Federal Legislation: The Pretrial Integrity and Safety Act

The Pretrial Integrity and Safety Act, SB 1593, was introduced by Sen. Kamala Harris and co-sponsor Senator Rand Paul on July 20, 2017, and awaits action in the Senate Judiciary Committee. The bill seeks to provide interested states the funding and opportunity to improve their approach to pretrial release, with a focus on moving away from financial conditions of release in favor of research-based risk assessments. Companion bill HR 4019 was introduced in the House by Rep. Todd Leiu on Oct.11. The bill awaits action in the House Judiciary Committee’s Crime, Terrorism, Homeland Security, and Investigations Subcommittee.

As introduced, the bill would:

- Authorize $10 million in grant funding to six states over three years to explore innovative changes to their pretrial systems.
- Propose a preference for grant awards, which will be prioritized for states that would:
  - Replace their money bail system with pretrial risk assessments. The assessments must reflect the local population and include objective analytics that account for and prevent potential opportunities for discrimination.
  - Identify release as the default scenario, unless the judicial officer has reason to believe release could risk the safety of the community or decrease the likeliness of the accused appearing at trial. Where conditions are deemed necessary, they should be non-financial and the least restrictive necessary.
  - Demonstrate evidence-based practices for supervision of bail conditions.
  - Appoint counsel as early as possible.
  - Demonstrate system effectiveness via data collection and reporting.
- Authorizes an additional $5 million over three years for a new National Pretrial Reporting Program at the Bureau of Justice Statistics for relevant data collection reflecting system performance in participating states.
- Provides for an annual report to the Department of Justice documenting program transparency and accountability.

Importantly, the bill avoids imposing harsh mandates on states as a condition for federal funding, and seeks to support innovative, state-led solutions to pretrial system reform. This approach works in tandem with ongoing legislative activity surrounding pretrial release in state legislatures across the country.
State Legislative Activity

In the past five years, every state has acted to change their pretrial policies in some way, reflecting over 500 new enactments between 2012 and 2016. So far in 2017, NCSL has tracked more than 150 new pretrial enactments, marking the highest level of state legislative activity on the subject since 2012. Risk assessments and conditions of pretrial release have emerged among the major legislative trends on the state level.

Risk Assessment
Between 2012 and 2016, 18 states enacted 31 new laws addressing the use of risk assessments at some point during the pretrial process. Of those states, eight – Alaska, Colorado, Delaware, Hawaii, Kentucky, New Jersey, Vermont and West Virginia – have required, authorized or incentivized the use of a risk assessment for some or all defendants on a statewide basis. So far in 2017, Illinois, Indiana, Montana and Rhode Island have followed suit.

For example, HB 1137 in Indiana requires the state supreme court to adopt rules establishing a statewide risk assessment system by January 2020, and instructs courts to consider the results of the risk assessment before determining the release of a defendant. Courts must consider releasing a defendant without money bail or surety if the court finds, based on the risk assessment and other relevant factors, that an arrestee does not present a “substantial risk of flight or danger to the arrestee or others.” In Vermont, SB 134 refined the state’s existing statewide risk assessment to focus on defendants who are unable to post bond within 24 hours of being lodged. Other 2017 state legislation encouraged consideration of risk assessment as part of local criminal justice planning, created task forces or study groups to look more closely at different kinds of risk assessment for different defendant populations, or established related pilot programs.

Pretrial Release Conditions
State legislatures have also been active in recent years providing courts with statutory guidance on conditions of release and expanding release options beyond financial obligations, emphasizing moderate-risk defendants. Prior to 2017, 15 states and the District of Columbia already required courts and other release authorities to impose the least restrictive conditions necessary on a defendant, with additional states adopting this change already in 2017. Some have gone even further, limiting courts’ ability to impose financial conditions on certain defendants and requiring them to consider a defendant’s ability to pay when setting financial conditions. Between 2012 and 2016, 36 states and the District of Columbia enacted 101 new laws expanding conditions of release beyond existing statute.

For additional information on federal legislation:
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