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PUBLIC DANGER AS A FACTOR IN PRETRIAL RELEASE

A Study Conducted in
Cooperation with the
National Association of
Pretrial Services Agencies

VOLUME II

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VOLUME II: FINAL REPORT
PUBLIC DANGER AS FACTOR IN PRETRIAL RELEASE

by

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INTRODUCTORY NOTE

This volume provides summaries of the "danger laws" of individual states. These laws -- passed by 32 states, the District of Columbia and the Federal Government -- permit judges, when setting pretrial release conditions, to consider whether a released defendant might pose a danger to the community.

Prepared as part of a broader study of pretrial dangerousness, the summaries in this volume are based solely on a review of the relevant sections of state constitutions, statutes and court rules; no attempt was made to review case law for each state. Originally intended to cover only laws passed through the end of 1982, the volume was updated to include the 1983 Iowa law as well as an appendix on the Federal Bail Reform Act of 1984.

Each danger law summary includes discussions of the following:

- defendants who are not entitled to pretrial release;
- types of defendants to whom the danger provisions of the law apply;
- special conditions that may be imposed on dangerous defendants, including whether such defendants may be detained before trial;
- special procedures required to invoke the dangerousness provisions, including the required findings, factors to consider, standard of proof, burden of proof, hearing requirements and speedy trial rules; and
- the review/appeals procedures.

A separate monograph, "A Comparative Analysis of State Laws," compares the state danger laws, including their different definitions of dangerousness, the types of restrictions (including detention) they permit on pretrial release, and the procedural steps required before those restrictions can be imposed. That monograph appears in Volume I of the Final Report.

Mary A. Toborg
Principal Investigator

-Digest of State Laws-

by

Barbara Gottlieb
and
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DANGER LAW SUMMARY

State: Alabama

Year Enacted: 1976

A. Defendants Not Entitled to Pretrial Release

Persons charged with a capital offense when the evidence of guilt is great.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants seeking pretrial release.

C. Special Conditions That May Be Imposed on Dangerous Defendants.

None. "Violence or lack of violence in the alleged commission of the offense" is a factor to consider in setting the amount of bond. Personal recognizance is available only to those charged with misdemeanors.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: None.
- 3) Factors to Consider: Violence or lack of violence in the alleged commission of the offense.
- 4) Standard of Proof: The exercise of discretion.
- 5) Burden of Proof: None specified.
- 6) Hearing: No special hearing.
- 7) Speedy Trial: No special provision for dangerous defendants. No specific speedy trial provisions for any defendants, but rules require call of cases on docket at least twice a year, and call of cases against defendants incarcerated as many more times as necessary to secure prompt trial.

E. Review/Appeals Procedures

Denial of bail is not reviewable but is appealable to Court of Criminal Appeals. The amount of bail is reviewable, but no procedures are specified.

Citation: Ala. Code Art. 15, secs. 15-13-2 et seq., and Ala. R. of Jud. Adm. 2 and 29.

COMMENTS, ALABAMA

The only provision for special treatment of dangerous defendants arises in regard to higher bail bonds for crimes involving violence or weapons. The statute does not call for, nor does it establish criteria for pretrial detention. However, in Alabama as elsewhere, high bond levels may de facto result in more pretrial detention if some defendants cannot afford to secure release.

DANGER LAW SUMMARY

State: Alaska

Year Enacted: Major statutory provisions were passed in 1967; some amendments are as recent as 1982.

A. Defendants Not Entitled to Pretrial Release

Those charged with capital offenses, when the proof is evident or the presumption great.

B. Defendants to Whom Danger Provisions Apply

All defendants are evaluated for potential dangerousness. In addition, special provisions apply to persons charged with felonies or crimes involving domestic violence.

C. Special Conditions that May Be Imposed on Dangerous Defendants

Custody and supervision by a designated person or organization; restrictions on travel, association or place of abode; mandatory return to custody after daylight hours under designated conditions; execution of a secured 10 percent appearance bond; execution of a bail bond with sufficient solvent sureties or cash deposit; or any other condition considered reasonably necessary to assure appearance and the safety of other persons and the community.

If the offense charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecution up to 48 hours to prepare to oppose release on personal recognizance or unsecured release bond on grounds of danger to other persons and the community. (But, see Comments.)

Persons charged with domestic violence may be subject to one or more conditions of release, including ordering the defendant: to cease and desist, to vacate the home of the victim, not to contact the victim except through counsel, to engage in personal or family counseling and to refrain from the consumption of alcohol or drugs.

A judicial officer who orders the release of a defendant may at any time amend his order to impose additional or different conditions of release or to release the person on personal recognizance or unsecured appearance bond, subject to considerations of safety and appearance.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: "That the release of the person will . . . pose a danger to other persons and the community."
- 2) Other Required Findings: That the defendant is charged with a felony or with a crime involving domestic violence. These findings are separate from, not in addition to, the finding of danger risk as grounds for restrictions on release.
- 3) Factors to Consider: The nature and circumstances of the offense, the weight of the evidence, the defendant's family ties, employment, financial resources, character and mental condition, length of community residence, record of convictions, record of appearance at court proceedings, failure to appear, or flight to avoid prosecution.

Alaska

- 4) Standard of Proof: Not specified; implicitly judicial discretion.
- 5) Burden of Proof: Not specified, except in regard to persons charged with felonies, where the prosecution must "demonstrate" that release with a minimum of conditions would pose a danger to other persons and the community.
- 6) Hearing: No special hearing is required to determine that the defendant's release would pose a danger, or for establishing conditions of release to address this danger. These functions are discharged at the defendant's first appearance before a judicial officer.
- 7) Speedy Trial: No special provisions for dangerous defendants. Rules for all defendants require trial within 120 days from arrest, arraignment or charge, whichever comes first.

E. Review/Appeals Procedure

No special procedures exist for dangerous defendants. Any person who remains in custody 48 hours after appearance before a judicial officer because of inability to meet the conditions shall, upon application, be entitled to have the conditions reviewed. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed. The defendant may then move the court to amend the order; said motion shall be determined promptly. Should the motion be denied, an appeal may be taken to the appropriate appellate court. The appellate court may modify, vacate, set aside, reverse or remand the action, with the specific right to order the person to be released. The appeal shall be determined promptly.

Citations: Alaska Constitution, Art. I, Secs. 11,12. Alaska Statutes Sec.12.30.010 et seq; Alaska Cr.R. 43,45.

COMMENTS, ALASKA

In Martin v. State, 517 P.2d 1389 (1974), the Supreme Court held that the statute does not permit detention without bail, because bail before conviction is a statutory (Code of Crim.Pro. Section 12.-30.010) and State constitutional (Alaska Const., Art. I, Sec 11) matter of right. The statute merely allows the judicial officer to consider danger to the community as a factor in setting bail.

DANGER LAW SUMMARY

State: Arizona

Year Enacted: Constitutional amendment and
related statutory changes, 1982

A. Defendants Not Entitled to Pretrial Release

Those charged with capital offenses when proof is evident or the presumption great or with felony offenses committed when the person charged is already admitted to bail on a separate felony charge and when the proof is evident or the presumption great in the current charge.

B. Types of Defendants to Whom Danger Provisions Apply

Persons charged with felony offenses are evaluated for risk of danger.

Note also that defendants charged with commission of a felony while on bail from a separate felony charge are denied the right to bail, as per Section A above. They are classified under A because the denial of bail is categoric and requires no special procedures such as hearings, findings, etc.

C. Special Conditions That May Be Imposed on Dangerous Defendants

A person charged with a felony may be detained for 24 hours pending a hearing for determination of dangerousness. If a determination of dangerousness is reached, the person may be denied release and detained for a maximum of 60 days.

All defendants charged with a felony shall be released upon the condition of good behavior, and any defendant charged with committing a felony while on release from a prior felony charge may have release revoked. A defendant charged with a felony who is found to have in any manner willfully violated any conditions of his release may have imposed different or additional conditions of release.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: For denial of pretrial release to persons charged with a felony offense, "that the person charged poses a substantial danger to another person or the community, (and) that no condition or combination of conditions of release . . . will reasonably assure the safety of the other person or the community . . ."

No findings concerning future danger are required for revoking release in cases of felony offenses committed while on release from a prior felony.

- 2) Other Required Findings: For denial of pretrial release to persons charged with a felony offense, "that the proof is evident or presumption great that the person committed the offense for which charged."

For revocation of release upon commission of a felony while on release from a prior felony charge, "that the defendant committed a felony during the period of release."

Arizona

For establishment of different or additional conditions of release for a defendant charged with a felony, " that the defendant has willfully violated the conditions of his release."

- 3) Factors to Consider: None are specified for dangerous defendants.
- 4) Standard of Proof: For denial of bail to persons charged with a felony, "clear and convincing evidence."
- 5) Burden of Proof: Not specified; implicitly on the prosecution.
- 6) Hearing: Upon oral motion of the state, the court shall order a hearing within 24 hours, unless there is a continuance. A continuance granted on the defendant's motion shall not exceed five days; one granted on the prosecution's motion and good cause shown shall not exceed 24 hours. The defendant may be detained pending the hearing.

Defendants are entitled to representation by counsel and can present information, testify and present witnesses on their own behalf. Defendants' testimony shall not be admissible in subsequent judicial proceedings except as it pertains to release conditions, sentence imposed, perjury or impeachment.

- 7) Speedy Trial: Pretrial detention for danger is limited to 60 days. Such defendants shall be placed on an expedited calendar and, consistent with the sound administration of justice, their trial shall be given priority. The statute does not specify the conditions or terms of release that will apply to the defendant should the detention period expire.

E. Review/Appeals Procedure

No provision specifically for dangerous defendants. Any person remaining in custody may move for reexamination of conditions of release whenever the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

Citations: Constitution of the State of Arizona, Article II, Section 22 (amended April 1982); Arizona Revised Stats. Sections 13-604 and 13-3961 et seq.; Rules Cr.P. 7, 8.1b, 8.2b.

COMMENTS, ARIZONA

The Arizona State Constitution was amended in 1982 to provide an additional situation in which bail is denied. Prior to the amendment, the Constitution required denial of bail to persons charged with capital offenses (first degree murder) or felonies committed while the person was free on bail from a prior felony charge. The amendment added the provisions that bail be denied to persons charged with a felony if there were sufficient evidence that the person had committed the offense, if the person posed "a substantial danger to any other person or the community," and if no conditions of release would "reasonably assure the safety of the other person or the community. . ." First-time felony arrests are thus subject to detention if a danger finding is made.

Arizona

Key language in the Arizona amendment was modeled after the U.S. Supreme Court case upholding the constitutionality of Washington, D.C.'s pretrial detention law. However, the passages in the D.C. statute defining in precise terms who is a "dangerous" or "violent" defendant were not incorporated into the Arizona law. Due process for defendants was reportedly an important consideration in drafting the amendment; a high standard of proof (clear and convincing evidence) is required, as is a special hearing and a speedy trial.

No significant legal challenges of the bail-denial provision have been heard on appeal as of this writing. It is invoked infrequently, in part because the prosecutors who would have to call for a no-bond hearing find that it requires that they amass significant amounts of evidence early in the case, so as to make a showing of proof evident and presumption great in the second arrest, and that it requires earlier disclosure of evidence than would otherwise be called for under the rules of procedure.

Arizona statutes also include provisions for special treatment of defendants convicted of any felony committed while released on bail or recognizance from a separate felony offense. Such defendants shall be sentenced for the felony committed while on pretrial release to a term of imprisonment two years longer than would otherwise be imposed. The additional sentence is in addition to any other enhanced punishment that may be applicable.

DANGER LAW SUMMARY

State: Arkansas

Year Enacted: 1976

A. Defendants Not Entitled to Pretrial Release

Those charged with capital offenses, when the proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants are evaluated for risk of danger. Special provisions apply to defendants accused of committing a felony while on release.

C. Special Conditions That May Be Imposed on Dangerous Defendants

A defendant who upon release may commit a serious crime may be prohibited from approaching or communicating with particular persons or classes of persons, going to certain described geographical areas or premises, possessing any dangerous weapon, engaging in certain described activities or indulging in intoxicating liquors or certain drugs, and may be required to report regularly to and be supervised by an officer of the court.

The court may impose additional or different conditions of release or revoke the release of a defendant who has willfully violated the conditions of release.

Defendants charged with committing a felony while on pretrial release may have their release revoked.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: To impose restrictive release conditions, that "it appears that there exists a danger that the defendant will commit a serious crime."
- 2) Other Required Findings: To revoke release, that there is "reasonable cause to believe that a defendant has committed a felony while released pending adjudication of a prior charge."

To alter conditions or revoke release, that the defendant has willfully violated release conditions.

- 3) Factors to Consider: None.
- 4) Standard of Proof: For establishment and alteration of restrictive release conditions, implicitly, judicial discretion ("If it appears that there exists a danger . . . the judicial officer . . . may enter an order . . .").

For revocation of release resulting from rearrest, "reasonable cause to believe."

Arkansas

- 5) Burden of Proof: Not assigned; implicitly on the prosecution.
- 6) Hearing: No special hearing is required for dangerous defendants.
- 7) Speedy Trial: No special provision for dangerous defendants. Rules for all defendants require trial for incarcerated defendants within nine months, and within 18 months for those held to bail.

E. Review/Appeals Procedures

None specified in statute.

Citation: Constitution of Arkansas, Article 2, Sec. 8; Rules Cr.P., Rules 9.3, 9.6, 27-30.

DANGER LAW SUMMARY

State: California

Year Enacted: Constitutional amendment passed in 1982.

A. Defendants Not Entitled to Pretrial Release

Those charged with capital crimes when the facts are evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

Those charged with felony offenses involving acts of violence on another person, or with felony offenses accompanied by a threat of great bodily harm to another person, when the appropriate findings are reached (see D-1 below).

C. Special Conditions That May Be Imposed on Dangerous Defendants

Release may be denied.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: In regard to a charge of violent felonies, "that there is a substantial likelihood the person's release would result in great bodily harm to others."

In regard to any felony charge, "that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released."

- 2) Other Required Findings: None.
- 3) Factors to Consider: None for detention of dangerous defendants.
- 4) Standard of Proof: Clear and convincing evidence, in both cases.
- 5) Burden of Proof: Not specified; implicitly on the prosecution.
- 6) Hearing: No special hearings are required for dangerous defendants.
- 7) Speedy Trial: No special provision for dangerous defendants. Statutes require dismissal of all felony charges unless information is filed within 15 days after being held, and unless trial begins within 60 days after indictment or information.

E. Review/Appeals Procedures

None specified for dangerous defendants.

Citations: Constitution of the State of California, Art. 1, Sec. 12; Annot. Calif. Codes, Secs. 1268 et seq., Calif. Penal Code, sec. 1047 (West 1970), secs. 686, 1048, 1050, 1382, 1384, 1385 (West Supp. 1982).

California

COMMENTS, CALIFORNIA

In 1982 California passed a constitutional amendment to allow consideration of defendant dangerousness in bail decisions for certain felony cases. The amendment permits denial of pretrial release to persons charged with violent felonies, or with any felony when the defendant has threatened another person with great bodily harm, where the court has found substantial likelihood that release would result in great bodily harm. The amendment, known as "Proposition 4," was one of two bail-related constitutional amendments proposed to California voters that year. The other was part of an anti-crime package which addressed an array of crime and public safety issues; it was known as the "Victims' Bill of Rights." In regard to bail, the Victims' Bill of Rights was much more sweeping than Proposition 4. It would have required judges, in granting or setting bail in any case, to consider—in the following order—the safety of the public, the gravity of the alleged offense, the previous criminal record of the defendant, and the probability of future appearance in court.

Both measures received extensive debate and media coverage, and both amendments were ratified by California voters. However, Proposition 4 received a larger number of votes than Proposition 8, so its wording superseded that of Proposition 8 in regard to bail.

