

Calendar No. 68

117TH CONGRESS
1ST SESSION

S. 312

To expand eligibility for and provide judicial review for the Elderly Home Detention Pilot Program, provide for compassionate release based on COVID–19 vulnerability, shorten the waiting period for judicial review during the COVID–19 pandemic, and make other technical corrections.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2021

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. WHITEHOUSE, Mr. TILLIS, Mr. COONS, Mr. CRAMER, Mr. BOOKER, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 8, 2021

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To expand eligibility for and provide judicial review for the Elderly Home Detention Pilot Program, provide for compassionate release based on COVID–19 vulnerability, shorten the waiting period for judicial review during the COVID–19 pandemic, and make other technical corrections.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “COVID–19 Safer De-
3 tention Act of 2021”.

4 **SEC. 2. DEFINITION OF COVERED EMERGENCY PERIOD.**

5 Section 12003(a)(2) of the CARES Act (18 U.S.C.
6 3621 note) is amended—

7 (1) by striking “ending on the date” and insert-
8 ing the following: “ending on the later of—

9 “(A) the date”;

10 (2) in subparagraph (A), as so designated, by
11 striking the “and” at the end and inserting “or”;
12 and

13 (3) by adding at the end the following:

14 “(B) the date that is 30 days after the
15 date on which the Bureau of Prisons ceases
16 modified operations in response to COVID–19;
17 and”.

18 **SEC. 3. HOME DETENTION FOR CERTAIN ELDERLY NON-**
19 **VIOLENT OFFENDERS.**

20 Section 231(g) of the Second Chance Act of 2007 (34
21 U.S.C. 60541(g)) is amended—

22 (1) in paragraph (1), by adding at the end the
23 following:

24 “(D) JUDICIAL REVIEW.—

25 “(i) IN GENERAL.—Upon motion of a
26 defendant, on or after the date described

1 in clause (ii), a court may reduce an im-
 2 posed term of imprisonment of the defend-
 3 ant and substitute a term of supervised re-
 4 lease with the condition of home detention
 5 for the unserved portion of the original
 6 term of imprisonment, after considering
 7 the factors set forth in section 3552(a) of
 8 title 18, United States Code, if the court
 9 finds the defendant is an eligible elderly of-
 10 fender or eligible terminally ill offender.

11 “(ii) DATE DESCRIBED.—The date de-
 12 scribed in this clause is the earlier of—

13 “(I) the date on which the de-
 14 fendant fully exhausts all administra-
 15 tive rights to appeal a failure of the
 16 Bureau of Prisons to place the de-
 17 fendant on home detention; or

18 “(II) the expiration of the 30-day
 19 period beginning on the date on which
 20 the defendant submits to the warden
 21 of the facility in which the defendant
 22 is imprisoned a request for placement
 23 of the defendant on home detention,
 24 regardless of the status of the re-
 25 quest.”; and

(2) in paragraph (5)—

(A) in subparagraph (A)(ii)—

(i) by inserting “including offenses under the laws of the District of Columbia,” after “offense or offenses,”; and

(ii) by striking “2/3 of the term of imprisonment to which the offender was sentenced” and inserting “1/2 of the term of imprisonment reduced by any credit toward the service of the offender’s sentence awarded under section 3624(b) of title 18, United States Code”; and

(B) in subparagraph (D)(i), by inserting “, including offenses under the laws of the District of Columbia,” after “offense or offenses,”.

SEC. 4. COMPASSIONATE RELEASE TECHNICAL CORRECTION.

Section 3582 of title 18, United States Code, is amended—

(1) in subsection (c)(1)—

(A) in the matter preceding subparagraph (A), by inserting after “case” the following: “, including, notwithstanding any other provision of law, any case involving an offense committed before November 1, 1987”; and

1 ~~(B)~~ in subparagraph ~~(A)~~—

2 (i) by inserting “, on or after the date
3 described in subsection ~~(d)~~” after “upon
4 motion of a defendant”; and

5 (ii) by striking “after the defendant
6 has fully exhausted all administrative
7 rights to appeal a failure of the Bureau of
8 Prisons to bring a motion on the defend-
9 ant’s behalf or the lapse of 30 days from
10 the receipt of such a request by the warden
11 of the defendant’s facility, whichever is
12 earlier,”;

13 ~~(2)~~ by redesignating subsections ~~(d)~~ and ~~(e)~~ as
14 subsections ~~(e)~~ and ~~(f)~~, respectively; and

15 ~~(3)~~ by inserting after subsection ~~(e)~~ the fol-
16 lowing:

17 “~~(d)~~ DATE DESCRIBED.—For purposes of subsection
18 ~~(e)(1)(A)~~, the date described in this subsection is the ear-
19 lier of—

20 “~~(1)~~ the date on which the defendant fully ex-
21 hausts all administrative rights to appeal a failure of
22 the Bureau of Prisons to bring a motion on the de-
23 fendant’s behalf; or

24 “~~(2)~~ the expiration of the 30-day period begin-
25 ning on the date on which the defendant submits a

1 request for a reduction in sentence to the warden of
 2 the facility in which the defendant is imprisoned, re-
 3 gardless of the status of the request.”.

