

American College of Bankruptcy



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June 29, 2020

Hon. Richard C. Shelby
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Hon. John N. Kennedy
Chairman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
United States Senate
Washington, DC 20510

Hon. Nita Lowey
Chairwoman
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Honorable Mike Quigley
Chairman
Subcommittee on Financial Services and
General Government
United States House of Representatives
Washington DC, DC 20515

Hon. Patrick J. Leahy
Ranking Member
Committee on Appropriations
United States Senate
Washington, DC 20510

Hon. Chris Coons
Ranking Member
Subcommittee on Financial Services
and General Government
Committee on Appropriations
United States Senate
Washington, DC 20510

Hon. Kay Granger
Ranking Member
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Honorable Tom Graves
Ranking Member
Subcommittee on Financial Services and
General Government
United States House of Representatives
Washington DC, DC 20515

Dear Chairs Shelby and Kennedy, Ranking Members Leahy and Coons,
Chairs Lowey and Quigley, and Ranking Members Granger and Graves:

The American College of Bankruptcy is an honorary association of almost 900 bankruptcy and insolvency professionals. The College plays an important role in sustaining professional excellence in the bankruptcy field. College Fellows include commercial and consumer bankruptcy attorneys, judges, insolvency accountants, turnaround and workout specialists, law professors, government officials and others in the bankruptcy and insolvency community. Its Fellows share a commitment to the administration and improvement of the Bankruptcy system. The College has no political orientation and is highly

selective in the issues on which it takes a position. The policy positions it does take are nonpartisan, focusing entirely on projects and issues that enhance the quality of the bankruptcy practice, including the administration of the bankruptcy courts.

Please accept this letter as the ACB's endorsement of the proposals advanced by the Judicial Conference of the United States, on behalf of the United States Courts, in its earlier letters to you of April 28, 2020 (copies attached), addressing legislative needs of the courts in light of the COVID-19 crisis.

The Judicial Conference's requests are predominantly focused on the needs and concerns of the federal judiciary as a whole. Consistent with the selective approach referenced above, the focus of the College is on the welfare of the U.S. Bankruptcy Courts, and those who rely on the ability of these courts and the bankruptcy system to keep U.S. businesses alive, and provide relief to individual Americans dealing with financial distress.

An organization of financial institutions has queried (in a recent report, "Bankruptcy is Coming: Are We Ready?") "[i]s the bankruptcy court system ready to handle what may be an unprecedented volume of corporate bankruptcy cases?" Others have commented that the "COVID-19 pandemic looks likely to cause the biggest surge in bankruptcy that the United States' court system has ever experienced." And, further, that "without an immediate increase in judicial capacity to manage the coming flood of cases, an even larger economic disaster awaits." Many believe that while the surge in bankruptcies has been seen first in commercial cases, a similar increase in bankruptcy cases filed by U.S. consumers—who have been laid off in record numbers, and whose personal financial resources are quickly becoming exhausted—will follow. A small sampling of recent publications highlighting these concerns is attached.

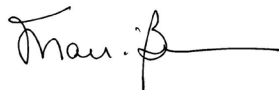
The challenges to the U.S. Bankruptcy Courts have been compounded by their need to proceed with remote operations—essential, in the COVID-19 environment, to serve their constituents in the face of the present and anticipated increases in filings—and their need to substantially increase their use of technology to meet those needs.

So as important as the desired legislation is for the U.S. Courts generally, it is at least if not more critical for the bankruptcy courts. We are not now urging the enactment of separate legislation for the bankruptcy courts alone, but instead strongly urge the enactment of the Judicial Conference's proposals as an important first step.

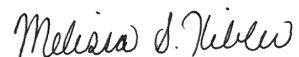
We note that the views expressed in this statement are those of the American College of Bankruptcy, on whose behalf this statement is issued, and do not necessarily reflect the personal views, if any, of any judge or other Fellow of the College (or any firm or educational institution with which one or more Fellows may be affiliated).

We would be grateful if you would keep us abreast of developments with respect to the Judicial Conference's proposals, and if you would let us know if there is anything more the College can do to support this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Bloom", with a long horizontal flourish extending to the right.

Mark D. Bloom, Chair

A handwritten signature in black ink, appearing to read "Melissa S. Kibler", enclosed in a thin black rectangular box.

