. In lieu of prison, Senate Bill (SB) 416²¹ participants receive community-based supervision by parole and probation offices, intensive substance abuse treatment, and mentoring services. Starting in 2015, the CJC, in partnership with the Oregon Social Learning Center (OSLC), began to study this program in Marion and Lane Counties, using a random-control trial research design to examine the extent to which this program reduces prison usage and improves recidivism outcomes, all while maintaining acceptable levels of public safety. Preliminary results for this study will be available in April 2019, with full results in the coming years.

¹⁸ Enrolled House Bill 3194 (2013), available at <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/HB3194/Enrolled>.

¹⁹ HB 2238 at §1(2)(c).

²⁰ See *Task Force on Public Safety Justice Reinvestment Report to the Legislature*, Oregon Criminal Justice Commission (2016), available at <https://www.oregon.gov/cjc/Documents/TaskForceonPublicSafetyJusticeReinvestmentReporttotheLegislature.pdf>.

²¹ The 416 Prison Diversion Program's moniker comes from a 2011 Senate bill that did not pass; however, the program was later funded as a Justice Reinvestment program.

Temporary Transitional Housing Random Control Trial

It is widely believed that offenders in the community are at increased risk for engaging in antisocial and/or criminal behavior when they do not have access to stable housing, particularly in the days immediately following release from custody. Providing a safe housing unit keeps offenders out of unstable situations, at least for a short time-period, and it may provide a stepping-stone to longer-term housing and employment. This hypothesis, however, has yet to be examined in Oregon and has never been formally evaluated in a randomized-controlled trial. The overarching aim of this study, conducted through a partnership between the CJC and the OSLC, is to evaluate the effectiveness of housing programs for reducing recidivism and improving long-term housing stability among offenders. If basic reentry housing is deemed to have positive outcomes, this type of program could feasibly be expanded to community corrections programs across the state. At present, this study is still in the recruitment stage, drawing a sample of study subjects in Douglas, Polk, and Umatilla counties. Data analysis will begin in the coming years, starting in 2020.

Presentencing Assessment Study

One of the Justice Reinvestment efforts is related to presentencing assessments that provide information on criminogenic risk and need-factors to aid the courts in determining whether individuals are appropriate candidates for community supervision. In December 2016, the CJC, in partnership with NPC Research, initiated a study of the presentence assessment process implemented in Josephine, Union, and Yamhill counties, which was designed to examine application of new risk-and-needs assessments prior to sentencing for those individuals who are eligible for downward departures. The outcomes being examined are whether prison usage (in terms of fewer sentences and shorter lengths-of-stay) in these counties has decreased and whether recidivism and revocation rates have been reduced. This study is ongoing, with results expected in 2019.

Reentry Study

Previous research indicates that post-prison reentry programs are associated with improved outcomes for ex-offenders, but a clear set of best-practices has yet to emerge. Washington and Linn counties have designed promising reentry services that combine both pre- and post-release services for individuals transitioning into the community following a prison sentence. These programs include in-person reach-ins, assessment-based case planning, service continuity, and access to mentors. The CJC, in partnership with the OSLC, initiated a study of these reentry programs, which found that these programs were beneficial and should continue, as they resulted in lower recidivism rates.

2017-2019 Biennium Funding Cycle

Prison Length of Stay Study

Contrary to common notions, recent research indicates that prison sentence length has no consistent and significant association with future offending (after accounting for criminal history, criminal trajectory, crime severity, and relevant demographics). Given that much of the research in this area examined incarcerated individuals outside of the United States, the CJC is currently studying this conclusion in Oregon through a partnership with Portland State University, using data for Oregon offenders to determine the extent to which the conclusion that time served has no effect on future offending is valid in the state. This study began in mid-2018 and is scheduled to conclude in mid-2019. Results and conclusions from this study will be presented during the 2019 Regular Session.

