

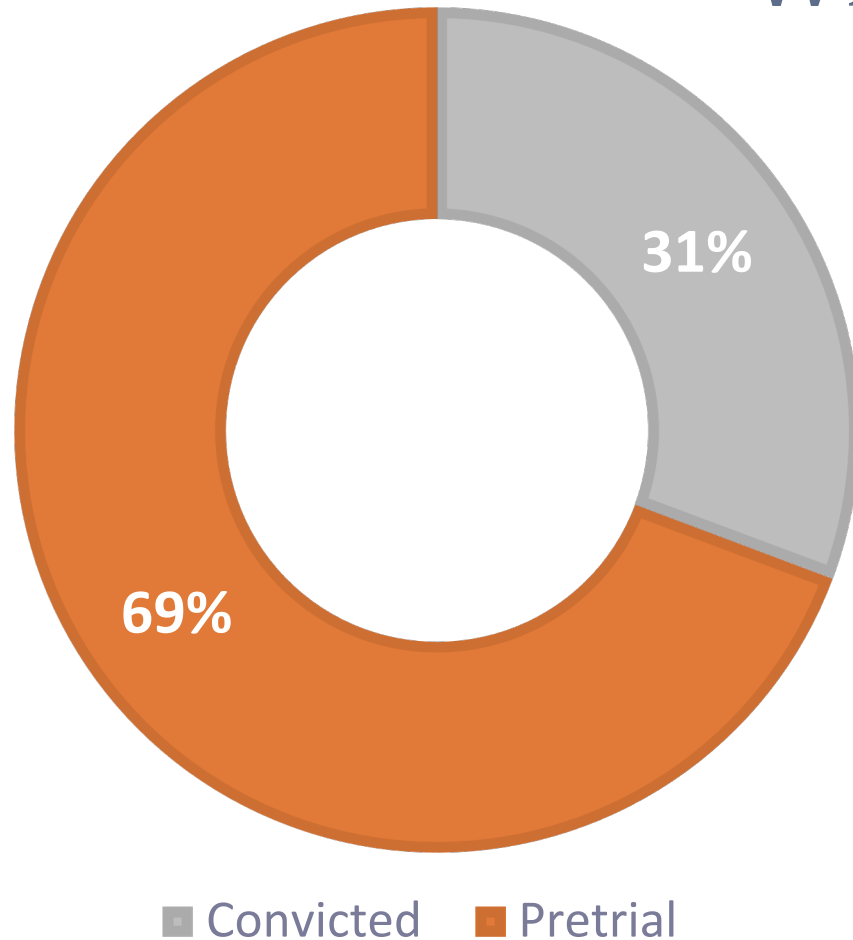


Pretrial Trends

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Who Is In Jail?