Melissa S. Kibler, President

cc: All Committee and Subcommittee
Members, by electronic delivery



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

April 28, 2020

Honorable Nita Lowey
Chairwoman
Committee on Appropriations
United States House of Representatives
Washington, DC 20515

Honorable Mike Quigley
Chairman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
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Honorable Tom Graves
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Dear Chairwoman Lowey, Chairman Quigley, and Representatives Granger and Graves:

The Judiciary is very appreciative of the work Congress accomplished in the CARES Act, including additional funding and provisions for video and teleconferencing authority in criminal proceedings. We write to inform you of additional urgent supplemental appropriations needs totaling \$36.6 million for the Judicial Branch related to ongoing impacts of the COVID-19 pandemic on federal court operations. In addition, we have identified legislative items needed to address immediate COVID-19 impacts on the federal courts as well as to address concerns regarding court operations post pandemic. We ask that these provisions be included in the next supplemental appropriations bill or similar COVID-19 response legislation. Details on the funding request and legislative items are discussed below with additional details provided in enclosures, as noted.

Before we address supplemental funding and legislative items, we would like to provide a brief update on the current state of federal court operations. Like other institutions throughout the world, the operations of the federal courts have been significantly disrupted by the COVID-19 pandemic. Most Judiciary personnel nationwide are teleworking, grand jury proceedings and jury trials have been postponed, civil litigation has significantly slowed, courts are using video and teleconferencing technology for proceedings in criminal cases and for other court matters to the extent practicable, and probation and pretrial services officers are using new

and innovative approaches to supervise remotely offenders released from prison and defendants awaiting trial. The Judicial Branch's 30,000 dedicated professionals – like public and private sector workers everywhere – continue to perform their duties admirably during this period of great uncertainty. As Congress looks to address the COVID-19 related needs of federal agencies, state and local governments, businesses, and individuals, we ask that you consider the supplemental funding and legislative items included in this request to ensure the Judicial Branch has the resources needed to respond and recover from this pandemic.

Judicial Branch Supplemental Appropriations

We appreciate the \$7.5 million in supplemental appropriations that Congress provided the Judiciary in the CARES Act to address immediate information technology needs and increased testing and treatment costs in our probation and pretrial services program. Subsequent to our request for that funding, we worked closely with courts and federal defender organizations nationwide and have identified additional supplemental appropriations requirements associated with COVID-19 pandemic prevention, preparedness, and response. The \$36.6 million we are seeking is to address emergent needs such as enhanced cleaning of court facilities, health screening at courthouse entrances, information technology hardware and infrastructure costs associated with expanded telework and videoconferencing, costs associated with probation and pretrial services supervision of offenders released from prison and defendants on pretrial release, and security related costs.

Enclosure 1 provides additional details of this request by Judiciary appropriations account: courts' Salaries and Expenses account (\$25.0 million), Defender Services (\$9.4 million), and Court Security (\$2.2 million). We note that overall requirements for the courts' Salaries and Expenses total \$52.5 million but we have identified \$27.5 million in available balances as a partial offset, resulting in a net supplemental appropriations request of \$25.0 million for this account.

Legislative Provisions

Enclosure 2 provides a detailed list of 17 legislative proposals of interest to the federal Judiciary in connection with its ongoing efforts to respond to the COVID-19 national emergency. Each of these proposals has been approved by the Judicial Conference. Draft legislative text is provided for each proposal.

The underlying objective behind each proposal is to ensure that the federal Judiciary continues to meet its constitutional mandate while protecting the health and safety of court personnel, litigants, and the public.

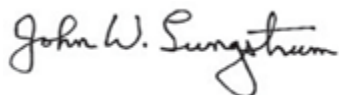
Of particular note, we have included a number of proposals intended to protect criminal detainees and litigants during the COVID-19 crisis, such as expediting compassionate release procedures under the First Step Act, reducing unnecessary pretrial detention of certain low-risk defendants, and allowing probation officers to focus on higher risk offenders instead of low-risk compassionate release offenders.

Other proposals address court administrative matters as impacted by COVID-19. These include, for instance, proposals ensuring the adequacy of critical judicial resources by converting temporary judgeships to permanent status and requesting a prudent number of new judgeships to meet anticipated caseload increases. We have also proposed temporary authority to the bankruptcy courts to extend or “toll” certain statutory deadlines under the Bankruptcy Code.

