



Pretrial Release and Detention Act

Physical liberty is a fundamental right. And yet, each day, more than half a million people are detained pretrial. This detention violates our Constitution and decreases safety in our communities. Worse, pretrial detention has devastating consequences for families and communities, especially communities of color.

Given these interests and the fundamental rights at stake, this Act abolishes money bail and requires the least restrictive conditions of pretrial release. The intent of the Act is to maximize pretrial liberty, reduce jail and prison populations, and address racial disparities within the current pretrial system. All provisions in this Act should be construed to effectuate this intent.

SECTION 1. SHORT TITLE

This [act] may be referred to as the Pretrial Release and Detention Act.

SECTION 2. SECURED FINANCIAL CONDITONS PROHIBITED

No secured financial condition on a person’s pretrial release shall be imposed. No secured financial condition on a person’s release pending sentencing, pending appeal, or pending adjudication of an alleged probation or parole violation, shall be imposed. No fee shall be required for any condition that is associated with diversion, deferred prosecution, pretrial or post-trial release, pretrial supervision, or pretrial detention.

SECTION 3. CITATION RELEASE

- (a) **AUTHORIZATION.**—At the discretion of the arresting officer, or as required by Section 4 (“Pretrial Release for Misdemeanor and Felony Offenses”) or the local prosecuting authority, release with citation may occur for any offense. Such release shall occur prior to jail booking or police processing procedures.
- (b) **MODIFICATIONS.**—Any individual cited and released under this Section shall have the right to petition for modification of any condition of release imposed via this section.
- (c) **PROCEDURE.**—At release, the citing official shall provide to all individuals the following:
 - (1) A summons to appear, which may include the conditions enumerated in subsection (d) (“Conditions”); and
 - (2) Written instructions concerning procedures necessary to resolve the case without appearance, if such procedures are appropriate in the specific case.



- (d) **CONDITIONS.**—The presumption shall be release without a condition other than appearance for required court proceedings. When additional conditions are imposed, they may include only the following:
 - (1) That the individual commit no new crimes; and
 - (2) That the individual provide a phone number, mailing address, e-mail address, or contact number of another person that the court may reach to send reminders, or another mechanism that the court may use to contact the individual. In no case shall failure to provide contact information impede an individual’s release.

- (e) **PRETRIAL SUPPORTS.**—When citing and releasing an individual, citing officials:
 - (1) Shall offer the individual court reminders, such as reminders via phone call or two-way text message;
 - (2) Shall offer the individual information on how the individual can contact the court, report a change in circumstances, or secure flexible scheduling; and
 - (3) May offer individuals other supports available in the jurisdiction, such as rides to court, transitional housing, pretrial navigators, or provision of court-based childcare.

SECTION 4. PRETRIAL RELEASE FOR MISDEMEANOR AND FELONY OFFENSES

- (a) **MISDEMEANOR OFFENSES.**—The court, sheriff, law enforcement officer, or other designee of the State having custody of an arrestee shall cite and release on personal recognizance every misdemeanor arrestee. Such release shall occur prior to jail booking or police processing procedures, using the procedures outlined in Section 3 (“Citation Release”).

- (b) **FELONY OFFENSES OTHER THAN EXTREMELY SERIOUS FELONY OFFENSES.**—
 - (1) **APPLICATION.**—This section applies to all felonies, excluding the felonies that are enumerated in subsection (c) (“Extremely Serious Felony Offenses”).
 - (2) **GENERAL.**—In a case that is covered by this subsection, arrestees shall be:



- (1) Released on recognizance, following the procedures described in Section 3 (“Citation Release”); or
 - (2) Released with one or more temporary conditions, following the procedure described in subsection (b)(3) (“Temporary Conditions of Release”).
- (3) TEMPORARY CONDITIONS OF RELEASE.—
- (1) Where the arresting officer, sheriff, or other designee of the State having custody of an arrestee certifies in writing that there is probable cause, based on individualized facts, to believe that further conditions of release will be warranted under the standards that are described in Section 5(d) (“Presumptions and Findings”), the arresting officer, sheriff, or other designee of the State may request an immediate hearing before a magistrate. Such hearing may occur no later than the conclusion of jail booking or police processing procedures.
 - (2) At the magistrate hearing, the magistrate may set temporary conditions of release, provided that—
 - (i) the magistrate finds, on the record and based on individualized facts, that release on recognizance would not reasonably mitigate a high risk of nonappearance or of serious physical harm to another reasonably identifiable person; and
 - (ii) the temporary conditions of release ordered are the least restrictive necessary to address the specific risk or risks identified.
 - (3) Where no magistrate is available when jail booking or police processing concludes, the arresting officer, sheriff, or other designee of the State may release the arrestee pursuant to one or more approved conditions authorized via a standing order that is issued by the presiding judge of the jurisdiction. Such order may include one or more standard conditions of release that the arresting officer, sheriff, or other designee of the State may select as appropriate to the case, provided that these conditions comport with Section 2 (“Secured Financial Conditions Prohibited”).
 - (4) If no magistrate is available when jail booking or police processing concludes, and if the presiding judge has not issued a standing



