

# Trends in Pretrial Release: State Legislation

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BY AMBER WIDGERY

**S**ix of every 10 people in local jails have not been convicted of a crime, but instead are held awaiting trial. About three-fourths of pretrial detainees are accused of property, drug or other nonviolent crimes, and many are not considered to be a flight risk or a danger to the public. However, many pretrial defendants remain in jail because they are unable to meet monetary or other conditions of release. At the same time, many higher-risk defendants often are quickly released.

State laws provide a framework for judges and other local officials to determine who is eligible for release and under what conditions. In recent years, state legislation has concentrated largely on individualizing the pretrial process by focusing on specific defendants or offense categories. From 2012 to 2014, 261 new laws in 47 states addressed pretrial policy. Notable enactments have covered risk assessments, victim-specific pretrial procedures, victim-specific conditions, pretrial services and diversion programs. These actions of state legislatures contribute to efforts underway nationally to improve pretrial justice.

## RISK ASSESSMENTS

An important trend in pretrial policy during the past three years 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 from the [Laura and John Arnold Foundation](#) shows that using such assessments can reduce the number of people awaiting trial in county jails and, at the



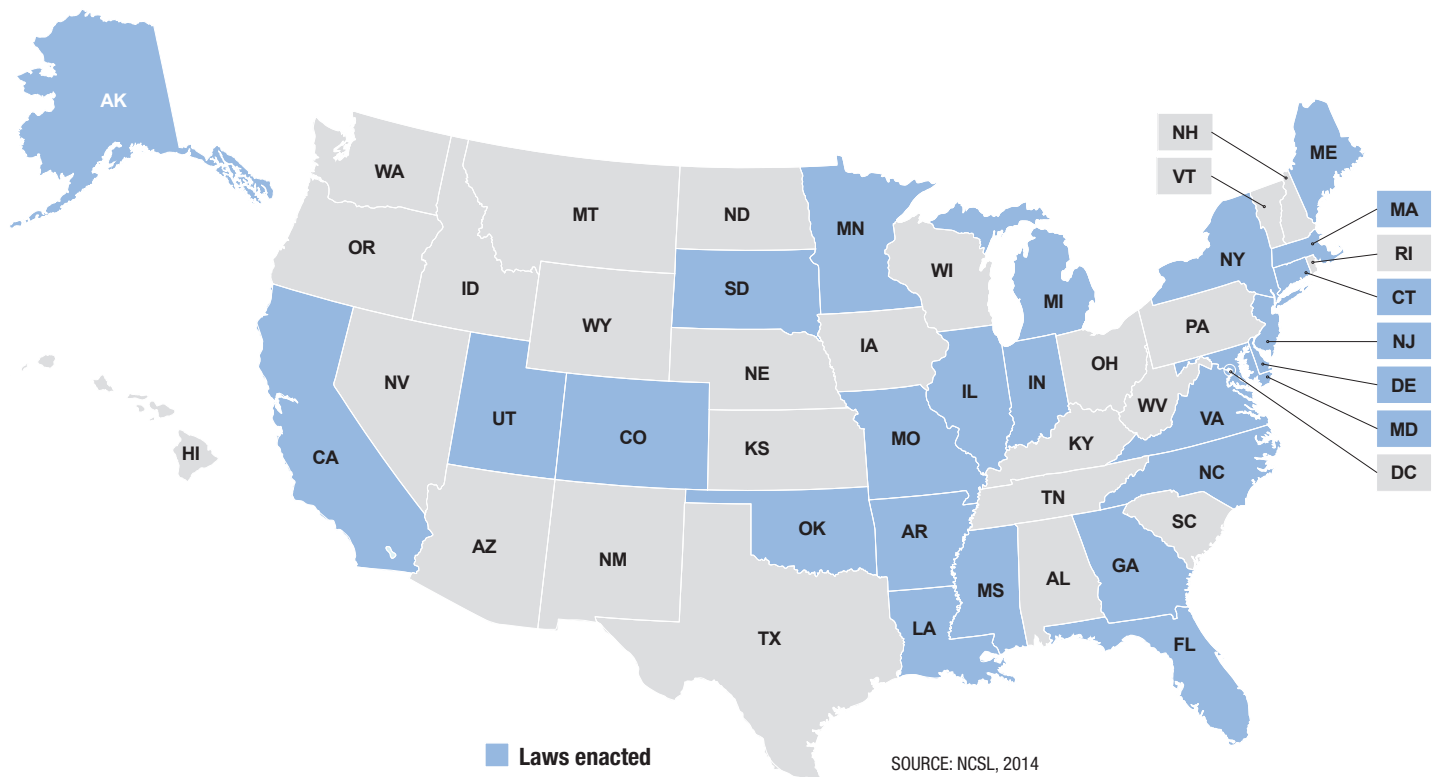
same time, enhance community safety.