Closing

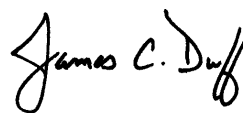
We appreciate your attention to the resource needs of the Judiciary. Please do not hesitate to contact us if you need any additional information.

Sincerely,



John W. Lungstrum
Chair, Committee on the Budget

Sincerely,



James C. Duff
Secretary

Enclosures

cc: Honorable Jerrold Nadler
Honorable Jim Jordan
Honorable Hank Johnson
Honorable Martha Roby



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
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April 28, 2020

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Honorable Chris Coons
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Before we address supplemental funding and legislative items, we would like to provide a brief update on the current state of federal court operations. Like other institutions throughout the world, the operations of the federal courts have been significantly disrupted by the COVID-19 pandemic. Most Judiciary personnel nationwide are teleworking, grand jury proceedings and jury trials have been postponed, civil litigation has significantly slowed, courts are using video and teleconferencing technology for proceedings in criminal cases and for other court matters to the extent practicable, and probation and pretrial services officers are using new

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Enclosure 1 provides additional details of this request by Judiciary appropriations account: courts' Salaries and Expenses account (\$25.0 million), Defender Services (\$9.4 million), and Court Security (\$2.2 million). We note that overall requirements for the courts' Salaries and Expenses total \$52.5 million but we have identified \$27.5 million in available balances as a partial offset, resulting in a net supplemental appropriations request of \$25.0 million for this account.

Legislative Provisions

Enclosure 2 provides a detailed list of 17 legislative proposals of interest to the federal Judiciary in connection with its ongoing efforts to respond to the COVID-19 national emergency. Each of these proposals has been approved by the Judicial Conference. Draft legislative text is provided for each proposal.

The underlying objective behind each proposal is to ensure that the federal Judiciary continues to meet its constitutional mandate while protecting the health and safety of court personnel, litigants, and the public.

Of particular note, we have included a number of proposals intended to protect criminal detainees and litigants during the COVID-19 crisis, such as expediting compassionate release procedures under the First Step Act, reducing unnecessary pretrial detention of certain low-risk defendants, and allowing probation officers to focus on higher risk offenders instead of low-risk compassionate release offenders.

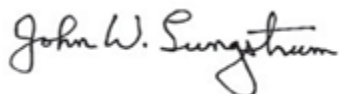
Chairman Richard C. Shelby, Chairman John N. Kennedy,
Senator Patrick J. Leahy, and Senator Chris Coons
Page 3

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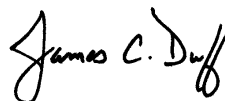
We appreciate your attention to the resource needs of the Judiciary. Please do not hesitate to contact us if you need any additional information.

Sincerely,



John W. Lungstrum
Chair, Committee on the Budget

Sincerely,



James C. Duff
Secretary

Enclosures

cc: Honorable Lindsey Graham
Honorable Dianne Feinstein
Honorable Ben Sasse
Honorable Richard Blumenthal

**Judiciary
Emergency Supplemental Request for COVID-19 Impact**

**Courts of Appeals, District Courts, and Other Judicial Services
Salaries and Expenses**

Legislative Language:

For an additional amount for “Salaries and Expenses”, \$25,000,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Description of Request:

The Judiciary requests \$25.0 million in net additional emergency supplemental appropriations in the courts’ Salaries and Expenses account to address COVID-19 pandemic impacts in appellate, district, and bankruptcy courts, and in probation and pretrial services offices. To identify these additional requirements, the Administrative Office received input from courts and probation and pretrial services offices nationwide on additional COVID-19 funding needs. After analyzing those requests, the Administrative Office has identified additional COVID-19 requirements totaling \$52.5 million, partially offset by \$27.5 million of available balances, resulting in a net supplemental appropriations request of \$25.0 million, to address the following emergent needs:

