

UNIFORM PRETRIAL RELEASE AND DETENTION ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITHOUT PREFATORY NOTE OR COMMENTS



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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM PRETRIAL RELEASE AND DETENTION ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Pretrial Release and Detention Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Abscond” means fail to appear in court as required with intent to avoid or delay adjudication.

(2) “Charge”, used as a noun, means an allegation of an offense in a complaint, information, indictment, [citation,] or similar record.

[(3) [“Citation”] means a record issued by [an authorized official] alleging an offense.]

(4) “Covered offense” means [one of the offenses for which pretrial detention or the imposition of a financial condition that cannot be paid within the time prescribed in Article 3 is authorized].

(5) “Detention hearing” means a hearing held under Section 401.

(6) “Not appear” means fail to appear in court as required without intent to avoid or delay adjudication. “Nonappearance” has a corresponding meaning.

(7) “Obstruct justice” means interfere with the criminal process with intent to influence or impede the administration of justice. The term includes tampering with a witness or evidence.

(8) “Offense” means the conduct that a statute proscribes.

(9) “Person” means an individual, estate, partnership, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Release hearing” means a hearing under Section 301.

(12) “Secured appearance bond” means a person’s promise, secured by sufficient [surety], deposit, lien or proof of access to collateral, to forfeit a specified sum if the individual whose appearance is the subject of the bond absconds or does not appear.

(13) “Unsecured appearance bond” means a person’s unsecured promise to forfeit a specified sum if the individual whose appearance is the subject of the bond absconds or does not appear.

Legislative Note: *In paragraphs (2) and (3), include the state’s term for a citation or the equivalent if the state adopts Article 2.*

Include paragraph (3) if the state adopts Article 2.

In paragraph (4), insert the list of offenses or offense classes or types for which detention or the imposition of a financial condition that cannot be paid within the time prescribed in Article 3 is authorized.

In paragraph (12), insert the state’s term for “surety”.

SECTION 103. SCOPE. This [act] governs a determination to [arrest,] release[, or detain an individual before trial. The act does not affect the validity of a law of this state other than this [act] regarding related matters, including:

- (1) forfeiture, release, or collection of an unsecured or secured appearance bond;
- (2) a seizure for the purpose of involuntary civil commitment;
- (3) a right of a crime victim, including a right regarding notification;
- (4) appellate review; or
- (5) release pending appeal.

Legislative Note: *In the first sentence, insert the bracketed text if the state adopts Article 2.*

[[ARTICLE] 2]

[CITATION] AND ARREST

Legislative Note: *Include Article 2 if the state chooses to include an article on citation and arrest.*

SECTION 201. AUTHORITY FOR [CITATION] OR ARREST.

(a) If [an authorized official] has probable cause to believe an individual is committing or has committed an offense, [the authorized official] may issue the individual a [citation] or take another action authorized by law.

(b) Except as otherwise provided by law of this state other than this [act], [an authorized official] may arrest an individual only if:

(1) the individual is subject to an order of detention from any jurisdiction, including an arrest warrant or order of revocation of probation, [parole], or release; or

(2) subject to subsection (c), [the authorized official] has probable cause to believe the individual is committing or has committed an offense.

(c) If an offense under subsection (b)(2) is [a misdemeanor or non-criminal offense] [punishable by not more than [six months] in jail or prison], [an authorized official] may not arrest the individual unless:

(1) the offense is [domestic violence, stalking, driving under the influence, unlawful firearms possession or use, a sexual offense, or other listed offense];

(2) the individual fails to provide adequate identification, orally or through documentation, as lawfully requested by [the authorized official];

(3) the individual is in violation of a condition or order of probation, [parole], or release; or

(4) [the authorized official] reasonably believes arrest is necessary to:

(A) safely conclude the [authorized official's] interaction with the individual;

(B) carry out a lawful investigation;

(C) protect a person from significant harm; or

(D) prevent the individual from fleeing the jurisdiction.

Legislative Note: *In each subsection, insert the state's term for an official authorized to issue a citation or the equivalent.*

In the introduction to subsection (c), insert the offenses or offense classes or types for which arrest is not authorized except as provided in paragraphs (1) through (4).

In subsection (c)(1), insert the offenses or offense classes or types sufficiently serious to authorize an arrest.

