

117TH CONGRESS
1ST SESSION

H. R. 2152

To provide grants to States, localities, 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 HOUSE OF REPRESENTATIVES

MARCH 23, 2021

Mr. LIEU (for himself and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide grants to States, localities, 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 2021”.

1 **SEC. 2. PURPOSE AND FINDINGS.**

2 (a) PURPOSE.—The purpose of this Act is to provide
3 grants to States, units of local government, and Indian
4 Tribes to reform their criminal justice system to encour-
5 age the replacement of the use of payment of money bail
6 as a condition of pretrial release in criminal cases.

7 (b) FINDINGS.—Congress finds the following:

8 (1) The justice system of the United States, a
9 cornerstone of our free society, is built on the ideals
10 that all accused people are presumed innocent unless
11 and until proven guilty, that all accused people have
12 the right to assert their innocence in a trial, that lib-
13 erty should not be denied absent due process of law,
14 that rich and poor people should be treated equally,
15 and that people should be judged by their own indi-
16 vidual actions, and not prejudged based on the ac-
17 tions of others.

18 (2) Pretrial detention and the money bail sys-
19 tems prevalent in most States undermine these
20 ideals by jailing people unnecessarily before a find-
21 ing of guilt and with minimal due process, and by
22 establishing a system that allows wealthy people to
23 pay for their liberty, while poor people remain in
24 jail.

1 (3) The inability to post money bail may result
2 in innocent people pleading guilty to low-level crimes
3 they did not commit so they can be released.

4 (4) Money bail systems have resulted in dis-
5 parate harms to poor people and communities of
6 color. Compared to white men charged with the
7 same crime and with the same criminal histories, Af-
8 rican-American men receive bail amounts that are
9 35 percent higher, and for Latino men, bail is set
10 19 percent higher than for white men.

11 (5) African Americans are 24 percent more
12 likely to be denied bail and 21 percent less likely to
13 be granted non-financial release than whites with
14 similar legal characteristics. Latinos are 25 percent
15 less likely to be granted nonfinancial conditions of
16 release.

17 (6) Although most women in jail are charged
18 with nonviolent crimes, women are less likely to be
19 able to afford money bail, and women in jail before
20 trial earn scarcely more per year than the average
21 bail amount of \$10,000.

22 (7) Detaining people who would otherwise be
23 highly likely to succeed in pretrial compliance, even
24 just for a few days, is strongly correlated with high-

1 er rates of new criminal activity both during the pre-
2 trial period and years after case disposition.

3 (8) When held for 2 to 3 days, people who
4 would have been highly likely to succeed in their
5 communities are almost 40 percent more likely to be
6 arrested for new crimes before trial than similarly
7 situated defendants held no more than 24 hours.

8 (9) Court reminder programs are a low-cost,
9 highly effective way of improving court appearance
10 rates. One review of different forms of court remind-
11 ers found failure-to-appear rates were reduced by 23
12 to 43 percent with the use of reminders.

13 (10) Pretrial supervision is most effective for
14 people with a decreased probability of appearing in
15 court, reducing failures to appear by 33 to 38 per-
16 cent.

17 (11) Jailing individuals before trial is the great-
18 est expense generated by current pretrial justice
19 practice. Unconvicted detainees account for 95 per-
20 cent of jail population growth, nationally, since
21 2000. Taxpayers now spend approximately
22 \$38,000,000 per day to jail individuals who are
23 awaiting trial. Annually, this adds up to
24 \$14,000,000,000 used to detain individuals.

1 **SEC. 3. PRETRIAL INTEGRITY AND SAFETY.**

2 Title I of the Omnibus Crime Control and Safe
3 Streets Act of 1968 (34 U.S.C. 10101 et seq.) is amended
4 by adding at the end the following:

5 **“PART OO—PRETRIAL INTEGRITY AND SAFETY**

6 **“SEC. 3051. GRANTS AND CONDITIONS.**

7 “(a) GRANTS AUTHORIZED.—

8 “(1) REPLACEMENT OF MONEY BAIL.—The As-
9 sistant Attorney General may make grants to eligible
10 entities for the replacement of the use of payment
11 of money bail as a condition of pretrial release with
12 respect to criminal cases.

13 “(2) NATIONAL PRETRIAL REPORTING PRO-
14 GRAM.—The Assistant Attorney General may make
15 grants to eligible entities to implement a National
16 Pretrial Reporting Program to collect data on the
17 processing of defendants by courts of States, units
18 of local government, and Indian Tribes.

