

116TH CONGRESS
2D SESSION

S. 3698

To expand compassionate release authority and elderly home confinement access for offenders with heightened coronavirus risk.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2020

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

A BILL

To expand compassionate release authority and elderly home confinement access for offenders with heightened coronavirus risk.

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 Grants of
5 Release And Compassion Effectively Act of 2020” or the
6 “Emergency GRACE Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) DIRECTOR.—The term “Director” means
2 the Director of the Bureau of Prisons.

3 (2) PUBLIC HEALTH EMERGENCY.—The term
4 “public health emergency”—

5 (A) means a public health emergency de-
6 clared by the Secretary of Health and Human
7 Services under section 319 of the Public Health
8 Service Act (42 U.S.C. 247d); and

9 (B) includes—

10 (i) a public health emergency declared
11 by the Governor of a State or territory in
12 which a Bureau of Prisons facility is lo-
13 cated; and

14 (ii) the public health emergency de-
15 clared on January 31, 2020, in response to
16 COVID–19.

17 **SEC. 3. EXPEDITED COMPASSIONATE RELEASE.**

18 (a) AUTHORITY.—For purposes of a motion filed
19 under section 3582(c)(1) of title 18, United States Code,
20 during any period for which a public health emergency is
21 in effect, the requirement to exhaust all administrative
22 rights and the 30-day waiting period described in section
23 3582(c)(1) of title 18, United States Code, shall not apply.

24 (b) IDENTIFYING COMPASSIONATE RELEASE
25 CASES.—The Director shall—

1 (1) identify defendants who are at a higher risk
2 of death, as defined by the Centers for Disease Con-
3 trol and Prevention, from the disease or illness for
4 which the public health emergency was declared, in-
5 cluding—

6 (A) defendants over the age of 60;

7 (B) defendants with a terminal illness, as
8 defined in section 3582(d)(1) of title 18, United
9 States Code; and

10 (C) defendants with autoimmune disorders
11 or serious medical conditions, including heart
12 disease, diabetes, HIV, chronic or acute res-
13 piratory disease, or cancer;

14 (2) upon a written request by a defendant for
15 the medical records of the defendant, or in the case
16 of the defendant's attorney, a request for the med-
17 ical records of the defendant that declares under the
18 penalty of perjury that the records are being sought
19 in connection with a motion under subsection (a),
20 promptly release all medical records from the year
21 preceding the request to the parties specified in the
22 request, including the court, the defendant, and any
23 individual acting on the defendant's behalf;

1 (3) ensure that there are adequate numbers of
2 Bureau of Prison employees to carry out paragraph
3 (1); and

4 (4) provide guidance to Bureau of Prison em-
5 ployees consistent with public health and safety rec-
6 ommendations to prevent the spread of the disease
7 or illness for which the public health emergency was
8 declared.

9 (c) PRESUMPTION.—In a motion filed under sub-
10 section (a) there shall be a presumption of sentence reduc-
11 tion for a defendant at a higher risk of death from the
12 disease or illness for which the public health emergency
13 was declared, including a defendant with autoimmune dis-
14 orders or serious medical conditions, including heart dis-
15 ease, diabetes, HIV, chronic or acute respiratory disease,
16 or cancer.

17 (d) LEGAL REPRESENTATION.—The court may ap-
18 point a Federal public defender or community defender,
19 or other counsel qualified to be appointed under section
20 3006A of title 18, United States Code, to assist a defend-
21 ant seeking relief under this section.

22 (e) CONFORMING AMENDMENTS TO SECTION 3582
23 OF TITLE 18, UNITED STATES CODE.—Section
24 3582(c)(1) of title 18, United States Code, is amended—

1 (1) in the matter preceding subparagraph (A),
2 by inserting “, including a case involving an offense
3 committed on or before November 1, 1987” after
4 “case”; and

5 (2) in subparagraph (A)(ii), by striking “70
6 years of age” and inserting “60 years of age”.

7 **SEC. 4. TEMPORARY RELEASE FROM FEDERAL CUSTODY**
8 **DURING A PUBLIC HEALTH EMERGENCY.**

9 (a) **TEMPORARY RELEASE FROM CUSTODY OF THE**
10 **UNITED STATES MARSHALS.**—During a public health
11 emergency, a court may order that an individual in the
12 custody of United States Marshals Service, or another
13 Federal agency, be transferred to home confinement to the
14 extent that the court determines such release to be nec-
15 essary for the health and safety of the individual or the
16 detention facility in which the individual would be placed.

17 (b) **TEMPORARY FURLOUGH OR TRANSFER.**—

18 (1) **IN GENERAL.**—During a public health
19 emergency, a court may order that an individual in
20 the custody of the Federal Bureau of Prisons be fur-
21 loughed or transferred to home confinement to the
22 extent that the court determines such furlough or
23 transfer to be necessary for the health and safety of
24 the individual or the correctional facility in which
25 the individual is held.

1 (2) **FACTORS TO BE CONSIDERED.**—In carrying
 2 out paragraph (1), the court may consider factors
 3 such as—

4 (3) The court may consider factors such as—

5 (A) whether an individual filed a motion
 6 for a reduction of sentence under section 3(a);

7 (B) the risk to the health and safety of the
 8 facility in which the individual is held, including
 9 an outbreak of a highly contagious virus or dis-
 10 ease; and

11 (C) the safety of the community in which
 12 a person will be released.

