

116TH CONGRESS
2D SESSION

S. 3646

To require the transfer or 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

MAY 7, 2020

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

A BILL

To require the transfer or 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”—

9 (A) means an individual who—

10 (i) is a juvenile (as defined in section
11 5031 of title 18, United States Code);

12 (ii) is 50 years of age or older;

13 (iii) has a covered health condition; or

14 (iv) is within 12 months of release
15 from incarceration; and

16 (B) includes an individual described in
17 subparagraph (A) who is serving a term of im-
18 prisonment for an offense committed before No-
19 vember 1, 1987.

20 (3) NATIONAL EMERGENCY RELATION TO A
21 COMMUNICABLE DISEASE.—The term “national
22 emergency relating to a communicable disease”
23 means—

24 (A) an emergency involving Federal pri-
25 mary responsibility determined to exist by the

1 President under section 501(b) of the Robert T.
2 Stafford Disaster Relief and Emergency Assist-
3 ance Act (42 U.S.C. 5191(b)) with respect to a
4 communicable disease; or

5 (B) a national emergency declared by the
6 President under the National Emergencies Act
7 (50 U.S.C. 1601 et seq.) with respect to a com-
8 municable disease.

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

11 (a) **AUTHORITY.**—Except as provided in subsection
12 (b), beginning on the date on which a national emergency
13 relating to a communicable disease is declared and ending
14 on the date that is 60 days after such national emergency
15 expires—

16 (1) notwithstanding any other provision of law,
17 the Director of the Bureau of Prisons shall place in
18 community supervision all covered individuals who
19 are in the custody of the Bureau of Prisons; and

20 (2) the district court of the United States for
21 each judicial district shall place in community super-
22 vision all covered individuals who are in the custody
23 and care of the United States Marshals Service.

24 (b) **EXCEPTIONS.**—

1 (1) BUREAU OF PRISONS.—In carrying out sub-
2 section (a)(1), the Director—

3 (A) may not place in community super-
4 vision any individual determined, by clear and
5 convincing evidence, to be likely to pose a spe-
6 cific and substantial risk of causing bodily in-
7 jury or using violent force against the person of
8 another;

9 (B) shall place in the file of each individual
10 described in subparagraph (A) documentation
11 of such determination, including the evidence
12 used to make the determination; and

13 (C) not later than 180 days after the date
14 on which the national emergency relating to a
15 communicable disease expires, shall provide a
16 report to Congress documenting—

17 (i) the demographic data (including
18 race, gender, age, offense of conviction,
19 and criminal history level) of the individ-
20 uals denied placement in community super-
21 vision under subparagraph (A); and

22 (ii) the justification for the denials de-
23 scribed in clause (i).

1 (2) DISTRICT COURTS.—In carrying out sub-
2 section (a)(2), each district court of the United
3 States—

4 (A) shall conduct an immediate and expedited review of the detention orders of all covered individuals in the custody and care of the United States Marshals Service, which may be conducted sua sponte and ex parte, without—

9 (i) appearance by the defendant or
10 any party; or

11 (ii) requiring a petition, motion, or
12 other similar document to be filed;

13 (B) may not place in community supervision any individual the court determines, after a hearing and by clear and convincing evidence, to be likely to pose a specific and substantial risk of causing bodily injury or using violent force against the person of another; and

19 (C) in carrying out subparagraphs (A) and
20 (B), may—

21 (i) rely on evidence presented in prior
22 court proceedings; and

23 (ii) if the court determines it necessary, request additional information from
24 the parties to make the determination.
25

1 (c) LIMITATION ON COMMUNITY SUPERVISION
2 PLACEMENT.—In placing covered individuals into commu-
3 nity supervision under this section, the Director of the Bu-
4 reau of Prisons and the district court of the United States
5 for each judicial district shall take into account and
6 prioritize placements that enable adequate social
7 distancing, which include home confinement or other
8 forms of low in-person-contact supervised release.

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

10 Notwithstanding section 3142 of title 18, United
11 States Code, beginning on the date on which a national
12 emergency relating to a communicable disease is declared
13 and ending on the date that is 60 days after such national
14 emergency expires, the Government may not seek to de-
15 tain, and a judicial officer (as defined in section 3156 of
16 title 18, United States Code) may not order the detention
17 of, any individual, unless the Government shows by clear
18 and convincing evidence that—

19 (1) releasing the individual will create a high
20 risk of willful non-appearance in court; or

21 (2) the individual poses a specific and substan-
22 tial risk of causing bodily injury or using violent
23 force against the person of another.

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

2 Beginning on the date on which a national emergency
3 relating to a communicable disease is declared and ending
4 on the date that is 60 days after such national emergency
5 expires, the Office of Probation and Pretrial Services of
6 the Administrative Office of the United States Courts
7 shall take measures to prevent the spread of the commu-
8 nicable viral disease among individuals under supervision
9 by—

10 (1) suspending the requirement that individuals
11 determined to be a lower risk of reoffending, or any
12 other individuals determined to be appropriate by
13 the supervising probation officer, report in person to
14 their probation or parole officer;

15 (2) identifying individuals who have successfully
16 completed not less than 18 months of supervision
17 and transferring such individuals to administrative
18 supervision or petitioning the court to terminate su-
19 pervision, as appropriate; and

20 (3) suspending the request for detention and
21 imprisonment as a sanction for violations of proba-
22 tion, supervised release, or parole.

23 **SEC. 7. PROHIBITION.**

24 No individual who is granted placement in community
25 supervision, termination of supervision, placement on ad-
26 ministrative supervision, or pre-trial release shall be re-

1 incarcerated, placed on supervision or active supervision,
2 or ordered detained pre-trial only as a result of the expira-
3 tion of the national emergency relating to a communicable
4 disease.

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