



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

48/51 have some kind of presumption of pretrial release

PRETRIAL RELEASE ELIGIBILITY

"All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great."

—Article 1, section 7 of the Minnesota Constitution

Minnesota's constitutional provision is similar to that of many states' laws governing pretrial release. Nearly every state has a presumption in favor of releasing all but a specified few defendants before trial. Forty states have such a provision in the state constitution. Where the constitution is silent on this, eight states have created a statutory presumption.

State constitutions and statutes specify which defendants may be detained before trial. Most commonly, defendants charged with capital offenses are barred from pretrial release. Other common circumstances in which release can be denied include violent and sex crimes, when the victim is a child or family member, or if the defendant has previous convictions for certain serious offenses. Defendants facing serious drug or alcohol charges, such as trafficking in a controlled substance or driving under the influence resulting in serious injury, may be denied release in a few states. However, denial of release is not absolute. A court must make certain determinations before ordering detention. For example, the court must find that "the proof is evident or the presumption great" against the defendant. Or, a court may deny release if it is determined that no conditions can reasonably assure the appearance of the defendant or if the defendant is a danger to himself or herself or the community.

While state laws broadly provide for presumption of release, they also define who is and is not eligible for pretrial release, and under what conditions.

The chart below provides more information on state laws governing pretrial release eligibility. (An [additional chart](#) provides more information on statutory guidance for setting pretrial release conditions.)

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
Alabama Const. art. 1 §16; §15-13-108	X	X	Capital offenses	Same as constitution
Alaska Const. art. 1 §11; §12.30.011(d)	X		Capital offenses	Unclassified felonies; class A felonies; sexual felonies; felony operating a vehicle while under influence of alcohol or drugs; felony refusing to submit to a chemical test; felony crimes against a person or any domestic violence offense if have a previous similar conviction in last five years; felonies committed while on pretrial release; arrested for felonies committed in another state.

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
Arizona Const. art. 2 §22; §13- 3967(a); §13- 3961(a)	X	X	Capital offenses; sexual assault; sexual conduct or molestation of a minor; serious felony offenses if the defendant is in the country illegally,* as defined by the Legislature; felony committed while on pretrial release for a felony offense; felony offenses.	Same as constitution plus aggravated driving under the influence by a person in the country illegally; felonies involving dangerous crimes against children; terrorism; if defendant is a street gang member.
Arkansas Const. art. 2 § 8; §16-84-110	X		Capital offenses	None specified
California Const. art. I § 12; Penal Code §1271 & 1270.5	X	X	Capital offenses; felonies involving acts of violence; felony sexual assault; felonies involving threats of great bodily harm.	Capital offenses
Colorado Const. art. II § 19; §16-4-101	X	X	Capital offenses; violent crimes committed while on pretrial release for a violent crime; violent crimes if there is a previous violent crime conviction or two previous convictions for any felony.	Same as constitution plus illegal possession of weapon due to criminal record; sexual assault; sexual assault on a child.
Connecticut Const art 1 § 8	X		Capital offenses	None specified
Delaware Const. art. 1 § 12; 11 Del. C. §2103; 11 Del. C. §2116	X		Capital offenses	Same as constitution plus violent felonies committed while on pretrial release for a violent felony.
District of Columbia §23-1322			None specified	1 st and 2 nd degree murder; assault with intent to kill; any offense while on pretrial release for a felony or misdemeanor; 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).

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
Florida Const. art. 1 § 14; §907.041(4)	X		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 previous conviction for driving under the influence manslaughter, was driving with a suspended license, or was previously convicted for driving with a suspended license; dangerous offenses; any offense while on pretrial release for a dangerous offense; manufacturing a controlled substance.
Georgia §17-6-1(e); §17- 6-13		X	None specified	Serious violent felony if there is a previous conviction for a serious violent felony; family violence crime involving serious injury.
Hawaii Const. art. 1 §12; §804-4(a); §804-3		X	Offenses punishable by life	Serious crimes as enumerated in §804-3(a).
Idaho Const. art. 1 §6; §19-2902	X	X	Capital offenses	None specified
Illinois Const. art. 1 §9; 725 ILCS 5/110-4	X	X	Capital offenses; offenses punishable by life or life without parole.	Same as constitution plus stalking; aggravated stalking; felonies not eligible for probation; unlawful use of weapons when the offense occurred in a school zone; terrorist threats.
Indiana Const. art. 1 § 17; §35-33-8-2	X		Murder and treason.	Murder
Iowa Const. art. 1 § 12; §811.1	X	X	Capital offenses	None specified
Kansas Const. Bill of Rights § 9; §22- 2802 §59-29a20	X	X	Capital offenses	Sexually violent predator