order setting forth available temporary conditions of release, the arresting officer, sheriff, or other designee of the State shall release the arrestee as described in Section 3 (“Citation Release”).

- (5) For any individual who is assigned one or more temporary conditions of release, the conditions shall last only until the pretrial release hearing that is described in Section 5 (“Pretrial Release Hearing”). If the arrestee chooses to waive the arrestee’s right to a pretrial release hearing, the conditions of release shall apply until the case is adjudicated.
- (6) Provided that the arrestee has not waived the arrestee’s right to a pretrial release hearing, the pretrial release hearing shall occur within seven days and shall follow the procedures described in Section 5 (“Pretrial Release Hearing”), except where an extension has been granted pursuant to Section 5(c) (“Extension”).
- (7) At a magistrate proceeding that may produce an order of temporary conditions, the arrestee shall have counsel or provisional counsel. Counsel shall be made available to all individuals who appear before the magistrate, regardless of income.

(c) **EXTREMELY SERIOUS FELONY OFFENSES.—**

- (1) **APPLICATION.—**This section shall apply to those extremely serious felony offenses enumerated in [*insert relevant sections from State code denoting the “most serious” of felony offenses*] that are or have as an element of the offense charged:
 - (1) The infliction or attempted infliction of serious bodily harm against another person or persons;
 - (2) Rape; or
 - (3) Sexual assault against a minor.
- (2) **GENERAL.—**In a case that is covered by this subsection, an arrestee may be:
 - (1) Released on personal recognizance;
 - (2) Released with one or more temporary condition or temporary conditions, following the procedures described in subsection (b)(3) (“Temporary Conditions of Release or Detention”); or



(3) Temporarily detained, following the procedures described in subsection (c)(3) (“Temporary Conditions of Release or Detention”).

(3) TEMPORARY CONDITIONS OF RELEASE OR DETENTION.—

(1) Where the arresting officer, sheriff, or other designee of the State having custody of an arrestee certifies in writing that there is probable cause, based on individualized facts, to believe that release on recognizance would not reasonably mitigate a high risk of nonappearance or serious physical harm to another reasonably identifiable person, the arresting officer, sheriff, or other designee of the State may request an immediate hearing before a magistrate. Such hearing may occur no later than the conclusion of jail booking or police processing procedures.

(2) At the magistrate hearing, the magistrate may order—

(i) a temporary condition or conditions of pretrial release, following the procedures and presumptions outlined in subsection (b)(3) (“Temporary conditions of release or detention”); or

(ii) temporary detention, if the State proves and the magistrate finds, on the record and based on individualized facts, that no conditions of release would reasonably mitigate a high risk of imminent, intentional flight or serious physical harm to another reasonably identifiable person.

(3) For any individuals who are temporarily detained, the individual shall receive a pretrial release hearing within 48 hours after the individual enters custody, as described in Section 5 (“Pretrial Release Hearing”). If the individual has not received a pretrial release hearing within 48 hours, except where an extension has been granted pursuant to Section 5(c) (“Extension”), the individual shall be released.

(4) At a magistrate proceeding that may produce an order of temporary conditions or temporary detention, the arrestee shall have counsel or provisional counsel. Counsel shall be made available to all individuals who appear before the magistrate, regardless of income.



