

116TH CONGRESS
2D SESSION

H. R. 9065

To amend title 18, United States Code, to amend provisions relating to the release or detention of a defendant pending trial, sentence, or appeal, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 31, 2020

Mr. NADLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to amend provisions relating to the release or detention of a defendant pending trial, sentence, or appeal, 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 “Federal Bail Reform
5 Act of 2020”.

6 **SEC. 2. RELEASE OR DETENTION OF A DEFENDANT PEND-**
7 **ING SENTENCE OR APPEAL.**

8 Section 3143 of title 18, United States Code, is
9 amended—

1 (1) in subsection (a)—

2 (A) by striking paragraph (1) and insert-
3 ing the following: “A person who has been
4 found guilty of an offense and who is awaiting
5 imposition or execution of sentence is entitled
6 to a presumption of release if, at the time of
7 the guilt determination, the person is on release
8 and performing satisfactorily. The person is
9 also entitled to a presumption that all condi-
10 tions of release continue unchanged. If the at-
11 torney for the Government moves to detain the
12 person, the person may only be detained after
13 consideration of the factors listed in section
14 3142(f)(5).”; and

15 (B) by striking paragraph (2);

16 (2) in subsection (b)—

17 (A) in paragraph (1), in the matter pre-
18 ceding subparagraph (A), by striking “Except
19 as provided in paragraph (2), the” and insert-
20 ing “The”;

21 (B) in paragraph (1), by striking subpara-
22 graph (A), and inserting the following:

23 “(A) by a preponderance of the evidence
24 that release does not pose a high risk of inten-
25 tional non-appearance in court or a specific and

1 substantial risk that the person will cause bod-
2 ily injury or use violent force against the person
3 of another if released under section 3142(b) or
4 (c); and”;

5 (C) in paragraph (1)(B)(i), by striking
6 “reversal,” and inserting “reversal of the con-
7 viction,”;

8 (D) by striking paragraph (2), and insert-
9 ing the following:

10 “(3) The person may file a motion requesting
11 that a judge other than the trial judge hear the mo-
12 tion for release if they are moving under paragraph
13 (1)(B)(i) or (1)(B)(ii).”; and

14 (E) in the matter preceding paragraph
15 (2)—

16 (i) by striking “If the judicial officer
17 makes such findings” and inserting the fol-
18 lowing:

19 “(2) If the judicial officer makes such find-
20 ings”; and

21 (ii) by striking “subparagraph
22 (B)(iv)” and inserting “paragraph
23 (1)(B)(iv)”;

24 (3) by striking subsection (c), and inserting the
25 following:

1 “(c) RELEASE OR DETENTION PENDING APPEAL BY
2 THE GOVERNMENT.—In a case in which an appeal of a
3 dispositive motion has been taken by the United States
4 under section 3731, the person is entitled to a presump-
5 tion of release under section 3142(b) or (c), unless it is
6 clearly shown that there are exceptional reasons why such
7 person’s detention would be appropriate. For cases in
8 which an appeal of a person’s sentence has been taken
9 by the United States under section 3742, if the person
10 is already on release and performing satisfactorily, the
11 person is entitled to a presumption that all conditions of
12 release continue unchanged; if the person is already de-
13 tained, the judicial officer shall—

14 “(1) if the person has been sentenced to a term
15 of imprisonment of 120 months or more, continue
16 the order of detention; or

17 “(2) if the person has been sentenced to a term
18 of imprisonment of less than 120 months, release or
19 detain the person under section 3142.”.

20 **SEC. 3. RELEASE OR DETENTION OF A DEFENDANT PEND-**
21 **ING TRIAL.**

22 Section 3142 of title 18, United States Code, is
23 amended as follows:

24 (1) By striking subsection (a) and inserting the
25 following:

1 “(a) PRESUMPTION OF INNOCENCE.—Nothing in this
2 section shall be construed as modifying or limiting the pre-
3 sumption of innocence.”.

4 (2) By striking subsection (b) and inserting the
5 following:

6 “(b) PRESUMPTION OF RELEASE WITHOUT CONDI-
7 TIONS.—In all cases, the judicial officer shall apply a pre-
8 sumption of release on personal recognizance subject to
9 subsections (c), (e), and (f).”.

10 (3) By striking subsection (c) and inserting the
11 following:

12 “(c) IMPOSING CONDITIONS OF RELEASE.—

13 “(1) If at the initial appearance hearing or the
14 pretrial release hearing the judicial officer deter-
15 mines by a preponderance of the evidence, based on
16 individualized facts, that the person’s release on per-
17 sonal recognizance under subsection (b) creates a
18 high risk of intentional non-appearance in court, or
19 a specific and substantial risk that the person will
20 cause bodily injury or use violent force against the
21 person of another, and the judicial officer deter-
22 mines that a combination of conditions under this
23 subsection would reasonably mitigate any risk posed
24 by the person, such judicial officer shall nevertheless
25 order the pretrial release of the person—

1 “(A) subject to the condition that the per-
2 son not commit a Federal, State, or local crime
3 during the period of release; and

4 “(B) subject to the least restrictive further
5 condition or combination of conditions that
6 could reasonably mitigate the risk identified,
7 which may include the condition that the per-
8 son—

9 “(i) remain in the custody of a des-
10 ignated person, who agrees to assume su-
11 pervision and to report any violation of a
12 release condition to the court;

13 “(ii) maintain employment, or, if un-
14 employed, actively seek employment;

15 “(iii) maintain or commence an edu-
16 cational program;

17 “(iv) abide by specified restrictions on
18 personal associations, place of abode, or
19 travel;

20 “(v) avoid all contact with an alleged
21 victim of the crime and with any potential
22 witness who may testify concerning the of-
23 fense;

1 “(vi) report on a regular basis to a
2 designated law enforcement agency, pre-
3 trial services agency, or other agency;

4 “(vii) comply with a specified curfew;

5 “(viii) refrain from possessing a fire-
6 arm, destructive device, or other dangerous
7 weapon;

8 “(ix) refrain from excessive use of al-
9 cohol, or any use of a narcotic drug or
10 other controlled substance, as defined in
11 section 102 of the Controlled Substances
12 Act (21 U.S.C. 802), without a prescrip-
13 tion by a licensed medical practitioner;

14 “(x) undergo available medical, psy-
15 chological, or psychiatric treatment, includ-
16 ing treatment for drug or alcohol depend-
17 ency, and remain in a specified institution
18 if required for that purpose;

19 “(xi) return to custody for specified
20 hours following release for employment,
21 schooling, or other limited purposes; and

22 “(xii) satisfy any other condition that
23 is necessary to avoid a high risk of inten-
24 tional nonappearance in court, or a specific
25 and substantial risk that the person will

1 cause bodily injury or use violent force
2 against the person of another.