Level of Service/Case Management Inventory Study

Community supervision is a key component in meeting the goals of Justice Reinvestment in Oregon, as community supervised sentences allow offenders to remain in the community while being held accountable for their crimes. This practice is believed to be cost-effective while also emphasizing rehabilitation and behavior change. In Oregon, community corrections departments use a validated dynamic risk-needs assessment, the Level of Service/Case Management Inventory (LSCMI), to identify the appropriate supervision level and to create a case plan. Probationers are then reassessed throughout their period of supervision to update the case plan and adjust the supervision level as necessary. While the use of the LSCMI assessment is widespread in Oregon, it has yet to be studied here. The CJC seeks to study how LSCMI scores for offenders change during their probationary terms, the extent to which LSCMI scores predict recidivism rates within the state, and the degree to which services provided to offenders during their supervision corresponds with needs identified by their LSCMI scores. This study is scheduled to begin in the fall of 2018 and conclude in mid-2019, with findings and conclusions delivered during the 2019 Regular Session.

Pretrial Study

During the 2017-19 biennium grant cycle, several Oregon counties requested funds to reform their pretrial detention process. Given this trend, the CJC elected to study the effect that pretrial detention has on criminal justice system outcomes in the state. The programs proposed by counties were inspired by academic research indicating that, all else being equal, individuals held in pretrial detention tend to receive longer prison sentences on average compared to individuals who were not held during their pretrial period. The CJC seeks to replicate this study in Oregon to determine whether pretrial factors are related to either the type of sanction imposed following conviction (i.e., probation versus prison) or the length of sentence. This study will begin in the fall of 2018 and conclude in mid-2019, with findings and conclusions delivered during the 2019 Regular Session.

Prison Use

Male and Female Prison Population Forecasts

When the Oregon Legislature passed HB 3194 in 2013, Oregon was facing the need to build an additional male prison facility in Junction City that would have had to be operational by early 2017. Justice Reinvestment has pushed the need for this facility, as well as the cost of building and operating it, out well beyond 2027.²²

²² The prison-use figures shown in this section include impacts of HB 3194 (2013) and HB 3078 (2017). HB 3078 will be discussed further on pages 19-21.



Oregon Male Prison Population Forecasts Showing Impacts of HB 3194 and HB 3078

In the **figure above**, the green line represents the April 2013 Male Prison Population Forecast, before HB 3194 was passed. The black line is the actual prison population up to the writing of this report. The blue line is the most recent Male Prison Population Forecast, from April 2018. The April 2018 Forecast includes projected prison bed savings from HB 3194 and HB 3078.²³ The red horizontal line represents the point at which Oregon will need a new Junction City facility to be built and operational.

²³ Enrolled House Bill 3078 (2017), available at <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB3078/Enrolled>.



Oregon Female Prison Population Forecasts Showing Impacts of HB 3194 and HB 3078

In the **figure above**, the green line represents the April 2013 Female Prison Population Forecast, before the Justice Reinvestment Act was passed. The black line is the actual prison population up to the writing of this report. The blue line is the most recent Female Prison Population Forecast, from April 2018. The April 2018 Forecast includes projected prison bed savings from HB 3194 and HB 3078. The red dotted horizontal line represents the point at which Oregon will be over capacity at the single female prison facility currently in use in Oregon, Coffee Creek. There is another female facility (OSP Minimum) that is not currently being used. If the DOC needs to expand into OSP Minimum, the cost has been estimated to be between \$10-20 million.

CJC tracks prison-use by county for property, drug, and driving crimes as part of administering the Justice Reinvestment Grants Program. County prison use data is available on CJC’s online data dashboards.²⁴

Grants Program and House Bill 3078

In the 2013-15 biennium, \$15 million was distributed among all 36 counties to begin their Justice Reinvestment programs. For the 2015-17 biennium, the Grants Program was funded in the amount of \$38.7 million. In the 2017-19 biennium, the Grants Program was funded at \$40.1 million, and an additional grant program was created in HB 3078. HB 3078 set aside \$7 million in supplemental grant funding for counties to be used for downward departure prison diversion programs as part of the greater Justice Reinvestment Program. For clarity, this \$7 million grant became known as the Supplemental Grant, and the \$40.1 million original grant became known as the Formula Grant. Twelve counties received the Supplemental Grant to create or enhance downward departure prison diversion programs. For both the Formula and Supplemental Grants, 10 percent of the grant funds are reserved for the funding of crime victims’ services.