SECTION 5. PRETRIAL RELEASE HEARING

- (a) **TIMING.**—
- (1) **INDIVIDUALS BEING DETAINED.**—When an individual is being temporarily detained, the pretrial release hearing shall occur no more than 48 hours after the individual enters custody, unless an extension has been granted according to subsection (c) (“Extension”).
 - (2) **INDIVIDUALS RELEASED ON TEMPORARY CONDITIONS.**—When an individual has been released on temporary conditions, the pretrial release hearing shall occur no more than seven days after temporary conditions were imposed, excluding weekends and holidays, unless the pretrial release hearing has been waived or an extension has been granted according to subsection (c) (“Extension”).
- (b) **RIGHT TO ATTORNEY.**—At the pretrial release hearing, an arrestee shall have the right to counsel. Prior to the hearing, an arrestee shall have an adequate opportunity, to meet privately and consult with counsel. Defense counsel shall be granted equal and timely access to all arrest, charging, and other relevant documents that are accessible to the prosecuting attorney and judicial officer. Any information in the State’s possession that is relevant to the question of release, guilt, or punishment, shall be disclosed prior to the hearing.
- (c) **EXTENSION.**—At or before the pretrial release hearing, the attorney for the State, the attorney for the accused, or the accused may request an extension of up to 48 hours to prepare for the pretrial release hearing. The judicial officer may grant the State’s request for an extension only if the State certifies to the judicial officer that the evidence needed by the State for such a hearing is unavailable through no fault of the State. The judicial officer shall grant an extension beyond 48 hours only upon motion of the arrestee and for good cause shown.
- (1) **TESTIMONY.**—An arrestee has the right to testify, to present witnesses, to cross-examine witnesses who testify for the prosecution, and to present evidence by proffer, through documents, or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. If the defendant testifies, the defendant’s testimony at pretrial hearings is not admissible in any other criminal proceedings other than perjury in the case in chief.
 - (2) **EVIDENCE SUPPORTING RELEASE.**—Prior to the pretrial release hearing, the attorney for the State shall provide all evidence or information favorable to the accused to the attorney for the accused, including any relevant impeachment information and any evidence material to guilt, innocence, or



punishment. This requirement includes any information that would undermine any factual assertion on which the prosecution relies in seeking additional conditions or, for those offenses described in Section 3(c) (“Extremely Serious Felony Offenses”), pretrial detention.

(d) PRESUMPTIONS AND FINDINGS.—

(1) FELONY OFFENSES OTHER THAN EXTREMELY SERIOUS FELONY OFFENSES.—

(A) PRESUMPTION.—For those charges that are defined in Section 3(b)(1) (“Felony Offenses Other Than Extremely Serious Felony Offenses”), the judicial officer shall apply at the pretrial release hearing a rebuttable presumption that—

- (i) The arrestee will be released on recognizance; and
- (ii) Liberty-restricting conditions, including pretrial supervision, drug testing, inpatient treatment, outpatient treatment, travel restrictions, curfew, home confinement, electronic monitoring, and [*insert any other conditions currently authorized under State law that similarly infringe on a person’s liberty interest*], are not necessary conditions of release.

(B) OVERCOMING THE PRESUMPTION.— The State may order conditions of pretrial release if the court finds by clear and convincing evidence that the person poses a high risk of nonappearance or of seriously physically harming another reasonably identifiable person during the adjudication period. In these cases, the court may order additional, nonmonetary conditions of pretrial release, provided that—

- (i) The conditions are justified in writing or on the record;
- (ii) Pretrial supports, such as those described in Section 3(a)(4) (“Pretrial Supports”), would not reasonably mitigate the risk of nonappearance; and
- (iii) The State meets its burden of providing clear and convincing evidence that—

(1) for all liberty-restricting conditions, as defined in subsection (d)(2)(a)(ii), the conditions are the least restrictive necessary to reasonably mitigate a high risk of imminent, intentional flight or of seriously physically harming another reasonably identifiable person during the



adjudication period, while preserving the ability of the accused individual to confer with counsel and prepare a defense;

(2) for all conditions other than liberty-restricting conditions, as defined in subsection (d)(2)(a)(ii), the conditions are the least restrictive necessary to reasonably mitigate a high risk of nonappearance or of seriously physically harming another reasonably identifiable person during the adjudication period, while preserving the ability of the accused individual to confer with counsel and prepare a defense; and

(3) the condition or conditions imposed are the least restrictive necessary to reasonably mitigate the risk or risks identified.

