

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: 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—115th Cong., 2d Sess.**

**S. 1917**

To reform sentencing laws and correctional institutions, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1 At the end, add the following:

2 **TITLE IV—PRETRIAL INTEGRITY**  
3 **AND SAFETY ACT**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the “Pretrial Integrity and  
6 Safety Act of 2018”.

7 **SEC. 402. PURPOSE AND FINDINGS.**

8 (a) PURPOSE.—The purpose of this title is to provide  
9 grants to States and Indian tribes to reform their criminal  
10 justice system to encourage the replacement of the use of

1 payment of money bail as a condition of pretrial release  
2 in criminal cases.

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

4 (1) The money bail system has proven to be an  
5 ineffective method of protecting public safety. Re-  
6 search shows that under money bail systems, nearly  
7 50 percent of defendants who were determined to be  
8 high-risk were allowed to return to the community  
9 with little or no effective oversight simply because  
10 they could afford to pay the amount set for money  
11 bail.

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

19 (3) According to the Arnold Foundation, “Com-  
20 pared to individuals released within 24 hours of ar-  
21 rest, low-risk defendants held 2–3 days were 17 per-  
22 cent more likely to commit another crime within two  
23 years. Detention periods of 4–7 days yielded a 35  
24 percent increase in re-offense rates. And defendants  
25 held for 8–14 days were 51 percent more likely to

1        recidivate than defendants who were detained less  
2        than 24 hours.”.

3            (4) Jailing arrested individuals before trial is  
4        the greatest expense generated by current pretrial  
5        justice practice. Unconvicted detainees account for  
6        95 percent of jail population growth, nationally,  
7        since 2000. Taxpayers now spend approximately  
8        \$38,000,000 per day to jail individuals who are  
9        awaiting trial. Annually, this adds up to  
10       \$14,000,000,000 used to detain individuals.

11           (5) Unnecessary detention may be counter-  
12        productive and undermine an important purpose of  
13        money bail—specifically to produce the defendant at  
14        trial. Studies show that those who are detained pre-  
15        trial for more than 24 hours and then released are  
16        less likely to reappear as required than other simi-  
17        larly situated defendants who are detained for less  
18        than 24 hours.

19           (6) In *Bearden v. Georgia*, 461 U.S. 660, 671  
20        (1983), the Supreme Court of the United States  
21        stated that the due process and equal protection  
22        principles of the Fourteenth Amendment to the Con-  
23        stitution of the United States prohibit “punishing a  
24        person for his poverty”. The Court prohibited the in-  
25        carceration of indigent probationers for non-willful

1 failure to pay a fine because to “do otherwise would  
2 deprive the probationer of his conditional freedom  
3 simply because, through no fault of his own, he can-  
4 not pay the fine.”. State and local justice systems  
5 that impose money bail that leads to pretrial defend-  
6 ants being detained because they cannot afford a  
7 money bail amount may result in “punishing a per-  
8 son” for his or her poverty.

9 (7) Pretrial detention can lead to devastating  
10 effects, including threatening the employment, hous-  
11 ing stability, child custody, and access to healthcare  
12 of an individual. *Barker v. Wingo*, 407 U.S. 514,  
13 532–33 (1972) (“The time spent in jail awaiting  
14 trial has a detrimental impact on the individual. It  
15 often means loss of a job; it disrupts family life; and  
16 it enforces idleness. Most jails offer little or no rec-  
17 reational or rehabilitative programs. The time spent  
18 in jail is simply dead time. Moreover, if a defendant  
19 is locked up, he is hindered in his ability to gather  
20 evidence, contact witnesses, or otherwise prepare his  
21 defense. Imposing those consequences on anyone  
22 who has not yet been convicted is serious. It is espe-  
23 cially unfortunate to impose them on those persons  
24 who are ultimately found to be innocent.”).

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

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

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

19          (11) Congress should encourage the replace-  
20          ment of the practice of money bail systems to pro-  
21          vide for a more equal and effective criminal justice  
22          system for the people of the United States.

