



Trends in Pretrial Release: State Legislation Update

Civil and Criminal Justice

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In the last six years every state legislature has addressed pretrial policy, resulting in close to 700 new enactments. NCSL's Trends in Pretrial Release: State Legislation report summarizes trends in pretrial legislative action between 2012 and 2014. Trends from the 2015, 2016 and 2017 state legislative sessions are highlighted below.

2017 Summary of Enactments

In 2017, state lawmakers in 46 states and the District of Columbia enacted 182 new pretrial laws—almost a 50 percent increase compared to 2015 and 2016. This upsurge shows how states have become increasingly focused on making changes to the front end of the criminal justice system.

States remain highly interested in diversion programs and treatment courts—with over two-thirds of states enacting related legislation. Pretrial diversion routes defendants away from jail and traditional criminal justice processing and addresses specific underlying factors that contribute to criminal behavior. While the primary focus of diversion continues to be on defendants who are veterans or have needs related to substance abuse and mental health disorders, a handful of states enacted policies addressing diversion for prostitution or nonviolent offenses.

Eight states enacted 13 laws to support veteran treatment courts. Almost all aimed to reduce barriers to participation and expand eligibility. Legislation on drug courts followed a similar trend with 16 states appropriating funds, expanding eligibility, or supplementing available programming. Three states—Indiana, Missouri, and Ohio—authorized the use of evidence-based addiction treatment and medication-assisted treatment for participants. Seven states created or modified provisions for mental health courts.

States also enacted diversion reforms that went beyond treatment courts. Eighteen states enacted laws aimed at diverting, intervening, and supporting individuals with mental health disorders. Examples of these policies include establishing crisis intervention protocols, requiring training for responders, and providing additional funding or treatment beds. Several states adopted deflection policies directing law enforcement to place a person in a treatment facility, rather than jail, if a mental health emergency was suspected. Additional deflection policies—meaning diversion prior to arrest—were enacted in Kentucky, Massachusetts, and New Mexico.



Another continuing pretrial trend relates to the use of risk assessments. Nine states enacted laws allowing or requiring courts to use risk assessments to assist in establishing bail and release conditions. Another five passed bills directing studies or development of risk assessment tools. The Rhode Island General Assembly authorized its pretrial services unit to issue a pre-arraignment report that includes the results of a risk screen, which can trigger additional screens for mental health or substance abuse needs, and in domestic violence cases, a lethality or dangerousness assessment.

States also modified who is eligible for release after arrest. Ten states enacted laws restricting eligibility for pretrial release. These restrictions applied primarily to defendants accused of violent person crimes, and generally required temporary holds or hearings before release, or prohibited release on personal recognizance. Relatedly, 11 laws were enacted that required or authorized issuance of a protection order as a condition of release.

Finally, legislatures amended pretrial release provisions by limiting the use of financial conditions in release decisions. Connecticut barred cash-only bail for certain crimes, and restricted the use of financial considerations for release in misdemeanor cases. Under its Bail Reform Act, Illinois created a presumption of non-monetary conditions of release. "Second-look" provisions were enacted

or revised in four states—Connecticut, Illinois, Maryland, and Texas. This policy requires a prompt bail review hearing if a defendant remains in detention due to inability to post bail.

2016 Summary of Enactments

In 2016, state lawmakers in 44 states and the District of Columbia enacted 118 new pretrial laws. These numbers demonstrate states' continued interest in making changes to the front end of the criminal justice system.

During 2016, states continued their focus on diversion programs and treatment courts for defendants who are veterans, have needs related to substance use, or have been identified as having mental health conditions. About two thirds of the states enacted a law related to diversion policies. Of those, 22 states appropriated money or authorized new funding sources to help expand and create diversion alternatives. An additional five states—Connecticut, Delaware, Illinois, Oklahoma, and West Virginia—also expanded access to diversion by authorizing new programs or expanding eligibility.

States have been particularly active when it comes to expanding diversion for defendants with needs related to substance use. Half of the states enacted a law expanding or modifying drug diversion policies. Relatedly, an additional 12 states enacted laws related to diversion of defendants with mental health needs and eight states enacted laws regarding diversion for veterans.

States have also modified who is eligible for release after arrest. In November 2016, New Mexico voters approved a constitutional amendment referred to them by the Legislature authorizing courts to deny release for the state's most dangerous offenders. The measure also added constitutional language to ensure that low-risk defendants are not detained solely because of an inability to post a financial or property bond.

Thirteen other states enacted laws restricting or expanding defendant eligibility for pretrial release. Enactments restricting eligibility for release generally authorized temporary holds, required hearings before release or authorized denial of release for certain defendants such as those accused of violent crimes or violation of a protection order.

Other eligibility provisions addressed review and revision of pretrial conditions, often monetary, that prevent a defendant from being released, authorization for release on recognizance for defendants accused of petty and misdemeanor offenses to prevent overcrowding, and the expansion of pretrial release options generally.

2015 Summary of Enactments

In 2015, state lawmakers in 42 states enacted 122 new laws dealing with pretrial issues, which was more than in any of the previous three years. Between 2012 and 2014 legislatures enacted a total of 250 laws.

During 2015, states continued to focus their attention on diversion programs and treatment courts for defendants who are veterans, have substance use disorders, or have been identified as having mental health conditions.

Nearly half of all states enacted a law related to diversion and seven states—Arizona, Georgia, Indiana, South Carolina, Texas, Utah and Washington—created or authorized new treatment alternatives.

Another nine states supported diversion options by expanding defendant eligibility, providing funding to encourage development of new programs, expanding program authorization, and streamlining procedures. Of states that addressed diversion in 2015, 17 of them focused on diverting a specific population of defendants away from the criminal justice system. This primarily included defendants identified as having mental health or substance use issues, and veterans.

More than half of all states enacted pretrial policies directed at individualizing the pretrial process. In 13 states, enactments specifically address the pretrial process when domestic violence or stalking is the alleged offense. Most often these measures focused on victim safety. Actions included delaying the release of the defendant and requiring a hearing prior to release, providing courts with legislative guidance such as requiring consideration of victim safety during the release hearing, or requiring specific conditions be implemented such as protection orders or GPS tracking.

In 2015, laws in 11 states focused specifically on defendants who were charged with drug offenses or were identified as having substance use disorders. These laws created or expanded diversion and treatment options for defendants at the pretrial stage of the criminal justice process.

States also enacted legislation to individualize the pretrial process for defendants identified as having mental health or substance use issues and defendants accused of domestic violence or sex offenses. These laws implemented specific release procedures and required or authorized conditions specific to the defendants' needs or the alleged offense.

More information about these and other pretrial policy enactments can be found in the NCSL Pretrial Release Legislation Database.

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