3 “(2) In any case where the person is charged
4 with an offense that involves a minor victim under
5 section 1201, 1591, 2241, 2242, 2244(a)(1), 2245,
6 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3),
7 2252A(a)(1), 2252A(a)(2), 2252A(a)(3),
8 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425, or
9 a failure to register offense under section 2250, ex-
10 cluding receipt of child pornography, any release
11 order shall contain a condition of electronic moni-
12 toring and each of the conditions specified at clauses
13 (iv) through (viii) of paragraph (1)(B).

14 “(3) The judicial officer may not impose any
15 condition of release that imposes a financial burden
16 on the person released. Prohibited financial condi-
17 tions include requiring payment of cash bail, requir-
18 ing a secured bond, requiring proof of ability to pay
19 an unsecured bond, requiring execution of a bail
20 bond or corporate surety bond, requiring a solvent
21 surety to co-sign a secured or unsecured bond, and
22 requiring posting of real property.

23 “(4) Any person who is deemed financially un-
24 able to obtain adequate representation and qualifies
25 for appointed counsel pursuant to other provisions of

1 this section or section 3006A is not required to pay
2 any costs associated with pretrial release or pretrial
3 supervision including costs of pretrial supervision,
4 electronic monitoring, global positioning systems
5 monitoring, medical, psychological, or psychiatric
6 treatment, and costs associated with any of the
7 other conditions of release in this subsection.

8 “(5) To facilitate appearance in court and ad-
9 herence to these conditions of release, the judicial of-
10 ficer shall instruct United States Pretrial Services to
11 provide individual court reminders, such as remind-
12 ers via phone call or two-way text message.

13 “(6) The judicial officer may at any time
14 amend the release order to impose additional or dif-
15 ferent conditions of release. Before the conditions
16 are modified, the person is entitled to notice of the
17 proposed modification and an opportunity to be
18 heard.”.

19 (4) By striking subsection (d) and inserting the
20 following:

21 “(d) NO SHACKLING.—No person shall be shackled
22 or otherwise physically restrained when appearing in court
23 for any hearing relating to pretrial release or detention,
24 unless the judicial officer makes a finding by clear and
25 convincing evidence, in writing or on the record, based on

1 individualized, case-specific reasons, that the person poses
2 an imminent danger to any person in the courtroom.”.

3 (5) By striking subsection (e) and inserting the
4 following:

5 “(e) INITIAL APPEARANCE HEARING.—

6 (1) IN GENERAL AND TIMING.—In any initial
7 appearance before a judicial officer (but in no event
8 later than 48 hours after entering into custody), the
9 judicial officer shall conduct an initial appearance
10 hearing for purposes of advising the person of the
11 criminal complaint or information, conducting ar-
12 raignment (as appropriate), allowing consultation
13 with and appointment of counsel, and determining
14 whether the judicial officer should release or detain
15 the person. The judicial officer shall provisionally
16 appoint counsel to represent any person eligible for
17 representation under section 3006A (without regard
18 to any financial ability to secure representation) by
19 not later than the beginning of the initial appear-
20 ance hearing if that person is not otherwise rep-
21 resented by counsel. If at the initial appearance
22 hearing the person is temporarily detained under
23 paragraph (3), the judicial officer shall immediately
24 thereafter, at the same initial appearance, conduct a
25 pretrial release hearing under subsection (f), unless

1 the judicial officer grants a continuance sought by
2 the person or the attorney for the Government under
3 paragraph (1) of such subsection.

4 “(2) PRESUMPTION OF RELEASE WITHOUT
5 CONDITIONS.—At the initial appearance hearing, the
6 judicial officer shall order the pretrial release of the
7 person on personal recognizance under subsection
8 (b) unless the judicial officer determines that—

9 “(A) a condition or combination of condi-
10 tions is required under subsection (c); or

11 “(B) temporary detention is—

12 “(i) mandatory under paragraph
13 (3)(A);

14 “(ii) appropriate under paragraph
15 (3)(B); or

16 “(iii) required under paragraph (4).

17 “(3) EXCEPTIONS TO IMMEDIATE RELEASE.—
18 At the initial appearance hearing, the judicial officer
19 may temporarily detain the person until the pretrial
20 release hearing only in accordance with the fol-
21 lowing:

22 “(A) MANDATORY TEMPORARY DETENTION
23 PENDING A PRETRIAL RELEASE HEARING.—Ex-
24 cept as provided in subparagraph (D), the judi-
25 cial officer shall order temporary detention and

1 shall hold a pretrial release hearing under sub-
2 section (f) when the person is charged with one
3 of the following offenses:

4 “(i) OFFENSES INVOLVING A MINOR
5 VICTIM.—A violation of section 1591, or
6 any felony that involves a minor victim.

7 “(ii) CERTAIN TERRORISM OF-
8 FENSES.—An offense listed in section
9 2332b(g)(5)(B) for which a maximum
10 term of imprisonment of 10 years or more
11 is prescribed.

12 “(iii) OTHER SERIOUS OFFENSES.—
13 An offense for which the maximum sen-
14 tence is life imprisonment or death, other
15 than an offense listed in subparagraph
16 (B)(i) or (B)(ii) for which the maximum
17 sentence is life imprisonment.

18 “(iv) CERTAIN REPEAT OFFENSES.—
19 Any felony if the person has been convicted
20 of two or more offenses described in para-
21 graph (3)(A)(iii) or (3)(B)(iii) of this sub-
22 section, or two or more State or local of-
23 fenses that would have been offenses de-
24 scribed in paragraph (3)(A)(iii) or
25 (3)(B)(iii) of this subsection if a cir-

1 cumstance giving rise to Federal jurisdic-
2 tion had existed, or a combination of such
3 offenses.