- Enhanced Cleaning. \$15.1 million is for enhanced cleaning of courthouses and court facilities. GSA provides regular cleaning of court facilities in accordance with tenant occupancy agreements but will only cover the cost of enhanced cleaning when there is a confirmed or suspected COVID-19 event and then only the area(s) accessed by the infected person(s). The Judiciary requires funding for enhanced cleaning of all court facilities nationwide to ensure the health and safety of Judiciary personnel, litigants, and the public. Enhanced cleaning would begin prior to re-occupancy of court facilities and be repeated as exposure incidents occur.
- Health Screening at Courthouse Entrances. \$15.0 million is for health screening at courthouse entrances utilizing the contract vehicle established by GSA for this purpose. Screening would be provided for 8 weeks.
- IT Infrastructure Costs. \$11.2 million is for hardware, software, licenses, and contract services to support the Judiciary’s national IT infrastructure to address increased demand due to expanded telework and videoconferencing, as well as costs associated with continuing to support current IT system hosting environments due to pandemic-related delays in migrating to cloud hosting.

- Telework and Videoconferencing Equipment. \$7.8 million is for laptops, printers, and peripherals to enable court and probation and pretrial services personnel to be fully telework capable, and for videoconferencing equipment in courts and detention facilities to facilitate holding criminal proceedings via electronic versus in-person means.
- Probation and Pretrial Services Supervision Costs. \$1.6 million is for increased costs associated with supervision of offenders released from prison and defendants on pretrial release, including mental health and drug testing and treatment, location monitoring, and Second Chance Act related expenses such as temporary housing for offenders/defendants.
- Other Costs. \$1.8 million is for miscellaneous equipment and supplies.

As identified above, \$25.0 million in additional supplemental appropriations, combined with \$27.5 million in available Judiciary balances, would enable the Judiciary to fund these COVID-19 emergency requirements totaling \$52.5 million.

Judiciary
Emergency Supplemental Request for COVID-19 Impact

Courts of Appeals, District Courts, and Other Judicial Services
Defender Services

Legislative Language:

For an additional amount for “Defender Services”, \$9,400,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Description of Request:

The Judiciary requests \$9.4 million in additional emergency supplemental appropriations in the Defender Services account to address COVID-19 pandemic impacts in federal defender organizations, which provide legal representation and other services to persons who are financially unable to obtain them in criminal and related matters in federal court. To identify these additional requirements, the Administrative Office received input from federal defender organizations nationwide on additional COVID-19 funding needs. After analyzing those requests, the Administrative Office has identified additional COVID-19 requirements totaling \$9.4 million to address the following emergency needs:

- IT Equipment and Infrastructure Upgrades. \$7.9 million is for hardware, software, and contract services to enable federal defender organization personnel to be fully telework capable, to support the federal defender national IT infrastructure to address increased demand due to expanded telework and videoconferencing, and for telecommunications upgrades to enable remote management of federal defender organization phone systems.

- Enhanced Cleaning. \$1.5 million is for enhanced cleaning of federal defender organizations’ office space. GSA provides regular cleaning of federal public defender offices in accordance with tenant occupancy agreements but will only cover the cost of enhanced cleaning when there is a confirmed or suspected COVID-19 event and then only the area(s) accessed by the infected person(s). The Judiciary requires funding for enhanced cleaning of all federal public defender offices and grant-funded community defender offices to ensure the health and safety of federal defender organization personnel and their clients.

Judiciary
Emergency Supplemental Request for COVID-19 Impact

Courts of Appeals, District Courts, and Other Judicial Services
Court Security

Legislative Language:

For an additional amount for “Court Security”, \$2,200,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally: Provided, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Description of Request:

The Judiciary requests \$2.2 million in emergency supplemental appropriations in the Court Security account to address security related COVID-19 pandemic impacts in the federal courts. The funding will address the following needs:

- Remote Security. \$1.8 million is for software and equipment that will enable court staff to renew security certificates for Judiciary personal identity verification-interoperable (PIV-I) cards remotely. This software and equipment will allow court staff currently teleworking to reset their security pins for digital signatures due to pin expiration or for other reasons without having to risk health and safety by physically going to the office.
- Personal Protective Equipment. \$0.4 million is to purchase personal protective equipment (gloves, masks, hand sanitizer, disinfecting wipes, etc.) for court security officers.

Focusing Probation Resources on Higher-Risk Offenders

Description: Allow the courts to terminate the supervised release term of an inmate who is no longer a threat and would not benefit from continued supervision. Inmates who have been compassionately released from the Bureau of Prisons (BOP) or who have already served a period of prerelease custody under the elderly home confinement program, or prerelease custody or supervised release for risk and needs assessment, would not need to wait for the statutorily required completion of one year.