SECTION 202. FORM OF [CITATION]. A [citation] must state:

(1) the circumstances of the alleged offense and the provision of law that it violates;

(2) if appearance is required:

(A) when and where the individual must appear; and

(B) how to request a change in the appearance date; and

(3) the possible consequences of violating the requirements of the [citation] or committing another offense before the individual's first court appearance.

SECTION 203. RELEASE AFTER ARREST. [An authorized official] may release an individual after arrest and without a release hearing by issuing a [citation] under Section 201(a). [The authorized official] may require the individual to execute an unsecured appearance bond as a condition of release.

Legislative Note: *Insert the state's term for an official authorized to release an individual after arrest but before the individual's first court appearance.*

SECTION 204. APPEARANCE ON [CITATION].

(a) If an individual appears as required by a [citation], the court shall issue an order of pretrial release on recognizance in the case for which the [citation] was issued. The order must include the information required under Section 304(a).

(b) If an individual absconds or does not appear as required by a [citation], the court may issue [a summons or an arrest warrant].]

Legislative Note: *In subsection (b), insert the term or terms for the judicial action or actions the state chooses to authorize if an individual fails to appear.*

[ARTICLE] 3

RELEASE HEARING

SECTION 301. TIMING.

(a) Unless an arrested individual is released after arrest [under Section 203], the individual is entitled to a hearing to determine release pending trial. Except as otherwise provided in subsection (b), the court shall hold the hearing not later than [48] hours after the arrest.

(b) The court may continue a release hearing:

(1) On motion of the individual; or

(2) In extraordinary circumstances, on its own or on motion of the [prosecuting authority] for not more than [48] hours.

(c) At the conclusion of a release hearing, the court shall issue an order of pretrial release or temporary pretrial detention.

Legislative Note: *In the first sentence of subsection (a), insert the bracketed words if the state adopts Article 2.*

In subsections (a) and (b), insert the deadlines the state designates for a release hearing and continuance of the hearing.

In subsection (b), insert the state's term for the state's prosecuting authority.

SECTION 302. RIGHTS OF ARRESTED INDIVIDUAL.

[(a)] An arrested individual has a right to be heard at a release hearing.

[(b)] The individual has a right to counsel at a release hearing. If the individual is unable to obtain counsel for the hearing, [an authorized agency] shall provide counsel. [The scope of representation under this section may be limited to the subject matter of the hearing.]]

Legislative Note: *Include subsection (b) if the state chooses to codify a right to counsel at the release hearing. Insert the state's term for the agency that is authorized to provide counsel. If the authorized agency varies locally, insert "an authorized agency". Include the last bracketed sentence if the state chooses to permit limited-scope representation.*

SECTION 303. JUDICIAL DETERMINATION OF RISK. At a release hearing, the court shall determine whether an arrested individual poses a risk that is relevant to pretrial release. The individual poses a relevant risk only if the court finds by clear and convincing evidence that the individual is likely to abscond, not appear, obstruct justice, violate an order of protection, or cause significant harm to another person. The court shall consider:

(1) available information concerning:

(a) the nature, seriousness, and circumstances of the alleged offense;

(b) the weight of the evidence against the individual;

(c) the individual's criminal history, history of absconding or nonappearance, and community ties;

(d) whether the individual has a pending charge in another matter or is under criminal justice supervision;

[(2) a recommendation of a pretrial services agency or relevant information provided by the agency;] and

(3) other relevant information, including information provided by the individual, the

[prosecuting authority], or an alleged victim.

Legislative Note: Include paragraph (5) if a pretrial services agency operates in the state.

In paragraph (6), insert the state's term for the state's prosecuting authority.

SECTION 304. PRETRIAL RELEASE.

(a) Except as otherwise provided in subsection (b) and Section 308, at a release hearing the court shall issue an order of pretrial release on recognizance of an arrested individual. The order must state:

(1) when and where the individual must appear; and

(2) the possible consequences of violating the terms of the order or committing an offense while the charge is pending.

(b) If the court determines under Section 303 that the individual poses a relevant risk, the court shall determine whether, under Sections 305, 306, and 307, pretrial release of the individual is appropriate.

(c) If the court determines under Sections 305, 306, and 307 that pretrial release is appropriate, the court shall issue an order of pretrial release. The order must include the information required under subsection (a) and any restrictive condition imposed by the court.

