



## **ABA Restoring the Presumption of Innocence Project**

### **2015 Updates on United States Pretrial Reform Efforts**

There are different types of pretrial reforms that are happening across the nation. Some states are implementing state-wide evidence-based decision making systems, while others implement at county-levels. The use of evidence-based decision making systems has also led to reform in bail structures and release requirements. Other states are focusing on creating diversion programs for low risk offenders or guaranteeing the right to counsel at initial bail conferences.

Additionally, the reform is happening at a variety of levels. Many states and localities are passing legislation to help reform pretrial detention and their penal codes. Additionally, some states are seeing the defeat of legislation that would harm pretrial release. While other states are experiencing reform being promoted from within the judiciary.

This list is composed of a summary of the variety of pretrial reforms occurring throughout the nation. It offers starting resources to begin to learn more about these reforms, but is not an exhaustive list of pretrial reforms or resources about the reforms. For more information about reforms around the country, see the Pretrial Justice Institute's *Implementing the Recommendations of the National Symposium on Pretrial Justice: The 2013 Progress Report* (<http://www.pretrial.org/download/infostop/Implementing%20the%20Recommendations%20of%20the%20National%20Symposium%20on%20Pretrial%20Justice-%20The%202013%20Progress%20Report.pdf>).

#### **1. Kentucky**

In 2011, Kentucky passed a bill which overhauled their criminal laws and penal code. This bill requires the gradual implementation of evidence-based practices. Additionally, it requires that a defendant who is determined to be low risk of failure to appear be released on their own recognizance. In addition to evidence-based practices, it also requires state-funded supervision and intervention programs from pretrial defendants. Currently, public defenders are filing appeals to ensure that the provisions requiring release for low or moderate risk be followed. There have been over 80 appeals with success for about one-third.

For more information about the Kentucky Pretrial Reforms, see the *Report on Impact of House Bill 463: Outcomes, Challenges and Recommendations* (<http://www.pretrial.org/download/law-policy/Kentucky%20Pre%20Post%20HB%20463%20First%20Year%20Pretrial%20Report.pdf>) and the *Kentucky Pretrial Release Manual*

(<http://dpa.ky.gov/NR/rdonlyres/D45BB632-4BCA-4BE6-B396-8CB20D917352/0/PretrialReleaseManualFINAL071713.pdf>).

## 2. Colorado

Over the past year, Colorado has implemented the Colorado Pretrial Assessment Tool (CPAT) throughout the state. They are in the process of standardizing the tool. Additionally, Colorado also implemented a new bail statute that promotes evidence-based risk assessments and de-emphasizes secured financial release requirements and charged-based bond schedules. Additionally, the bill creates a presumption of release and least restrictive release conditions. While in Mesa County, their Evidence-based Decision Making Pretrial Committee and National Institute of Corrections Evidence-Based Decision Making Initiative have developed new bond guidelines that place more emphasis on risk assessment and less on the defendant's ability to post a financial bond.

For more information about Mesa County see *Mesa County's Pretrial Justice County Profile*

(<http://www.naco.org/programs/csd/Documents/Criminal%20Justice/County%20Justice%20Program%20Examples/Mesa%20County,%20CO%20-%20Pretrial%20Profile.pdf>).

For more information about the CPAT see the *Colorado Pretrial Assessment Tool (CPAT) Report* (<http://www.pretrial.org/download/risk-assessment/CO%20Pretrial%20Assessment%20Tool%20Report%20Rev%20-%20PJI%202012.pdf>).

## 3. New York

The Center for Court Innovation has begun researching and developing a validated pretrial risk and needs assessment designed for misdemeanor defendants. Additionally after reviewing data gathered since 1964, the New York Criminal Justice Agency has promoted the use of Desk Appearance Tickets in lieu of custodial arrests for low-level offense defendants. Meanwhile, during the State of the Judiciary speech, New York State Chief Judge Jonathan Lippman highlighted a need for overhauling the bail system. Additionally, Kings County Criminal Court has launched its first misdemeanor pretrial supervised release program with 95% compliance by participants.

For more information about Desk Appearance Tickets, see Mary T. Phillip's report, *Desk Appearance Tickets: Their Past, Present, & Possible Future* (<http://www.nycja.org/library.php>). For the New York State Chief Judge Jonathan Lippman's State of the Judiciary, see *State of the Judiciary 2014* (<https://www.nycourts.gov/whatsnew/pdf/2014-SOJ.pdf>).

## 4. West Virginia

In 2012, the governor requested assistance in reinvesting in justice and analyzing and reforming the criminal justice system. As a result, the state passed legislation that empowers the state Supreme Court of Appeals to use a standardized pretrial risk assessment as part of evidence-based pretrial decision-making.

