**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

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-NINTH YEAR

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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 [insert the offenses for which the state authorizes pretrial detention or the imposition of a financial condition that cannot be paid within the time prescribed in Article 3].

(5) “Detention hearing” means a hearing 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 conduct that a statute or ordinance 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) “Release on recognizance” means pretrial release of an individual with no condition other than to appear in court as required and to abide by generally applicable laws.

(13) “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.

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

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

*If paragraph (3) is included, insert the state’s term for an official authorized to issue a citation or the equivalent or make an arrest. The same term should be inserted in Article 2, with the exception of Section 203, and elsewhere in this act where “authorized official” appears in brackets.*

*In paragraph (13), insert the state’s term for “surety”.*

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

 (1) forfeiture, release, or collection of a secured appearance bond or an unsecured appearance bond;

(2) involuntary civil commitment;

(3) a right of a crime victim, including a right of notification;

(4) appellate review; or

(5) release pending appeal.

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

# [[ARTICLE] 2

# [CITATION] AND ARREST

***Legislative Note:*** *Include Article 2 if the state chooses to replace its current law on citation and arrest with this article.*

## 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 other 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 [insert the offenses or offense types for which the state chooses to authorize arrest];

(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 subsection (b)(1) and (c)(3), insert the state’s term for parole or the equivalent.*

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

*In subsection (c)(1),* *insert offenses such as* *domestic violence, stalking, driving under the influence, unlawful possession or use of a firearm, a sexual offense, or other offenses or offense types for which the state chooses to authorize arrest.*

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

(1) the circumstances of the alleged offense and the provision of law violated;

(2) if court 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 [citation] or committing an 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 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 arrest warrant].]

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

# [ARTICLE] 3

# RELEASE HEARING

## SECTION 301. TIMING.

(a) Unless an arrested individual is released [under Section 203] after arrest, 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 arrested individual; or

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

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

***Legislative Note:*** *If the state adopts Article 2, insert the bracketed text in the first sentence of subsection (a).*

*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 prosecuting authority. The same term should be inserted elsewhere in this act where “prosecuting authority” appears in brackets.*

## SECTION 302. RIGHTS OF ARRESTED INDIVIDUAL.

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

[(b) An arrested 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 provide a statutory right to counsel at the release hearing. Insert the state’s term for the agency 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 the arrested individual poses a risk that is relevant to pretrial release. The individual poses a relevant risk only if the court determines 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; and

 (D) whether the individual has a pending charge in another matter or is under criminal justice supervision; [and]

 (2) [any relevant information provided by a [pretrial services agency]; and

 (3)] other relevant information, including information provided by the individual, the [prosecuting authority], or an alleged victim.

***Legislative Note:*** *Include paragraph (2) if an agency performs pretrial services in the state, insert the name of the appropriate agency, and do the same where the phrase “pretrial services agency” appears elsewhere in the act.*

## 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. The order must state:

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

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

 (b) If the court determines under Section 303 that an arrested individual poses a relevant risk, the court shall determine under Sections 305, 306, and 307 whether 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, or both, are available and sufficient to address satisfactorily the risk.

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

 (b) A restrictive condition under subsection (a) includes:

 (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] another person;

 (8) active or passive electronic monitoring;

 (9) [house arrest];

 (10) subject to Section 307, a secured appearance bond or 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 address satisfactorily the relevant risk the court identifies under Section 303.

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

***Legislative Note:*** *In subsection (b)(9), insert the state’s term for house arrest.*

## 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 the arrested individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed. 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 the restrictive condition that requires payment of the fee.

(b) Before imposing a secured appearance bond or unsecured appearance bond under Section 306, the court shall consider the arrested 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 restrictive condition under Section 306 unless the court determines by clear and convincing evidence that the arrested individual is likely to abscond, not appear, obstruct justice, or violate an order of protection.

(d) Subject to Sections 308 and 403, the court may not impose a secured appearance bond as a restrictive condition under Section 306:

(1) to keep an arrested individual detained;

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

(3) the cost of which is an amount greater than the individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed.

## SECTION 308. TEMPORARY PRETRIAL DETENTION.

(a) At the conclusion of a release hearing, the court may issue an order to detain the arrested individual temporarily until a detention hearing, or may impose a financial condition of release in an amount greater than the individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed, 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 that no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303;

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

(3) [in a case in which the individual is charged with a felony, ]it is extremely likely the individual will not appear, and no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303.

(b) If under subsection (a) the court issues an order to detain the arrested individual temporarily or that imposes a financial condition of release in an amount greater than the individual is able to pay from personal financial resources not later than [24] hours after the condition is imposed, 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 an offense that is not a felony.*

# [ARTICLE] 4

# DETENTION HEARING

## SECTION 401. TIMING.

(a) If the court issues an order of temporary pretrial detention of an arrested individual under Section 308, or pretrial release of an arrested individual under Section 304 subject to 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 continue a detention hearing for good cause for not more than [72] hours.

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

(d) At the conclusion of a 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 chooses for a detention hearing and continuance of the hearing.*

## **SECTION 402. RIGHTS OF DETAINED INDIVIDUAL**.

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

(1) review evidence to be introduced by the [prosecuting authority] before it is introduced at the hearing;

(2) present evidence, call witnesses, and provide information;

(3) testify; and

(4) cross-examine witnesses.

***Legislative Note:*** *In subsection (a), 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 403. PRETRIAL DETENTION.**

(a) At a detention hearing, the court shall consider the criteria 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 the detained 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 isprima 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 detained 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 address satisfactorily the relevant risk the court identifies under Section 303; or

(2) [in a case where the individual is charged with a felony, ]it is extremely likely that the individual will not appear, and no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Section 303.

(c) If under subsection (b) the court issues an order of pretrial detention or continues a restrictive condition of release that results in detention, 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 (b)(2), include the bracketed language only if the state defines “covered offenses” to include an offense that is not a felony.*

# [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 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.

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 the individual subject to the order 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 the 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 issued 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 such as a mandatory fee, a secured bond, or another financial condition.*

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

***Legislative Note:*** *In determining the effective date, the state should determine the amount of time it may need to prepare for implementation of the act.*