

115TH CONGRESS
2D SESSION

S. 3271

To prohibit the use of payment of money as a condition of pretrial release
in Federal criminal cases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 25, 2018

Mr. SANDERS introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To prohibit the use of payment of money as a condition
of pretrial release in Federal criminal cases, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Money Bail Act”.

5 **SEC. 2. PROHIBITION OF MONEY BAIL IN FEDERAL CRIMI-**
6 **NAL CASES.**

7 Notwithstanding any provision of Federal law, no jus-
8 tice, judge, or other judicial official in any court created
9 by or under article III of the Constitution of the United

1 States may use payment of money as a condition of pre-
 2 trial release in any criminal case.

3 **SEC. 3. ALTERNATIVE BAIL SYSTEMS.**

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

7 **“PART NN—ALTERNATIVE PRETRIAL PROTOCOL**

8 **“SEC. 3041. GRANTS.**

9 “(a) GRANTS AUTHORIZED.—

10 “(1) ALTERNATIVES TO MONEY BAIL.—The As-
 11 sistant Attorney General may make grants to State
 12 and tribal court systems and eligible entities for de-
 13 veloping alternatives to the use of payment of money
 14 bail as a condition of pretrial release with respect to
 15 criminal cases.

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

22 “(b) USE OF FUNDS FOR ALTERNATIVES TO MONEY
 23 BAIL GRANTS.—

24 “(1) IN GENERAL.—Amounts received under a
 25 grant under subsection (a)(1) shall be used for de-

1 veloping expanded alternatives to preventive deten-
2 tion programs that perform more effective evidence-
3 based pretrial practices and result in annual statis-
4 tically significant decreases in the pretrial detention
5 populations of States and units of local government.

6 “(2) RIGHT TO COUNSEL.—An eligible entity
7 receiving a grant under subsection (a)(1) shall pro-
8 vide a defendant with counsel at the earlier of—

9 “(A) as soon as is feasible after custodial
10 restraint; or

11 “(B) the first appearance before a commit-
12 ting magistrate, judge, or other judicial officer.

13 “(3) LIMIT ON DETENTION.—An eligible entity
14 receiving a grant under subsection (a)(1), with re-
15 spect to a defendant—

16 “(A) may not use preventive detention if
17 an alternative measure is sufficient to ensure a
18 court appearance and public safety;

19 “(B) may not use an alternative measure
20 to preventive detention developed under para-
21 graph (1) if release of the defendant on unse-
22 cured bond or recognizance is sufficient to en-
23 sure a court appearance and public safety; and

1 “(C) may use preventive detention only if
2 a judicial officer determines, by clear and con-
3 vincing evidence, that detention is necessary.

4 “(4) PREVENTIVE DETENTION PROTOCOL.—An
5 eligible entity receiving a grant under subsection
6 (a)(1) shall—

7 “(A) grant a defendant the right to appeal
8 a preventive detention order within 48 hours of
9 the order; and

10 “(B) review the preventive detention order
11 on a monthly basis.

12 “(c) DATA REPORT.—Each entity receiving a grant
13 under subsection (a)(1) shall submit to the Assistant At-
14 torney General, for each fiscal year during which the enti-
15 ty expends amounts received under the grant, a data re-
16 port on the money bail program of the State or Indian
17 tribe, at such time and in such manner as the Assistant
18 Attorney General may reasonably require, which shall—

19 “(1) be broken down by the demographic vari-
20 ables of age group, sex, race and ethnicity, disability,
21 and income of the defendant;

22 “(2) include the percentage of defendants de-
23 tained in jail or prison who are released from jail or
24 prison prior to case disposition, broken down by de-

1 mographic variables of age group, sex, race and eth-
2 nicity, disability, income, and release condition;

3 “(3) provide the average time to release from
4 jail for defendants who are released pretrial, broken
5 down by demographic variables of age group, sex,
6 race and ethnicity, disability, income, and release
7 condition;

8 “(4) provide the percentage of defendants who
9 are detained for the entire duration of the pretrial
10 phase of their case, broken down by demographic
11 variables of age group, sex, race and ethnicity, dis-
12 ability, income, and reason for detention;

13 “(5) provide the average duration of the period
14 defendants who are not released are in custody in a
15 prison or jail before the disposition of their case,
16 broken down by demographic variables of age group,
17 sex, race and ethnicity, disability, income, and rea-
18 son for detention;