1 **SEC. 403. PRETRIAL INTEGRITY AND SAFETY.**

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

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

6 **“SEC. 3041. DEFINITIONS.**

7 “In this part—

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

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

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

16 “(B) a faith-based or community organiza-  
17 tions;

18 “(C) a State or tribal court system;

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

20 “(E) an Indian tribe;

21 “(3) the term ‘evidence-based practices’, with  
22 respect to supervision of the conditions of pretrial  
23 release, means intervention programs and super-  
24 vision policies, procedures, programs, and practices  
25 that scientific research demonstrates are the least  
26 restrictive necessary to reduce the instance of a fail-

1       ure by a defendant to appear in court or criminal  
2       activity by a defendant during the pretrial period,  
3       when implemented competently;

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

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

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

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

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

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

23               “(A) based on nonfinancial, personal recog-  
24               nizance;

25               “(B) with pretrial supervision;

1                   “(C) with an unsecured financial obliga-  
2                   tion; or

3                   “(D) with a secured financial obligation;  
4                   and

5                   “(8) the term ‘State or tribal court system’  
6                   means the court, court system, administrative offices  
7                   of the courts, or similarly situated agency of a State  
8                   or Indian tribe.

9   **“SEC. 3042. GRANTS AND CONDITIONS.**

10                   “(a) GRANTS AUTHORIZED.—

11                   “(1) REPLACEMENT OF MONEY BAIL.—The As-  
12                   sistant Attorney General may make grants to State  
13                   and tribal court systems and eligible entities for the  
14                   replacement of the use of payment of money bail as  
15                   a condition of pretrial release with respect to crimi-  
16                   nal cases.

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

23                   “(b) TERMS AND CONDITIONS.—

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

1 “(2) MAXIMUMS.—

2 “(A) REPLACEMENT OF MONEY BAIL.—

3 Under subsection (a)(1), the Assistant Attorney

4 General may make—

5 “(i) not more than 6 grants to a State

6 or tribal court system during each fiscal

7 year; and

8 “(ii) not more than \$10,000,000 in

9 grants during each fiscal year, of which—

10 “(I) not more than \$6,500,000

11 shall be grants to State or tribal court

12 systems; and

13 “(II) not more than \$3,500,000

14 shall be grants to eligible entities to

15 provide technical assistance, training,

16 and performance evaluation.

17 “(B) NATIONAL PRETRIAL REPORTING

18 PROGRAM.—The Assistant Attorney General

19 may not make more than \$5,000,000 in grants

20 under subsection (a)(2) during each fiscal year.

21 “(c) USE OF FUNDS FOR REPLACEMENT OF MONEY

22 BAIL GRANTS.—

23 “(1) ACTIVITIES.—Amounts received under a

24 grant under subsection (a)(1) shall be used for de-

25 veloping the long-term, sustainable capacity to per-

1 form more effective pretrial practices that include  
2 system analysis, training and technical assistance,  
3 meeting facilitation, research and performance eval-  
4 uation, information technology reprogramming, and  
5 shall seek to incorporate and implement the ele-  
6 ments described in paragraph (2).

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

9 “(A) replacing money bail systems with in-  
10 dividualized, pretrial assessments that—

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

15 “(ii) shall use risk-based decision  
16 making that includes objective, research-  
17 based, and locally validated assessment  
18 tools that do not result in unwarranted  
19 disparities on the basis of any classifica-  
20 tion protected under Federal non-  
21 discrimination laws or the nondiscrimina-  
22 tion laws of the applicable State;

23 “(B) providing for—

24 “(i) a presumption of release in most  
25 cases; and

1           “(ii) a preventative detention protocol  
2           only for cases in which a judicial officer  
3           determines, by clear and convincing evi-  
4           dence and after a hearing during which the  
5           defendant is represented by counsel, that  
6           the appearance of the defendant in court  
7           and the safety of the community cannot  
8           reasonably be assured through the use of  
9           any combination of conditions;

10           “(C) if pretrial release requires imposing  
11           conditions, ensuring it is based on the least re-  
12           strictive conditions that a judicial officer deter-  
13           mines would reasonably assure the appearance  
14           of the defendant and the safety of others in the  
15           community;

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

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

21           “(i) as soon as is feasible after custo-  
22           dial restraint; or

23           “(ii) the first appearance before a  
24           committing magistrate, judge, or other ju-  
25           dicial officer;

1           “(F) ensuring an officer of the State, unit  
2 of local government, or Indian tribe appears be-  
3 fore a committing magistrate, judge, or other  
4 judicial officer at the pretrial hearing;

5           “(G) ensuring the constitutional right of a  
6 defendant to a speedy trial is effectuated, in-  
7 cluding—

8           “(i) setting specific limits on the time  
9 within which either the defendant shall be  
10 brought to trial or the case shall be re-  
11 solved through a nontrial disposition;

12           “(ii) providing guidelines for com-  
13 puting the time within which the trial must  
14 be commenced or the case otherwise re-  
15 solved; and

16           “(iii) establishing appropriate con-  
17 sequences in the event that the right of the  
18 defendant to a speedy trial is denied;

19           “(H) ensuring that the defendant, State,  
20 unit of local government, or Indian tribe is enti-  
21 tled to an immediate, expedited appeal of a pre-  
22 trial detention decision; and

23           “(I) instituting a system of data collection  
24 and reporting to determine the effectiveness of  
25 the program replacing the money bail system.

