

Authorization

	Arizona	California	District of Columbia	New Jersey	New Mexico
Constitution	Article 2, Section 22.	Article 1, Section 12 Article 1, Section 28 (f)(3)		N.J. Const. art. I, 11	Article 2, Section 13
Statute	A.R.S. Title 13, Chapter 38, Article 12	Cal. SB-10; CA Penal Code. Title 10. Chapter 1 - 1.5.	D.C. Code § 23-1322	PL. 2014, c. 31 N.J.S.A. 2A:162 - 15-25	N.M.S. § 31-3 (Code of Criminal Procedure)
Court Rules	Rule 7.2. Right to Release	Rule 4.101. Bail in criminal cases	DC Court of Appeals Rule 4	Criminal Court: R. 3:4A: Pretrial Detention	NMRA 5-401. Pretrial release; NMRA 5-409. Pretrial detention
		Rule 4.102.		R. 3:25-4 Speedy Trial for Certain Defendants;	
		R. 3:26-1: Right to Pretrial Release Before Conviction			
		Municipal Court: R. 3:26-1: Right to Pretrial Release Before Conviction			
		R. 7:4-9(d): Motions for Pretrial Detention			
		R. 7:8-11 Limitations on Pretrial Incarceration			



Detention Eligibility

	Arizona	California	District of Columbia	New Jersey	New Mexico
Crimes charged, criminal history, and other factors	Rule 7.2	SB-10 §1320.10(e)	D.C. Code § 23-1322(b)(1)	2A.162-19(a)	Article 2, Section 13
	Any felony.	Specified crimes of violence, on post-conviction supervision, pending felony, threatened witness or victim, or pretrial supervision will not assure protection of the public and victim and the defendant's appearance.	Specified violent or dangerous crimes, offenses under DC Theft and White-Collar Crimes Act, or serious risk that the person will obstruct justice or flee.	Specified serious felony crimes, domestic violence or human trafficking of minors offenses, and persons previously convicted of 2 or more such specified offenses, or any other crime where prosecutor believes there is a serious risk that defendant will not appear, pose a danger, or obstruct justice.	Any felony.
Felonies/misdemeanors	Rule 7.2	SB-10 §1320.	D.C. Code § 23-1321(a)	P.L.2014, c.31 2A:162-19	NMRA 5-409
	Any felony.	Certain felonies.	Certain felonies.	Articulated indictable crimes (felonies); any indictable crime if prosecutor believes there is serious risk on release; only domestic violence related disorderly persons (DV misdemeanors).	Any felony.

Due Process Procedures

	Arizona	California	District of Columbia	New Jersey	New Mexico
Rebuttable presumptions		SB-10 §1320.20(a)	D.C. Code § 23-1322(c)	N.J.S.A. 2A:162-18 (b); 2A:162-19 (b); 2A:162-19(e) (2)-(3)	
		Presumption of pretrial detention for certain violent felonies, or those assessed as "high risk" in combination with either certain serious or violent prior felony convictions, or a pending sentence for another violent felony, or the defendant has threatened a witness or was on supervision at the time of current arrest.	Presumption of pretrial detention for certain crimes of violence committed while armed or on pre-trial release, or a prior conviction for such a crime, certain firearms laws, or for robbery in which a victim sustained injury, or the defendant has threatened or harmed a law enforcement officer, or witness, or juror.	N.J.S.A. 2A:162-18(b) Presumption of release in all cases except those involving murder or charges punishable by life imprisonment. N.J.S.A. 2A: 162-19(b); - 19(e)(2)-(3): Presumption of pretrial detention for offenses involving murder/life imprisonment. See also R. 3:4A	
Timeline for hearing	A.R.S. § 13-3961 (E); Rule 7.2.(b)(4)	SB-10 §1320.19(a)	D.C. Code § 23-1322	N.J.S.A. 2A:162-19(d)(1)	NMRA 5-409.(F)(1)(a)
	By statute, within 24 hours of initial appearance; by court rule, no later than 7 days after court detains.	For misdemeanors within 12 hours, otherwise within 3 court dates of arraignment.	3 days after initial appearance.	Not later than first appearance unless prosecutor requests 3-day continuance or defendant requests 5-day continuance, or both.	3 days after arrest if in local detention center, 5 days if not local, at arraignment if not in custody.

