

The Smarter Pretrial Detention for Drug Charges Act of 2023

Pretrial detention rates in the federal system are increasing across all demographic groups. The Smarter Pretrial Detention for Drug Charges Act of 2023 is a targeted bill that would eliminate the blanket presumption of pretrial detention for most federal drug charges. This would permit federal courts to make individualized determinations regarding whether pretrial detention is appropriate for each individual charged with a nonviolent drug offense. Any person found to be a flight risk or a threat to public safety would be detained.

Under the Bail Reform Act of 1984, which governs federal pretrial detention, the release of defendants is generally presumed unless a judge finds risk of flight or potential danger to the community. This is the appropriate standard for defendants due to 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 for 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.”

A 2017 Probation and Pretrial Services Office study found that this drug presumption does not correctly identify which defendants are higher risk. For example, it found no significant difference in rates of failures to appear between presumption and non-presumption cases, and presumption cases had fewer violent rearrests than non-presumption cases. The study concluded that the drug presumption has been an “unsuccessful attempt” to identify high-risk defendants based primarily on the charge and “has contributed to a massive increase in the federal pretrial detention rate, with all of the social and economic costs associated with high rates of incarceration.” Also, racial disparities in pretrial release rates are evident in drug cases, with white defendants more likely to receive pretrial release than Black defendants.

As a result of the presumption, defendants charged with drug offenses are detained in two-thirds of cases. Pretrial supervision only costs \$11 per day, compared to \$92 per day for pretrial detention, per detainee.

The Smarter Pretrial Detention for Drug Charges Act would address these concerns by eliminating the presumption of pretrial detention for drug offenses. This would allow courts to make an individualized determination regarding whether pretrial detention is appropriate for each defendant charged with a nonviolent drug offense. A defendant would be detained if the court found he or she was a flight risk or posed a threat to public safety.