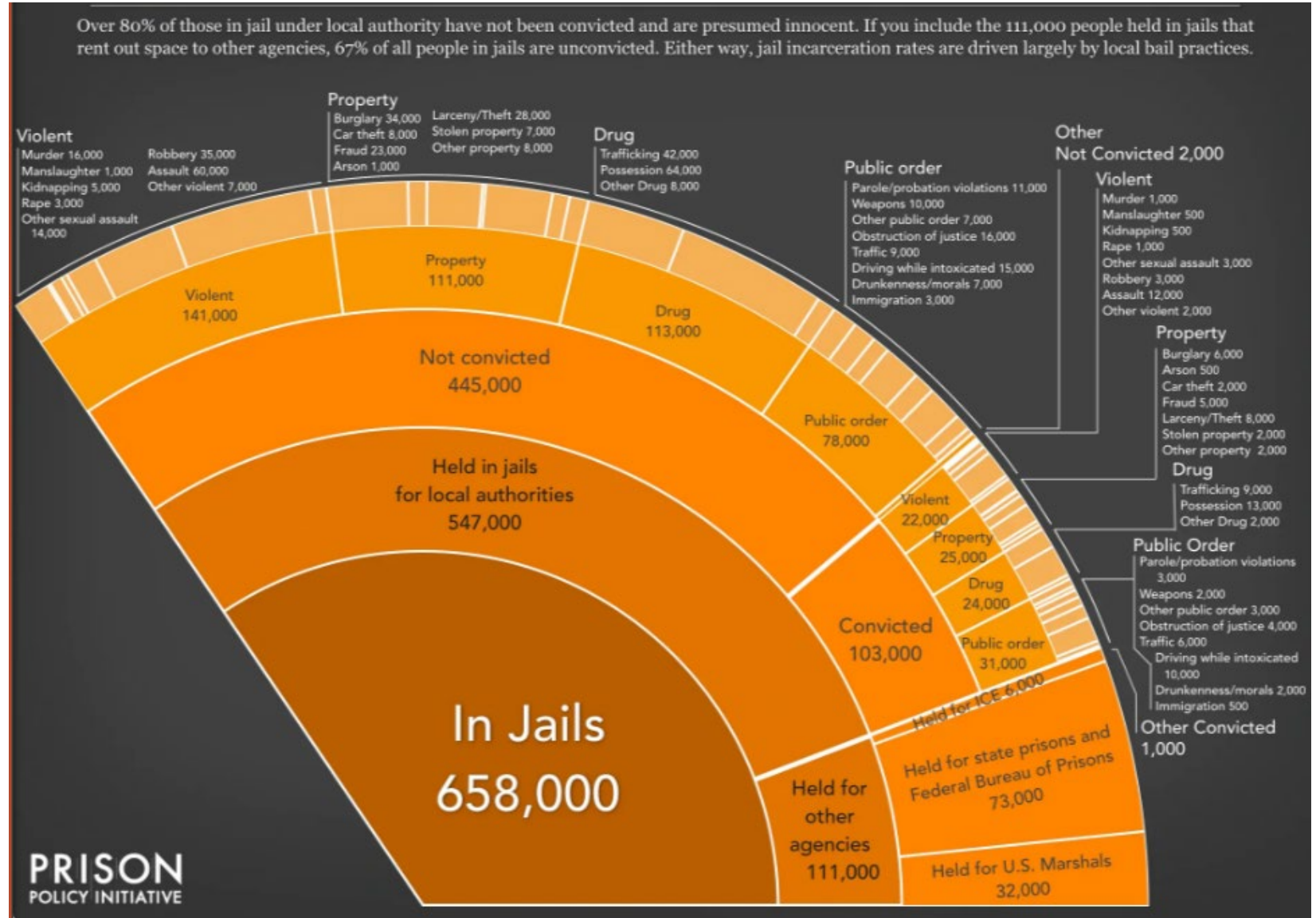


PRETRIAL POPULATIONS, 2020

Population Changes:

- Significant decrease in jail populations and admissions from 2019 to 2020.
- Convicted population dropped by 34%.
- Unconvicted population dropped by 21%.
- People held for felonies declined by 18% and those held for misdemeanors dropped by 45%.

In 2020, 77% of all people in jail were held for felony offenses. Most held pretrial were detained on property, drug or public-order offenses.



State Legislation by the Numbers

- All 50 state legislatures have acted to change pretrial policy in some way since 2012.
- The number of bills aimed at systemically changing the pretrial process has increased since 2012 with at least four states approving constitutional amendments.
- Changes have also happened through local practice or litigation.

National Legislative Trends

- Individualization and Court Guidance
- Conditions of Release and Pretrial Services
- Reducing Bookings, Detention and Length of Stay
- Constitutional and Release/Detention Changes

Individualization and Court Guidance

Significant Recent Legislation has:

- Emphasized consideration of risk and individual circumstances over bond schedules.
- Required ability to pay considerations when setting financial conditions.
- Authorized, required or regulated use of risk assessment tools.
- Created presumptions of release on recognizance and release on the least restrictive conditions.



