S. 1593

To provide grants to States and Indian tribes to reform their criminal justice system to encourage the replacement of the use of payment of secured money bail as a condition of pretrial release in criminal cases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2017

Ms. HARRIS (for herself and Mr. PAUL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide grants to States and Indian tribes to reform their criminal justice system to encourage the replacement of the use of payment of secured money bail as a condition of pretrial release in criminal cases, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Pretrial Integrity and
5 Safety Act of 2017”.

6
SEC. 2. PURPOSE AND FINDINGS.

(a) PURPOSE.—The purpose of this Act is to provide grants to States and Indian tribes to reform their criminal justice system to encourage the replacement of the use of payment of money bail as a condition of pretrial release in criminal cases.

(b) FINDINGS.—Congress finds the following:

(1) The money bail system has proven to be an ineffective method of protecting public safety. Research shows that under money bail systems, nearly 50 percent of defendants who were determined to be high-risk were allowed to return to the community with little or no effective oversight simply because they could afford to pay the amount set for money bail.

(2) Other studies have shown that for low-risk individuals, pretrial detention for even short periods makes it more likely the individuals will commit new crimes following release. Low-risk defendants held for as little as 3 days are 40 percent more likely to commit a crime during the pretrial period compared to comparable defendants released within 24 hours.

(3) According to the Arnold Foundation, “Compared to individuals released within 24 hours of arrest, low-risk defendants held 2–3 days were 17 percent more likely to commit another crime within two
years. Detention periods of 4–7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8–14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours.”.

(4) Jailing arrested individuals before trial is the greatest expense generated by current pretrial justice practice. Unconvicted detainees account for 95 percent of jail population growth, nationally, since 2000. Taxpayers now spend approximately $38,000,000 per day to jail individuals who are awaiting trial. Annually, this adds up to $14,000,000,000 used to detain individuals.

(5) Unnecessary detention may be counter-productive and undermine an important purpose of money bail—specifically to produce the defendant at trial. Studies show that those who are detained pretrial for more than 24 hours and then released are less likely to reappear as required than other similarly situated defendants who are detained for less than 24 hours.

(6) In Bearden v. Georgia, 461 U.S. 660, 671 (1983), the Supreme Court of the United States stated that the due process and equal protection principles of the Fourteenth Amendment to the Con-
stitution of the United States prohibit “punishing a person for his poverty”. The Court prohibited the incarceration of indigent probationers for non-willful failure to pay a fine because to “do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine.”. State and local justice systems that impose money bail that leads to pretrial defendants being detained because they cannot afford a money bail amount may result in “punishing a person” for his or her poverty.

(7) Pretrial detention can lead to devastating effects, including threatening the employment, housing stability, child custody, and access to healthcare of an individual. Barker v. Wingo, 407 U.S. 514, 532–33 (1972) (“The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is espe-
cially unfortunate to impose them on those persons
who are ultimately found to be innocent.”).

(8) Nationwide, about 9 in 10 detained defend-
ants had a money bail amount set but were unable
to meet the financial conditions required to secure
release.

(9) The inability to post money bail may result
in innocent individuals pleading guilty to low-level
crimes so they can be released.

(10) Money bail systems have resulted in dis-
parate harms to poor people and communities of
color. Studies have shown that African American
and Hispanic defendants are more likely to be de-
tained pretrial than White defendants and less likely
to be able to post money bail so they can be re-
leased. Moreover, race and money bail amounts are
significantly correlated. Nationally, African Amer-
ican men pay 35 percent higher money bail amounts
than White men, and Hispanic men pay 19 percent
higher money bail amounts than White men.

(11) Congress should encourage the replace-
ment of the practice of money bail systems to pro-
vide for a more equal and effective criminal justice
system for the people of the United States.
SEC. 3. PRETRIAL INTEGRITY AND SAFETY.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

“PART MM—PRETRIAL INTEGRITY AND SAFETY

“SEC. 3031. DEFINITIONS.

“In this part—

“(1) the term ‘charge-risk profile’ means a composite of the charge (or charge category) and risk score (or risk category of failing to appear in court or being rearrested) of a defendant;

“(2) the term ‘eligible entity’ means a public or private entity, including—

“(A) a nonprofit entity (including a tribal nonprofit);

“(B) a faith-based or community organizations;

“(C) a State or tribal court system;

“(D) a unit of local government; and

“(E) an Indian tribe;

“(3) the term ‘evidence-based practices’, with respect to supervision of the conditions of pretrial release, means intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates are the least restrictive necessary to reduce the instance of a fail-
ure by a defendant to appear in court or criminal
activity by a defendant during the pretrial period,
when implemented competently;

