



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Hon. Jerrold Nadler
United States House of Representatives
2132 Rayburn Office Building
Washington, D.C. 20510

Hon. Madeleine Dean
United States House of Representatives
120 Cannon Office Building
Washington, D.C. 20510

Hon. Jim Jordan
United States House of Representatives
2056 Rayburn Office Building
Washington, D.C. 20510

Hon. David J. Trone
United States House of Representatives
1110 Longworth Office Building
Washington, D.C. 20510

October 27, 2021

RE: Law Enforcement Leaders Support for the Smarter Pretrial Detention for Drug Charges Act of 2021, H.R. 5722

Dear Chairman Nadler, Vice Chair Dean, Ranking Member Jordan, and Representative Trone:

We write on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration to endorse **H.R. 5722, the Smarter Pretrial Detention for Drug Charges Act of 2021** (the “Smarter Pretrial Detention Act”). Our national coalition includes over 200 current and former law enforcement officials, across the political spectrum, dedicated to protecting public safety and reducing unnecessary incarceration.

The Smarter Pretrial Detention Act would amend the Bail Reform Act of 1984 by eliminating the presumption of pretrial detention for individuals charged with nonviolent drug offenses to allow courts to make individualized determinations of pretrial release or detention on a case-by-case basis.¹ Currently, the pretrial detention analysis for people charged with nonviolent drug offenses is similar to that used for those charged with terrorism, hijacking, and other violent crimes. In 2010, the rate of pretrial detention for individuals whose highest charge was a drug offense was 84 percent—similar to the detention rates for those charged with violent or weapons offenses, which were 87 and 86 percent, respectively.² In contrast, those charged with property or public order offenses were detained at rates of 41 and 50 percent, respectively.³

The notion that all individuals charged with drug offenses should be treated alike, and assumed to pose a serious risk of flight or danger to their community, is outdated and not supported by data. Notably, a 2017 study found no significant difference in the rates of failure to appear between presumption and non-presumption cases.⁴ Additionally, among those identified as low risk, there was no significant difference in the rate of violent rearrest between presumption and non-presumption cases.⁵ For individuals identified as moderate- and high-risk, the rate of rearrest for a violent crime was lower among individuals charged with a presumption case.⁶ These findings run counter to the assumption that people charged with drug offenses pose a flight risk or threat to their

communities. Yet the statutory presumption has become “an almost de facto detention order for almost half of all federal cases,”⁷ resulting in a rising pretrial detention rate that does not necessarily protect the community or facilitate the administration of justice.

Absent the presumption, the Bail Reform Act generally requires the release of people charged with federal crimes on the “least restrictive” conditions that will reasonably assure the person’s return to court and safety of the community.⁸ This is for good reason. Studies show that people who pose a low risk of committing new crimes while on pretrial release, but are detained pretrial for even as little as two to three days, are up to 40 percent more likely to commit new crimes than comparable people who are held for less than 24 hours.⁹

In addition, unnecessary jail time can cause severe harm to people’s lives, families, and communities.¹⁰ Just a few days in jail can cause people to lose their jobs, housing, and even custody of their children. These costs are disproportionately borne by communities of color, who are impacted by the federal criminal justice system at high rates, with Blacks and Latinos incarcerated federally at seven and nearly five times the rate of whites, respectively.¹¹

The Smarter Pretrial Detention Act would restore judicial discretion and is likely to reduce the number of individuals unnecessarily incarcerated pretrial for federal drug offenses. It also may offer the government savings. The daily cost of pretrial detention is approximately \$92, significantly greater than the \$11 needed for pretrial supervision.¹² Given that the average period of pretrial detention was approximately 255 days in 2016, reducing unnecessary pretrial incarceration and expanding community supervision could save scarce governmental resources.¹³

Eliminating the presumption of pretrial detention for those charged with federal drug crimes will reduce unnecessary pretrial incarceration and harm to families and communities. We urge the House Committee on the Judiciary to prioritize and pass the bipartisan Smarter Pretrial Detention Act out of committee and to continue to support the bill on the House floor.

Respectfully yours,



Ronal W. Serpas
Executive Director
Law Enforcement Leaders to
Reduce Crime & Incarceration
Retired Police Superintendent
New Orleans, Louisiana

¹ See 18 U.S.C. § 3142(e)(3).

