

CITIZENS' RIGHT TO KNOW ACT OF 2018

APRIL 27, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2152]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2152) to require States and units of local government receiving funds under grant programs operated by the Department of Justice, which use such funds for pretrial services programs, to submit to the Attorney General a report relating to such program, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Committee Votes	3
Committee Oversight Findings	5
New Budget Authority and Tax Expenditures	5
Congressional Budget Office Cost Estimate	6
Duplication of Federal Programs	6
Disclosure of Directed Rule Makings	7
Performance Goals and Objectives	7
Advisory on Earmarks	7
Section-by-Section Analysis	7
Dissenting Views	7

The Amendment

The amendment is as follows:

Strike all that follows after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Citizens’ Right to Know Act of 2018”.

SEC. 2. REPORTING REQUIREMENT FOR DEPARTMENT OF JUSTICE GRANT RECIPIENTS USING FUNDS FOR PRETRIAL SERVICES PROGRAMS.

(a) IN GENERAL.—For each fiscal year in which a State or unit of local government receives funds under any grant program operated by the Department of Justice, including the Edward Byrne Memorial Justice Assistance grant program under subpart I of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.), and which uses funds received under such program for a pretrial services program, the State or unit of local government shall submit to the Attorney General a report which contains the following:

(1) The name of each defendant participating in a pretrial release program administered by the pretrial services program, and whether, as applicable, each occasion on which such defendant failed to make an appearance.

(2) Information relating to any prior convictions of each defendant participating in the pretrial services program.

(3) The amount of money allocated for the pretrial services program.

(b) PUBLICATION REQUIREMENT.—Subject to any applicable confidentiality requirements, the Attorney General shall, on an annual basis, make publicly available the information received under subsection (a).

(c) REDUCTION IN FUNDING.—The Attorney General shall, for State or unit of local government which fails to comply with the requirement under subsection (a) for a fiscal year, reduce the amount that the State or local government would otherwise receive under each grant program described in subsection (a) in the following fiscal year by 100 percent.

(d) REALLOCATION.—Amounts not allocated to a State or unit of local government under subsection (c) shall be reallocated under each such grant program to States and units of local government that comply with the requirement under subsection (a).

(e) DEFINITION.—The term “failed to make an appearance” means an action whereby any defendant has been charged with an offense before a court and who is participating in a pretrial release program for which funds received under a grant program referred to in subsection (a) are used as a condition of pretrial release—

(1) does not appear for any court date regarding such charge;

(2) does not appear for any one appointment with the pretrial services program; or

(3) does not appear for any post-release appearance the court may require.

Purpose and Summary

H.R. 2152 requires States and units of local government that receive funds under grant programs operated by the Department of Justice and use such funds for pretrial services programs to submit to the Attorney General a report relating to such programs.

Background and Need for the Legislation

Until the 1960s, the options for those defendants accused of a crime were release on one’s own recognizance (ROR), commercial bail, or incarceration. The intent of commercial bail was to ensure the appearance of the defendant in court at no cost to the taxpayer. In 1961, the first U.S. pretrial services program, the Manhattan Bail Project, was established. A pretrial services program provides the bail-setting court with information and options to help the court make an informed pretrial release decision and may provide supervision of those released by the court with conditions. The program was designed to help defendants who were unable to post the financial surety bond conditions set in New York City. The pro-

gram interviewed defendants to gather information on community ties to determine a defendant's likelihood of appearing in court. Based on these interviews, low-risk individuals were recommended for release on their own recognizance, or the defendants' promise to appear without financial obligation.

However, over the last four decades, pre-trial release programs have expanded well beyond their original scope and purpose. Today, there are over 300 pre-trial release programs nationwide whose participants routinely include violent and repeat offenders, many of whom are able to post a commercial bond and have done so in the past. In many instances, the federal government has become a major source of funding for pre-trial release programs.