²⁴ See Justice Reinvestment Prison Usage Dashboard, Oregon Criminal Justice Commission, available at <https://www.oregon.gov/cjc/data/Pages/jri-prison.aspx>, last accessed August 31, 2018.

HB 3078 also contained sentencing changes to Theft in the First Degree and Identity Theft, and expanded Short-Term Transitional Leave from a maximum of 90 days to 120 days.²⁵ This bill also tasked the CJC with studying “the impact of this 2017 Act on prison utilization, recidivism and public safety” and report the results to the legislature no later than February 1 of each year.²⁶ The CJC submitted the first of these reports in February 2018, and it is available on the CJC’s website.²⁷ HB 3194 also contained sentencing changes which have all phased in at this point and all changes are factored in to the prison forecast going forward.²⁸

It should be noted that HB 3078 is the subject of a lawsuit challenging its constitutionality.²⁹ Judges in a few counties have ruled that the sentencing changes in HB 3078 were passed unconstitutionally, concluding that this could lead to offenders receiving different sentences in different counties for the same offense. The suit is presently under review by the Oregon Supreme Court. Oral argument was held on September 13, 2018.

The sentencing changes in HB 3078 have had a significant impact on the Prison Population Forecast, especially for the female prison population. Theft in the First Degree and Identity Theft are the most common offenses for which women are incarcerated in Oregon. These sentencing changes were incorporated into the latest Prison Population Forecast in April 2018. If the Oregon Supreme Court rules that these sentencing changes are unconstitutional, then the projected prison-bed savings from the HB 3078 sentencing changes will be removed from the forecast.³⁰

Counties also spend their Justice Reinvestment Grant funds on a wide variety of services, positions, and materials. The CJC tracks how counties spend these funds for both the Formula and Supplemental Grants and the 10-percent reserved for crime victims’ services on the CJC website.³¹

Short-Term Transitional Leave

In 2013, HB 3194 expanded the maximum amount of Short-Term Transitional Leave (STTL) that an inmate may receive from 30 days to 90 days. In 2018, HB 3078 expanded this further to 120 days. As of the writing of this report, STTL has saved the Oregon 359,142 prison-bed days since January 2014.

²⁵ Enrolled House Bill 3078 §7 (2017).

²⁶ *Id.* at §10.

²⁷ *House Bill 3078 (2018) Impact Report to the Senate and House Committees on Judiciary*, Oregon Criminal Justice Commission (2018), available at https://www.oregon.gov/cjc/Documents/HB-3078_Impact_Report.pdf.

