



NATIONAL CONFERENCE
of STATE LEGISLATURES



PRETRIAL RELEASE LAWS: RECENT STATE ENACTMENTS

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Criminal Justice Program

The majority of criminal defendants are eligible for pretrial release, with very few exceptions for the most serious charges. State law provides a framework for judges and other local officials to determine who is eligible for release and under what conditions. Actions of state legislatures in recent years contribute to efforts underway nationally to improve pretrial justice.

Highlights of recent legislation have included requiring the use of pretrial risk assessments, establishing statewide standards for pretrial services programs and ensuring victim safety.

Risk Assessments

An important trend in pretrial policy has been risk-based assessments that shift focus to the individual defendant instead of determining release suitability and conditions based primarily on the alleged charges. Recent research of the Laura and John Arnold Foundation has shown that such assessment can reduce the number of low-risk people in county jails and help courts distinguish those who pose the greatest risk. Assessment also reveals information that can make supervision more individualized, safe and effective. Since 2012, there have been 18 laws that create or regulate the use of risk assessments during the pretrial process.

So far in 2014, eight laws have been passed that regulate how risk assessment tools are used to assess whether, and under what conditions, a defendant should be released. Vermont adopted a law that requires the court to conduct risk assessments on most defendants, including defendants charged with drug offenses and those unable to post bond after 24 hours. The court must then consider the results when determining conditions of release. The new law also added the option for the court to order a substance abuse assessment and treatment as part of release conditions. In recent years, statewide risk assessments like under Vermont's new law have been enacted in four other states—Colorado, Delaware, Kentucky and West Virginia.

Pretrial Services

In nearly every state, local jurisdictions operate pretrial services for the courts. This includes conducting assessments to assist the court in making pretrial release decisions and supervising defendants released

pending trial. There have been 23 laws enacted over the last three years governing the use of pretrial services, 10 so far in 2014.

Since 2012, five states—Colorado, Hawaii, Nevada, Vermont and West Virginia—have authorized or created guidelines for the administration of pretrial services throughout the state. West Virginia’s 2014 law creates local pretrial services programs for defendants who are identified by pretrial risk assessments as appropriate candidates for release. The local pretrial programs are responsible for administering the risk assessments and presenting the assessment results and recommendations. The programs also monitor defendants’ compliance with release conditions, coordinate with agencies and organizations to provide pretrial services, and report to the court on the defendant’s compliance with conditions.

Victim Protection

Domestic violence, stalking, violation of protection orders, crimes against children and sex offenses are common offenses for which an accused defendant can be denied release. Short of denying release, some states have placed heightened requirements on defendants who are accused of crimes against victims and granted release. At least 25 new laws in the last three years deal specifically with victims of crime and their role in the release process.

Connecticut, Illinois and Oklahoma have enacted laws that require the court to consider victim safety when determining if a defendant should be released and under what conditions. Illinois’ measure, passed in 2014, proposes changes to the state’s Constitution and has been referred to voters for the November election. Changes in Connecticut and Oklahoma were statutory.

Laws in other states have required electronic monitoring of defendants or protection orders for victims of domestic violence as a condition of release.

NCSL Resources

Regulation of the bail bond industry, eligibility for and conditions of release, and pretrial diversion are perennial interests of state legislatures. For example, over the past three years, at least 27 laws have regulated bail and recovery agent licensing. Measures have included changing age, education and training requirements and requiring pre-license examinations.

State laws and recent enactments for these and other pretrial release policies can be found on NCSL’s Pretrial Policy Laws Database at www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy.

Citations

Colo. HB 1236 (2013), Conn. SB 262 (2014), Del. SB 226 (2013), Hawaii HB 2599 (2013), Hawaii SB 2776 (2013), Ill. HCA 1 (2014), Ky. HB 463 (2011), Nev. SB 101 (2013), Okla. HB 1912 (2013), Vt. SB 295 (2014), W.V. SB 307 (2014), W.V. SB 371 (2013).