(2) EXTREMELY SERIOUS FELONIES.—

(A) PRESUMPTION.—For those charges that are defined in Section 4(c)(1) (“extremely serious felony offenses”), the court shall apply at the pretrial release hearing a rebuttable presumption that—

- (i) The arrestee will be released on recognizance; and
- (ii) Liberty-restricting conditions, which include pretrial supervision, drug testing, inpatient treatment, outpatient treatment, travel restrictions, curfew, home confinement, electronic monitoring, and [*insert any other conditions currently authorized under State law that similarly infringe on a person’s liberty interest*], are not necessary conditions of release.

(B) OVERCOMING THE PRESUMPTION.—The State may overcome the presumptions in subsection (d)(2)(A) (“Presumption”) and order either additional conditions of release, following the process outlined in subsection (d)(1)(“Felony Offenses Other Than Extremely Serious Felony Offenses”), or pretrial detention. Pretrial detention may be ordered only if the State proves by clear and convincing evidence that no condition or combination of conditions, short of complete incapacitation, could reasonably mitigate a high risk of imminent, intentional flight or a specifically identified risk of serious physical harm to another reasonably identifiable person during the adjudication period. In these cases, the court may order pretrial detention, provided that—



- (i) The conditions are justified in writing or on the record;
 - (ii) The State meets its burden of proving by clear and convincing evidence that—
 - (1) no condition or combination of conditions, short of complete incapacitation, could protect against a high risk of imminent, intentional flight or a specifically identified risk of serious physical harm to another reasonably identifiable person;
 - (2) the court has considered and rejected all conditions short of complete incapacitation; and
 - (3) the condition or conditions imposed are the least restrictive necessary to reasonably mitigate the risk or risks identified.
- (e) STATEMENT IN WRITING.—
- (1) RELEASE CONDITIONS.—If the court orders any conditions of pretrial release, the judicial officer shall issue in writing a statement of reasons explaining why the conditions are the least restrictive necessary to reasonably mitigate a high risk of nonappearance or the safety of the public, and how the conditions set address the specific risk or risks identified.
 - (2) DETENTION ORDER.—If the court enters an order of detention, the judicial officer shall issue in writing a statement of reasons explaining the specific risks posed by the arrestee and specific findings of fact demonstrating by clear and convincing evidence that no condition or combination of conditions, short of complete incapacitation, could reasonably mitigate those risks. Findings of fact shall be individualized and case-specific, and the judicial officer may not enter findings resulting in pretrial detention using a standard form or standard oral recitation.
 - (3) APPEAL.—If a judicial officer orders pretrial detention, the arrestee shall be informed of the right to an immediate, expedited appeal. Such appeal shall be heard within 72 hours unless the arrestee consents to a delay. All appeals shall be reviewed de novo.
- (f) PRETRIAL SUPPORTS.—If a judicial officer is releasing an individual with conditions, the judicial officer:
- (1) Shall offer the arrestee court reminders, such as reminders via phone call or two-way text message;



- (2) Shall offer the arrestee information on how the arrestee can contact the court, report a change in circumstances, or secure flexible scheduling; and
 - (3) May offer arrestees other supports available in the local jurisdiction, such as rides to court, transitional housing, or provision of court-based childcare.
- (g) **NO SHACKLING.**—No arrestee shall be shackled or otherwise physically restrained when appearing in court for any hearing relating to pretrial release or detention, unless the court makes a finding in writing or on the record based on individualized, case-specific reasons that the arrestee poses an imminent danger to any person in the courtroom.
- (h) **LATE NIGHT RELEASES.**—In all cases where the jail is releasing an individual and where no friend or family member is available to help the individual travel home, the individual shall receive free transportation from the jail facility. Such transportation may include subsidized passes for public transportation, subsidized rides, or direct provision of rides.
- (i) **REOPENING HEARINGS.**—At any time after the hearing and prior to trial, a hearing may be reopened upon showing of good cause, such as that circumstances have changed materially. At this point, the State or the accused may seek to impose, remove, or modify any condition of pretrial release or reconsider an order of detention. This provision shall apply regardless of whether the pretrial release hearing was initially waived.
- (1) **TIMING.**—If a hearing is requested, it shall be held within 24 hours if the individual is in custody or within seven days if the person is not in custody, except if the State or the accused requests an extension. In these cases, the judicial officer may grant an extension of up to 48 hours for good cause if the State so requests.
 - (2) **INTERLOCUTORY APPEAL.**—Nothing in this provision shall interfere with the right of an arrestee to seek immediate, expedited interlocutory appeal of an order of detention under this [act].
- (j) **PRE-HEARING RELEASE.**—In all cases, the law enforcement agency detaining an arrestee:
- (1) May release the arrestee prior to the pretrial release hearing if, in its discretion, that official or agency believes such detention to be unnecessary or harmful to the health or well-being of any person, or if that official or agency determines release to be in the public interest; and



- (2) Shall release the arrestee if a pretrial release hearing has not been held within 48 hours of the arrestee entering custody, except where an extension has been granted pursuant to Section 5(c) (“Extension”).