19 “(b) TERMS AND CONDITIONS.—

20 “(1) DURATION OF GRANTS.—A grant under
21 subsection (a) shall be for a period of 3 fiscal years.

22 “(2) MAXIMUMS.—

23 “(A) REPLACEMENT OF MONEY BAIL.—

24 “(i) MAXIMUM NUMBERS.—During
25 each fiscal year for which amounts are
26 made available to carry out subsection

1 (a)(1), the Assistant Attorney General may
2 award not more than 6 grants under such
3 subsection to eligible entities for the 3-year
4 grant period beginning in such fiscal year.

5 “(ii) MAXIMUM AMOUNTS.—In mak-
6 ing grants under subsection (a)(1) for a 3-
7 year grant period beginning in a fiscal
8 year, the Assistant Attorney General shall
9 ensure that the total amount awarded
10 under all grants for the duration of such
11 period does not exceed \$10,000,000, of
12 which—

13 “(I) not more than \$6,500,000
14 shall be grants to State, local, or
15 Tribal court systems; and

16 “(II) not more than \$3,500,000
17 shall be grants to eligible entities that
18 are not a State, local, or Tribal court
19 system to provide technical assistance,
20 training, and performance evaluation.

21 “(B) NATIONAL PRETRIAL REPORTING
22 PROGRAM.—The Assistant Attorney General
23 may not make more than \$5,000,000 in grants
24 under subsection (a)(2) for any 3-year period.

1 “(c) USE OF FUNDS FOR REPLACEMENT OF MONEY
2 BAIL GRANTS.—

3 “(1) ACTIVITIES.—Amounts received under a
4 grant under subsection (a)(1)—

5 “(A) shall be used for developing the long-
6 term, sustainable capacity to perform more ef-
7 fective pretrial practices that include system
8 analysis, training and technical assistance,
9 meeting facilitation, research and performance
10 evaluation, and information technology re-
11 programming; and

12 “(B) in carrying out pretrial practices,
13 shall seek to incorporate and implement the ele-
14 ments described in paragraph (2).

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

17 “(A) expanding the use of citations instead
18 of custodial arrest;

19 “(B) replacing the use of payment of
20 money as a condition of pretrial release;

21 “(C) requiring representation by counsel
22 with adequate training in representing defend-
23 ants at pretrial detention hearing for all defend-
24 ants as soon as feasible after custodial re-
25 straint, but not later than the first hearing at

1 which a defendant’s liberty is subject to restric-
2 tion;

3 “(D) providing for—

4 “(i) a presumption of release in all
5 cases; and

6 “(ii) limiting the authority to request
7 pretrial detention to those defendants who
8 have been charged with—

9 “(I) felony offenses involving ac-
10 tual violence against another person
11 or punishable by a maximum term of
12 life imprisonment;

13 “(II) misdemeanor crimes of do-
14 mestic violence;

15 “(III) misdemeanor crimes of
16 stalking; or

17 “(IV) misdemeanor hate crimes;

18 “(E) ensuring that before detention or any
19 condition of pretrial release more restrictive
20 than release on recognizance is imposed, there
21 is a pretrial release hearing that—

22 “(i) provides for the right to present
23 evidence, the right to cross-examine ad-
24 verse witnesses, and the right to testify or
25 remain silent;

1 “(ii) results in a written record ex-
2 plaining the clear and convincing evidence
3 relied on by the judicial officer to justify a
4 detention order or additional condition of
5 release; and

6 “(iii) occurs as soon as feasible after
7 custodial restraint, but not later than 24
8 hours after custodial restraint if the indi-
9 vidual is being detained, unless the defend-
10 ant requests a continuance;

11 “(F) ensuring that before pretrial deten-
12 tion is imposed—

13 “(i) a judicial officer determines by
14 clear and convincing evidence that the indi-
15 vidual poses a high risk of intentional
16 avoidance of prosecution or of seriously
17 physically harming another reasonably
18 identifiable person during the adjudication
19 period;

20 “(ii) a judicial officer determines by
21 clear and convincing evidence that no con-
22 dition, or combination of conditions, can
23 sufficiently mitigate a high risk of inten-
24 tional avoidance of prosecution or of seri-
25 ously physically harming another reason-

1 ably identifiable person during the adju-
2 dication period; and

3 “(iii) no less restrictive condition is
4 adequate to address the specific risk or
5 risks identified;

6 “(G) ensuring that before any condition of
7 pretrial release more restrictive than release on
8 recognizance is imposed—

