



A BRIEF OVERVIEW OF PRETRIAL RELEASE LAWS

State legislatures consider and enact laws that address all aspects of pretrial policy, including release eligibility, conditions of release, bail, commercial bail bonding and pretrial diversion. These legislative policies have an important role in providing fair, efficient and safe pretrial practices carried out by law enforcement and the courts. Below you will find a brief description of the areas of pretrial law that NCSL tracks. The constitutional and statutory provisions outlined below provide a framework for pretrial release decision-making, but court rule and case law provide further guidance. NCSL does not track case law, and only tracks court rules when a statute authorizes them or is superseded by the rules.

Citation in Lieu of Arrest

A citation is a written order, in lieu of a warrantless arrest, that is issued by a law enforcement officer or other authorized official, requiring a person to appear in a designated court or governmental office at a specified time and date. State laws specify when the use of a citation is appropriate.

Pretrial Release Eligibility

Most commonly, there is a broad presumption of eligibility for release while awaiting trial. State constitutions and laws determine which pretrial defendants are eligible for release and under what conditions. Most commonly, defendants charged with capital offenses are barred from pretrial release. Other circumstances in which release can be denied include violent and sex crimes, when the victim is a child or family member, or if the defendant has previous convictions for certain serious offenses.

Guidance for Setting Release Conditions

Many defendants charged with crimes may be released prior to trial, and courts decide whether or not to impose conditions on the release. States often provide specific guidance to courts when setting conditions of pretrial release. Guidance could include instructions to consider victim safety or a list of specific factors to consider that have been developed by the legislature.

Pretrial Release Conditions

In general, conditions imposed on a defendant released prior to trial must be related to assuring the appearance of the accused and ensuring safety of victims, witnesses and the public. State law provides a framework for judges when setting conditions of pretrial release.

Pretrial Detention

Pretrial detention is allowed when the broad presumption of release is overcome. States often limit

pretrial detention to those charged with the most serious crimes and other specified circumstances such as violating conditions of, or committing a new crime while on pretrial release.

Bail Bond Agent Licensure

A professional bail agent is a surety who guarantees a defendant's appearance in court for financial gain. To participate as a bail agent in the commercial bail industry, state law often provides licensure requirements. Thirty-seven states have licensing requirements for bail agents and four prohibit commercial bond all together.

Bail Bond Agent Business Practices

To conduct business, bail agents advertise their services, meet with their clients and interact with public officials. For each of these activities, state law provides guidelines that bail agents must comply with in their operation.

Bail Forfeiture Procedures

Bail forfeiture is the procedure where, as the result of a breach of a condition of bail, the defendant's bond is forfeited to the court. State laws provide many guidelines for the procedure.

Recovery Agents

A recovery agent or "bounty hunter" is a person who is lawfully authorized to apprehend bail fugitives and surrender them to the court. Many states provide licensure requirements and other guidelines for bail recovery agents. Licensure and training requirements vary by state from very little regulation to robust licensure and training requirements. Areas of regulation often include what attire is permitted, association with bail agents, and whether a recovery agent may enter private property.

Victims' Rights and Protections

Victims' rights and protections include the right to notice of a release hearing, notice of pretrial release, and the right to participate in pretrial proceedings. Laws in each state determine which rights and protections are offered to victims, and most states have laws that specifically address victim interests related to pretrial release.

Pretrial Diversion

Diversion programs address factors that contribute to criminal behavior of the accused, called criminogenic needs. Individuals are diverted prior to conviction and a guilty plea may or may not be required. Successful completion of the program results in a dismissal of charges. State laws require that participation in diversion programs is voluntary and that the accused has access to counsel prior to making the decision to participate. State diversion programs are often built around a particular class of criminogenic needs. For example, many states have substance abuse, mental health, or veterans diversion programs.

***State specific information can be found on separate handouts for those states in attendance at this meeting. For additional state specific or policy information please visit our website at:
<http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-policy.aspx>***