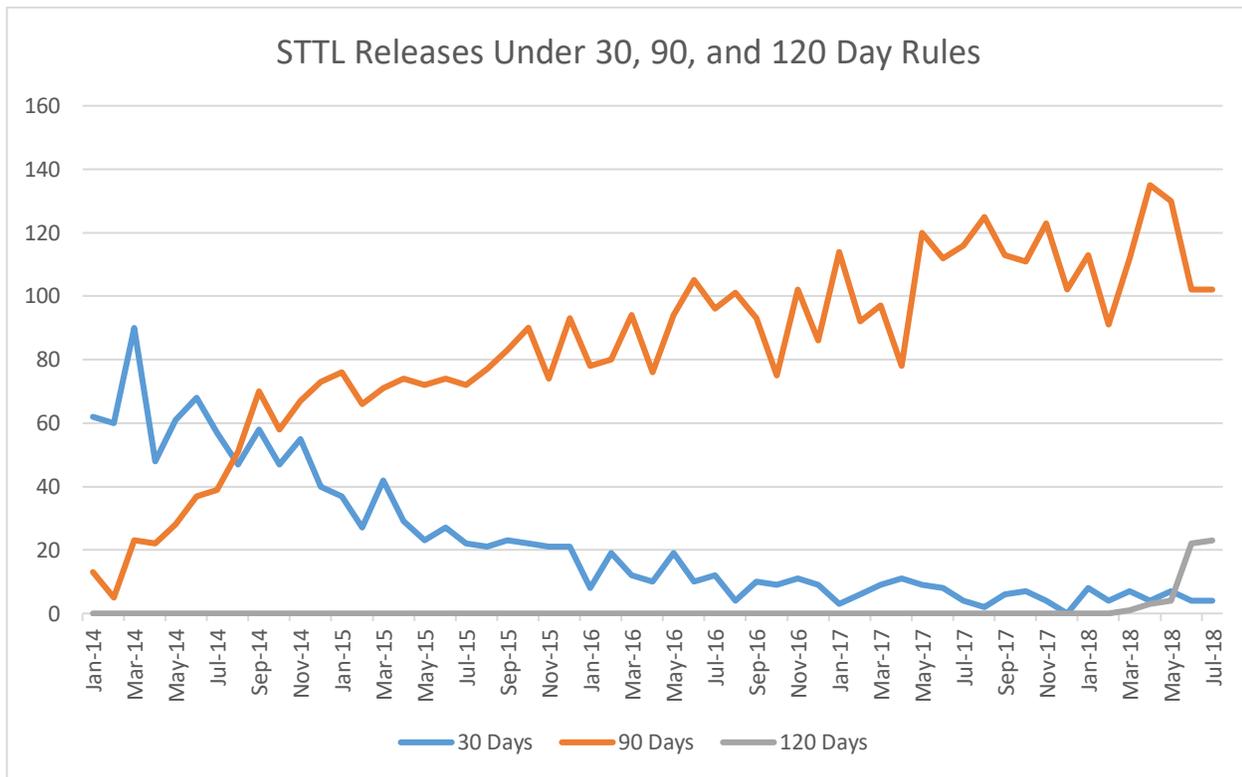
²⁸ *See Task Force on Public Safety Justice Reinvestment Report to the Legislature*, Oregon Criminal Justice Commission (2016) at 7 (demonstrating impacts of sentencing changes from HB 3194).

²⁹ *See John S. Foote v. State of Oregon*, S065883 (2018). Case status and briefs on appeal available at <https://web.courts.oregon.gov/records/sccalendar.nsf/b29dd44d01dffe088256c91005b3a5b/d3b3f278fbedb95588258274007fca82?OpenDocument>.

³⁰ *See House Bill 3078 (2018) Impact Report to the Senate and House Committees on Judiciary* for more information regarding projected prison-bed savings from HB 3078 sentencing changes.

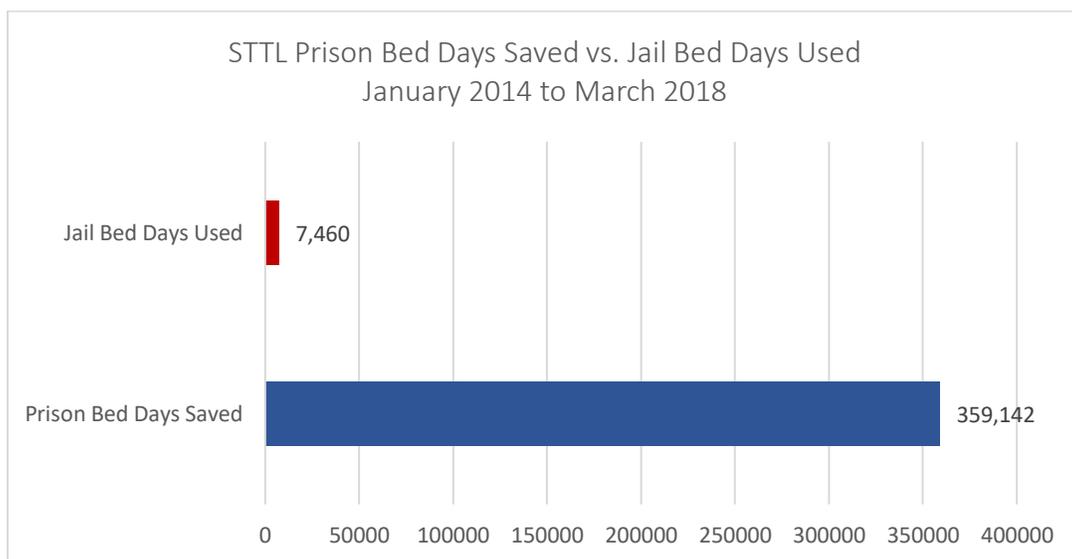
³¹ *See Justice Reinvestment Dashboard*, Oregon Criminal Justice Commission, available at <https://www.oregon.gov/cjc/data/Pages/jri.aspx>, last accessed August 31, 2018.

