



**State Legislative Approaches to Bail or Pretrial Release Conditions
for Domestic Violence Offenders**

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STATE LEGISLATIVE APPROACHES TO BAIL OR PRETRIAL RELEASE CONDITIONS FOR DOMESTIC VIOLENCE OFFENDERS

States have taken various legislative approaches to increasing victim's safety in the pretrial release of offenders who are arrested for committing domestic assault, including requiring that a judge determine bail, dictating risk factors to be assessed before release, mandating the issuance of no contact orders and imposing minimum stays in jail.

I. REQUIREMENT THAT JUDGE DETERMINE RELEASE

In many states, the offender can not just simply post bail but must first appear before a judge or other court official. For example, Georgia provides:

When an arrest is made by a law enforcement officer without a warrant upon an act of family violence pursuant to Code Section 17-4-20, the person charged with the offense shall not be eligible for bail prior to the arresting officer or some other law enforcement officer taking the arrested person before a judicial officer pursuant to Code Section 17-4-21.
Ga.Code Ann. Section 17-6-1 (B)

Similarly, Rhode Island provides:

- (a) (1) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when a person is charged with or arrested for a crime involving domestic violence, that person may not be released from custody on bail or personal recognizance before arraignment without first appearing before the court or bail commissioner. The court or bail commissioner authorizing release shall issue a no-contact order prohibiting the person charged or arrested from having contact with the victim.
RI Gen. Laws § 12-29-4

II. CONSIDERATION OF RISK FACTORS

In an effort to identify those offenders who pose the greatest risk of harm to victims, some legislatures are explicitly requiring the judge to consider many factors such as the offender's history of domestic violence, whether the offender has a history of

violating court orders and his prior criminal record. *See*, for example, Ohio Rev. Code Ann. § 2919.251 and Or. Rev. Stat. § 135.230.

III. ISSUANCE OF NO CONTACT ORDER

Most states provide for the issuance of no contact orders prohibiting the offender from contacting the victim; in some cases the issuance is mandatory. As shown above, Rhode Island has such a provision. In Wisconsin an offender is prohibited from having contact with the victim or her residence for 72 hours after the arrest. Wis. Stat. § 968.075(5).

IV. MANDATORY MINIMUM STAY IN JAIL

In at least two states, Nevada and Tennessee, offenders are required to remain in jail for 12 hours before they can be released. Nevada provides:

A person arrested for a battery that constitutes domestic violence pursuant to NRS 33.018 must not be admitted to bail sooner than 12 hours after his arrest. If the person is admitted to bail more than 12 hours after his arrest, pursuant to subsection 5 of NRS 171.178, without appearing personally before a magistrate, the amount of bail must be:

(a) Three thousand dollars, if the person has no previous convictions of battery that constitute domestic violence pursuant to NRS 33.018 and there is no reason to believe that the battery for which he has been arrested resulted in substantial bodily harm;

(b) Five thousand dollars, if the person has:

(1) No previous convictions of battery that constitute domestic violence pursuant to NRS 33.018, but there is reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(2) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018, but there is no reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(c) Fifteen thousand dollars, if the person has:

(1) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 and there is reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(2) Two or more previous convictions of battery that constitute domestic violence pursuant to NRS 33.018.

Tennessee provides that :

Any offender arrested for any criminal offense defined in [title 39, chapter 13](#), in which the alleged victim is a victim as defined in § [36-3-601\(8\)](#), shall not be released within twelve (12) hours of such arrest if the magistrate or other official duly authorized to release such offender finds that such offender is a threat to the alleged victim. Such official may, however, release the accused in less than twelve (12) hours if the official determines that sufficient time has or will have elapsed for the victim to be protected.
Tenn. Code Ann. § 40-11-150 (h)(1).

Texas takes a slightly different approach, allowing an offender to be held for 4 hours after he has posted bond, if there is probable cause to believe that the violence will continue if he is immediately released. The detention period can be extended up to 48 hours if certain aggravating factors are present. Tex. Crim. Pro. Code art. 17.291.

Finally, Utah has decided that in certain instances bail can be denied altogether. Its law provides:

In addition to the provisions of Subsections (1) through (6), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail. If bail is denied under this subsection, it shall be under the terms and conditions described in Subsections (1) through (6).*

Utah Code Ann. 77-36-2.5(8).

The attached chart lists most of the state statutes specifically dealing with the pretrial release of domestic violence offenders and indicates if they require a judge to determine bail, mandate issuance of no contact orders, permit the court to seize firearms and/or impose a mandatory minimum period of incarceration.

	Bail request must be heard by judge or other court official	Must issue no contact order as a condition of release	May prohibit offender from possessing firearms	Offender may not be released for a minimum amount of hours
Ala. Code § 30-5-3	X		X	
Alaska Stat. § 12.30.027	X		X*if used in assault	
Ariz. Rev. Stat. Ann. §13-3601				
Ark. Code Ann. § 16-81-113	X			
Cal. Penal Code §§ 1269c, 853.6				
Colo. Rev. Stat. §§ 16-4-103, 16-4-105				
Conn. Gen. Stat. § 54-63d			X	
Del. Code Ann. t 10 §§ 1046	X			
Fla. Stat. §§ 741.29, 741.2901, 784.046	X			
GA Code Ann. § 17-6-1	X			
Haw. Rev. Stat. § 709-906				
Iowa Code § 236.14	X	X		
Ill. Rev. Stat.Ch. 725 s 5/110-10			X	
Kan. Stat. Ann. § 12-4301		X		
KY Rev. Stat. Ann. §431.064			X	
Md. Ann. Code Crim. Pro. § 5-202	X			

Mass Gen.Laws ch. 209A § 6				
Mich. Comp. Laws § 780.582a	X			
Minn. Stat § 629.72			X	
Miss. Code Ann. § 99-5-37	X			
Mont. Code Ann. § 46-9- 302	X			
Neb. Rev. Stat. § 42-929	X			
NH Rev. Stat § 597:2				
NJ Rev. Stat.§ 2C:25-26	X		X	
Nev. Rev. Stat. § 178.484				X
NY Crim. Pro. Law § 530.12				
NC Gen. Stat.§ 15A-534.1	X			
ND Cent. Code § 14-07.1-10	X			
Ohio Rev. Code. Ann. §§ 2919.251, 2937.23				
Okla. Stat. t 22 § 1105	X			
OR Rev. Stat. §§ 135.230, 135.250, 135.260		X		
PA 18 Pa. Cons. Stat. Ann. § 2711	X	X		
PR Laws Ann. t 8 § 638				
RI Gen. Laws § 12-29-4	X	X		
SC Code Ann. § 16-3-1840				

SD Cod. Laws Ann. §25-10-40	X			
Tenn. Code Ann. §40-11- 150	X		X	X
Tex. Crim. Pro. Code art. 17.29, 17.291				X* can be held (but not mandatory) up to 48 hours if aggravating factors present
Utah Code Ann. § 77-36- 2.5		X		
Vt. Stat. Ann. Rules of Crim. Proc., Rule 3				
VI Code Ann. t 16 §99				
Wash. Rev. Code § 10.99.040				
WV. Va. Code §48-2A-14	X	X		
Wis. Stat. § 968.075(5)		X		

