

116TH CONGRESS
2D SESSION

S. 3579

To require the release of certain individuals in the custody of the United States because of their risk of exposure during a national emergency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2020

Mr. BOOKER (for himself and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the release of certain individuals in the custody of the United States because of their risk of exposure during a national emergency, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Emergency Commu-
5 nity Supervision Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) As of the date of introduction of this Act,
2 the novel coronavirus has spread to all 50 States,
3 the District of Columbia, and 3 territories.

4 (2) The Centers for Disease Control and Pre-
5 vention have projected that between 160,000,000
6 and 214,000,000 people could be infected by the
7 novel coronavirus in the United States over the
8 course of the pandemic.

9 (3) Although the United States has less than 5
10 percent of the world's population, the United States
11 holds approximately 21 percent of the world's pris-
12 oners and leads the world in the number of individ-
13 uals incarcerated, with nearly 2,200,000 people in-
14 carcerated in State and Federal prisons and local
15 jails.

16 (4) Studies have shown that individuals age out
17 of crime starting around 25 years of age, and re-
18 leased individuals over the age of 50 have a very low
19 recidivism rate.

20 (5) According to public health experts, incarcer-
21 ated individuals are particularly vulnerable to being
22 gravely impacted by the novel corona virus pandemic
23 because—

24 (A) they have higher rates of underlying
25 health issues than members of the general pub-

1 lic, including higher rates of respiratory disease,
2 heart disease, diabetes, obesity, HIV/AIDS,
3 substance abuse, hepatitis, and other conditions
4 that suppress immune response; and

5 (B) the close conditions and lack of access
6 to hygiene products in prisons make these insti-
7 tutions unusually susceptible to viral
8 pandemics.

9 (6) The spread of communicable viral disease in
10 the United States generally constitutes a serious,
11 heightened threat to the safety of incarcerated indi-
12 viduals, and there is a serious threat to the general
13 public that prisons may become incubators of com-
14 munity spread of communicable viral disease.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) COVERED HEALTH CONDITION.—The term
18 “covered health condition” with respect to an indi-
19 vidual, means the individual—

20 (A) is pregnant;

21 (B) has chronic lung disease or asthma;

22 (C) has congestive heart failure or coro-
23 nary artery disease;

24 (D) has diabetes;

1 (E) has a neurological condition that weak-
2 ens the ability to cough;

3 (F) has HIV;

4 (G) has sickle cell anemia;

5 (H) has cancer; or

6 (I) has a weakened immune system.

7 (2) COVERED INDIVIDUAL.—The term “covered
8 individual” means an individual who—

9 (A) is 50 years of age or older;

10 (B) has a covered health condition; or

11 (C) is within 12 months of release from in-
12 carceration.

13 (3) NATIONAL EMERGENCY RELATING TO A
14 COMMUNICABLE DISEASE.—The term “national
15 emergency relating to a communicable disease”
16 means—

17 (A) an emergency involving Federal pri-
18 mary responsibility determined to exist by the
19 President under section 501(b) of the Robert T.
20 Stafford Disaster Relief and Emergency Assist-
21 ance Act (42 U.S.C. 5191(b)) with respect to a
22 communicable disease; or

23 (B) a national emergency declared by the
24 President under the National Emergencies Act

1 (50 U.S.C. 1601 et seq.) with respect to a com-
2 municable disease.

3 **SEC. 4. PLACEMENT OF CERTAIN INDIVIDUALS IN COMMU-**
4 **NITY SUPERVISION.**

5 (a) **AUTHORITY.**—Except as provided in subsection
6 (b), beginning on the date on which a national emergency
7 relating to a communicable disease is declared and ending
8 on the date that is 60 days after such national emergency
9 expires—

10 (1) the Director of the Bureau of Prisons shall
11 place in community supervision all covered individ-
12 uals who are in the custody of the Bureau of Pris-
13 ons; and

14 (2) the Director of the United States Marshals
15 Service shall place in community supervision all cov-
16 ered individuals who are in the custody of the
17 United States Marshals Service.

18 (b) **EXCEPTION.**—In carrying out subsection (a),
19 each Director—

20 (1) may not place in community supervision any
21 individual determined, by clear and convincing evi-
22 dence, to be likely to pose a specific and substantial
23 risk of causing bodily injury or using violent force
24 against the person of another;

1 (2) shall place in the file of each individual de-
2 scribed in paragraph (1) documentation of such de-
3 termination, including the evidence used to make the
4 determination; and

5 (3) not later than 180 days after the date on
6 which the national emergency relating to a commu-
7 nicable disease expires, shall provide a report to
8 Congress documenting—

9 (A) the demographic data (including race,
10 gender, age, offense of conviction, and criminal
11 history level) of the individuals denied place-
12 ment in community supervision under para-
13 graph (1); and

14 (B) the justification for the denials de-
15 scribed in subparagraph (A).

16 (c) LIMITATION ON COMMUNITY SUPERVISION
17 PLACEMENT.—In placing covered individuals into commu-
18 nity supervision under this section, the Director of the Bu-
19 reau of Prisons and the Director of the United States
20 Marshals Service shall take into account and prioritize
21 placements that enable adequate social distancing, which
22 include home confinement or other forms of low in-person-
23 contact supervised release.

1 **SEC. 5. LIMITATION ON PRE-TRIAL DETENTION.**

2 Notwithstanding section 3142 of title 18, United
3 States Code, beginning on the date on which a national
4 emergency relating to a communicable disease is declared
5 and ending on the date that is 60 days after such national
6 emergency expires, the Government may not seek to de-
7 tain, and a judicial officer (as defined in section 3156 of
8 title 18, United States Code) may not order the detain-
9 ment of, any individual, unless the Government shows by
10 clear and convincing evidence that the individual is likely
11 to pose a flight risk or specific and substantial risk of
12 causing bodily injury or using violent force against the
13 person of another.

14 **SEC. 6. LIMITATION ON SUPERVISED RELEASE.**

15 Beginning on the date on which a national emergency
16 relating to a communicable disease is declared and ending
17 on the date that is 60 days after such national emergency
18 expires, the Office of Probation and Pretrial Services of
19 the Administrative Office of the United States Courts
20 shall take measures to prevent the spread of the commu-
21 nicable viral disease among individuals under supervision
22 by—

23 (1) suspending the requirement that individuals
24 determined to be a lower risk of reoffending report
25 in person to their probation or parole officer;

1 (2) identifying individuals who have successfully
2 completed not less than 18 months of supervision
3 and transferring such individuals to administrative
4 supervision or terminating supervision, as appro-
5 priate; and

6 (3) suspending the use of incarceration as a
7 sanction for violations of probation or parole that do
8 not constitute a new felony offense.

9 **SEC. 7. PROHIBITION.**

10 No individual who is granted placement in community
11 supervision, termination of supervision, placement on ad-
12 ministrative supervision, or pre-trial release shall be re-
13 incarcerated, placed on supervision or active supervision,
14 or ordered detained pre-trial only as a result of the expira-
15 tion of the national emergency relating to a communicable
16 disease.

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