

*The Forum for America's Ideas*

# PRETRIAL RELEASE: STATE LAW & LEGISLATION

AMBER WIDGERY  
DECEMBER 2018



NATIONAL CONFERENCE *of* STATE LEGISLATURES

# State Legislation Generally

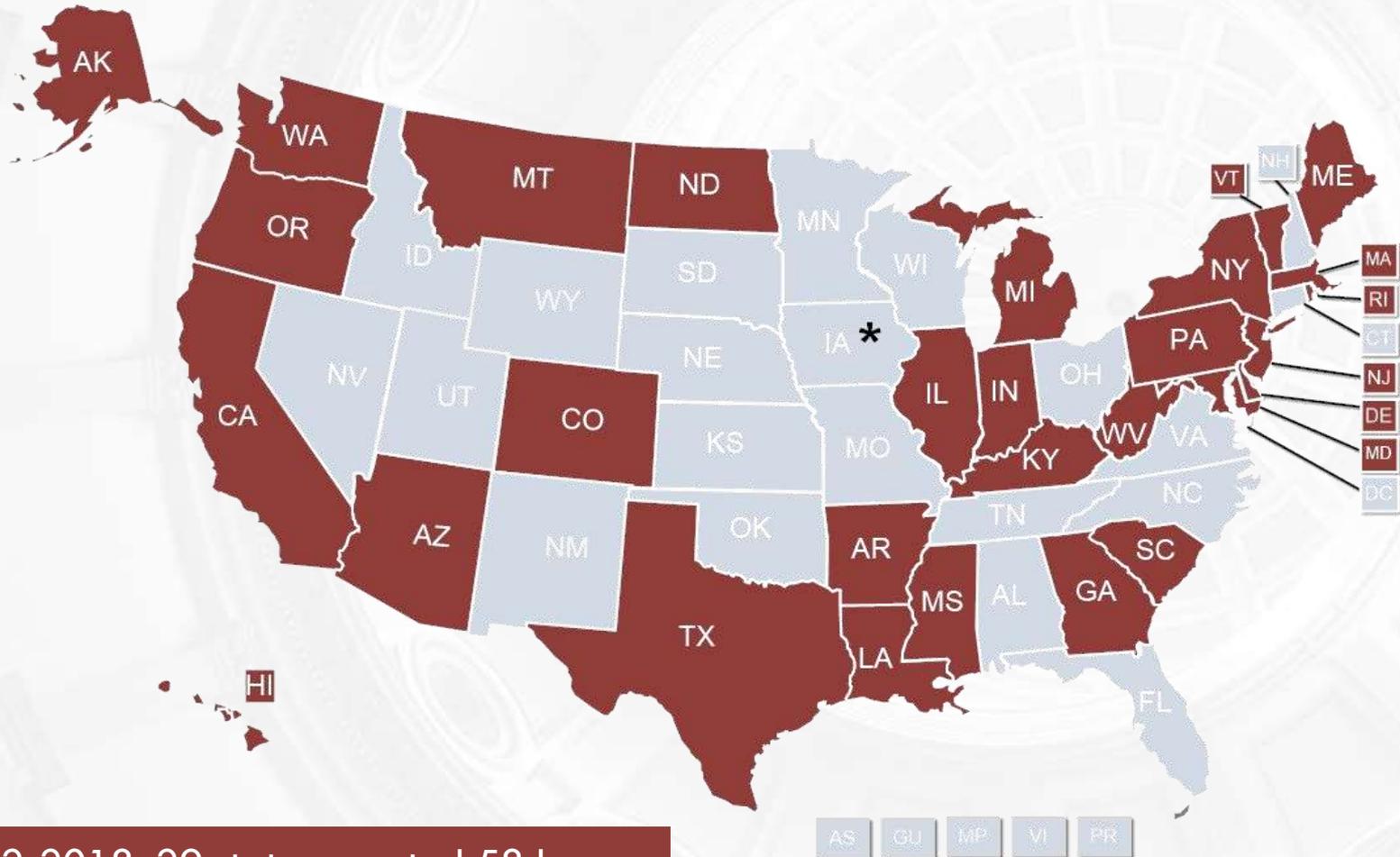
- Every state legislature has acted to change pretrial policy in some way since 2012.
- More than 800 bills have been enacted in that same timeframe.
- Legislative efforts to change pretrial policy have largely been bipartisan.



