



NATIONAL CONFERENCE of STATE LEGISLATURES
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16/51 states (and D.C.) provide a kind of review hearing for defendants detained on condition of release. In most cases review occurs within a couple of days.

PRETRIAL DETENTION

States provide most defendants the opportunity for release prior to trial. Pretrial detention is limited to only those charged with the most serious crimes and other specified circumstances such as violating conditions of, or committing a new crime while on pretrial release.

A court must make certain determinations before ordering detention. Commonly, state laws require the court to determine there is probable cause to believe the accused committed the crime or that no release conditions will reasonably assure the defendant's appearance. States also permit denial of release in order to protect the safety of the victim or the community. Laws in 18 states and the District of Columbia require a hearing to determine if a defendant will be detained or released. These hearings provide the court with the opportunity to consider information presented by the prosecution and defense. State laws have placed certain parameters on the hearings.

Generally, denial hearings take place shortly after arrest. Twelve states have set specific time frames for when the hearing must be held. For example, Massachusetts law requires the hearing at the defendant's first court appearance unless there is a continuance. The law further specifies that a continuance by the defense cannot exceed seven days and a maximum of three days when requested by the prosecution.

Laws in eight states and the District of Columbia address detainment of the accused pending the outcome of the hearing. The District of Columbia, Massachusetts and Ohio require the defendant to be held for the duration of the hearing.

Procedural rights are enumerated for defendants in eight states and the District of Columbia. These include the right to counsel, the right to be present during the hearing, the opportunity to testify and to present and cross-examine witnesses.

The chart "Hearings Required to Deny Pretrial Release" below provides more information on these hearings.

Limits on Pretrial Detention

The purpose of Kansas' pretrial release laws are "... to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges... when detention serves neither the ends of justice nor the public interest." [§28-2201]

Courts generally have the authority to review and amend conditions of pretrial release at any time prior to trial, as they deem appropriate. But in 14 states and the District of Columbia, courts are required to review, upon application, the conditions of defendants who have been granted release but remain in jail because they are unable to meet those conditions. (More information on common conditions of release, such as cash or secured bonds, supervision and electronic monitoring is included in the "Pretrial Release Conditions" chart.)

Under Alaska's law, a defendant who remains detained after the review can appeal to a higher court. In South Dakota, if the conditions are not modified and the accused remains in jail, the court is required to record the reasons for the imposed conditions.

The chart "States Requiring a Judicial Review When Defendant is Unable to Meet the Pretrial Release Conditions" below provides more information on review of release conditions.

STATE & CITATION	CRIMES THAT REQUIRE A HEARING TO DENY PRETRIAL RELEASE	TIME FRAMES SPECIFIED	DETAINMENT OF DEFENDANT ADDRESSED	RIGHTS OF DEFENDANT ENUMERATED
Alaska §12.30.011	Capital offenses; unclassified felonies; class A and sexual felonies; felony operating a vehicle while under the			

STATE & CITATION	CRIMES THAT REQUIRE A HEARING TO DENY PRETRIAL RELEASE	TIME FRAMES SPECIFIED	DETAINMENT OF DEFENDANT ADDRESSED	RIGHTS OF DEFENDANT ENUMERATED
	influence; felony refusing to submit to a chemical test; felony crimes against a person; any domestic violence offense if the defendant has a prior similar conviction in last five years.			
Arizona §13-3961	Capital offenses; felony offenses; sexual conduct or molestation of a minor; aggravated driving under the influence by a person in the country illegally; felonies involving dangerous crimes against children; terrorism; the defendant is a street gang member.	X	X	X
Colorado §16-4-101	Capital offenses; violent crimes if the defendant has a prior violent crime conviction or two prior convictions for any felony; illegal possession of weapon due to criminal record; sexual assault; sexual assault on a child.	X		
Delaware 11 §2103	Capital offenses			
District of Columbia §23-1322	1st and 2nd degree murder; assault with intent to kill; crime of violence or dangerous crime as enumerated in §23-1331; obstruction of justice; illegal possession of a firearm as enumerated in §23-1322(c)(7)&(8).	X	X	X
Florida §907.041	Capital offenses or offenses punishable by life; defendant has threatened, intimidated or injured a victim, witness, juror or judicial officer; trafficking controlled substances; driving under the influence manslaughter and has a prior conviction for driving under the influence manslaughter, was driving with a suspended license, or was prior convicted for driving with a suspended license; dangerous offenses; manufacturing a controlled substance.	X	X	X