9 “(i) a judicial officer determines by
10 clear and convincing evidence that the indi-
11 vidual poses a high risk of intentional
12 avoidance of prosecution or of seriously
13 physically harming another reasonably
14 identifiable person during the adjudication
15 period; and

16 “(ii) a judicial officer determines by
17 clear and convincing evidence that no less
18 restrictive conditions or pretrial supports
19 can sufficiently mitigate a high risk of in-
20 tentional avoidance of prosecution or of se-
21 riously physically harming another reason-
22 ably identifiable person during the adju-
23 dication period;

1 “(H) if pretrial release requires imposing
2 additional conditions beyond release on recog-
3 nizance, ensuring that these conditions—

4 “(i) are nonfinancial, pose no cost to
5 the defendant, and are relevant only to the
6 charge;

7 “(ii) are the least restrictive condi-
8 tions that would reasonably ensure the ap-
9 pearance of the defendant in court or that
10 would reasonably ensure that the defend-
11 ant does not present an imminent threat of
12 serious physical harm to a reasonably iden-
13 tifiable person; and

14 “(iii) were set without consideration
15 of or with decreased weight given to crimi-
16 nal convictions older than 2 years;

17 “(I) ensuring supervision of the conditions
18 of pretrial release is based on proven data out-
19 comes;

20 “(J) improvements made to the applicable
21 pretrial services agency that, among other func-
22 tions—

23 “(i) provides support to defendants
24 awaiting trial to effectively meet the condi-

1 tions of release placed on them by the judi-
2 cial officer;

3 “(ii) provides outreach to and part-
4 nership with community-based support
5 structures to connect defendants with sup-
6 portive services; and

7 “(iii) provides data collection, anal-
8 ysis, and research capabilities to assist the
9 jurisdiction in achieving the benchmarks
10 listed in paragraph (3);

11 “(K) ensuring an officer of the State, unit
12 of local government, or Indian Tribe that
13 brought the charges against the defendant ap-
14 pears before a committing magistrate, judge, or
15 other judicial officer at all hearings;

16 “(L) ensuring the constitutional right of a
17 defendant to a speedy trial is effectuated, in-
18 cluding—

19 “(i) setting specific limits on the time
20 within which either the defendant shall be
21 brought to trial or the case shall be re-
22 solved through a nontrial disposition;

23 “(ii) providing guidelines for com-
24 puting the time within which the trial must

1 be commenced or the case otherwise re-
2 solved; and

3 “(iii) establishing appropriate con-
4 sequences in the event that the right of the
5 defendant to a speedy trial is denied, and
6 ensuring that under no circumstances a
7 person is detained longer than the max-
8 imum sentence allowable if convicted of the
9 charges;

10 “(M) ensuring that the defendant and the
11 State, unit of local government, or Indian Tribe
12 that brought the charges against the defendant
13 is entitled to an immediate, expedited appeal of
14 a pretrial detention decision; and

15 “(N) instituting a system of data collection
16 and reporting to determine the effectiveness of
17 the process replacing the money bail system.

18 “(3) BENCHMARKS.—A State, local, or Tribal
19 court system receiving a grant under subsection
20 (a)(1) shall seek to achieve the following:

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

23 “(B) Not more than 10 percent of defend-
24 ants are rearrested pending trial.

1 “(C) Overall release rates of defendants
2 pending trial are not less than 95 percent.

3 “(D) 100 percent of defendants have an
4 attorney at the first appearance of the defend-
5 ant before a magistrate, judge, or other judicial
6 officer.

7 “(E) 100 percent of defendants preven-
8 tively detained were detained after a pretrial re-
9 lease hearing that occurred not later than 24
10 hours after custodial restraint, unless the de-
11 fendant requested a continuance.

12 “(F) To the extent feasible, charging deci-
13 sions are made not later than 14 days after the
14 date of the issuance of a citation or custodial
15 arrest.

16 “(G) To the extent feasible, the trial of the
17 defendant begins not later than 30 days after
18 the date of the issuance of a citation or custo-
19 dial arrest.

20 “(H) No defendants were detained during
21 any portion of time from arrest through adju-
22 dication simply due to an inability to satisfy a
23 legal financial obligation set by the court.

24 “(4) ALTERNATIVE PRETRIAL RELEASE MECHA-
25 NISMS.—Nothing in this part shall be construed to

1 prohibit the consideration of alternative pretrial re-
2 lease mechanisms that replace money bail systems
3 while furthering the principles described in this part.