What areas of pretrial  
policy has legislation  
addressed?



# Risk Assessments

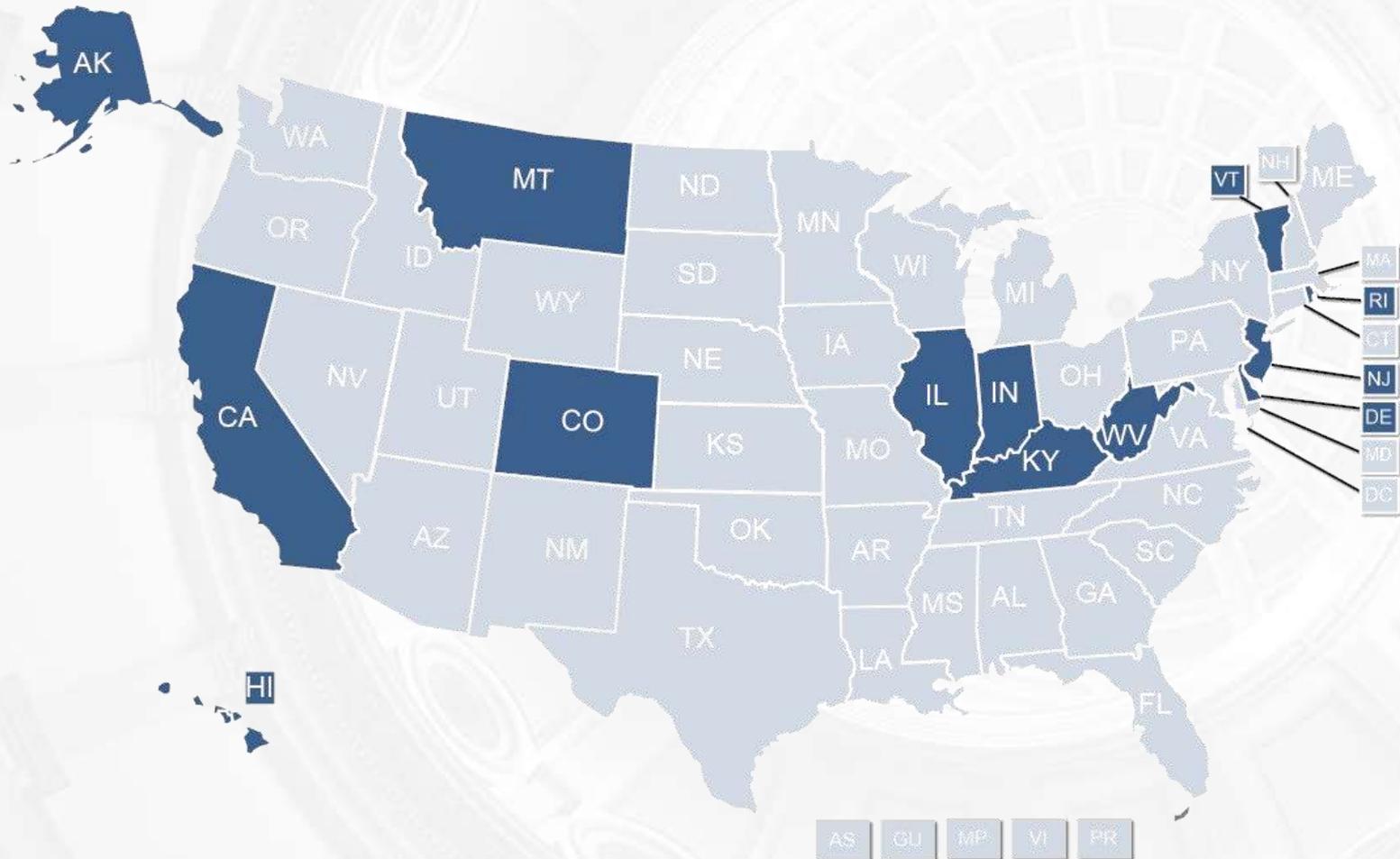


2012-2018: 29 states enacted 58 laws



NATIONAL CONFERENCE of STATE LEGISLATURES

# Statewide Risk Assessments



2012-2018: 13 states authorize statewide risk assessment



NATIONAL CONFERENCE *of* STATE LEGISLATURES

# Risk Assessments: Recent Enactments

## Recent Statewide Expansions

- ❑ CA SB 10 (2018)
- ❑ IL SB 2034 (2017)
- ❑ IN HB 1137 (2017)
- ❑ MT SB 59 (2017)
- ❑ RI HB 5064/SB 10 (2017)

