



Trends in Pretrial Release: State Legislation Update

Law and Criminal Justice

NATIONAL CONFERENCE of STATE LEGISLATURES

JAN 2017

In the last five years every state legislature has addressed pretrial policy, resulting in more than **500 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 and 2016 state legislative sessions are highlighted below.

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 the past year, 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. Pretrial diversion routes defendants away from jail and traditional criminal justice processing and addresses specific underlying factors that contribute to criminal behavior.

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. Last year 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 8 states enacted laws regarding diversion for veterans.

States have also modified who is eligible for release after arrest. Last November, 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 re-



stricting 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 this year, 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](http://www.ncsl.org) at www.ncsl.org.

ACKNOWLEDGEMENTS

This report was supported by a partnership project of the National Conference of State Legislatures' Criminal Justice Program in Denver, Colo., and the Laura and John Arnold Foundation, New York, N.Y. NCSL gratefully acknowledges the Arnold Foundation's support of and assistance to NCSL and state legislatures. For information about the project, see NCSL's Criminal Justice Program Partner's Page.



NATIONAL CONFERENCE of STATE LEGISLATURES

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

www.ncsl.org

© 2017 by the National Conference of State Legislatures. All rights reserved.