SECTION 6. DETENTION FOLLOWING NONAPPEARANCE

- (a) **GENERAL.**—No individual not charged with a crime described in Section 4(c) (“Extremely Serious Felony Offenses”) shall be detained following nonappearance in court, or for any other violation of a release condition, except where the court follows the procedures outlined in this section to establish that the individual engaged in intentional flight.
- (b) **WAITING PERIOD FOLLOWING NONAPPEARANCE.**—Except in exceptional circumstances when the judicial officer has probable cause, based on individualized facts, to believe that the individual is planning to flee the jurisdiction, the judicial officer shall wait seven days before issuing any show cause order or arrest warrant for an individual who has missed a court appearance.
 - (1) **TIMING.**—These seven days begin on the day and at the time that the person was scheduled to appear.
 - (2) **CONTACT.**—During the seven-day period, the court shall make meaningful attempts to contact the individual.
 - (3) **CANCELLATION OF WARRANT.**—If the individual returns to court within the seven-day period or reschedules the court appointment, the judicial officer shall not issue any arrest warrant or show cause order.
- (b) **SHOW CAUSE ORDER.**—If a person does not appear or reschedule the court appointment within the seven-day period, a judicial officer may, on motion of the State, issue an order to show cause why the person should not be found in contempt or otherwise be subject to revocation of pretrial release.
 - (1) **CONTENT.**—The order to show cause shall state those facts alleged to constitute the contempt or basis for revocation.
 - (2) **CERTIFIED COPY.**—A certified copy of the order shall be served upon the person in the same manner as [*insert relevant lawful service of process*] at least 48 hours before the time assigned for the hearing on the matter.
 - (3) **ARREST WARRANT.**—If the person does not appear at the assigned time after having been validly served with the order to show cause, the court may issue a warrant for the person’s arrest.



- (c) **TEMPORARY DETENTION.**—A person arrested pursuant to a warrant for a show cause hearing may be detained for up to 48 hours pending a pretrial release hearing.
- (d) **HEARING REQUIREMENT.**—A person who does not appear for a court appointment shall be provided a hearing governed by Section 5 (“Pretrial Release Hearing”) if the State is moving for additional conditions or detention.
- (e) **HEARING OUTCOMES.**—At the pretrial release hearing, an arrestee who did not appear for a court appointment may be:
 - (1) Released on recognizance;
 - (2) Released on the same or modified conditions;
 - (3) Detained, provided that the judicial officer finds that the nonappearance was willful, and with the specific intent of avoiding prosecution, following the procedure outlined in subsection (g) (“Procedure for Determining Willfulness”).
- (f) **PROCEDURE FOR SETTING CONDITIONS.**—Before a judicial officer orders additional conditions, the judicial officer shall ask the arrestee if pretrial supports would have prevented the nonappearance and, if so, consider whether such supports may be appropriate now as an alternative to additional conditions. For any case involving an individual who was not provided pretrial supports initially, the judicial officer shall state in writing or on the record why provision of pretrial supports is insufficient to mitigate the risk of nonappearance.
- (g) **PROCEDURE FOR DETERMINING WILLFULNESS.**—No finding that a person’s nonappearance was willful and with the specific intent of avoiding prosecution may be made unless, at a minimum, the judicial officer finds by clear and convincing evidence that:
 - (1) The arrestee was reminded of the court appearance through a two-way text message reminder system, by phone call, or, if the person does not have access to a phone, by an in-person reminder; and
 - (2) The willful nonappearance was caused by a specific intent to evade prosecution.