The **figure below** shows the number of individuals per month receiving STTL for 30, 90 and 120 days.

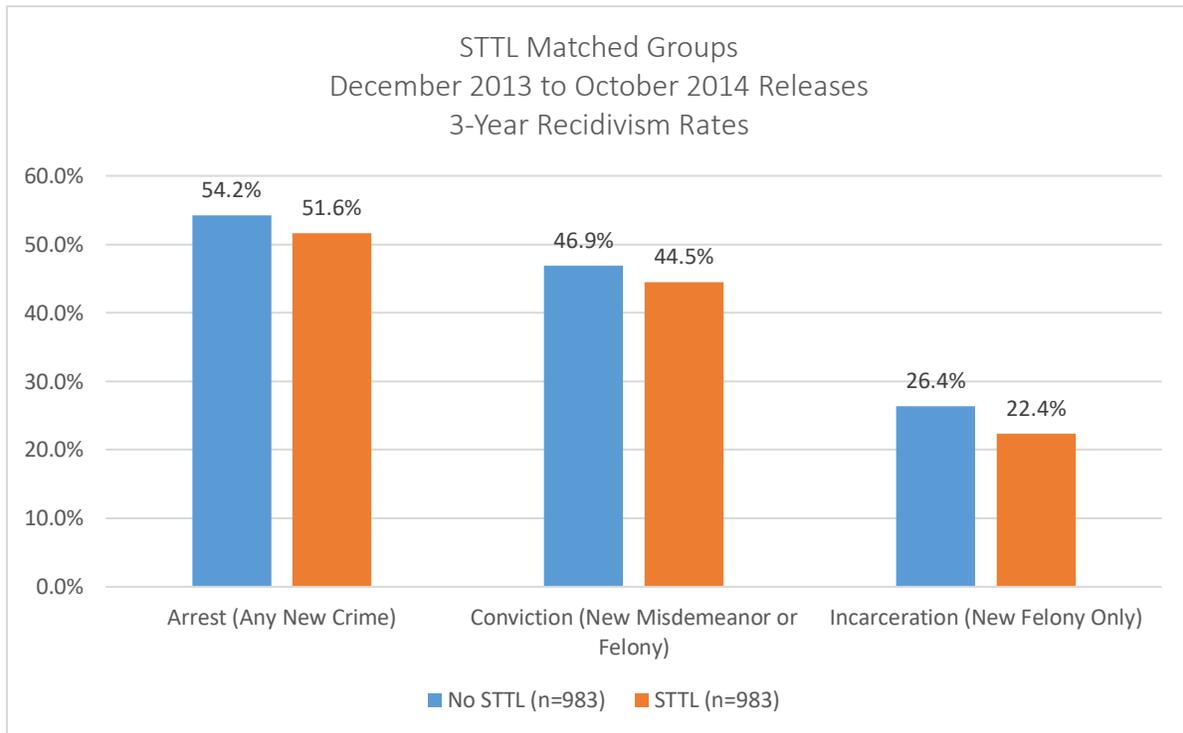


Offenders who receive STTL must be accepted by the county to which they are released from prison. Those offenders are then supervised on post-prison supervision and many require services such as treatment, housing, and employment assistance. Most counties spend a significant portion of their Justice Reinvestment Grant funds to enhance their ability to supervise these offenders and provide them necessary services.