An assessment provides information that can help make decisions about release/detention and supervision more individualized and effective. Since 2012, 20 laws in 14 states created or regulated the use of risk assessments during the pretrial process. In 2014 alone, 11 laws were passed to regulate how risk assessment tools are used to help determine 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 those 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 law also added the option for the court to order sub-

stance abuse assessment and treatment as part of release conditions.

In recent years, statewide risk assessments similar to Vermont's have been enacted in five other states—Colorado, Delaware, Hawaii, New Jersey and West Virginia. Other states have adopted risk assessments for specific populations of defendants. In 2012, Maine required that the results of validated, evidence-based domestic violence risk assessments be transmitted to the bail commissioner and the district attorney for consideration when determining pretrial release. In total, 10 laws required some kind of pretrial risk assessment, four laws required a risk assessment prior to participation in a diversion program and three laws clarified prior risk assessment laws.

**Figure 1. States That Enacted Victim-Specific Pretrial Release Laws, 2012-2014**



## VICTIM-SPECIFIC PROCEDURES

State legislatures are addressing the process for releasing defendants accused of victim-specific crimes. Domestic violence, stalking, violation of protection orders, crimes against children and sex offenses are common charges for which an accused defendant can be denied release. Short of denying release, states have put in place additional procedures prior to release for defendants who face such charges.

At least 21 laws in 15 states enacted during the last three years deal specifically with victims of crime and their role in the release process. Delaware, Illinois, Louisiana and Oklahoma enacted laws that require the court to consider victim safety when determining if a defendant should be released and, if so, under what conditions. Illinois' measure, passed in 2014, proposed changes to the state's constitution and was approved by voters in the November election. Changes in Delaware, Louisiana and Oklahoma were statutory.

Laws in other states require a delay, or "cooling off period," prior to releasing a defendant accused of a domestic violence offense. Alaska, Maine, Massachusetts and Mississippi passed laws to delay release, either by specifying a period of time during which a defendant may be held, or requiring that the defendant appear in court before release. Twenty-nine states and the District of Columbia now require a court hearing for one or more victim-related offenses. Seven states allow for a period of delay prior to pretrial release.

Figure 1 shows states that enacted victim-specific procedures or victim-specific conditions laws.

## VICTIM-SPECIFIC CONDITIONS

Legislatures have authorized courts to order additional conditions of release in victim-specific cases to ensure victim and community safety. Electronic monitoring of pretrial defendants is one of the most common release conditions addressed legislatively since 2012. Seven states—Alaska,

Illinois, Indiana, Louisiana, Maine, Michigan and Minnesota—allowed or modified the use of electronic monitoring for defendants accused of victim-specific crimes. Presently, 13 states statutorily permit electronic monitoring in victim-specific cases.

Four states made financial bond a mandatory release condition, required courts to consider ordering it for victim-specific offenses, or increased the required amount. For example, a 2014 Washington law prohibits pretrial release for defendants accused of certain sexual or violent offenses unless release is secured by payment of a financial bond. Kansas, South Dakota and Tennessee passed related financial conditions laws for racketeering offenses, domestic abuse and traffic offenses resulting in death or serious injury.