Justification: As more inmates are released during the COVID-19 pandemic, placing an increased burden on court probation services, this legislative proposal would allow courts to terminate the period of supervised release of an offender who does not require intensive probation supervision prior to the current minimum of one year. This proposal would relieve probation officers of some of their unnecessary workload, allowing them to focus their limited resources where most needed. Legislative and policy developments, such as the First Step Act, the CARES Act, and the Attorney General’s directives to the BOP, are resulting in even more of these cases burdening probation officers and costing taxpayer money which is unnecessary for many compassionate, elderly, and other release cases. An extended period of supervision in the community is generally unnecessary to ensure public safety and may even, in some cases, be counterproductive.

Application: Section 3583(e)(1) of Title 18 currently specifies that early termination of supervision may occur *only* after one year when warranted by the conduct of the defendant released and the interest of justice. With an increasing number of persons being released from incarceration early and spending an extended period of time on prerelease confinement as a result of recently enacted laws, including persons under compassionate release or who have served a period of prerelease custody under 34 U.S.C. § 60541(g) (elderly home confinement program), 18 U.S.C. § 3624(c) (prerelease custody), or 18 U.S.C. § 3624(g) (prerelease custody or supervised release for risk and needs assessment system participant), the one- year waiting period may be too long for the best interest of the defendant, public safety, and the administration of the criminal justice system. These offenders include many elderly and terminally ill persons who, independently of their own conduct, may be physically incapacitated, dying, or aged to the point that they are no longer a risk to the community and cannot meaningfully engage in the supervision process. In addition, the requirement is sometimes redundant because probation officers would be providing supervision and assistance to persons on supervised release who have already received such services during the period of home confinement. Relieving the responsibility of supervision in these cases would alleviate workload demands on probation officers and allow them to focus on higher priority cases.

Proposed Legislative language:

SEC. ____ ALLOWING EARLY TERMINATION OF SUPERVISED RELEASE

Section 3583(e)(1) of title 18, United States Code, is amended by inserting after “the interest of justice” the following:

“, except that in the case of a defendant released from imprisonment under sections 3582(c)(1), 3624(c), or 3624(g) of that title or under section 60541(g) of title 34, United States Code, terminate a term of supervised release and discharge the defendant at any time, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of supervised release, if it is satisfied that such action is in the interest of justice ”.

Keeping Non-Dangerous Defendants Out of Prison Prior to Trial

Description: Reduce unnecessary pretrial detention of certain low-risk defendants charged with drug trafficking offenses by: (1) limiting the application of the presumption of detention to defendants whose criminal history suggests that they pose a higher risk of failing to appear for court proceedings or that they may be a danger to the community; and (2) removing the presumption from other low-risk defendants.

Justification: The COVID-19 pandemic has created dire circumstances in many federal prisons, including those in which the Attorney General has declared an emergency. This proposal would help by allowing some defendants, who would ordinarily be required to be detained, to be placed under community supervision while awaiting trial. Efforts are being made at the Bureau of Prisons, pursuant to the Attorney General's directives, to release as many prisoners as possible to home confinement under the compassionate release program and to take the virus into account when making pre-trial release recommendations. Congress has also authorized additional compassionate releases in the CARES Act.

Application: This provision reduces unnecessary pretrial detention of certain low-risk defendants charged with drug trafficking offenses by limiting the application of the presumption of detention to defendants whose criminal history suggests that they pose a higher risk of failing to appear for court proceedings or that they may be a danger to the community. Section 3142(e) of Title 18 creates a presumption that certain defendants should be detained pending trial because a court cannot craft conditions of community supervision that would reasonably assure both the safety of the community and the defendant's appearance at court proceedings. The statute identifies several categories of defendants to whom this presumption applies, including those charged with specific drug trafficking offenses, and places the burden on a defendant to rebut the presumption for detention. In keeping with its support of evidence-based supervision practices, the Administrative Office of the U.S. Courts conducted a study analyzing data collected from a ten-year period. The study reveals that a sizeable segment of low-risk defendants falls into the category of drug traffickers subject to the presumption of detention. The study concluded that these defendants are detained at a high rate, even when their criminal histories and other applicable risk factors indicate that they pose a low risk of either reoffending or absconding while on pretrial release, and arguably should be released for pretrial supervision.