STATE & CITATION	CRIMES THAT REQUIRE A HEARING TO DENY PRETRIAL RELEASE	TIME FRAMES SPECIFIED	DETAINMENT OF DEFENDANT ADDRESSED	RIGHTS OF DEFENDANT ENUMERATED
Hawaii §804-3	Offenses punishable by life; serious crimes as enumerated in §804-3(a).			
Illinois 725 ILCS 5/110-6.1; 5/110-6.3	Capital offenses; offenses punishable by life or life without parole; stalking; aggravated stalking; felonies not eligible for probation; unlawful use of weapons when the offense occurred in a school zone; terrorist threats.	X	X	X
Indiana §35-33-8-2	Murder.			
Louisiana C. Cr. P. Art. 330.1	Capital offenses; violent offenses; production, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense a controlled substance.	X	X	
Maine 15 § 1027; §1029	Crimes that are currently or were formerly a capital offense, regardless of current penalty.	X		
Massachusetts 276 §58A	Burglary; arson; offenses involving domestic abuse; drug offenses with a mandatory minimum sentence of three years; intimidation of a witness; 3rd or subsequent driving under the influence; illegal possession of a firearm as enumerated in 269 §10(a), (c) & (m) & 269 §10G.	X	X	X
Mississippi Const. Art. 3, §29	Capital offenses; crimes punishable by life in prison; offenses punishable by 20 or more years; defendant has a prior conviction for a capital offense.			
Ohio §2937.222	Felonies that pose a substantial risk of serious physical harm; noncapital aggravated murder; murder; 1st or 2nd degree felony; aggravated vehicular homicide; vehicular homicide; vehicular manslaughter; felony stalking; felony driving under the influence of drugs or alcohol.	X	X	X

STATE & CITATION	CRIMES THAT REQUIRE A HEARING TO DENY PRETRIAL RELEASE	TIME FRAMES SPECIFIED	DETAINMENT OF DEFENDANT ADDRESSED	RIGHTS OF DEFENDANT ENUMERATED
Oregon §135.240	Murder; treason; aggravated murder; violent felonies.	X		X
Rhode Island §12-13-1.1	Offenses punishable by life; offenses involving use or threat of use of a dangerous weapon when there is a prior similar conviction or prior life sentence; drug crimes punishable by more than 10 years.			
Texas Const. Art. 1, § 11a	Felonies when there are two prior felony convictions; offenses involving a deadly weapon when there is a prior felony conviction.			
Washington §10.21.040; §10.21.060	Capital offenses; offenses punishable by life in prison.	X	X	X
Wisconsin Const. Art. 1, § 8;	1st degree intentional homicide; 1st or 2nd degree sexual assault of a child; repeated acts of sexual assault on the same child; sexual assault of a child placed in substitute care; violent crime or attempted violent crime and has a prior similar conviction.	X	X	X

HEARINGS REQUIRED TO DENY PRETRIAL RELEASE*

Source: National Conference of State Legislatures, 2013

* No statute located for states not listed.

Court rule and case law provide further guidance regarding mandatory financial conditions. Court rule is not included in this chart unless a statute authorizes or is superseded by the rules and case law is not included.

STATE & CITATION	POLICY
Alaska §12.30.006	Review conditions after 48 hours in custody.
Colorado §16-4-107	Review conditions after 7 days in custody and there are new factors for the court to consider.
Connecticut §54-63d	Requires court staff to report to the court when unable to meet conditions.
District of Columbia §23-1321	Review conditions after 24 hours in custody.

STATE & CITATION	POLICY
Kansas §22-2802	Review conditions without unnecessary delay after receiving request.
Kentucky §431.520	Review conditions after 24 hours in custody.
Maine 15 §1028	Review conditions within 48 hours of receiving request.
Maryland Criminal Procedure §5-215	Review conditions immediately upon not meeting conditions.
Missouri §544.455	Review conditions after 24 hours in custody.
Nebraska §29-901.3	Review conditions after 24 hours in custody.
New Hampshire §597:39	Permits modification of conditions upon notice to the prosecutor.
New Mexico R. Cr. P. Rule 5-401	Review conditions after 24 hours in custody.
North Dakota §29-08 authorizes R. Cr. P. Rule 46	Review conditions after 48 hours in custody.
South Dakota §23A-43-8	Review conditions after 24 hours in custody.
Vermont 13 §7554	Review conditions after 48 hours in custody.
Wisconsin §969.08	Review conditions after 48 hours in custody.

JUDICIAL REVIEW WHEN DEFENDANT IS UNABLE TO MEET PRETRIAL RELEASE CONDITIONS *

Source: National Conference of State Legislatures, 2013

*No statute located for states not listed.

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