² Thomas H. Cohen, *Pretrial Detention and Misconduct in Federal District Courts, 1995–2010*, Bureau of Justice Statistics, 2013, 3, tbl.1, <https://www.bjs.gov/content/pub/pdf/pdmfdc9510.pdf>.

³ *Ibid.*

⁴ Amaryllis Austin, “The Presumption for Detention Statute’s Relationship to Release Rates,” *Federal Probation Journal* 81, no. 2 (2017): 60, <https://www.uscourts.gov/federal-probation-journal/2017/09/presumption-detention-statutes-relationship-release-rates>.

⁵ *Ibid.*, 59.

⁶ *Ibid.*

⁷ *Ibid.*, 61.

⁸ Charles Doyle, *Bail: An Overview of Federal Criminal Law*, Congressional Research Service, July 31, 2017, <https://fas.org/sgp/crs/misc/R40221.pdf>.

⁹ *Pretrial Criminal Justice Research*, Laura and John Arnold Research Foundation, November 2013, 4, https://cjcc.doj.wi.gov/sites/default/files/subcommittee/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

¹⁰ “Why Are People in Jail Before Trial?,” Pretrial Justice Institute, last accessed October 21, 2020, <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>.

¹¹ William J. Sabol et al., *Trends in Correctional Control by Race and Sex*, National Council on Criminal Justice, December 2019, 3, <https://counciloncj.foleon.com/reports/trends-key-findings/overview/> (discussing racial disparities in the federally incarcerated population from 2001 to 2017). Although the Bureau of Prisons (BOP) does not specifically report the racial makeup of the pretrial detention population, approximately 14 percent of people incarcerated federally have not been convicted of a crime. Mark Motivans, *Federal Justice Statistics, 2015–2016*, Bureau of Justice Statistics, 2016, 2, tbl.1, <https://www.bjs.gov/content/pub/pdf/fjs1516.pdf>. See also Wendy Sawyer, “How race impacts who is detained pretrial,” Prison Policy Initiative, October 9, 2019, https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/ (discussing state-level data demonstrating people of color are disproportionately impacted by pretrial detention).

¹² John J. Fitzgerald to Chief Probation Officers and Chief Pretrial Services Officers, September 9, 2020, Administrative Office of the United States Courts, Costs of Community Supervision, Detention, and Imprisonment, on file with Law Enforcement Leaders to Reduce Crime & Incarceration.

¹³ Austin, *supra* note 4, 53.



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Hon. Lindsey Graham
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

Hon. Michael S. Lee
United States Senate
361A Russell Senate Office Building
Washington, D.C. 20510

Hon. Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Hon. Christopher A. Coons
United States Senate
218 Russell Senate Office Building
Washington, D.C. 20510

Hon. Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

November 12, 2020

RE: Law Enforcement Leaders Support for the Smarter Pretrial Detention for Drug Charges Act of 2020, S. 4549

Dear Chairman Graham, Ranking Member Feinstein, Senators Durbin, Lee, and Coons:

We write on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration in support of the Smarter Pretrial Detention for Drug Charges Act of 2020, S. 4549 (the “Smarter Pretrial Detention Act”). Our national coalition includes over 200 current and former law enforcement officials, across the political spectrum, dedicated to protecting public safety and reducing unnecessary incarceration.

The Smarter Pretrial Detention Act would amend the Bail Reform Act of 1984 by eliminating the presumption of pretrial detention for individuals charged with nonviolent drug offenses to allow courts to make individualized determinations of pretrial release or detention on a case-by-case basis.¹ Currently, the pretrial detention analysis for people charged with nonviolent drug offenses is similar to that used for those charged with terrorism, hijacking, and other violent crimes. In 2010, the rate of pretrial detention for individuals whose highest charge was a drug offense was 84 percent—similar to the detention rates for those charged with violent or weapons offenses, which were 87 and 86 percent, respectively.² In contrast, those charged with property or public order offenses were detained at rates of 41 and 50 percent, respectively.³

The notion that all individuals charged with drug offenses should be treated alike, and assumed to pose a serious risk of flight or danger to their community, is outdated and unsupported by data. Notably, a 2017 study found no significant difference in the rates of failure to appear between

presumption and non-presumption cases.⁴ Additionally, among those identified as low risk, there was no significant difference in the rate of violent rearrest between presumption and non-presumption cases.⁵ For individuals identified as moderate- and high-risk, the rate of rearrest for a violent crime was lower among individuals charged with a presumption case.⁶ These findings run counter to the assumption that people charged with drug offenses pose a flight risk or threat to their communities. Yet the statutory presumption has become “an almost de facto detention order for almost half of all federal cases,”⁷ resulting in a rising pretrial detention rate that does not necessarily protect the community or facilitate the administration of justice.