The effect of the amendment is to treat felonies, when accompanied by specified findings of future danger, the same way that capital charges are treated: as grounds for exclusion from bail. While some due process requirements are spelled out, in general the procedural aspects of this law are minimal. If a defendant meets the specified criteria, then release may be denied and no review or appeal is called for.

DANGER LAW SUMMARY

State: Colorado

Year Enacted: A constitutional amendment was enacted in 1982; statutory provisions date from 1979 and 1972.

A. Defendants Not Entitled to Pretrial Release

Those charged with a capital offense, where proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

Those charged with a crime of violence, when proof is evident or presumption great, and when the court makes a finding of "significant peril," and when the crime of violence is alleged to have been committed on probation or parole from a conviction for a crime of violence; on bail from a pending crime of violence charge; or after two previous separate felony convictions, or one previous felony conviction for a crime of violence. Prior felony convictions include crimes from other jurisdictions which, if committed in Colorado, would be felonies.

Danger provisions also apply to defendants charged with committing a felony while on pretrial release; those who when arrested were at liberty from a felony or Class 1 misdemeanor; and those with a record of conviction for a Class 1 misdemeanor within two years, or for a felony within five years, prior to the release hearing.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Bail may be denied persons charged with crimes of violence who meet the criteria described in Section B.

It is a condition of every release bond that the defendant not commit a felony while released. The court has the power to revoke, increase or alter the bail bond if it finds probable cause to believe that a felony was committed by a defendant awaiting adjudication of a prior felony charge.

Additional conditions may also be imposed to "render it more likely" that the defendant will fulfill release conditions.

The following types of defendants shall be denied release on personal recognizance, unless the district attorney consents: defendants arrested while on pretrial release from a prior felony or Class 1 misdemeanor, and defendants who have been convicted of a Class 1 misdemeanor within two years or a felony within five years prior to the release hearing. Defendants who when arrested were at liberty on surety bond for a felony or Class 1 misdemeanor shall be denied release on personal recognizance unless the surety is notified and afforded an opportunity to surrender the person into custody.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: For denial of bail, "that the public would be placed in significant peril if the accused were released on bail."
- 2) Other Required Findings: For denial of bail, proof evident or presumption great in regard to the instant crime; that the alleged crime of violence was committed while on conditional release from confinement or subsequent to previous felony convictions, as described in Section B.

For revocation, increase or alteration of the bail bond in regard to felony-on-bail, probable cause that the defendant committed a Class 1, 2, 3 or 4 felony while released pending adjudication of a prior felony charge.

For denial of personal recognizance, that the defendant fits the relevant enumerated category described in Section C.

- 3) Factors to Consider: Defendant's employment status and history and his financial condition; the nature and extent of his family relationships; past and present residence; character and reputation; the nature of the offense charged, apparent probability of conviction and the likely sentence; prior criminal record, including appearance in court as required; any facts indicating the possibility of violations of law if the defendant is released without restrictions; any facts indicating a likelihood that there will be intimidation or harassment of possible witnesses by the defendant; any other facts tending to indicate that the defendant has strong ties to the community and is not likely to flee; and the identity of persons who agree to assist the defendant in attending court at the proper time.

Factors addressing danger and factors addressing flight are not separated. All factors are considered in determining release conditions of each defendant.

- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Not specified in regard to dangerous defendants; implicitly on the prosecution.
- 6) Hearing: A special hearing is required to determine the dangerousness of persons charged with a crime of violence. The hearing must be held within 96 hours of arrest and upon reasonable notice.

Hearings may be held to increase or decrease the amount of bail or otherwise modify the terms and conditions of release. Reasonable notice shall be given to the district attorney or to the defendant of an application for modification of a bond initiated by the other party. The district attorney has the right to appear at all hearings seeking modification of the terms and conditions of bail and may advise the court on all pertinent matters during the hearing.

Colorado

- 7) Speedy Trial: If a person is denied bail on grounds of dangerousness, the person's trial shall be commenced not more than 90 days after the bail denial. If the trial is not commenced within 90 days and the delay is not attributable to the defense, the court shall immediately schedule a bail hearing and shall set the amount of bail for the person.

Any person whose bail bond is revoked or increased because of a risk of flight or danger (commission of a felony while on release) and who remains in custody must be tried on the charges on which the bail bond is revoked or increased within 90 days of the change in bail terms or within six months after the arraignment on such charges, whichever date is earlier.

E. Review/Appeals Procedures

None.

Citations: Constitution of Colorado, Article 2, Secs. 19, 20; Colorado Revised Statutes, Secs. 16-4-101 et seq.

COMMENTS, COLORADO

Colorado's 1982 Constitutional amendment expands the number of situations in which the State can deny release. These were limited previously to capital charges; under the amendment, following a hearing and finding of dangerousness, persons charged with crimes of violence can be preventively detained if they allegedly committed this crime while on pretrial release, probation or parole from a previous crime of violence, or had two previous felony convictions or one previous felony conviction for a crime of violence.

Bail can also be denied to a person convicted of a crime of violence who is appealing such conviction or awaiting sentencing; these circumstances fall outside the purview of this study.

The Constitutional amendment addresses crimes of violence "as may be defined by the general assembly," thus building in flexibility to encompass legislative changes in the definition.

A crime of violence was defined by the Colorado Revised Statutes of 1973 to mean a crime in which a person uses or possesses and threatens to use a deadly weapon during a crime against an elderly or handicapped person, murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion; also, any unlawful sexual offense which causes bodily injury, or in which threat, intimidation or force is used against a minor.

Colorado

Statutory law passed prior to the amendment allows the courts to revoke, increase or alter bail bonds in cases of alleged felonies on bail from pending felonies. It also denies personal recognizance release for certain instances of alleged crime-on-bail or for defendants with a history of prior convictions within a specified time frame.

The statute also allows denial of personal recognizance release to defendants charged with a Class 3 misdemeanor, a petty offense, or any unclassified offense where the maximum penalty does not exceed six months' imprisonment, when a finding of imminent danger is made. That finding reads that "the continued detention or posting of a surety bond is necessary to prevent imminent bodily harm to the accused or to another." Findings of "imminent" danger apparently refer to defendants who for reasons of intoxication, insanity, etc. may injure others or themselves, and are not danger provisions as this study uses the term.

The statute does not specify what sanctions are to be brought to bear against defendants charged with committing a felony while on release from a prior non-felony charge. Clearly they have violated a condition of release, but revocation of release is not authorized.

DANGER LAW SUMMARY

State: Delaware

Year Enacted: 1967

A. Defendants Not Entitled to Pretrial Release

Those charged with a capital crime, when the proof is positive or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

All non-capital defendants are evaluated for risk of danger to the community.

C. Special Conditions That May Be Imposed on Dangerous Defendants

If the court determines that the accused shall not be released on personal recognizance or unsecured appearance bond, it may order execution of a secured appearance bond, the amount of the bond and nature of the surety to be established by the court. The statute as well as the State Constitution orders that bail not be excessive, adding that "the court . . . shall require such bail as will reasonably assure the reappearance of the accused, compliance with the conditions set forth in the bond and the safety of the community."

The court may also impose (on any defendant) one or more of the following conditions: the defendant's return to the court at any time upon notice, and submission to its authority; custody and supervision by a designated person or organization; supervision by a presentence or probation officer; restrictions on the defendant's travel, association, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode during the period of release; periodic reporting to an agent or officer of the court; psychiatric or medical treatment; support for his family; for persons who are convicted, due prosecution of any post-conviction remedies or appeals, and surrender of self to the court; and any other condition deemed necessary to assure appearance as required and to carry out the purposes of the statute (which explicitly include the safety of the community).

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: For release on personal recognizance or on unsecured appearance bond, "that there is no substantial risk to the safety of the community."
- 2) Other Required Findings: None.
- 3) Factors to Consider: The nature and circumstances of the crime charged, the accused's family ties, employment, financial resources, character and mental condition, length of residence in the community, record of convictions, court appearances or failure to appear or flight to avoid prosecution. The statute calls for these factors to be considered in regard to the likelihood of both appearance and danger.
- 4) Standard of Proof: Judicial discretion.

Delaware

- 5) Burden of Proof: Not specified. The law calls for personal recognizance or unsecured appearance bonds to be granted "wherever feasible consistent with a reasonable assurance of . . . the safety of the community . . ." yet requires a finding "that there is no substantial risk to the safety of the community in permitting such unsecured release." It is not clear from the statute how such a finding is to be reached or who shoulders that burden.
- 6) Hearing: No special hearing. Determinations as to type of bond and release conditions are made at first appearance before the court or magistrate.
- 7) Speedy Trial: No special provision for dangerous defendants. Any prisoner incarcerated for treason or any felony and not indicted and tried at the second court term after incarceration shall be discharged from prison.

E. Review/Appeals Procedures

No special procedures are established in regard to dangerous defendants. Either the accused or the Attorney General may apply to the court for any modification of any determination by the court as to the type of release, its conditions, or the amount and nature of the bond or surety. Orders denying bail prior to conviction may be appealed to the Superior Court, and procedures for bail appeals are governed by the Rules of the Superior Court.

Citations: Delaware Constitution, Art. I, Secs. 11, 12; Del. Code Ann., 1953, Art. II, Secs. 2101 et seq.

COMMENTS, DELAWARE

The State maintains a "policy against unnecessary detention of defendants pending trial."

DANGER LAW SUMMARY

State: District of Columbia

Year Enacted: 1970, amended 1982

A. Defendants Not Entitled to Pretrial Release

Those charged with murder in the first degree.

B. Types of Defendants to Whom Danger Provisions Apply

All other defendants are evaluated for risk of danger. Special conditions of release (see C below) may be applied to defendants who, if released on recognizance or on an unsecured appearance bond, would pose a danger to the community. Detention for various, specified periods may be ordered for the following types of defendants:

- . defendants charged with a "dangerous crime" (defined below) when the pattern of their past and present behavior indicates that no condition or combination of conditions will reasonably assure the safety of the community;
- . defendants charged with a "crime of violence" (see below), when the person has been convicted within the preceding 10 years of a crime of violence or if he allegedly committed the current offense while on bail or other release or on probation, parole or mandatory release pending completion of a sentence for a separate crime of violence;
- . defendants who threaten, injure or intimidate, or attempt to do so, any prospective witness or juror, in order to obstruct or attempt to obstruct justice; and
- . defendants charged with a crime of violence who may be addicted to a narcotic drug.

In addition, short-term detention is authorized of defendants who, when arrested, were on probation, parole or mandatory release pending completion of sentence for any offense and who if released may pose a danger to the community, and of defendants charged with a dangerous or violent crime alleged to have occurred while the defendant was on bond for a separate pending crime. See Section C.

The term "dangerous crime" means (a) taking or attempting to take property from another by force or threat of force; (b) unlawfully entering or attempting to enter any business or residential premises with the intent to commit an offense therein; (c) arson or attempted arson of any premises adaptable for business or residential use; (d) forcible rape, or assault with intent to commit forcible rape, or (e) unlawful sale or distribution of a narcotic, depressant or stimulant drug if the offense is punishable by imprisonment for more than one year.

District of Columbia

The term "crime of violence" means murder, forcible rape, carnal knowledge of a female under the age of sixteen, taking or attempting to take immoral, improper or indecent liberties with a child under sixteen years, mayhem, kidnaping, robbery, burglary, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, arson, assault with intent to commit any offense, assault with a dangerous weapon, or an attempt or conspiracy to commit any of the foregoing offenses, if the offense is punishable by imprisonment for more than one year.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Defendants whose release on personal recognizance or unsecured appearance bond would not reasonably assure the community's safety will have imposed, in lieu of or in addition to these forms of release, the first of the following conditions, or any combination of the following, as necessary to assure safety:

- . custody and supervision by a designated person or organization;
- . restrictions on travel, association, or place of abode during the period of release;
- . an appearance bond in a specified amount and the deposit with the court in cash or other security of up to 10 percent of the amount of the bond; or
- . any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.

The statute expressly forbids the imposition of financial conditions solely to assure the safety of any other person or the community.

Defendants charged with a dangerous crime, a crime of violence or with threatening a prospective witness or juror may be detained pending a hearing for a maximum of five days. Should the hearing officer find in favor of detention, defendants may be held for a maximum of 60 calendar days before their trial is commenced. Unless the trial is begun within this 60-day period, the defendant is to be treated in accordance with the provisions regulating other defendants, i.e., subject to various financial and nonfinancial release terms.

Notwithstanding the 60-day limit on detention for the above-described defendants, an additional detention period not to exceed 30 days may be granted to allow additional time required to prepare for the defendant's trial, which is to be scheduled on an expedited basis.

District of Columbia

A defendant charged with a crime of violence and who may be a narcotics addict may be detained for a maximum of three calendar days, under medical supervision, to determine whether he is an addict. A hearing is required within the three days and, upon appropriate findings, the person may be detained pretrial for up to 60 days.

Defendants charged with murder in the first degree may be held without bond if no conditions of release would prevent them from posing a danger. Although the procedure is spelled out for appealing a detention order in a first-degree murder case, the conditions and duration of the detention itself are not prescribed.

Persons charged with any offense and presently on probation, parole or mandatory release pending completion of sentence for any offense may be held without bond for up to five working days when the judicial authority finds that the defendant poses a risk of flight or danger. If the appropriate probation, parole or state correctional authorities fail or decline to take custody of the defendant within the prescribed period, the defendant will be treated in accordance with the provisions regulating other defendants unless otherwise eligible for pretrial detention.

Persons charged with a dangerous or violent crime alleged to have been committed while on bond for a separate offense may be held for up to three working days to allow consideration of any violation of the conditions of release in that pending case.

D. Special Procedures Required to Invoke Dangerousness Provisions

1) Required Findings Concerning Future Danger: To impose release conditions on any defendant, that unsecured release "will not reasonably assure . . . the safety of any other person or the community." To detain defendants accused of a dangerous crime or a crime of violence, or who threaten a prospective witness or juror, or a possible addict charged with a crime of violence, that "there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community."

To detain defendants charged with committing any offense while on probation, parole or mandatory release pending completion of sentence, that the defendant "may . . . pose a danger to any other person or the community if released."

To detain a defendant charged with murder in the first degree, that "no one or more conditions of release will reasonably assure that the person will not . . . pose a danger to any other person or to the community."

To detain defendants charged with a dangerous crime while on bond in another pending case, no prediction of future danger is necessary.

District of Columbia

- 2) Other Required Findings: For defendants accused of a dangerous crime, a crime of violence or threatening, etc. of a prospective witness or juror, that they meet the relevant criteria spelled out in (B) above. For persons accused of dangerous or violent crimes, an additional finding of substantial probability of guilt in the offense for which now charged is required.

For detention of a possible addict charged with a crime of violence, that the person is an addict, plus substantial probability of guilt in the current offense.

For a defendant charged with committing any offense while on probation, parole or mandatory release pending completion of sentence, that the person does fall into one of these categories of post-conviction status.

For a defendant charged with a dangerous crime or a crime of violence while on bond in another pending case, "probable cause that an offense has been committed and that the defendant committed it."

For a person charged with first-degree murder, no additional findings are required.

- 3) Factors to Consider: In determining which conditions to attach to release orders, the court is instructed to consider the nature and circumstances of the offense charged, the weight of the evidence, family ties, employment, financial resources, character and mental conditions, past conduct, length of residence in the community, record of convictions, and any record of appearance at court proceedings, flight to avoid prosecution or failure to appear at court proceedings.

No such factors need be considered in making determinations about pretrial detention.

- 4) Standard of Proof: For determining whether a defendant poses a danger to any person or the community for the purpose of imposing release conditions, judicial discretion.

For defendants charged with a dangerous crime, a crime of violence or threatening, etc., a prospective witness or juror, "clear and convincing evidence" that the defendant fits the appropriate category as enumerated in (B) above. For violent and dangerous crimes, "substantial probability" of guilt.