H.R. 2152 responds to this development by requiring that the Attorney General, on an annual basis, submit a report to Congress containing the name of each defendant participating in a pretrial release program administered by a pretrial services program, each occasion on which such defendant failed to make an appearance, and information relating to the previous arrest record of each defendant participating in the pretrial services program. If a jurisdiction fails to produce a report in a given fiscal year, the jurisdiction will lose part of its grant funding for the following fiscal year. The purpose of this report is to ensure Congress, and the citizens it represents, know what types of defendants are being released prior to trial using federal taxpayers' dollars, and whether their communities are running successful pretrial services programs.

Hearings

The Committee on the Judiciary held no hearings on H.R. 2152.

Committee Consideration

On March 7, 2018, the Committee met in open session and ordered the bill (H.R. 2152) favorably reported, with an amendment, by a roll call vote of 14 to 10, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 2152.

1. An amendment offered by Mr. Cicilline to change the reporting requirements of States or units of local government that receive grants for pre-trial services was defeated by a roll call vote of 9 to 11.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)			
Mr. King (IA)		X	

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Gohmert (TX)			
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)			
Mr. Labrador (ID)		X	
Mr. Farenthold (TX)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Buck (CO)		X	
Mr. Ratcliffe (TX)			
Ms. Roby (AL)			
Mr. Gaetz (FL)			
Mr. Johnson (LA)		X	
Mr. Biggs (AZ)		X	
Mr. Rutherford (FL)			
Ms. Handel (GA)		X	
Mr. Nadler (NY), Ranking Member	X		
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Deutch (FL)			
Mr. Gutiérrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Mr. Jeffries (NY)	X		
Mr. Cicilline (RI)	X		
Mr. Swalwell (CA)			
Mr. Lieu (CA)			
Mr. Raskin (MD)	X		
Ms. Jayapal (WA)	X		
Mr. Schneider (IL)	X		
Ms. Demings (FL)			
Total	9	11	

2. Motion to report H.R. 2152, as amended, favorably to the House. Approved 14 to 10.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)			
Mr. Smith (TX)			
Mr. Chabot (OH)			
Mr. Issa (CA)	X		
Mr. King (IA)	X		
Mr. Gohmert (TX)	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Marino (PA)	X		
Mr. Gowdy (SC)			
Mr. Labrador (ID)	X		
Mr. Farenthold (TX)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Buck (CO)	X		
Mr. Ratcliffe (TX)			
Ms. Roby (AL)			
Mr. Gaetz (FL)	X		
Mr. Johnson (LA)	X		
Mr. Biggs (AZ)	X		
Mr. Rutherford (FL)			
Ms. Handel (GA)	X		
Mr. Nadler (NY), Ranking Member		X	
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)		X	
Mr. Johnson (GA)		X	
Mr. Deutch (FL)			
Mr. Gutiérrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Mr. Jeffries (NY)		X	
Mr. Cicilline (RI)		X	
Mr. Swalwell (CA)			
Mr. Lieu (CA)			
Mr. Raskin (MD)		X	
Ms. Jayapal (WA)		X	
Mr. Schneider (IL)		X	
Ms. Demings (FL)		X	
Total	14	10	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 2152, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 5, 2018.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2152, the Citizens' Right to Know Act of 2018.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

KEITH HALL.

Enclosure

cc: Honorable Jerrold Nadler
Ranking Member

H.R. 2152—Citizens' Right to Know Act of 2018

As ordered reported by the House Committee on the Judiciary on
March 7, 2018

H.R. 2152 would require states and localities that receive grants from the Department of Justice (DOJ) for programs that provide pretrial services to report to DOJ about those programs. The bill also would direct DOJ to publish the data annually, including prior convictions of program participants and amounts spent on the programs.

Using information from DOJ, CBO estimates that implementing the bill's provisions would cost the department less than \$500,000 each year; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 2152 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 2152 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2152 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 2152 establishes or reauthorizes a program of the Federal government known to be duplicative of another Fed-

eral program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee finds that H.R. 2152 contains no directed rule making within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2152 would require States and units of local government that receive funds under grant programs operated by the Department of Justice, and use such funds for pretrial services programs to submit to the Attorney General a report relating to such programs.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2152 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short title. Section 1 sets forth the short title of the bill as the “Citizens Right to Know Act of 2018.”