4 “(B) DISCRETIONARY TEMPORARY DETEN-
5 TION.—Except as provided in subparagraph
6 (D), on a showing by the attorney for the Gov-
7 ernment of a likelihood of success on the merits
8 at obtaining an order for detention at the pre-
9 trial release hearing, the judicial officer may
10 order temporary detention and may hold a pre-
11 trial release hearing under subsection (f) only
12 in one of the following circumstances:

13 “(i) CERTAIN ALLEGED NARCOTICS
14 OFFENSES.—The person is charged with
15 an offense for which a minimum term of
16 imprisonment of ten years or more is pre-
17 scribed in the Controlled Substances Act
18 (21 U.S.C. 801 et seq.), the Controlled
19 Substances Import and Export Act (21
20 U.S.C. 951 et seq.), or chapter 705 of title
21 46, and the attorney for the Government
22 proffers evidence sufficient to support a
23 finding that the person is an organizer or
24 leader in the offense or proves, by clear
25 and convincing evidence based on individ-

1 ualized facts, that detention is necessary
2 because the person’s release creates a spe-
3 cific and substantial risk that the person
4 will cause bodily injury or use violent force
5 against the person of another, and proves
6 by clear and convincing evidence that no
7 conditions of release could reasonably miti-
8 gate that risk.

9 “(ii) FIREARMS OFFENSES.—The per-
10 son is charged with any felony that in-
11 volves the possession or use of a firearm or
12 destructive device (as those terms are de-
13 fined in section 921), or any other dan-
14 gerous weapon.

15 “(iii) CRIME OF VIOLENCE.—The per-
16 son is charged with a crime of violence, as
17 defined in section 924(c)(3)(A).

18 “(iv) FAILURE TO REGISTER.—The
19 person is charged with a failure to register
20 felony offense under section 2250.

21 “(v) NON-APPEARANCE IN COURT.—
22 The attorney for the Government proves,
23 by clear and convincing evidence based on
24 individualized facts, that the person’s re-
25 lease creates a high risk of intentional non-

1 appearance in court, and that no condi-
2 tions of release could reasonably mitigate
3 that risk.

4 “(vi) OBSTRUCTION OF JUSTICE.—

5 The attorney for the Government proves,
6 by clear and convincing evidence based on
7 individualized facts, that there is a high
8 risk that the person will obstruct or at-
9 tempt to obstruct justice, or threaten, in-
10 jure, or intimidate, or attempt to threaten,
11 injure, or intimidate, a prospective witness
12 or juror, and that no conditions of release
13 could reasonably mitigate that risk.

14 “(C) LEGAL STANDARD FOR EXCEPTIONS

15 TO IMMEDIATE RELEASE.—The judicial officer
16 may not order the temporary detention of any
17 person on the ground that they pose a general-
18 ized danger or a financial danger to any other
19 individual or the community. If the judicial offi-
20 cer does not order detention under subpara-
21 graph (A) or (B), the judicial officer must order
22 the immediate release of the person under sub-
23 section (b) or (c).

24 “(D) EXCEPTIONS TO DETENTION.—Dur-

25 ing any continuance under paragraph (1), a

1 person who would otherwise be ordered tempo-
2 rarily detained under this paragraph may not
3 be detained if the person establishes extenu-
4 ating employment, family, or other cir-
5 cumstances that weigh against temporary de-
6 tention, in which case the judicial officer shall
7 release the person under subsection (b) or (c),
8 pending the pretrial release hearing.

9 “(4) TEMPORARY DETENTION TO PERMIT REV-
10 OCATION OF CONDITIONAL RELEASE, DEPORTATION,
11 OR EXCLUSION.—

12 “(A) During the initial appearance hearing
13 the judicial officer shall make a determination
14 as to whether the attorney for the Government
15 has proven, by a preponderance of the evidence
16 based on individualized facts, that—

17 “(i) the person—

18 “(I) is, and was at the time the
19 offense was committed, on—

20 “(aa) release pending trial
21 for a felony under Federal, State,
22 or local law;

23 “(bb) release pending im-
24 position or execution of sentence,
25 appeal of sentence or conviction,

1 or completion of sentence, for
2 any offense under Federal, State,
3 or local law; or

4 “(cc) probation or parole for
5 any offense under Federal, State,
6 or local law; or

7 “(II) is not a national of the
8 United States or an alien lawfully ad-
9 mitted for permanent residence, as de-
10 fined in section 101(a)(20) of the Im-
11 migration and Nationality Act (8
12 U.S.C. 1101(a)(20)), and is inadmis-
13 sible or deportable under such Act;
14 and

15 “(ii) the person’s release creates a
16 high risk of intentional non-appearance in
17 court, or a specific and substantial risk
18 that the person will cause bodily injury or
19 use violent force against the person of an-
20 other, and that no conditions of release
21 could reasonably mitigate that risk.

22 “(B) If the judicial officer determines that
23 the attorney for the Government has satisfied
24 the requirement under subparagraph (A), such
25 judicial officer shall order the detention of the

1 person, for a period of not more than five days,
2 excluding Saturdays, Sundays, and holidays,
3 and direct the attorney for the Government to
4 notify the appropriate court, probation or pa-
5 role official, or State or local law enforcement
6 official, or the appropriate official of the De-
7 partment of Homeland Security, consistent with
8 the following:

9 “(i) If the appropriate court, proba-
10 tion, or parole official fails or declines to
11 take the person into custody during the
12 five-day period of temporary detention, the
13 person shall be treated in accordance with
14 the other provisions of this section.

15 “(ii) If temporary detention is sought
16 under subclause (II) of subparagraph
17 (A)(i), the person shall be afforded the op-
18 portunity to enter evidence rebutting any
19 determination under such subclause.

20 “(iii) If the person rebuts the nation-
21 ality determination, temporary detention
22 under this paragraph is not permitted.

