

Q4 2020

What's  
Happening in  
**PRETRIAL  
JUSTICE**



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## Fourth Quarter Remarks

COVID-19 continues to ravage the U.S., and one of the most dangerous places is in our nation's prisons and jails. The Marshall Project, which has been [tracking data](#), estimates that (as of December 15) 1,738 people died from COVID-19 in a correctional facility in 2020. In Michigan, a state where mass testing has been instituted in prisons, the infection rate is 2,825 per 10,000 people, or a rate more than 8 times greater than the state overall. In some states, more specific data is available. The University of Texas at Austin reports that, between April 7 and October 4, 2020, 190 people locked up in Texas prisons, 14 people in Texas jails, and 27 staff died from COVID-19, and the vast majority (80%) of people who died in jail were in pretrial status.

One of the key strategies to fighting the pandemic will be the vaccine, but even here, we see how people who live behind bars are degraded and devalued. According to a Federal Bureau of Prisons memo obtained by the Associated Press, staff will be prioritized for the vaccine allotment, not people who are serving time. The [Prison Policy Institute](#) reports that only 7 states have prioritized people who are incarcerated for vaccines; 13 states have similarly prioritized corrections staff. The politicization of who will be vaccinated, in spite of overwhelming evidence regarding who will be harmed, will ultimately harm all of us.

As we embark upon the new year, we all have a shared responsibility to ensure that the promises of 2020 around racial equity and meaningful criminal legal reforms can begin to be fulfilled in 2021. We must call upon system actors, policymakers and community members to look directly at our history of racism so we can redefine the future. And here at PJI, we will also provide a forum for co-creating solutions through a racial equity lens, making sure that the metaphorical table includes voices that have been excluded or marginalized.

This is the last edition of What's Happening in Pretrial Justice in a quarterly, print format. For 2021, we will be sharing the latest pretrial news with you through a monthly digital newsletter. If you need to sign up, visit, [pretrial.org](https://pretrial.org).

In solidarity,  
Team PJI

## A note about the format

**What's Happening in Pretrial Justice** is arranged by state, so readers can easily get a holistic view of what's happening in specific places. For those of you seeking information across states, the table on page 34 shows which states have information in the respective categories seen below:

- 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
- COVID-19

Please note, the **COVID-19** category summarizes changes in court practices and lawsuits regarding jail conditions. We also urge you to check resources that are maintained more frequently due to the fast-moving demands of the pandemic.

We also have an **interactive version** of this report, including a searchable map and additional stats, at [pretrial.org/WHIP/](https://pretrial.org/WHIP/).

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](https://university.pretrial.org). Got information to suggest for the next edition? Please email [wendy@pretrial.org](mailto:wendy@pretrial.org).

## 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

In [Karr v. Alaska](#), the Court of Appeals found that the COVID-19 pandemic qualifies as “new information” for purposes of granting a bail review hearing, and that the trial courts erred by declining to grant the appellants a bail review hearing.

In March, 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, were to be released on their own recognizance. In August, the presiding judges issued a [second administrative order](#) with similar provisions.

## ARIZONA

### COVID-19

On June 12, the [number of people testing positive for coronavirus](#) in the Maricopa County (Phoenix) jail exceeded the number of cases for the entire state prison population. One in fourteen people incarcerated in the jail, or 313 out of 4,400 tested positive, compared to 252 cases among the nearly 41,000 people in Arizona’s prisons. The Maricopa County jail reduced its population by more than one-third in anticipation of outbreaks.

### Prosecutor-Led Change

The District Attorney for Maricopa County has unveiled a [data dashboard](#). The dashboard shows types of charges, disposition of cases and the race of court-involved people. The data dashboard reveals that drug charges make up 45% of all cases filed, and that Black people make up 17% of all referred cases, even though the county is only 6.4% Black.

### 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, if any; and any reason pretrial release was not granted, if applicable.

### Executive-Branch Led Change

**NEW** The Pima County Board of Supervisors has [approved the creation of a community bond](#) program to be operated by a to-be-named non-profit organization. The community bond program would be allowed to post bond for people who have had bond set at less than \$30,000 and are not charged with certain crimes.

**NEW** The Pima County Jail Population Review Committee, a partnership of criminal justice agencies and service providers emphasizing housing and wrap-around services for people released from jail, [has found that in less than two years, 467 people have been released](#), saving the county 21,479 days in jail. Among the 467 released, 150 said they were homeless and 19 were veterans.

## ARKANSAS

### COVID-19

As of mid-June, [more than one-third of new COVID-19 cases in the state](#) were attributed to jails and prisons, with the majority occurring at the Benton County jail and a state prison.

## CALIFORNIA

### COVID-19

**NEW** In response to a lawsuit brought by the ACLU and Munger, Tolles & Olsen, the Orange County Superior Court has ordered a 50% reduction in Orange County jail populations in order to create conditions that allow for sufficient social distancing and other measures to reduce the risk of a COVID-19 outbreak. The lawsuit of [Campbell v. Barnes](#) was styled as a writ of habeas corpus on behalf of two medically-vulnerable people in the jail and a writ of mandate. The county must file a plan with the court no later than December 31 detailing how the reduction has been achieved, and how the county will

continue to keep the population at a lower density. In response to a dramatic spike in COVID-19 cases at the Santa Rita jail, community members and local organizers gathered for a march and press conference to demand accountability on behalf of the Alameda County Sheriff's Department. On July 16th, jail officials reported 40 new cases; by July 22nd, 178 people had tested positive at the jail. Eighty-five percent of people at the jail are being held pretrial, and a hotline has been set up to call and discuss jail conditions. A website, [Santa Rita Jail Solidarity](#), collects testimonies from people currently or formerly incarcerated at the jail.

The California Judicial Council voted to [rescind its emergency order](#) which created a presumptive \$0 bail schedule as a way of reducing jail populations during the COVID-19 outbreak, but urged counties to maintain the emergency schedule "where necessary to protect the health of the community, the courts, and the incarcerated." Los Angeles, Alameda, and San Diego counties are among those localities that announced that they would continue operating under the emergency bail schedule.

A coalition of civil rights organizations [sued](#) Los Angeles County and the sheriff, home to the nation's largest jail system, claiming that "nearly 12,000 people in the Los Angeles County's jails are forced to suffer unconstitutional conditions that deny them the precautions and protections necessary to mitigate against the risks of COVID-19." According to the suit, people in the jails have no way to wash or dry their hands, maintain an adequate distance from each other, or receive testing even while showing symptoms.

San Francisco District Attorney Chesa Boudin [directed attorneys](#) not to oppose motions for pretrial release in cases involving misdemeanors or drug-related felony charges if the person is deemed not to pose a risk to public safety. He also asked his attorneys to consider credit for time served in plea deals. The jail population

in San Francisco had [fallen by 25%](#) in March as part of a response to the threat of the coronavirus.

### [Prosecutor-Led Change](#)

San Francisco District Attorney Chesa Boudin [announced](#) that his office will no longer seek cash bail, and instead rely on an assessment tool to make determinations of potential risks to public safety. 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 individuals pretrial without affecting court appearance or public safety.

### [Executive Branch Led-Change](#)

The Los Angeles County Board of Supervisors voted unanimously in favor of two motions to expand data collection in order to promote transparency around local criminal justice statistics. The [first motion](#) would require data collection that examines pretrial release before and after the beginning of the COVID-19 pandemic in an attempt to maintain the reduced jail populations achieved during the pandemic. The second motion would, with privacy protections, make public information about incarceration, probation, mental health, use-of-force, prosecution and diversion, broken down by race, gender, age and other demographic measurements.