SECTION 305. PRACTICAL ASSISTANCE; VOLUNTARY SUPPORTIVE SERVICES.

(a) If the court determines under Section 303 that an arrested individual poses a relevant risk, the court shall determine whether practical assistance or a voluntary supportive service is available and sufficient to satisfactorily address the relevant risk.

(b) If the court determines that practical assistance or a voluntary supportive service is available and sufficient to satisfactorily address a relevant risk that the court has identified under

Section 303, the court shall refer the individual to the practical assistance or voluntary supportive service and issue an order of pretrial release under Section 304(c).

SECTION 306. RESTRICTIVE CONDITION OF RELEASE.

(a) If the court determines under Section 305 that practical assistance or voluntary supportive services are not sufficient to satisfactorily address a relevant risk the court has identified under Section 303, the court shall impose the least restrictive condition or conditions reasonably necessary to satisfactorily address the relevant risk and issue an order of pretrial release under Section 304(c).

(b) Restrictive conditions under subsection (a) may include:

- (1) mandatory therapeutic treatment or social services;
- (2) a requirement to seek to obtain or maintain employment or maintain an education commitment;
- (3) a restriction on possession or use of a weapon;
- (4) a restriction on travel;
- (5) a restriction on contact with a specified person;
- (6) a restriction on a specified activity;
- (7) supervision by [a [pretrial services agency] or] a third party;
- (8) active or passive electronic monitoring;
- (9) [house arrest];
- (10) subject to Section 307, a secured appearance bond or an unsecured appearance bond;
- (11) a condition proposed by the arrested individual, the [prosecuting authority], or an alleged victim;

(12) any other non-financial condition required by law of this state other than this [act]; or

(13) another condition to satisfactorily address the relevant risk the court has identified under Section 303.

(c) The court shall state in a record why the restrictive condition or conditions imposed under subsection (a) are the least restrictive reasonably necessary to satisfactorily address the relevant risk the court has identified under Section 303.

Legislative Note: In paragraph (9), insert the state's term for house arrest.

In paragraph (11), insert the state's term for the state's prosecuting authority.

SECTION 307. FINANCIAL CONDITION OF RELEASE.

(a) Subject to Sections 308 and 403, the court may not impose a restrictive condition under Section 306 that requires initial payment of a fee in a sum greater than an arrested individual is able to pay within [24] hours from personal financial resources. If the individual is unable to pay the fee, the court shall waive or modify the fee, or waive or modify the restrictive condition that requires payment of the fee, to the extent necessary to release the individual. If the individual is unable to pay a recurring fee, the court shall waive or modify the recurring fee, or waive or modify the restrictive condition that requires payment of the fee.

(b) Before imposing a secured appearance bond or an unsecured appearance bond as a condition of release, the court shall consider the individual's personal financial resources and obligations, including income, assets, expenses, liabilities, and dependents.

(c) Subject to Sections 308 and 403, the court may not impose a secured appearance bond as a condition of release unless the court determines, by clear and convincing evidence, that the individual is likely to obstruct justice, violate an order of protection, abscond, or not appear.

(d) Subject to Sections 308 and 403, the court may not impose a secured appearance bond:

(1) to keep the individual detained;

(2) for a non-felony charge, unless the individual has absconded or did not appear [three or more] times in a criminal case or combination of criminal cases; or

(3) in an amount greater than the individual is able to pay within [24] hours from personal financial resources.

SECTION 308. TEMPORARY PRETRIAL DETENTION.

(a) At the conclusion of a release hearing, the court may issue an order to temporarily detain the arrested individual until a detention hearing, or may impose a financial condition of release in an amount greater than the individual is able to pay within [24] hours from personal financial resources, only if the individual is charged with a covered offense and the court determines, by clear and convincing evidence, that:

(1) it is likely that the individual will abscond, obstruct justice, violate an order of protection, or cause significant harm to another person and no less restrictive condition is sufficient to satisfactorily address the risk;

(2) the individual has violated a condition of an order of pretrial release for a pending criminal charge; or

(3) it is extremely likely that the individual will not appear, and no less restrictive condition is sufficient to satisfactorily address the risk[, in a case in which the individual is charged with a felony].