The **figure below** compares the prison bed days saved by STTL to the “cost” to the counties in jail bed days used. The beds saved vastly outweighs the cost to counties.



STTL participants who violate their supervision may be sanctioned in the county jail or returned to prison. This creates the risk that, of the offenders who release early from prison on STTL, those who commit violations could end up in the county jail, thereby shifting the financial burden of these offenders from the state to the county.



CJC tracks offenders who receive STTL on the CJC website³² and the recidivism rates for STTL participants in an annual report.³³ So far, inmates who have participated in the STTL program show lower 3-year, 2-year and 1-year recidivism rates than inmates who were statutorily eligible but did not participate. The **figure above** shows this comparison at the 3-year mark for the December 2013 to October 2014 cohort.

Recidivism

HB 3194 redefined recidivism for Oregon to include arrest, conviction, or incarceration for a new crime within three years of release from incarceration or imposition of probation. As Oregon’s Statistical Analysis Center, the CJC tracks recidivism and updates the analysis every six months. Recidivism data is also available in the form of an interactive dashboard on the CJC’s website.³⁴ This dashboard is updated with every biannual recidivism report.

In the most recent recidivism report (May 2018), the CJC focused on recidivism as a percentage of total criminal arrests.³⁵ On average, recidivating events account for about one-fifth of all new criminal arrests in the state over the last decade. However, within certain crime categories, the recidivating events that drive arrests are much greater as a percentage, for example in the categories of drug possession and property crimes. Most

³² See Short-Term Transitional Leave Dashboard, Oregon Criminal Justice Commission, available at <https://www.oregon.gov/cjc/data/Pages/sttl.aspx>, last accessed August 31, 2018.

³³ See *Short-Term Transitional Leave Program*, Oregon Criminal Justice Commission (2018), available at https://www.oregon.gov/cjc/justicereinvestment/Documents/STTL_Analysis_Jan_2018.pdf.

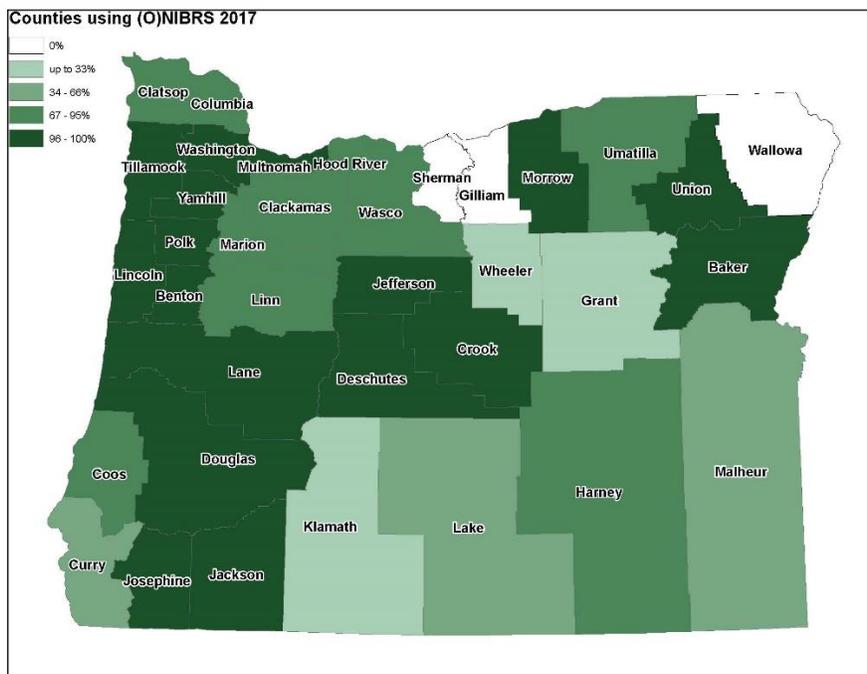
³⁴ See Recidivism Dashboard, Oregon Criminal Justice Commission, available at <https://www.oregon.gov/cjc/data/Pages/recidivism.aspx>, last accessed August 31, 2018.