### [Pretrial Litigation](#)

The Supreme Court of California has ruled that the federal constitutional holdings in Part III the [appellate court decision](#) of *In re Humphrey* are binding in the state, pending the state supreme court's review of the whole case. Trial courts are required to consider an individual's financial

circumstances and ability to pay before setting bail. A federal judge has allowed a first-of-its-kind antitrust lawsuit, alleging that sureties and bail bond companies acted in concert to charge the maximum bond premium and avoid competitive pricing, to proceed. In [Crain v. Accredited Surety](#), Judge Jon Tigar rejected an argument from the bail bond industry that they were immune from liability under state and federal law.

### [Selected Legislation](#)

**NEW** Voters rejected Proposition 25, which would have upheld SB 10, by a margin of 56% to 44%. SB 10 would have restructured the pretrial system in the state by removing cash bail and requiring pretrial assessments.

### [Community & Grassroots-Led](#)

The California Policy Lab has released a new report, [Alternatives to Prosecution: San Francisco's Collaborative Courts and Pretrial Diversion](#), examining outcomes for the 16,000 individuals referred to diversion programs over a 10-year-period.

A new [study](#) from the Public Policy Institute of California suggests that SB 10 would not address long-standing inequities in arrests and bookings. Forty-nine percent of African-Americans who are arrested would be held for risk assessment under SB 10, compared to 37% of whites and Latinos, because of existing inequities in arrest, booking and criminal history.

The San Francisco Board of Supervisors voted to close the jail located in the city's Hall of Justice by November 1, 2020, accelerating a timeline originally set by Mayor London Breed for July 2021. The [ordinance](#), introduced by Supervisor Sandra Fewer, gained support after the jail population fell due to COVID-19 related releases. The ordinance also contains provisions for a subcommittee to implement long-term strategies to maintain lower populations in the jail, not including transfers to jails in other jurisdictions or increasing the number of beds in existing facilities. City officials worked with activists in

the No New SF Jails Coalition.

SF Pretrial (formerly the San Francisco Pretrial Diversion Project) announced that 51 hotel rooms have been made available to their clients, based on referrals from the courts. On their [website](#), SF Pretrial notes, "In addition to sustaining shelter and safe hygiene, our new supportive housing units will facilitate individualized client support through onsite case management, support groups, and connections to important community resources."

## COLORADO

### COVID-19

**NEW** The ACLU of Colorado has released a report, "[COVID-19 Jail Depopulation in Colorado](#)," praising the collective efforts of sheriffs, judges, district attorneys, public defenders and prosecutors to decrease jail populations in order to minimize the spread of coronavirus. At its peak, jail populations fell by 46% statewide. The organization now calls on policymakers to work toward maintaining such strategies into the future.

The ACLU of Colorado [sued the sheriff of Weld County](#), alleging that the jail violated the Eighth and Fourteenth Amendment rights of people who are confined in the jail with high risks of complications from COVID-19, including age, chronic health conditions, history of smoking, or pregnancy. Under a preliminary injunction, the court ordered the sheriff to provide a list of medically vulnerable people, and to institute policies that allow minimal distancing, sanitation, and increased monitoring.

Governor Jared Polis released a [6-page guidance letter to law enforcement and detention centers](#), emphasizing "prioritiz[ation 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% in response to the pandemic.

The jail population of Colorado's 15 largest counties [dropped by 30%](#) due to releases made to mitigate the spread of COVID-19. The size of the reductions varied by county; Jefferson County, the state's fourth-most populous county, had a 47% decrease while Weld County had a 15% decrease in jail population.

### Change in Practice

The University of Northern Colorado released its [study](#) of the current Colorado Pretrial Assessment Tool (CPAT) and its process of receiving feedback from system actors to construct a revised version.

### Prosecutor-Led Change

Most of Colorado's 22 district attorneys are running unopposed for their seats, but four populous jurisdictions including Adams, Arapahoe, Jefferson, and Larimer counties, have contested races. In those races, issues such as prosecution of drug possession cases, spending on jails, bail policy, police accountability, death penalty and life sentences, have become prominent issues. Only three other districts have contested races.

### Selected Legislation

Governor Jared Polis signed a package of police reforms ([SB 217](#)) into law. These reforms include: a ban on the use of chokeholds; new standards regarding the use of deadly force, including a prohibition of the use of deadly force when a person is suspected of a minor or nonviolent offense; data collection and reporting requirements; a duty on police officers to intervene when

a colleague is behaving inappropriately; and limits on the use of force on protesters.

[SB 179](#) would require each district attorney to collect data regarding demographics, charges filed, pretrial release results, and sentencing. The district attorney is required to create an annual report with the data collected and make the data available to the public upon request. This bill did not move out of committee before the end of the session.

[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. This bill did not move out of committee before the end of the session.

### 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

**NEW** The ACLU of Colorado released a [letter](#) outlining its concerns with the Colorado Pretrial Assessment Tool (CPAT) due to the results of a validation study conducted by the University of Northern Colorado. The UNC study revealed that the current version of CPAT incorrectly identified Black and people experiencing home-

lessness as “high risk” at a greater rate as when compared to white and housed people, and that the revised version of CPAT (CPAT-R) may be even more discriminatory. Moreover, the CPAT could only be validated for marginally relevant behavior such as missing a single court date or charges of low-level misdemeanors, rather than the likelihood of violent behavior or flight from prosecution.

The ACLU of Colorado, Colorado Freedom Fund and the family of Michael Marshall have launched the [Bringing Our Neighbors Home campaign](#) to raise public awareness 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

Due to restrictions on volunteers and visitors in correctional facilities, the Department of Corrections has taken responsibility for ensuring that people in its facilities have the information necessary to register and cast a ballot. Packets provided by the Department of Corrections include information on who is eligible to vote, how to register and cast a ballot, and addresses to registrars offices as well as postage-paid envelopes for making requests.

A lawsuit brought against Governor Ned Lamont and the Department of Corrections by the ACLU has reached a settlement. [McPherson v. Lamont](#) concerned adequate protections for people, either in pretrial status or post-adjudication, while confined, from risks presented by COVID-19. The settlement includes the creation of a 5-per-

son agreement monitoring panel, mass testing, sanitation procedures and prioritized release for people who are age 65 or older or have a heightened medical risk score.

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.

### Pretrial Litigation

In September, the Supreme Court of Connecticut heard [arguments in a habeas action](#) regarding whether Joseph Moore received ineffective assistance of counsel because he was not advised of the state's pretrial offers (plea deals) before he was convicted; specifically, Moore said he was not aware that he would be facing more time in prison than if he had agreed to the state's pretrial offers.

### 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, and the percentage of people charged who received pretrial diversion determined by race, sex, ethnicity and age; 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 and 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.

### Selected Legislation

[SB 222](#) would repeal HB 204, a set of pretrial justice reforms passed in 2018 to reduce reliance on monetary conditions of release. [SB 151](#), framed as a competing bill introduced in 2019, would amend the state constitution to create the presumption of right to bail except for capital offenses when the proof is positive or the presumption great. Neither bill passed before the legislature adjourned on June 30, 2020.

[HB 356](#) would require transparency in the use of pretrial risk assessment tools. Any data or information used to build or validate the tool must be open to public inspection, auditing and testing, and creators of the assessment tools may not assert trade secret or intellectual property. Additionally, the tool may not be used until testing for bias has been shown not to increase or magnify bias against a protected class. This bill did not pass before adjournment.