Eight states have authorized courts to order a defendant to abstain from consuming alcohol or other substances and have allowed testing to ensure compliance. North Carolina passed a law in 2012 authorizing courts to order electronic monitoring to ensure continuous sobriety of the defendant

**Figure 2. Types of Release Conditions States Enacted, 2012-2014**

				Delaware
			Arkansas	Georgia
			Colorado	Illinois
	Alaska	Alaska	Indiana	Kansas
Colorado	Idaho	Illinois	Louisiana	Kentucky
Kansas	Kentucky	Indiana	Maine	Louisiana
Louisiana	Montana	Louisiana	Mississippi	Maryland
Maryland	North Carolina	Maine	Missouri	Nevada
North Carolina	Oklahoma	Michigan	New Jersey	Rhode Island
South Dakota	South Dakota	Minnesota	New York	South Carolina
Tennessee	Vermont	Missouri	Utah	Vermont
Washington	Washington	Vermont	Virginia	Virginia
<b>Financial</b>	<b>Substance Related</b>	<b>Electronic Monitoring</b>	<b>Victim Protection</b>	<b>Other Conditions</b>

SOURCE: NCSL, 2014

in domestic violence cases. Kentucky's 2014 law provided for similar monitoring of moderate- or high-risk defendants and defendants who have a history of substance abuse. Figure 2 provides information about states that addressed victim protection and other types of conditions.

## 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. Twenty laws in 14 states

were enacted governing pretrial services from 2012 to 2014.

Almost half of the states that passed legislation on pretrial services—Colorado, Hawaii, Nevada, New Jersey, Vermont and West Virginia—authorized or created statewide pretrial services programs. In those six states, most defendants are eligible for pretrial services with only a few specifically excluded by law.

Colorado's 2013 law allows a judge to have any bail-eligible defendant evaluated by a pretrial services program so that recommendations on appropriate release

conditions can be made. It also requires that the chief judge in every judicial district consult annually with counties to develop pretrial services programs. All programs must meet statewide standards set by the new law, and annual reports must be submitted to the judicial department.

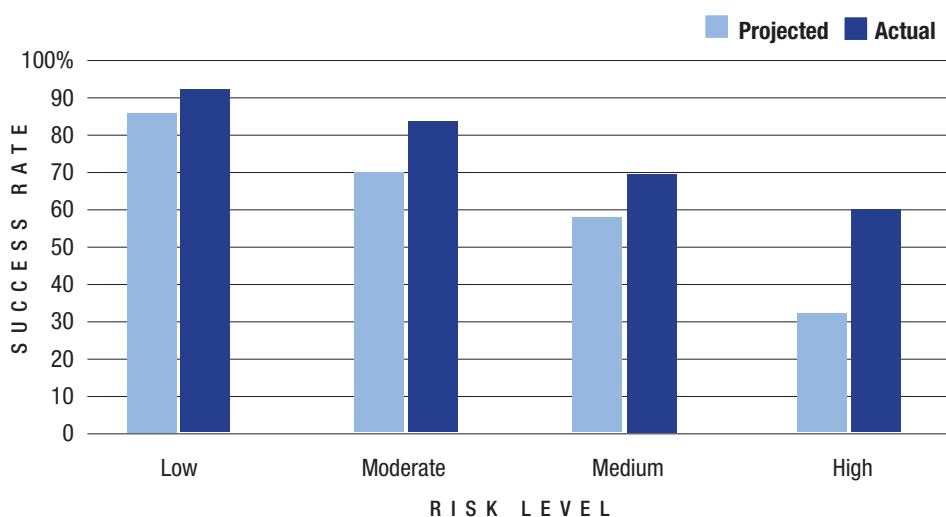
One year after implementation, preliminary data in Denver, Colo., show defendants at all risk levels were succeeding at rates higher than initially projected. The county's evaluation is based on compliance with court appearances and the number of new arrests. This data demonstrates that the objectives of pretrial compliance and safety are being met (see Figure 3).

Other states adopted pretrial programs for more specific populations of defendants. For example, Alaska and Idaho created pretrial programs in 2014 that specifically cater to supervision needs of defendants who face charges involving the use of alcohol or controlled substances.

