What’s Happening in PRETRIAL JUSTICE

Q1 2020
Don’t miss the new interactive version of this report, including a searchable map and additional stats, at pretrial.org/WHIPJ.

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Introduction

Welcome to the newly redesigned What’s Happening in Pretrial Justice for the first quarter of 2020. What’s new? First, we have rearranged the information by state, so readers can easily get a holistic view of what’s happening in specific states and regions.

Within each state, you will notice several categories that we’ve used in the past, including:

- Changing Practice
- Defender-Led Change
- Prosecutor-Led Change
- Judiciary Branch-Led Change
- Legislative Branch-Led Change
- Executive Branch-Led Change
- Pretrial Litigation
- Selected Pretrial Legislation
- Community & Grassroots Action

We have also added a new category: COVID-19, which summarizes how counties and states have addressed the threat of COVID-19 in jails. (Though we also urge you to check resources that are maintained more frequently due to the fast-moving demands of the pandemic.)

COVID-19 has become a crucible for many jurisdictions: Are they willing to protect the lives of people in custody or facing arrest, as well as the staff who work in correctional facilities? Can they adapt their practices to minimize the spread of coronavirus—or will they stick with the “way things have always been done.” By putting information here, we intend to highlight the broad array of COVID-related strategies that impact the rights and well-being of people with pretrial status.

For those of you seeking information across states, a table at the end of the report shows which states have information in the respective categories. (See page 18.)

This report depends on many sources—and, as always, we look forward to your comments and additions. To join the online discussion about What’s Happening in Pretrial Justice, visit us at university.pretrial.org. Do you have information to suggest for the next edition? Please email wendy@pretrial.org.

Thanks and stay well,
Team PJI
ALABAMA

**Selected Legislation**

*HB 81* is a proposed amendment to the state constitution, expanding the cases for which bail will be denied. Known as “Aniah’s Law,” the amendment would deny bail to people accused of offenses carrying a punishment of life imprisonment and life without parole. *HB 113* enumerates the offenses for which bail would be denied and outlines a detention hearing process. *HB 113* also sets a $300 minimum bond amount, per offense, for violations and misdemeanors.

**Executive Branch-Led Change**

The Study Group on Criminal Justice Policy, appointed by Governor Kay Ivey, released its recommendations. The group noted that community corrections programs, which include pretrial diversion programs, hold enormous potential for the state, but warned against “pay to play” requirements.

ALASKA

**COVID-19**

The presiding judges of Alaska’s four judicial districts issued a [temporary bail schedule](#) designed to reduce overcrowding in jails during the pandemic. All people charged with misdemeanors, with some exceptions, are to be released on their own recognizance.

ARIZONA

**Selected Legislation**

*SB 1647* would permit the creation of pretrial diversion programs for people who are primary caregivers.

*SB 1618*, a criminal justice data bill, includes a section for pretrial justice data collection, including disaggregated demographic data around: pretrial release determinations made at an arraignment hearing, including all monetary and nonmonetary conditions of release and any modifications to the conditions of release; cash bail or bond payment, including whether the defendant used a professional bondsman or a surety bail bond agent to post a surety bond; any bail or bond or other condition of pretrial release revocation due to a new offense, a failure to appear or a violation of the terms of bail or bond or other conditions of pretrial release; a county attorney’s recommendations, if any, concerning the setting or revocation of bail or bond or other pretrial release conditions; and any reason pretrial release was not granted, if applicable.

ARKANSAS

There is no information for this state at this time. Check back next quarter.

CALIFORNIA

**COVID-19**

The California Judicial Council, the policymaking body of the court system led by Chief Justice Tani Cantil-Sakauye, issued a series of emergency rules pertaining to the pandemic, including an Emergency Bail Schedule that sets bond at $0 for most misdemeanor and lower-level felony offenses and includes other specified provisions.

Los Angeles County, home to the nation’s largest jail system, [reports](#) that it has reduced its jail population by 10 percent as a response to COVID-19. Los Angeles has also reduced the number of arrests per day from 300 to 60 using cite and release procedures instead.

San Francisco District Attorney Chesa Boudin has [directed](#) attorneys not to oppose motions for pretrial release in cases involving misdemeanors or drug-related felony charges. He also asked his attorneys to consider credit...
What's Happening in Pretrial Justice

for time served in plea deals. The jail population in San Francisco has **fallen by 25 percent**.

**Prosecutor-Led Change**
San Francisco District Attorney Chesa Boudin **announced** that his office will no longer seek cash bail at arraignment, and pretrial detention will only be considered when there is “a substantial likelihood that the defendant’s release would result in great bodily harm to others or the defendant’s flight.”

Boudin has also created a **pretrial diversion program for people who are caregivers**, a move permitted under a new law (SB 394) passed last year.

**Judiciary Branch-Led Change**
The Judicial Council of California received a **final report** regarding practices that reduce adult recidivism, including pretrial programs. As a result of the data collected, the study found that pretrial programs can safely release more low- and moderate-risk defendants pretrial without affecting court appearance or public safety.