4 **SEC. 5. TEMPORARY SHORTENING OF ADMINISTRATIVE EX-**
 5 **HAUSTION.**

6 Section 12003 of the CARES Act (18 U.S.C. 3621
 7 note) is amended by adding at the end the following:

8 “(e) COMPASSIONATE RELEASE.—For purposes of a
 9 motion filed under section 3582(e)(1) of title 18, United
 10 States Code, during the covered emergency period—

11 “(1) the 30-day waiting period requirement in
 12 section 3582(d)(2) shall be reduced to not more
 13 than 10 days; and

14 “(2) in the case of a defendant who is, accord-
 15 ing to guidance from the Centers for Disease Con-
 16 trol and Prevention, considered to be at a higher
 17 risk for severe illness from COVID-19, including be-
 18 cause the defendant is 60 years of age or older or
 19 has an underlying medical condition, such risk shall
 20 be considered to be an extraordinary and compelling
 21 reason under subparagraph (A)(i) of such section
 22 3582(e)(1).

23 “(f) NONVIOLENT ELDERLY OFFENDERS.—For the
 24 purpose of a motion filed under subparagraph (D) of sec-
 25 tion 221(g)(1) of the Second Chance Act of 2007 (34

1 U.S.C. 60541(g)(1)), during the covered emergency pe-
 2 riod, the 30-day waiting period requirement clause (ii)(II)
 3 of such subparagraph (D) shall be reduced to 10 days.”.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “COVID–19 Safer Deten-*
 6 *tion Act of 2021”.*

7 **SEC. 2. DEFINITION OF COVERED EMERGENCY PERIOD.**

8 *Section 12003(a)(2) of the CARES Act (18 U.S.C.*
 9 *3621 note) is amended—*

10 *(1) by striking “ending on the date” and insert-*
 11 *ing the following: “ending on the later of—*

12 *“(A) the date”;*

13 *(2) in subparagraph (A), as so designated, by*
 14 *striking the “and” at the end and inserting “or”; and*

15 *(3) by adding at the end the following:*

16 *“(B) the earlier of—*

17 *“(i) the date that is 30 days after the*
 18 *date on which the Bureau ceases modified*
 19 *operations in response to COVID–19; or*

20 *“(ii) the date that is 90 days after the*
 21 *date described in subparagraph (A); and”.*

22 **SEC. 3. HOME DETENTION FOR CERTAIN ELDERLY NON-**
 23 **VIOLENT OFFENDERS.**

24 *Section 231(g) of the Second Chance Act of 2007 (34*
 25 *U.S.C. 60541(g)) is amended—*

(1) in paragraph (1), by adding at the end the following:

“(D) JUDICIAL REVIEW.—

“(i) IN GENERAL.—Upon motion of a defendant, on or after the date described in clause (ii), after imposing a term of imprisonment, a court may reduce the imposed term of imprisonment of the defendant and substitute a term of supervised release with the condition of home detention for the unserved portion of the original term of imprisonment, after considering the factors set forth in section 3553(a) of title 18, United States Code, if the court finds the defendant is an eligible elderly offender or eligible terminally ill offender.

“(ii) DATE DESCRIBED.—The date described in this clause is the earlier of—

“(I) the date on which the defendant fully exhausts all administrative rights to appeal a failure of the Bureau of Prisons to place the defendant on home detention; or

“(II) the expiration of the 30-day period beginning on the date on which

1 *the defendant submits to the warden of*
2 *the facility in which the defendant is*
3 *imprisoned a request for placement of*
4 *the defendant on home detention, re-*
5 *gardless of the status of the request.*

6 “(iii) *LIMITATION ON MOTIONS.—If a*
7 *defendant’s motion filed under this subpara-*
8 *graph is denied, the defendant may not file*
9 *another motion under this subparagraph*
10 *until the date that is 90 days after the date*
11 *on which the motion was denied.*

12 “(iv) *RIGHT TO COUNSEL.—The court*
13 *may appoint a Federal public defender or*
14 *community defender, or other counsel quali-*
15 *fied to be appointed under section 3006A of*
16 *title 18, United States Code, to assist a de-*
17 *fendant seeking relief under this subpara-*
18 *graph.*

19 “(v) *APPLICABILITY OF CRIME VICTIMS’*
20 *RIGHTS ACT.—Section 3771 of title 18,*
21 *United States Code (commonly known as*
22 *the ‘Crime Victims’ Rights Act’), shall*
23 *apply to any proceeding under this sub-*
24 *paragraph.”;*

(2) in paragraph (4), in the first sentence, by inserting after “paragraph (3)” the following: “, including the number of offenders released pursuant to judicial review under paragraph (1)(D)”; and

(3) in paragraph (5)—

(A) in subparagraph (A)(ii)—

(i) by inserting “, including offenses under the laws of the District of Columbia,” after “offense or offenses”; and

(ii) by striking “to which the offender was sentenced” and inserting “reduced by any credit toward the service of the offender’s sentence awarded under section 3624(b) of title 18, United States Code”; and

(B) in subparagraph (D)(i), by inserting “, including offenses under the laws of the District of Columbia,” after “offense or offenses”.