(b) If the court issues an order under subsection (a), the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.

Legislative Note: In subsection (a)(3), include the bracketed language only if the state defines “covered offense” to include a non-felony offense.

[ARTICLE] 4

DETENTION HEARING

SECTION 401. TIMING.

(a) If the court issues an order of temporary pretrial detention under Section 308, or of pretrial release under Section 304 and imposes a restrictive condition that results in continued detention of the individual, the court shall hold a hearing to consider continued detention of the individual pending trial. The hearing must be held not later than [72] hours after issuance of the order.

(b) The court on its own or on motion of the [prosecuting authority] may for good cause continue the detention hearing for not more than [72] hours.

(c) The court shall continue a detention hearing on motion of the individual.

(d) At the conclusion of the detention hearing, the court shall issue an order of pretrial release or detention.

Legislative Note: In subsections (a) and (b), insert the deadlines the state specifies for a detention hearing and continuance of the hearing.

In subsection (b), insert the state’s term for the state’s prosecuting authority.

SECTION 402. RIGHTS OF DETAINED INDIVIDUAL.

(a) At a detention hearing, a detained individual has a right to counsel. If the individual is indigent, [an authorized agency] shall provide counsel. [The scope of representation under this section may be limited to the subject matter of the hearing.]

(b) At a detention hearing, the individual has a right to:

(1) review evidence to be introduced by the [prosecuting authority] before its

introduction at the hearing;

(2) present evidence and witnesses and provide information;

(3) testify; and

(4) cross-examine witnesses.

Legislative Note: In subsection (b)(2), insert the state's term for the state's prosecuting authority.

SECTION 403. PRETRIAL DETENTION.

(a) At a detention hearing, the court shall consider the criteria and restrictive conditions in Sections 303 through 307 to determine whether to issue an order of pretrial detention or continue, amend, or eliminate a restrictive condition that has resulted in continued detention of an individual. If failure to satisfy a secured appearance bond or pay a fee is the only reason the individual continues to be detained, the fact of detention is prima facie evidence that the individual is unable to satisfy the bond or pay the fee.

(b) The court at a detention hearing may issue an order of pretrial detention or continue a restrictive condition of release that results in detention only if the individual is charged with a covered offense and the court determines, by clear and convincing evidence, that:

(1) it is likely that the individual will abscond, obstruct justice, violate an order of protection, or cause significant harm to another person and no less restrictive condition is sufficient to satisfactorily address the risk; or

(2) it is extremely likely that the individual will not appear, and no less restrictive condition is sufficient to satisfactorily address the risk[, in a case where the individual is charged with a felony].

(c) If the court issues an order under subsection (b), the court shall state in a record why no less restrictive condition is sufficient.

Legislative Note: In subsection (b)(2), include the bracketed language only if the state defines “covered offenses” to include a non-felony offense.

[ARTICLE 5]

MODIFYING OR VACATING ORDER

SECTION 501. MODIFYING OR VACATING BY AGREEMENT. By agreement of the [prosecuting authority] and an individual subject to an order issued under [Article] 3 or 4, the court may:

- (1) modify an order of pretrial release;
- (2) vacate an order of pretrial detention and issue an order of pretrial release; or
- (3) issue an order of pretrial detention.

Legislative Note: In the first sentence, insert the state’s term for the state’s prosecuting authority.

SECTION 502. MOTION TO MODIFY. On its own or on motion of a party, the court may modify an order of pretrial release or detention using the procedures and standards in [Articles] 3 and 4. The court may consider new information relevant to the order, including information that an individual has violated a condition of release. The court may deny the motion summarily if it is not supported by new information.

[ARTICLE] 6

MISCELLANEOUS PROVISIONS

SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform [act], consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[SECTION 602. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

SECTION 603. TRANSITION. This [act] applies to an arrest made[, [a citation] issued,] or a release or detention hearing held on or after [the effective date of this [act]], including a hearing to enforce, modify, or vacate a release or detention order entered before the effective date of this [act].

[SECTION 604. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)]

Legislative Note: *A state may need to repeal or amend a statute that imposes mandatory release conditions for an offense or offense class or type such as a mandatory fee, a secured bond, or another financial condition.*

SECTION 605. EFFECTIVE DATE. This [act] takes effect