**COLORADO**

**COVID-19**
Governor Jared Polis released a **six-page guidance letter to law enforcement and detention centers**, emphasizing “prioritization of arrests of serious and violent offenses over non-violent crimes, while always considering victims’ rights,” maintaining social distancing protocols in jails, reducing jail populations, and setting personal recognizance bonds as much as possible.

Denver Police Chief Paul Pazen **announced** that officers will default to issuing summons instead of arresting people charged with misdemeanors and some drug-related offenses. The Denver jail has had one of the largest population reductions in the state, falling by 37 percent in response to the pandemic.

The jail population of Colorado’s 15 largest counties **dropped by 30 percent** due to releases made to mitigate the spread of COVID-19. The reductions were not even; Jefferson County, the state’s fourth-most populous county, had a 47 percent decrease while Weld County, approximately half the population of Jefferson County, had a 15 percent decrease in jail population.

**Selected Legislation**
**SB 179** would require each district attorney to collect data regarding people charged related to demographics, charges filed, pretrial release results, and sentencing. The district attorney would be required to create an annual report with the data collected and make the data collected available to the public upon request.

**SB 161** would change several portions of the pretrial justice process including: creating a presumption of pretrial release with non-monetary conditions; requiring each judicial district to implement a pretrial release assessment process; requiring each judicial district to adopt, via an administrative order, a written process for allowing for the immediate pretrial release of certain arrested persons on a summons or an unsecured personal recognizance bond without any monetary condition after a pretrial release assessment; and requiring all counties to develop a pretrial services program by April 2021, with an annual reporting requirement.

**Executive Branch-Led Change**
Colorado Attorney General Phil Weiser **testified in favor of SB 161**, noting that “Cash bail requirements shouldn’t be permitted to serve as a revenue generator, an ineffective alternative for individualized judgments as to whether a person is a risk (to society or to flee), or, worst of all, an instrument of criminalizing poverty.”

**Community & Grassroots Action**
The ACLU of Colorado, Colorado Freedom Fund and the family of Michael Marshall have launched the **Bringing Our Neighbors Home campaign** to raise public aware-
ness around pretrial justice issues using data and stories; pass policies that dramatically increase the number of people who are released before trial; end wealth-based pretrial detention; and fight racism at every stage of the pretrial justice system. Michael Marshall died while being held on a $100 bond; during a psychiatric episode, he was held down by sheriff’s deputies until he aspirated on his own vomit.

CONNECTICUT

COVID-19

The Smart Justice campaign of the ACLU of Connecticut assembled a group representing community members, people who are formerly incarcerated, and people who have worked in corrections to call on Governor Ned Lamont and the members of the Connecticut General Assembly to issue a thoughtful and compassionate plan to release as many people as possible from jails and prisons to protect them from COVID-19.

Selected Legislation

SB 462 would create accountability measures for prosecutors, including pretrial justice practices, through: the development of specific policies for prosecutors to follow regarding pretrial release and detention; the development of prosecutor performance review metrics which include the percentage of people detained pretrial as determined by race, sex, ethnicity and age of defendant, and the percentage of defendants charged who received pretrial diversion determined by race, sex, ethnicity and age of defendant; the fiscal impact of the outcomes of criminal cases as measured, in part, by the total costs of pretrial detention during the evaluation period; and training for newly-hired prosecutors to include racial bias, systemic collateral consequences of arrest, charging and incarceration, mental illness, trauma and reentry. At least one day of training for prosecutors would be held in a correctional facility.

DELAWARE

COVID-19

The ACLU of Delaware sent a letter to the state court administrator, asking for a suspension of payments due for outstanding fines, fees and restitution, citing the economic uncertainty facing many citizens and the consequences for missing payments, including the loss of driver’s licenses.

FLORIDA

COVID-19

A broad alliance of groups representing unions, PTAs, churches, legal services organizations and non-profits sent a letter to Governor Ron DeSantis, outlining 17 major practice considerations to minimize the impact of COVID-19 on people in jails and prisons.

Pinellas County reported that its average number of daily arrests has fallen more than four-fold as deputies move to citation-first practices.

Leon County reported that the number of people in jail has fallen 60% compared to the first week in February, before the first COVID-19 case was recorded in Florida.

GEORGIA

COVID-19

WABE, the National Public Radio station for Atlanta, is maintaining a running account of cases of COVID-19 among detained people and employees in Georgia’s prisons, jails and immigration detention centers, along with any actions undertaken by jails to reduce the impact of COVID-19.

The ACLU of Georgia and the Southern Center of Human Rights (SCHR) sent a letter to all 159 sheriffs in Georgia, asking them to work with government officials to iden-
tify ways to reduce their jail populations and to develop plans to reduce the spread of COVID-19 in the jails.

**Selected Legislation**

**HR 1390** would create the House Study Committee on Bail Reform, to be made up of five members of the House of Representatives. The resolution noted that the cost of keeping people in pretrial detention in Georgia runs over $400 million annually.