## FLORIDA

### COVID-19

A lawsuit against the Miami Department of Corrections for inadequate protections for people against the risk of exposure to COVID-19 has resulted in a 45-day preliminary injunction for the Metro West Detention Center to provide adequate spacing, sanitation supplies and procedures and testing. The suit of [Swain v. Junior](#), brought by Advancement Project National Office, Community

Justice Project, Inc., Civil Rights Corps, GST LLP, DLA Piper and Dream Defenders, on behalf of all medically vulnerable people who were detained solely because they cannot afford cash bail.

The ACLU of Florida and Disability Rights Florida brought a lawsuit against the Broward County jail, stating that correctional facilities in the county “have not instituted even the most basic safeguards for prisoners and staff” against the risk of exposure to COVID-19. [Barrett v. Tony](#) seeks an end to unconstitutional conditions of confinement and a process for releasing all medically-vulnerable people.

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 in late March](#) 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.

### Community & Grassroots Action

In a [press release](#), the ACLU of Florida urged the Miami-Dade County Commission to reject a \$412 million jail expansion proposal, and instead look at proposals to address pretrial detention and community needs such as housing, healthcare, public space and jobs.

## GEORGIA

### COVID-19

The Southern Center for Human Rights and the ACLU

of Georgia have filed a lawsuit on behalf of four people held in the Clayton County jail, accusing jail administrators of failing to take reasonable steps to protect people from exposure to COVID-19. Attorneys in [Jones v. Hill](#) have asked the court to compel the sheriff's office to develop a plan to screen, monitor, and protect people in the facility.

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 for Human Rights (SCHR) sent a [letter](#) to all 159 sheriffs in Georgia, asking them to work with government officials to identify 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.

Governor Brian Kemp signed [HB 402](#) into law, which would not permit courts to release people charged with certain offenses, ranging from murder to driving under the influence of alcohol, on an “unsecured judicial release,” formerly known as release on recognizance. The bill also prohibits people charged with certain offenses from being given a signature bond so they can enter a pretrial release or diversion program; a judge can order participation in such a program if that person can afford to post bail.

### Community & Grassroots Action

The ACLU of Georgia, working with law professors,

computer science students, and student and community volunteers, has released a [study](#) examining how closely Georgia courts complied with four legal requirements set under recent bail reform legislation and litigation: an evaluation of ability to pay; holding an individualized bail hearing that evaluates a person's finances within 48 hours of arrest; guaranteed release within 48 hours on a misdemeanor charge; and availability of a public defender when bail is set. Not a single county was in full compliance; most counties satisfied only one or two requirements.

## HAWAII

### COVID-19

The Supreme Court of Hawai'i [ordered](#) that all people charged with and held on a petty misdemeanor or misdemeanor offense be released, with a date to appear in court at a future date, as a response to the threat of COVID-19. As of mid-August, 170 out of 968 people held at Oahu Community Correctional Center and 34 staff had tested positive for the virus.

### 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% 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

Looking at data from the Cook County jail and the Illinois Department of Public Health, researchers from Harvard University found that [almost 16% of all COVID-19 cases](#) in the state were associated with the presence of people who had cycled through the Cook County jail. These findings have been disputed by the Cook County sheriff, whose office released a statement that cases were coming into the jail, not the other way around.

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*.

### Legislative Branch-Led Change

**NEW** State Senator Robert Peters introduced SB 4025, the Pretrial Fairness Act, which would eliminate cash bail, allow pretrial detention under certain circumstances, and mandate the collection and release of pretrial data. Due to modified Senate procedures as a result of COVID-19, it had not been officially read into the record as of this writing.

[HB 4613](#), introduced by Rep. Robyn Gabel, would amend the Children and Family Services Act, to study the availability of youth services to reduce the use of youth detention, and permit pretrial detention only when: the youth is 13 years of age or older; there is probable cause to believe the youth is delinquent, and secure custody is a matter of “immediate and urgent necessity in light of a serious threat to the physical safety of a person or persons”; or to secure the presence of the youth at the next hearing, as evidenced by a demonstrable record of willful failure to appear within the last 12 months.

### 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

**NEW** Researchers from Loyola University have released [findings related to General Order 18.8A](#), an order issued by the Chief Judge of the Circuit Court of Cook County in 2017, which established a presumption of release without monetary bail. The study found that order increased the use of individual recognizance bonds (also known as i-bonds), from 26% to 57%, while having no impact on court appearance or new criminal activity. Researchers also estimated that \$31.4 million in bond costs were avoided due to the increased use of i-bonds.

**NEW** The Coalition to End Money Bond and the Illinois

Network for Pretrial Justice held three digital town halls to provide information about the movement to end money bond, the harms of pretrial incarceration, and the proposed Pretrial Fairness Act. Each of the town halls was hosted by a member of the Illinois General Assembly. [Recordings of the town hall discussions](#) can be found on the Facebook page of the Coalition to End Money Bond.

The Illinois Network for Pretrial Justice hosted a [teach-in](#) about the Pretrial Fairness Act, which would outlaw money bail, allow judges to issue a notice, rather than a warrant, for nonappearance in court, and limit pretrial detention.

[Data from the Juvenile Monitoring Information System \(JMIS\)](#), which reflects information from 16 juvenile detention centers in Illinois, revealed that approximately 50 children under the age of 13 have been held before trial so far in 2020. Additionally, for the month of July, Black children made up 63% of admissions.

[“Protecting Public Health through Decarceration: Holding Cook County’s Criminal Courts Accountable During the COVID-19 Pandemic”](#) documents the extent of net-widening during the pandemic. As of March 17, the jail population at Cook County was 5,588, and approximately 2,400 people were on electronic monitoring. The population dropped and then began to rise again; as of September 4, the jail population was over 5,000, but the number of people on electronic monitoring was 3,365 (as of August). Ninety-one percent of people on EM were either Black or Latinx.

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

### COVID-19

The Supreme Court of Indiana rejected a petition by the ACLU requesting emergency rulemaking to reduce the number of people in jails and prisons as a response to COVID-19. The court stated in its [order](#) that many counties had already undertaken steps to reduce the number of people confined in jails and prisons, and "Indiana trial courts already have tools at their disposal to determine if pretrial detainees and convicted persons should be released from incarceration."

### Judiciary Branch-Led Change

The Indiana Evidence Based Decision Making (EBDM) Initiative Pretrial Work Group received the results of a [multi-county study](#) regarding the impact of the Indiana Risk Assessment System-Pretrial Assessment Tool (IRAS-PAT) and the implementation of [Criminal Rule 26](#), which requires jurisdictions to use evidence-based practices to make pretrial release decisions. Judge Mark Spitzer, who leads the group, indicated that the group will review the results and adjust the state's pretrial standards accordingly, and grant pretrial certification to the pilot counties who participated in the study.

### Pretrial Litigation

The Indiana Court of Appeals found that a trial court abused its discretion in denying a man's motion to reduce his \$250,000 cash-only bail. In [Yeager v. Indiana](#), the court found that Yeager presented evidence of substantial mitigating factors, including his lifelong residence in the area, steady employment, and no criminal history except for a law enforcement encounter 15 years earlier. The court also noted that the only evidence that Yeager presented a threat to anyone was the evidence in the present case, which violated the presumption of innocence.

### 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% of people in Iowa jails are there because they cannot afford the bond amount in their case.

### Selected Legislation

Governor Kim Reynolds signed a police reform bill that was introduced, debated and passed in the Iowa legislature in a single day. [HF2647](#) allows the attorney general to prosecute criminal offenses committed by police officers; restricts the use of chokeholds; and mandates annual training for law enforcement officers regarding bias and de-escalation techniques.