23 “(iv) If the person fails to rebut the
24 nationality determination, the judicial offi-
25 cer shall order the temporary detention of

1 the person under this paragraph. If the
2 Department of Homeland Security fails or
3 declines to take such person into custody
4 during the five-day period of temporary de-
5 tention, the person shall be treated in ac-
6 cordance with other provisions of this sec-
7 tion and shall not be subject to detention
8 under the Immigration and Nationality Act
9 (except section 236A of such Act, 8 U.S.C.
10 1226A) during the pendency of the case.

11 “(5) PRODUCTION OF PRETRIAL SERVICES RE-
12 PORT.—No later than the initial appearance hearing,
13 United States Probation and Pretrial Services shall
14 produce to the judicial officer, the person, and the
15 attorney for the Government a report detailing infor-
16 mation pertaining to the pretrial release of that per-
17 son.”.

18 (6) By striking subsection (f) and inserting the
19 following:

20 “(f) PRETRIAL RELEASE HEARING.—

21 “(1) IN GENERAL AND TIMING.—If the person
22 is not ordered released on personal recognizance
23 without conditions under subsection (b) at the initial
24 appearance hearing, the judicial officer shall imme-
25 diately thereafter, at the same initial appearance,

1 conduct a pretrial release hearing under subsection
2 (f), unless the judicial officer grants a continuance
3 sought by the person or the attorney for the Govern-
4 ment. A continuance of the pretrial release hearing
5 on motion of the attorney for the Government must
6 be supported by good cause and may not exceed
7 three days (not including any intermediate Saturday,
8 Sunday, or legal holiday). A continuance of the pre-
9 trial release hearing on motion of the person may
10 not exceed five days (not including any intermediate
11 Saturday, Sunday, or legal holiday). During a con-
12 tinuance, a person detained temporarily under sub-
13 section (e)(3) shall be detained until the pretrial re-
14 lease hearing, unless the person establishes extenu-
15 ating employment, family, or other circumstances
16 that weigh against temporary detention, in which
17 case the judicial officer shall release the person
18 under subsection (b) or (c) pending the pretrial re-
19 lease hearing.

20 “(2) PRESUMPTION OF RELEASE WITHOUT
21 CONDITIONS.—At the pretrial release hearing, the
22 judicial officer shall apply a presumption of release
23 on personal recognizance under subsection (b) unless
24 the judicial officer determines that a condition or

1 combination of conditions is required under sub-
2 section (c).

3 “(3) LEGAL STANDARD AT THE PRETRIAL RE-
4 LEASE HEARING.—

5 “(A) If the person is temporarily detained
6 at the initial appearance hearing under sub-
7 section (e)(3)(A), (e)(3)(B)(i), (e)(3)(B)(ii),
8 (e)(3)(B)(iii), (e)(3)(B)(iv), or (e)(3)(B)(vi),
9 then at the pretrial release hearing the judicial
10 officer may order the detention of the person
11 before trial only if the attorney for the Govern-
12 ment proves, by clear and convincing evidence
13 based on individualized facts, that detention is
14 necessary because the person’s release creates a
15 specific and substantial risk that the person will
16 cause bodily injury or use violent force against
17 the person of another, and proves by clear and
18 convincing evidence that no conditions of re-
19 lease could reasonably mitigate that risk. The
20 judicial officer may not detain any person on
21 the ground that they pose a generalized danger
22 or a financial danger to any other individual or
23 the community. If the attorney for the Govern-
24 ment did not move for detention under sub-
25 section (e)(3)(A), (e)(3)(B)(i), (e)(3)(B)(ii),

1 (e)(3)(B)(iii), (e)(3)(B)(iv), or (e)(3)(B)(vi) at
2 the initial appearance hearing yet wishes to
3 seek detention at the pretrial release hearing
4 for an offense enumerated in those subsections
5 on the ground that the person's release creates
6 a specific and substantial risk that the person
7 will cause bodily injury or use violent force
8 against the person of another, the attorney for
9 the Government must meet the legal standard
10 in this subparagraph and also establish by clear
11 and convincing evidence that such request rests
12 on evidence that was newly discovered after the
13 initial appearance and that the failure to dis-
14 cover the evidence previously was not caused by
15 any lack of due diligence.

16 “(B) If the person is temporarily detained
17 at the initial appearance hearing under sub-
18 section (e)(3)(B)(v) or (e)(3)(B)(vi), then at the
19 pretrial release hearing the judicial officer may
20 order the detention of the person before trial
21 only if the attorney for the Government proves,
22 by clear and convincing evidence based on indi-
23 vidualized facts, that the person's release cre-
24 ates a high risk of intentional non-appearance
25 in court, and proves by clear and convincing

1 evidence that no conditions of release could rea-
2 sonably mitigate that risk. If the attorney for
3 the Government did not move for detention
4 under subsection (e)(3)(B)(v) or (e)(3)(B)(vi)
5 at the initial appearance hearing yet wishes to
6 seek detention at the pretrial release hearing on
7 the ground that the person’s release creates a
8 high risk of intentional non-appearance in
9 court, the attorney for the Government must
10 meet the legal standard in this subparagraph
11 and also establish by clear and convincing evi-
12 dence that such request rests on evidence that
13 was newly discovered after the initial appear-
14 ance and that the failure to discover the evi-
15 dence previously was not caused by any lack of
16 due diligence.

17 “(C) At the pretrial release hearing, the
18 attorney for the Government bears the burden
19 of proof. If the attorney for the Government
20 does not meet its burden of proof, the judicial
21 officer shall release the person under subsection
22 (b) or (c).

23 “(4) PROCEDURE AT THE PRETRIAL RELEASE
24 HEARING.—

25 “(A) PROCEDURAL REQUIREMENTS.—

1 “(i) DISCLOSURE REQUIREMENTS.—If
2 the attorney for the Government requests
3 detention, then at a reasonable time prior
4 to the pretrial release hearing the attorney
5 for the Government shall provide to the
6 person—

7 “(I) notice of the alleged factual
8 bases for detention;

9 “(II) the evidence offered in sup-
10 port thereof;

11 “(III) any information in its pos-
12 session that is relevant—

13 “(aa) to the question of re-
14 lease, guilt, or punishment; or

15 “(bb) to impeachment of the
16 Government’s witnesses; and

17 “(IV) any information in their
18 possession that is favorable to the per-
19 son.