## Other Risk Assessment Enactments 2017 & 2018

- ❑ HI HB 1135 (2017)
- ❑ MA HB 3800 (2017)
- ❑ MI HB 4323 (2017)
- ❑ ND SB 2015 (2017)
- ❑ NY SB 5492 (2017)
- ❑ OR HB 2238 (2017)
- ❑ TX SB 1326 (MH) (2017)
- ❑ VT SB 134 (2017)
- ❑ WA HB 1163 (DV) (2017)
- ❑ AK HB 312 (2018)
- ❑ DE HB 204 (2018)
- ❑ IA HB 2492 (2018)\*
- ❑ MD HB 447 (2018)
- ❑ MA SB 2371 (2018)
- ❑ MI SB 848 (2018)
- ❑ PA SB 449 (2018)
- ❑ WV HB 4228 (2018)







# Court Guidance on Release Conditions

- Significant Legislation from 2017 & 2018:
  - Expanded the number of states with a presumption of the least restrictive conditions.
  - Limited courts' ability to impose financial conditions and California prohibited financial conditions altogether.
  - Required courts to consider a defendant's ability to pay financial conditions or pretrial supervision fees.
  - Sped up review of conditions of release for those who aren't able to meet initial conditions.



# Court Guidance: Release & Ability to Pay

## Connecticut HB 7044 (2017)

- Limits a court's ability to impose financial conditions.
- Shortens the period until bail review hearing and authorizes courts to remove financial conditions.

## Illinois SB 2034 (2017)

- Presumption of non-financial/least restrictive conditions.
- Court guidance on defendant's ability to pay.
- Review of conditions for defendants detained by financial conditions of release.
- Ensures pretrial access to counsel.
- Reduction of bail by \$30 for each day in jail on specified offenses.



# Court Guidance: Release & Ability to Pay

## Nebraska L 259 (2017)

- Requires courts to consider all methods of bond and conditions to avoid incarceration.
- Requires courts to consider ability to pay if they determine that a PR bond is not appropriate.
- Requires court to impose the least onerous conditions necessary.
- Pretrial services/supervision changes.

## Texas SB 1913 (2017)

- Addresses release by municipal and justice courts only.
  - Limits the use of bail bonds and encourages the use of PR bonds.
  - Presumes inability to pay after 48 hours if the defendant does not post a bail bond and encourages use of a PR bond.
  - Limits the use of warrants after FTA.



# Court Guidance: Release & Ability to Pay

## 2018 Notable Enactments

- **DE HB 204** - Creates 2nd look provision if a defendant is not released in 72 hours – courts must review within 10 days. Adds language authorizing conditions beyond appearance agreement only if they are related to public safety, mitigating flight or the integrity of the process.
- **GA SB 407** – Requires courts to consider a defendants financial resources including income, assets and financial obligations prior to setting bail.



# Court Guidance: Release & Ability to Pay

## 2018 Notable Enactments Continued

- **MA SB 2371** – Requires court to consider defendant's financial resources when setting bail at an amount not higher than would reasonably ensure appearance.
- **NH SB 556** – Requires that court not impose a financial condition that will result in detention solely because of a defendant's inability to pay. Creates an option for motion for 2nd look within 36 hours.
- **VT HB 728** - Requires courts to consider a defendant's financial means prior to imposing any financial conditions of release.