## KANSAS

### Judiciary Branch-Led Change

**NEW** The Ad Hoc Pretrial Justice Task Force, appointed by the Kansas Supreme Court in 2018, delivered its

[report to the court](#). The report includes a breadth of recommendations, including: pretrial release education to district and municipal courts; data collection; use of notice to appear rather than arrest for non-violent misdemeanor charges; increased resources for and use of mental health organizations, crisis intervention centers and diversion for drug-related offenses; and access to defense counsel at first appearance. With regards to pretrial risk assessment, the task force recommended a pilot program where some jurisdictions would use a scored and validated tool, and others would receive the same information but no algorithm-based score.

A Supreme Court task force on pretrial detention practices hosted two public forums in September to answer questions and address concerns about its work before delivering the final report to the Kansas Supreme Court on November 6. The task force's draft report can be found [here](#).

### 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. This bill died in committee.

## KENTUCKY

### COVID-19

The Administrative Office of the Courts revealed that the percentage of people granted administrative release (own recognizance) increased from 10% to 39% (as of April) in [response to the threat of the coronavirus](#). During roughly the same period, arrests decreased in the state; most people were cited to court rather than arrested if charged with non-violent or non-sexual offenses.

As of June 1, the Supreme Court of Kentucky implemented an emergency administrative [release schedule](#) to expedite release as a response to COVID-19. Any person charged with a non-sexual and non-violent misdemeanor, or a non-sexual and non-violent Class D felony and not assessed as high risk for new criminal activity, shall be released on recognizance by pretrial services with some exceptions.

### 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

[Who's Got the Power: How to urgently decarcerate Louisiana in the era of COVID-19](#) from the Vera Institute of Justice is a succinct guide to powers possessed by the governor, mayors, sheriffs, chiefs of police, district attorneys and judges to release people, and the basis for that authority. Forty-two percent of incarcerated people tested for COVID-19 by the Department of Corrections

have tested positive.

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](#).

### **Defender-Led Change**

Journalist Soledad O'Brien facilitated a [conversation](#) with public defenders, a judge and formerly-incarcerated person on the state of indigent defense in the state. Louisiana only funds 41% of the public defender system; the rest is funded by user fees. The conversation was hosted by [For the Sixth](#), an organization dedicated to saving public defense and ending user pay in Louisiana.

### **Pretrial Litigation**

Two cases, [Moran v. Landrum-Johnson](#) and [Matthews v. Herman](#), concerning the setting of financial bail with-

out inquiring into ability to pay and conflicts of interest between judges who set bail and manage the court's finances, have been consolidated. Both suits have been brought against all judges of the Orleans Parish Criminal District Court except for Judge Harry Cantrell, since an identical suit was brought against Cantrell earlier this year.

### **Selected Legislation**

Governor John Bel Edwards signed [HB 129](#) into law. The new law includes the successful completion of a pretrial diversion program resulting in the district attorney declining to prosecute as the basis for a motion to expunge a record of arrest.

[Senate Concurrent Resolution 7](#) passed both houses to "create a Police Training, Screening, and De-escalation Task Force to study and make recommendations to the legislature on the topics, among others, of training, screening, de-escalation, racial bias recognition, misconduct, duty to report misconduct, penalties, use of force, identifying and eliminating bad actors."

[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.

### **Community & Grassroots Action**

[Justice Can't Wait: An Indictment of Louisiana's Pretrial System](#), a report from the ACLU of Louisiana, shows that the pretrial incarceration costs the state nearly \$290 million every year and 57% of people in jail have been arrested for non-violent offenses. Louisiana's pretrial incarceration rate has increased 10.3% over the last four years, and Black people are more than twice as likely to be jailed pretrial than white people.

## MAINE

### Selected Legislation

[LD 1295](#) would direct the Department of Health and Human Services and the Department of Corrections to determine the current need for forensic emergency and crisis beds to ensure the prompt and humane treatment of arrested individuals who have mental illness needs and are awaiting trial.

[HB 1421](#) would change some procedures relating to the setting of bail, including: a rebuttable presumption that a person must be released on personal recognizance without condition, except for formerly capital offenses; the judicial officer will order pretrial release subject to least restrictive conditions unless a judicial officer determines by the preponderance of the evidence that release will result in an imminent risk of willful flight or a specific and serious imminent risk of harm to a reasonably identifiable person; and a judicial officer must find by clear and convincing evidence that the imposition of a financial condition is not in excess of that reasonably necessary to ensure appearance, and that determination must include consideration of whether the person receives public assistance and the amount that the person's family can pay with jeopardizing health care, housing or the ability to purchase food.

## MARYLAND

### COVID-19

Civil Rights Corps sued the Prince George's County jail on behalf of people with pretrial and post-conviction status, arguing that they are "denied even the minimal precautions necessary to mitigate against the risks of COVID-19," such as soap and prompt access to medical care. The court in [Seth v. McDonough](#) granted a temporary restraining order in part, requiring the jail to treat people identified as "high risk," provide training staff and develop a protocol for identifying and isolating

people who test positive.

The Lifer Family Support Network filed a [petition](#) with the Court of Appeals to use its extraordinary powers to prioritize the release of prisoners at the greatest risk of contracting coronavirus, require county courts to expedite decisions on releasing people incarcerated, and cease new admissions into the state's jails and prisons, unless necessary to address a public safety threat. A week after the petition was filed, the Chief of the Court of Appeals issued [guidance](#) to trial courts to consider the risk posed by correctional facilities.

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 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.

### Community & Grassroots Action

**NEW** The Public Justice Center discussed issues relating to the pandemic, pretrial justice and police reform in its "Justice for Breakfast" video series. The Public Justice Center partnered with the ACLU and the Job Opportunities Task Force to discuss its lawsuit to reduce pretrial jail populations during the pandemic, promote transparency of police officer disciplinary records, and remove police from schools.

### Selected Legislation

[HB 49/SB 68](#) has passed. The new law requires jurisdictions that use pretrial risk scoring instruments (formerly known as pretrial risk assessments) 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

### COVID-19

In response to a [petition brought by the Committee for Public Counsel Services](#) and the Massachusetts Association of Criminal Defense Lawyers regarding the safety of people in correctional facilities during the pandemic, the Supreme Judicial Court of Massachusetts has ruled that “pretrial detainees who have not been charged with an excluded offense...are entitled to a rebuttable presumption of release on personal recognizance, and a hearing within two business days of filing a motion for reconsideration of bail and release.”

### Pretrial Litigation

The Supreme Judicial Court of Massachusetts held in [Commonwealth v. Norman](#) that the pretrial imposition of GPS monitoring is not allowed if it is not tied to the permissible goals of pretrial conditions 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.

### Community & Grassroots Action

The Harvard Law School Criminal Justice Policy Program has released a new [report](#) examining the factors that contribute to racial disparities throughout the criminal legal system in Massachusetts, where Black people are imprisoned at a rate 7.9 times that of white people, and Latinx at 4.9 times that of white people. Black and Latinx people are less likely to have their cases resolved through less severe dispositions such as pretrial proba-

tion or continuances without findings. One factor, racial and ethnic differences in the type and severity of initial charge, accounted for over 70% of the disparities in sentence length.

## MICHIGAN

### COVID-19

Michigan State Appellate Defender Office and Criminal Defense Resource Center have created a [trial motions bank](#) for defense attorneys to provide support during the pandemic. Pretrial motions include: emergency motion for modification of release decision; motion to challenge to continued pretrial confinement of at-risk clients; and emergency motion for pretrial release due to public health and safety threat.

