What’s Happening in PRETRIAL JUSTICE

Q2 2020
Don’t miss the new interactive version of this report, including a searchable map and additional stats, at pretrial.org/WHIPJ.

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Second Quarter Remarks

The spring of 2020 will reverberate for a long time. As predicted, jails and prisons have become epicenters of COVID-19 outbreaks, with many jurisdictions facing lawsuits over the failure to provide basic sanitary supplies and medical services. The ACLU and Prison Policy Institute issued a report card on state responses to the pandemic based on the availability of personal protective equipment, reductions in jail and prison populations, release of medically-vulnerable people and availability of data. No state received higher than a D-.

Then, the graphic death of George Floyd at the hands of Minneapolis police officers led to protests over police brutality across the country, and a national recalibration of how people think and talk about race, racism, police brutality and the role of police in communities. As of mid-June, according to the National Council of State Legislatures, 159 bills had been introduced that address policing issues such as oversight, the use of chokeholds, data-gathering and independent investigations of police misconduct. Because we include law enforcement encounters as part of the pretrial justice stage, this report includes the police reforms that passed in states as of the end of June; additional bills under consideration can be found here.

PJI has also been monitoring the criminal legal system’s treatment of protestors. In Hamilton County, Ohio, the “Drop the Charges” campaign calls on Cincinnati to drop “misconduct at an emergency” charges against 550 people. (Because this charge is a misdemeanor, authorities are allowed to lock people up, rather issue a ticket.) In at least one incident, the city ordered the buses to stop running their routes so they could be used as temporary “holding cells,” where people were held for 12 hours without food, water or access to bathrooms. Ironically, some people were caught up in the arrest sweep because they were unable to use public transportation. According to The Guardian, more than 10,000 largely non-violent protesters have been arrested across the country.

At the same time, previous pretrial justice wins are under constant threat. In New York, historic reforms had been in effect for a scant three months before police unions partnered with others to support roll-backs, and a bill in Delaware is attempting to reverse changes passed in 2018. We at the Pretrial Justice Institute oppose any reforms that fail to account for historic and systemic racism, or have disparate racial impact. There is no pretrial justice without racial justice.

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 TK 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 through June of 2020. 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/WHIPJ.

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. Got information to suggest for the next edition? Please email 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.

**ARIZONA**

**COVID-19**

*NEW* 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.

**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.

**ARKANSAS**

**COVID-19**

*NEW* 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.

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

COVID-19
NEW 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.

NEW 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 percent 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.

Pretrial Litigation
NEW 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.

Community & Grassroots Action
NEW 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 Jail Coalition.

NEW SF Pretrial (formerly 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.”
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 percent in response to the pandemic.

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

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 when a person is suspected of a minor or non-violent offense; data collection and reporting requirements; a duty of 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.

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.”

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 his own vomit.

**CONNECTICUT**

**COVID-19**

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-person 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.

**Selected Legislation**

**NEW** *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**

**NEW** *SB 222* would repeal HB 204, a set of pretrial justice reforms passed in 2018 to reduce reliance on monetary conditions of release.

**NEW** *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.

**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* was 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.

**NEW** 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. *Barnett 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 nonprofits 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 percent compared to the first week in February, before the first COVID-19 case was recorded in Florida.

**GEORGIA**

**COVID-19**

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

The ACLU of Georgia and the Southern Center 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**

**NEW** SB 402 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. As of June 29, the bill had passed both houses and had been sent to the governor.

**HAWAII**

**COVID-19**

In response to a lawsuit by the state public defender’s office, the state supreme court issued an order requiring jails and prisons within the state to reduce inmate populations to the facilities’ design capacity. The state public defender’s office had filed a petition for extraordinary writ in the state supreme court, asking the court to issue an order directing the governor, director of the Department of Public Safety and the paroling authority “to take immediate steps to significantly reduce the population of its Correctional Centers and Correctional Facilities to prevent the massive loss of life and harm that the spread of COVID-19 would cause in such facilities.”
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, reported that during the last two weeks of March, the county jail population had fallen from 1,054 to 857.

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

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

ILLINOIS

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

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

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

INDIANA

COVID-19
NEW 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.”