13 **SEC. 5. ALLOWING FOR MEDICAL ASSISTANCE UNDER MED-**
 14 **ICAID FOR INMATES DURING 30-DAY PERIOD**
 15 **PRECEDING RELEASE.**

16 The subdivision (A) following paragraph (30) of sec-
 17 tion 1905(a) of the Social Security Act (42 U.S.C.
 18 1396d(a)) is amended by inserting “and except during the
 19 30-day period preceding the date of release of such indi-
 20 vidual from such public institution” after “medical institu-
 21 tion”.

22 **SEC. 6. STOPPING THE SPREAD OF CORONAVIRUS IN FED-**
 23 **ERAL PRISONS.**

24 (a) **REQUIRED ACTION TO STOP THE SPREAD OF**
 25 **CORONAVIRUS.**—The Director shall require that all Bu-

1 reau of Prisons facilities, including all contract facilities,
2 follow the Centers for Disease Control recommended pro-
3 cedures for limiting the spread of the coronavirus, includ-
4 ing robust and ongoing testing, providing adequate soap,
5 medical care, comprehensive sanitation and cleaning of fa-
6 cilities, personal protective equipment, and other safety
7 measures provided free of charge to—

8 (1) individuals who are incarcerated or detained
9 in a Bureau of Prisons facility, including all contract
10 facilities; and

11 (2) individuals who work or volunteer in a Bu-
12 reau of Prisons facility, including all contract facili-
13 ties.

14 (b) PLANS AND PROCEDURES.—Not later than 7
15 days after the date of enactment of this Act, the Director
16 shall—

17 (1) release information about plans and proce-
18 dures to address the coronavirus within Bureau of
19 Prisons facilities, including all contract facilities;

20 (2) update the number of coronavirus cases
21 that exist in Bureau of Prisons facilities, including
22 all contract facilities, and provide daily updates of
23 the number;

24 (3) begin the process of testing—

1 (A) all individuals who are incarcerated or
 2 detained in a Bureau of Prisons facility or a
 3 contract facility; and

4 (B) all individuals who work or volunteer
 5 in a Bureau of Prisons facility or contract facil-
 6 ity;

7 (4) provide prompt and accurate information
 8 about the number of coronavirus fatalities;

9 (5) inform attorneys, families, and friends of in-
 10 mates in custody when individuals are ill with
 11 coronavirus and continue to provide timely, up-to-
 12 date information about the health of loved ones;

13 (6) provide information about visitation, com-
 14 munication policies, and lockdowns; and

15 (7) give updates on healthcare services being
 16 provided.

17 **SEC. 7. EMERGENCY APPROPRIATIONS FOR STATE SEN-**
 18 **TENCING REDUCTIONS ON THE BASIS OF AGE**
 19 **OR MEDICAL CONDITION.**

20 There are hereby appropriated, out of amounts in the
 21 Treasury not otherwise appropriated, for additional
 22 amounts for the Department of Justice for “State and
 23 Local Law Enforcement Assistance”, \$50,000,000 for fis-
 24 cal year 2020, to remain available until expended, to pre-
 25 vent, prepare for, and respond to the coronavirus, domesti-

1 cally or internationally, to be awarded pursuant to the for-
2 mula allocation (adjusted in proportion to the relative
3 amounts statutorily designated therefor) that was used in
4 fiscal year 2019 for the Edward Byrne Memorial Justice
5 Assistance Grant program as authorized by subpart 1 of
6 part E of title I of the Omnibus Crime Control and Safe
7 Streets Acts of 1968 (“1968 Act”): *Provided*, That the
8 amounts be awarded to the corrections departments or
9 agency of each State and territory of the United States
10 for the purpose of identifying State inmates who are at
11 a higher risk of death from the disease or illness for which
12 the public health emergency was declared, as defined by
13 the Centers for Disease Control and Prevention, including
14 inmates over the age of 60, inmates with a terminal ill-
15 ness, and inmates with autoimmune disorders or serious
16 medical conditions, including heart disease, diabetes, HIV,
17 chronic or acute respiratory disease, or cancer, and for
18 the purpose of testing inmates for the coronavirus, and
19 assisting such inmates in the preparation, drafting, and
20 submission of requests for compassionate release, medical
21 or elderly parole, or other sentence reductions on the basis
22 of age or medical condition pursuant to relevant State law:
23 *Provided further*, That the allocation provisions under sub-
24 sections (a) through (e) of section 505 and the special
25 rules for Puerto Rico under section 505(g) and section

1 1001(c) of the 1968 Act, shall not apply to the amount
2 provided under this section: *Provided further*, That awards
3 hereunder, shall not be subject to restrictions or special
4 conditions that are the same as (or substantially similar
5 to) those, imposed on awards under such subpart in fiscal
6 year 2018, that forbid interference with Federal law en-
7 forcement: *Provided further*, That such amount is des-
8 ignated by the Congress as being for an emergency re-
9 quirement pursuant to section 251(b)(2)(A)(i) of the Bal-
10 anced Budget and Emergency Deficit Control Act of 1985.

○