1           “(3) BENCHMARKS.—A State or tribal court  
2 systems or eligible entity receiving a grant under  
3 subsection (a)(1) shall seek to achieve the following:

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

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

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

10           “(D) 100 percent of defendants have an  
11 attorney at the first appearance of the defend-  
12 ant before a magistrate, judge, or other judicial  
13 officer.

14           “(E) The majority of defendants preven-  
15 tively detained were detained after a hearing  
16 that occurred not later than 3 days after the  
17 date of the arrest or booking of the defendant,  
18 and 100 percent of such hearings occurred not  
19 later than 7 days after the date of the arrest  
20 or booking.

21           “(F) Validated pretrial assessments with  
22 risk-based decision making that do not lead to  
23 disproportionately higher pretrial detention  
24 rates for individuals on the basis of race and  
25 ethnicity.

1           “(4) ALTERNATIVE PRETRIAL RELEASE MECHA-  
2           NISMS.—Nothing in this part shall be construed to  
3           prohibit the consideration of alternative pretrial re-  
4           lease mechanisms that replace money bail systems  
5           while furthering the principles described in this part.

6           “(d) ANNUAL REPORT.—

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

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

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

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

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

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

3           “(A) be broken down by the demographic  
4 variables of age group, sex, race and ethnicity,  
5 disability, and charge-risk profile of the defend-  
6 ant;

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

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

18           “(D) provide the percentage of defendants  
19 who are detained for the entire duration of the  
20 pretrial phase of their case, broken down by de-  
21 mographic variables of age group, sex, race and  
22 ethnicity, disability, charge-risk profile, and rea-  
23 son for detention;

24           “(E) provide the average duration of the  
25 period defendants who are not released are in

1 custody in a prison or jail before the disposition  
2 of their case, broken down by demographic vari-  
3 ables of age group, sex, race and ethnicity, dis-  
4 ability, charge-risk profile, and reason for de-  
5 tention;

6 “(F) provide the percentage of defendants  
7 released from custody before trial who appeared  
8 at all court appearances for which the court ex-  
9 pected them to appear during the pretrial phase  
10 of their case, broken down by demographic vari-  
11 ables of age group, sex, race and ethnicity, dis-  
12 ability, charge-risk profile, and release condi-  
13 tion;

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

21 “(H) provide data on the access of defend-  
22 ants to counsel, including the number of coun-  
23 sel appointments for indigent defendants and  
24 the outcomes of pretrial release decisions based  
25 on whether counsel was provided; and

1           “(I) include a summary of the steps the  
2           entity has taken to ensure that any risk assess-  
3           ment tool—

4                   “(i) is properly and regularly vali-  
5                   dated based on reliable local data;

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

8                   “(iii) does not result in unwarranted  
9                   disparities on the basis of any classifica-  
10                  tion protected under Federal non-  
11                  discrimination laws or the nondiscrimina-  
12                  tion laws of the applicable State.

13           “(e) ALLOCATION OF FUNDS.—

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

18                   “(2) LIMITATIONS; EQUITABLE DISTRIBUTION.—

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

23                           “(i) not more than 2 percent may be  
24                           used by the Assistant Attorney General for  
25                           salaries and administrative expenses; and

1                   “(ii) not more than 25 percent may be  
2                   used for technical assistance, training, and  
3                   evaluation.

4                   “(B) **EQUITABLE DISTRIBUTION.**—The As-  
5                   sistant Attorney General shall ensure that  
6                   grants awarded under this section are equitably  
7                   distributed among the geographical regions and  
8                   between urban and rural populations, including  
9                   Indian tribes, consistent with the objective of  
10                  reducing recidivism among criminal offenders.

11                  “(f) **REALLOCATION OF APPROPRIATIONS.**—A recipi-  
12                  ent of a grant under subsection (a) shall return to the  
13                  Assistant Attorney General any amounts received under  
14                  a grant under subsection (a) that are not expended for  
15                  a purpose described in this section.”.