

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR LINCOLN COUNTY

**In the Matter of Pre-Trial Release** )  
 ) No. 22-03  
 )  
 ) ORDER REGARDING PRE-TRIAL  
 ) RELEASE

**WHEREAS**, the 2021 Legislative Assembly enacted Oregon Laws 2021, Chapter 643, initially introduced as Senate Bill 48 (2021) by the Oregon Criminal Justice Commission, to reduce reliance on security release and provide statewide guidance for local pretrial release orders; and

**WHEREAS**, ORS 135.233 provides the presiding judge of a judicial district to 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 the offenses:

- 1) Subject to release on recognizance;
- 2) Subject to release with special conditions of release as specified in the order; and
- 3) Not eligible for release until arraignment.

**WHEREAS**, the Chief Justice issued guidelines for presiding judge pretrial orders. Additionally, the Chief Justice entered Chief Justice Order 22-010 that requires each presiding judge of circuit court to enter a standing pretrial release order as required under ORS 135.233(1) that complies with the guidelines established by Chief Justice Order 22-010 with an operative date of July 1, 2022. This Order accomplishes that mandate.

**THEREFORE, IT IS HEREBY ORDERED** the Lincoln County Sheriff shall comply with all provisions outlined in this pretrial release order as follows:

**SECTION 1: RELEASE DECISION PROCESS:**

To balance the rights of the defendant and presumption of pretrial release against community and victim safety and the risk of failure to appear, this order implements a two-step release process to be followed by the sheriff in making all release decisions:

- **Step 1:** Identify the charge and release category;
- **Step 2:** Determine if the defendant meets the criteria to consider overriding circumstances and what, if any, enhanced conditions of release should be ordered.

Step 1 is **Identifying the charge and release guideline category** each Oregon felony and misdemeanor falls into. The current Release Guidelines Categorization List is maintained by the State Court Administrator of the Oregon Judicial Department and may be found here: [List of Offenses by Guideline](#). The Release Guidelines Categorization List is intended as a tool to assist the sheriff, with the application of the release guidelines established in this order. The **Release Guidelines Categorization List** is hereby incorporated into this Order.

Attached to this Order is Exhibit A to be used in Step 2, which includes a chart of **overriding circumstances to be considered** and if a defendant meets the criteria of the overriding circumstance, the action that should be taken with regard to the release decision. Exhibit A is hereby incorporated into this Order.

Attached to this Order is Exhibit B, also to be used in Step 2, which includes **enhanced conditions of release**. These enhanced conditions of release shall be used if, after identifying the charge and release category, it is determined that there are overriding circumstances which require enhanced conditions of release. Exhibit B is hereby incorporated into this Order.

## **SECTION 2: AUTHORIZATION AND CRITERIA FOR PRE-TRIAL RELEASE**

### **GUIDELINE 1:**

1. The Sheriff shall release on recognizance with a release agreement with the general conditions in ORS 135.250, all persons charged with the following offenses:
  - A. Any non-person misdemeanor, except those offenses listed in section 2 or 3 below;
  - B. Any non-person Class C felony, except those offenses listed in section 2 or 3 below;
  - C. Any driving while suspended offense defined in ORS 811.182, except for aggravated driving while suspended as defined in ORS 163.196; and
  - D. Any other offense that is not included in sections 2 or 3 below.

### **GUIDELINE 2:**

2. The Sheriff shall release on court-imposed conditions, all persons charged with the following offenses:
  - A. Any non-domestic violence person misdemeanor, as defined in OAR 213-003-0001(15);
  - B. Any driving under the influence of intoxicants (DUII) offense, as defined in ORS 813.010 and ORS 813.011; and

- C. Any non-domestic violence Class B felony and any non-domestic violence person Class C felony as defined in OAR 213-003-0001(14), except for those offenses included in Guideline 3 below to be held for arraignment.