20 “(ii) REPRESENTATION BY COUN-
21 SEL.—At the hearing, the person has the
22 right to be represented by counsel, and, if
23 financially unable to obtain adequate rep-
24 resentation, to have counsel appointed
25 under section 3006A (without regard to

1 any financial ability to secure representa-
2 tion).

3 “(iii) PROCEDURAL RIGHTS.—The
4 person shall be afforded an opportunity to
5 testify, to subpoena documents and wit-
6 nesses, to present witnesses, to cross-exam-
7 ine witnesses who appear at the hearing,
8 and to present information by proffer or
9 otherwise. If the person testifies, the per-
10 son’s testimony is not admissible in any
11 other criminal proceedings other than as
12 impeachment evidence if the person testi-
13 fies at trial.

14 “(iv) WITNESS PRODUCTION RE-
15 QUIREMENT.—The attorney for the Gov-
16 ernment shall support its detention request
17 with the testimony of witnesses, unless the
18 person waives the right to such testimony.

19 “(v) ADVERSE INFERENCE.—If the
20 attorney for the Government fails to com-
21 ply with the requirements of this subpara-
22 graph, the judicial officer may draw an ad-
23 verse inference that weighs against the at-
24 torney for the Government’s detention re-
25 quest.

1 “(B) EVIDENTIARY STANDARD.—The rules
2 concerning admissibility of evidence in criminal
3 trials do not apply to the presentation and con-
4 sideration of information at the hearing, except
5 that hearsay evidence shall not be admitted un-
6 less the judicial officer determines that the at-
7 torney for the Government has offered a satis-
8 factory explanation for not producing the testi-
9 fying witness, and that the hearsay evidence is
10 reliable.

11 “(5) FACTORS TO BE CONSIDERED AT THE
12 PRETRIAL RELEASE HEARING.—In determining
13 whether there are conditions of release that could
14 reasonably mitigate the risks described in paragraph
15 (3), the judicial officer shall take into account the
16 available information concerning—

17 “(A) the history and characteristics of the
18 person, including the person’s character, phys-
19 ical and mental condition, family ties, employ-
20 ment, financial resources, length of residence in
21 the community to which the person is seeking
22 to be released, community ties, past violent con-
23 duct, criminal history, and record concerning
24 appearance at court proceedings;

1 “(B) the nature and circumstances of the
2 offense charged;

3 “(C) whether the person’s release creates a
4 specific and substantial risk that the person will
5 cause bodily injury or use violent force against
6 the person of another;

7 “(D) the weight of the evidence against the
8 person, but to preserve the presumption of in-
9 nocence in subsection (a), the judicial officer
10 shall give this factor the least weight;

11 “(E) whether the person’s age or medical
12 condition renders them especially vulnerable;
13 and

14 “(F) the conditions of confinement, includ-
15 ing access to adequate medical, mental health,
16 and dental treatment, access to medications,
17 and the person’s ability to privately consult
18 with counsel and meaningfully prepare a de-
19 fense.

20 “(6) ADDITIONAL DEFENSE BURDEN OF PRO-
21 Duction IN CERTAIN SERIOUS CASES.—The attor-
22 ney for the Government continues to bear the bur-
23 den of meeting the legal standard in paragraph (3)
24 of this subsection, but to obtain release the person
25 shall present some affirmative mitigating cir-

1 cumstances under paragraph (5) of this subsection
2 if that person—

3 “(A) is accused of—

4 “(i) an offense under section 2332b
5 for which the maximum term of imprison-
6 ment is 10 years or more;

7 “(ii) an offense under chapter 77 of
8 this title for which the maximum term of
9 imprisonment is 20 years or more; or

10 “(iii) an offense involving a minor vic-
11 tim under section 1201, 1591, 2241, 2242,
12 2244(a)(1), 2245, 2251, 2251A,
13 2252(a)(1), 2252(a)(2), 2252(a)(3),
14 2252A(a)(1), 2252A(a)(2), 2252A(a)(3),
15 2252A(a)(4), 2260, 2421, 2422, 2423, or
16 2425; or

17 “(B) has been temporarily detained pursu-
18 ant to subsection (e)(3)(A), if the judicial offi-
19 cer determines that the attorney for the Gov-
20 ernment has proven—

21 “(i) the person has been convicted of
22 a Federal offense that is described in sub-
23 section (e)(3)(A), or of a State or local of-
24 fense that would have been an offense de-
25 scribed in subsection (e)(3)(A) if a cir-

1 cumstance giving rise to Federal jurisdic-
2 tion had existed;

3 “(ii) the offense described in clause (i)
4 was committed while the person was on re-
5 lease pending trial for a Federal, State, or
6 local offense; and

7 “(iii) a period of not more than five
8 years has elapsed since the date of convic-
9 tion, or the release of the person from im-
10 prisonment, for the offense described in
11 clause (i), whichever is later.”.

12 (7) By striking subsections (g) through (j).

13 (8) By adding at the end the following:

14 “(g) CONTENTS OF RELEASE AND DETENTION
15 ORDER.—

16 “(1) CONTENTS OF RELEASE ORDER.—If the
17 judicial officer orders pretrial release, the judicial of-
18 ficer shall—

19 “(A) in cases where the judicial officer im-
20 poses conditions of release under subsection (c),
21 provide written findings of fact and a written
22 statement of reasons explaining why any condi-
23 tions imposed is the least restrictive necessary
24 to reasonably mitigate any individualized and
25 specific risks posed by the person;

1 “(B) include a written statement that sets
2 forth all the conditions to which the release is
3 subject, in a manner sufficiently clear and spe-
4 cific to serve as a guide for the person’s con-
5 duct; and

6 “(C) advise the person of—

7 “(i) the penalties for violating a condi-
8 tion of release, including the penalties for
9 committing an offense while on pretrial re-
10 lease;

11 “(ii) the consequences of violating a
12 condition of release, including the imme-
13 diate issuance of a warrant for the per-
14 son’s arrest; and

15 “(iii) sections 1503 of this title (relat-
16 ing to intimidation of witnesses, jurors,
17 and officers of the court), 1510 (relating
18 to obstruction of criminal investigations),
19 1512 (tampering with a witness, victim, or
20 an informant), and 1513 (retaliating
21 against a witness, victim, or an informant).