Pretrial Litigation
NEW 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 crimi-
nal 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 1120) specifies that a person may earn one day of good time credit for every four days served on pretrial home detention, but may not earn accrued time for time served on pretrial home detention.

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

**IOWA**

**COVID-19**

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

**Selected Legislation**

NEW Governor Kim Reynolds signed a police reform bill that was introduced, debated and passed in the Iowa legislature in a single day. HB 2647 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**

**Selected Legislation**

NEW 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**

NEW 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 need-
alness, nothing will prevent a defending attorney from providing representation to any person entitled to such representation at the earliest necessary stage at which a person is entitled to counsel. If the person is later found to not qualify for a public defender, they will be required to make reimbursement for representation.

**LOUISIANA**

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

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

**Pretrial Litigation**

Two cases, Moran v. Landrum-Johnson and Matthews v. Herman, concerning the setting of financial bail without 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**

**NEW** 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.

**NEW** 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 percent of the fee would be disbursed to the criminal court fund, 18 percent to the district public defender, and 12 percent 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 pretrial incarceration costs the state nearly $290 million every year and 57 percent of people in jail have been arrested for non-violent offenses. Louisiana’s pretrial incarceration rate has increased 10.3 percent 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.

LD 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 without 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.

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 679 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 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 that 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 percent of whites; conversely, 54 percent of non-whites were subject to bail amounts under $1,000, compared to 63 percent of whites. The report recommended that courts, probation departments, prosecutors and police departments continue to implement anti-racism and implicit bias training, and to gather future data.

**MICHIGAN**

**COVID-19**

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.

**NEW** 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.”

**NEW** 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.”

**Selected Legislation**

*HB 5464* would not allow a pretrial risk assessment to be utilized unless: the tool is shown to be valid after peer testing and to be free of biases; all documents and information used by the builder to create the tool are open to public inspection, auditing and testing; a party to a criminal case where the tool is considered or replied 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**

**NEW** The Minnesota Legislature failed to pass police reforms following the death of George Floyd at the hands of Minneapolis police because the House and Senate could not reach agreement. The package of reforms passed by the Democratic-led House had included deeper reforms such as ending felony disenfranchise-ment and the independent investigation of police misconduct by the attorney general, while the Republican-led Senate proposed reforms focused on particular police behaviors.

*HF 741* 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**

NEW 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 Randoph 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.

**Pretrial Litigation**

NEW 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 wait list is 114 days; as of January 2020, 4,600 people were on the wait list, 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.”
NEBRASKA

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

NEVADA

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

NEW HAMPSHIRE

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

NEW JERSEY

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

**AB 571** would require that a court that releases a 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.

NEW MEXICO

COVID-19
**NEW** 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 percent of the defendants were not accused of a violent crime while released awaiting trial.

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

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

NEW YORK

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

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

Pretrial Litigation
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 percent decline in people held pretrial in jail, the amended laws could create a 16 percent increase.

NEW Following nationwide protests against police brutality, New York passed a suite of policing reforms. A06144, 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. S06601 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
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
NEW 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 percent of felony release orders and 85 percent of misdemeanor release orders.

Executive Branch–Led Change
NEW 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 The University of North Carolina School of Government Criminal Justice Innovation Lab 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 percent of misdemeanors and 16.4 percent of felonies were for violent crimes.

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

COVID-19
Cass County announced that jail reduction plans would allow the jail to have single bunks for every 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 convincing evidence that recognizance release would present a substantial risk of harm.”

Judges in Cuyahoga County held a rare Saturday court session to work out plea deals and facilitate 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.

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.

**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**

*New* 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**

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.

H 7143/S 2288 would not permit courts to impose financial conditions of release on a person charged 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) 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**

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, 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 percent of capacity as a result.

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

**TEXAS**

**COVID-19**

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

**Pretrial Litigation**

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 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, if 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

Selected Legislation
As of the end of June, both houses had passed a set of police reforms, and S. 219 was slated for signature by Governor Phil Scott. S. 219 makes 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
VTDigger, a nonprofit 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 percent; 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.

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

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

### WASHINGTON

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

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

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

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

### WEST VIRGINIA

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

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

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

WYOMING

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

Following is a list of the major Q2 pretrial activities mentioned in this report by state and category.

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