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
Kentucky Const. §16	X		Capital offenses	None specified
Louisiana Const. art. 1 § 18; C. Cr. P. Art. 330 & Art. 331	X	X	Capital offenses; violent offenses; production, manufacture, distribute, or dispense, or possess with intent to manufacture, distribute or dispense a controlled substance.	Same as constitution
Maine Const. art. 1 §10; 15 § 1003(3)&(4)		X	Crimes that are currently or were formerly a capital offense, regardless of current penalty.	Same as constitution
Maryland CR. Pr. Law § 5-202				Violent offenses if have a previous conviction for a violent offense; offenses enumerated in CR. PR. Law § 5-202(d)(1) committed while on pretrial release for a similar offense; violation of a protection order involving threats or abuse of a family member; offenses enumerated in CR. PR. Law § 5-202(f)(1) if have a previous similar conviction; any offense if a registered sex offender.
Massachusetts 276 §58; 276 §58A		X	None specified	Capital offenses; burglary; arson; violation of a protection order; offenses involving domestic abuse; drug offenses with a mandatory minimum sentence of three years; intimidation of a witness; 3 rd or subsequent driving under the influence; illegal possession of a firearm as enumerated in 269 §10(a), (c) & (m) & 269 §10G.; new crime while on pretrial release.
Michigan Const. art. 1 § 15; §765.5, §765.6(1)	X	X	Murder; treason; violent felonies if there are two previous violent felony convictions within 15 years; 1 st degree criminal sexual conduct; armed robbery; kidnapping with intent to	Murder and treason.

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
			extort money; violent felony while on pretrial release for a violent felony.	
Minnesota Const. art. 1 § 7	X		Capital offenses	None specified
Mississippi Const. art. 3 §29; §99-5-33	X		Capital offenses; crimes punishable by life in prison; offenses punishable by 20 or more years; defendant has a previous conviction for a capital offense; felony committed while on pretrial release as enumerated in Const. Art. 3 § 29(2).	If there is potential for a murder charge, defendant is not eligible for bail until it is known if the wounded victim will recover.
Missouri Const. art 1 § 20; §544.455; § 544.470	X	X	Capital offenses	Illegal alien charged with any offense.
Montana Const. art. 2 § 21; §46-9-102	X	X	Capital offenses	Same as constitution
Nebraska Const. art. 1, § 9;	X		Murder; treason; sexual offenses involving penetration by force.	None specified
Nevada Const. art, 1, §7; §178.484	X	X	Capital offenses or murder punishable by life without parole.	1 st degree murder
New Hampshire §597:1; §597:1c; §597:2(III-a)		X	None specified	Offenses punishable by life; abuse of a family or household member; violation of a protection order for domestic violence.
New Jersey Const. art. 1 §11	X		Capital offenses	None specified
New Mexico Const. art. 2 §13	X		Capital offenses; any felony and if there are two or more previous felony convictions; felonies involving use of a deadly weapon and if there is a prior felony conviction.	None specified

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
New York C. Pr. Law §510.10		X	None specified	None specified
North Carolina Const. art. 1 §27; §15A-533, §15A-534.6			None specified	Capital offenses; drug trafficking while on pretrial release for another offense and there is a prior similar conviction within the previous five years; offense associated with a criminal street gang while on pretrial release for another offense and there is a prior similar conviction within the previous five years; manufacture of methamphetamine committed to maintain dependence on or illegal use of the drug.
North Dakota Const. art. 1 §11	X		Capital offenses	None specified
Ohio Const. art. 1 §9; §2937.222	X		Capital offenses; felonies that pose a substantial risk of serious physical harm, as determined by the General Assembly.	Noncapital aggravated murder; murder; 1 st or 2 nd degree felony; aggravated vehicular homicide; vehicular homicide; vehicular manslaughter; felony stalking; felony driving under the influence of drugs or alcohol.
Oklahoma Const. art. 2 §8; 22 § 1101	X	X	Capital offenses; violent offenses; offenses punishable by life or life without parole; felony when there are two or more prior felony convictions; dangerous controlled substance offenses when maximum sentence is a minimum of 10 years.	Same as constitution plus kidnapping.
Oregon Const. art. 1 §14 & §43; §135.240	X		Murder; treason; aggravated murder; violent felonies.	Same as constitution plus any offense while on pretrial release.
Pennsylvania Const. art. 1	X	X	Capital offenses or offenses punishable by life.	Same as constitution

