Every state legislature has acted to change pretrial policy in some way since 2012.

More than 800 bills have been enacted in that same timeframe.

Legislative efforts to change pretrial policy have largely been bipartisan.
What areas of pretrial policy has legislation addressed?
2012-2018: 29 states enacted 58 laws
Statewide Risk Assessments

2012-2018: 13 states authorize statewide risk assessment
### Risk Assessments: Recent Enactments

**Recent Statewide Expansions**
- CA SB 10 (2018)
- IL SB 2034 (2017)
- IN HB 1137 (2017)
- MT SB 59 (2017)
- RI HB 5064/SB 10 (2017)

**Other Risk Assessment Enactments 2017 & 2018**
- HI HB 1135 (2017)
- MA HB 3800 (2017)
- MI HB 4323 (2017)
- ND SB 2015 (2017)
- NY SB 5492 (2017)
- OR HB 2238 (2017)
- TX SB 1326 (MH) (2017)
- VT SB 134 (2017)
- WA HB 1163 (DV) (2017)
- AK HB 312 (2018)
- DE HB 204 (2018)
- IA HB 2492 (2018)*
- MD HB 447 (2018)
- MA SB 2371 (2018)
- MI SB 848 (2018)
- PA SB 449 (2018)
- WV HB 4228 (2018)
Presumption of Release on Recognizance or Non-Financial Conditions

23 states have a presumption of release on non-financial conditions and California prohibits use of financial conditions.
Least Restrictive Conditions of Pretrial Release

18 states & D.C. require the use of least restrictive conditions

4 states structure how conditions are imposed

Updated through 2018
Court Guidance on Release Conditions

- Significant Legislation from 2017 & 2018:
  - Expanded the number of states with a presumption of the least restrictive conditions.
  - Limited courts’ ability to impose financial conditions and California prohibited financial conditions altogether.
  - Required courts to consider a defendant’s ability to pay financial conditions or pretrial supervision fees.
  - Sped up review of conditions of release for those who aren’t able to meet initial conditions.
## Court Guidance: Release & Ability to Pay

<table>
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<td>□ Limits a court’s ability to impose financial conditions.</td>
<td>□ Presumption of non-financial/least restrictive conditions.</td>
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<td>□ Shortens the period until bail review hearing and authorizes courts to remove financial conditions.</td>
<td>□ Court guidance on defendant’s ability to pay.</td>
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<td>□ Review of conditions for defendants detained by financial conditions of release.</td>
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<td>□ Ensures pretrial access to counsel.</td>
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<td>□ Reduction of bail by $30 for each day in jail on specified offenses.</td>
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</table>
Court Guidance: Release & Ability to Pay

**Nebraska L 259 (2017)**
- Requires courts to consider all methods of bond and conditions to avoid incarceration.
- Requires courts to consider ability to pay if they determine that a PR bond is not appropriate.
- Requires court to impose the least onerous conditions necessary.
- Pretrial services/supervision changes.

**Texas SB 1913 (2017)**
- Addresses release by municipal and justice courts only.
  - Limits the use of bail bonds and encourages the use of PR bonds.
  - Presumes inability to pay after 48 hours if the defendant does not post a bail bond and encourages use of a PR bond.
  - Limits the use of warrants after FTA.

*Nebraska L 259 (2017)*

*Texas SB 1913 (2017)*
Court Guidance: Release & Ability to Pay

2018 Notable Enactments

- **DE HB 204** - Creates 2nd look provision if a defendant is not released in 72 hours – courts must review within 10 days. Adds language authorizing conditions beyond appearance agreement only if they are related to public safety, mitigating flight or the integrity of the process.

- **GA SB 407** – Requires courts to consider a defendants financial resources including income, assets and financial obligations prior to setting bail.
Court Guidance: Release & Ability to Pay

2018 Notable Enactments Continued

- **MA SB 2371** – Requires court to consider defendant’s financial resources when setting bail at an amount not higher than would reasonably ensure appearance.

- **NH SB 556** – Requires that court not impose a financial condition that will result in detention solely because of a defendant’s inability to pay. Creates an option for motion for 2nd look within 36 hours.

- **VT HB 728** - Requires courts to consider a defendants financial means prior to imposing any financial conditions of release.
Conditions of Pretrial Release

2012-2018: 43 states & D.C. enacted 151 laws
Conditions of Pretrial Release

Pretrial Release Conditions: Types of Bond Additional Conditions

Use the dropdown buttons to select a type of bond or additional conditions. Comprehensive state information on the most common statutory conditions of pretrial release is available in the interactive map below.

NCSL Conditions of Release Database
Pretrial Services

2012-2018: 30 states enacted 87 laws

NCSL Brief on Pretrial Services
Defendant Eligibility for Pretrial Release

2012-2018: 33 states & D.C. enacted 84 laws
Addressing Victims During the Pretrial Process

- The majority of states provide victims with the right to be notified of a defendant’s release.
- The majority of states have laws addressing victim participation during the pretrial stage.
  - This includes the right to be heard or the right to be consulted.
State Legislation Addressing Victims and Pretrial Policy

2012-2018: 39 states enacted 106 laws
Citation in Lieu of Arrest

2012-2018: 14 states enacted 23 laws

Citation in Lieu of Arrest: 50 State Chart
Deflection and Diversion

- Deflection is an emerging legislative trend that reroutes individuals with behavioral health needs before arrest or before contact with the justice system.

- Alternatively, statutory pretrial diversion is well established in 48 states and the District of Columbia and reroutes defendants after arrest, but prior to adjudication or final entry of judgment.
Statutory Pretrial Diversion Database

The interactive map has been designed to allow users to compare state general population diversion courts and programs. Select the state on the map for detail about general population diversion programs and courts in each state.

Thirty-seven states authorize programs that are not population specific and address the needs of defendants more generally than the programs listed above. These laws generally designate who has authorization to create a diversion program or designates administrative authority over a program to a specific individual or office such as prosecuting attorneys, local courts, or other local governmental agency. State statute also generally provides guidance on which defendants are eligible for participation in the diversion program and often specifically excludes defendants charged with a particular crime, defendants with specified criminal histories, or cases where certain circumstances, like death or bodily injury, were a factor.

Statutory Pretrial Diversion Database
Elections 2018

Post-Election Legislative Control

Pre-Election Legislature Control

National Conference of State Legislatures
NCSL has tracked pretrial policy enactments since 2012. Enactments can be searched by topic, year, state, author or bill number. You can also search the summaries by keyword.

Want to Know More?

- Bond Forfeiture & Conditions Violations
- Budget, Oversight & Administration
- Citation in Lieu of Arrest
- Commercial Bond Regulation
- Conditions of Release
- Statutory Court Guidance
- Diversion/Deflection
- Eligibility for Release
- Pretrial Services & Programs
- Risk Assessments
- Special Populations
- Victims Protections and Policy
Resources and Reports from the States

- Information on the provisions I’ve discussed today can mostly be found in:
  - NCSL’s Pretrial Enactment Database
  - NCSL’s Pretrial Pending Legislation Database
  - NCSL’s Pretrial Policy Database

- NCSL also tracks reports coming out of state legislatures or from the executive and judicial branches. Those can be found on our State Reports Webpage.
Questions?
Contact me at:
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