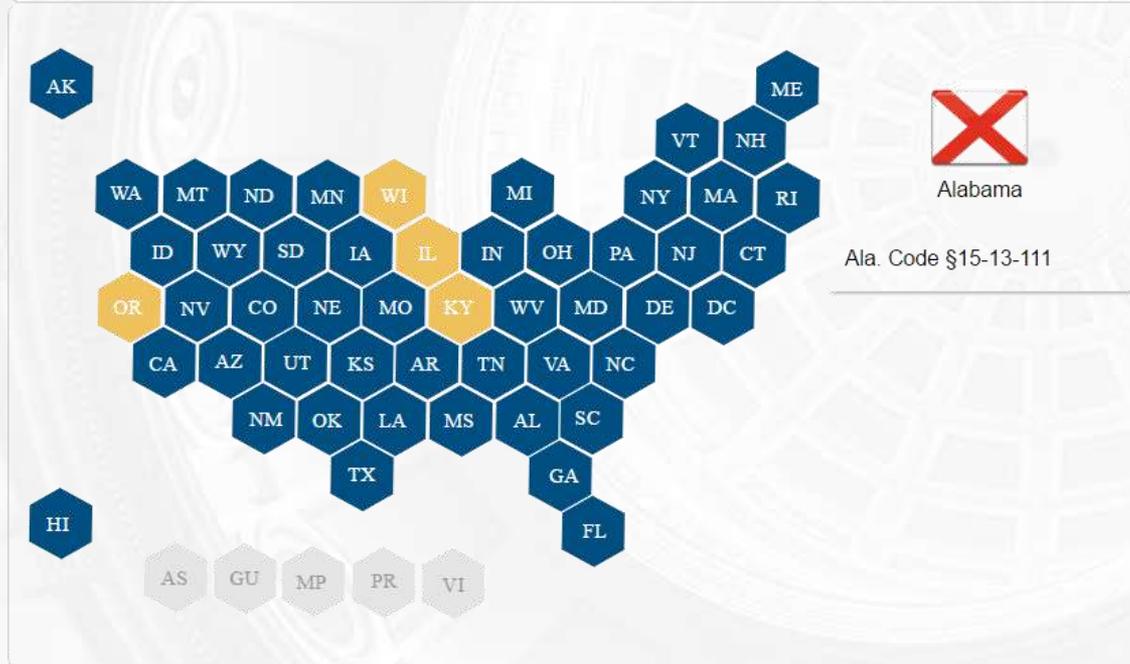




# Conditions of Pretrial Release

Pretrial Release Conditions: Types of Bond ▾ Additional Conditions ▾

Use the dropdown buttons to select a type of bond or additional conditions. Comprehensive state information on the most common statutory conditions of pretrial release is available in the interactive map below.