4 “(d) ANNUAL REPORT.—

5 “(1) IN GENERAL.—Each entity receiving a
6 grant under this section shall submit to the Assist-
7 ant Attorney General, for each fiscal year during
8 which the entity expends amounts received under the
9 grant, a report, at such time and in such manner as
10 the Assistant Attorney General may reasonably re-
11 quire, that contains—

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

15 “(B) an assessment of whether the activi-
16 ties are meeting the need for the program iden-
17 tified in the application for the grant;

18 “(C) for a grant under subsection (a)(1),
19 data on the money bail program of the State,
20 local, or Tribal court system; and

21 “(D) such other information as the Assist-
22 ant Attorney General may require.

23 “(2) DATA.—The data provided under para-
24 graph (1)(C) shall—

1 “(A) be broken down by the demographic
2 variables of age group, sex, race and ethnicity,
3 disability, and charges filed;

4 “(B) include the percentage of defendants
5 detained in jail or prison who are released from
6 jail or prison prior to case disposition, broken
7 down by demographic variables of age group,
8 sex, race and ethnicity, charges filed, and re-
9 lease condition;

10 “(C) provide the average time to release
11 from jail for defendants who are released pre-
12 trial, broken down by demographic variables of
13 age group, sex, race and ethnicity, disability,
14 charges filed, and release condition;

15 “(D) provide the percentage of defendants
16 who are detained for the entire duration of the
17 pretrial phase of their case, broken down by de-
18 mographic variables of age group, sex, race and
19 ethnicity, disability, charges filed, and reason
20 for detention;

21 “(E) provide the average duration of the
22 period defendants who are not released are in
23 custody in a prison or jail before the disposition
24 of their case, broken down by demographic vari-

1 ables of age group, sex, race and ethnicity, dis-
2 ability, charges filed, and reason for detention;

3 “(F) provide the percentage of defendants
4 released from custody before trial who appeared
5 at all court appearances for which the court ex-
6 pected them to appear during the pretrial phase
7 of their case, broken down by demographic vari-
8 ables of age group, sex, race and ethnicity, dis-
9 ability, charges filed, and release condition;

10 “(G) provide the percentage of defendants
11 released from custody before trial who were not
12 arrested for or charged with a new crime during
13 the pretrial phase of their case, broken down by
14 demographic variables of age group, sex, race
15 and ethnicity, disability, charges filed, and re-
16 lease condition;

17 “(H) provide data on the access of defend-
18 ants to counsel, including the number of coun-
19 sel appointments and the outcomes of pretrial
20 release decisions in all cases where counsel was
21 provided; and

22 “(I) provide data on the most serious of-
23 fense with which defendants were charged and
24 the classification of the offense.

25 “(e) ALLOCATION OF FUNDS.—

1 “(1) IN GENERAL.—For fiscal year 2021, of the
2 amounts appropriated to the Office, the Assistant
3 Attorney General shall use \$15,000,000 to carry out
4 this part.

5 “(2) LIMITATIONS; EQUITABLE DISTRIBUTION.—
6

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

10 “(i) not more than 2 percent may be
11 used by the Assistant Attorney General for
12 salaries and administrative expenses; and

13 “(ii) not more than 25 percent may be
14 used for technical assistance, training, and
15 evaluation.

16 “(B) EQUITABLE DISTRIBUTION.—The As-
17 sistant Attorney General shall ensure that
18 grants awarded under this section are equitably
19 distributed among the geographical regions and
20 between urban and rural populations, including
21 Indian Tribes, until all funds made available
22 are expended, consistent with the objective of
23 reducing recidivism among criminal offenders.

24 “(f) REALLOCATION OF APPROPRIATIONS.—A recipi-
25 ent of a grant under subsection (a) shall return to the

1 Assistant Attorney General any amounts received under
2 a grant under subsection (a) that are not expended for
3 a purpose described in this section.

4 “(g) ABILITY TO PAY DETERMINATION.—

5 “(1) IN GENERAL.—A recipient of a grant
6 under subsection (a) may only impose a fee or fine
7 in a criminal proceeding if a court makes a written
8 determination that the defendant has sufficient re-
9 sources or income to pay all or part of the fee, fine
10 and costs. In making that determination, the court
11 shall consider whether the defendant qualifies for a
12 public defender or appointed counsel.