Sec. 2. Reporting requirement for Department of Justice grant recipients using funds for pretrial services programs. Section 2 requires a state or local government that receives funds under a Department of Justice (DOJ) grant program and uses such funds for a pretrial services program to annually report the amount of funds received by the pretrial services program and certain information about participating defendants. DOJ must publish the information. Additionally, DOJ must reduce the grant allocation of a state or local government that fails to comply.

Dissenting Views

We support fostering greater transparency in the operation of our criminal justice system, but H.R. 2152, the “Citizens’ Right to Know Act,” does not facilitate this goal. Rather, it undermines the privacy rights of Americans and fails to address the fundamental flaws with our Nation’s money bail system. The bill would: (1) require a unit of state or local government that uses U.S. Department of Justice (DOJ) grant funding to pay for pretrial services programs to report annually certain information to the DOJ about defendants who participate in such programs; (2) mandate that this information be published by the DOJ; and (3) impose a 100% reduction in the DOJ grant allocation for any state or local government that fails to comply. In sum, these directives would not further transparency because the information the bill requires to be provided would be incomplete and could be used to displace pretrial

services programs in favor of the money bail system, which disparately impacts the poor and most vulnerable in our society. And, the bill would undermine the privacy rights of those who participate in pretrial service programs. Therefore, we cannot support this legislation.

Pretrial services programs are publicly-funded operations that gather information about defendants awaiting bail hearings and provide supervision of defendants who have been released with specific conditions. Before pretrial services programs were instituted, courts primarily relied on the money bail system to determine which defendants were eligible for release. Money bail systems allow defendants to be released before trial if they can pay a monetary amount set by the judge.

Increasingly, money bail systems have come under criticism for being unfair, unsafe, and expensive. A determination of eligibility for release from incarceration based on financial means disadvantages people who lack those resources. People who are unable to pay their bail remain in custody until their scheduled court dates, which can be months, if not years in the future. A recent study conducted by the Bureau of Justice Statistics found that 65% of the inmates detained in jails were awaiting court action on a charge.¹ Not only is it inherently unfair to keep people in custody based solely on their financial means, but it also unfairly perpetuates their poverty by preventing them from working, paying rent, and providing for their families.²

Despite the popularity and success of pretrial services programs, lobbying efforts have limited their implementation on the state level. In fact, legislation similar to H.R. 2152 has made its way through state legislatures in the past, supported by the American Legislative Exchange Council (ALEC), a conservative special interest group that works with state lawmakers and represents bail bondsmen.³ This group has helped facilitate the passage of nearly identical legislation in states, such as Florida and Texas, designed to displace pretrial services programs by imposing administrative burdens upon them.

H.R. 2152, as amended by the substitute amendment offered by Chairman Goodlatte (R-VA), would require state or local governments that use federal funding under any grant program operated by the DOJ to fund a pretrial services program to annually submit a report to the Attorney General to include such information as the name of each defendant participating in the program and each occasion the defendant failed to make an appearance, information relating to the prior convictions of the defendant, and the amount of money allocated for the program. The bill would require the Attorney General to publish this information on an annual basis.

As explained by the American Civil Liberties Union in their letter to the Committee opposing the bill, the required reporting of this information raises privacy concerns: “We are troubled that the Citizens’ Right to Know Act would collect and publicly report personally identifiable information of individuals participating in pretrial services programs—individuals who have not been convicted

¹*Jail Inmates in 2016*, Bureau of Justice Statistics (2018).

²Pretrial Integrity and Safety Act, H.R. 4019, 115th Cong. § 2(b)(4) (2017).

³*Facts and Positions: The Truth about Commercial Bail Bonding in America*, the National Association of Pretrial Services Agencies Advocacy Brief (2009).

of a crime given their pretrial status.”⁴ Although the Committee adopted an amendment offered by Representative David Cicilline (D–RI) to eliminate the requirement that arrest information for each defendant be reported, we believe the bill continues to raise privacy concerns.

To address these concerns, and to require the reporting of information that would actually help the public evaluate the efficacy of these programs and money bail systems, Representative Cicilline and Ranking Member Sheila Jackson Lee (D–TX) of the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations offered an amendment to replace the categories of information required to be reported with the following aggregated information:

(1) Of the total number of defendants who appeared at an initial bail hearing, the percentage of such defendants who were released on their own recognizance.