22 “(2) CONTENTS OF DETENTION ORDER.—If the
23 judicial officer orders pretrial detention, the judicial
24 officer shall—

1 “(A) provide written findings of fact and a
2 written statement of the reasons for the deten-
3 tion, identifying whether the detention is based
4 on a finding that the person’s release creates a
5 high risk of non-appearance in court or a spe-
6 cific and substantial risk that the person will
7 cause bodily injury or use violent force against
8 the person of another, and stating that no con-
9 dition or combination of conditions could rea-
10 sonably mitigate that risk;

11 “(B) direct that the person be committed
12 to the custody of the Attorney General for con-
13 finement in a corrections facility separate, to
14 the extent practicable, from persons awaiting or
15 serving sentences or being held in custody pend-
16 ing appeal;

17 “(C) direct that the person be afforded
18 reasonable opportunity for private consultation
19 with counsel;

20 “(D) direct that, on order of a court of the
21 United States or on request of an attorney for
22 the Government, the person in charge of the
23 correctional facility in which the person is con-
24 fined deliver the person to a United States

1 Marshal for the purpose of an appearance in
2 connection with a court proceeding;

3 “(E) direct that any place of pretrial con-
4 finement shall conform to the Federal Perform-
5 ance Based Detention Standards;

6 “(F) direct that the correctional facility in
7 which the person is confined provide immediate
8 access to adequate medical, mental health, and
9 dental treatment and promptly provide any
10 medications; and

11 “(G) direct that any person with an objec-
12 tively serious medical or mental health condi-
13 tion be subject to a periodic (based on a deter-
14 mination of what period would be appropriate
15 to the individual’s condition) review before the
16 judicial officer to ensure that the place of pre-
17 trial confinement is adequately addressing said
18 condition, and to consider appropriate alter-
19 natives to continued confinement, if necessary.

20 “(h) SUBSEQUENT ORDER FOR TEMPORARY RE-
21 LEASE.—

22 “(1) The judicial officer may, by subsequent
23 order, permit the temporary release of a person to
24 the extent that the judicial officer determines such
25 release to be necessary for the person to privately

1 consult with counsel; meaningfully prepare a de-
2 fense; obtain access to medical, mental health, or
3 dental treatment that has not been adequately pro-
4 vided by the place of pretrial confinement; or for any
5 other compelling reason.

6 “(2) The judicial officer may, by subsequent
7 order, permit the temporary release of a person who
8 has been detained to allow the person to attend a
9 major life event of an immediate family member,
10 such as a wedding, birth, religious ritual, gradua-
11 tion, deathbed visit, or funeral, if the judicial officer
12 finds that conditions of release could reasonably
13 mitigate any previously identified risk for the limited
14 period of release. An immediate family member is
15 defined as a spouse, domestic partner, cohabitant,
16 child, stepchild, grandchild, parent, stepparent,
17 mother-in-law, father-in-law, son-in-law, daughter-in-
18 law, grandparent, brother, sister, half-brother, half-
19 sister, stepsibling, brother-in-law, sister-in-law, aunt,
20 uncle, niece, nephew, or first cousin.

21 “(i) PROCEDURES IN REMOVAL CASES.—

22 “(1) A person who is arrested or summoned to
23 court in a district other than where the offense was
24 allegedly committed (hereinafter in this section re-
25 ferred to as the ‘arresting district’) shall be entitled

1 to an initial appearance hearing and a pretrial re-
2 lease hearing in the arresting district. The initial ap-
3 pearance hearing shall occur no more than 48 hours
4 after the person enters custody. Upon appearance
5 before a judicial officer in the arresting district, the
6 person shall be detained or released as provided in
7 subsections (a) through (h) of this section.

8 “(2) If the judicial officer in the arresting dis-
9 trict orders the detention of the person pending
10 transfer to the district where the offense was alleg-
11 edly committed (hereinafter in this section referred
12 to as the ‘charging district’), the person shall be
13 taken before a judicial officer in the charging dis-
14 trict not more than 5 days after the initial appear-
15 ance hearing in the arresting district and shall re-
16 ceive an initial appearance hearing and pretrial re-
17 lease hearing in the charging district in accordance
18 with subsections (a) through (h) of this section. The
19 judicial officer in the charging district is not bound
20 by any factual or legal determinations made by the
21 judicial officer in the arresting district.

22 “(3) If the judicial officer in the arresting dis-
23 trict orders the person released pending transfer to
24 the charging district, the person shall receive a
25 prompt initial appearance hearing in the charging

1 district. If the person appears as directed in the
2 charging district and is performing satisfactorily on
3 release, the person is entitled to a presumption that
4 all conditions of release continue unchanged in the
5 charging district. The attorney for the Government
6 shall have the right to appeal the release order to
7 the district court in the arresting district only. Any
8 government appeal must be conducted on an expe-
9 dited basis. Either party can move to modify the
10 conditions of release in the charging district under
11 this section.

12 “(4) If the judicial officer in the arresting dis-
13 trict orders the person detained pending transfer to
14 the charging district, the person shall be informed of
15 the right to an expedited appeal to the district court
16 in the arresting district, and such appeal shall be
17 heard within 72 hours unless the person consents to
18 a delay. Any appeal by the Government must also be
19 conducted on an expedited basis.”.

20 **SEC. 4. REVIEW AND APPEAL OF A RELEASE OR DETEN-**
21 **TION ORDER.**

22 Section 3145 of title 18, United States Code, is
23 amended—

24 (1) in subsection (a)—

1 (A) in the matter following paragraph (2),
2 by striking “The motion shall be determined
3 promptly.”;

4 (B) by striking the matter preceding para-
5 graph (1), and inserting “Except in a removal
6 case covered by section 3142(i), if a person is
7 ordered released by a magistrate judge—”;

8 (C) in paragraph (1)—

9 (i) by striking “court having original
10 jurisdiction over the offense” and inserting
11 “district court”;

12 (ii) by inserting after “conditions of
13 release” the following: “at any time before
14 trial”; and

15 (iii) by striking “and”; and

16 (D) by striking paragraph (2) and insert-
17 ing the following:

18 “(2) the person may file, with the magistrate
19 judge or with the district court, a motion for amend-
20 ment of the conditions of release at any time before
21 trial; and

22 “(3) motions under this subsection shall be de-
23 termined promptly.”;

24 (2) by striking subsection (b) and inserting the
25 following:

1 “(b) REVIEW OF A DETENTION ORDER.—

2 “(1) REVIEW BY A MAGISTRATE JUDGE.—Ex-
3 cept in a removal case covered by section 3142(i), if
4 a person is ordered detained by a magistrate judge,
5 the person may file with the magistrate judge a mo-
6 tion for reconsideration or amendment of the order
7 for any reason material to the inquiry in section
8 3142, at any time before trial. The person is entitled
9 to a hearing on that motion. The pretrial release
10 hearing standards in subsection (f) of section 3142
11 govern at that reopened hearing.