13 “(2) DEFINITIONS.—In this subsection:

14 “(A) The term ‘fees’—

15 “(i) means monetary fees that are im-
16 posed for the costs of fine surcharges or
17 court administrative fees; and

18 “(ii) includes additional late fees, pay-
19 ment-plan fees, interest added if an indi-
20 vidual is unable to pay a fine in its en-
21 tirety, collection fees, and any additional
22 amounts that do not include the fine.

23 “(B) The term ‘fines’ means monetary
24 fines imposed as punishment.

1 **“SEC. 3052. DEFINITIONS.**

2 “In this part—

3 “(1) the term ‘domestic violence’ means a pat-
4 tern of behavior involving the use or attempted use
5 of physical, sexual, verbal, emotional, economic, or
6 technological abuse or any other coercive behavior
7 committed, enabled, or solicited to gain or maintain
8 power and control over a victim, by a person who—

9 “(A) is a current or former spouse or dat-
10 ing partner of the victim, or other person simi-
11 larly situated to a spouse of the victim under
12 the family or domestic violence laws of the ju-
13 risdiction;

14 “(B) is cohabitating with or has
15 cohabitated with the victim as a spouse or dat-
16 ing partner, or other person similarly situated
17 to a spouse of the victim under the family or
18 domestic violence laws of the jurisdiction;

19 “(C) shares a child in common with the
20 victim;

21 “(D) is an adult family member of, or paid
22 or nonpaid caregiver for, a victim aged 50 or
23 older or an adult victim with disabilities; or

24 “(E) commits acts against a youth or adult
25 victim who is protected from those acts under

1 the family or domestic violence laws of the ju-
2 risdiction.

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

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

7 “(B) a faith-based or community organiza-
8 tion;

9 “(C) a State or Tribal court system;

10 “(D) a unit of local government; and

11 “(E) an Indian Tribe;

12 “(3) the term ‘proven data outcomes’, with re-
13 spect to supervision of the conditions of pretrial re-
14 lease, means intervention programs and supervision
15 policies, procedures, programs, and practices that
16 use data to identify the least restrictive conditions
17 necessary to provide reasonable assurance that the
18 individual does not pose a high risk of intentional
19 avoidance of prosecution or of seriously physically
20 harming another reasonably identifiable person dur-
21 ing the adjudication period;

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

23 “(A) includes court date notifications by
24 phone call, letter, postcard, text message, or in-

1 person reminder or another nonrestrictive pre-
2 trial supervisory condition; and

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

7 “(5) the term ‘misdemeanor crime of stalking’
8 means an offense that—

9 “(A) is a misdemeanor crime of stalking
10 under Federal, State, Tribal, or municipal law;
11 and

12 “(B) is a course of harassment, intimidat-
13 ion, or surveillance of another person that—

14 “(i) places that person in reasonable
15 fear of material harm to the health or safe-
16 ty of—

17 “(I) that person;

18 “(II) an immediate family mem-
19 ber (as defined in section 115 of title
20 18, United States Code) of that per-
21 son;

22 “(III) a household member of
23 that person; or

24 “(IV) a spouse or intimate part-
25 ner of that person; or

1 “(ii) causes, attempts to cause, or
2 would reasonably be expected to cause
3 emotional distress to a person described in
4 items subclauses (I) through (IV) of clause
5 (i);

6 “(6) the term ‘misdemeanor hate crime’ means
7 an offense that—

8 “(A) is a misdemeanor under Federal,
9 State, or tribal law;

10 “(B) has, as an element, that the conduct
11 of the offender was motivated by hate or bias
12 because of the actual or perceived race, color,
13 religion, national origin, gender, sexual orienta-
14 tion, gender identity, or disability of any per-
15 son; and

16 “(C) involves the use or attempted use of
17 physical force, the threatened use of a deadly
18 weapon, or other credible threat to the physical
19 safety of any person;

20 “(7) the term ‘money bail’ means a secured
21 monetary obligation that is imposed by a court as a
22 condition of the initial release of a defendant or on-
23 going court conditions of release before the trial or
24 adjudication of the criminal charges pending against
25 the defendant;

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

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

6 “(A) based on nonfinancial, personal recog-
7 nizance;

8 “(B) with pretrial supervision;

9 “(C) with an unsecured financial obliga-
10 tion;

11 “(D) with a secured financial obligation; or

12 “(E) with a combination of the conditions
13 described in subparagraphs (A) through (D);
14 and

15 “(10) the term ‘State, local, or Tribal court sys-
16 tem’ means the court, court system, administrative
17 offices of the courts, or similarly situated agency of
18 a State, unit of local government, or Indian Tribe.”.

○