Individualization and Ability to Pay

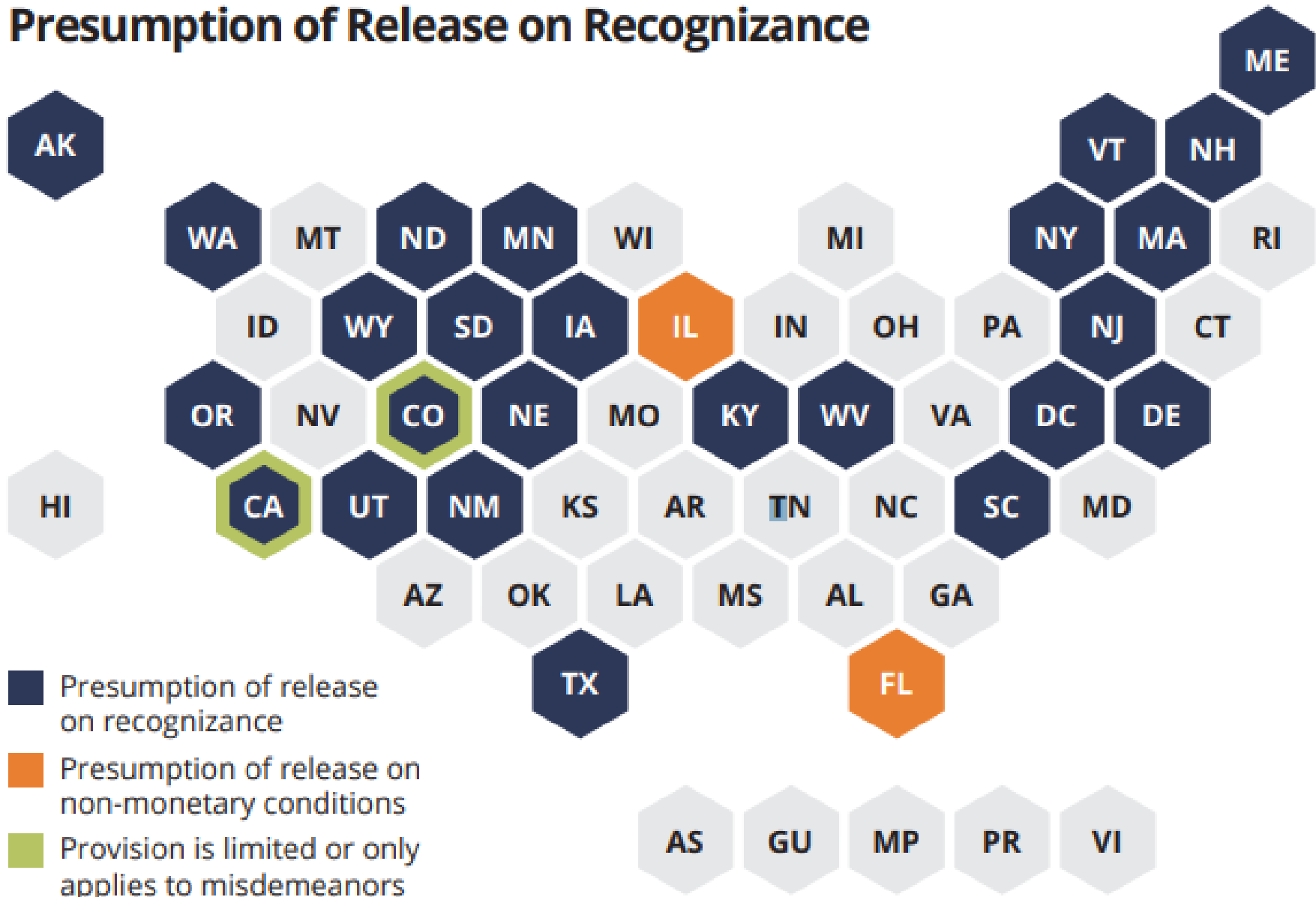
- States have limited the use of bond schedules or placed more emphasis on individual factors and risk over charge or offense classification.
- At least 13 states have recently enacted a law requiring courts to consider a defendant's ability to pay financial conditions of pretrial release.