## DIVERSION

Nearly two-thirds of states addressed pretrial diversion during the past three years. These actions contribute to the trend of more individualized pretrial release and supervision. Diversion programs are often created to filter defendants from the traditional criminal justice process and address specific underlying factors that contribute to

**Figure 3. Success Rates of Denver Defendants Under Pretrial Supervision**



SOURCE: DENVER PRETRIAL SERVICES, 2014

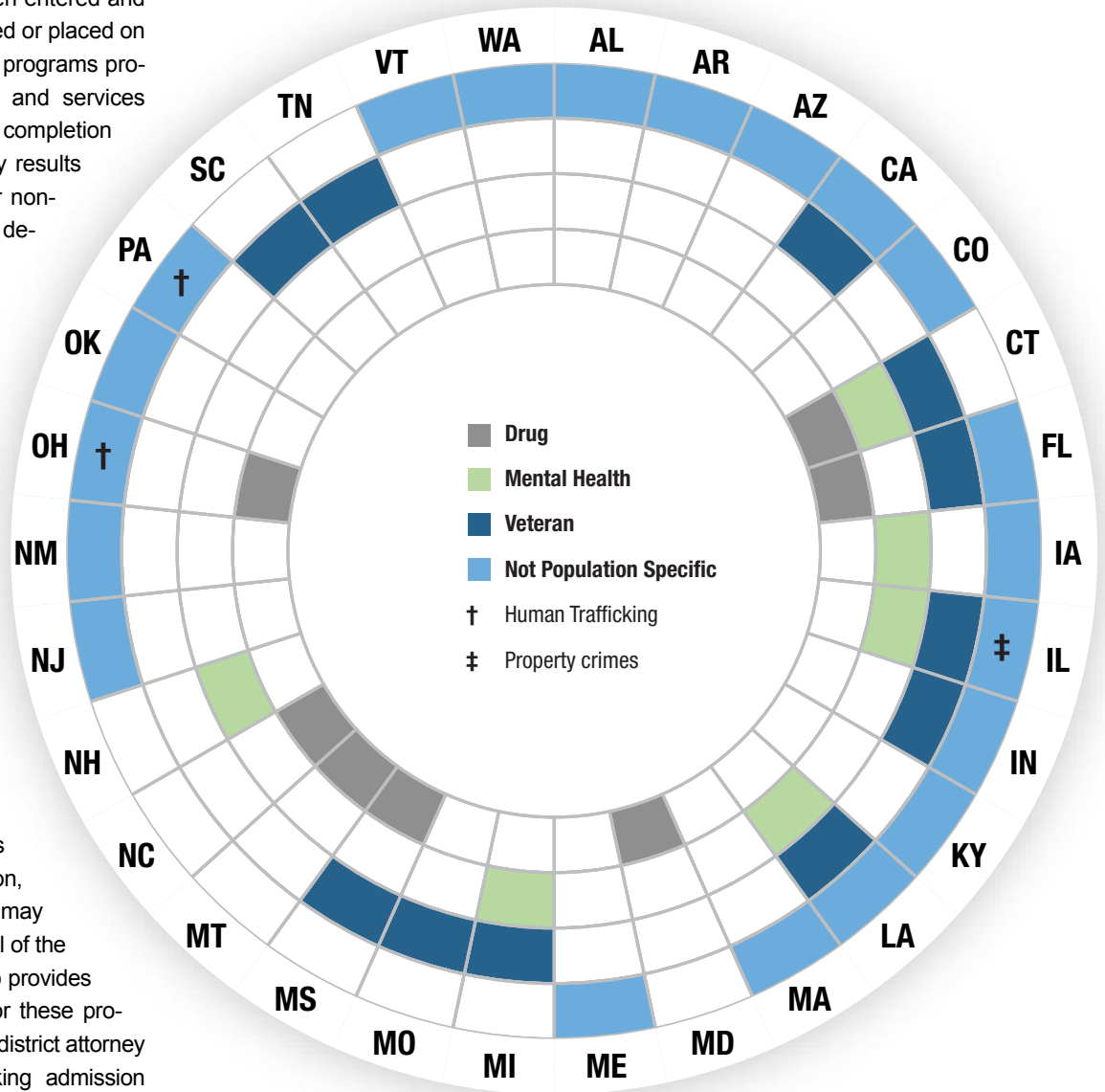
criminal behavior. Placement in a diversion program can occur prior to entry of a plea or after a guilty plea has been entered and the case has been suspended or placed on a specialized docket. These programs provide supervision, treatment and services for defendants. Successful completion of all requirements generally results in a dismissal of charges or non-entry of a conviction on the defendant's criminal record.