Absent the presumption, the Bail Reform Act generally requires the release of people charged with federal crimes on the “least restrictive” conditions that will reasonably assure the person’s return to court and safety of the community.⁸ This is for good reason. Studies show that people who pose a low risk of committing new crimes while on pretrial release, but are detained pretrial for even as little as two to three days, are up to 40 percent more likely to commit new crimes than comparable people who are held for less than 24 hours.⁹

In addition, unnecessary jail time can cause severe harm to people’s lives, families, and communities.¹⁰ Just a few days in jail can cause people to lose their jobs, housing, and even custody of their children. These costs are disproportionately borne by communities of color, who are impacted by the federal criminal justice system at high rates, with Blacks and Latinos incarcerated federally at seven and nearly five times the rate of whites, respectively.¹¹

The Smarter Pretrial Detention Act would restore judicial discretion and is likely to reduce the number of individuals unnecessarily incarcerated pretrial for federal drug offenses. It also may offer the government savings. The daily cost of pretrial detention is approximately \$92, significantly greater than the \$11 needed for pretrial supervision.¹² Given that the average period of pretrial detention was approximately 255 days in 2016, reducing unnecessary pretrial incarceration and expanding community supervision could save scarce governmental resources.¹³

Eliminating the presumption of pretrial detention for those charged with federal drug crimes will reduce unnecessary pretrial incarceration and harm to families and communities. We urge the Committee on the Judiciary to pass the bipartisan Smarter Pretrial Detention Act out of committee and to continue to support the bill on the Senate floor.

Respectfully yours,



Ronal W. Serpas
Executive Director
Law Enforcement Leaders to
Reduce Crime & Incarceration
Former Police Superintendent
New Orleans, Louisiana



Taryn A. Merkl
Senior Counsel
Law Enforcement Leaders to
Reduce Crime & Incarceration
Former Assistant U.S. Attorney
Eastern District of New York

Art Acevedo

Police Chief
Houston, Texas
President
Major Cities Chiefs Association

Hassan Aden

Federal Consent Decree Monitor
Cleveland, Ohio and Baltimore, Maryland
Former Executive Fellow
Police Foundation
Former Police Chief
Greenville, North Carolina

Cedric Alexander

Former Director of Public Safety
DeKalb County, Georgia
Former Police Chief
DeKalb County, Georgia
Former President
National Organization of Black Law Enforcement Executives

Eric Atkinson

Police Chief
Menomonie, Wisconsin

Todd Axtell

Police Chief
St. Paul, Minnesota

Jean Peters Baker

County Prosecutor
Jackson County, Missouri

Carmen Best

Former Police Chief
Seattle, Washington

William Bratton

Former Police Commissioner
New York, New York
Former Police Chief
Los Angeles, California
Former Police Commissioner
Boston, Massachusetts

Kristin M. Bronson

City Attorney
Denver, Colorado

Michael Brown

Police Chief
Alexandria, Virginia

Kenton Buckner

Police Chief
Syracuse, New York
Former Police Chief
Little Rock, Arkansas

Jim Bueermann

Former President
Police Foundation
Former Police Chief
Redlands, California

Chris Burbank

Former Police Chief
Salt Lake City, Utah

Kami N. Chavis

Former Assistant U.S. Attorney
District of Columbia

John Chisholm

District Attorney
Milwaukee County, Wisconsin

John Choi

County Attorney
Ramsey County, Minnesota

Jerry Clayton

Sheriff
Washtenaw County, Michigan

Steven Conrad

Former Police Chief
Louisville, Kentucky

Brendan Cox

Director of Policing Strategies
LEAD National Support Bureau
Former Police Chief
Albany, New York

Dwayne A. Crawford

Executive Director
National Organization of Black Law Enforcement Executives

Ronald Davis

Former Director
U.S. Department of Justice, Office of Community Oriented Policing Services (COPS)
Former Police Chief
East Palo Alto, California

Richard Deane, Jr.