19 “(6) provide the percentage of defendants re-
20 leased from custody before trial who appeared at all
21 court appearances for which the court expected them
22 to appear during the pretrial phase of their case,
23 broken down by demographic variables of age group,
24 sex, race and ethnicity, disability, income, and re-
25 lease condition;

1 “(7) provide the percentage of defendants re-
 2 leased from custody before trial who were not ar-
 3 rested for or charged with a new crime during the
 4 pretrial phase of their case, broken down by demo-
 5 graphic variables of age group, sex, race and eth-
 6 nicity, disability, income, and release condition;

7 “(8) provide data on the access of defendants
 8 to counsel, including the number of counsel appoint-
 9 ments for indigent defendants and the outcomes of
 10 pretrial release decisions based on whether counsel
 11 was provided;

12 “(9) provide data on the case outcomes of de-
 13 fendants who were released on recognizance, placed
 14 in an alternative to detention program developed
 15 under subsection (b)(1), or placed in preventive de-
 16 tention; and

17 “(10) provide data on the cost per defendant of
 18 preventive detention and each form of alternative to
 19 detention developed under subsection (b)(1).

20 “(d) ALLOCATION OF FUNDS.—

21 “(1) IN GENERAL.—For fiscal year 2018, of the
 22 amounts appropriated to the Office, the Assistant
 23 Attorney General shall use such sums as are nec-
 24 essary to carry out this part.

1 “(2) **EQUITABLE DISTRIBUTION.**—The Assist-
 2 ant Attorney General shall ensure that grants
 3 awarded under this section are equitably distributed
 4 among the geographical regions and between urban
 5 and rural populations, including Indian tribes, con-
 6 sistent with the objective of reducing recidivism
 7 among criminal offenders.

8 “(e) **CONTRACT AUTHORITY.**—Each entity receiving
 9 a grant under subsection (a)—

10 “(1) may contract with nongovernmental com-
 11 munity-based organizations to—

12 “(A) operate community-based supervision
 13 programs; and

14 “(B) develop evaluation metrics for car-
 15 rying out effective pretrial practices; and

16 “(2) may not use funds to contract with an en-
 17 tity offering for-profit pretrial services.”.

18 **SEC. 4. INELIGIBILITY FOR CERTAIN FUNDS.**

19 Section 505 of title I of the Omnibus Crime Control
 20 and Safe Streets Act of 1968 (34 U.S.C. 10156) is amend-
 21 ed—

22 (1) in subsection (a)—

23 (A) in paragraph (1), in the matter pre-
 24 ceding subparagraph (A), by striking “in para-

1 graph (2)” and inserting “in paragraphs (2)
2 and (3)”;

3 (B) by adding at the end the following:

4 “(3) ELIGIBILITY.—Beginning with the third
5 fiscal year beginning after the date of enactment of
6 the No Money Bail Act, the Attorney General may
7 not allocate any amounts appropriated to carry out
8 this subpart to any State that uses payment as a
9 condition of pretrial release with respect to a criminal
10 case.”;

11 (2) in subsection (f)—

12 (A) by striking “If the Attorney General”
13 and inserting:

14 “(1) IN GENERAL.—If the Attorney General”;
15 and

16 (B) by adding at the end the following:

17 “(2) STATE INELIGIBLE DUE TO SYSTEM OF
18 BAIL.—Notwithstanding paragraph (1), if the Attorney
19 General determines, with respect to any grant
20 period, that a State is ineligible under subsection
21 (a)(3), the Attorney General shall reallocate any
22 amounts allocated to the State or that would have
23 been allocated to the State for such period—

24 “(A) among the other eligible States; and

1 “(B) in proportion to allocations among el-
2 igible States under subsection (a).”.

3 **SEC. 5. GAO ASSESSMENT.**

4 Not later than 3 years after the date of enactment
5 of this Act, the Comptroller General of the United States
6 shall conduct an assessment of pretrial systems used by
7 States in place of the use of payment of money bail as
8 a condition of pretrial release with respect to criminal
9 cases, which shall include an—

10 (1) an assessment of the effectiveness of the
11 pretrial systems;

12 (2) a measurement of any disparities on the
13 basis of any classification protected under Federal
14 nondiscrimination laws or the nondiscrimination
15 laws of the applicable State in the use of the pretrial
16 systems; and

17 (3) a measurement of any disparities on the
18 basis of socioeconomic status.

○