³⁵ See *Oregon Recidivism Analysis*, Oregon Criminal Justice Commission (2018), available at <https://www.oregon.gov/cjc/SAC/Documents/May2018RecidivismReport-Final.pdf>.

county Justice Reinvestment programs are focused mainly on property and drug crimes, and the results of this analysis should be of interest to practitioners, as well as policy makers, as they consider how to best implement programs that reduce recidivism and prison use. The CJC will continue to break down this data in the coming months to help counties measure the impacts of their programs.

Public Safety

Public Safety is notoriously difficult to measure. Reported crime data is the best information currently available on crime rates in Oregon. On September 25, 2017, the FBI released the 2016 Uniform Crime Reports (UCR) for Oregon and all other states in the US. This report, titled “Crime in the United States, 2016,” shows the number of property-index and violent-index crimes reported in all states. There are some reporting issues with this data, but overall, Oregon has seen a substantial improvement in reporting by law enforcement agencies. The most noteworthy changes in index crimes from the 2015 to the 2016 data were both within property crimes. There was a 10-percent decrease in reported burglaries but a 20-percent increase in reported auto thefts. The CJC prepared a brief on the FBI report available at the CJC’s website.³⁶ The next FBI report containing 2017 data is expected in late September 2018.



Oregon law enforcement agencies are currently switching to a new reporting system. The new system, the National Incident Based Reporting System (NIBRS), is an incident-based reporting system for crimes known to law enforcement. NIBRS will collect significantly more data than is currently available in the Oregon Uniform Crime Reporting Program (OUCR). The switch from OUCR to NIBRS is a major undertaking that law enforcement agencies must make individually by January 2021. The **figure above** represents the percentage of law enforcement agencies, by county, which have already converted to NIBRS. CJC also tracks reported crime data, both nationally and for Oregon, on the CJC website, in the form of a data dashboard.³⁷

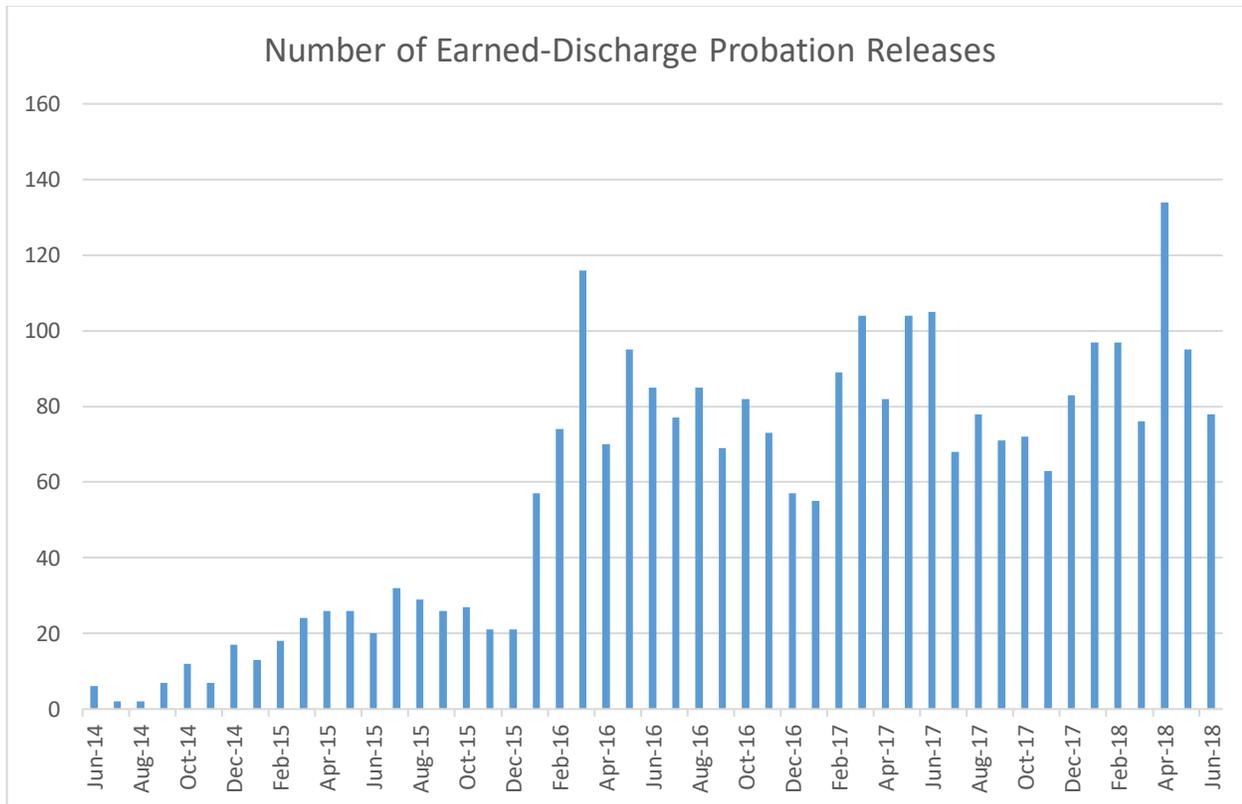
³⁶ See *2016 Release of FBI Uniform Crime Reports for Oregon*, Oregon Criminal Justice Commission (2017), available at https://www.oregon.gov/cjc/SAC/Documents/2016_FBI_UCR_Oregon.pdf.