**HAWAII**

**COVID-19**

The state public defender’s office filed a **petition of extraordinary writ** in the state supreme court, asking the court to issue an order directing the governor, director of the Department of Public Safety and the paroling authority “to take immediate steps to significantly reduce the population of its Correctional Centers and Correctional Facilities to prevent the massive loss of life and harm that the spread of COVID-19 would cause in such facilities.” The public defender also filed a petition to have a special master appointed to make release decisions quickly, and provided a list of 426 people who could be released under specific criteria.

**Selected Legislation**

The Task Force on Prison Reform established by House Concurrent Resolution No. 85 in 2016 (“HCR 85 Task Force on Prison Reform”) released its **key recommendations** calling for more diversion programs and culturally-relevant programming for Native Hawaiians and the end of new jail planning until there is a plan to reduce jail populations through diversion and bail reform.

**IDAHO**

**COVID-19**

Ada County, the most populous county in the state, reports that during the last two weeks of March, the county jail population had fallen from 1,054 to 857.

The Idaho Supreme Court suspended the requirement that people arrested and charged with a crime must have a preliminary hearing within 21 days if they are out of custody. Preliminary hearings are only held for people in jail.

**Community & Grassroots Action**

The ACLU of Idaho released its **Blueprint for Smart Justice** for the state, noting that 71 percent of people in jail have not been convicted of a crime, and that black adults in the state are imprisoned at a rate nearly five times higher than that for white adults. The report calls for, among other things, the end of cash bond and a strengthened public defense system. The state’s public defense system is currently the subject of a class action lawsuit, *Tucker v. Idaho*, which argues that under the Sixth Amendment right to effective assistance of counsel, the state must establish and fund a statewide public defense system with uniform standards for workloads, performance and training.

**ILLINOIS**

**COVID-19**

The Cook County Sheriff is providing the number of detained people and staff who have tested positive for COVID-19 on its **website**. The jail is the nation’s largest-known source of COVID-19 infections according to the *New York Times*.

**Executive Branch-Led Change**

Governor J.B. Pritzker made the elimination of cash bail in the state one of his criminal justice priorities. The Illinois General Assembly held a hearing on the issue in February.

**Community & Grassroots Action**

More than 200 advocates delivered **quart-sized jars of gummi bears** to legislators in the state capitol, calling
for the end of the use of money bail. Each jar held 250 gummi bears, symbolizing the 267,421 people held before trial in the state every year. The Illinois Network for Pretrial Justice and the Coalition to End Money Bond helped organize the protest.

**INDIANA**

**Selected Legislation**

Public Law 106 (HB 112) specifies that a person may earn one day of good time credit for every four days served on pretrial home detention, but may not earn accrued time for time served on pretrial home detention.

Public Law 34 (HB 1047) amends the duties of the justice reinvestment advisory council to include the review and evaluation of pretrial services and solutions to address jail overcrowding.

**IOWA**

**COVID-19**

Twenty-six organizations, including the ACLU, Iowa-Nebraska NAACP, League of United Latin American Citizens of Iowa, Quad Cities Interfaith and the Iowa Coalition Against Domestic Violence, sent a letter to Governor Kim Reynolds, sheriffs, prosecutors, police chiefs, and the Iowa Supreme Court asking the officials to take urgent steps to limit the spread of COVID-19 in prisons and jails. The letter asks for actions such as limiting arrests by issuing citations and tickets, and reducing the number of people put into jail. The letter noted that 87 percent of people in Iowa jails are there because they cannot afford the bond amount in their case.

**KANSAS**

**Selected Legislation**

SB 429 would permit each judicial district to establish an arrest bond schedule, and allow automatic increases in the bond amount for people who are not state residents, currently on probation, parole or pretrial release, or subject to warrants from other jurisdictions.

**KENTUCKY**

**Defender-Led Change**

The Department of Public Advocacy, Kentucky’s public defender system, petitioned the state Supreme Court to “enter an order directing the Court of Justice to refrain from using money bail in any case involving an indigent person, unless there is a finding by clear and convincing evidence that the individual presents a danger to the community.” The petition invokes a seldom-used power in the state constitution which allows the Supreme Court to issue “all writs necessary...as may be required to exercise control over the Court of Justice.”

**Selected Legislation**

HB 494 would state that before a determination of neediness, nothing will prevent a defending attorney from providing representation to any person entitled to such representation at the earliest necessary stage at which a person is entitled to counsel. If the person is later found to not qualify for a public defender, they will be required to make reimbursement for representation.

**LOUISIANA**

**COVID-19**

The Promise of Justice Initiative and 19 other organizations sent a letter to Governor John Bel Edwards urging the governor and state officials to create a comprehensive plan to prevent and manage the spread of COVID-19 in prisons, jails and juvenile facilities.