“(4) the term ‘least restrictive conditions’—

“(A) includes court date notifications by
phone call, letter or postcard, text message, in-
person reminder, or another noninvasive pre-
trial supervisory condition; and

“(B) does not include a condition that im-
poses additional financial obligations on the de-
fendant, including charging the defendant for
implementation of the conditions;

“(5) the term ‘money bail’ means a secured
monetary obligation that is imposed by a court as a
condition of the release of a defendant before the
trial or adjudication of the criminal charges pending
against the defendant;

“(6) the term ‘reason for detention’ means whether a defendant was held without bond, held on
another charge, or held for another reason;

“(7) the term ‘release condition’ means whether
a defendant was released—

“(A) based on nonfinancial, personal recogni-
nance;

“(B) with pretrial supervision;
“(C) with an unsecured financial obligation; or
“(D) with a secured financial obligation; and
“(8) the term ‘State or tribal court system’ means the court, court system, administrative offices of the courts, or similarly situated agency of a State or Indian tribe.

“SEC. 3032. GRANTS AND CONDITIONS.
“(a) GRANTS AUTHORIZED.—
“(1) REPLACEMENT OF MONEY BAIL.—The Assistant Attorney General may make grants to State and tribal court systems and eligible entities for the replacement of the use of payment of money bail as a condition of pretrial release with respect to criminal cases.
“(2) NATIONAL PRETRIAL REPORTING PROGRAM.—The Assistant Attorney General may make grants to eligible entities to implement a National Pretrial Reporting Program to collect data on the processing of defendants by courts of States and units of local government.
“(b) TERMS AND CONDITIONS.—
“(1) DURATION OF GRANTS.—A grant under subsection (a) shall be for a period of 3 fiscal years.
“(2) Maximums.—

“(A) Replacement of money bail.—

Under subsection (a)(1), the Assistant Attorney General may make—

“(i) not more than 6 grants to a State or tribal court system during each fiscal year; and

“(ii) not more than $10,000,000 in grants during each fiscal year, of which—

“(I) not more than $6,500,000 shall be grants to State or tribal court systems; and

“(II) not more than $3,500,000 shall be grants to eligible entities to provide technical assistance, training, and performance evaluation.

“(B) National pretrial reporting program.—The Assistant Attorney General may not make more than $5,000,000 in grants under subsection (a)(2) during each fiscal year.

“(c) Use of funds for replacement of money bail grants.—

“(1) Activities.—Amounts received under a grant under subsection (a)(1) shall be used for developing the long-term, sustainable capacity to per-
form more effective pretrial practices that include system analysis, training and technical assistance, meeting facilitation, research and performance evaluation, information technology reprogramming, and shall seek to incorporate and implement the elements described in paragraph (2).

“(2) ELEMENTS.—The elements described in this paragraph are—

“(A) replacing money bail systems with individualized, pretrial assessments that—

“(i) measure the risk of flight and risk of anticipated criminal conduct posed by a defendant while on pretrial release; and

“(ii) shall use risk-based decision making that includes objective, research-based, and locally validated assessment tools that do not result in unwarranted disparities on the basis of any classification protected under Federal nondiscrimination laws or the nondiscrimination laws of the applicable State;

“(B) providing for—

“(i) a presumption of release in most cases; and
“(ii) a preventative detention protocol only for cases in which a judicial officer determines, by clear and convincing evidence and after a hearing during which the defendant is represented by counsel, that the appearance of the defendant in court and the safety of the community cannot reasonably be assured through the use of any combination of conditions;

“(C) if pretrial release requires imposing conditions, ensuring it is based on the least restrictive conditions that a judicial officer determines would reasonably assure the appearance of the defendant and the safety of others in the community;

“(D) ensuring supervision of the conditions of pretrial release is based on evidence-based practices;

“(E) ensuring a defendant is provided with counsel at the earlier of—

“(i) as soon as is feasible after custodial restraint; or

“(ii) the first appearance before a committing magistrate, judge, or other judicial officer;
“(F) ensuring an officer of the State, unit of local government, or Indian tribe appears before a committing magistrate, judge, or other judicial officer at the pretrial hearing;

“(G) ensuring the constitutional right of a defendant to a speedy trial is effectuated, including—

“(i) setting specific limits on the time within which either the defendant shall be brought to trial or the case shall be resolved through a nontrial disposition;

“(ii) providing guidelines for computing the time within which the trial must be commenced or the case otherwise resolved; and

“(iii) establishing appropriate consequences in the event that the right of the defendant to a speedy trial is denied;

“(H) ensuring that the defendant, State, unit of local government, or Indian tribe is entitled to an immediate, expedited appeal of a pretrial detention decision; and

“(I) instituting a system of data collection and reporting to determine the effectiveness of the program replacing the money bail system.
“(3) BENCHMARKS.—A State or tribal court systems or eligible entity receiving a grant under subsection (a)(1) shall seek to achieve the following:

“(A) Defendants return to court rates are not less than 95 percent.