SECTION 7. RELEASE PENDING SENTENCING, APPEAL, OR PROBATION REVOCATION



- (a) **RELEASE PENDING SENTENCING.**—Once an individual has been convicted and is pending sentencing, the presumption shall be that all conditions of release continue unchanged. If the government seeks to modify any conditions, the court shall hold a hearing following the procedures and presumptions outlined in Section 4 (“Pretrial Release Hearing”).
- (b) **RELEASE PENDING APPEAL.**—
- (1) **WHERE RELEASE IS REQUESTED.**—After sentencing, a sentenced person may make a request for release pending appeal. The conditions of pretrial release shall remain unchanged except where the prosecution seeks to modify any conditions. If the prosecution seeks to modify any conditions or seeks detention, the court shall hold a hearing following the procedures and presumptions outlined in Section 5 (“Pretrial Release Hearing”). All conditions of pretrial release that were in place prior to sentencing continue unchanged if the appeal raises a colorable question of law or fact that would result in:
- (A) Reversal of the conviction;
 - (B) An order for a new trial;
 - (C) A sentence that does not include a term of imprisonment; or
 - (D) A reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.
- (2) **WHERE RELEASE IS NOT REQUESTED.**—If the person does not request release pending appeal, or if the court does not find that there exists a colorable issue for appeal, the court may order the person detained. The court may, in its discretion, set a date certain by which the person shall report to custody.
- (c) **RELEASE PENDING PROBATION REVOCATION.**—If an individual faces possible revocation for allegedly violating a probation condition, the probation officer and court shall follow the process outlined in this [act]. Individuals may not be detained for allegedly violating probation conditions. If an individual is accused of a new offense, the individual shall be accorded the same presumptions and process outlined in this [act].

SECTION 8. DATA AND REPORTING

- (a) **GENERAL REQUIREMENT.**—The [*insert equivalent of the Department of Criminal Justice Services or state court administrative office*] (“Department”) shall identify, define, and create a mechanism to collect data including at minimum the data defined in subsection (c) (“Minimum Required Data”). This requirement shall cover judicial officers in every locality.



(b) REPORTING MECHANISM. —

(1) DEPARTMENT REPORTS.—The Department shall create a uniform mechanism for reporting the information that is described in subsection (c) (“Minimum Required Data”). It shall include the collected information in an annual report that is made available online, free of charge.

(2) COURT REPORTS.—Each month, every judicial officer conducting pretrial release hearings shall file with the Department and with the Administrative Office of the Courts a report that details, at minimum, the following information:

- (A) A list of each arrestee ordered released and each arrestee ordered detained;
- (B) The offenses with which they are charged;
- (C) The total length of time in custody for those released, and length of time in custody so far for those detained; and
- (D) For individuals ordered released, a list of any conditions of release ordered.

(c) MINIMUM REQUIRED DATA.—The data required by the Department shall include, at minimum, the following items. All data shall be disaggregated by locality and by individual, subject to existing anonymization and other policies regarding individual data and privacy protections.

- (1) The number of arrests that were made in the implementing jurisdiction;
- (2) The number of prosecutions that were made in the implementing jurisdiction;
- (3) For each individual who was brought before the court:

- (A) Year of birth;
- (B) Race;
- (C) Ethnicity;
- (D) Gender;
- (E) Primary language;
- (F) Indigence status;



- (G) Individual residential zip code;
 - (H) Charge data;
 - (I) Number of charges;
 - (J) Top offense charge by code section;
 - (K) Top offense charge description;
 - (L) Top charge type (e.g., felony, misdemeanor, civil infraction, other);
 - (M) Top charge class (e.g., 1, 2, 3, 4);
 - (N) Charges requested by the prosecutor;
 - (O) If defendant was detained, the reason why release was denied in the specific case;
 - (P) If bail has been revoked due to intentional flight, whether revocation has occurred in the specific case;
 - (Q) Initial nonmonetary conditions of release imposed and any subsequent modification of conditions;
 - (R) Outstanding warrants and/or other bars to release from another jurisdiction, such as an Immigration and Customs Enforcement detention hold or hold from another jurisdiction;
 - (S) Release or discharge date;
 - (T) Status change date if an individual changed from pretrial to sentenced to a term of incarceration;
 - (U) Percentage of cases where the charges were dropped and where final disposition differs from top offense charged; and
 - (V) Release or discharge reason (e.g., posted bond, released on recognizance, released under supervision, disposition resulting in release or discharge), including the specific reasons for “released by court order” and “disposition resulting in release/discharge”.
- (4) The percentage of arrestees who were detained prior to trial;
 - (5) For those detained, the length of time that was spent in pretrial detention;