Former President
National Association of Former United States Attorneys
Former U.S. Attorney
Northern District of Georgia

Allison DeFoor

Former Sheriff
Monroe County, Florida

John Diaz

Director, Department of Adult and Juvenile Detention
King County, Washington
Former Police Chief
Seattle, Washington

W. Thomas Dillard

Former U.S. Attorney
Eastern District of Tennessee

T.J. Donovan

Attorney General
Vermont
Former State's Attorney
Chittenden County, Vermont

Richard Doran

Former Attorney General
Florida

Edward Dowd, Jr.

Former President
National Association of Former United States Attorneys
Former U.S. Attorney
Eastern District of Missouri

Michael Dunbaugh

Former Police Chief
Santa Rosa, California

Mark Earley

Former Attorney General
Virginia
Former President and CEO
Prison Fellowship

Dean M. Esserman

Senior Counselor
Police Foundation
Former Police Chief
New Haven, Connecticut

Paul H. Fitzgerald

Sheriff
Story County, Iowa
Former President
National Sheriffs' Association

Neill Franklin

Executive Director
Law Enforcement Action Partnership
Former Police Commander
Baltimore, Maryland

Michael Freeman

County Attorney
Hennepin County, Minnesota

Doug Gansler

Former Attorney General
Maryland
Former State's Attorney
Montgomery County, Maryland

Sim Gill

District Attorney
Salt Lake County, Utah

Barry R. Grissom
Former U.S. Attorney
District of Kansas

Ron Hampton
Former Chair
National Black Police Association
Former Executive Director
National Black Police Association

Hal Hardin
Board of Directors Member
National Association of Former United States Attorneys
Former U.S. Attorney
Middle District of Tennessee

Brent D. Harris
City Prosecutor
Flagstaff, Arizona

Timothy Heaphy
Former U.S. Attorney
Western District of Virginia

William Holbrook
Police Chief
Columbia, South Carolina

Peter S. Holmes
City Attorney
Seattle, Washington

Walter C. Holton
Former U.S. Attorney
Middle District of North Carolina

John Hummel
District Attorney
Deschutes County, Oregon

Joseph Jaffe
Former District Attorney
Sullivan County, New York

James E. Johnson
Corporation Counsel
New York City, New York
Former Undersecretary for Enforcement
U.S. Department of the Treasury

Kevin Joyce
Sheriff
Cumberland County, Maine

Gil Kerlikowske
Former Commissioner
U.S. Customs and Border Protection
Former Director
Office of National Drug Control Policy
Former Police Chief
Seattle, Washington
Former Police Commissioner
Buffalo, New York

Peter J. Koutoujian
Sheriff
Middlesex County, Massachusetts
President
Major County Sheriffs of America
President
Massachusetts Sheriffs' Association

David LaBahn
President and CEO
Association of Prosecuting Attorneys

Chris Magnus
Police Chief
Tucson, Arizona

Sherry Matteucci
Former U.S. Attorney
District of Montana

Beth McCann
District Attorney
Denver, Colorado

Charles McClelland
Former Police Chief
Houston, Texas

Cameron McLay
Former Police Chief
Pittsburgh, Pennsylvania

William McManus
Police Chief
San Antonio, Texas

Risco Mention-Lewis
Deputy Police Commissioner
Suffolk County, New York

Joel Merry
Sheriff
Sagadahoc County, Maine
Former President
Maine Sheriffs Association

Stephanie Morales
Commonwealth's Attorney
Portsmouth, Virginia

Peter Newsham
Police Chief
Washington, District of Columbia

Steven O'Donnell
Former Superintendent
Rhode Island State Police
Former Commissioner
Rhode Island Department of Public Safety

Matthew D. Orwig
Former U.S. Attorney
Eastern District of Texas

Mark W. Osler
Former Assistant U.S. Attorney
Eastern District of Michigan

Kathleen O'Toole
Former Police Chief
Seattle, Washington
Former Police Commissioner
Boston, Massachusetts

Melba Pearson

Former President
National Black Prosecutors Association
Former Assistant State Attorney
Miami-Dade County, Florida

Andrew Peralta

Former President
National Latino Peace Officers Association

Brad Pigott

Former U.S. Attorney
Southern District of Mississippi

Richard J. Pocker

Former U.S. Attorney
District of Nevada

Bryan Porter

Commonwealth's Attorney
Alexandria City, Virginia

Karl Racine

Attorney General
Washington, District of Columbia

Rick Raemisch

Former Executive Director
Colorado Department of Corrections
Former Sheriff
Dane County, Wisconsin