³⁷ See Oregon Uniform Crime Report Dashboard, Oregon Criminal Justice Commission, available at <https://www.oregon.gov/cjc/data/Pages/OUCR.aspx> (last accessed August 31, 2018).

Offender Accountability

Earned-discharge incentivizes offenders to comply with probation conditions by allowing for the early termination of a supervision sentence under certain conditions. These conditions include a minimum period of supervision that is not less than six months and is at least 50 percent of the period of supervision that was imposed at sentencing. This change applies to supervision sentences on or after August 1, 2013. There were some implementation challenges with the original criteria of earned-discharge, and HB 3070³⁸ was designed to resolve these issues. HB 3070 became effective January 1, 2016.

The **figure below** shows the number of earned-discharge supervision terminations. The first earned-discharge terminations occurred in June 2014.



³⁸ Enrolled House Bill 3070 (2015), available at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB3070/Enrolled>.

IV. Preliminary Recommendations of the Task Force

General

- The Task Force recommends submission of a second progress report to supplement these initial recommendations.

Preliminary Pretrial Incarceration Recommendations

- The Task Force recommends continuing its study of pretrial incarceration. As obtaining jail data from counties is critical to the mission of the Task Force's work, the Task Force recommends continuing efforts to obtain it and improve its completeness, including, but not limited to, working with individual counties on data-tracking methods and data-sharing opportunities, administering a statewide jail survey, and exploring means for the state to assist counties in tracking, analyzing and improving this data, e.g., by way of technical assistance or other means of support.
- The Task Force recommends adding a focus on reducing economic disparity in pretrial incarceration, in addition to reducing racial and ethnic disparity.

Preliminary Criminal Fines and Fees Recommendations

- The Task Force recommends continuing its fines and fees work, including creating distinct channels of review, such as impacts to criminal defendants, their families, and communities; imposition and collection impacts on circuit, municipal, and justice courts; and impacts to those systems should the manner in which criminal fines and fees are imposed, collected, and distributed change.
- The Task Force recommends evaluating avenues for providing Oregon judges with additional discretion to consider an individual's ability to pay and waive financial obligations, where appropriate, and evaluating attendant impacts of expansion of those practices.
- The Task Force recommends evaluating the rates at which court-imposed financial obligations are commuted to community service (i.e., at least minimum wage to ensure programs help individuals pay down debts as much as working would).

Preliminary Justice Reinvestment Recommendations

- The Task Force recommends allowing three-percent funding for Justice Reinvestment studies to be used to evaluate local programs and treatment service providers to ensure that these services meet evidence-based practices, are effective in meeting the needs of their populations, and that the state's grant-funding investments are used responsibly.