



**RECOMMENDATIONS TO SAVE LIVES BY PROTECTING INCARCERATED YOUTH AND ADULTS  
DURING THE COVID-19 PANDEMIC**

May 4, 2020

**Ensure Safe Conditions for People Who Remain Incarcerated**

1. **Congress should ensure free and needed access to COVID-19 testing, medical care and treatment, PPE, physical distancing, and sanitation** for people who are incarcerated and reentering the community.
2. **Congress should immediately waive Section 1905(a)(A) of the Social Security Act (commonly referred to as the inmate exclusion) on an emergency basis until after the COVID-19 crisis is over.** This provision prohibits use of Medicaid funding (and other federal funds) for medical care provided to “inmates of a public institution.” This additionally applies to individuals who are incarcerated but have not been convicted of a crime (in 2017, approximately 540,000 people were incarcerated in pre-trial detention). Removing this provision would provide significant relief to states and counties whose budgets are dramatically impacted by the COVID-19 outbreak and other health issues.
3. **Congress should appropriate \$100 million to prevent and mitigate the COVID-19 risks for justice-involved youth.** The \$100 million should remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, of which \$75,000,000 shall be for programs authorized by section 221 of the Juvenile Justice and Delinquency Prevention Act of 1974, and \$25,000,000 for delinquency prevention, as authorized by section 504 of the Act.

**Release People from Incarceration to End Facility Overcrowding and Reduce the Spread of COVID-19**

1. **Congress should pass and fund H.R. 6414, the COVID-19 *Correctional Facility Emergency Response Act*, and fund it at the requested level of \$1 billion to incentive states and localities to release individuals from incarceration; reduce pre-trial detention; and support safe transition and reentry during the COVID-19 epidemic.**
2. **Congress should pass H.R. 6400/S. 3579, the *Emergency Community Supervision Act*, that would reduce the number of individuals in federal custody as a response to the COVID-19 pandemic. It would transition vulnerable people and those nearing the end of their sentence from incarceration to community supervision (e.g., home confinement); limit the use of pretrial detention; and modify supervised release, including to limit the use of incarceration as a sanction for a parole violation.**
3. **Congress should expedite access to federal compassionate release during public health emergencies, including the COVID-19 pandemic,** by amending 18 USC 3582(c) to waive the 30 day period between when a person files their petition with the warden and when he or she can file a motion with the Court.
4. **Congress should extend compassionate release eligibility as authorized under the First Step Act to “old law” federal prisoners, sentenced prior to 1987, who are amongst the oldest in the federal prison**

system and are particularly vulnerable to COVID-19 infection because of their age and health conditions and pose no public safety risk.

5. **Congress should extend the federal Elderly Home Confinement Program to individuals 50-years-old and over who have completed at least 50% of their sentence.**
6. **Congress should pass H.R. 1949**, to allow for the release of individuals who are serving sentences for crimes committed while they were under the age of 18 and have served 20 continuous years in confinement.
7. **Congress should incentivize states and localities to release adults and youth from prisons, jail, detention centers and secure confinement facilities by providing an increased federal medical assistance percentage (FMAP) by 2% for any State or jurisdiction that enacts widespread policies that release 10% or more of their State prison and youth detention population.** States may also receive an additional 1% increase in FMAP by working with local jurisdictions to release 15% or more of their local jail population for the duration of the crisis. States and local jurisdictions that maintain these decreases after the immediate COVID-19 crisis has passed shall remain eligible for the increased FMAP.
8. **Congress should provide \$20 million to support the scale-up of successful state Parenting Sentencing Alternatives (PSA) programs that have the potential to keep parents out of prison.** Funding should scale up and create Parenting Sentencing Alternative programs to reduce the prison population during the COVID epidemic. Existing programs allow judges to waive a sentence for eligible people within the state's standard sentence range and impose 12 months of community custody along with conditions for treatment and programming.
9. **Congress should eliminate the presumption of pretrial detention for drug offenses.** A defendant could still be detained if the court found he or she was a flight risk or posed a threat to public safety. Under the Bail Reform Act of 1984, Congress enacted the presumption of detention for "high-risk defendants" who were likely to pose a significant risk of danger to the community or "major drug traffickers" who were likely to flee if released. Rather than applying narrowly to high risk defendants, the drug presumption now applies to 93% of all drug cases.

### **Support Safe and Effective Reentry to the Community**

1. **Congress should pass H.R. 6414 and fund it at the requested level of \$1 billion** to incentivize states and localities to release individuals from incarceration and **to support safe transition and reentry to the community during the COVID-19 pandemic.** This funding would support a range of critical reentry services, such as access to housing/shelter, food/nutrition, medical and behavioral health care (including overdose prevention and harm reduction services), workforce development, and other supportive services to ensure the safety of individuals and the community upon release.
2. **Congress should provide funding to ensure that individuals released from custody have access to safe, affordable, and accessible housing including:**
  - a. Tenant-based rental assistance vouchers specifically for individuals released from custody as a result of the COVID-19 pandemic.

- b. \$11.5 billion in McKinney-Vento Emergency Solutions Grants (ESG) to ensure that formerly incarcerated people can access shelter and housing during the epidemic through short-term rental assistance, rapid rehousing, and housing counseling.
  - c. \$100 billion in emergency rental assistance, distributed through HUD's Homeless Assistance Grants program. This flexible funding could help formerly incarcerated people cover security and utility deposits and provide short- and medium-term rental assistance for people recently released.
- 3. **Congress should pass H.R. 1329, The Medicaid Reentry Act, to permit states to start Medicaid benefits for eligible individuals 30 days prior to release from custody** to provide more effective COVID-19 care, including appropriate medical supplies, treatment, coordination, and transition to community-based care.
- 4. **Congress should repeal or waive current federal prohibitions and oppose additional or new prohibitions that prevent individuals with criminal records from receiving federal COVID-19 benefits and supports.** Federal programs, including SNAP, TANF, housing assistance, and SBA Paycheck Protection and EIDL programs refuse or reduce access to benefits for individuals with certain records. In addition, some states institute onerous work-requirements to receive benefits. Congress should prevent such bars to federal benefits and resources during the COVID-19 epidemic.
- 5. **Congress should ensure access to COVID-19 federal cash assistance and unemployment assistance to individuals or their families (in case of youth) impacted by the justice system.** These funds are intended to help with lost wages, access to food, housing, and other basic needs. Relief funds should not be automatically seized or reduced to pay owed child support or other debts.
- 6. **Congress should improve employment outcomes by expanding existing federal education and workforce development programs that serve individuals with criminal records, including:**
  - a. \$650 million through the Workforce Innovation and Opportunity Act (WIOA) program, including:
    - i. \$350 million for reentry and workforce development services through the Reentry Employment Opportunities (REO) program
    - ii. \$200 million for Title 1 Employment and Training Activities to support workforce training providers serving individuals impacted by the criminal justice system
    - iii. \$100 million for correctional education through the Adult Education and Family Literacy Act program
  - b. \$44 billion for a national transitional jobs program funded through the Dislocated Worker Assistance National Reserve with a dedicated percentage of these jobs for youth and adults impacted by the justice system. Subsidized employment and "earn-as-you-learn" models are time-limited, wage-paying jobs that combine real work, skills development, and supportive services that help participants transition successfully into the labor market.

*The Justice Roundtable is a broad-based coalition of more than 100 organizations working to reform federal criminal justice laws and policies. Founded in 2002, the Roundtable's mission is to bring value to the Justice Movement by coordinating the federal legislative and advocacy efforts of the Washington criminal justice advocacy community.*