Legal, policy, and budgetary factors—including the presumption of innocence and the relative costs of incarceration versus pretrial supervision— support reducing unnecessary pretrial detention. Therefore, the Judicial Conference endorsed limiting the application of the presumption of detention to defendants who meet these particular criteria, which would enable judges to make pretrial release decisions for low-risk defendants on a case-by-case basis. No defendant would be automatically released into the community if this proposal were enacted.

Proposed Legislative language:

SEC. ____ REDUCING UNNECESSARY PRETRIAL DETENTION OF LOW-RISK DEFENDANTS.

Section 3142(e)(3)(A) of title 18, United States Code, is amended by inserting the following before the semicolon: “and such person has previously been convicted of two or more offenses described in subsection (f)(1) of this section, or two or more state or local offenses that would have been offenses described in subsection (f)(1) of this section if a circumstance giving rise to federal jurisdiction had existed, or a combination of such offenses”.

Compassionate Release Requests in District Courts Before Administrative Exhaustion by Reducing Unnecessary Electronic Monitoring

Description: To allow filing compassionate release motions directly to district court without 30-day exhaustion of administrative remedies if waiting would cause irreparable harm to inmates during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to COVID-19 and ending 30 days after the national emergency terminates.

Justification: District courts are severely constrained by the statute's administrative exhaustion provision, especially in the midst of the COVID-19 pandemic. The 30-day lapse requirement in particular has prevented district courts from timely reviewing the petitions of vulnerable inmates who claim serious and irreparable harm to their health. According to reports from defenders working with Bureau of Prison (BOP) facilities across the country, there have been significant delays in BOP's response to requests for compassionate release. These delays assume that the requests can even be made. For example, inmates in transit often do not have a warden to whom they can submit a compassionate release request. Likewise, inmates in a number of jurisdictions have reported wardens or case managers refusing to even accept such requests, rendering the administrative exhaustion process practically unavailable. Inmates at the BOP Federal Correctional Complex in Oakdale, Louisiana (F.C.C. Oakdale) have reported that their compassionate release requests have been returned to them unanswered. Attorney General William Barr named F.C.C. Oakdale as one of three BOP institutions that needed to focus on releasing vulnerable inmates because of the acute, deadly, and widespread COVID-19 outbreak. The first BOP inmate COVID-related death sadly occurred at F.C.C. Oakdale. The Office of the Warden at Taft Correctional Institution in Taft, California went so far as to issue an official memo stating that administrative requests would not be answered and that "no further requests would be addressed."

Application: Amend 18 U.S.C. § 3582 to allow a defendant, once he or she has filed a request for compassionate release relief with the BOP, to file a motion for compassionate release directly in the district court before 30 days have lapsed if the exhaustion of administrative remedies would be futile or the 30-day lapse would cause serious harm to the defendant's health due to the COVID-19 pandemic. This legislation would be effective during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to COVID-19 and end 30 days after the national emergency terminates.

Proposed Legislative language:

SEC. ____ COMPASSIONATE RELEASE REQUESTS BEFORE ADMINISTRATIVE EXHAUSTION.

Subsection (c)(1)(A) of section 3582 of title 18, United States Code, is amended as follows:

the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, *or, effective during the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to COVID-19 and end 30 days after the national emergency terminates, upon motion by the defendant submitted to the court upon a showing that administrative exhaustion would be futile or that the 30-day lapse would cause serious harm to the defendant's health*, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

Focusing Scarce Electronic Monitoring Resources on Higher Risk Offenders

Description: Allow district judges to waive the electronic monitoring condition required for pretrial release in certain cases when a more restrictive condition of confinement and monitoring is imposed on an offender, so that scarce monitoring equipment and probation officer resources can be applied where most needed.

Justification: This provision would lessen the extreme pressures being faced by probation offices, especially the electronic location monitoring provision, caused by the COVID-19 pandemic emergency.