For possible addicts charged with a crime of violence, "clear and convincing evidence" of addiction, plus "substantial probability" of guilt in the current offense.

For defendants charged with committing an offense while on probation, parole or mandatory release, the standard of proof is not specified. The statute requires that it appear that the defendant is in such a status.

District of Columbia

For defendants accused of first-degree murder, "reason to believe" that there is a risk of flight or danger to any other person or to the community.

- 5) Burden of Proof: In most cases the burden lies on the prosecution, by virtue of the statute's general rebuttable presumption of release. For a defendant charged with a dangerous crime, the prosecution is explicitly required to certify by motion that the defendant's behavior establishes a pattern that makes him a danger to the community.

One area arises where the burden is ambiguous. The court may detain persons charged with any offense "if it appears that such person is presently on probation, parole or mandatory release pending completion of sentence for any offense . . . and that such person may flee or pose a danger to any other person or to the community if released." This wording suggests that the burden may lie on the defense to rebut the apparent risk of danger.

- 6) Hearing: No special hearing is called for, apart from the initial bail determination, in order to attach safety-oriented conditions to a defendant's release. No separate hearing is required to permit the detention of a person charged with first-degree murder or to permit the short-term detention of defendants under evaluation for drug addiction or who may have committed crimes while on probation, parole, mandatory release or bond. Hearings are required, however, to permit the detention of defendants charged with dangerous crimes, with crimes of violence or with threatening a prospective witness or juror, as described in (B) above, and to permit the longer-term detention of dangerous defendants who are narcotics addicts.

The pretrial detention hearing shall be held immediately upon the person being brought before the judicial officer, unless the person or the prosecution moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances; a continuance on motion of the prosecution shall be granted upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

Defendants shall be entitled to representation by counsel during the hearing and can present information by proffer or otherwise, testify and present witnesses on their own behalf. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceedings, but shall be admissible in subsequent proceedings, including those to establish penalties for failure to appear, for offenses committed during release and for violation of release conditions. Information presented in detention hearings need not conform to the rules pertaining to the admissibility of evidence in a court of law.

District of Columbia

- 7) Speedy Trial: Persons who are ordered detained subsequent to a pretrial detention hearing shall have their trials placed on an expedited calendar and, consistent with the sound administration of justice, their trials shall be given priority. Pretrial detention is limited to 60 days (plus any delays at the request of the defendant), plus, upon application and a showing of good cause, an additional period not to exceed 30 days, to allow preparation for the expedited trial.

E. Review/Appeals Procedures

A person on whom conditions of release are imposed and who, after twenty-four hours from the time of the release hearing, continues to be detained because of inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. Similarly, a person who is ordered released on a condition which requires return to custody after specified hours shall, upon application, be entitled to a review. Unless the requirement is removed and the person released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. If the judicial officer who imposed conditions is not available, any other judicial officer may conduct the review.

Should a defendant be detained after such a review, or if a motion to review is denied, or if conditions of release should be imposed or continued, the defendant may move to have the order amended, or may appeal. Such motion or appeal shall be determined promptly.

Should a defendant be ordered released, or should a motion for pretrial detention be denied, the prosecution may move to have the order amended or revoked, or may appeal. Such an appeal or motion must also be determined promptly.

Whenever a person has been released and it subsequently appears that such person may be subject to pretrial detention, the government may initiate a pretrial detention hearing by ex parte written motion.

Citation: D.C. Code Sections 23-1321 et seq.

District of Columbia

COMMENTS, DISTRICT OF COLUMBIA

The D.C. statute is one of the most comprehensive and complex pretrial detention statutes in the country. A number of provisions in the statute that are not described in the preceding pages bear mentioning here.

The statute establishes fines and/or terms of imprisonment for failure to appear and for violating the terms of release. Failure to appear in court as required shall result in forfeiture of any securities associated with the release, plus a fine and a sentence. These range from \$5,000 and one to five years imprisonment if the release was in connection with a felony, to, in misdemeanor cases, a fine not more than the maximum provided for said misdemeanor, and imprisonment of 90 days to one year. Any terms of imprisonment must be served consecutive to any other sentences of imprisonment.

Any person who violates a condition of release is subject to revocation of release, an order of detention, and prosecution for contempt of court. Bail revocation and detention both require a hearing and specified findings. A conviction for contempt of court in such cases is punishable by imprisonment up to six months, a fine not to exceed \$1,000, or both.

Persons convicted of committing a crime during release are subject to imprisonment for one to five years for a felony and 90 days to a year for a misdemeanor, to be served consecutive to any other terms and to apply in addition to any other applicable penalties.

The law was amended in 1982 to permit the extension of pretrial detention from 60 to 90 days; to establish a three-day hold for defendants charged with committing a dangerous or violent crime while on bail; and to adjust the five-day hold from five calendar days to five work days.

The 60- or 90-day preventive detention authorized under the statute is invoked rarely, reportedly because it is cumbersome and time-consuming to use and pretrial detention can effectively be achieved through the use of high bail bonds.

DANGER LAW SUMMARY

State: Florida

Year Enacted: Constitutional amendment, enabling
legislation and changes in court
rules, effective 1983

A. Defendants Not Entitled to Pretrial Release

Those charged with a capital offense or an offense punishable by life imprisonment, where the proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

Defendants presently charged with a "dangerous crime" who meet the required findings listed below (see D-1, D-2) concerning prior conviction or pending charge for a dangerous crime, and concerning the threat of harm to the community that a defendant's release would pose. A dangerous crime is any of the following felonies: arson, aggravated assault, aggravated battery, illegal use of explosives, child abuse, hijacking, kidnapping, homicide, manslaughter, sexual battery, robbery, burglary of a dwelling and attempting or conspiring to commit any such crime.

C. Special Conditions that May be Imposed on Dangerous Defendants

Release of such defendants may be denied if no conditions of release can reasonably protect the community from risk of physical harm to persons. For defendants whose potential danger can be contained by means of conditions of release, release may be granted subject to the first of the following conditions "which will reasonably protect the community from risk of physical harm," or if no single condition gives that assurance, any combination of the following conditions: personal recognizance; an unsecured appearance bond in a specified amount; restrictions on travel, association or place of abode; custody and supervision by a designated person or organization; execution of a bail bond with sufficient solvent sureties or deposit of cash in lieu thereof, provided that this may be satisfied by providing an appearance bond; and any other condition deemed reasonably necessary "to assure appearance as required," including a condition that the person return to custody after specified hours. The confusion of purpose between safety and appearance is apparently unintentional.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: That "the defendant poses the threat of harm to the community" and that "no conditions of release can reasonably protect the community from risk of physical harm to persons."

Florida

- 2) Other Required Findings: "[T]hat the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. In addition, the court must find that at least one of the following conditions is present:
 1. The defendant has previously been convicted of a crime punishable by death or life imprisonment.
 2. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of the arrest for the crime presently charged.
 3. The defendant is on probation, parole or other release pending completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest. . ."
- 3) Factors to Consider: In determining whether to release a defendant on bail or on other conditions and in determining what that bail or those conditions may be, the court may consider the nature and circumstance of the offense charged and the penalty provided by law; the weight of the evidence; the defendant's family ties, length of community residence, employment history, financial resources and mental condition; defendant's past and present conduct including any record of convictions, flight to avoid prosecution, or failure to appear in court; the nature and probability of danger which the defendant's release poses to the community; the source of funds used to post bail; whether the defendant is already on release pending resolution of another criminal proceeding or is on probation, parole or other release pending completion of a sentence; and any other facts the court considers relevant.
- 4) Standard of Proof: In order for detention to be ordered, the Court Rules require the State to show "beyond a reasonable doubt" the need for detention, pursuant to the criteria of the State statute. The statutory standards of proof include "substantial probability" that the defendant poses the threat of harm to the community and "substantial probability" that the defendant committed the crime charged. No standard of proof is specified for the several remaining required findings, namely, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community. Presumably, judicial discretion applies in these instances.
- 5) Burden of Proof: Explicitly on the State.

Florida

- 6) Hearing: A final order for pretrial detention shall be entered only after a hearing in the court of trial jurisdiction. The hearing shall be held within five days of the filing of a complaint by the state attorney, or of the date of taking the person into custody pursuant to a motion for pretrial detention, whichever is later. The defendant may request a continuance; the state attorney shall be entitled to one continuance for good cause. No continuance shall be for longer than five days unless there are extenuating circumstances. The defendant may be detained pending the hearing. In the hearing the defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. No testimony by the defendant shall be admissible to prove guilt at any other judicial proceeding, but may be admitted in an action for perjury or for impeachment.

The court's pretrial detention order shall be based solely upon evidence produced at the hearing, and shall contain findings of fact and conclusions of law. The detention order shall be made on the record either in writing or orally, and the court shall render its findings within 24 hours of the pretrial detention hearing.

- 7) Speedy Trial: Dangerous defendants may not be held more than 90 days. Failure of the state to bring the defendant to trial within that time shall result in his release from detention "subject to any conditions of release" unless the trial delay was requested or caused by the defendant or his counsel.

E. Review/Appeals Procedures

In the event any trial court enters a final order of pretrial detention, the defendant may obtain review by motion to the appropriate appellate court. These may be the State Supreme Court, the District Court of Appeals or the Circuit Court. No details are provided on the nature of the appeals procedure.

Citations: Constitution of the State of Florida, Art. I, Sec. 14, as amended November 1982, effective January 1, 1983; Fla. Stats. Annot. Sec. 907.041, effective simultaneously with the constitutional amendment; and Rules of Criminal Procedure, Rule 3.131, effective October 1, 1983.

Florida

COMMENTS, FLORIDA

An amendment to Florida's State Constitution and companion enabling legislation were enacted in 1982; these resulted in major changes in Florida's handling of pretrial release decisions. Changes in the rules of criminal procedure followed, effective October 1, 1983. The ensemble of these changes establishes a policy of preventive detention for dangerous defendants, but couples it with a presumption in favor of releasing non-dangerous defendants on non-monetary conditions. The purpose of linking preventive detention with a presumption of release is threefold. First, it places the burden on the State to show why a person should be detained while awaiting trial. This reflects concerns raised in Florida over maintaining the presumption of innocence on the one hand, and reducing jail overcrowding on the other. Second, it removes the dominant role that financial considerations play in release. Previously, the State utilized a bond schedule and release was based on a defendant's ability to pay; the commercial bail bondsman was the primary source of money for bail, and indigent defendants might face detention because they could not afford a bondsman's fee. The shift to non-financial considerations in making the release decision increases the equity of the pretrial system. Finally, the State perceived a need for a mechanism that would permit detention of defendants whose repeated offenses established them as a threat to society.

To meet objections by critics who argued that the constitutional amendment alone did not provide sufficient safeguards for defendants, the legislature adopted a companion statute which codifies the procedures for denial of bail. These procedures include an expeditious hearing before a judge to determine grounds for denial, and enumeration of the types of charges to which the law applies. The Court Rules further provide that the State attorney has the burden of showing "beyond a reasonable doubt" the need for pretrial detention, pursuant to the criteria in the statute. This is the same degree of proof required to convict a defendant and is more stringent than most State danger laws.

Another noteworthy aspect of the Florida danger law is that it counts as dangerous crimes "attempting or conspiring to commit" any of the enumerated dangerous-crime felonies.

Much of the concern over crime in Florida revolves around the issue of narcotics trafficking, and the statute does explicitly permit preventive detention of persons charged with trafficking in controlled substances. However, detention in such cases is based on a finding that the defendant if released might fail to appear in court; it is not linked to questions of community danger.

DANGER LAW SUMMARY

State: Georgia

Year Enacted: Major danger provisions enacted in 1982.

A. Defendants Not Entitled to Pretrial Release

The following defendants are not eligible for pretrial release as a matter of right: any person charged with murder, rape, armed robbery, kidnapping, arson, burglary, aircraft hijacking, or any of several specified narcotics-related charges, and who has previously been convicted of any of these crimes or whose present arrest occurred while on parole or probation, bail or own-recognizance release for any of these crimes.

B. Types of Defendants to Whom Danger Provisions Apply

Defendants described in (A) above, except persons charged with narcotics-related offenses, may petition the Superior Court for release on bail.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Persons not entitled to pretrial release as described in (A) above may be denied bail.

They may be held in custody for up to 10 days before their petition for bail is heard.

Persons charged with any of the crimes enumerated in (A), plus treason or perjury, in the absence of any previous conviction, parole, probation or pending pretrial release for any of these crimes, are bailable only before a judge of the Superior Court but are not required to petition for bail. Danger findings apparently do not apply in these cases.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: A defendant in one of the categories enumerated in (A) above may be released only if the court finds that release poses no significant risk of: significant threat or danger to any person or to the community or to any property in the community; committing any felony pending trial; or intimidating witnesses or otherwise obstructing the administration of justice.
- 2) Other Required Findings: That the defendant falls into one of the categories enumerated in (A) above.
- 3) Factors to Consider: None specified in the statute.

Georgia

- 4) Standard of Proof: Judicial discretion.
- 5) Burden of Proof: Implicitly on the defendant, in that release may be granted only if the presumption of danger is rebutted.
- 6) Hearing: Defendants accused of the felonies listed in (A) above must petition for release on bail. A hearing before the Superior Court must be set within 10 days of receipt of petition.
- 7) Speedy Trial: No special provision for dangerous defendants. Statute allows any defendant to demand a trial at either term of the court when indictment is found or the next succeeding term. Failure to try the accused when demanded necessitates admitting the accused to bail. Failure to try the accused for two terms results in discharge and acquittal for non-capital offenses.

E. Review/Appeals Procedures

Defendants accused of the felonies listed in (A) above, or the prosecuting attorney, may appeal decisions of the court pertaining to bond.

Citation: Official Code of Georgia, 1982, Secs. 17-6-1, 27-1901, 1902, 2001, 2002.

COMMENTS, GEORGIA

Georgia's danger law deprives persons charged with an enumerated felony of the automatic right to bail if the person has been previously convicted of an enumerated felony or if the present arrest occurred on parole or probation, bail or own-recognition release from one of the enumerated crimes. Such defendants must petition the Superior Court for release and must be able to demonstrate that they pose no significant threat or danger to any person or to the community or to any property in the community.

Since its passage, the law was amended by the legislature to drop aggravated assault from the list of dangerous crimes. The statute requires that the enumerated crimes be heard by the State Superior Court, and the high volume of aggravated assault cases, which include domestic altercations, created severe backlogs in the Superior Court. Aggravated assaults are today heard by the magistrate courts and do not provide grounds under this law for denial of release.

DANGER LAW SUMMARY

State: Hawaii

Year Enacted: 1980

A. Defendants Not Entitled to Pretrial Release

Those charged with a "serious crime" (a Class A or B felony, excluding only forgery in the first degree and failing to render aid), when the proof is evident and the presumption great, and when one of the following holds:

- 1) the offense is punishable by imprisonment for life not subject to parole; or
- 2) the defendant has been previously convicted of a serious crime within ten years of the date of the current charge; or
- 3) the defendant is on parole.

In addition, when the offense is the illegal infliction of a wound or injury and there is a probability that the victim will die as a result of the wound, the defendant will be detained "until the consequences of the injury can be ascertained."

The statute originally contained the provision that bail could be denied a defendant charged with a serious crime if proof were evident and the presumption great and if that defendant were already on bail on a felony charge. However, this provision was struck down by the Hawaii Supreme Court (see Comments, below).

B. Types of Defendants to Whom Danger Provisions Apply

- 1) Any defendant who while admitted to bail on any charge commits a serious crime (defined in Section A, above).
- 2) Any defendant of whom it can be shown that there exists a danger that the defendant will commit a serious crime if released.
- 3) Any defendant posing the danger of committing a serious crime who breaches a release condition imposed to address this danger.