Individual Consideration and Ability to Pay

- Colorado § 16-4-103 requires conditions and the type of bond to be sufficient to reasonably ensure appearance and public safety: “taking into consideration the individual characteristics of each person in custody, including the person’s financial condition.”



Presumption of Release on Recognizance



Source: NCSL, 2020

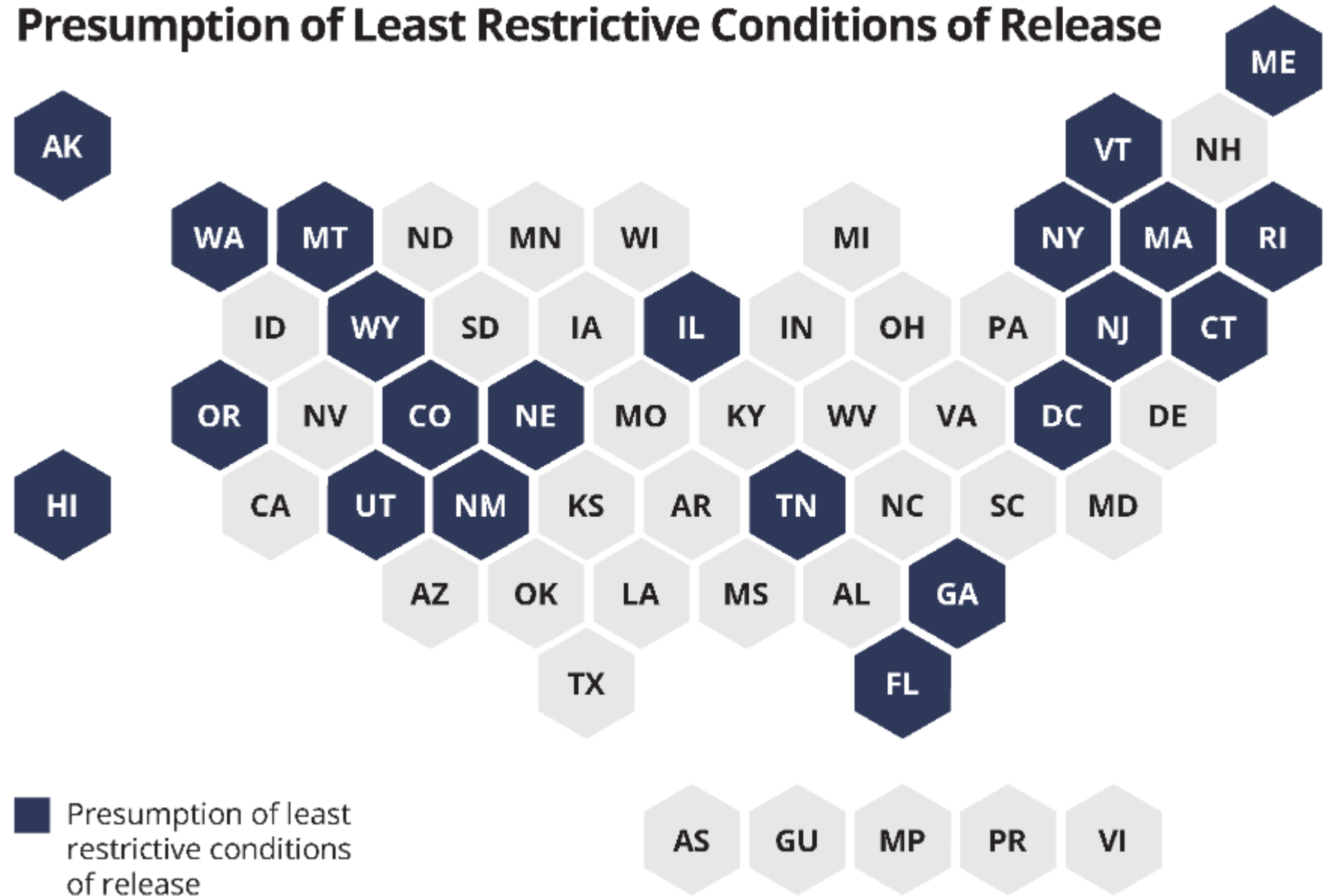
Conditions of Release and Pretrial Services