**GUIDELINE 3:**

- 3. The Sheriff shall hold for arraignment, first appearance, or a release decision under ORS 135.235(3)(b), all defendants charged with the following offenses:
  - Any violent felony, as defined in ORS 135.240, any offense in ORS 137.700;
  - Any Class A felony;
  - Any sex crime (whether designated or not), as defined in ORS 163A.005, including luring a minor, purchasing sex with a minor, and invasion of personal privacy in the first degree, or any attempt, solicitation or conspiracy to commit these crimes;
  - Any domestic violence felony or misdemeanor, as defined in ORS 135.230;
  - Any felony stalking as described in ORS 163.732, any violation of a stalking protective order as described in ORS 163.750, and felony strangulation as described in ORS 163.187.
  - Any of the following offenses:
    - a. Possession of a firearm or dangerous weapon in a public building or court facility, as defined in ORS 166.370; and unlawful possession of machine guns, certain short-barreled firearms, and firearm silencers, as defined in ORS 166.272;
    - b. Failure to appear in any degree, as defined in ORS 162.195 and ORS 162.205;
    - c. Felon in possession of a firearm, as defined in ORS 166.270;
    - d. Fleeing or Attempting to Elude, as defined in ORS 811.540;
    - e. Resisting arrest, as defined in ORS 162.315;
    - f. Giving false information to a peace officer, as defined in ORS 807.620 and ORS 162.165;
    - g. Escape in any degree, as defined in ORS 162.145, ORS 162.155 and ORS 162.165; and unauthorized departure, as defined in ORS 162.175;
    - h. Tampering with a witness, as defined in ORS 162.285;
    - i. Violation of restraining order (FAPA, EPPDAPA, SAPO);
    - j. Supervised probation or post-prison violations/detainers;
    - k. Fugitive from justice, as defined in ORS 133.747.

**SECTION 3: CRITERIA FOR CONDITIONAL RELEASES:**

In addition to the crimes listed in Guideline 2, the following circumstances would lead to Special Conditions of Release:

- Any Guideline 1 offense with a named victim or location;
- Any offense committed with a co-defendant;
- The person is impaired by any substance at the time of the interview or arrest.

- The person has a medical condition that requires immediate attention that cannot be treated or managed within the correctional facility.
- The person is unable to provide a phone number and/or address.

#### **SECTION 4: CRITERIA FOR OVERRIDING CIRCUMSTANCES:**

The following person-specific criteria require holding the individual for arraignment, regardless of crime category:

1. The person made a threat of violence to a victim, law enforcement officer, or anyone else connected with the case;
2. The person used or threatened the use of a dangerous weapon;
3. The person is unable to comprehend, or refuses to comply, with the release process, participate in the release assessment process, or sign a conditional release agreement;
4. The person has a prior arrest or conviction for same charged offense in the prior 30-days;
5. The person is on release in a pending case;
6. The person has outstanding warrants or holds in other jurisdictions;
7. The offense has a minor child as the alleged victim;
8. The person has three class A misdemeanor convictions for the same conduct in the previous five years;
9. The person has three failure to appear arrests within 5 years;
10. The person is charged with violating a court order (Contempt), except remedial contempt for non-payment of child support;
11. The current charge is harassment and the alleged victim is a family or household member.
12. The person requires further evaluation for specialized services (e.g. mental health, disability) and circumstances of the offense demonstrate individual poses a threat to individual safety or safety of the community. If services are available and individual willing to engage in services, move to Guideline 2.
13. Any DUII, if the person has been convicted of a prior felony DUII, has a pending DUII, or has, at least two times in the 10 years prior the date of the current DUII, been arrested for DUII.
14. A bench probation violation where the allegation is non-appearance to serve a jail term.
15. The person is currently on post-prison supervision.
16. The person is charged with a felony drug offense and has a prior arrest/conviction for a drug offense or is in possession of a substantial quantity of a controlled substance.

If a person is held for 48-hours on an overriding circumstance, the sheriff may request review for release by the on-call magistrate.

**SECTION 5: APPLICATION**

This General Order supersedes all previous orders related to the same subject, including all orders relating to security schedules (97-03, 08-06, 10-01), and shall remain in effect until further order of this Court.

The Sheriff is directed to release or hold for arraignment all persons arrested and booked into the Lincoln County Jail according to this order, including all persons arrested pursuant to an arrest warrant.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

6/29/2022 1:55:20 PM

\_\_\_\_\_  
Sheryl Bachart  
Presiding Judge      *Sheryl Bachart*  
Circuit Court Judge Sheryl Bachart

**EXHIBIT A: CRITERIA FOR OVERRIDING CIRCUMSTANCES**

<b>OVERRIDING CIRCUMSTANCES</b>	<b>GUIDELINE 1 CHARGE</b>	<b>GUIDELINE 2 CHARGE</b>	<b>GUIDELINE 3 CHARGE</b>
Person is unable to comprehend or refuses to engage or participate in the release assessment process or sign a release agreement	Move to Guideline 3		
Person has made a direct threat of violence to a victim, law enforcement officer, or anyone else connected to the case	Move to Guideline 3		
Prior failure to appear in the case in which the person was arrested	Move to Guideline 3		
Any outstanding warrants or holds	Move to Guideline 3		
Three FTA arrests within 5 years	Move to Guideline 3	Move to Guideline 3	
Three class A misdemeanor convictions for the same conduct in the last five years	Move to Guideline 3	Move to Guideline 3	
Prior arrest or conviction for same charged offense in the prior 30 days	Move to Guideline 3	Move to Guideline 3	
Person has a medical condition that cannot be treated or managed within the correctional facility	Move to Guideline 2		Move to Guideline 2
Any Category 1 offense with a named victim or location	Move to Guideline 2		
Current charge of harassment and the victim is a family or household member	Move to Guideline 3	Move to Guideline 3	
Any incident involving a Co-Defendant	Move to Guideline 2		
Person is subject to release in another pending case	Move to Guideline 3		
Person is unable to provide an address and/or phone number	Move to Guideline 2		
The offense has a minor child as the alleged victim	Move to Guideline 3		
Bench probation violation where allegation is non-appearance to serve a jail term	Move to Guideline 3		