C. Special Conditions That May Be Imposed on Dangerous Defendants

- 1) "Upon proof" that a defendant has committed a serious crime while on pretrial release for any offense, the defendant's bond in that pending case may be revoked
- 2) Defendants shown to present a risk of future serious crime may be held without bond or released subject to one or more of the following types of conditions: reporting to and remaining under the supervision of an officer of the court; prohibitions against approaching or contacting specified persons, visiting specified places, or engaging in specified activities (which may include possessing a dangerous weapon or taking intoxicating liquors or specified drugs).
- 3) Release may be revoked from any defendant found to have violated any condition of release imposed to prevent the commission of serious crime on bail.

Hawaii

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: To deny release for those identified as presenting a risk of future danger, "that there exists a danger that the defendant will commit a serious crime" if released.
- 2) Other Required Findings: (a) To revoke pretrial release in cases where the defendant is charged with a serious crime, that the applicable criteria in Section A are met and proven. (b) To revoke pretrial release for breach of conditions of release, proof that the defendant has breached any of the conditions imposed.
- 3) Factors to Consider: None specified.
- 4) Standard of Proof: None specified; hence, judicial discretion.
- 5) Burden of Proof: Not specified; implicitly on the prosecution.
- 6) Hearing: No special hearing required by the statute.
- 7) Speedy Trial: No special provision for dangerous defendants. Rules of Penal Procedure require trial for all defendants within six months.

E. Review/Appeals Procedures

None specified.

Citations: Haw. Rev. Stat. Secs. 660-30 et seq.; Huihui v. Shimoda, (Hawaii) 644 P. 2d 968 (1982), Rules Penal Proc., Rule 48.

COMMENTS, HAWAII

In Huihui v. Shimoda, (Hawaii) 644 P.2d 968 (1982), the Hawaii Supreme Court held that the H.R.S. Section 804-3(b)(3) concerning serious crimes committed on bail from a pending felony charge violated Article 1, Section 12 of the Hawaii Constitution (the state's parallel provision to the eighth amendment) and the due process clause of the fourteenth amendment. Because the statute provides for the severability of invalid provisions and because only H.R.S. Section 804-3(b)(3) was before the court in this case, the remaining sections of the statute remain in force as of this writing.

In overturning this section of the statute, the court stated that potential danger to the community was a legitimate state interest, but that the means chosen to implement that interest was impermissible, because it "exceeds the bounds of reasonableness and due process by conclusively presuming a defendant's dangerousness from the fact that he had been charged previously with a serious crime and presently with a felony, and by leaving no discretion in the trial judge to allow bail based on other factors which may be directly relevant to a determination of the likelihood of the defendant's committing other crimes while free pending trial." Id. at 978.

DANGER LAW SUMMARY

State: Illinois

Year Enacted: Bail revocation provisions date from 1975. Changes were enacted in 1981-82, including a Constitutional Amendment.

A. Defendants Not Entitled to Pretrial Release

Those accused of capital offenses or crimes punishable by life imprisonment, where the proof is evident and the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

- 1) Any defendant who, while admitted to bail on a previous charge, violates the terms of release by violating any criminal statute of any jurisdiction. Special sanctions apply to violators whose alleged crime on bail consists of a forcible felony or any felony which in the State of Illinois would be considered forcible.
- 2) Any defendant released on personal recognizance whom the court finds potentially dangerous.

C. Special Conditions That May Be Imposed on Dangerous Defendants

- 1) If a defendant, while on pretrial release, is charged with breaking any criminal statute of any jurisdiction, this constitutes a violation of the terms of release and the court may issue a warrant to bring the defendant before the court for a hearing. Where the alleged violation consists of a forcible felony (or an act which would be a forcible felony if committed in Illinois) and the defendant is on bail for a forcible felony, the court may hold the defendant without bail pending the hearing. Detention pending the hearing is authorized for up to 10 days, plus any period of delay occasioned by the defendant. This 10-day detention may be extended by up to 5 additional days if the defendant-caused delay occurs within the last 5 days of the 10-day period.

If the court finds at the hearing that while on pretrial release the defendant violated a statute that is not a forcible felony, then the original bail may be increased or bail conditions may otherwise be altered. If the court finds the defendant while on pretrial release to have violated a statute that is a forcible felony, the original bail may be increased, otherwise altered or revoked. If the statute violated is found to be a forcible felony and the defendant was already admitted to bail on a prior forcible felony charge, then bail must be revoked.

- 2) Defendants deemed potentially dangerous by the court may be released on their own recognizance, but ordered to: report to a designated supervisory person or agency; refrain from possessing a firearm or other dangerous weapon; refrain from approaching or communicating with certain people or from visiting certain places or premises; refrain from certain activities or from the use of intoxicating liquors or certain drugs; undergo treatment for drug addiction or alcoholism, or medical or psychiatric treatment; work or study; attend or reside in a designated facility; or support his or her dependents. If a minor, the defendant may be ordered to attend school or a non-residential program for youths, and contribute to his or her own support.

Violation of any of these release conditions is grounds for alteration of bail under the procedures described in Section C(1) above.

Illinois

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: For imposing special conditions of release, that "the court finds that (certain) conditions are reasonably necessary to ... protect the public from the defendant ..."
- 2) Other Required Findings: For revoking pretrial release, "that the defendant has committed a forcible felony offense while admitted to bail."
- 3) Factors to Consider: None are specified.
- 4) Standard of Proof: Imposition of special conditions of release requires "proof presented," but the standard of such proof is not specified. Revocation or alteration of bail conditions requires proving the violation "by clear and convincing evidence."
- 5) Burden of Proof: In order to impose special conditions of release, implicitly on the prosecution. In order to revoke release, explicitly on the prosecution.
- 6) Hearing: A hearing is required to determine whether conditions of release have been violated. At such hearing the State has the burden of proving the violation by clear and convincing evidence. The evidence must be presented in open court with the right of confrontation, cross-examination and representation by counsel. Rules of evidence applicable in criminal trials govern the admissibility of evidence. No transcript, record or finding of the hearing is admissible as evidence against the defendant in the trial of the offense for which the violation was found, nor may any reference be made in that trial to the hearing, evidence presented there or the court's finding.
- 7) Speedy Trial: If the bail of any defendant is revoked, the defendant may demand and shall be entitled to be brought to trial on the original offense within 60 days after the date of bail revocation. If not brought to trial within the 60 days (plus any period of delay resulting from a continuance granted at the request of the defendant), the defendant shall not be held any longer without bail.

E. Review/Appeals Procedures

No special provisions are made for dangerous defendants; however, any defendant, or the State or the court upon its own motion may make application for the court to increase or decrease the amount of bail, alter the conditions of the bail bond or grant bail where it has been previously revoked. The nature of such a proceeding is not spelled out in the statute.

Citation: Illinois State Constitution, Art 1, Sec. 9; Illinois Ann. Stats., Sec. 38-110-1 et seq.

COMMENTS, ILLINOIS

The basic danger law in Illinois applies to persons charged with crime-on-bail, and utilizes revocation of bail to restrain dangerous defendants. Good behavior is made a condition of all bail releases; violation of this condition becomes grounds for detention if the violation is the alleged commission of a felony.

This provision was recommended by the Chicago Crime Commission in 1974 as an ameliorative to a bill enacted earlier that year; that bill allowed judges to suspend the 10% deposit provision of Illinois' bail law and require a 100% cash deposit in certain cases (murder, aggravated kidnapping, treason) or where a defendant was charged with crime-on-bail. Since the amount of bail was already discretionary, the 1974 bill did not create any new judicial authority; furthermore, its reliance on prohibitive cash deposits to inhibit a defendant's ability to secure release raised questions of constitutionality. The Crime Commission proposed a straightforward approach to holding dangerous defendants in custody; provided a means for revoking bail without making bail unavailable to a class of defendants; and assured due process to the defendant. The Crime Commission's proposal was enacted by the Illinois General Assembly in 1975.

Some relatively minor adjustments in the statute and a constitutional amendment were enacted in 1981-82. The effect of the constitutional amendment is to expand the category of defendants who may be denied pretrial release, to include those charged with crimes punishable by life imprisonment as well as those charged with capital offenses.

The statutory changes expanded the powers of the State courts and of the State's Attorney to challenge bail settings, and established a long list of conditions of release that may be applied to defendants whose unconditional release is deemed potentially dangerous. While many of these conditions are commonly sanctioned in other States' danger laws (e.g., reporting to a designated supervisory third party, refraining from possessing a weapon, refraining from communicating with certain people), others are less usual: undergoing treatment for drug addiction or alcoholism, or medical or psychiatric treatment; working or studying; or supporting dependents. Violation of any of the conditions imposed is grounds for alteration or increase of bail.

The Illinois law as a whole is among the more explicit both in regard to the conditions that may be imposed on dangerous defendants and to the procedures required to invoke them. According to one of its authors, the law was designed to be applied sparingly and appears to be used rarely if at all.

DANGER LAW SUMMARY

State: Indiana

Year Enacted: 1981

A. Defendants Not Entitled to Pretrial Release

Defendants charged with murder or treason where the proof is evident or the presumption strong.

B. Types of Defendants to Whom Danger Provisions Apply

Defendants who, while on bail, commit a felony or Class A misdemeanor or commit any crime, if lawful behavior was a condition of release. Defendants arrested for any bailable offense while on probation or parole.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Bail may be revoked if the State shows that the defendant committed a felony or a Class A misdemeanor while on pretrial release.

Bail may also be revoked for defendants who, while on bail, violate any condition of their current release order. Thus, if the release order poses good behavior or refraining from illegal activities as a condition of release, then rearrest while on bail could become grounds for bail revocation.

The court may detain for a maximum of 15 calendar days a person charged with committing any offense while on probation or parole. If within the 15-day period the appropriate authority fails to initiate proceedings to revoke probation or parole, the defendant will be accorded normal treatment in regard to bail, i.e., bond conditions will be set, sufficient to assure the defendant's appearance.

D. Special Conditions Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: No such findings are required.
- 2) Other Required Findings: That the defendant fits one of the categories enumerated in (B) above. The wording in regard to serious crime on bail is noteworthy; the State must show that the defendant, while admitted to bail, "committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring him to trial."
- 3) Factors to Consider: None.
- 4) Standard of Proof: (a) For revocation of bail, "clear and convincing proof." (b) For detention of a probationer or parolee, the standard of proof is not specified.
- 5) Burden of Proof: (a) For revocation of bail, the State must show proof. (b) For detention in parole/probation cases, burden of proof is not assigned; however, it appears to lie with the defense as the State has authority to detain.

Indiana

- 6) Hearing: No special hearing required for dangerous defendants.
- 7) Speedy Trial: No special provision for dangerous defendants. Rules for all defendants require discharge if an incarcerated defendant is not tried within six months of charge or arrest, whichever is later. Rules also provide upon motion for early trial; the defendant is to be discharged unless tried within 70 days. Statute requires discharge upon motion, of a defendant held to bail more than three terms of court.

E. Review/Appeals Procedures

No special procedures for dangerous defendants. For any defendant, upon a showing of good cause, the State or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing such a motion, credible hearsay evidence is admissible to establish good cause. For revocation of bail, see Section (C) above.

Citations: Indiana Code, Sec. 35-33-8-1 et seq.; 35-1-26-2, 35-1-27-1, 35-1-27-3, 35-3.1-1-4; Ind. R. Crim. Proc. 4; Constitution of the State of Indiana, Art. I, Sec. 17.

COMMENTS, INDIANA

Indiana's law allowing revocation of bail from defendants charged with a felony or serious misdemeanor committed while on bail, or with any bailable offense committed while on probation or parole, does not clearly announce itself at first reading to be a danger law. In fact, the statute asserts at several points that the purpose of bail is "to assure the defendant's appearance" at legal proceedings. Viewed in this light, pretrial detention of defendants rearrested while on court-ordered release may be seen as a response to their defiance of judicial authority, and/or as a step necessary to assure administration of release conditions. The statute also makes revocation of bail subject to a finding that the alleged crime "demonstrates instability and a disdain for the court's authority to bring (the defendant) to trial." This unusual language is not found in any other State's danger law and further underscores the question whether the law's intent was protection of the community from crime.

Discussions with persons who participated in drafting this law confirm that the law's intent is indeed a crime control function. The bill originated with the elected prosecutor of Marion County (Indianapolis and environs) as part of a drive for bail reform that he helped spearhead; he reports that it was triggered by a highly publicized case of rape/murder committed by a defendant on bail. Media attention to this specific crime, as well as media attention to crime on bail in general, is credited by both supporters and opponents of the measure as having contributed to its passage.

Indiana

The law targets defendants who violate the terms of a release order, either in regard to bail or probation or parole. The Indiana Consitution allows outright denial of bail only to defendants charged with murder or treason, or with anyailable offense committed while on probation or parole. The unusual wording concerning "instability and . . . disdain" was drawn from an Indiana Supreme Court case and was chosen to bolster the likelihood that the bill would be accepted by the legislature.

DANGER LAW SUMMARY

State: Iowa

Year Enacted: 1983

A. Defendants Not Entitled to Pretrial Release

Those charged with any class A felony (murder, first degree kidnapping or first degree sexual abuse), and any defendant whose release on personal recognizance or unsecured appearance would jeopardize the personal safety of another person or persons.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants are evaluated for potential dangerousness.

C. Special Conditions that May be Imposed on Dangerous Defendants.

The judicial officer shall impose the first of the following conditions of release which will reasonably assure the safety of another person or persons, or, if no single condition gives that assurance, any combination of the following conditions: custody and supervision by a designated person or organization; restrictions on travel, association or place of abode; execution of a bail bond with sufficient surety, or the deposit of cash in lieu thereof (but see comments); and any other condition deemed reasonably necessary to assure the safety of another person or persons, including a return to custody after specified hours. The judicial officer may at any time amend the release order to impose additional or different conditions of release.

When a defendant is released, the judicial officer shall issue a written order stating the conditions of release, inform the defendant of the penalties for violation of release conditions, and shall advise the defendant that violation of release conditions will lead to immediate issuance of a warrant for the defendants arrest.

D. Special Conditions that May be Imposed on Dangerous Defendants

- 1) Required Findings Concerning Future Danger: "that release will jeopardize the personal safety of another person or persons."
- 2) Other Required Findings: None.
- 3) Factors to Consider: In considering which conditions of release will reasonably assure the safety of another person or persons, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.
- 4) Standard of Proof: Judicial discretion.
- 5) Burden of Proof: Not specified; implicitly on the prosecution.

Iowa

- 6) Hearing: No special hearing is called for.
- 7) Speedy trial: No special provision for dangerous defendants. For all defendants, charges must be dismissed if the defendant is not tried within 90 days of indictment or within one year of arraignment.

E. Review/Appeals Procedures

Defendants shall be informed of their right to have conditions of their release reviewed; court-appointed attorneys shall be appointed for indigent defendants who desire such review. Unless the conditions of release are amended and the defendant released, the judicial officer shall set forth in writing the reasons for requiring conditions proposed. A defendant who is released by a judicial officer rather than a district court judge or district associate judge on condition of returning to custody after specified hours, shall, upon application, be entitled to review.

A defendant who is detained, or whose release is on condition of returning to custody after specified hours, may after review by a lower court judge, apply to a district judge or district associate judge having jurisdiction to amend the release order. The motion for appeal must be promptly set for hearing.

If such an appeal is denied, or if a defendant is detained after conditions of release have been imposed or amended upon such motion, an appeal may be taken from the district court. It shall be determined summarily, without briefs, on the record made. However, the defendant may elect to file briefs and may be heard in oral argument, in which case the prosecution shall have a right to respond as in an ordinary appeal from a criminal conviction. The appellate court may, on its own motion, order the parties to submit briefs and specify deadlines for their filing. If the order for detention (or part-time detention) is not supported by the appellate court, the case may be remanded for further hearing or the court may order the defendant released, on personal recognizance, on unsecured appearance bond, or on conditions outlined in C above.