- (6) The pretrial release conditions imposed in each case;
 - (7) The number of show cause and warrants issued;
 - (8) The rate of willful nonappearance;
 - (9) The number of people who were offered pretrial supports;
 - (10) The percentage of arrestees who were found to have committed extremely serious felonies while on pretrial release;
 - (11) Where pretrial diversion programs exist in a community, the referral rates into these programs;
 - (12) The breakdown of all such statistics, including by offense type and by defendant demographic characteristics such as race, age, and gender; and
 - (13) The average cost of keeping an individual in that locality in jail for one night.
- (d) ANONYMIZATION REQUIREMENT.—Statistics broken down by offense type or demographic group will not be reported for that offense type or demographic group if, in that given quarter, there exist fewer than five arrests in that category.

SECTION 9. EFFECTIVE DATE

The amendments made in this [act] shall take effect on _____.

Commentary

A. Definitions:

“Secured financial condition”

In this document, “secured financial condition” means upfront payment of money, either by the defendant or by a third party, as a requirement of fulfilling the condition, whether such payment is required in whole upfront or by using a deposit, lien, surety, or proof of access to collateral that the court deems sufficient.

“Intentional flight”

In this document, “intentional flight” means failure to appear in court as required with the intent to avoid or delay adjudication.



“Felony” & “Misdemeanor”

In this document, the words “felony” and “misdemeanor” are defined as in 18 U.S. Code § 3559. “Misdemeanor” shall mean any crime classified as a Class A, B, or C misdemeanor in 18 U.S. Code § 3559(a).

“Bail”

As used in this document, “bail” refers to a mechanism that is used to secure pretrial release. Such mechanism may involve release conditions or may occur without conditions, meaning release on personal recognizance. The goal of “bail” is to ensure that a person returns to court as required.

“Liberty-restricting condition”

In this document, “liberty-restricting condition” has the same definition as outlined in the American Civil Liberties Union’s [A New Vision for Pretrial Justice](#) document. These conditions impose “moderate to serious hardship” on an individual’s ability to complete their regular life activities, which include going to work, taking care of children, attending medical appointments, taking care of family emergencies, and taking advantage of educational opportunities. Examples of “liberty-restricting conditions” include travel restrictions, no-contact orders, house arrest, a third-party custody, curfew, drug or alcohol monitoring, and electronic monitoring.

B. Companion measures:

As jurisdictions implement pretrial reform, these jurisdictions should simultaneously adopt companion measures that will help to ensure policy success and begin repairing the harms that have been caused by the current system. Such companion measures may include, though are not limited to, the following:

Community-based oversight:

When implementing bail reform, jurisdictions should create a community-based oversight mechanism that has access to the data specified in Section 9 and an established channel for raising its concerns.

Community reinvestment:

When implementing bail reform, jurisdictions should include a mechanism to calculate and reinvest the resulting savings. These “community reinvestment” programs should focus on non-carceral spending priorities that are determined through a participatory, community-led process. If being implemented at the State-level, States may focus on those communities that have historically been most affected by incarceration, supervision, and other aspects of the criminal system.



Holistic pretrial supports:

Jurisdictions should provide a robust set of pretrial supports that help people succeed during the pretrial period. For examples and ideas, jurisdictions should review [*A Holistic Framework for Pretrial Justice*](#).

Public education:

Policy change is the first step toward correcting the pretrial system's disastrous impact on communities nationwide, but jurisdictions should additionally consider ways to educate people and acknowledge the harms caused. This public education may include art displays, exhibitions, panels, community meetings, conversations with people who have been directly affected, restorative justice, and other ways of publicly illuminating the negative impacts that pretrial detention and pretrial-related wealth extraction have had on communities, especially communities of color.

Judicial education:

Judges are critical to implementing bail reform effectively. To ensure that judges have the resources and tools to be successful, comprehensive and timely trainings are crucial. These trainings should include not only information on resources available and the new law's components, but also interactions with community members that can start to build empathy and understanding regarding the system's current impacts.

C. Notes:

This model legislation does not endorse or intend the use of algorithmic risk assessment tools, given their role in furthering racial disparities and lack of demonstrated efficacy. In any case, algorithmic risk assessment tools should under no circumstances be used in making decisions about whether an individual should be detained. In jurisdictions that already use algorithmic risk assessment tools, we recommended reviewing [*The Use of Pretrial "Risk Assessment" Instruments: A Shared Statement of Civil Rights Concerns*](#).