Person is charged with violating a court order (Contempt), except remedial contempt for nonpayment of child support	Move to Guideline 3
Person is under the influence of intoxicants at time of arrest or interview	Move to Guideline 2
Person requires further evaluation for specialized services (mental health) and circumstances of offense demonstrate person poses a threat to individual safety or safety of the community.	Move to Guideline 3; if services available and person willing to engage in services, move to Guideline 2
Person is charged with DUII and person has prior conviction for felony DUII, has a pending DUII, or has, at least two times in the ten years prior to the date of current DUII, been arrested for DUII	Move to Guideline 3
Person is charged with a felony drug offense and has a prior arrest/conviction for a drug offense or is in possession of a substantial quantity of a controlled substance	Move to Guideline 3

**EXHIBIT B: CRITERIA FOR CONDITIONAL RELEASES**

The following offense-specific criteria lead to the following conditions:

<b>CHARGE</b>	<b>SPECIAL CONDITION OF RELEASE</b>
DUII	<ul style="list-style-type: none"> <li>Do not use or possess any intoxicants (alcohol, marijuana, cannabis products, inhalants, controlled substances and/or psilocybin);</li> <li>Do not drive a motor vehicle unless properly licensed and insured;</li> <li>No entry into liquor stores, taverns, bars, or dispensaries.</li> </ul>
Non-DV person crimes eligible for release with special conditions	<ul style="list-style-type: none"> <li>Absolutely no contact with the victim;</li> <li>No entry onto premises, business or other location occupied by the victim;</li> <li>No possession or access to firearms or other deadly weapons;</li> <li>If intoxicants are implicated in the crime, no consumption or possession of intoxicants (alcohol, marijuana, cannabis products, inhalants, controlled substances and/or psilocybin);</li> </ul>
Any Guideline 1 offense with a named victim or location	<ul style="list-style-type: none"> <li>No contact with alleged victim or location</li> </ul>
Any possession, delivery, or manufacture of a controlled substance	<ul style="list-style-type: none"> <li>No consumption or possession of intoxicants (alcohol, marijuana, cannabis products, inhalants, controlled substances and/or psilocybin);</li> <li>No contact with persons known to be using or possessing controlled substances</li> <li>No entry into liquor stores, taverns, bars, or dispensaries.</li> </ul>
Co-Defendant	<ul style="list-style-type: none"> <li>No contact with Co-Defendant</li> </ul>
Aggravated DWS	<ul style="list-style-type: none"> <li>No driving without a valid license or insurance</li> </ul>
Animal Abuse (any degree)	<ul style="list-style-type: none"> <li>Do not possess any domestic animal</li> </ul>

The following person-specific criteria lead to the following conditions:

<b>CRITERIA</b>	<b>CONDITION OF RELEASE</b>
Person is visibly intoxicated	<ul style="list-style-type: none"> <li>No possession or consumption of intoxicants (alcohol, marijuana, cannabis products, inhalants, controlled substances and/or psilocybin);</li> <li>No entry into liquor stores, taverns, bars, or dispensaries.</li> </ul>



Substance misuse is indicated in PC Affidavit	<ul style="list-style-type: none"> <li>• No consumption or possession of intoxicants (alcohol, marijuana, cannabis products, inhalants, controlled substances and/or psilocybin);</li> <li>• No entry into liquor stores, taverns, bars, or dispensaries.</li> </ul>
Person released to treatment facility, adult foster care, clean and sober living home, or other community housing program	<ul style="list-style-type: none"> <li>• Abide by all rules of the residential facility</li> <li>• Comply with all aspects of treatment plan</li> <li>• Follow all directives of the behavioral health program</li> </ul>
Person is on supervised probation	<ul style="list-style-type: none"> <li>• Contact probation officer by next business day</li> </ul>
Person not able to provide an address	<ul style="list-style-type: none"> <li>• Weekly phone check-ins with Pre-trial services. Every Tuesday or Thursday at 3:00 p.m.</li> </ul>
Person not able to provide a phone number	<ul style="list-style-type: none"> <li>• Weekly in-person check-ins with Pre-trial services. Every Tuesday or Thursday at 3:00 p.m.</li> </ul>