The Orleans Parish District Court judges issued a blanket
order calling for the immediate release of people who are: awaiting trial for a misdemeanor offense; arrested for failure to appear at a probation status hearing; found in contempt of court; or jailed for failing a drug screening while on bond. The order stated that all people released under the order should be issued subpoenas to report back to court within 10 days after normal court functions have resumed. The order came the same day that the Orleans Public Defender filed a petition asking for the release of people meeting certain conditions and a letter-writing campaign was organized by the Orleans Parish Prison Reform Coalition. Orleans Parish Sheriff Marlin Gusman responded to the order with a letter to the judges asking for the release of more people not included in the order, such as people convicted or awaiting trial on non-violent felony offenses and asking the judges to stop issuing warrants for non-violent offenses. Updates to the status of the Orleans Justice Center can be found here.

Selected Legislation

HB 500 would allow the district attorney for DeSoto Parish to assess a fee for participation in a pretrial diversion or intervention program. According to the bill, 28% of the fee would be disbursed to the criminal court fund, 18% to the district public defender, and 12% to the district attorney.

HB 129 would modify the law relating to the expungement of arrests that do not lead to conviction to include successful completion of a pretrial diversion program as a reason that the prosecuting attorney declined to prosecute.

Maryland

COVID-19

Baltimore City State’s Attorney Marilyn Mosby announced that her office would dismiss pending charges against people arrested for drug possession, attempted distribution, prostitution, trespassing, minor traffic offenses over the last four years, and black people are more than twice as likely to be jailed pretrial than white people.
and urinating in public.

Public Defender Keith Lotridge and Prince George’s County State’s Attorney Aisha Braveboy worked together to ask a judge to release dozens of people who have been charged with low-level non-violent crimes.

**Selected Legislation**

**HB 49/SB 68** would require a jurisdiction that uses pretrial risk scoring instruments (formerly known as pretrial risk assessments) to assist in determining the eligibility of pretrial release to make an independent validation study in order to be eligible for the Pretrial Services Program Grant Fund. The bill also requires programs to incorporate multiple levels of supervision based on the instrument scores.

**HB 82/SB 659** would require a county to reimburse a person for costs incurred to satisfy conditions of pretrial release imposed by the court if the person is found not guilty of all charges arising out of the same incident. Any pretrial services program that receives funding from the Pretrial Services Program Grant Fund would be prohibited from charging fees for participation in the program.

**HB 1377/SB 513** would not require a person to pay for home detention monitoring fees or devices, as a condition of pretrial release, if the person qualifies as indigent or if the device is provided by the state or local jurisdiction.

**Massachusetts**

**Pretrial Litigation**

The Massachusetts Supreme Judicial held in *Commonwealth v. Norman* that the pretrial imposition of GPS monitoring is not allowed if it is not tied to the permissible pretrial goals of ensuring return to court and safeguarding the judicial process by protecting victims and witnesses from intimidation. General crime deterrence is not a legitimate reason under §58 of the bail statute.

**Selected Legislation**

**HB 1343** would not allow a person who is ordered to refrain from the use of alcohol or controlled substances as a condition of release, or to submit to drug or alcohol testing, to be drug or alcohol tested more than four times per month. If the court determines that a person who has completed treatment for substance use and is still subject to pretrial conditions of release is in need of treatment, the person shall be ordered to resume treatment and a positive drug or alcohol test shall not be considered a violation of conditions of release.

**Legislative Branch-Led Change**

The Special Commission to Evaluate Policies and Procedures Related to the Current Bail System released its report. The Commission declined to recommend the elimination of cash bail, believing that procedures regarding affordable bail were largely addressed after the state Supreme Judicial Court addressed the issue in Brangan v. Commonwealth and the decision was largely codified to ensure that bail would be set no higher than what would reasonably assure appearance after accounting for financial resources. The report also found disparities in the imposition of bail. Nineteen percent of non-whites were subject to a bail over $5,000, compared to 11% of whites; conversely, 54% of non-whites were subject to bail amounts under $1,000, compared to 63% of whites. The report recommended that courts, probation departments, prosecutors and police departments continue to implement anti-racism and implicit bias training, and to gather future data.

**Michigan**

**COVID-19**

As part of its administrative order, the Michigan Supreme Court urged trial courts “to take into careful consideration public health factors arising out of the present state of emergency: in making pretrial release decisions, including in determining any conditions of release.”
**Selected Legislation**

**HB 5464** would not allow a pretrial risk assessment to be utilized unless: the tool is shown to be valid after peer testing and to be free of biases; all documents and information used by the builder to create the tool are open to public inspection, auditing and testing; a party to criminal case where the tool is considered or relied upon is entitled to review all calculations and data used to create the risk score for that person; and the builder does not assert trade secrets or intellectual protections to quash discovery of materials used to build the tool.

**SB 724** would amend the Michigan indigent defense commission act to require defense counsel to personally appear at every court event throughout the case, including arraignment, probable cause conference and preliminary examination. The bill would also require defense counsel to be compensated during the pendency of an appeal of a court’s decision regarding pretrial release on bond.

**Executive Branch-Led Change**

The Michigan Joint Task Force on Jail and Pretrial Incarceration released its report and recommendations to reduce jail populations. Recommendations include: expansion of appearance tickets in lieu of custodial arrest; diversion programs for people with behavioral health needs; strengthening the presumption of release on personal recognizance; and timelines for pretrial release and appearance before a judicial officer.

