



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 23, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on S.2495, the "Bail Bond Fairness Act of 2007." The Justice Department opposes this bill.

Under the current Federal pretrial services system and the bail options available under current law, courts have the means to allow defendants to remain in the community, to manage them, and to compel them to remain law abiding. Pretrial services officers enforce court ordered conditions of release and monitor defendants in the community; they ensure public safety and manage the risk posed by released defendants. This bill would undermine these efforts and pose new risks to the community. More specifically, S.2495 would eliminate the power of Federal courts to forfeit bail, including a bail bond, where a defendant failed to satisfy a condition of release, other than by failing to appear before the court. This change would seriously limit the ability of Federal courts to enforce important conditions of pretrial release. As a result, the bill would unnecessarily endanger public safety or increase the use of pretrial detention of defendants and thereby costs to the Federal government, or both.

Section 3142 of title 18 of the United State Code addresses the conditional pretrial release of defendants in the Federal criminal justice system. If a court determines that unsecured release will not reasonably assure a defendant's appearance or will endanger the safety of anyone in the community, the court is authorized to set conditions for release. These conditions can include: the posting of bail or a bail bond; restrictions on possession of weapons; use of alcohol or drugs; contact with victims or witnesses to the crime; or the keeping of a curfew. If these conditions are not met, the court can order the defendant detained and also can revoke and forfeit any bail or bail bond executed in the case. Rule 46 of the Federal Rules of Criminal Procedure sets out the procedures relating to the forfeiture of bail or bail bonds and to the setting aside or remission of any forfeiture.

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We believe that placing the assets of the defendant or those of a friend or relative of the defendant at risk should the defendant violate a condition of release significantly increases the probability that the defendant will comply with such conditions. By eliminating that risk, enactment of S.2495 would have two possible consequences. Either it would increase the risk of harm to the community - by increasing the risk that a released defendant would violate one or more conditions of release tied to public safety - or it would cause courts to refuse to release defendants who might otherwise be candidates for release (out of a reluctance to expose the court and innocent members of the public to the greater risk that the defendant would violate a significant condition of release). For example, good public policy dictates that a defendant charged with a crime of violence, if not detained, be released pending trial with every possible incentive not to possess a weapon and to stay away from the victim and witnesses of the charged crime. Under current law, a court can order the defendant's bail summarily forfeited if the defendant breaches either of these critical conditions of release. Imposing such conditions is appropriate because it fosters both public safety and appropriate use of pretrial detention. If S.2495 were enacted into law, the court would be powerless to forfeit any bail, regardless of the seriousness of the defendant's breach of a non-appearance condition of release.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's views, there is no objection to submission of this report.

Sincerely,



Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Minority Member