Citations: Iowa Constitution, Art. 1 Secs. 10-12; Iowa Code Ann. sec. 811.2, 813.2; Iowa R. Crim. Pro. 2,3,27.

* * * * *

COMMENTS, IOWA

A ten percent deposit bond is authorized as an appearance bond, the deposit to be returned to the defendant "upon the performance of the appearances as required. . ." No such linkage of bail to appearance is made in regard to secured bond, suggesting that it may be lawfully utilized as a danger-related condition of release.

While the statute does not explicitly authorize detention of dangerous defendants, it does provide for review and appeal of release conditions which result in detention because the defendant is unable to comply with them.

DANGER LAW SUMMARY

State: Maryland

Year Enacted: 1969; amended several times,
most recently in 1982

A. Defendants Not Entitled to Pretrial Release

Those charged with an offense punishable by death or life imprisonment without parole.

Those charged with any of certain enumerated crimes (arson; burglary; assault with intention to murder, ravish or rob; manufacture or distribution of narcotics; kidnapping; murder; manslaughter; rape; robbery; and related offenses) allegedly committed while on bail or own recognizance release from pending charges for one of these same crimes.

B. Types of Defendants to Whom Danger Provisions Apply

Those described in (A) are entitled to rebut their ineligibility for release, and in that sense may fall into this category.

Defendants charged with one of those enumerated crimes after a prior conviction for one of those crimes are subject to special restrictions, as is a defendant whose release would pose a "danger . . . to himself and the person of others;" however, see Comments.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Defendants who commit one of the enumerated crimes while on pretrial release for one of those crimes may be held without bond until or unless prior pending charges are determined by the court.

Personal recognizance release must be denied defendants who are accused of one of the enumerated crimes after a previous conviction for one of them.

Personal recognizance release can be denied if a finding of danger is made.

D. Special Procedures Required to Invoke Dangerousness Provisions

1) Required Findings Concerning Future Danger: In order to rebut the ineligibility for release of a person charged with an enumerated crime committed while on bail for an enumerated crime, "that the applicant would not pose a danger to any other person or to the community." In regard to all defendants being considered for release, "the court may consider the danger of the defendant to himself and the person of others in considering whether he should be released on his personal recognizance."

2) Other Required Findings: None pertaining to dangerousness.

Maryland

- 3) Factors to Consider: None that apply only in the cases of potentially dangerous defendants. Seven conditions are listed that apply to all bailable cases "in determining which conditions of release will reasonably assure the appearance of the defendant as required." One of these is "danger ... to himself and the person of others."
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Defendants charged with committing one of the enumerated crimes must rebut their ineligibility for release. In other cases, the burden of proof is not specified.
- 6) Hearing: A person charged with one of the enumerated crimes may rebut in a hearing his ineligibility for release before determination of the prior charge. If, after consideration of the matters presented in the rebuttal, the court is persuaded that the applicant would neither pose a danger nor flee, it may allow the defendant released pending trial on suitable bail and other such conditions as will reasonably assure appearance.

No other details concerning hearings are provided in the statute.

- 7) Speedy Trial: No special provision for dangerous defendants. For all defendants, trial is required within 180 days.

E. Review/Appeals Procedure

Court may amend or revoke pretrial release orders on the motion of any party or on its own motion. Revocation or the imposition of additional conditions must be accompanied by a written order.

Citations: Constitution of Maryland, Article 25; Ann. Code of Maryland, Art. 27, Secs. 591, 616½, 638B; Maryland R. of Proc. Rules 721,777.

COMMENTS, MARYLAND

The option of denying personal recognizance release to a person who may pose a danger to self and others may well be designed to apply in cases of intoxication, mental illness, etc., given that the most dangerous offenses are already denied personal recognizance, that the person's danger to self is at issue, and that there is no further discussion on what constitutes dangerousness or how it should be determined.

DANGER LAW SUMMARY

State: Massachusetts

Year Enacted: 1981

A. Defendants Not Entitled to Pretrial Release

Persons charged with an offense punishable by death.

B. Types of Defendants to Whom Danger Provisions Apply

Any defendant with a pending case when arrested.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Bail may be revoked in the pending case and the defendant detained without bail for up to 60 days.

D. Special Conditions Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: "That the release of said prisoner will seriously endanger any person or the community and that the detention of the prisoner is necessary to reasonably assure the safety of any person or the community."
- 2) Other Required Findings: Probable cause to believe that the defendant violated the conditions of release by committing a crime while on release.
- 3) Factors to Consider: Gravity, nature and circumstances of the offenses charged; record of convictions; whether the instant charges or convictions are for offenses involving the use or threat of physical force or violence against any person; whether the defendant is on probation, parole or other release pending completion of sentence for any conviction; whether the defendant is on release pending sentence or appeal for any conviction; the defendant's mental condition; and any illegal drug distribution or present drug dependency.
- 4) Standard of Proof: Judicial discretion.
- 5) Burden of Proof: Prosecution must show probable cause for current arrest; no other burden specified.
- 6) Hearing: A probable cause hearing is required to determine if the defendant violated the conditions of release by committing a crime while on release. The defendant has a right to representation by counsel at this hearing. If probable cause is determined, the court shall then determine whether the release of the prisoner would seriously endanger any person or the community. If so, and if an order to revoke bail on the pending charge is issued, the order shall state in writing the reasons and shall be reviewed by the court upon the acquittal of the prisoner or the dismissal of any of the cases involved.
- 7) Speedy Trial: The defendant may be detained only up to 60 days, following which the defendant must be brought to trial (if the delay is not attributable to the defense), or bail or personal recognizance must be ordered. A prisoner so detained shall be brought to trial as soon as reasonably possible

Massachusetts

E. Review/Appeals Procedure

No special procedures exist for dangerous defendants. Any prisoner not admitted to bail on personal recognizance without surety may petition the superior court for a review of the order. Court review will normally take place the same day the petition is filed or, if necessary, the following business day.

Citation: Mass. Gen. Laws Ann., Chapter 276, Sec. 58 (as amended Acts of 1981, ch. 802).

DANGER LAW SUMMARY

State: Michigan

Year Enacted: A constitutional amendment was passed in 1978; Court Rules date from 1977, 1980 and 1981.

A. Defendants Not Entitled to Pretrial Release

None

B. Types of Defendants to Whom Danger Provisions Apply

When the proof is evident or the presumption great, bail may be denied persons indicted or arraigned for:

- 1) A violent felony when, within the 15 immediately preceding years, the defendant has been convicted of two or more violent felonies and when the prior convictions arose out of at least two separate incidents, events, or transactions;
- 2) Murder or treason;
- 3) Criminal sexual conduct in the first degree, armed robbery, or kidnapping with intent to extort money or other valuable thing thereby; or
- 4) A violent felony alleged to have been committed while the person was on bail pending disposition of a violent felony charge or on probation or parole resulting from a prior violent felony conviction.

NOTE: "Violent felony" is a felony, an element of which involves a violent act or threat of a violent act against any other person.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Denial of pretrial release up to 90 days.

D. Special Conditions Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: In regard to charges of first degree criminal sexual conduct, armed robbery or kidnapping/extortion, the defendant must rebut with clear and convincing evidence the presumption that he/she presents a danger to any other person.
- 2) Other Required Findings: Probable cause sufficient to indict.
- 3) Factors to Consider: None that are danger-related.
- 4) Standard of Proof: Clear and convincing evidence, in the defendant's rebuttal of a presumption of dangerousness. Otherwise, not specified.
- 5) Burden of Proof: (a) Prosecution's burden to show probable cause. (b) In Section B(3), above, defendant's burden to show by clear and convincing evidence that he/she is not likely to present a danger to any other person.

Michigan

- 6) Hearing: No special hearing required; determination made at bail hearing following indictment or at arraignment on a warrant.
- 7) Speedy Trial: Trial for a defendant detained for dangerousness must begin within 90 days following the date on which bail was denied, unless delay is attributable to defense; otherwise a bail hearing must be scheduled and bail must be set.

E. Review/Appeals Procedures

None specified.

Citation: Michigan Const., Art. 1 § 15 (1978); Mich. Court Rules 790 (1977, 1980, 1981)

COMMENTS, MICHIGAN

The amended Michigan Constitution establishes the categories of alleged offenses for which bail may be denied, and sets the 90-day "speedy trial" rule. It is unusual for a State constitution to provide such a degree of detail.

Denial of bail for the enumerated charges is not mandatory, including for charges of murder and treason. However, only in the cases of first degree criminal sexual conduct, armed robbery and kidnapping/extortion does a rebuttable presumption of danger exist. The courts will detain persons charged with these crimes unless they can rebut with clear and convincing evidence the presumption that they present a danger to any other person.

Denial of bail where the defendant has twice previously been convicted of a violent felony is an example of "habitual offender" legislation.

DANGER LAW SUMMARY

State: Minnesota

Year Enacted: 1979

A. Defendants Not Entitled to Pretrial Release

Persons charged with a capital offense when the proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

All other defendants are evaluated for a risk of danger.

C. Special Conditions That May Be Imposed on Dangerous Defendants

- 1) When the court determines that a defendant's "release will be inimical of public safety or will not reasonably assure the appearance of the person as required," then it shall impose the first of the following conditions or, if necessary, any combination of the following conditions "which will reasonably assure the appearance of the person. . ." The conditions are: care and supervision by a designated person or organization; restrictions on travel, association or place of abode during the period of release; appearance bond with sufficient sureties or a cash deposit; or "any other condition deemed reasonably necessary to assure appearance as required," including the condition that the person return to custody after specified hours. The court is also instructed "in any event . . . (to) also fix the amount of money bail without other conditions upon which the defendant may obtain his release."
- 2) Following notice and hearing, conditions of release may be revised for a defendant charged with a crime while on release from the initial charge; the conditions of release listed above may be imposed.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: "That such a release will be inimical of public safety."
- 2) Other Required Findings: None.
- 3) Factors to Consider: The court is instructed to consider various factors "in determining which conditions of release will reasonably assure such appearance . . ." No factors are designated as applicable in danger cases. However, one of the factors to be considered to assure appearance is "the safety of any other person or the community."

- 4) Standard of Proof: (a) To deny bail for reasons of safety, the exercise of the discretion of the court or judicial officer. (b) To revise release conditions for defendants charged with crime on bail, "notice and hearing" are required, but the standard of proof is not specified.
- 5) Burden of Proof: Not specified in statute. a) By implication, denial of bail for reasons of safety requires the prosecution to show that release would be inimical of public safety. b) To revise release conditions for defendants charged with crime on bail, the burden of proof is not assigned.
- 6) Hearing: No special hearing is required for the initial determination of release conditions for dangerous defendants. Review of bail terms for a defendant accused of crime on bail requires "notice and hearing." No guidelines are provided for the hearing other than that it shall be conducted by the court having jurisdiction over the prior charge.
- 7) Speedy Trial: No special provision for dangerous defendants. Rules for all defendants allow dismissal of indictment or charge when there has been unnecessary delay by the prosecution in bringing a defendant to trial. The rules also provide for trial within 60 days of written or oral demand by the prosecution or the defendant.

E. Review/Appeals Procedures

Upon motion, the court before which the case is pending shall review the conditions of release.

Citations: Constitution of the State of Minnesota, Article 1, Section 7; Minn. Stat. 629.44, 629.52; Minn. Rules Cr.P. 6.02, 6.03, 11.10, 19.04, 19.05, 30.12.

COMMENTS, MINNESOTA

The statute explicitly requires that the issue of public safety be a factor in release decisions for all defendants, and requires that, if a defendant is found dangerous, conditions of release be applied. A list of release conditions is enumerated that applies both to dangerous defendants and to those who pose a risk of flight. However, subsequent to spelling out this list of conditions, the statute speaks only of imposing them to "assure the appearance of the person for trial or hearing." No mention is made of imposing release conditions for the purpose of assuring the public safety.

In general, the statute's danger provisions rely on the discretion of the court and are not specific in regard to procedural questions or standards of proof. Concern for danger and concern for flight are not clearly distinguished.

DANGER LAW SUMMARY

State: Nebraska

Year Enacted: Constitution amended in 1978.
Statutory provisions passed
in 1972, 1974, 1975.

A. Defendants Not Entitled to Pretrial Release

Those accused of treason, sexual offenses involving penetration by force or against the will of the victim, and murder, when the proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

None, other than those defendants described above. See comments.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Pretrial release must be denied.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: That "proof is evident or the presumption great" that the defendant committed one of the crimes enumerated in (A).
- 3) Factors to Consider: None specified.
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Not specified.
- 6) Hearing: Not specified.
- 7) Speedy Trial: No special provision for dangerous defendants. Statutory law for all defendants requires trial within six months from the filing of information or indictment.

E. Review/Appeals Procedures

None are specified for dangerous defendants.

Citations: Constitution of Nebraska, Article 1, Section 9; Rev. Stats. Neb., 1943, Section 29-901, 29-1207.

COMMENTS, NEBRASKA

Nebraska's constitutional amendment denying pretrial release to persons accused of certain sexual crimes, as well as murder and treason, was passed by the electorate in 1978. It was appealed to the U.S. Supreme Court, which declared moot a U.S. Court of Appeals decision finding the amendment unconstitutional. Hunt v. Roth, 648 F.2d 1148 (8th Cir. 1981); vacated as moot sub nom. Murphy v. Hunt, 102 S.Ct. 1181 (1982). The amendment, thus, stands in its original form, which makes pretrial detention mandatory for the three specified crimes, when proof is evident or the presumption great. Because detention is not subject to discretion, additional findings, factors and procedures are not called for.

Forcible sexual assaults are treated in some states as offenses to which danger provisions apply; they appear in this case in Section A, not B, because Nebraska chooses to treat them with categorical denial of the right to bail.

DANGER LAW SUMMARY

State: Nevada

Year Enacted: A constitutional amendment was ratified in 1980.

A. Defendants Not Entitled to Pretrial Release

Those charged with capital offenses or murders punishable by life imprisonment without possibility of parole, when the proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

Those who are arrested for a felony while on pretrial release.

C. Special Conditions That May be Imposed on Dangerous Defendants

Release in the pending case may be revoked after a hearing. The defendant may be held without bail while awaiting the bail revocation hearing.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: That proof is evident or the presumption great that the defendant has committed a felony during the period of pretrial release.
- 3) Factors to Consider: None are specified.
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Not specified. Implicitly on the prosecution.
- 6) Hearing: A bail revocation hearing is conducted by the magistrate who originally set bail or by any judge of the court in which the original charge is pending. The required finding is listed in Section D(2).
- 7) Speedy Trial: No special provision for dangerous defendants. All defendants are to be tried within 60 days after indictment or information.

E. Review/Appeals Procedures

Not provided for in the statute.

Citations: Constitution of Nevada, Art. 1, Secs. 6, 7; Nevada Revised Statutes, Secs. 174.515, 178.484 et seq.

COMMENTS, NEVADA

The statute provides that "every release on bail. . .is conditioned upon the defendant's good behavior while so released." This provision is clearly intended as a danger law, in that the statute identifies only one act that violates this condition: the commission of a felony while on pretrial release in a pending case.

DANGER LAW SUMMARY

State: New Mexico

Year Enacted: A constitutional amendment was ratified in 1980.

A. Defendants Not Entitled to Pretrial Release

Those charged with capital offenses when the proof is evident or the presumption great.

B. Defendants to Whom Danger Provisions Apply

Those charged with a felony who have previously been convicted within the State of two or more felonies which arose separately from the instant case; those charged with a felony involving the use of a deadly weapon who have a prior felony conviction within the State; those charged with committing a serious crime while on pretrial release; and those found by the court to present a danger of committing a serious crime if released.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Defendants with prior felony convictions as described in (B) above may be denied pretrial release for a period of 60 days. The period of pretrial incarceration without bail may be extended by any period of time by which trial is delayed due to a continuance granted at the request of the defendant.