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Defendant's rights	A.R.S. § 13-3961(E)	CA Penal Code. Title 10. Chapter 1.5. §1320.19 - 1320.23	D.C. Code § 23-1322(d)	N.J.S.A. 2A:162-19(e)	NMRA 5-409.(F)(3)
	Right to counsel and opportunity to testify and present witnesses.	Hearing completed in one session, right to counsel, right to be heard.	Right to counsel, opportunity to testify and present and cross-examine witnesses. Defendant's testimony presumptively inadmissible on issue of guilt at trial.	Right to counsel and discovery, opportunity to testify and present and cross-examine witnesses. Defendant's testimony presumptively inadmissible on issue of guilt at trial.	Right to be present, right to counsel, opportunity to testify and present witnesses.
Factors to consider	Rule 7.2.(b)(3)	SB-10 §1320.18(c)	D.C. Code § 23-1322(e)	N.J.S.A. 2A:162-20	NMRA 5-401.(C)
	Nature and circumstances of the offense charged, including whether the offense is a "dangerous offense" as defined in A.R.S. § 13-105 (an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person); the weight of the evidence against the defendant; history and characteristics of the defendant; nature and seriousness of danger to persons or community; recommendation of pretrial services program; victim statement; and other relevant factors.	Results of risk assessment, criminal charge, criminal history, history of failure to appear, and recommendations of the pretrial services agency.	Nature and circumstances of offense: weight of the evidence, defendant's history, characteristics, criminal justice status, physical and mental conditions, community ties, and the danger that would be posed by the defendant's release.	Nature and circumstances of offense, weight of evidence, history and characteristics of the defendant, the release recommendation of pretrial services using risk assessment, and the danger and risk posed by release.	Results of risk assessment, nature and circumstances of offense, weight of evidence, history and characteristics, physical and mental conditions, community ties, whether on supervision, nature and seriousness of offense.

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Proof is evident or presumption is great	Rule 7.2.(b)(1) & (b)(2)(A)	Not applicable.	D.C. Code § 23-1322(h)(4)(D)(i)	Not applicable.	Article 2, Section 13
	Article 2, Section 22.				
	A.R.S. § 13-3961(A)		Nothing shall be construed as modifying or limiting the presumption of innocence.		All persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.
Clear & convincing standard	Rule 7.2.(b)(2)(B)	SB-10 §1320.20(d)(1)	D.C. Code § 23-1322(b)(2)	Used in: N.J.S.A. 2A:162-15 ; -18 (a)(1) ; -19(e)(3) ; -24 ; R. 3:4A	NMRA 5-409.(A)
	Article 2, Section 22.				
	A.R.S. § 13-3961(D)				
No conditions of release will reasonably assure safety	Rule 7.2.(b)(2)(C)	SB-10 §1320.20(f)	D.C. Code § 23-1322(b)(2)	Used in: N.J.S.A. 2A:162-15 ; -18 (a)(1) ; -19(e)(3) ; -24 ; R. 3:4A	NMRA 5-409.(A)
	"No condition or combination of conditions of release will reasonably assure the safety of the victim, any other person, or the community."				

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Written findings & reasons for decision	Rule 7.2.(b)(4)(D)	SB-10 §1320.20(d)(2)	D.C. Code § 23-1322(g)(1)	N.J.S.A. 2A:162-21(a) R. 3:4A	NMRA 5-409.(G)
	"The court's findings must be on the record."	"The court shall state the reasons for ordering preventive detention on the record."	"Include written findings of fact and a written statement of the reasons for the detention."	"Include written findings of fact and a written statement of the reasons for the detention."	"The court shall file written findings of the individualized facts justifying the detention."
Right of appeal	Rule 7.2.(c)(2)	SB-10 §1320.21	DC Court of Appeals Rule 4(c)(1)(A)	N.J.S.A. 2A:162-18(2)(c)	NMRA 5-409.(L)
	"Upon the filing of a timely notice of appeal, the court--on motion or on its own--may amend the conditions of release."	"If either party files a writ challenging the decision, the court of appeal shall expeditiously consider that writ."	"An appeal may be taken to the court having appellate jurisdiction over such court."	"An eligible defendant may appeal an order of pretrial detention."	"Either party may appeal the district court order disposing of the motion for pretrial detention."
Expedited trial	A.R.S. § 13-3961(E)	SB-10 §1320.20(d)(3)	D.C. Code § 23-1322(h)(1)	N.J.S.A. 2A:162-22; R. 3:25-4; R. 7:8-11	NMRA 5-409.(J)
	"The case of the person shall be placed on an expedited calendar."		"The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar."		"Shall provide expedited priority scheduling in a case in which the defendant is detained pending trial."