The ACLU, Advancement Project and Civil Rights Corps brought suit against Oakland County and its sheriff on behalf of people held at the jail, including a man unable to bond out, seeking basic protections for people at risk of exposure to COVID-19. While the lower court initially granted a preliminary injunction to plaintiffs in [Cameron v. Bouchard](#) for release of medically vulnerable people, basic sanitation, distancing and training protocols, the county successfully moved for a motion to stay the order in part because the Sixth Circuit had vacated a similar preliminary injunction on the argument that officials did not act with “deliberate indifference.”

Civil Rights Corps, Advancement Project, Detroit Justice Center and Venable LLP brought suit against Wayne County and its sheriff alleging that conditions at the jail violated the Eighth and Fourteenth Amendments. Plaintiffs have filed an emergency motion for expedited consideration of a temporary restraining order in [Russell v. Wayne County](#), noting that at the time of filing, two jail physicians and two deputies at the jail had died of 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: a) in making pretrial release decisions, including in determining any conditions of release.”

### Legislative Branch-Led Change

**NEW** The Michigan legislature passed several criminal justice reforms, including SB 1046, which expanded the use of citation tickets in lieu of arrest, and HB 5846, which will reduce driver’s license suspensions for offenses not related to dangerous driving, such as driving without a valid license. Driving without a license is the third-most-common reason for jail admission in Michigan.

The Michigan Joint Task Force on Jail and Pretrial Incarceration introduced a suite of bills designed to reduce jail admissions. These bills include ending the suspension of driver’s licenses for reasons unrelated to unsafe driving (driving with a suspended license is the third most common charge resulting in jail admission) and increasing the use of appearance citations and summonses. Summaries of the bills can be found [here](#).

### Selected Legislation

[SB 1046](#) and [SB 1047](#) would encourage the use of citations and summonses over arrest. SB 1046 expands law enforcement discretion to issue appearance citations for misdemeanor offenses; SB 1047 creates a presumption for criminal summonses for certain offenses.

[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 determine 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, according to District Attorney Mike Freeman.

### Selected Legislation

In a special session, the Minnesota legislature passed a [set of reforms](#) (HF 1) collectively known as the Minnesota Police Accountability Act of 2020, and the bill was signed by Governor Tim Walz. The reforms include: limitations on certain types of restraints by police; the creation of independent use-of-force investigation regarding officer-involved deaths; a prohibition on warrior-style training; and a duty to intercede by police officers.

[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 bail, 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

### COVID-19

On April 9, the Attorney General for the state of Mississippi and the State Public Defender filed a [joint motion](#) in the state's supreme court to order senior circuit court judges to conduct weekly reviews of conditions of release for all people held before trial, without regard to whether they had been locked up more than 90 days. On April 23, Chief Justice Michael Randolph issued an [administrative order](#), requiring that all jurisdictions that had not conducted a review of pretrial release conditions within the past 30 days must do so within 14 days.

## 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.

### **Executive Branch-Led Reform**

The City Council of Kansas City approved a [resolution](#) from the mayor, Quinton Lucas, urging municipal courts to stop issuing warrants for those who fail to appear for low-level ordinance violations such as parking tickets. Instead, an administrative tribunal within the Parking and Transportation Commission will hear evidence and impose fines.

### **Pretrial Litigation**

**NEW** Arch City Defenders, along with private law firms, brought a lawsuit on behalf of people who had been held pretrial at the county jail. [Hopple v. St. Francois County](#) alleges inhumane conditions including extreme temperatures; withholding of food; overcrowding; and inadequate healthcare. The suit also alleges of culture of fear and violence in the jail, perpetuated by retaliation and fights arranged by deputies.

An attorney representing a group of people who have been placed on a wait list to receive legal representation from a public defender has sought to have the suit styled as a class action. The average time on the waitlist is 114 days; as of January 2020, 4,600 people were on the waitlist, including 600 people in pretrial detention. The ACLU, Roderick & Solange MacArthur Justice Center, and Orrick, Herrington & Sutcliffe are plaintiffs' counsel in [David v. Missouri](#).

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, which is embedded in the bill, 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."

### **Changing Practice**

The Supreme Court of Montana [issued a project update](#) regarding a five-county pilot program to employ the Public Safety Assessment. The five counties include Lewis and Clark, Yellowstone, Missoula, Lake and Butte Silver Stone. The report found that of people released under the PSA, 60% were released on own recognizance, and 40% had some form of cash bail required for release. Of those released before trial, 88% reported to court appearances (based on warrants for failure to appear) and 82% had no new arrests. Among people who had new charges, 2% were violent offenses.

## NEBRASKA

### Selected Legislation

Newly-passed [LB 881](#) contains provisions relating to pretrial justice. If a person is required to post bond but is financially unable to pay the amount and is indigent, the court shall appoint counsel for that person. Any person charged with misdemeanors or violations of city ordinances shall be released on personal recognizance unless: that person has a previous failure to appear in the past six months; if the judge determines that release will not reasonably assure appearance or could jeopardize safety; the person was arrested pursuant to a warrant. A person held in custody awaiting trial may not be held for a period of time longer than the maximum possible sentence authorized for such an offense.

[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 a person’s children, family, and community.”

## NEVADA

### Pretrial Litigation

The Supreme Court of Nevada issued an opinion in [Valdez-Jiminez vs. Eighth Judicial District Court](#) described as a “sea change” by public defenders in the state. The decision places restrictions on when money bonds can be used, and holds that a money bail amount that a person cannot pay is the equivalent of an order of pretrial detention. The court also held that a pretrial detention order can never be issued without a substantive finding that pretrial detention is absolutely necessary, and that this finding must occur at a prompt hearing, with counsel, applying the heightened evidentiary standard of “clear and convincing” evidence, and with findings explaining the basis for the decision on the record. That opinion can be found [here](#).

### Legislative Branch-Led Change

**UPDATE** Nevada lawmakers belonging to an interim committee to study bail and the use of pretrial detention have approved several recommendations to be used for drafting legislation in 2021. The committee also approved drafting a letter to the state Supreme Court, urging it to study racial bias in the Nevada Pretrial Risk Assessment Tool and to submit a report to the legislature. The committee had [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. The Las Vegas Metropolitan Police Department reported that 600 people were incarcerated for more than 7 days because they could not afford bond amounts of less than \$2,500. Clark County Detention Center reported that 40% of its pretrial detention population is Black, even though Black people make up only 11% of the county population.

### Pretrial Litigation

The ACLU of Nevada, the ACLU, O’Melveny & Myers and Franny Forsman have settled a class action against the state for failing to provide constitutionally adequate legal counsel to people who cannot afford attorneys. The settlement in [Davis v. Nevada](#) applies to all people facing formal charges in ten rural counties where the penalty includes the possibility of imprisonment.

## 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.

### Selected Legislation

Governor Chris Sununu signed [HB 1645](#) into law. Among

the provisions, the bill adds a bail commissioner to the commission on pretrial detention, pretrial scheduling, and pretrial services and adds a provision for determining whether the court will order the release of a defendant pending trial. The new law also makes it mandatory for police to report misconduct by fellow officers.

### Community & Grassroots Action

[Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire](#), a new report from the National Juvenile Defender Center, reveals that an absence of dedicated juvenile defense attorneys leads to many youth waiving their rights, and that nearly every aspect of the defense system is designed to devalue juvenile delinquency cases. The assessment also found that defense counsel is often not appointed early enough in a young person's case in the New Hampshire juvenile court system. Youth who are not detained sometimes appear at their first court hearing without having spoken with a lawyer, and the assessment team observed numerous young people pleading guilty to misdemeanor-level charges at their first court hearing, without legal representation.

