



Smarter Pretrial Detention for Drug Charges Act of 2021

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Background

Pretrial detention rates in the federal system are at record high levels across all demographic groups. Generally, a judge assesses whether the accused is a flight risk or a potential danger to the community. However, for certain crimes, like terrorism and child trafficking, there is a presumption of detention without regard to the circumstances and background of the accused. One of these “presumption” charges applies to all drug offenses with a maximum punishment of 10 years or more (the vast majority of federal drug offenses). This presumption is a relic of an antiquated and failed approach to combatting the drug epidemic and treats nonviolent drug offenses like terrorism, child sex crimes, and other serious violent crimes.

According to a 2017 study from the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts, the drug presumption “has contributed to a massive increase in the federal pretrial detention rate, with all of the social and economic costs associated with high rates of incarceration.” The study also found no significant difference in the rates of failure to appear between presumption and non-presumption cases. Further, because of the presumption, defendants charged with drug offenses are detained prior to trial over four-fifths of the time.

There is also a significant economic cost to this presumption, as pretrial supervision only costs \$11 a day per defendant, compared to \$92 per day for pretrial detention. Over the average pretrial detention period of 255 days, this equates to \$23,460 per defendant. In contrast, pretrial supervision only costs an average of \$2,805 per defendant across the same 255 days.

About the Smarter Pretrial Detention for Drug Charges Act

The Smarter Pretrial Detention for Drug Charges Act of 2021 would eliminate the blanket presumption of pretrial detention for most federal drug charges. This would permit federal courts to make individualized determinations regarding whether pretrial detention is appropriate for each defendant charged with a nonviolent drug offense.

Endorsed by: American Civil Liberties Union, American Conservative Union, Dream Corps JUSTICE, Due Process Institute, Law Enforcement Leaders to Reduce Crime & Incarceration, National Association of Criminal Defense Lawyers, Prison Fellowship, R Street Institute, Right on Crime, Sentencing Project, Successful Reentry, and Tzedek Association.