Thirteen states authorized new pretrial diversion programs. Six—Alabama, Arkansas, California, Colorado, Illinois and New Jersey—developed statewide standards and authorized local jurisdictions to operate the programs. A 2013 Alabama law allowed any district attorney or municipality in the state to establish a pretrial diversion program. The law stipulates that those accused of 13 specified crimes are ineligible for participation, while all other defendants may be admitted with the approval of the district attorney. The law also provides basic operating standards for these programs and outlines criteria a district attorney should consider when making admission decisions.

Eight states—Florida, Illinois, Louisiana, Michigan, Mississippi, Missouri, New Hampshire and South Carolina—authorized new treatment courts, a kind of diversion. These courts differ from a more traditional adversarial court model by coordinating the efforts of judicial officers, treatment and supervision personnel, prosecutors and defense counsel. These courts generally are developed and administered by local judicial districts.

Most recent diversion laws concentrate on defendant populations such as veterans and active-duty service members, those with substance abuse and addiction disorders, and defendants identified as hav-

**Figure 4. Types of Diversion Programs Addressed by States, 2012-2014**



SOURCE: NCSL, 2014

ing mental health conditions (see Figure 4). Fourteen laws in 11 states during the past three years have created or regulated diversion programs for veterans or service members. These programs provide mental health and substance abuse treatment, often in partnership with veterans' agencies.

Nine laws in seven states authorized diversion programs for people with substance abuse disorders, while laws in six states addressed mental health needs of defendants. In 2014, laws in Ohio and Pennsylvania allowed for diversion of defendants who are arrested for prostitution-related

crimes but have been identified as victims of human trafficking.

## LOOKING FORWARD

Louisiana, Minnesota, South Carolina and Utah passed legislation in 2014 requiring studies and recommendations related to pretrial policy. It is expected that these studies will prompt and inform legislative proposals in 2015 and beyond as state legislatures continue to work toward making pretrial release and supervision safer and more effective. For more information about state pretrial policies, see NCSL's [Pretrial Enactment Database](#).

## APPENDIX

Alaska SB 22 (2013) and SB 64 (2014); Ala. HB 494 (2013); Ark. HB 1470 (2013); Calif. SB 1227 (2014); Colo. HB 1156 (2013) and HB 1236 (2013); Del. SB 226 (2012) and HB 39 (2013); Fla. SB 922 (2012); Hawaii HB 2599 (2012) and SB 2776 (2012); Idaho HB 461 (2014); Ill. HB 4926 (2012), SB 26 (2012), HB 3744 (2014), HCA 1 (2014) and SB 3349 (2014); Kan. SB 16 (2013); Ky. HB 359 (2014); La. HB 441 (2012), SB 71 (2013), HB 1142 (2014) and SR 150 (2014); Me. HB 1263 (2012), HB 1381 (2012) and

HB 593 (2013); Mass. SB 2334 (2014); Mich. HB 5162 (2012) and HB 4127 (2013); Minn. HF 3172 (2014) and SF 2736 (2014); Miss. HB 780 (2012) and HB 585 (2014); Mo. HB 374 (2013) and SB 118 (2013); Nev. SB 101 (2013); N.H. HB 1442 (2014); N.J. AB 3598 (2013) and SB 946 (2014); N.C. HB 494 (2012); Ohio HB 130 (2014); Okla. HB 1912 (2013); Pa. SB 75 (2014); S.C. HB 3014 (2014) and SB 19 (2014); S.D. SB 149 (2012); Tenn. SB 2604 (2012); Utah SJR 20 (2014); Vt. SB 295 (2014); Wash. HB 1171 (2014); W. Va. SB 371 (2013) and SB 307 (2014).

## RESOURCES

1. [NCSL Pretrial Database: Enactments](#)
2. [NCSL Pretrial Database: States](#)
3. [NCSL Pretrial Database: Policies](#)
4. NCSL's Criminal Justice Program is in Denver, Colo., 303-364-7700 or email [cj-info@ncsl.org](mailto:cj-info@ncsl.org)
5. [Laura and John Arnold Foundation](#)

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**William T. Pound, Executive Director**

7700 East First Place, Denver, Colorado 80230, 303-364-7700 | 444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001, 202-624-5400

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