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
§14; 42 Pa.S.C.A. 5701				
Rhode Island Const. art. 1 §9; §12-13-1	X	X	Offenses punishable by life; offenses involving use or threat of use of a dangerous weapon when there is a previous similar conviction or previous life sentence; drug crimes punishable by more than 10 years.	None specified
South Carolina Const. art. 1 §15; § 22-5-510	X		Capital offenses; offenses punishable by life; violent offenses, as defined by the General Assembly.	Same as constitution plus violent offenses enumerated in § 16-1-60.
South Dakota Const. art. 6 §8	X		Capital offenses	None specified
Tennessee Const. art. 1, §15; §40-11-102	X	X	Capital offenses	Same as constitution
Texas Const. art. 1 § 11, 11a & 11c; C. Cr. P. Art. 17.152 & Art. 17.153	X		Capital offenses; felonies when there are two previous felony convictions; felonies while on pretrial release for a felony; offenses involving a deadly weapon when there is a previous felony conviction. Authorizes the legislature to enact a law to deny release for a violation of a protection order that is a condition of pretrial release for a family violence offense.	Violation of a protection order that is a condition of pretrial release related to family violence or a child victim.
Utah Const. art. 1 §8; §77-20-1; §77- 36-2.5(10)	X	X	Capital offenses; felonies while on pretrial release for a felony; crimes designated by statute as non-bailable.	Same as constitution plus felonies and domestic violence offenses.
Vermont Const. art. 2 §40; 13 § 7553, 13 §7553a, 13 §§ 1043, 1044, 1063	X		Offenses punishable by life or death; felonies that involve violence.	Same as constitution plus first and second degree aggravated domestic assault; aggravated stalking.

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
Virginia §19.2-120, §19.2-120.1		X	None specified	Violent offenses as enumerated in §19.2-297.1; offense punishable by life or death; drug offenses if punishable by 10 or more years and there is a prior similar conviction or conviction as drug kingpin; firearm offenses carrying a mandatory minimum penalty; any felony if there are two or more prior convictions for violent offenses or offenses punishable by life or death; sex assault on a child; aggravated sexual battery; crimes against nature; incest; taking indecent liberties with a child and there is a previous conviction for a similar offense; child pornography; driving under the influence resulting in death or injury and there are three prior convictions for a similar offense; a 2 nd or subsequent violation of a protection order; disarming a law enforcement or correctional officer; threatening witnesses related to drug or violent offenses; illegal aliens charged with offenses enumerated in §19.2-120.1.
Washington Const. art. 1 §20	X		Capital offenses; offenses punishable by life in prison, as set by the Legislature.	None specified
West Virginia §62-1C-1		X	None specified	Life imprisonment
Wisconsin Const. art. 1 §8; §969.01; §969.035	X	X	Authorizes the Legislature to enact a law denying release for murder punishable by life, sexual assault punishable by a maximum of 20 years, and for felonies involving serious bodily injury or threat of serious bodily injury if there is a previous similar conviction within limits	1 st degree intentional homicide; 1 st or 2 nd 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 previous similar conviction.

STATE & STATUTE	PRESUMPTION OF PRETRIAL RELEASE		WHEN PRETRIAL RELEASE MAY BE DENIED	
	IN CONSTITUTION	IN STATUTE	IN CONSTITUTION	IN STATUTE
			enumerated in Const. Art. 1 §8(3).	
Wyoming Const. art. 1 §14; §7-10-101;	X	X	Capital offenses	Same as constitution

50 STATE CHART | PRETRIAL RELEASE ELIGIBILITY

Source: National Conference of State Legislatures, 2013

*Held unconstitutional by the United State Court of Appeals for the Ninth Circuit. See *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), *cert. denied*, No. 14-825, 575 U.S. ____ (2015).

Constitutional and statutory provisions provide a framework for pretrial release decision-making, but court rule and case law provide further guidance. Court rule is not included in this chart unless a statute authorizes or is superseded by the rules and case law is not included. Laws governing the release of defendants charged with a crime when they are already under the supervision of the criminal justice system (in prison or on community supervision) also are not included in this chart.