

Pending Federal Legislation Encourages Jurisdictions to Eliminate Money Bail

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Important and unprecedented legislation was introduced last week that represents a watershed moment in pretrial justice. The No More Money Bail Act of 2016, sponsored by Congressman Ted W. Lieu of California, portrays a growing awareness at the federal level of the inherent flaws in criminal justice systems that rely on money bail as a condition of pretrial release. Congressman Lieu's bill echoes the sentiment of a Statement of Interest (<https://www.justice.gov/opa/pr/department-justice-files-statement-interest-clanton-alabama-bond-case>) filed by the Department of Justice (DOJ) in 2015 calling the use of money bail unconstitutional and bad public policy.

The bill specifies two conditions. First, it would prohibit the use of money bail in the federal pretrial justice system. This would be a welcome move: a benefit to accused individuals, families, communities and victims. While the federal system already developed and validated a pretrial risk assessment instrument and has options for supervised release pending trial, there is great variation across federal districts in its application. The "No More Money Bail Act" will increase the use of legal and evidence-based pretrial practices in federal courts across the nation and ensure equal protection under the law.

The second condition of the No More Money Bail Act encourages jurisdictions who receive Edward Byrne Memorial Justice Assistance Grants (ByrneJAG) funding to replace their existing money bail systems with ones that are fairer, safer and more effective.

A BILL

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

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

3 **SECTION 1. SHORT TITLE,**

4 This act may be noted as the "No Money Bail Act
5 of 2016".

6 **SEC. 2 FINDINGS,**

7 Congress finds the following:

8 (1) Nearly 60 percent of the inmates in jails in
9 the United States are pretrial detainees who have

This Byrne JAG stipulation would have far-reaching implications. In 2014, the Department of Justice awarded nearly \$280 million to states and local territories in Byrne JAG funding. This money is applied to a "range of program areas including law enforcement, prosecution and court, prevention and education, corrections and community corrections, drug treatment and enforcement, planning, evaluation, and technology improvement, and crime victim and witness initiatives.

(https://www.bja.gov/Publications/JAG_Fact_Sheet.pdf)"

States and localities rely heavily on Byrne JAG funding and the grants support important and necessary programs. However, the DOJ places conditions on funding that require compliance with certain aspects of the law. For example, currently, Byrne JAG recipients may have their awards reduced by ten percent if they fail to implement the Sex Offender Registration and Notification Act (SORNA), or by five percent if they cannot certify compliance with the Prison Rape Elimination Act (PREA).

The No More Money Bail Act of 2016 has tremendous potential to improve pretrial justice, both federally and locally. As with any legislation though, it is only effective if it passes, becomes law, is implemented, and monitored for compliance. We will have to wait and see on that outcome. For now, it is another sign that bail reform has stepped onto the national stage and that requiring money bail for the pretrial release of unconvicted individuals is ineffective, unfair, and unlawful-and a practice whose days are numbered.

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Glossary of Terms and Phrases Relating to Bail and the Pretrial Release or Detention Decision

([http://www.pretrial.org/download/pjireports/Glossary%20of%20Terms%20Uuly%202015\).pdf](http://www.pretrial.org/download/pjireports/Glossary%20of%20Terms%20Uuly%202015).pdf))

Pretrial Criminal Justice Research Brief – LJAF 20132013

<http://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf>

Money as a Criminal Justice Stakeholder: The Judge's Decision to Release or Detain a Defendant Pretrial – NIC 2014

<http://www.pretrial.org/download/research/Money%20as%20a%20Criminal%20Justice%20Stakeholder.pdf>

Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform - NIC 2014

<http://www.pretrial.org/download/research/Fundamentals%20of%20Bail%20-%20NIC%202014.pdf>

Unsecured Bonds: The As Effective And Most Efficient Pretrial Release Option

<http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20option%20%20Jones%202013.pdf>

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