“(B) Not more than 10 percent of defendants are rearrested pending trial.

“(C) Overall release rates of defendants pending trial are not less than 85 percent.

“(D) 100 percent of defendants have an attorney at the first appearance of the defendant before a magistrate, judge, or other judicial officer.

“(E) The majority of defendants preventively detained were detained after a hearing that occurred not later than 3 days after the date of the arrest or booking of the defendant, and 100 percent of such hearings occurred not later than 7 days after the date of the arrest or booking.

“(F) Validated pretrial assessments with risk-based decision making that do not lead to disproportionately higher pretrial detention rates for individuals on the basis of race and ethnicity.
“(4) ALTERNATIVE PRETRIAL RELEASE MECHANISMS.—Nothing in this part shall be construed to prohibit the consideration of alternative pretrial release mechanisms that replace money bail systems while furthering the principles described in this part.

“(d) ANNUAL REPORT.—

“(1) IN GENERAL.—Each entity receiving a grant under this section shall submit to the Assistant Attorney General, for each fiscal year during which the entity expends amounts received under the grant, a report, at such time and in such manner as the Assistant Attorney General may reasonably require, that contains—

“(A) a summary of the activities carried out using amounts made available under the grant;

“(B) an assessment of whether the activities are meeting the need for the program identified in the application for the grant;

“(C) for a grant under subsection (a)(1), data on the money bail program of the State or Indian tribe; and

“(D) such other information as the Assistant Attorney General may require.
“(2) DATA.—The data provided under paragraph (1)(C) shall—

“(A) be broken down by the demographic variables of age group, sex, race and ethnicity, disability, and charge-risk profile of the defendant;

“(B) include the percentage of defendants detained in jail or prison who are released from jail or prison prior to case disposition, broken down by demographic variables of age group, sex, race and ethnicity, disability, charge-risk profile, and release condition;

“(C) provide the average time to release from jail for defendants who are released pre-trial, broken down by demographic variables of age group, sex, race and ethnicity, disability, charge-risk profile, and release condition;

“(D) provide the percentage of defendants who are detained for the entire duration of the pretrial phase of their case, broken down by demographic variables of age group, sex, race and ethnicity, disability, charge-risk profile, and reason for detention;

“(E) provide the average duration of the period defendants who are not released are in
custody in a prison or jail before the disposition of their case, broken down by demographic variables of age group, sex, race and ethnicity, disability, charge-risk profile, and reason for detention;

“(F) provide the percentage of defendants released from custody before trial who appeared at all court appearances for which the court expected them to appear during the pretrial phase of their case, broken down by demographic variables of age group, sex, race and ethnicity, disability, charge-risk profile, and release condition;

“(G) provide the percentage of defendants released from custody before trial who were not arrested for or charged with a new crime during the pretrial phase of their case, broken down by demographic variables of age group, sex, race and ethnicity, disability, charge-risk profile, and release condition;

“(H) provide data on the access of defendants to counsel, including the number of counsel appointments for indigent defendants and the outcomes of pretrial release decisions based on whether counsel was provided; and
“(I) include a summary of the steps the entity has taken to ensure that any risk assessment tool—

“(i) is properly and regularly validated based on reliable local data;

“(ii) includes objective, research-based data; and

“(iii) does not result in unwarranted disparities on the basis of any classification protected under Federal non-discrimination laws or the nondiscrimination laws of the applicable State.

“(e) Allocation of Funds.—

“(1) In General.—For fiscal year 2018, of the amounts appropriated to the Office, the Assistant Attorney General shall use $15,000,000 to carry out this part.

“(2) Limitations; Equitable Distribution.—

“(A) Limitations.—Of the amount made available to carry out this section in any fiscal year—

“(i) not more than 2 percent may be used by the Assistant Attorney General for salaries and administrative expenses; and
“(ii) not more than 25 percent may be used for technical assistance, training, and evaluation.

“(B) Equitable distribution.—The Assistant Attorney General shall ensure that grants awarded under this section are equitably distributed among the geographical regions and between urban and rural populations, including Indian tribes, consistent with the objective of reducing recidivism among criminal offenders.

“(f) Reallocation of Appropriations.—A recipient of a grant under subsection (a) shall return to the Assistant Attorney General any amounts received under a grant under subsection (a) that are not expended for a purpose described in this section.”.