The court may at any time have a defendant arrested to review conditions of release and, upon review and after a hearing, as required, may impose any conditions of release authorized by the statute. (See Section (E) below.) After a hearing and the required showing, the court may revoke bail or recognizance from a defendant charged with a serious crime allegedly committed while on pretrial release and detain the defendant for an unspecified length of time.

Defendants found to present a danger of committing a serious crime may be prohibited from possessing any dangerous weapon or may have imposed "any other condition necessary to assure the orderly administration of justice."

D. Special Procedures Required to Invoke Dangerousness Provisions

1) Required Findings Concerning Future Danger: "That there exists a danger that the defendant will commit a serious crime, will seek to intimidate witnesses or will otherwise unlawfully interfere with the orderly administration of justice. . ."

2) Other Required Findings: To deny release, that the defendant fits one of the categories outlined in (B) above concerning prior felony convictions. To revoke release, "that the defendant has been indicted or bound over for trial on a charge constituting a serious crime allegedly committed while the defendant was released pending adjudication of a prior charge." These findings are separate from and independent of the danger findings referred to in (D-1).

New Mexico

- 3) Factors to Consider: No factors are specified for arriving at a finding of dangerousness.
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Not specified.
- 6) Hearing: A hearing is required in order for a defendant to be found potentially dangerous and for conditions of release to be established to address this danger. No procedural details on the hearing are provided by the statute. Such a hearing may be held initially or when the court, on its own motion or on that of the district attorney, has the defendant arrested in order to review the conditions of release.

A hearing shall also be held in order to revoke the bail or recognizance of a defendant charged with committing a serious crime while on pretrial release. A showing is required that the defendant has been indicted or bound over for trial for the latter charge; see D-2.

- 7) Speedy Trial: Trial is required within 60 days for felony defendants having prior felony convictions (see section C, above). A limit on detention is not specified in cases of serious crimes allegedly committed during pretrial release, but all defendants are to be tried within six months.

E. Review/Appeals Procedures

Several of the provisions for review of release conditions imposed on dangerous defendants are described in D-6 above. In addition, if a defendant is found to pose a danger of committing a serious crime while on pretrial release, and conditions of release are imposed to address this danger in addition to a prohibition on possessing any dangerous weapons, then the defendant shall upon application be entitled to a review of such conditions.

The court on its own motion or upon motion of the district attorney may at any time have a defendant arrested to review the conditions of release. Upon review the court may: impose any of a variety of conditions prescribed for assuring appearance; after a hearing, impose any of the conditions specified for dangerous defendants; or, after a hearing and showing, revoke the pretrial release of a defendant charged with a serious crime committed while on pretrial release.

If, after a hearing or a review, a defendant continues to be detained because of inability to meet the conditions imposed; or if the requirement to return to custody after specified hours is continued; or if conditions pertaining to dangerous defendants are imposed or continued; or if pretrial release is revoked because of a charge of crime on bail, the defendant may appeal to the supreme court or the court of appeals.

Citations: Constitution of the State of New Mexico, Art. II, Sec. 13; N.M. Rules Cr.P. for the District Cts., Rules 22-26, 37.

DANGER LAW SUMMARY

State: New York

Year Enacted: Major danger provision enacted in 1981.

A. Defendants Not Entitled to Pretrial Release

None.

B. Types of Defendants to Whom Danger Provisions Apply

Defendants charged with a Class A or violent felony while on release under any form of pretrial release (including surety bond) from any pending felony. Class A felonies include murder in the first and second degree and arson, kidnapping and drug sales in the first degree. More than 35 crimes are categorized as violent. They include robbery, rape, burglary and use or threatened use of a gun or knife in the commission of a crime.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Bail or recognizance in the pending case may be revoked and the defendant may be detained for a period not to exceed 90 days or until either the charges have been reduced or dismissed such that the defendant is no longer charged with a felony, or until the new charges have been reduced or dismissed such that the defendant is no longer charged with a subsequent Class A or violent felony, whichever of these periods is shortest. Before pretrial release can be thus revoked, a hearing must be held (see D-6 below). The defendant may be detained pending that hearing for up to 72 hours. An additional 72 hours' detention may be granted upon the showing of good cause (some compelling fact or circumstance that precluded the hearing from being held within the initial 72 hours), or where the failure to hold the hearing resulted from the defendant's request or occurred with the defendant's consent.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: For revocation of bail or recognizance, that there is reasonable cause to believe that the defendant committed one or more specified Class A or violent felony offenses while on release in a pending felony charge. For an initial detention prior to a hearing, that the defendant has been charged with a Class A or a violent felony committed while on pretrial release from a pending felony charge. For supplementary prehearing detention, good cause or that the delay was due to the defendant's request or occurred with defendant's consent.
- 3) Factors to Consider: None.
- 4) Standard of Proof: "Reasonable cause to believe" that the defendant committed a specified felony while on pretrial release. Pre-hearing detention requires only notice that a Class A or violent felony complaint has been filed.
- 5) Burden of Proof: By implication on the prosecution, both for revocation of release and for pre-hearing detention.

New York

- 6) Hearing: The court must hold a hearing before bail or recognizance can be revoked. The court will receive any relevant, admissible evidence not legally privileged. Defendants may cross-examine witnesses and may present relevant, admissible evidence on their own behalf. The hearing may be consolidated with, and conducted at the same time as, the defendant's felony (probable cause) hearing. A transcript of testimony taken before the grand jury upon presentation of the subsequent offense shall be admissible as evidence during the hearing. The district attorney may move to introduce grant jury testimony of a witness in lieu of that witness' appearance at the hearing.
- 7) Speedy Trial: Detention pursuant to revocation of pretrial release is limited to 90 days, exclusive of any periods of adjournment requested by the defendant, or until charges have been dropped or reduced such that the defendant is no longer charged with commission of a felony or with commission of a subsequent class A or violent felony.

E. Review/Appeals Procedures

None specified in statute.

Citations: Consolidated Laws of N.Y. (McKinney's), CPL, Sec. 510.30, 510.60, 530.60 (as amended Laws 1981 c.788 Sections 1,2)

COMMENTS, NEW YORK

In 1979 a social science research firm reported that one-quarter of all arrests in Manhattan were for crimes committed by defendants out on bail and awaiting disposition of pending charges. New York's danger law was drafted at least in part in response to that report. It authorizes revocation of bail and 90-day detention of persons charged with a Class A or violent felony while on pretrial release from pending felony charges.

The statute includes a speedy-trial provision limiting the detention of dangerous defendants to 90 days. Upon expiration of that time period, the court "may grant or deny release." Denial of release—that is to say, additional detention—is permitted if the court finds that it must hold the defendant to assure appearance in court.

The New York State Assembly had several years earlier debated and rejected the concept of preventive detention. Legislators who had opposed that concept were reportedly pleased to be able in an election year to vote for an "anti-crime" bill which, because of its due process provisions and the fact that it relies not on prediction of future criminality but juridically-established "reasonable cause to believe" that a crime has already been committed, was considered a fairer and more moderate approach.

DANGER LAW SUMMARY

State: North Carolina

Year Enacted: Recent additions, amendments to the statute were enacted in 1973 and 1975.

A. Defendants Not Entitled to Pretrial Release

The court determines in its discretion whether persons charged with capital offenses should be released.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants seeking pretrial release.

C. Special Conditions That May Be Imposed on Dangerous Defendants

When the court determines that the defendant poses a danger, it must impose release on an appearance bond secured in full by a cash deposit, mortgage, or at least one solvent surety.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: That release will pose a danger of injury to any person.
- 2) Other Required Findings: No others that are danger-related.
- 3) Factors to Consider: Nature and circumstances of the offense; the weight of the evidence; defendant's family ties, employment, financial resources, character and mental condition; length of community residence; record of convictions and court appearances or flight; plus "any other evidence relative to the issue of pretrial release."
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Implicitly on the prosecution, as non-secured terms of release are to be granted unless the court finds a risk of danger.
- 6) Hearing: None called for in statute.
- 7) Speedy Trial: No special provision for dangerous defendants. All defendants are to be tried within 90 days.

E. Review/Appeals Procedures

No special procedures for dangerous defendants.

Citations: N. Car. Gen. Stat., Article 26, Sec. 15A-533, et seq., 701, 703, 1381, 1382, 1383.

COMMENTS, NORTH CAROLINA

This statute expressly favors, for non-dangerous defendants, release conditions that do not depend on the defendant's financial condition. The special restrictive release condition for potentially dangerous defendants involves posting a secured bond. Detention is not encouraged.

Restrictive release conditions apply equally to dangerous defendants, those at risk for flight, and defendants who endanger the integrity of the judicial process. The same is true of factors to consider in determining the terms of release.

DANGER LAW SUMMARY

State; Rhode Island

A. Defendants Not Entitled to Pretrial Release

Those charged with offenses punishable by death or by life imprisonment, when proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

Those released prior to trial who violate the condition of release that they "keep the peace and be of good behavior."

C. Special Conditions That May Be Imposed on Dangerous Defendants

Not specified; implicitly, release could be revoked. See comments.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: None are specified in the statute.
- 3) Factors to Consider: None.
- 4) Standard of Proof: Not specified in the statute. See comments.
- 5) Burden of Proof: Not specified in the statute.
- 6) Hearing: In all cases where the State opposes the granting of bail for crimes punishable by death or life imprisonment, a hearing "shall be held in the superior court unless arrangements are made . . . for a stenographic or electronic recording of proceedings in the district court." No other specifics are provided concerning the nature of the hearing, required findings, etc. In regard to a bail revocation hearing, see comments.
- 7) Speedy Trial: Persons indicted for or charged by information with treason, murder, robbery, rape, arson or burglary and denied release shall be tried or bailed within six months, unless the absence under certain conditions of a State's witness causes a delay. Persons accused of these crimes, without being indicted or charged, may not be detained for more than six months; after six months, they must be bailed or discharged.

E. Review/Appeals Procedures

No special procedure is specified for dangerous defendants.

Citations: Constitution of the State of Rhode Island, Art. I. Secs. 8,9;
General Laws of Rhode Island, Sec. 12-13-1 et seq.; Super. R. Crim. 46.

Rhode Island

COMMENTS, RHODE ISLAND

The Rhode Island Supreme Court heard in 1977 a case concerning revocation of bail that clarifies many of the procedural questions examined here. The court held that a specific statute granting the trial court the right to revoke bail is unnecessary. Since a court with jurisdiction over a criminal case has the power to enforce its orders, it has inherent authority to revoke bail upon breach of a bail condition. Mello v. Superior Court, 370 A.2d 1262 (1977). In addition, Superior Court Rules of Criminal Procedure provide that a violation of the terms of release may be punished as a contempt of court and that bail may be forfeited.

The court also found that since a defendant facing bail revocation is jeopardized at least as much as one facing revocation of parole, probation, or imposition of sentence for breach of a deferred sentence agreement, the due process rights afforded defendants in those situations must attach to a defendant in a bail revocation proceeding. Id.

Under those requirements of due process, a defendant awaiting a bail revocation hearing has the right to a speedy determination of his status. Specifically, the court found that a bail revocation hearing must be conducted with the same promptness as the hearing which follows State opposition to the granting of bail; a two-week delay was deemed clearly unlawful. Id.

The standard of proof established by this case for bail revocation hearings is that evidence must "reasonably satisfy that there had been a violation;" thus, the standard of proof requires the State to go beyond probable cause and affords a defendant the necessary due process. Id.

DANGER LAW SUMMARY

State: South Carolina

Year Enacted: 1962, 1969

A. Defendants Not Entitled to Pretrial Release

Defendants charged with capital offenses or offenses punishable by life imprisonment.

B. Types of Defendants to Whom Danger Provisions Apply

All other defendants seeking pretrial release.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Dangerous defendants are not eligible for release on unsecured appearance bond, which appears to be the least restrictive form of release authorized by the State. They may have imposed one or more of the following: appearance bond in a specified amount with sufficient sureties; custody and supervision by a designated person or organization; restrictions on travel; association or place of abode; and/or "any other conditions deemed reasonably necessary to assure appearance as required," including return to custody after specified hours.

These conditions are mandated expressly for dangerous defendants as well as defendants who might flee, hence the omission of reference to danger in the quoted clause may be inadvertent.

All persons released are "enjoined" to "be of good behavior toward all the citizens" of the State.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: That "unreasonable danger to the community will result."
- 2) Other Required Findings: None.
- 3) Factors to Consider: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, length of community residence, and record of convictions and flight from court proceedings.

These factors are to be considered in assessing risk of flight or danger to the community. No factors are identified as relating solely or primarily to either issue.

- 4) Standard of Proof: Judicial discretion.
- 5) Burden of Proof: By implication, on the prosecution, since the statute directs that defendants "shall be ordered released" unless a finding of risk of flight or danger is made.
- 6) Hearing: No special hearing is called for in the statute. The court may "at any time after notice and hearing," amend its release order to impose additional or different conditions of release.

South Carolina

- 7) Speedy Trial: No special provision for dangerous defendants. For all defendants, if a defendant has not been indicted some time in the next term after commitment to jail, upon motion, the defendant shall be released on bail. Failure to indict by the second court term after commitment to jail results automatically in discharge from jail.

E. Review/Appeals Procedures

None are mandated in the statute. Item (D-6) above implies the possibility of review but does not provide any procedural details.

Citation: Constitution of South Carolina, Art. 1, Sec. 15; S.C. Code, Sec. 17-15-10 et. seq., 17-23-90.

DANGER LAW SUMMARY

State: South Dakota

Year Enacted: Major danger-related provisions were enacted in 1980.

A. Defendants Not Entitled to Pretrial Release

Defendants charged with a capital offense, when the proof is evident or the presumption great.

Although the State Constitution excludes such defendants from bail, the statutory scheme excludes them only from release on personal recognizance or unsecured appearance bond, and specifically makes them eligible for release on conditional personal recognizance or surety bond, unless the committing magistrate has reason to believe that no conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or the community.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants seeking pretrial release. This includes defendants accused of capital crimes, who are to be released on specified conditions unless the court finds that they may pose a danger.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Defendants accused of capital crimes shall be denied release on personal recognizance or on an unsecured appearance bond. They may be denied release altogether or may be released subject to one or more of the following conditions: custody and supervision by a designated person or organization; restrictions on travel, association or place of abode; release on a 10 percent secured appearance bond deposited with the court; execution of a bail bond with sufficient solvent sureties; or "any other condition reasonably necessary to assure the defendant's appearance as required" including a condition that the defendant return to custody after specified hours. The absence of a reference to danger as well as to appearance in this latter phrase is apparently an oversight.

The same enumerated conditions of release apparently apply to defendants accused of non-capital crimes if the court finds that release on personal recognizance or on unsecured appearance bond is inadequate to allay their potential danger to other persons or the community. This is unclear, however, for two reasons. First, the enumerated conditions of release are specifically labeled as appearance-related. Second, the statute does not state that these conditions apply to dangerous defendants in non-capital cases, whereas it does specifically refer to them in regard to dangerous defendants in capital cases.

Defendants already released on personal recognizance when brought before the court for the current offense may be denied release on personal recognizance or on an unsecured appearance bond.

South Dakota

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: "That the defendant may pose a danger to any other person or to the community."
- 2) Other Required Findings: None.
- 3) Factors to Consider: The risk that the defendant will pose a danger to any person or the community is a factor to be considered in determining the conditions of release to assure appearance. No factors are specified to respond to a risk of danger.
- 4) Standard of Proof: The exercise of judicial discretion; the court's "reason to believe."
- 5) Burden of Proof: By implication, on the prosecution, since the statute directs that defendants be released unless a finding of risk of flight or danger is made.
- 6) Hearing: No special hearings are required. The court may at any time impose additional or different conditions of release. Notice and hearing to do so are not specified.
- 7) Speedy Trial: No special provision for dangerous defendants. For all defendants, statutory law provides for dismissal of indictment or information if there is unnecessary delay in presenting the charge to the grand jury, filing an information, or bringing the defendant to trial.