Risk Assessment

	Arizona	California	District of Columbia	New Jersey	New Mexico
Use of Risk Assessment	Pretrial Services Unit	SB-10 §1320.9	Pretrial Services Agency	N.J.S.A. 2A:162-16(b)(1) : Court must consider before making a release decision See also N.J.S.A. 2A:162-17(a) ; -20(f) ; -25(b)	Public Safety Assessment For Pretrial Release and Detention
	Public Safety Assessment (PSA) used to identify a person’s risk to reoffend and the likelihood to attend future court hearings if released; also used in pretrial services program recommendations & pretrial detention hearings.	"Persons arrested and detained to be subject to a pretrial risk assessment conducted by Pretrial Assessment Services."	To identify eligibility for detention, make recommendations for release, and help identify supervision levels and conditions for released defendants.	Uses Public Safety Assessment.	Uses Public Safety Assessment in one county.

Monetary Bail

	Arizona	California	District of Columbia	New Jersey	New Mexico
Use of Monetary Bail	<p>Article 2, Section 22. A. “All persons charged with crime shall be bailable by sufficient sureties, except: ...”</p>	<p>SB-10</p>	<p>D.C. Code § 23-1321(c)(3)</p>	<p>N.J.S.A. 2A:162-17(c): 3rd consideration (bail by itself) in least restrictive release hierarchy N.J.S.A. 2A:162- 17(d): 4th consideration (combination of bail and non-monetary conditions) in release hierarchy See also R. 3:26-2(b)</p>	<p>NMRA 5-401.(B) & (E)</p>
	<p>A.R.S. §13-3969: "Sheriff [...] shall provide to a person charged with a bailable offense in his custody a list containing the names and telephone numbers of those persons authorized to post bail bonds in the county" Rule 7.2 (c)(2)(A) “The court may not rely on a schedule of charge-based bond amounts, and it must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition.”</p>	<p>SB 10 repeals all pre-existing laws regarding bail and requires that any remaining references to bail refer to the newly established procedures. SB 10 also provides: "A person shall not be required to pay for any nonmonetary condition or combination of conditions imposed."</p>	<p>DC retains the use of secured and unsecured bonds to promote the defendant’s appearance (not to promote public safety) but they are rarely used (less than 5% of cases) and the DC Code prohibits the court from setting a financial bail that results in the defendant’s detention.</p>	<p>"Monetary bail may be set for an eligible defendant only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required."</p>	<p>“If the court makes findings of the reasons why release on personal recognizance or unsecured appearance bond, in addition to any non-monetary conditions of release, will not reasonably ensure the appearance of the defendant as required, the court may require a secured bond for the defendant’s release.”</p>

¹ This Appendix accompanies the National Center for State Courts' February 2020 *Pretrial Preventive Detention White Paper*. The White Paper and Appendix were created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. For more information, see www.safetyandjusticechallenge.org. The White Paper and Appendix were authored by Judge Roger K. Warren (Ret.) and Ms. Susan Keilitz, JD, in collaboration with Ms. Jacquelyn Gilbreath and Dr. Pamela Casey as part of the National Center for State Courts' work on the Safety and Justice Challenge. A Work Group established by the Conference of Chief Justices and the Conference of State Court Administrators provided guidance and reviews throughout the drafting process. Any points of view or opinions expressed in the White Paper do not necessarily represent the official position of the MacArthur Foundation, the National Center for State Courts, the Conference of Chief Justices, or the Conference of State Court Administrators. For more information on the National Center for State Courts' work on the Safety and Justice Challenge, see <https://www.ncsc.org/Topics/Criminal/Courts-and-Jails/Safety-and-Justice-Challenge.aspx>. For more information on state pretrial justice reform efforts, see the NCSC's Pretrial Justice Center for Courts at www.ncsc.org/pjcc.