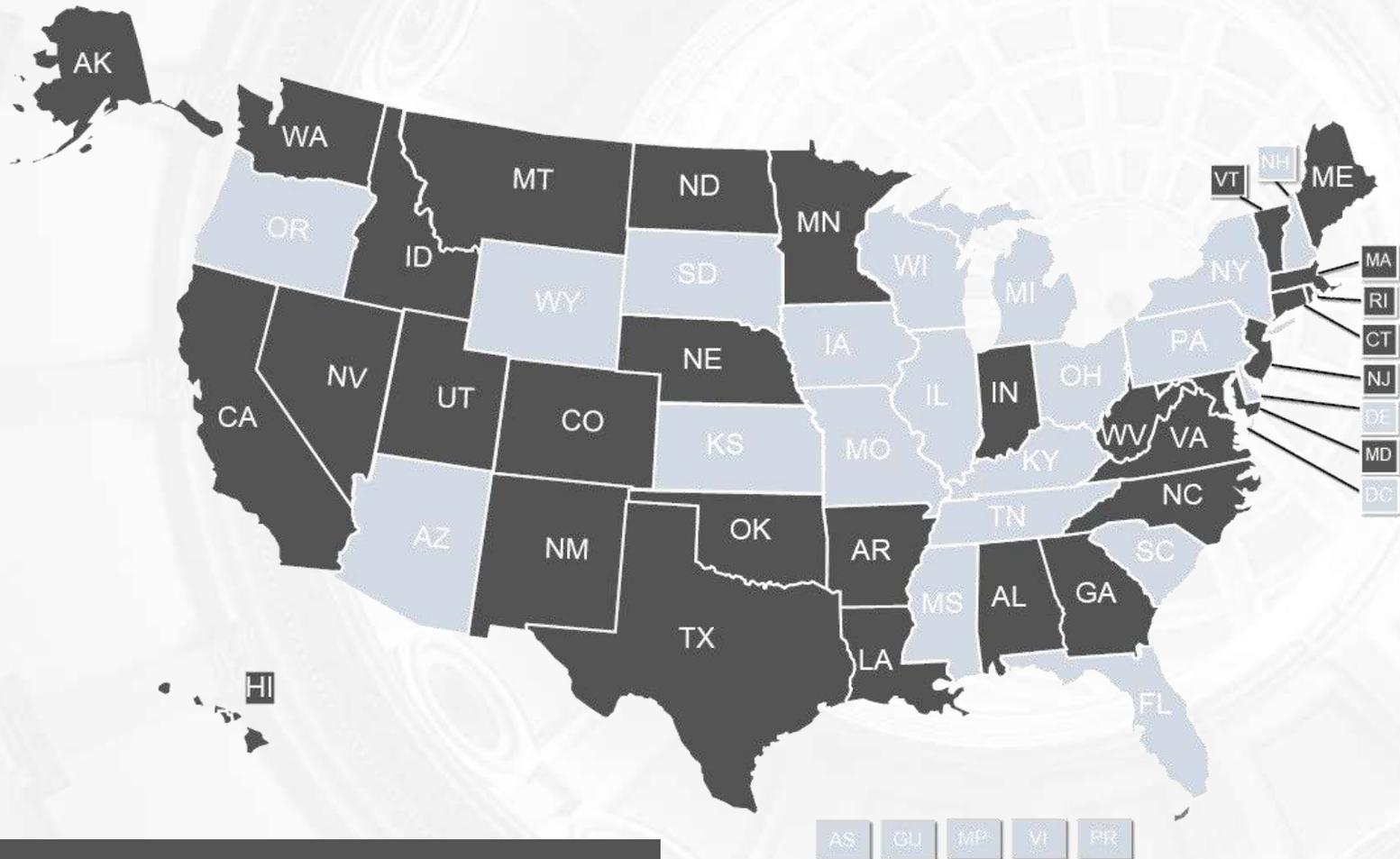


[NCSL Conditions of Release Database](#)



NATIONAL CONFERENCE *of* STATE LEGISLATURES

# Pretrial Services



2012-2018: 30 states enacted 87 laws

[NCSL Brief on Pretrial Services](#)



NATIONAL CONFERENCE of STATE LEGISLATURES



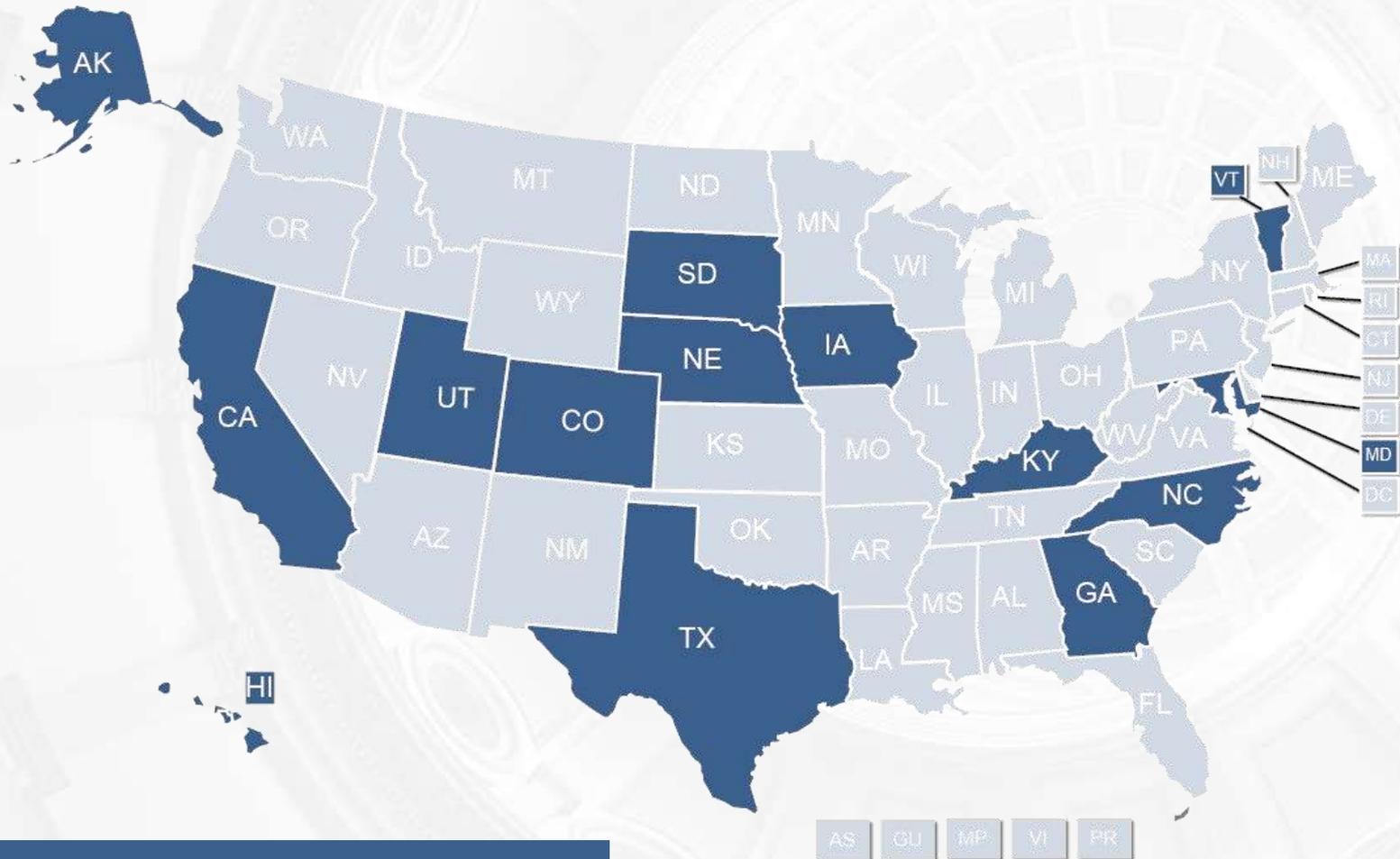
# Addressing Victims During the Pretrial Process