Application: This provision allows district judges to waive the electronic monitoring condition required for pretrial release in certain cases when a more restrictive condition is imposed on an offender thus allowing monitoring equipment and probation officer time to focus on where it is needed more. As part of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. No. 109-248), Section 3142(c)(1)(B) of Title 18, was amended to require the court to impose electronic monitoring as a condition of pretrial release in any case that involves a minor victim under various Title 18 offenses or a failure to register offenses under 18 U.S.C. § 2250. The condition is required, however, even if the court imposes another, more restrictive condition such as residing in a halfway house or participating in a residential treatment program. The Adam Walsh Act was enacted, among other things, “[to] protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, [and] to promote Internet safety.” Elimination of the requirement to impose an electronic monitoring condition in cases where the defendant is confined and monitored in a secure residential setting would not jeopardize these goals. Moreover, installing the electronic monitoring equipment in halfway houses and treatment facilities carries unnecessary costs consisting of equipment rental, monitoring time, and labor.

Proposed Legislative language:

SEC. ____ EFFICIENT USE OF ELECTRONIC MONITORING CONDITIONS.

The first undesignated paragraph of Section 3142(c)(1)(B) of title 18, United States Code, is amended by adding the following after the reference to (viii) in (xiv): “, except that the electronic monitoring condition may be waived if the judicial officer determines that a more restrictive condition is necessary to ensure the appearance of the person as required or to ensure the safety of any other person and the community”

Focusing Pretrial Officer Resources on Higher Risk Defendants by Eliminating Mandatory Reports That Have No Use

Description: Authorizes a district court to direct that a pretrial services bail report need not be prepared in certain cases where the report would not be useful in the court's determination of release or detention because the defendant is already in custody or has a detainer.

Justification: This legislative proposal would help reduce workload burdens on probation and pretrial services offices caused by the COVID-19 pandemic emergency, and allow pretrial services to be deployed where more needed.

Application: This proposal authorizes a district court to direct that a pretrial services bail report not be prepared in certain cases where the report would not be useful in the court's determination of release or detention. Section 3154(1) of Title 18 directs officers to prepare bail reports on each person charged with an offense, "except that a district court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with class A misdemeanors as defined in section 3559(a)(6) of [Title 18]." This exception does not apply to felony offenses, even though certain defendants appearing before the courts have little or no chance of being released pending trial. For example, defendants who are already serving sentences in federal, state, or local custody on other charges would not be eligible for pretrial release, nor would most defendants who are illegal aliens subject to an immigration detainer.

This amendment to Section 3154(1) would give the court discretion to waive the preparation of a pretrial services report in cases where the report would have little or no bearing on the court's release decision, thereby conserving the resources of the probation or pretrial services office. Specifically, the court could waive the bail report requirement if the defendant is subject to an ICE detainer or if the defendant is already in federal, state, or local custody in connection with a previous conviction.

Proposed Legislative language:

SEC. ____ WAIVER OPTION FOR UNNECESSARY BAIL REPORTS.

Section 3154(1) of title 18, United States Code, is amended by inserting before the end of the sentence " , individuals described in section 3142(d)(1)(B) of this title, or individuals who are already in federal, state, or local custody in connection with a previous conviction".

Focusing Probation Officer Resources Where Most Needed by Eliminating Duplicative Notifications

Description: Eliminate the duplicate notification requirement for victims to reduce the informational burden on victims and focus probation officer resources where most needed.

Justification: This legislative proposal would help reduce workload burdens on probation and pretrial services offices caused by the COVID-19 pandemic emergency.

Application: This proposal streamlines victim notification requirements to reduce the burden on victims and increase governmental efficiency. As part of the Mandatory Victims Restitution Act of 1996, probation officers are required by 18 U.S.C. § 3664(d)(2) to provide the victims of an offense with notice of the defendant's conviction, the sentence date, and the victim's opportunity to submit an impact statement. The officer is also required to provide the victim with an affidavit form to submit a claim for restitution. In a similar fashion, the Crime Victims' Rights Act directs the "officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime [to] make their best efforts to see that crime victims are notified of, and accorded, the rights described in [the Act]." As a result of these two provisions, it is not uncommon for probation officers to contact victims to provide notice and seek a statement after employees of an executive branch agency have already done so. This duplication of effort is wasteful, and sometimes confuses or upsets victims, who may already be overwhelmed by the criminal justice system. Amending Section 3664(d)(2) to eliminate the current duplication of efforts in cases with identifiable victims will conserve resources and provide victims with a single point of contact. Because the executive branch already has an obligation under Section 3771(c)(1) and would most likely have contact with such victims long before sentencing, it makes sense to eliminate the redundant duties assigned to probation officers. In the event the executive branch agencies failed to contact a victim, the probation officer would then provide the notice.