**MINNESOTA**

**COVID-19**

Hennepin County, the most populous county in Minnesota, reduced its jail population by one-quarter to help prevent the spread of COVID-19, as of the third week of March.

**Selected Legislation**

**HF 471** would modify the use of money bail so that a person charged with a misdemeanor offense (with some exceptions) must be released on personal recognizance unless the court determines there is a substantial likelihood that the person will not appear at future court proceedings or poses a threat to a victim’s safety. If the court determines that a substantial likelihood does exist, the court must impose the least restrictive conditions of release that will reasonably assure appearance which may include unsecured appearance bond or money bond. “If the court sets conditions of release other than unsecured appearance bond or money bond, it must also set money bail without other conditions on which the defendant may be released.” The bill also forbids the setting of financial conditions that results in pretrial detention.

**MISSISSIPPI**

There is no information for this state at this time. Check back next quarter.

**MISSOURI**

**COVID-19**

In response to letters sent by the Missouri State Public Defender’s Office, which sought the release of people within certain categories, and the Missouri Association of Prosecuting Attorneys, which argued against ‘blanket’ release,’ the Missouri Supreme Court issued a letter to local judges, reminding them of court rules allowing release pending trial, and deferred individual decisions to those judges.

**Pretrial Litigation**

A three-judge panel for the United States Court of Appeals for the Eighth Circuit in Dixon v. St. Louis reversed a lower court’s injunction against the enforcement of any monetary condition of release resulting in detention. The court found that the lower court had improperly failed to account for the impact of new court rules, which clarified that a court may not impose cash bail absent an individualized assessment of a person’s financial circumstances.
**Selected Legislation**

**SB 995** would change pretrial procedures based on an assessment system embedded in the bill. If a prosecuting attorney wishes to request an arrest warrant at the initiation of a case, the assessment must be completed to allege why a person should be arrested and confined. A person who is determined to be ‘low risk’ of flight under the risk assessment shall be ordered released on unsecured bond or own recognizance. A person who is determined to be ‘moderate risk’ of flight shall also be released on unsecured bond or own recognizance, but also subject to electronic monitoring, drug or alcohol testing or increased supervision. A person who is determined to be ‘high risk’ of flight or danger to others may be denied pretrial release.

**MONTANA**

**COVID-19**

On March 20, Chief Justice Mike McGrath sent a letter to all judges of courts of limited jurisdiction asking them to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for non-violent offenses.”

**NEBRASKA**

**Selected Legislation**

**LB 1209** would allow counties to expand diversion programs to include caregiver diversion programs, recognizing that “criminal convictions affect not only the person convicted but also such person’s children, family, and community.”

**NEVADA**

**Legislative Branch-Led Change**

Nevada lawmakers belonging to an interim committee to study bail and the use of pretrial detention heard testimony from law enforcement, public defenders, district attorneys and bail bond agents in a follow-up hearing, with an emphasis on data and the role of race and gender in pretrial detention decisions. Las Vegas Metropolitan Police Department reported that 600 people were incarcerated more than 7 days because they could not afford bond amounts of less than $2,500. Clark County Detention Center reported that 40 percent of its pretrial detention population is black, even though black people make up only 11 percent of the county population.

**NEW HAMPSHIRE**

**COVID-19**

The ACLU of New Hampshire and the New Hampshire Association of Criminal Defense Attorney sent a joint letter to state officials, calling for the release of people who are vulnerable to COVID-19 and to limit the number of people who are arrested and detained.

**NEW JERSEY**

**Selected Legislation**

**AR 91** urges the New Jersey Supreme Court to revise the Public Safety Assessment to take into account “a defendant’s entire criminal history background including but not limited to a defendant’s juvenile history record, expunged records, domestic violence history, a defendant’s classification under Megan’s Law, any sexual offenses and any firearms or weapons offenses.”

**AB 571** would require that a court that releases a defendant charged with a crime with bail restrictions or vehicular homicide to place the person under pretrial home supervision as a condition of release. The court may determine whether the defendant is to be monitored with an electronic monitoring device.
NEW MEXICO

Judiciary Branch-Led Change
The New Mexico Supreme Court ordered the establishment of a 15-member committee to consider possible changes in procedures for the pretrial detention of criminal defendants, following a set of court rule changes made in 2016. In its press release, the court noted that a study from the University of New Mexico found that 96 percent of the defendants were not accused of a violent crime while released awaiting trial.

Selected Legislation
HB 32 would create a presumption that no release conditions will reasonably protect the community and require courts to deny bail if the prosecuting authority provides by clear and convincing evidence that the charge against the person is a first-degree felony or a serious violent offense; or if the person was previously convicted of any felony; or if the person has previously violated conditions of pretrial release for any offense. The standard of proof to rebut such evidence is preponderance of the evidence.