For more information about West Virginia's reform, see *West Virginia's Justice Reinvestment: Strengthening Community Supervision, Increasing Accountability, and Expanding Access to Substance Use Treatment* (<http://csgjusticecenter.org/wp-content/uploads/2014/06/West-Virginias-Justice-Reinvestment-Summary-Report.pdf>).

## 5. Delaware

The state passed legislation in 2012, which mandates the implementation of evidence-based risk and needs assessments to be used for identifying candidates for

pretrial release or non-detention alternatives. In 2013, the state passed legislation that now requires a court to state in writing its reasons for overriding any risk assessment recommendations for juveniles' pretrial release or non-detention alternative.

For more information about Delaware's reform, see *Bail and Pre-Trial Detention: Opportunities for Reform in Delaware* (<http://www.dcjustice.org/wp-content/uploads/2012/11/Risk-Assessment-Instruments-in-Determining-Bail10.23.12.pdf>).

## 6. Maryland

In *DeWolfe v. Richmond*, the Maryland Court of Appeals stated that a person's constitutional right to representation commences when they first appear before a judicial officer and their liberty is first at stake. This has been interpreted as guaranteeing counsel for indigent defendants at their first bail hearing.

To read the opinion, see *DeWolfe v. Richmond*, 434 Md. 444, 76 A.3d 1019 (2013).

## 7. New Jersey

A study reported that more than 73% of New Jersey's jail population was in pretrial status and over 38% were being held because of an inability to pay a money bond. After this report, New Jersey Chief Justice Stuart Rabner convened a taskforce to make recommendations and the Drug Policy Alliance introduced new legislation that would require a validated risk assessment and encourage non-monetary release conditions.

Additionally, in November, the state of New Jersey voted on a Constitutional amendment and a bill which would change the pretrial criminal justice process. These were approved during the election. The laws change the basis of setting of bail from one's ability to pay to one's risk level. However, it does allow a judge to order pretrial detention for those accused of serious crimes, who may be a danger to others or a flight risk.

For more information about the amendment, see Colleen O'Dea's article "Ballot Question No.1 Would Fundamentally Change Who Is Eligible for Bail in NJ" (<http://www.njspotlight.com/stories/14/11/03/ballot-question-no-1-would-fundamentally-change-who-is-eligible-for-bail-in-nj/>).

## 8. Wisconsin

The state defeated a bill that would have reintroduced the commercial bail bond industry into the state. In Eau Claire County, they implemented analyzed a diversion program for low-risk individuals. Additionally, the state courts of appeal cautioned against mandatory conditions of release that were based solely on the nature of the crime.

For more information about the diversion program, see the *Evidence-Based Decision Making – Charging Program* (<http://ebdmoneless.org/sites/all/documents/EBDM%20Charging%20Program%20Final.pdf>). For the state court of appeals decision, see *State v. Wilcenski*, 2013 WI App 21, ¶ 20, 346 Wis. 2d 145, 827 N.W.2<sup>nd</sup> 642.

## 9. Virginia

Virginia has 31 pretrial services agencies which serve the almost three-fourths of the state. These agencies conduct pretrial investigations and risk assessment using the Virginia Pretrial Risk Assessment Instrument (VPRAI). This has shifted the presumption of a secured bond for release to favoring release with the least restrictive terms.

Additionally, the Department of Criminal Justice is calling for amendments to remove the requirement of secured bonds for certain charge and to require the presumption of release with least restrictive terms.

For more information about Virginia, see *A “New Norm” for Pretrial Justice in the Commonwealth of Virginia: Pretrial Risk-based Decision Making* (<http://www.dcjs.virginia.gov/corrections/documents/A%20New%20Norm%20for%20Pr%20etrial%20Justice%20in%20the%20Commonwealth%20of%20Virginia.pdf>).

#### **10. Washington D.C.**

The National Association of Drug Court Professionals hosted a training event in D.C. which focused on their Annals of Research and Knowledge on Successful Offender Management (ARK) Program. ARK is an evidence-based decision making framework to help sort defendants into pretrial diversion options. Additionally, the DC Pretrial Services Agency has created a new tool which incorporates failure to appear, re-arrest, dangerous behavior into its risk assessment.

For more information about ARK, see *A New Vision for Criminal Justice Reform* in ALL RISE, which is the National Association of Drug Court Professional’s Magazine ([http://www.nadcp.org/learn/all-rise-magazine/16294\\_NADCP\\_Mag\\_FNL.pdf](http://www.nadcp.org/learn/all-rise-magazine/16294_NADCP_Mag_FNL.pdf)).

For more information about the DC Pretrial Services Agency’s risk assessment, please see Spurgeon Kennedy, et. al.’s *Using Research to Improve Pretrial Justice and Public Safety: Results from PSA’s Risk Assessment Validation Project* in FEDERAL PROBATION (<http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2013-06/research.html>).