E. Review/Appeals Procedures

No special procedures are prescribed for dangerous defendants. A range of review procedures is generally available to all defendants.

Citations: Constitution of South Dakota; S.D. Codif. Laws Ann. Sec. 23A-16-3, 23A-43-2, 23A-44-3 et seq.

COMMENTS, SOUTH DAKOTA

The statute invokes certain sanctions against potentially dangerous defendants, yet the wording of key sections of the law are expressly labeled as applying "to assure appearance for trial." The omission at these points of wording related to danger probably reflects the statute's history, as the danger provisions were added to the statute after its initial enactment had put in place the traditional, appearance-oriented language.

No specific provision is made for the detention of dangerous defendants accused of non-capital crimes. However, detention is mandated for dangerous defendants accused of capital crimes. This distinction on the basis of capital versus non-capital crime, not on the basis of potential danger, raises the question whether detention is intended to play a crime-control function.

The wording of this statute is at several points confusing or vague.

DANGER LAW SUMMARY

State: Tennessee

Year Enacted: The danger clause was enacted in 1981.

A. Defendants Not Entitled to Pretrial Release

Defendants charged with capital crimes, where the proof is evident or the presumption great.

B. Types of Defendants to Whom Danger Provisions Apply

Those charged with a bailable criminal offense while on bail for a separate criminal offense.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Bail on each offense committed while on release will be set in an amount not less than twice that which is customarily set for the offense charged.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: That the defendant meets the criteria described in (B) above.
- 3) Factors to Consider: None.
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Not specified.
- 6) Hearing: No special hearing is called for.
- 7) Speedy Trial: No special provision for dangerous defendants. For all defendants, court rules allow dismissal of an indictment if there is delay in presenting the charge to a grand jury or in bringing the case to trial.

E. Review/Appeals Procedures

No special procedures exist for dangerous defendants. All defendants are entitled to a hearing on a motion to review bond status.

Citations: Constitution of the State of Tennessee, Article 1, Sections 15, 16; Tenn. Code Annot., Sec. 14-11-101 et seq., 40-2001, 2005, Tenn. R. Crim. Proc., R. 48

Tennessee

COMMENTS, TENNESSEE

This law requires the setting of bail at levels twice or more the normal amount in cases of alleged crime on bail. Its intent, according to the State Senator who introduced it into the legislature, is to detain "repeat" criminals by making bail more difficult to afford. This Senator had attempted in the past to enact legislation denying the right to bail in all cases of alleged crime-on-bail; however, those earlier efforts failed to proceed beyond the committee level. The present law reportedly passed by a large margin.

The law pertains to all crimes committed on bail, not solely to violent or serious ones. In this sense, it is quite different from the other laws examined in this report, most of which are aimed specifically at dangerous defendants.

DANGER LAW SUMMARY

State: Texas

Year Enacted: Constitutional amendment
adopted in 1977

A. Defendants Not Entitled to Pretrial Release

Persons charged with an offense punishable by death when the proof or presumption of guilt is great.

B. Types of Defendants to Whom Danger Provisions Apply

Any person charged with a felony less than capital:

- 1) Who has been twice previously convicted of a felony (second conviction being subsequent to the first both in point of time of commission of the offense and the conviction therefor); or
- 2) Which was committed while on bail for a prior felony for which the defendant was already indicted; or
- 3) Involving the use of a deadly weapon after being convicted of a prior felony.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Bail may be denied pending trial, if the order denying bail is issued within seven days of the time of incarceration.

D. Special Conditions Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: None.
- 2) Other Required Findings: (a) Defendant fits one of the categories enumerated above. (b) Evidence substantially shows defendant committed the offense for which now charged.
- 3) Factors to Consider: None specified.
- 4) Standard of Proof: Substantial showing of guilt in offense for which now charged.
- 5) Burden of Proof: On the prosecution.
- 6) Hearing: Probable cause hearing in offense for which now charged.
- 7) Speedy Trial: Trial of dangerous defendants must begin within 60 days of initial incarceration (unless delay is attributable to defense) or order denying bail will be set aside.

E. Review/Appeals Procedures:

Defendant may appeal to Court of Criminal Appeals. The appeal will be given preference.

Citation: Texas Const. Art. 1, Sec. 11a; Texas Crim. Proc. Code Ann., Secs. 17.01 et seq.

COMMENTS, TEXAS

The Texas Constitution was amended in 1977 to allow denial of bail in three cases of alleged offenses: where the present felony is committed while the defendant is on bail from a pending felony; where the present felony involves use of a deadly weapon and the defendant has previously been convicted of a felony; and where the defendant has twice previously been convicted of a felony. This latter instance is looked upon by the courts as a "habitual offender" status, a category of offenders not specifically addressed in this study.

Besides establishing the parameters of dangerousness, the Constitution is also the vehicle which specifies a number of the procedural elements of the bail denial process, e.g., the standard of proof, speedy trial requirement and right of appeal. It is unusual for a State Constitution to provide so much procedural detail.

DANGER LAW SUMMARY

State: Utah

Year Enacted: 1980

A. Defendants Not Entitled to Pretrial Release

None.

B. Types of Defendants to Whom Danger Provisions Apply

Those charged with a capital offense, with a felony committed while free on bail awaiting trial on a prior felony, or with a felony committed while on probation or parole for a prior felony, where the proof is evident or the presumption strong.

C. Special Conditions That May Be Imposed on Dangerous Defendants

In the cases described above, the accused may be admitted to bail only by a magistrate or upon the circuit or district court's refusal, and upon good cause shown, by a justice of the supreme court, after hearing and finding that the interests of justice do not require detention without bail.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: That "the interests of justice do not require detention without bail."
- 2) Other Required Findings: If a defendant is refused bail by a lower court and appeals that decision to the State supreme court, the defense must show good cause that the defendant should be admitted to bail.
- 3) Factors to Consider: None specified.
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: On the defense, once the prosecution has shown that the proof is evident or the presumption of guilt great.
- 6) Hearing: No special danger hearing is required.
- 7) Speedy Trial: No special provision for dangerous defendants. All defendants are entitled to bail or trial within 30 days after arraignment if unable to post bail. The court may order an indictment dismissed when there is unreasonable delay in bringing a defendant to trial.

E. Review/Appeals Procedures

A defendant denied bail by a circuit or district court has the right to appeal the decision to the State Supreme Court.

Citations: Utah Code Ann. (1982 edition) Chap. 20, Secs. 77-1-6, 77-20-1 et seq. 77-35-25; Utah Constitution Art. 1, Secs. 8, 9, 12.

COMMENTS, UTAH

The statute makes no specific reference either to danger or to appearance as the purpose of pretrial detention. The finding required to permit release—"that the interests of justice do not require detention without bail"—can be understood to apply in either case. On the one hand, defendants accused of repeated felonies can be viewed as a threat to the "interests of justice" in that they may commit crimes against the law-abiding community. On the other hand, defendants who violate the terms of release, probation or parole by committing a felony can be viewed as defying the integrity of the justice system; such defendants may be poor risks for appearance in court.

Types of defendants to whom this law pertains are clearly spelled out. Other provisions of the law (e.g., the factors to consider, standards of proof, etc.) are quite vague. Also unclear is whether the hearing and findings are required in all cases, or only where a justice of the State supreme court is reviewing a lower court's denial of bail. (See section C.)

DANGER LAW SUMMARY

State: Vermont

Year Enacted: Statute: 1967, amended 1969.
State constitution amended in April 1982.

A. Defendants Not Entitled to Pretrial Release

Persons charged with offenses punishable by death or life imprisonment when the evidence of guilt is great.

B. Types of Defendants to Whom Danger Provisions Apply

All non-capital defendants are evaluated for risk of danger.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Any one or more of the following conditions may be imposed on a potentially dangerous defendant, either in place of or in addition to personal recognizance or an unsecured appearance bond: release into the custody and supervision of a designated person or organization; restrictions on travel, association or place of abode; execution of an appearance bond in a specified amount secured by a deposit not to exceed 10 percent of the amount of the bond; execution of a bail bond with sufficient solvent sureties or cash; or "any other condition deemed reasonably necessary to assure appearance as required," including a condition requiring return to custody after specified hours.

(See comments concerning use of this law to permit detention.)

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: Defendant constitutes "a danger to the public."
- 2) Other Required Findings: None.
- 3) Factors to Consider: Factors are not separated by flight and danger risks. The assessment of both risks is to consider the nature and circumstances of the offense charged; the weight of the evidence against the accused; the accused's family ties, employment, financial resources, character and mental condition, length of residence in the community, record of convictions, and record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

Vermont

- 4) Standard of Proof: Judicial discretion.
- 5) Burden of Proof: Not specified.
- 6) Hearing: No special hearing required.
- 7) Speedy Trial: No special provision for dangerous defendants. All defendants must be brought to trial within 90 days after arraignment when the defendant is in custody and within six months after arrest in other cases.

E. Review/Appeals Procedures

General procedures for all detained defendants; no special procedures under danger law. Any defendant not released within 24 hours of the release hearing as a result of his inability to meet those conditions, or any defendant released on condition of returning to custody after specified hours, is entitled, upon application, to a review of the release conditions by the judicial officer who imposed them.

Citations: Vermont Constitution, Chap. 1, Art. 10; Chap. 2, Sec.40 (adopted April 13, 1982). Vt. Stat. Ann., Title 13, Sec. 7551-4; Vt. Sup. Ct. Admin. Order 17. State v. Pray, (Vermont) 346 A. 2d 227 (1975); State v. Brown, (Vermont) 396 A. 2d 134 (1978).

COMMENTS, VERMONT

The statute does not expressly permit preventive detention or denial of bail solely on a finding that the defendant would constitute a danger to the community. Until the case of State v. Pray, 346 A.2d 227 (1975), however, judges did entertain motions that bail be denied solely on the grounds that the defendant's release would constitute a danger to the public. In that case, the Vermont Supreme Court held that denial of bail solely upon finding of danger to the community was contrary to the constitution of the state, which prohibits unreasonable bail (Vt. Const. Ch. 2 Section 40), and, according to the court, provides that the sole purpose of bail is to assure appearance.

In State v. Brown, 396 A.2d 134 (1978), the court upheld as a valid condition of release that the defendant not be the subject of a new charge of felony for which probable cause is found. The court stated that while bail cannot be denied solely for the protection of the public, a court may impose a condition of bail solely for that purpose.

The 1982 constitutional amendment extended the denial of bail to cover crimes punishable by life imprisonment as well as crimes punishable by death.

DANGER LAW SUMMARY

State: Virginia

Year Enacted: 1975, 1978

A. Defendants Not Entitled to Pretrial Release

None.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants seeking pretrial release are evaluated for a risk of danger.

Persons charged with capital offenses are eligible for release on personal recognizance or unsecured appearance bond unless the court makes a finding of danger.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Release may be denied.

All defendants granted release on personal recognizance or unsecured appearance bond may have imposed "any. . . condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior. . . pending trial, including a condition requiring that the person return to custody after specified hours."

D. Special Procedures Required to Invoke Dangerousness Defendants

- 1) Required Findings Concerning Future Danger: That the defendant's liberty "will constitute an unreasonable danger to himself or the public." Persons accused of capital crimes are eligible for release unless a judge finds that no conditions of release "will reasonably assure that the person will not. . . pose a danger to any other person or to the community."
- 2) Other Required Findings: No others related to dangerousness.
- 3) Factors to Consider: None specified.
- 4) Standard of Proof: For persons accused of capital crimes, judicial discretion (that the court "has reason to believe").
- 5) Burden of Proof: Implicitly on the prosecution, as defendants are granted bail unless a finding of danger is made.
- 6) Hearing: None specified in the statute.
- 7) Speedy Trial: No special provision for dangerous defendants. For all defendants, after a finding of probable cause, the defendant is forever discharged from prosecution if trial is not commenced within five months (if the defendant is in custody) or nine months (defendant not in custody).

Virginia

E. Review/Appeals Procedures

No special procedures for dangerous defendants. Any defendant may appeal a bail determination to the next higher court, up to and including the State Supreme Court.

Citations: Va. Code Sec. 19. 2-120 et seq., 241, 242, 243.

COMMENTS, VIRGINIA

Virginia is one of the few states whose statute permits denial of release solely on the grounds of a prediction of danger, without reference to the nature of the charge, prior arrest or conviction records, etc. At the same time, Virginia is also one of the few that extends a presumption of release to persons charged with capital offenses. The statute requires the court to make a finding of dangerousness in order for defendants in capital cases to be detained.

The conditions applicable to defendants released on personal recognizance or unsecured appearance bond are labeled at one point as appearance-related; however, the statute also stipulates that they are designed to assure both "appearance as required" and "good behavior pending trial." The "good behavior" condition is frequently construed as addressing potential dangerous or criminal behavior.

DANGER LAW SUMMARY

State: Washington

Year Enacted: 1976

A. Defendants Not Entitled to Pretrial Release

None.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Defendants charged with a capital offense may, if found to pose a substantial danger to another or to the community, be detained.

The court may prohibit dangerous defendants from approaching or communicating with particular persons or classes of persons, or from going to certain geographical areas or premises; from possessing any dangerous weapons, or engaging in certain described activities or indulging in intoxicating liquors or in certain drugs; or require that they report regularly to and remain under the supervision of an officer of the court or other person or agency.

The court order authorizing release shall contain a statement of the conditions imposed, if any, shall inform the defendant of penalties applicable to violations of said conditions, and shall advise the defendant that he is subject to arrest upon any such violation. Violation of release conditions will result in a hearing to reconsider conditions of release.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: For any defendant, "that there exists a substantial danger that the defendant will commit a serious crime" upon release. For defendants charged with a capital offense, "that the defendant may. . . pose a substantial danger to another or to the community."
- 2) Other Required Findings: Probable cause that the defendant committed the offense charged.
- 3) Factors to Consider: None.
- 4) Standard of Proof: Not specified; implicitly, judicial discretion.
- 5) Burden of Proof: Not specified; implicitly on the prosecution.
- 6) Hearing: No special danger hearing required.
- 7) Speedy Trial: No special provision for dangerous defendants. For all defendants, arraignment is required within 14 days of filing of indictment or information if defendant is in jail or on conditions of release, or 14 days after appearance in superior court following said filing. Detained defendants are to be brought to trial within 60 days of arraignment; defendants not in custody are to be tried within 30 days of arraignment.

Washington

E. Review/Appeals Procedures

No special procedures exist for dangerous defendants. After 24 hours from the time of release, the court may, upon request, review the conditions of release previously imposed.

Citations: Constitution of Washington, Art. I, Secs. 14, 20; Revised Code of Wash. Ann., Sec. 10.19.010 et seq; 10.46.010; Sup. Ct. Cr. R., Rules 3.2, 3.3.

DANGER LAW SUMMARY

State: Wisconsin

Year Enacted: Constitutional amendment passed in 1981; was challenged in court and upheld in 1982. Enabling legislation was passed in 1982.

A. Defendants Not Entitled to Pretrial Release

None.

B. Types of Defendants to Whom Danger Provisions Apply

All defendants are assessed for potential danger to the community. Special provisions apply to defendants charged with first-degree murder; first-degree sexual assault; with committing or attempting to commit a violent crime, when the defendant has previously been convicted of committing or attempting a violent crime; and with committing a serious crime while on pretrial release.

Dangerous defendants may be required to execute a secured appearance bond with sufficient solvent sureties, or deposit cash in lieu of sureties; placed in the custody and supervision of a designated person or organization; subjected to restrictions on travel, association or place of abode during the period of release; prohibited from possessing any dangerous weapon; or may have imposed any other nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm.

