



September 10, 2020

## **Support the Smarter Pretrial Detention for Drug Charges Act, S. 4549**

On behalf of FreedomWorks' activist community, I urge you to contact your senators and ask them to cosponsor the Smarter Pretrial Detention for Drug Charges Act, S. 4549. Introduced by Sens. Mike Lee (R-Utah) and Dick Durbin (D-Ill.), the Smarter Pretrial Detention for Drug Charges Act removes the presumption of pretrial detention for individuals charged with nonviolent drug offenses.

Federal law, in 18 U.S.C. 3142, provides the presumption of pretrial release for individuals who do not pose a danger to any person and community and are not a flight risk. However, there are a handful of offenses for which there is an exclusion for this presumption of liberty while a case is pending. One of the offenses for which pretrial incarceration is statutorily encouraged is drug offenses. This has caused the number of individuals in pretrial detention to increase.

Excluding immigration offenses, individuals charged with drug offenses represented around 43 percent of those charged with federal crimes in FY 2019. Pretrial detention has a cost of \$73 per day, far greater than the \$7 daily cost of pretrial supervision. The average time in pretrial detention is 255 days, bringing the average cost of pretrial detention to \$18,615. Pretrial supervision would cost \$1,785 over the same period. There is no significant difference in failure to appear rates between those who were given the presumption of pretrial release and those who were not given that presumption.

The Smarter Pretrial Detention for Drug Charges Act would simply eliminate the presumption of pretrial detention for federal drug offenses currently in 18 U.S.C. 3142. This does not mean that an individual accused of a drug crime would automatically be granted pretrial release. Rather, a judge would be able to make a determination of whether an individual accused of a drug crime based on the same criteria individuals accused of most other federal crimes are considered; whether he or she is a flight risk and a danger to any person and his or her community.

This presumption has caused detention rates to rise over the years. A cheaper, more efficient alternative exists in the form of pretrial release when certain criteria are met and if the individual

accused of a drug crime abides by other requirements mandated by law. For these reasons, I urge you to contact your senators and ask them to cosponsor the Smarter Pretrial Detention for Drug Charges Act, S. 4549.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Brandon', with a stylized, flowing script.

Adam Brandon  
President, FreedomWorks