SEC. 4. COMPASSIONATE RELEASE TECHNICAL CORRECTION.

Section 3582 of title 18, United States Code, is amended—

(1) in subsection (c)(1)—

(A) in the matter preceding subparagraph (A), by inserting after “case” the following: “, including, notwithstanding any other provision

1 *of law, any case involving an offense committed*
 2 *before November 1, 1987”; and*

3 *(B) in subparagraph (A)—*

4 *(i) by inserting “, on or after the date*
 5 *described in subsection (d)” after “upon mo-*
 6 *tion of a defendant”; and*

7 *(ii) by striking “after the defendant*
 8 *has fully exhausted all administrative rights*
 9 *to appeal a failure of the Bureau of Prisons*
 10 *to bring a motion on the defendant’s behalf*
 11 *or the lapse of 30 days from the receipt of*
 12 *such a request by the warden of the defend-*
 13 *ant’s facility, whichever is earlier,”;*

14 *(2) by redesignating subsections (d) and (e) as*
 15 *subsections (e) and (f), respectively;*

16 *(3) by inserting after subsection (c) the fol-*
 17 *lowing:*

18 *“(d) DATE DESCRIBED.—For purposes of subsection*
 19 *(c)(1)(A), the date described in this subsection is the earlier*
 20 *of—*

21 *“(1) the date on which the defendant fully ex-*
 22 *hausts all administrative rights to appeal a failure of*
 23 *the Bureau of Prisons to bring a motion on the de-*
 24 *fendant’s behalf; or*

7 “(g) *RIGHT TO COUNSEL.*—The court may appoint a
8 *Federal public defender or community defender, or other*
9 *counsel qualified to be appointed under section 3006A to*
10 *assist a defendant seeking relief under this section.*

15 *SEC. 5. TEMPORARY SHORTENING OF ADMINISTRATIVE EX-*
16 *HAUSTION.*

19 “(e) COMPASSIONATE RELEASE.—For purposes of a
20 motion filed under section 3582(c)(1) of title 18, United
21 States Code, during the covered emergency period—

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1 “(2) in the case of a defendant who is, according
 2 to guidance from the Centers for Disease Control and
 3 Prevention, considered to be at a higher risk for severe
 4 illness from COVID–19, including because the defend-
 5 ant is 60 years of age or older or has an underlying
 6 medical condition, such risk shall be considered to be
 7 an extraordinary and compelling reason under sub-
 8 paragraph (A)(i) of such section 3582(c)(1).

9 “(f) *NONVIOLENT ELDERLY OFFENDERS.*—For the
 10 purpose of a motion filed under subparagraph (D) of section
 11 231(g)(1) of the Second Chance Act of 2007 (34 U.S.C.
 12 60541(g)(1)), during the covered emergency period, the 30-
 13 day waiting period requirement clause (ii)(II) of such sub-
 14 paragraph (D) shall be reduced to 10 days.

15 “(g) *APPLICABILITY OF CRIME VICTIMS’ RIGHTS*
 16 *ACT.*—Section 3771 of title 18, United States Code (com-
 17 monly known as the ‘Crime Victims’ Rights Act’), shall
 18 apply to any proceeding under subsection (e) or (f).”.

19 **SEC. 6. REPORT BY COMPTROLLER GENERAL OF THE**
 20 **UNITED STATES.**

21 “(a) *STUDY.*—The Comptroller General of the United
 22 States shall conduct a study on Federal post-release, proba-
 23 tion, and pretrial services, including, at a minimum, an
 24 evaluation of changes made to operational practices as a
 25 result of COVID–19 and recent statutory changes preceding

1 *the date of enactment of this Act, such as how pretrial and*
2 *post-release supervision is conducted, the impact on officer*
3 *caseloads, overtime hours reported or worked by officers,*
4 *and the process for transitioning an individual from the*
5 *custody of the Bureau of Prisons United States Probation*
6 *and Pretrial Services personnel.*

7 **(b) REPORT.**—*Not later than 1 year after the date of*
8 *enactment of this Act, the Comptroller General of the United*
9 *States shall submit a report on the results of the study con-*
10 *ducted under subsection (a) to the Committee on the Judici-*
11 *ary of the Senate and the Committee on the Judiciary of*
12 *the House of Representatives.*

13 **SEC. 7. DIRECTIVE TO ADMINISTRATIVE OFFICE OF THE**
14 **UNITED STATES COURTS.**

15 *The Administrative Office of the United States Courts*
16 *shall, as part of the first budget request or re-estimate sub-*
17 *mitted to Congress after the date of enactment of this Act,*
18 *include a request for resources to address staffing needs in*
19 *each judicial district of the United States, including any*
20 *additional resources that may be necessary as a result of*
21 *this Act and the amendments made by this Act for staffing*
22 *and overtime pay.*

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A BILL

To expand eligibility for and provide judicial review for the Elderly Home Detention Pilot Program, provide for compassionate release based on COVID-19 vulnerability, shorten the waiting period for judicial review during the COVID-19 pandemic, and make other technical corrections.

JUNE 8, 2021

Reported with an amendment