HB 203 would not permit a court to excuse a person from posting bail unless that person motions for a hearing in which that person proves that they lack the financial means necessary to post bail. A person who has been released on own recognizance in one matter will not be allowed to be released on recognizance on another matter unless that person posts secured bond in the first matter. A court shall consider a person “who commits a crime while the defendant is awaiting trial for a prior offense as a danger to the community and require that the defendant post a secured bond for the current matter. A court shall consider a defendant who commits a crime while the defendant is awaiting trial for more than one other pending matter as a flight risk and danger to the community, and the court shall deny the defendant pretrial release.”

NEW YORK

COVID-19
New York City Council Speaker Corey Johnson and Council members Rory Lancman and Donovan Richards sent a letter to Mayor Bill de Blasio, Chief Judge Janet DiFiore and District Attorneys of the city’s five boroughs, calling on them to cease arrests and decline prosecution of victimless offenses, such as marijuana use, fare evasion and unlicensed driving due to failure to pay fines or fees. The letter also called on judges to set bail ‘only when absolutely necessary’ and noted that those people charged with a felony for whom bail has been set need appropriate safeguards. “Interminable detention is not an acceptable solution.”

The New York Legal Aid Society sent a letter urging greater transparency on COVID-19 data from Rikers Island and other jails. The Legal Aid Society is maintaining data on its own website, though the organization notes that its numbers do not include people who contracted COVID-19 in custody and were subsequently released, transferred or died.

Community & Grassroots Action
On January 1, 2020, Court Watch NYC announced a new court monitoring campaign. Eyes on 2020: First 100 Days of Bail Reform monitored the first 100 days of statewide bail reform implementation and reported their observations on Twitter (@CourtWatchNYC). A list of practices and outcomes they focused on can be found here.

NORTH CAROLINA

Community & Grassroots Action
The University of North Carolina Criminal Justice Innovation Lab created The Citation Project, which seeks to improve policing practices by implementing and rigorously evaluating citation in lieu of arrest practices. The effort is a collaboration between the UNC School of
Government, the North Carolina Association of Chiefs of Police (NCACP), and North Carolina State University.

**NORTH DAKOTA**

**COVID-19**
Cass County announced that jail reduction plans would allow the jail to have single bunks for every person.

Sheriff Kelly Leben of Burleigh County announced plans to reduce the detention center population by one-third, from 300 to 200.

**OHIO**

**COVID-19**
The Supreme Court of Ohio issued guidance to local courts regarding COVID-19. “At bail hearings, issue recognizance bonds, unless there is clear and convincing evidence that recognizance release would present a substantial risk of harm.”

Judges in Cuyahoga County held a rare Saturday court session to work out plea deals and facilitate release. People who were recently arrested also appeared before a judge on Saturday to avoid having to wait until Monday.

The Hamilton County Common Pleas presiding judge signed an order authorizing the county sheriff to release people from the jail at the sheriff’s discretion. At the time the order was signed, the jail was at double its capacity.

**OKLAHOMA**

**COVID-19**
Americans for Prosperity, Still She Rises, Oklahomans for Criminal Justice Reform, ACLU Oklahoma, Mental Health Association of Oklahoma, Oklahoma Women’s Coalition, OK Policy Institute, Center for Employment Opportunities, and the Oklahoma Conference of Churches urged Governor Kevin Stitt to issue an Executive Order to protect people in correctional facilities. In their 10-point plan, the groups recommended pretrial release of anyone who did not constitute an ‘imminent threat’ to public safety, and the use of cite and release procedures instead of pretrial booking and detention.

**OREGON**

**COVID-19**
Chief Justice Martha Walters issued a comprehensive order regarding court operations, including the mandate that courts “must explore alternatives to current arrest and detention policies including use of cite-in-lieu of arrest where appropriate to keep jail population at a minimum.”

The Oregon Justice Resource Center (OJRC) compiled advocacy resources for Oregonians who are concerned about COVID-19 in the justice system. Their site includes: template letters to the governor, county sheriff and director of the Department of Corrections; legal actions; and sample petitions and motions. The Center is also collecting data on positive cases, and has a survey to understand local jail responses to COVID-19.

A civil rights action was filed against Columbia County, arguing that the Columbia County jail’s “deliberate indifference” to the serious risk that COVID-19 poses to medically vulnerable people constitutes cruel and unusual punishment and a violation of the Fourteenth Amendment. The suit in *Thompson v. Columbia County* seeks mandatory spacing of six feet or more between people in jail, a safety plan, readily available access to sanitation supplies and COVID testing.

**Defender-Led Change**
The Metropolitan Public Defender (MPD), the largest single provider of public defense services in Oregon,
mounting a coordinated, aggressive campaign to argue that people should not have to pay bonds in order to be released, using a combination of constitutional, case law and statutory arguments. MPD is receiving assistance from the Civil Rights Corps in this effort.

**Prosecutor-Led Change**
Candidates for Multnomah County District Attorney have made pretrial reform a key issue in their campaigns. Ethan Knight, a former deputy district attorney for the county and a federal prosecutor, has stated that reducing pretrial detention requires connecting people to services that address substance and mental health issues outside of jail before the court date, and that court-ordered fines and fees compound issues of poverty. Mike Schmidt, who also has experience as a deputy district attorney and is director of the Oregon Criminal Justice Commission, has stated that he would eliminate cash bail.