## 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 person 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 person is to be monitored with

an electronic monitoring device.

### Judiciary Branch-Led Change

The [third annual report](#) on the impact of the state's criminal justice reform shows that the jail population continues to decline, decreasing 6.4% from 2018 to 2019, while the majority of people who are released return to court without being charged with new criminal activity. Sixty-five percent of people who are detained are faced with first-degree charges, such as homicide, aggravated sexual assault or serious weapons charges, or second-degree charges, such as robbery or aggravated arson. The racial proportions of the jail population remain similar to the population in 2012; in 2012, the jail population was 54% Black, 28% white, and 18% Hispanic, and in 2019, the jail population was 55% Black, 29% white, and 16% Hispanic.

### Pretrial Litigation

Consolidating two cases, [State v. Antoine McCray](#) and [State v. Sahaile Gabourel](#), the New Jersey Supreme Court found that the state cannot prosecute contempt charges for violations of conditions of pretrial release under the Criminal Justice Reform Act; "[t]he Legislature considered and rejected contempt sanctions during the drafting stage of the CJRA". No-contact orders, notably, are treated differently under CJRA and can be prosecuted under the contempt statute.

## NEW MEXICO

### COVID-19

The New Mexico Supreme Court [rejected a bid](#) from the ACLU and the Law Office of the Public Defender to expand the number of people released from jails as a response to the threat of coronavirus under the governor's executive order. The court said that the state's actions did not constitute "deliberate indifference" to the health and safety of the inmates under the Eighth Amendment.

### 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% 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 Yorkers United for Justice released [Principles for the Criminal Justice System in the Time of COVID-19](#), a set of recommendations designed to minimize the risks of new outbreaks. Pretrial justice-related recommendations include: law enforcement should refrain from arresting those people whose conduct do not post an immediate risk to public safety; law enforcement should not make arrests for failures to adhere to social distancing guidelines; people who do not pose an immediate risk of flight and do not pose a serious risk to an identifiable person should be released on own recognizance with appropriate conditions as necessary; courts should review cases of those in jail pretrial every 30 days.

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.

### Changes in Practice

The New York Criminal Justice Agency released a [Research Brief](#) discussing the updated Release Assessment,

used to provide New York City Criminal Courts with information about likelihood of court appearance. The updated Release Assessment recommended 85% of people for release during the first several months of its use. The updated Release Assessment was implemented in November 2019, shortly before bail reforms took effect in the state on January 1, 2020, which eliminated bail for most misdemeanors and non-violent felony cases; some changes were subsequently rolled back. [Updating the New York City Criminal Justice Agency Release Assessment](#) describes the process of identifying and weighing new factors for the updated assessment by Luminosity and the University of Chicago.

### Pretrial Litigation

**NEW** A Bronx Supreme Court Justice [rejected the posting of a \\$150,000 cash bail](#) by an unincorporated association known as Free Them All for Public Health because the association was “not in rightful possession” of the funds as required by law and had not been properly certified by the Superintendent of Insurance to operate a charitable bail organization, and because the person charged “would have no ‘skin in the game’ if Free Them All posted his bail.”

A boutique criminal defense and civil rights firm filed a [class action against the city of New York](#) and NYPD Commissioner Dermot Shea, alleging that the NYPD, violated and continues to violate the Bail Reform law by falsely imprisoning people charged with driving under the influence of alcohol with blood alcohol concentrations below 0.08. Under the new law, people with blood alcohol concentrations below 0.08 should be given a Desk Appearance Ticket (DAT) and an immediate release.

### Selected Legislation

Just three months after historic pretrial reforms went into effect in New York, the state [amended the reforms](#) in April. The changes made more charges eligible for cash bail and detention, expanded non-monetary

conditions, and created data collection requirements. The [Center for Court Innovation](#) projects that while the original reforms contributed to a 40% decline in people held pretrial in jail, the amended laws could create a 16% increase.

Following nationwide protests against police brutality, New York passed a suite of policing reforms. [A6144](#), known as the Eric Garner Anti-Chokehold Act, creates criminal penalties for law enforcement officers who use chokeholds or similar restraints resulting in physical injury or death. [A10609](#), the Police Statistics and Transparency (STAT) Act, requires courts to compile and publish racial and other demographic data of all low-level offenses, including misdemeanors and violations. [S6601](#) establishes that when a person is under arrest or in custody, the responsible law enforcement officer has a duty to provide medical and mental health care to that person, or can face liability for failure to provide care. Additional reforms allow the disclosure of disciplinary records of law enforcement officers ([A6144](#)), prohibiting race-based 911 calls ([A1531](#)), and establishes an Office of Special Investigation within the Office of the Attorney General to investigate and prosecute cases where the death of a person follows an encounter with a law enforcement officer ([S2574](#)).

### Community & Grassroots Action

[Pursuing Pretrial Justice Through An Alternative to Bail](#), a new study from MDRC, looks at the outcomes of the New York City’s supervised release program and finds that the program is associated with high court appearance rates, low arrest rates, and a substantial reduction in the use of money bond and pretrial detention.

Court Watch NYC (CWNYC) collected real-time data of what is actually happening in courtrooms following the first 100 days of bail reform taking effect on January 1. [SAME GAME, DIFFERENT RULES: Eyes on 2020: Lessons From the First 100 Days of New York’s Bail Reform](#) is based on over 360 hours observing 937 people

churn through criminal court arraignments from January 1 to March 10, 2020 and finds Black New Yorkers were much more likely to be arrested, charged with bail-eligible offenses, subjected to monetary bond and release under onerous conditions, and less likely to be released on their own recognizance, as compared to white New Yorkers. Additionally, prosecutors and judges often ignored requirements of the new law, and judges circumvented the intent of the law by setting partially secured bond amounts above both the cash bail and bail bond amounts, likely preventing many from getting free. CWNYP is a collaborative project between the Brooklyn Community Bail Fund, 5 Boro Defenders, and VOCAL-NY.

The Department of Criminal Justice Services [reports](#) that the jail population increased from 11,090 in July to 11,583 in August, the first time the state's jail population has risen month-to-month since September 2019. Community advocates blame the increase on rollbacks to bail reform which took effect on July 2.

The [No Price on Justice Campaign](#) released a first-of-its-kind report, [New York's Ferguson Problem](#), showing how the state's reliance on court fines and fees is racially biased and criminalizes poverty. The release of the report was accompanied by the introduction of the End Predatory Court Fees Act, sponsored by Senator Julia Salazar and Assembly Member Yuh-Line Niou, which would eliminate court fees, mandatory minimum fines, incarceration on the basis of unpaid fines and fees, and garnishment of commissary accounts. According to a study from the Federal Reserve Board, 6% of all U.S. adults struggle with court debt, but that percentage rises to 12% for Black families and 9% for Hispanic families.

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

### [Pretrial Litigation](#)

A lawsuit brought by the ACLU and Civil Rights Corps against officials in Alamance County is still continuing, but the two sides have reached agreement to some terms in a consent order for preliminary injunction. In [Allison v. Allen](#), local judges will change pretrial release policies to ensure that every person gets a prompt bail hearing with an individualized inquiry before a judge and receives access to counsel. In 2017, Alamance County judges required a secured bond in 93% of felony release orders and 85% of misdemeanor release orders.

### [Executive Branch-Led Change](#)

Governor Roy Cooper established the [North Carolina Task Force for Racial Equity in Criminal Justice](#). The Task Force's mandate is to develop evidence-informed strategies and equitable policy solutions that address the structural impact of intentional and implicit racial bias while maintaining public safety in the areas of law enforcement practices and accountability, and criminal justice practices, including pretrial release and bail practices. The task force will provide recommendations to the governor by December 1.