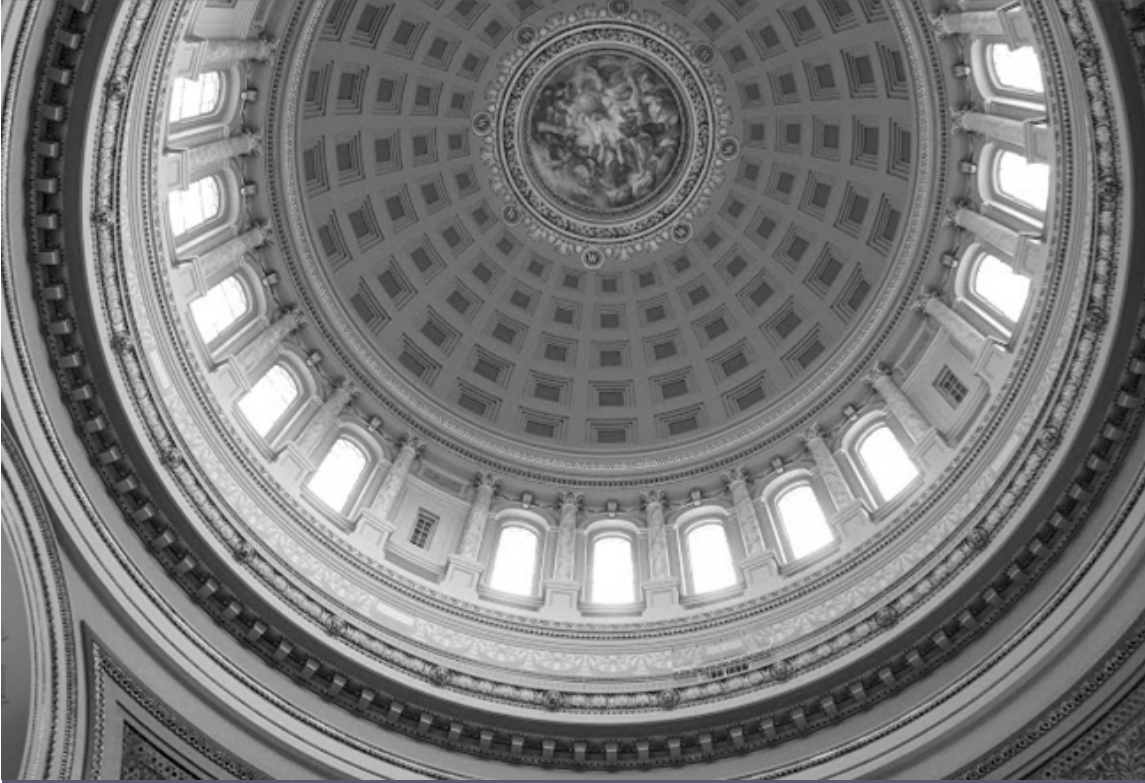
Significant Recent Legislation has:

- Created presumption of release on the least restrictive conditions.
- Addressed statutorily authorized conditions of release.
- Expanded pretrial services at the state level and through funding.
- Implemented court reminder systems.

- Nearly half the states and D.C. have laws that require courts to impose the least restrictive conditions necessary to ensure appearance and/or public safety.
- In a handful of states where this presumption is not codified, courts are required to first consider release on recognizance or unsecured appearance bond. Then, if the court determines that either method is insufficient other statutory release conditions may be considered.

Presumption of Least Restrictive Conditions of Release





Statutorily Authorized Conditions of Release

- Every state enumerates conditions of release and most have a catch all provision.
- Every state as of *today* authorizes the use of financial conditions of release, though some states have started to address the role of money as a condition of release pretrial.
- Colorado, Connecticut, Illinois, New York & Texas.