**Community & Grassroots Action**
Oregon DA for the People, a coalition of families, formerly incarcerated people and allies, has developed a People’s Platform for criminal justice reform. The platform includes: the end of targeting communities of color; declining to prosecute people with mental health needs; decriminalizing homelessness, sex work, and drug use; ending the prosecution of children as adults; and ending mass incarceration. The organization has also held district attorney candidate forums, organizer trainings and phone banking events.

**PENNSYLVANIA**

**COVID-19**
District Attorney for Philadelphia Larry Krasner issued guidance to his office regarding responses to COVID-19, including: not holding any person charged with non-violent felonies or misdemeanors for any amount of cash bail; encouraging assistant district attorneys to delay prosecution when immediate arrest is unnecessary; and working with the public defender to consider bail reduction requests.

Philadelphia Police Commissioner Danielle Outlaw announced that police will be delaying arrests for non-violent crimes, including drug offenses, theft and prostitution. The decision to arrest a person believed to pose a threat to public safety will be made in consultation with a supervisor. The announcement was supported by the Fraternal Order of Police.

**Pretrial Litigation**
A federal judge granted summary judgment to the Philadelphia Bail Fund, which presented the issue of “whether the plaintiff is entitled under the First Amendment to audio-record bail hearings in the Philadelphia Municipal Court where the court itself only makes inferior recordings for internal purposes and does not make official recordings or transcripts of those proceedings.” The court found that rules prohibiting recordings are unconstitutional under the First Amendment, insofar as the court does not make its own official audio recordings or transcripts available to the public. The Bail Fund was represented by the Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center (ICAP).

**Community & Grassroots Action**
The Philadelphia Bail Fund, the Philly Community Bail Fund, the #No215Jail Coalition, POWER Interfaith, Live Free and other organizations held a People’s Hearing on Bail and Pretrial Punishment on Martin Luther King Day. The event featured testimony from people directly harmed by pretrial detention and called for pressure on elected and appointed officials to end the use of money bond.

**RHODE ISLAND**

**COVID-19**
The Rhode Island Department of Corrections is submit-
ting weekly lists of people being held on low bail amounts to the public defender’s and attorney general’s offices for assessment to be released. Rhode Island has a unified system, meaning that the prisons and jails are operated at the state level.

**Selected Legislation**

SB 2552 would create a presumption of non-monetary conditions of pretrial release, and the imposition of the least restrictive conditions or combination of conditions necessary to reasonably ensure court appearance and protect the integrity of judicial proceedings from a specific threat to a witness or participant. The court would be required to consider a person’s socio-economic circumstance when setting conditions of release or imposing monetary bail.

HB 7143/SB 2288 would not permit courts to impose financial conditions of release on a person charged with only a misdemeanor, unless that person is charged with a domestic violence offense, or that person requests financial conditions, or if the court makes a finding that there is a ‘likely risk’ that the person will fail to appear in court or obstruct justice.

**SOUTH CAROLINA**

There is no information for this state at this time. Check back next quarter.

**SOUTH DAKOTA**

**COVID-19**

On March 13, the Chief Justice of South Dakota Supreme Court declared a judicial emergency, and authorized presiding judges of the state’s seven judicial circuits to “adopt, modify and suspend court rules and orders... as warranted to address the spread of COVID-19 in their areas.”

The Pennington County Jail Review Team, which previously met every other week, is meeting two days a week by email to review the jail population for people to recommend for release. The county has also discontinued drug and alcohol testing as a condition of pretrial release when possible.

In Minnehaha County, judges are providing immediate bond reviews for people who are symptomatic, and the fine and bond schedule has been altered to increase the number of offenses eligible for cite-and-release, and personal recognizance bonds.

**TENNESSEE**

**COVID-19**

A broad coalition of state-based and national organizations led by the Choosing Justice Initiative filed an emergency petition with the state Supreme Court to take immediate action to substantially reduce the population of local jails and juvenile detention centers and reduce new admissions to local jails.

**Pretrial Litigation**

The Civil Rights Corps (CRC), ICAP and Baker Donelson have filed a lawsuit against the sheriff, judge and judicial commissioners of Hamblen County. The suit of Torres v. Collins argues that the judge and judicial commissioners routinely and unconstitutionally set unaffordable bond amounts, and that the inhumane and unsanitary jail is operating at 170 percent of capacity as a result.

The ACLU of Tennessee, CRC and Choosing Justice Initiative filed suit on behalf of Nashville Community Bail Fund (NCBF) against the Criminal Court Clerk for Davidson County, arguing that garnishing fines and fees from bonds posted with the court is unconstitutional. On March 18, the United States District Court Judge Aleta Trauger granted a preliminary injunction, prohibiting garnishment of bonds posted by NCBF, in the case of NCBF v. Gentry.
TEXAS

COVID-19
On March 29, Governor Greg Abbott issued an Executive Order precluding “the release on personal bond of any person previously convicted of a crime that involves physical violence or the threat of physical violence, or of any person currently arrested for such a crime that is supported by probable cause.” Under the order, release on secured bond would still be permitted. The same order also prohibits automatic release on bond due to the state not being ready for trial.

