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Durbin, Lee, Coons Introduce Bipartisan Smarter Pretrial Detention For Drug Charges Act

WASHINGTON – U.S. Senators Dick Durbin (D-IL), Mike Lee (R-UT), and Chris Coons (D-DE), members of the Senate Judiciary Committee, today introduced the bipartisan *Smarter Pretrial Detention for Drug Charges Act of 2020*, a targeted bill that would eliminate the blanket presumption of pretrial detention for most federal drug charges. Pretrial detention rates in the federal system are at record high levels and on an upward trend across all demographic groups. This legislation would permit federal courts to make individualized determinations regarding whether pretrial detention is appropriate for each defendant charged with a nonviolent drug offense. Any defendant found to be a flight risk or a threat to public safety would be detained.

“The *First Step Act* was a critical move in the right direction to reform our criminal justice system, but there is much more work to be done. Defendants are presumed innocent until proven guilty, and far too many people are being detained pending trial without consideration of their individual circumstances. The *Smarter Pretrial Detention for Drug Charges Act* will help reduce federal pretrial detention, which is at record high levels,” Durbin said. **“I will fight to get this targeted, bipartisan legislation through the Senate with my colleagues, Senator Lee and Senator Coons.”**

“The Fifth Amendment protects the life, liberty, and property of all Americans from government interference without due process of law. This legislation seeks to better protect the right of all Americans against unjust imprisonment by changing the presumption for pretrial detention,” said Lee. **“This change to a presumption against pretrial detention will allow judges more discretion to consider each defendant’s individual and unique circumstances when deciding whether pretrial detention is appropriate and necessary.”**

“In our system of presumed innocence, a court should determine that pretrial detention is necessary based on individual circumstances, not blanket presumptions,” Coons said. **“This narrow, commonsense bill would protect public safety while helping to address a pretrial detention rate that is wasting resources, increasing racial disparities, and leading to longer sentences. I thank Sens. Durbin and Lee for their leadership on this critical issue.”**

The following organizations support the *Smarter Pretrial Detention for Drug Charges Act*: #cut50, a program of Dream Corps; ACLU; American Conservative Union; Americans for Prosperity; Americans for Tax Reform; Black Public Defender Association; Drug Policy Alliance; Due Process Institute; Fair Trials; FAMM; Federal Public and Community Defenders; FreedomWorks; Innocence Project; Justice Roundtable; Justice Action Network; National Association of Criminal Defense Lawyers; National Legal Aid and Defender Association; Prison Fellowship; R Street Institute; Right on Crime; The Sentencing Project; The Leadership Conference for Civil and Human Rights; and Tzedek Association.

The *Bail Reform Act of 1984* governs federal release and pretrial detention proceedings, and under its provisions, release is generally presumed unless a judge finds risk of flight or potential danger to the community, which is the appropriate standard for defendants with the presumption of innocence. However, this release presumption is reversed for certain criminal charges, creating a presumption of detention without regard to the circumstances and background of the accused.

One of these “presumption” charges is any drug offense that is punishable by 10 years or more (the vast majority of federal drug offenses). This presumption, a relic of an antiquated and failed approach to combatting the last drug epidemic, treats nonviolent drug offenses like terrorism, hijacking, and other serious violent crimes. According to the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts, this presumption has “become an almost de facto detention order for almost half of all federal cases.”

As a result of the presumption, defendants charged with drug offenses are detained in two-thirds of cases. Pretrial supervision only costs \$7 per day, compared to \$73 per day for pretrial detention, per detainee. In 2016, the average period of detention for a pretrial defendant reached 255 days, costing an average of \$18,615 per defendant. In contrast, one day of pretrial supervision costs an average of \$7 per day, for an average cost of \$1,785 per defendant across the same 255 days.