Statutorily Authorized Conditions of Release

- Several states have expanded requirements to consider victim safety when setting conditions.
- Some states have made specific conditions mandatory initially:
 - No-contact orders in specified cases. (violent, domestic violence, etc.)
 - Cooperation with competency evaluations.
 - Continuous alcohol monitoring.
- Some states have prohibited the use of specific conditions:
 - Mandating and agreement that bond funds be used for court costs, fees or restitution.
 - Mandating abstention from prescribed/medical-marijuana or other substances.

Pretrial Services

- Alaska, Illinois, Kentucky, New Jersey and Washington, D.C. each have statewide pretrial services agencies.
- Some states require or encourage local jurisdictions to establish pretrial services agencies.
- Other states have required specific services on a statewide basis. Alaska, Colorado, Massachusetts, New York, Texas and Washington for example require court reminders statewide.



Reducing Bookings, Detention and Length of Stay

Significant Recent Legislation has:

- Expanded citation in lieu of arrest and deflection opportunities.
- Created or expanded delegated release authority, release before appearance and court capacity for pretrial hearings.
- Addressed the timeline between arrest and release.
- Requiring or authorizing conditions reviews or 2nd look provisions.

Citation in Lieu of Arrest

- Citation in lieu of arrest is permitted in every state.
- Most states authorize citations for low-level offenses.
- 8 states allow the use of citations for certain felonies.
- 7 states provide general authorization for law enforcement to issue citations without specifying level of offense.



Deflection Strategies

Police-Mental Health Collaboration Programs



■ Crisis Intervention Teams (CIT)

Crisis intervention teams are composed of experienced law enforcement officers who volunteer to receive specialized training to respond to mental health calls. These officers are then dispatched to mental health calls or assist other officers who are not CIT trained.



■ Co-Responder Teams

Trained law enforcement officers and mental health professionals who respond to mental health calls as a team and generally work together for an entire shift, riding in the same car.



■ Mobile Crisis Teams

Mental health professionals working as a team with specialized training to help stabilize individuals during law enforcement encounters and during crisis situations. Teams can respond to law enforcement or mental health calls.



■ Case Management Teams

Behavioral health professionals, law enforcement officers, peers and others that form a team to coordinate care and develop collaborative solutions to reduce repeat interactions with individuals.



■ Crisis Stabilization Centers

Facilities where law enforcement officers can take individuals experiencing mental health crisis that serve as alternatives to jail and emergency departments.

State legislation has:

- Supported training for law enforcement.
- Authorized the use of or funded crisis triage centers and other community-based resources.
- Funded or required the establishment of co-response teams or related non-law enforcement responses.

Release Before Appearance and Use of Technology

- Use of bond for release in certain cases before first appearance.
- Bond commissioner/sheriff (delegated) release authority.
- Administrative release/pretrial services.
- Audiovisual technology.





Timing of First Appearance

- Most states require a “prompt” initial appearance with many providing specific timelines of 24 or 48 hours.
- Just under half of states use language such as, “without unnecessary delay,” “as soon as practicable” or “within a reasonable time.”
- A few states link timing of first appearance to court sessions or terms of court.

Review of Conditions

- Some states have authorized or required court review of conditions of pretrial release after a specified period of time when a defendant remains detained. This can be automatic or by allowing for a motion.
- At the local level – jail population review teams can have a similar function.



Constitutional and Release Framework Changes

Significant Recent Legislation has:

- Modified state constitutional provisions related to pretrial release and detention.
- Modified statutory and constitutional provisions addressing victims' rights during the pretrial process.
- Modified statutory provisions outlining who is eligible for release or pretrial detention.



Recent Constitutional Amendments

- Recently amended pretrial frameworks - state constitutional provisions:
 - Alabama
 - New Jersey
 - New Mexico
 - Ohio
- Recent actions have modified constitutional and statutory victims' rights to require:
 - Court consideration of victim safety when determining release and conditions.
 - Expanded notice and participation rights for victims in pretrial proceedings.

Questions?

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