Community & Grassroots Action
The Texas Criminal Justice Coalition (TCJC) and the Texas Organizing Project released a first-of-its-kind report, ranking judges in Harris County according to their money bail practices. The report also calculates the county’s cost of pretrial detention compared to other municipal services.

UTAH

Selected Legislation
Governor Gary Herbert signed HB 206 into law which creates new funding for pretrial services and new procedures regarding pretrial release and detention. Except as provided, the court is required to release people on their own recognizance on the condition that the individual appear at all required court proceedings, unless the court finds that “additional conditions are necessary to reasonably assure compliance” with court appearance, safety of witnesses or victims or the public, or prevent obstruction of justice. If the charges include offenses eligible for detention, the court must set a hearing as soon as practicable, and the hearing will include the right to counsel and the ability for both parties to make arguments. The bill also contains pretrial release data collection requirements.

The governor also signed SB 193 into law, which amends reporting requirements for county jails. Under the new law, jails must report: the average daily population each month; the number of people in the county jail on the last day of each month who identify as each race or ethnicity included in the FBI Standards for Transmitting Race and Ethnicity; the number of people booked into jail; the number of people denied pretrial release; who sets financial conditions of release (bail commissioner or court); and the number of days a person is held in custody before disposition of the charges.

VERMONT

Community & Grassroots Action
VTDigger, a non-profit online news organization, hosted “How to Fix a Jail,” a community discussion on criminal justice reform. Speakers featured Janos Marton, who led policy strategy in the Close Rikers campaign, and Chittenden County State’s attorney Sarah George, who advocated for arresting fewer people, detaining fewer people, and sentencing people for “far less time.”

VIRGINIA

Selected Legislation
The legislature passed SB 818, which establishes a behavioral health docket. The law is intended to “to promote public safety and reduce recidivism by addressing co-occurring behavioral health issues, such as mental illness and substance abuse, related to persons in the criminal justice system.”

SB 723 would require the Department of Criminal Justice Services to implement a pilot program for uniform reporting mechanisms for criminal justice agencies to collect data relating to bail determinations.
WASHINGTON

COVID-19
The Supreme Court of Washington issued an order requiring, among other actions to address the risk of COVID-19, that courts shall hear motions for pretrial release on an expedited basis; that people identified as vulnerable or at-risk constitutes a ‘material change in circumstances’ allowing the amendment of a previous order or conditions of release; parties may present agreed orders for release of in-custody defendants which should be signed expeditiously.

The Spokane Municipal Court issued an emergency order that people booked into jail on low-level misdemeanor charges, whether they were pre- or post-conviction, be released.

A coalition of criminal justice advocates, including the ACLU, Disability Rights Washington, Living with Conviction and the Spokane NAACP, sent a letter to Spokane County and City officials, requesting that they take immediate steps to mitigate the risk of exposure to COVID-19.

The ACLU also worked with allies to send a letter to King County and Seattle government officials, asking them to take immediate steps to protect the health of people in the King County Jail or facing the possibility of entering the jail. The King County Department of Adult and Juvenile Detention responded that the adult jail has been decreased by approximately 25%, 1,940 to 1,434, with the goal of quickly decreasing the population so that each person remaining in custody will be in a single cell.

WEST VIRGINIA

COVID-19
On March 27, the Administrative Office of the West Virginia Supreme Court of Appeals issued guidance to courts regarding people in pretrial detention. “It is requested that Circuit Judges and Magistrates contact the Prosecuting Attorney in each county and request that the Prosecutors and the Assistant Prosecutors review the most recent list of pretrial detainees to identify any pre-trial individuals who do not constitute a public safety risk and may be appropriate candidates for PR or reduced bond...Once those individuals are identified, the Prosecutor and defense attorney may consider submitting an agreed order for a PR or a reduced bond, and the judicial officer should deem such requests as emergency, time-sensitive matters for consideration.”

Selected Legislation
Governor Jim Justice approved HB 2419 which requires that a judicial officer shall release a person charged with a misdemeanor on own recognizance, unless that person is charged with certain specified offenses. The new law also requires that when a person remains incarcerated due to an inability to meet the requirements of a secured bond after initial appearance, the judicial officer who set the bond must hold a hearing within 72 hours of setting the initial bail amount to determine if there are conditions which can “assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community or the safety and maintenance of evidence.”

WISCONSIN

COVID-19
Sauk County Circuit Court issued guidelines for handling different types of proceedings; courts are permitted sua sponte, or on their own accord, to modify bond on any person held on a $1000 or less cash bond.

WYOMING

There is no information for this state at this time. Check back next quarter.
## Pretrial Activity by State

Following is a list of the major Q1 pretrial activities mentioned in this report by state and category.

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