### [Community & Grassroots Action](#)

**NEW** Researchers at the University of North Carolina Criminal Justice Innovation Lab (UNCCJIL) and Western Carolina University have released a [first quarter evaluation](#) of reforms adopted in Judicial District 2, a rural area of the state. The report found that magistrates adhered to the decision-making tool's recommendations in nearly 80% of cases, and that pretrial bookings were lower than for the same period in 2019, but that the length of stay for those charged with misdemeanors

had increased, which may be attributable to an increase in bookings for violent misdemeanor charges.

The UNCCJIL released its [detailed analysis](#) of felony and misdemeanor charges brought in the state in 2019. The vast majority of charges were for non-violent misdemeanors. In 2019, the state charged 1.6 million misdemeanors and 340,000 felonies; 6.6% of misdemeanors and 16.4% of felonies were for violent crimes.

The UNCCJIL also created [The Citation Project](#), which seeks to improve policing practices by implementing and rigorously evaluating citations 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 inmate.

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 Ohio Organizing Collaborative and the Ohio Prisoners Justice League organized a [“Caravan to Columbus”](#) protest, calling on Governor Mike DeWine to release 20,000 people who are incarcerated.

The Supreme Court of Ohio issued [guidance](#) to local courts regarding COVID-19. “At bail hearings, issue recognizance bonds, unless there is clear and convinc-

ing 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 the release of people. 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.

### Judiciary Branch-Led Change

[Ohio Criminal Rule 46](#) took effect on July 1. The rule calls for the court to release a person on least restrictive conditions that will reasonably assure appearance in court, the protection or safety of any person or community, or prevent the obstruction of justice, when a person is not detained. Financial release conditions should be related to risk of non-appearance, and should be in the amount least costly to the person. Courts are required to establish bond schedules.

### Community & Grassroots Action

[Ohio Could Save Big By Implementing Bail Reform: A Fiscal Impact Analysis](#) estimates that ending wealth-based detention would save the state \$199-\$265 million annually. The report, from the ACLU of Ohio, also found that in all four jurisdictions that were analyzed, Athens, Cuyahoga, Franklin and Vinton counties, Black people were charged and jailed at much higher rates than white people.

## OKLAHOMA

### COVID-19

The Oklahoma Policy Institute [released its analysis](#) of the

risk that COVID-19 poses to jails in the state, concluding that jails could easily become overwhelmed by the virus because 50 of the state's 77 counties have no ICU beds and the fact that the state's failure to expand Medicaid has resulted in hospital closures and reduced services in rural communities.

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

The ACLU of Oregon created [resources for people in jail](#) to challenge the conditions of their confinement during the pandemic; resources include instructions on how to file a petition for writ of habeas corpus with an accompanying template and an affidavit on eligibility for counsel.

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 website 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. Plaintiffs are represented by the Oregon Justice Resource Center and the Sugerman Law Office.

### Defender-Led Change

The Metropolitan Public Defender (MPD), the largest single provider of public defense services in Oregon, is mounting a [coordinated 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 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, [stated at a candidate forum](#) 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, stated at the same forum that he would eliminate cash bail.

### Legislative Branch-Led Change

[Oregon Measure 110](#), also known as the Drug Decriminalization and Addiction Treatment Initiative, would remove criminal penalties for possession of small amounts of drugs, and establish the Drug Treatment and Recovery Services Fund to provide grants to government and community-run organizations to create addiction recovery centers. The Oregon Criminal Justice Commission estimates that the proposed reclassification would reduce the significant overrepresentation of Black people arrested for possession of a controlled substance.

### 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

The Supreme Court of Pennsylvania denied a [petition from the ACLU and the Public Defender Association of Pennsylvania](#) seeking an invocation of the court's King's Bench authority to release people from jails as a response to COVID-19. The court instead directed the lower courts to ensure that jails could comply with public health guidelines or else identify people for release.

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

The Pennsylvania Supreme Court declined to initiate large-scale reforms based on a special master inquiry into bail practices in the First Judicial District, which includes Philadelphia. Agreeing that no condition of release, monetary or otherwise, should be imposed for the sole purpose of ensuring incarceration before trial, and that cash bail amounts should be tailored to the individual, the court [requested](#) that the Court Administrator consider a number of proposals, such as judicial education, gathering financial information for an arrested person, and creating pretrial release forms employing "plain language."

The Pennsylvania Supreme Court [has agreed to consider whether Chapter 3 of the Rules of Criminal Procedure applies to Veterans Courts](#) and other diversionary and problem-solving courts. Joseph McCabe argues that Chapter 3 does apply, and that he had been "impermissibly denied full benefits of the Veterans Treatment Court program, namely a dismissal of charges, based upon his inability to pay full restitution." Chapter 3 governs the Accelerated Rehabilitative Disposition program for people charged with DUI.

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 [submitting 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

### COVID-19

The ACLU of South Carolina released [“We the People” Means All of Us](#), a call to action for the state to address the threat of COVID-19 by reducing jail and prison populations, protecting against abuses of expanded police, decriminalizing marijuana, and ensuring access to vote. The ACLU has also set up an email hotline ([covid19@aclusc.org](mailto:covid19@aclusc.org)) to receive reports of health violations in jails, prisons and detention centers.

## SOUTH DAKOTA

### COVID-19

On March 13, the Chief Justice of South Dakota Supreme Court David Gilbertson 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

The ACLU of Tennessee released a new [report](#), examining changes in total jail population and pretrial population in response to the threat of COVID-19. From December 2019 to April 2020, 64 of 120 facilities decreased their jail populations; by the end of April, one-quarter of facilities were operating at or above 75% of total capacity. The report also noted that 82% of the state's counties are rural, and three of those counties have some of the worst per capital coronavirus rates in the country due to outbreaks in prisons.

A federal judge ordered an inspection of the Shelby County jail after the ACLU and Just City Memphis filed a lawsuit on behalf of two older people in the jail who are at risk for complications or death from exposure to COVID-19. The judge also stated that older and medically-vulnerable people in the jail may be certified as a class in [Busby v. Bonner](#).

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

Civil Rights Corps (CRC), Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center 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% 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. The order was challenged by trial judges on the grounds that the order interfered with their ability to make individualized bail determinations; a trial court issued a temporary restraining order, blocking enforcement of the order, but on April 23, the Supreme Court of Texas [ruled in favor of Governor Abbott](#) on the grounds that the judges were not the proper parties to bring the suit. The court noted, "That does not mean the issues raised in this lawsuit are unimportant or cannot be litigated. If a defendant in a bail hearing contends the executive order is unconstitutional and the suspended statutes should continue to provide the rule of decision, the judge has a duty to rule

on that issue, and the losing side can challenge that ruling." ACLU, Texas Fair Defense Project and Civil Rights Corps brought the lawsuit.

### Judiciary Branch-Led Change

**NEW** The judges of Fort Bend County, the tenth most populous county in Texas, issued an [order regarding procedures for bail hearings and pretrial release](#), noting that in hearings to determine pretrial detention, due process requires an inquiry into a person's ability to pay; consideration of alternative conditions of release; and representation by counsel. When money bail is unaffordable for people charged with misdemeanors, such people are "presumptively entitled to a personal bond absent a finding on the record of either extraordinary circumstances or conduct" and no person "may be kept in jail due to...inability to pay a fee or cost associated with a condition of release."

### Pretrial Litigation

The Houston City Council voted to settle a class action for monetary damages on behalf of people who were detained for lengthy periods of time with no probable cause hearings, a violation of the Fourth Amendment. The plaintiffs in [Hernandez v. Houston](#) are represented by Civil Rights Corps and the Texas Fair Defense Project.