(2) Of the total number of defendants who appeared at an initial bail hearing, the percentage of such defendants who participated in a pretrial release program administered by the pretrial services program, without financial obligations imposed as a condition of their release.

(3) Of the total number of defendants who appeared at an initial bail hearing, the percentage of such defendants who were released on monetary bail, and who completed the pretrial period without being arrested for a subsequent unrelated offense.

(4) Of the total number of defendants who were released on monetary bail, the percentage of such defendants who completed the pretrial period without having a bench warrant issued for a failure to appear.

(5) Of the total number of defendants participating in the pretrial services program, the percentage of such defendants who completed the pretrial period without being arrested for a subsequent unrelated offense.

(6) Of the total number of defendants participating in the pretrial services program, the percentage of such defendants who completed the pretrial period without having a bench warrant issued for a failure to appear. Had this bill actually been intended to obtain information to help us better understand the various approaches to pretrial release, the Majority would have supported this amendment, which unfortunately was defeated by a vote of 9 Democrats to 11 Republicans.

We are also concerned that H.R. 2152 will unduly burden state and local governments. In particular, the bill would impose an unnecessarily punitive penalty of a 100% reduction in the funding received from the relevant DOJ program if the state or local government does not comply with the bill’s reporting requirement. Representative Cicilline offered an amendment that would have replaced this provision with one that would have reduced funding based on a pro rata share of the placement cost of each defendant not reported. This amendment was defeated by voice vote.

The bill could further burden state and local governments by creating redundancy in reporting requirements in states and localities

⁴ Letter from Faiz Shakir & Kanya Bennett, the American Civil Liberties Union, to Chairman Bob Goodlatte & Ranking Member Jerrold Nadler, H. Comm. on the Judiciary (Mar. 7, 2018).

that already have laws requiring the release of the information directed to be reported under the bill. Representative Pramila Jayapal (D-WA) offered an amendment to prevent states and localities from being forced to issue unnecessary and duplicative reports where they already have similar reporting requirements in effect. This commonsense amendment was defeated by voice vote.

Perhaps the bill's greatest shortcoming is that it fails to address the fundamental injustices that result from the money bail system. Instead of adopting this flawed bill, the Committee should be examining pretrial services and bail issues with the goal of reforming our Nation's bail system, not for the purpose of protecting the use of money bail. In fact, thoughtful legislation has already been introduced in this Congress, including H.R. 1437, the "No Money Bail Act," which would incentivize states to eliminate the payment of money as a condition of release in criminal cases within three years.⁵ The author of that bill, Representative Ted Lieu (D-CA), submitted a statement for the record, asking that the Committee work with him "to reform this inherently unfair and unjust system to ensure that no American is detained before pretrial solely because he or she cannot afford bail."⁶ In an effort to focus the Committee on legislation that would be more worthy of consideration, Ranking Member Jerrold Nadler offered an amendment based on H.R. 1437, which he withdrew after discussing its merits and calling for the Committee to work to eliminate money bail.

Incarcerating people because they cannot afford to pay bail is unjust. Money bail is unfair to the indigent, unproductive, and expensive for American taxpayers. Unfortunately, H.R. 2152 appears to be intended to perpetuate this practice. Because of our concerns about the operation and impact of this measure, and because the bill fails to reform the system of money bail used by many jurisdictions in this country, we oppose H.R. 2152 and must respectfully dissent.

MR. NADLER.
 MS. LOFGREN.
 MS. JACKSON LEE.
 MR. COHEN.
 MR. JOHNSON, JR.
 MR. DEUTCH.
 MR. GUTIÉRREZ.
 MS. BASS.
 MR. RICHMOND.
 MR. JEFFRIES.
 MR. CICILLINE.
 MR. LIEU.
 MS. JAYAPAL.
 MR. RASKIN.
 MS. DEMINGS.

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⁵H.R. 1437, 115th Cong. (2017).

⁶Rep. Ted Lieu, *Statement for the Record for House Judiciary Committee Markup of H.R. 2152* (Mar. 7, 2018).