12 “(2) REVIEW BY A DISTRICT COURT.—Except
13 in a removal case covered by section 3142(i), if a
14 person is ordered detained by a magistrate judge,
15 the person may file, with the district court, a motion
16 for pretrial release. The motion shall be heard within
17 72 hours unless the person consents to a delay. The
18 district court shall review the motion and release or
19 detain the person after a hearing under section
20 3142.”;

21 (3) in subsection (c), by striking “The appeal
22 shall be determined promptly” and all that follows
23 and inserting the following: “If a judicial officer or-
24 ders pretrial detention, the person shall be informed
25 of the right to an appeal. Such appeal shall be heard

1 within 72 hours unless the person consents to a
2 delay. The judicial officer may order a person who
3 has been detained under section 3142 released pend-
4 ing the appeal of the detention order if it is clearly
5 shown that there are exceptional reasons why such
6 person’s detention would not be appropriate.”; and

7 (4) by inserting, at the end, the following:

8 “(d) **RELEASE PENDING REVIEW OR APPEAL.**—If a
9 person is ordered released by a magistrate judge and the
10 attorney for the Government files a motion for revocation
11 of the release order or a motion for amendment of the
12 conditions of release with the district court under para-
13 graph (1) of subsection (a), or the attorney for the Gov-
14 ernment files an appeal from a release order with the court
15 of appeals under subsection (c) of this section, the person
16 shall remain on pretrial release pending review or appeal.
17 A release order shall not be stayed pending review or ap-
18 peal.”.

19 **SEC. 5. SANCTIONS FOR VIOLATION OF A RELEASE CONDI-**
20 **TION.**

21 Section 3148 of title 18, United States Code, is
22 amended—

23 (1) by striking subsection (a) and inserting the
24 following:

1 “(a) AVAILABLE SANCTIONS FOR VIOLATION OF RE-
2 LEASE.—If the judicial officer finds that a person who has
3 been released under section 3142 has violated a condition
4 of release, the judicial officer may—

5 “(1) continue the person on pretrial release
6 without new conditions;

7 “(2) continue the person on pretrial release
8 with new conditions; or

9 “(3) revoke the person’s release and enter an
10 order of detention.”;

11 (2) in subsection (b)—

12 (A) by inserting after “A judicial officer
13 may issue a” the following: “summons to ap-
14 pear in court or a”; and

15 (B) by striking paragraph (2) (including
16 the matter following subparagraph (B)) and in-
17 serting the following:

18 “(2) finds that, based on the factors set forth
19 in section 3142(f)(5) and based on individualized
20 facts, the person poses a high risk of intentional
21 non-appearance in court or poses a specific and sub-
22 stantial risk that the person will cause bodily injury
23 or use violent force against the person of another,
24 and that no conditions of release could reasonably
25 mitigate that risk.”; and

1 (3) by striking subsection (c).

2 **SEC. 6. PRETRIAL DETENTION AND RELEASE DATA AND RE-**
3 **PORTING.**

4 (a) IN GENERAL.—Chapter 207 of title 18, United
5 States Code, is amended by inserting after section 3154
6 the following new section:

7 **“§ 3154A. Pretrial detention and release data and re-**
8 **porting**

9 “(a) DATA COLLECTION.—The Administrative Office
10 of the U.S. Courts, United States Probation and Pretrial
11 Services, the United States Sentencing Commission, and
12 the Executive Office of United States Attorneys shall each
13 maintain records with respect to pretrial detention and re-
14 lease for each person charged with a Federal crime. These
15 records shall include:

16 “(1) Demographic information, including race,
17 Hispanic ethnicity, age, sex, and citizenship status.

18 “(2) The type of crime charged.

19 “(3) Whether during the initial appearance
20 hearing the person was represented by a Federal or
21 community defender attorney, counsel appointed
22 under section 3006A, private counsel, or was unrep-
23 resented.

24 “(4) Whether during the pretrial release hear-
25 ing the person was represented by a Federal or com-

1 munity defender attorney, counsel appointed under
2 section 3006A, private counsel, or was unrepre-
3 sented.

4 “(5) The person’s pretrial risk assessment (in
5 this section referred to as ‘PTRA’) score.

6 “(6) Whether the person was detained after
7 their initial appearance hearing and if so, the legal
8 basis for detention.

9 “(7) Whether the person was released after
10 their initial appearance hearing and if so, the terms
11 and conditions of that release, including the amount
12 of the bond, whether the bond was secured or unse-
13 cured, and if the bond was secured, whether it was
14 secured by money, property, or other collateral.

15 “(8) Whether the charged crime qualifies for
16 mandatory or temporary detention at the initial ap-
17 pearance hearing under section 3142(e)(3)(A) or
18 section 3142(e)(3)(B) of this title.

19 “(9) Whether the prosecutor moves for manda-
20 tory temporary detention under section
21 3142(e)(3)(A) or discretionary temporary detention
22 under section 3142(e)(3)(B).

23 “(10) Whether the charged crime requires an
24 additional burden of production for the defense at
25 the pretrial release hearing under section 3142(f)(6).

1 “(11) Whether a subsequent pretrial release
2 hearing was held.

3 “(12) Whether the person was detained after
4 the pretrial release hearing and if so, the legal basis
5 for detention.