The federal monitor in *ODonnell v. Harris County* has issued its [first six-month report](#) with three major findings: Over 90% of people charged with misdemeanors are now released prior to trial, with 80% released within 48 hours; new criminal complaints for people who are released did not increase, but instead went slightly down; the racial disparities in pretrial release have been "almost entirely eliminated" since the new rules went into effect.

The Texas Court of Criminal Appeals raised the bond of a man who originally had a \$500 bond set by the court. The hearing officer who set the original bond amount had expressed concerns over exposure to COVID-19 in

the jail; the district attorney had requested detention without bond, and [subsequently sought to raise the bond amount to \\$50,000](#), the amount under the bail schedule. Under a rarely-used law requiring "sufficient and appropriate bond in the interests of public safety," the court of appeals raised the bond amount to \$100,000 in [Texas v. Singleton](#).

### Community & Grassroots Action

The ACLU of Texas has launched a free interactive online tool, the [Texas Jails Data Dashboard](#), to illustrate the cost of high rates of pretrial incarceration. The dashboard will also allow interested parties to see how incarceration rates and COVID-19 cases in jails have changed over time, and compare counties. The dashboard was created in partnership with January Advisors.

The Texas Justice Initiative has created a [dashboard](#) to examine the cases of people who died in jail before going to trial since 2005. The dashboard shows that on average, 85 people die every year while being held before the resolution of their case; nearly half of those cases (47%) were deemed natural causes and 26% were deaths by suicide.

[Project Orange](#), a group dedicated to overcoming obstacles to voting in jails, filmed two [PSAs](#) about registering and voting from jail with Houston rappers Bun B and Trae Tha Truth, which the sheriff's office agreed to broadcast ahead of the voter registration deadline. Project Orange is also planning to send mailers to people incarcerated in jails about voting behind bars in 34 jails across the country.

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 not 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 inmate population each month; the number of inmates 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

### Prosecutor-Led Change

State's Attorney Sarah George for Chittenden County [announced](#) that her office will no longer request cash bail under any circumstance. She also stated that prosecutors may opt for non-arrest warrants or summonses for nonappearance in court.

### Pretrial Litigation

The Supreme Court of Vermont ruled in [Vermont v. White](#) that a trial court has discretion to review bail and set conditions of release prior to the end of a sixty-day hold without bail. White had sought a review of bail five days before the end of the sixty-day period in order to attend his father's funeral; the court noted that a trial court has limited discretion to consider factors outside statutory factors in deciding whether to hold a person without bail.

### Selected Legislation

Governor Phil Scott signed [S 219](#) into law, which makes law enforcement data collection, including traffic stops and use of force information, a requirement for state grant eligibility, and bans the use of chokeholds.

### Community & Grassroots Action

VT Digger, 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

### COVID-19

Commonwealth's Attorney for Fairfax County, Steve Descano, announced on April 15 that the [jail population had fallen by 30%](#); the office attributed the drop to a totality of efforts, including case reviews and pretrial motions emphasizing a move away from detaining people as they await trial.

### Prosecutor-Led

**NEW** Steve Descano announced in December that his office will no longer seek cash bail, formalizing a prac-

tice that his office had undertaken since January. Descano said his office will continue to recommend no bond for defendants who pose a risk to the community or are a possible flight risk, and called on the Virginia General Assembly to end cash bail when it begins its new legislative session.

### Pretrial Litigation

**NEW** In an opinion letter, meaning that the ruling is not binding on other cases, Fairfax County Circuit Judge David Bernhard found that there is no Constitutional right to cash bail, and moreover, there is no “objectively reasonable way to link a quantum of cash to a release decision.” The opinion noted that the court had been presented no evidence that the imposition of a cash bond make it appreciably more likely that Hunter would appear for trial. Bernhard has not imposed cash bond conditions since 2013. The ruling in [Virginia v. Hunter](#) is not binding on other cases.

### Selected Legislation

**NEW** A bill to end pretextual police stops has become law in Virginia. Under SB 5029, police may no longer stop drivers for reasons such as a broken tail light, objects hanging from a rearview mirror, or the suspected odor of marijuana.

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.

### Community & Grassroots Action

[Set Us Free: Coloring Our Way Out of Cash Bail](#) is an in-

teractive and creative education tool paid for by SONG’s Member Initiated Project program. The coloring book describes the state’s cash bail system, provides information about people in jails and the school-to-prison pipeline, and suggests alternatives to incarceration.

## 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.

### Pretrial Litigation

The Washington Supreme Court affirmed a lower court's decision that pretrial shackling without an individualized determination of need violated the constitutional rights of the defendant. The court in [Washington v. Jackson](#) reversed the Court of Appeals' holding that this violation was harmless, and found that the burden was on the state to show that the error was harmless beyond a reasonable doubt.

### Community & Grassroots Action

The ACLU of Washington is [calling on officials](#) to permanently adopt practices that have led to reductions in jail populations due to COVID-19. These reductions were achieved by identifying elderly and medically-vulnerable people, and removing or lowering cash bail as a condition of release. The state's overall statewide jail populations initially fell by 50%, and reductions at individual county jails have ranged between 30-65%.

## WEST VIRGINIA

### COVID-19

A coalition of prison reform groups is [asking court officials to make better use of HB 2419](#) (see below) to lower jail populations and reduce the spread of COVID-19 by releasing people charged with misdemeanors on own recognizance and holding 72-hour review hearings of people detained due to inability to pay. As of August 10, eight out of West Virginia's 10 jails were over capacity. The Southern Central Regional Jail has a capacity for 468, but actually held 727 people as of August 8; as of August 19, 57 people at the facility had tested positive for 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

**NEW** In response to a [report from Reuters](#) showing that the death rate in West Virginia jails was the highest among 44 states surveyed, state lawmakers have pledged to take action by introducing bills to require training at jails to identify and respond to trauma, to require jail healthcare contractors to promptly provide prescription medications, and to address deaths caused by suicide and lack of access to healthcare. The report found that more than one-third of deaths in the state jails were caused by a medical condition or illness, and more than a quarter were deaths by suicide.

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.

### Judiciary-Led Reform

The A2J Lab, a research lab run by Harvard Law School, released an [interim report](#) on the Public Safety Assessment-Decision Making Framework (PSA-DMF) in Dane County, Wisconsin. While possessing limited data, authors of the report said there is some evidence that providing the PSA-DMF printout to the judicial officer caused a change in the officer's decision; for people considered low risk, the judicial officer was less likely to require cash bail, or bail in a lower amount. People considered high risk were less likely to be offered signature bonds (personal recognizance bond). There were no statistically significant differences between the treated (using PSA-DMF) and control group with regard to measures of racial fairness, number of pretrial incarceration days, or rates of nonappearance or new crimes.

### Executive Branch-Led

The Dane County Board approved a [study of cash bail spanning 2016-2018](#) to determine whether people could afford to post cash and whether race was a factor in bail setting, among other factors. From 2012 to 2016, Dane County court released 81% of people on signature bonds (a promise to pay but no money required for release).

### Community & Grassroots Action

**NEW** A [preliminary study of pretrial detention](#) in Waukesha County by Marquette University researchers has found that Black people make up 23% of people booked into the system but comprise less than 2% of the general population. On average, Black people were released 6.7 days after booking, compared to 3.7 days for white people. Employment status was also associated with time to release; people who were employed were released after 3.2 days, while people who were unemployed were released, on average, after 6.4 days.

## WYOMING

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