Sue Rahr

Former Sheriff
King County, Washington
Former Director
Board of Directors, National Sheriffs' Association

Donald N. Raley

Former Police Chief
Artesia, New Mexico

Charles H. Ramsey

Former Police Commissioner
Philadelphia, Pennsylvania

Gary Raney
Former Sheriff
Ada County, Idaho

Jill Ravitch
District Attorney
Sonoma County, California

Troy Rawlings
County Attorney
Davis County, Utah

Jeffrey Rosen
District Attorney
Santa Clara County, California

Richard Rossman
Executive Director
National Association of Former United States Attorneys
Former U.S. Attorney
Eastern District of Michigan

Richard W. Stanek
Former President
Major County Sheriffs' Association
Former Sheriff
Hennepin County, Minnesota

Darrel Stephens
Former Executive Director
Major Cities Chiefs Association
Former Police Chief

Donald Stern
Former President
National Association of Former United States Attorneys
Former U.S. Attorney
District of Massachusetts

Robert Stutman
Former Special Agent in Charge
U.S. Drug Enforcement Administration, New York Field Division

Gregory A. Thomas

Senior Executive

Law Enforcement Operations, Office of the District Attorney

Kings County, New York

Former President

National Organization of Black Law Enforcement Executives

Brett Tolman

Former U.S. Attorney

District of Utah

Cyrus R. Vance, Jr.

District Attorney

New York County, New York

Joyce Vance

Former U.S. Attorney

Northern District of Alabama

John E. Wetzel

Secretary of Corrections

Department of Corrections, Pennsylvania

Thomas B. Wine

Commonwealth's Attorney

Jefferson County, Kentucky

¹ See 18 U.S.C. § 3142(e)(3).

² Thomas H. Cohen, *Pretrial Detention and Misconduct in Federal District Courts, 1995–2010*, Bureau of Justice Statistics, 2013, 3, tbl.1, <https://www.bjs.gov/content/pub/pdf/pdmfcd9510.pdf>.

³ Ibid.

⁴ Amaryllis Austin, “The Presumption for Detention Statute’s Relationship to Release Rates,” *Federal Probation Journal* 81, no. 2 (2017): 60, <https://www.uscourts.gov/federal-probation-journal/2017/09/presumption-detention-statutes-relationship-release-rates>.

⁵ Ibid, 59.

⁶ Ibid.

⁷ Ibid, 61.

⁸ Charles Doyle, *Bail: An Overview of Federal Criminal Law*, Congressional Research Service, July 31, 2017, <https://fas.org/sgp/crs/misc/R40221.pdf>.

⁹ *Pretrial Criminal Justice Research*, Laura and John Arnold Research Foundation, November 2013, 4, https://cjcc.doi.wi.gov/sites/default/files/subcommittee/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

¹⁰ “Why Are People in Jail Before Trial?,” Pretrial Justice Institute, last accessed October 21, 2020, <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>.

¹¹ William J. Sabol et al., *Trends in Correctional Control by Race and Sex*, National Council on Criminal Justice, December 2019, 3, <https://counciloncj.foleon.com/reports/trends-key-findings/overview/> (discussing racial disparities in the federally incarcerated population from 2001 to 2017). Although the Bureau of Prisons (BOP) does not specifically report

the racial makeup of the pretrial detention population, approximately 14 percent of people incarcerated federally have not been convicted of a crime. Mark Motivans, *Federal Justice Statistics, 2015–2016*, Bureau of Justice Statistics, 2016, 2, tbl.1, <https://www.bjs.gov/content/pub/pdf/fjs1516.pdf>. See also Wendy Sawyer, “How race impacts who is detained pretrial,” Prison Policy Initiative, October 9, 2019, https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/ (discussing state-level data demonstrating people of color are disproportionately impacted by pretrial detention).

¹² John J. Fitzgerald to Chief Probation Officers and Chief Pretrial Services Officers, September 9, 2020, Administrative Office of the United States Courts, Costs of Community Supervision, Detention, and Imprisonment, on file with Law Enforcement Leaders to Reduce Crime & Incarceration.

¹³ Austin, *supra* note 4, 53.