6 “(13) Whether the person was released after
7 the pretrial release hearing and if so, the terms and
8 conditions of that release, including the amount of
9 the bond, whether the bond was secured or unse-
10 cured, and if the bond was secured, whether it was
11 secured by money, property, or other collateral.

12 “(14) If a bond was set at any point, whether
13 a condition of the person’s release was electronic
14 monitoring.

15 “(15) Whether the person was detained at the
16 time of case disposition, including at the time of
17 guilty plea entry, jury conviction, acquittal, dis-
18 missal, or other case disposition.

19 “(16) If the person was convicted, whether the
20 person was detained at the time of sentencing.

21 “(17) The number of days spent in pretrial de-
22 tention prior to sentencing or prior to other non-con-
23 viction disposition.

1 “(18) Whether the person violated a technical
2 condition of pretrial release at any time prior to sen-
3 tencing or prior to other non-conviction disposition.

4 “(19) Whether the person was charged with a
5 new criminal offense at any time prior to sentencing
6 or prior to other non-conviction disposition.

7 “(20) Whether the person’s bond was revoked
8 for failing to appear in court at any time.

9 “(21) The charges filed.

10 “(22) The final charges of conviction.

11 “(23) The sentence imposed, if applicable.

12 “(b) FEDERAL JUSTICE STATISTICS PROGRAM
13 DATA.—

14 “(1) IN GENERAL.—The data collected under
15 subsection (a) shall be reported to the Federal Jus-
16 tice Statistics program of the Bureau of Justice Sta-
17 tistics, with identifiers allowing it to be linked to
18 other data from that program on the same cases.

19 “(2) PUBLICATION.—The data reported under
20 paragraph (1), shall be made available annually to
21 the National Archive of Criminal Justice Data, with-
22 out identifying the persons involved, for research
23 purposes.

24 “(3) INTEGRATION.—The Administrative Office
25 of the U.S. Courts, United States Probation and

1 Pretrial Services, the United States Sentencing
2 Commission, and the Executive Office of the United
3 States Attorneys may choose to integrate the data
4 under subsection (a) within existing datasets pro-
5 vided to the Federal Justice Statistics program of
6 the Bureau of Justice Statistics.

7 “(c) PUBLICATION.—The Administrative Office of
8 the U.S. Courts shall publish, on a quarterly basis, na-
9 tional data and data for each district in the aggregate and
10 disaggregated by race, Hispanic ethnicity, counsel status,
11 sex, age, and type of crime charged, on the following:

12 “(1) Pretrial detention and release rates.

13 “(2) The median or average duration of pretrial
14 detention.

15 “(3) The median PTRR score.

16 “(4) The number of people not represented by
17 counsel during the entirety of the initial appearance
18 hearing.

19 “(5) The number of people detained after the
20 initial appearance hearing.

21 “(6) The number of people released after the
22 initial appearance hearing.

23 “(7) The number of people detained after the
24 pretrial release hearing.

1 “(8) The number of people released after the
2 pretrial release hearing.

3 “(9) The number of people who qualified for
4 mandatory or temporary detention at the initial ap-
5 pearance hearing under section 3142(e)(3)(A) or
6 section 3142(e)(3)(B) of this title.

7 “(10) The number of cases that required an ad-
8 ditional burden of production for the defense at the
9 pretrial release hearing under section 3142(f)(6) of
10 this title.

11 “(11) The number of people detained without a
12 pretrial release hearing being held.

13 “(12) The number of people released on an un-
14 secured bond.

15 “(13) The number of people released on a se-
16 cured bond.

17 “(14) The number of people released on a bond
18 for which one of the conditions is electronic moni-
19 toring.

20 “(15) The number of people who violated a
21 technical condition of pretrial release at any time
22 prior to sentencing or prior to other non-conviction
23 disposition.

1 “(16) The number of people charged with a
2 new criminal offense at any time prior to sentencing
3 or prior to other non-conviction disposition.

4 “(17) The number of people whose bond was
5 revoked for failing to appear in court at any time.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for title 18, United States Code, is amended by inserting
8 after the item relating to section 3154 the following:

 “3154A. Pretrial detention and release data and reporting.”.

9 **SEC. 7. CONFORMING AMENDMENTS.**

10 Rule 32.1 of the Federal Rules of Criminal Proce-
11 dure, is amended in subsection (a)—

12 (1) by striking paragraph (6) and inserting the
13 following:

14 “(6) RELEASE OR DETENTION.—

15 “(A) IN GENERAL.—A person held in cus-
16 tody must be taken without unnecessary delay
17 before a judicial officer and shall receive an ini-
18 tial appearance hearing. At the initial appear-
19 ance hearing, the judicial officer shall issue an
20 order as set forth in section 3142(e) and sec-
21 tion 3142(g) of title 18, United States Code.
22 All provisions of sections 3142(b) and (c) of
23 title 18, United States Code, shall apply.

24 “(B) MANDATORY TEMPORARY DETENTION
25 FOR CERTAIN VIOLATIONS.—At the initial ap-

1 appearance hearing, the judicial officer shall pro-
2 ceed under section 3142(e)(3)(A) of title 18,
3 United States Code, if the petition alleges a vio-
4 lation predicated on the initiation of a new
5 criminal prosecution against the person—

6 “(i) a Federal, State or local offense
7 punishable by a term of imprisonment ex-
8 ceeding one year that—

9 “(I) is an offense that is a felony
10 and has as an element the use, at-
11 tempted use, or threatened use of
12 physical force against the person or
13 property of another, or

14 “(II) involves the possession of a
15 firearm or destructive device of a type
16 described in 26 U.S.C. 5845(a); or

17 “(ii) any other Federal, State, or local
18 offense punishable by a term of imprison-
19 ment exceeding 20 years.

20 “(C) DISCRETIONARY TEMPORARY DETEN-
21 TION.—At the initial appearance hearing, the
22 judicial officer shall proceed under section
23 3142(e)(3)(B) of title 18, United States Code,
24 for all categories of violation not described in
25 subparagraph (B).”; and

1 (2) by inserting at the end the following:

2 “(7) PRETRIAL RELEASE HEARING.—At the
3 pretrial release hearing, the judicial officer shall fol-
4 low the procedures as set forth in section 3142(f) of
5 title 18, United States Code.”.

○