- The majority of states provide victims with the right to be notified of a defendant's release.
- The majority of states have laws addressing victim participation during the pretrial stage.
  - This includes the right to be heard or the right to be consulted.





# Citation in Lieu of Arrest



2012-2018: 14 states enacted 23 laws

[Citation in Lieu of Arrest: 50 State Chart](#)



NATIONAL CONFERENCE *of* STATE LEGISLATURES

# Deflection and Diversion

- Deflection is an emerging legislative trend that reroutes individuals with behavioral health needs before arrest or before contact with the justice system.
- Alternatively, statutory pretrial diversion is well established in 48 states and the District of Columbia and reroutes defendants after arrest, but prior to adjudication or final entry of judgment.



# Statutory Pretrial Diversion Database

## General Population Diversion



The interactive map has been designed to allow users to compare state general population diversion courts and programs. Select the state on the map for detail about general population diversion programs and courts in each state.

Thirty-seven states authorize programs that are not population specific and address the needs of defendants more generally than the programs listed above. These laws generally designate who has authorization to create a diversion program or designates administrative authority over a program to a specific individual or office such as prosecuting attorneys, local courts, or other local governmental agency. State statute also generally provides guidance on which defendants are eligible for participation in the diversion program and often specifically excludes defendants charged with a particular crime, defendants with specified criminal histories, or cases where certain circumstances, like death or bodily injury, were a factor.



## Population Specific Diversion

- Substance Abuse
- Mental Health
- Veterans/Active Military
- Domestic Relations
- Worthless Check
- Other



### SUBSTANCE ABUSE

The 16 states in ■ have statutorily authorized specialty courts aimed at addressing the needs of defendants charged with a drug offense or who have substance use related needs. The 8 states in ■ have statutorily created diversion programs for defendants charged with a drug offense or who have substance use related needs. The 15 states in ■ have statutorily authorized both specialty courts and diversion programs.

[Check out statutory citations and a chart of population-specific programs.](#)

[Statutory Pretrial Diversion Database](#)





## TOPICS

- Bond Forfeiture & Conditions Violations
- Budget, Oversight & Administration
- Citation in Lieu of Arrest
- Commercial Bond Regulation
- Conditions of Release
- Statutory Court Guidance
- Diversion/Deflection
- Eligibility for Release
- Pretrial Services & Programs
- Risk Assessments
- Special Populations
- Victims Protections and Policy

# Want to Know More?

- NCSL has tracked pretrial policy enactments since 2012. Enactments can be searched by topic, year, state, author or bill number. You can also search the summaries by keyword.



# Resources and Reports from the States

- Information on the provisions I've discussed today can mostly be found in:
  - ▣ [NCSL's Pretrial Enactment Database](#)
  - ▣ [NCSL's Pretrial Pending Legislation Database](#)
  - ▣ [NCSL's Pretrial Policy Database](#)
  
- NCSL also tracks reports coming out of state legislatures or from the executive and judicial branches. Those can be found on our [State Reports Webpage](#).



# Questions?

Contact me at:

[amber.widgery@ncsl.org](mailto:amber.widgery@ncsl.org)