Release may be denied defendants accused of first-degree murder or first-degree sexual assault, or accused of committing or attempting to commit a violent crime when the defendant has a prior conviction for committing or attempting to commit a violent crime. Such detention may only be ordered after a hearing; the defendant may be detained for a maximum of 10 days prior to the hearing. If the required findings are made, the defendant may be detained for an additional period not to exceed 60 days, excluding time resulting from a delay caused by the defendant or from a continuance granted at the defendant's request.

It is a condition of release in all cases that the person released shall not commit any crime. Violation of the conditions of release or of the bail bond constitutes grounds for an increase in the amount of bail or other alteration in the conditions of release. If the alleged violation is the commission of a serious crime, release may be revoked.

A defendant accused of committing a serious crime while on pretrial release may be detained for 7 days prior to a hearing. If at the hearing the court makes the required findings, release in the pending case may be revoked and the defendant may be detained for up to 60 days pretrial.

Wisconsin

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: No finding is required in order for the court to impose any nonmonetary conditions of release deemed reasonably necessary to protect members of the community from serious bodily harm.

In order to deny pretrial release, the court must find that "available conditions of release will not adequately protect members of the community from serious bodily harm."

No findings of future danger are required to revoke pretrial release.

- 2) Other Required Findings: In order to deny release, the court must find, in addition to the risk of bodily harm, that the defendant committed one of the specified crimes or that the defendant committed or attempted to commit a violent crime subsequent to a prior conviction for a violent crime.

In order to revoke pretrial release, the court must find that the defendant committed a serious crime while on conditional pretrial release.

- 3) Factors to Consider: In setting conditions of release for dangerous defendants, as well as in fixing the amount of bail to assure appearance, the following factors are to be considered: the ability of the arrested person to give bail; the nature, number and gravity of the offenses and the potential penalty the defendant faces; whether the alleged acts were violent; the defendant's prior criminal record, if any; the character, health, residence and reputation of the defendant; the character and strength of the evidence; whether the defendant is currently on probation or parole, or on bail or subject to other release conditions in other pending cases, or bound over for trial after a preliminary examination; whether the defendant has in the past forfeited bail or violated a condition of release; and whether the defendant was a fugitive from justice at the time of arrest. The court is also directed to consider "the policy against unnecessary detention of the defendant's (sic) pending trial."

- 4) Standard of Proof: "Clear and convincing evidence" in both cases.

- 5) Burden of Proof: In regard to the required findings for denial or revocation of pretrial release, the burden is explicitly on the State.

- 6) Hearing: A pretrial detention hearing is required in order to continue to hold in custody a defendant who has been arrested. The pretrial hearing shall be commenced within 10 days from the date the defendant is detained or brought before the court on a warrant following allegation by the district attorney that denial of release is appropriate and necessary. The defendant may not be detained for more than 10 days prior to the hearing without conditions of release being set.

During the hearing, the State must prove the relevant findings (D(1) and D(2) above). Evidence shall be presented in open court with the right to confrontation, right to call witnesses, right to cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials apply in the hearing. The court may exclude witnesses until they are called to testify, may direct that potential witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined. The defendant's testimony shall not be admissible on the issue of guilt in other judicial proceedings, but shall be for perjury proceedings and for impeachment purposes.

A hearing is also required in order for pretrial release to be revoked. Such a hearing must be commenced within seven days from the date the defendant is taken into custody. The defendant may not be detained more than seven days without conditions of release being set.

At the hearing, the State must prove the relevant finding (see D(2) above). Evidence shall be presented in open court with the right of confrontation, right to call witnesses, right of cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing. No reference may be made during the trial for the pending charge to the court's finding in the hearing, nor to any testimony of the defendant in the hearing, except for impeachment purposes.

A defendant may petition the court to be released from custody with or without conditions at any time.

- 7) Speedy Trial: A person who is denied release subsequent to being charged with any of the crimes enumerated in Section B has the right to a pretrial detention hearing within 10 days from the date he is detained or brought before the court. If the defendant is detained following the hearing, such detention is limited to a maximum of 60 days exclusive of delays caused by the defendant or a continuance initiated by the defendant. Persons thus detained are entitled to have their cases placed on an expedited trial calendar and their trials given priority. Defendants detained for alleged violation of pretrial release conditions may be held seven days prior to a hearing.

In cases where release is revoked, defendants may demand and shall be entitled to be brought to trial on the pending offense within 60 days. If they are not brought to trial within 60 days, they shall not be held longer without conditions of release being set and they shall be released on bail or other conditions deemed appropriate by the court. In computing the 60-day period, the court shall exclude any period of delay resulting from a continuance granted at the request of the defendant.

Wisconsin

E. Review/Appeals Procedures

Upon petition by the State or by the defendant, the court may increase or decrease the amount of bail, or alter the conditions of release or of the bail bond, or may grant bail if it has been previously revoked.

A defendant for whom conditions of release are imposed and who remains in detention after 72 hours because of inability to meet the conditions, is entitled upon application to have the conditions reviewed by the judge of the court where the action is pending. Unless the conditions of release are amended and the defendant released, the judge shall set forth on the record the reasons for requiring the continuation of the conditions. The same rights pertain to a defendant who is released on the condition of a return to custody after specified hours.

In the above-described situations, reasonable notice of petition by the defendant must be given to the State and vice versa.

A defendant whose pretrial release has been revoked may petition the court for reinstatement of conditional release, if any of the circumstances authorizing revocation of release are altered.

Citations: Constitution of Wisconsin, Art. 1, Secs. 6,8 (amended 1981); Wisc. Stats. Ann. Secs. 969.001 et seq.; 940.01 et seq.; 940.49; 971.14(1).

COMMENTS, WISCONSIN

Passage of Wisconsin's danger law is testimonial to the influence of the "victims' rights movement" in establishing pretrial detention of dangerous defendants. The law was initiated and championed by the parents of a young woman who was raped and murdered by a defendant free on 10 percent deposit bond from pending sexual assault charges. The parents at first attempted to do away with deposit bond; this effort evolved into a campaign for passage of a State constitutional amendment to allow pretrial detention of persons charged with specified violent crimes. Wisconsin voters ratified the measure by a margin of nearly 3-to-1.

According to one figure who helped draft the amendment, it passed on the grounds that it would give judges a freer hand in imposing preventive detention. However, the State legislature chose to interpret it in limited terms. The enabling legislation adopted by the State Assembly defines quite narrowly the violent crimes to which the law applies, and due-process safeguards for defendants are extensive. The law was used to impose detention only twice during the year following its passage.

APPENDIX: SUMMARY OF FEDERAL DANGER LAW

United States (Federal Courts)

Year Enacted: 1984

A. Defendants Not Entitled to Pretrial Release

All defendants are evaluated for potential dangerousness; and under certain circumstances, described below, defendants may be detained before trial because they are considered dangerous to the community. Both the consideration of dangerousness when making the release decision and authorization of preventive detention - in certain circumstances - reflect major changes in federal law.

B. Types of Defendants to Whom Danger Provisions Apply

Any defendant charged with any misdemeanor or felony may be found to pose a potential danger to the public safety and may be required to adhere to certain restrictive conditions of release. Pretrial detention provisions apply, in addition, to the following types of defendants:

1) Those charged with commission of any federal offense while:

- a) on pretrial release for a felony; or
- b) on release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence for any offense; or
- c) on probation or parole for any offense; or
- d) not a citizen of the United States or lawfully admitted for permanent residence;

and found either likely to flee or to pose a danger to any person or the community may be detained temporarily, for up to 10 calendar days, to permit law enforcement officials to consider revoking release or, in (d), deportation.

2) Those charged with:

- a) a crime of violence; or
- b) an offense for which the maximum sentence is life imprisonment or death; or
- c) an offense defined in the Controlled Substances Act or the Controlled Substances Import and Export Act (21 U.S.C. 801 et seq., 951 et seq., and 955a) for which a maximum term of imprisonment of 10 years or more is prescribed; or
- d) any felony, after the person has been convicted of two or more prior offenses outlined in (a) through (c) of this paragraph;

and found either likely to flee or to pose a danger to any person or the community may be detained pending trial.

The term "crime of violence" is defined to mean "an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." The prior offenses in (d) may include comparable state or local offenses which would have been one of these federal offenses, had federal jurisdiction existed.

- 3) A rebuttable presumption of dangerousness warranting detention arises in those cases listed in (2), above, where:
 - a) the defendant is charged with any federal offense, and has previously been convicted of one of the federal offenses described in B (2) (a), (b) or (c) above (or of a state or local offense that would have been one of those federal offenses, had federal jurisdiction existed); and
 - b) where the prior offense occurred while on pretrial release; and
 - c) not more than five years have elapsed since the date of conviction or the release of the person from imprisonment for this offense, whichever is later.

C. Special Conditions That May Be Imposed on Dangerous Defendants

Federal defendants may be released on personal recognizance or on an unsecured appearance bond, subject to the condition that they not commit a federal, state or local crime during the period of release. Defendants found potentially dangerous may be released subject to further financial and/or non-financial conditions, which are to be imposed in the least restrictive combination deemed sufficient to reasonably assure appearance and public safety. The conditions which may be imposed are to: (a) remain in the custody and supervision of a designated person; (b) maintain employment; (c) maintain or commence an educational program; (d) abide by specified restrictions on personal associations, place of abode, or travel; (e) avoid all contact with an alleged victim of the crime and with a potential witness; (f) report regularly to a designated law enforcement, pretrial services or other agency; (g) comply with a curfew; (h) refrain from possessing a firearm or other dangerous weapon; (i) refrain from excessive use of alcohol or any use of a narcotic drug or other controlled substance without a legal prescription; (j) undergo medical or psychiatric treatment, including institutionalization if required; (k) execute an agreement to forfeit property, including money, upon failure to appear; (l) execute a surety bond to assure appearance; (m) return to custody at specified hours, following release for work, school or other limited purposes; and (n) satisfy any other condition that is reasonably necessary to assure appearance and the safety of any other person and the community. The judicial officer may at any time amend the order to impose additional or different conditions of release.

The law stipulates that financial conditions may not be imposed if they result in the pretrial detention of the defendant.

The judicial officer shall provide a written statement of all the conditions of release, in a manner sufficiently clear and specific to serve as a guide for the person's conduct. The judicial officer shall also advise the person of the penalties for committing an offense while on pretrial release; the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and penalties for the intimidation of witnesses, jurors and officers of the court, obstruction of criminal investigations, tampering with a witness, victim or informant, and retaliating against a witness, victim or informant.

Special sanctions are also established for defendants who violate danger-related conditions of release. These include revocation of release, detention, and prosecution for contempt of court.

D. Special Procedures Required to Invoke Dangerousness Provisions

- 1) Required Findings Concerning Future Danger: That the defendant's pretrial release on personal recognizance or an unsecured appearance bond "will endanger the safety of any other person or the community." In order for detention to be ordered, the court must reach the finding (apart from likelihood of flight) that no condition(s) of release "will reasonably assure... the safety of any other person and the community..." (Emphasis added.)
- 2) Other Required Findings: That the defendant falls into one of the categories outlined in section B above.
- 3) Factors to Consider: In considering whether there are conditions of release that will reasonably assure the safety of any other person and the community, the court shall take into account the available information concerning the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug; the weight of the evidence against the person; the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug/alcohol abuse, criminal history, and record concerning appearance at court proceedings; whether at the time of the current offense or arrest the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of sentence for any offense; and the nature and seriousness of the danger to any person or the community that would be posed by the person's release.
- 4) Standard of Proof: No standard of proof is specified (and so, implicitly, judicial discretion is the standard) to reach a determination that the defendant's release on personal recognizance or on an unsecured appearance bond will endanger the safety of any other person or the community. The same is true in determining that a defendant described in B (1) should be temporarily detained.

A finding that no condition(s) of release will reasonably assure the safety of any other person or the community -- hence, an order of detention -- must be supported by clear and convincing evidence.

However, defendants charged with any of the drug-related offenses described in B (2) face a rebuttable presumption that no condition or combination of conditions will assure the safety of the community, if the court finds probable cause to believe that said specified offense was committed. The standard of proof required to successfully rebut this presumption is not specified.

Similarly, defendants described in B (3) face a rebuttable presumption that no condition(s) of release will reasonably assure the safety of any other person or the community. Again, the standard of proof required to rebut this presumption is not specified.

Also, where there is probable cause to believe that a defendant, while on pretrial release, committed a federal, state or local felony, the defendant faces the same rebuttable presumption that no condition(s) of release will assure the safety of any other person or the community. Again, the standard of proof required to rebut this presumption is not specified.

- 5) Burden of Proof: Defendants charged with an offense defined in the Controlled Substances Act or the Controlled Substances Import and Export Act (see B (2) (c)) and for whom probable cause is found face the burden of rebutting a presumption that no condition or combination of conditions of release will reasonably assure the safety of the community.

Defendants charged with committing while on pretrial release a crime of violence, an offense punishable by life imprisonment or death, or a specified drug offense punishable by 10 years or more (see B (3)) face the burden of rebutting a presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.

Defendants charged with committing a felony while on pretrial release, where probable cause is found, face the burden of rebutting a presumption that no condition(s) of release will assure the safety of any person or the community.

In all other instances, the burden of proof lies on the prosecution.

- 6) Hearing: The judicial officer shall hold a detention hearing to determine whether any condition or combination of conditions as set forth in section (C) above will reasonably assure the appearance of the defendant as required and the safety of any other person and the community. Such a hearing can be called for only by the attorney for the Government in cases that involve a crime of violence, an offense punishable by death or life imprisonment, a specified drug offense punishable by 10 years' or more imprisonment, or any felony committed after the defendant has been previously convicted of two or more of these offenses. A detention hearing may be called for by the attorney for the Government or by the court, on its own motion, in cases that involve the risk that the defendant will obstruct justice or threaten, injure or intimidate a prospective witness or juror.

The hearing shall be held immediately upon the defendant's first appearance before the judicial officer unless the defense or the attorney for the Government seeks a continuance. Except for good cause, a continuance on motion of the defendant may not exceed five days; continuance on motion of the prosecution may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or on his own motion, may order that, while in custody, a defendant who appears to be narcotics addict receive a medical examination to determine addiction status.

At the hearing, the defendant has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed; to testify, to present witnesses, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

The defendant may be detained pending completion of the hearing.

- 7) Speedy Trial: Provisions of the Speedy Trial Act of 1974, as amended, apply to all federal criminal defendants, including those who are found to be community safety risks under the Bail Reform Act of 1984.

E. Review/Appeals Procedures

If a defendant is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a federal appellate court, then the attorney for the Government may file, with the court having original jurisdiction, a motion for revocation of the order, and either the attorney for the Government or the defendant may file, again with the court having original jurisdiction, a motion for amendment of the conditions of release. The motion shall be determined promptly.

If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a federal appellate court, the person may file, with the court having original jurisdiction, a motion for revocation or amendment of the detention order. The motion shall be determined promptly.

No other special appeals procedure is established for defendants whose pretrial release is restricted for dangerousness. The general appeals-related provisions of the Comprehensive Crime Control Act of 1984, of which the Bail Reform Act of 1984 is a part, apply to defendants appealing danger-related decisions.

Citation: Bail Reform Act of 1984, Secs. 202-210 of the Comprehensive Crime Control Act of 1984, codified at 18 United States Code Secs. 3141 et seq.

COMMENTS: FEDERAL SYSTEM

The Bail Reform Act of 1984 contains additional provisions of interest pertaining to pretrial dangerousness. Failures to appear and to surrender for sentencing are made offenses, with penalties graded in proportion to the severity of the charge against the defendant; prison terms imposed for such offenses must be consecutive to prison sentences on any other offense. Persons convicted of committing any offense while released pursuant to the federal danger provisions shall receive an enhanced sentence (two to 10 years if the offense is a felony and 90 days to one year if the offense is a misdemeanor); these prison terms must be consecutive to any other sentence of imprisonment.