Proposed Legislative language:

SEC. ___ STREAMLINING VICTIM NOTIFICATION PROVISIONS.

Section 3664(d)(2) of title 18, United States Code, is amended by inserting the following undesignated paragraph after section 3664(d)(2)(B): "The required notice and provision of an affidavit form in foregoing subparagraphs (A) and (B) may be excused if a person identified in section 3771(c)(1) has already provided notice and an affidavit form to the victim."

Maximizing Use of Probation Resources on Higher Risk Offenders by Clarifying Obligations for Prerelease Custody

Description: To maximize the use of probation resources by harmonizing the standard for the three circumstances under which the probation system is authorized to supervise inmates in the custody of the Bureau of Prisons (BOP) who have been placed on prerelease custody to be “to the extent practicable.”

Justification: The differing language for all three provisions creates inconsistent requirements for U.S. probation’s involvement in assisting inmates on pre-release custody. Amending the more compulsory language of 18 U.S.C. § 3624(c) and 34 U.S.C. § 60541(g) to track the more permissive language of 18 U.S.C. § 3624(g) would clarify and harmonize the various obligations of the probation system to assist inmates on pre-release custody. More importantly, the probation system does not always have the resources to supervise pre-release inmates. The lack of resources is even more of an issue under the expanded release authorities of the First Step Act and in response to the COVID-19 pandemic. Additionally, any arrangement to supervise pre-release inmates should be jointly agreed to by the BOP and the probation system.

Application: There are three different statutory provisions that discuss the obligation of the probation system to assist inmates on pre-release custody: 18 U.S.C. §§ 3624(c) and (g), and 34 U.S.C. § 60541(g). Under the three provisions, probation officers are authorized to supervise inmates in the custody of the BOP who have been placed on pre-release custody. However, all three provisions set forth different degrees to which officer assistance is authorized. If an individual is released under 18 U.S.C. § 3624(c), then the U.S. probation system must, “to the extent practicable,” offer assistance to the individual during pre-release custody. In comparison, if an individual is released under 18 U.S.C. § 3624(g), then the BOP must, “to the greatest extent practicable,” enter into an agreement with the U.S. probation system to supervise the individual, and the probation system must “to the greatest extent practicable” offer assistance to any prisoner not under its supervisions during pre-release custody. If an individual is released under the elderly and family reunification for certain nonviolent offenders pilot program, pursuant to 34 U.S.C. § 60541(g), probation “shall provide such assistance and carry out such functions as the Attorney General may request in monitoring, supervising, providing services to, and evaluating” that individual. The three standards should be made consistent by amending 18 U.S.C. § 3624(c) and 34 U.S.C. § 60541(g) to require the probation system to provide assistance only “to the extent practicable.”

Proposed Legislative language:

SEC. __ CLARIFYING AND HARMONIZING THE OBLIGATION OF THE U.S. PROBATION SYSTEM TO ASSIST INMATES ON PRERELEASE CUSTODY

- (a) Section 3624(c)(3) of title 18, United States Code, is amended by striking “shall” and inserting “should” after “The United States Probation System”.
- (b) Section 3624(g)(7) of title 18, United States Code, is amended by striking “shall” after “Bureau of Prisons” and inserting “should” in its place, and by striking “greatest” before “extent practicable”.
- (c) Section 3624(g)(8) of title 18, United States Code, is amended by striking “shall” after “United States Probation and Pretrial Services” and replacing it with “should”, and by striking “greatest”.
- (d) Section 60541(g)(4) of title 34, United States code is amended by striking “shall provide” and inserting in its place “should, to the extent practicable, provide”.

Increase the Speed of Consideration of Compassionate Release Motions

Description: Facilitate provision of medical records needed in compassionate release motions to courts, probation officers, and defense counsel in a prompt manner or as ordered by the court so that a defendant's motions can be decided as quickly as possible.

Justification: The First Step Act expanded compassionate release procedures by authorizing an inmate to file a motion directly with the court based on the earlier exhaustion of administrative remedies or the lapse of 30 days from the warden's receipt of a request. The expanded procedures, as well as the recent COVID-19 pandemic, have led to an increase in requests for compassionate release to both the Bureau of Prisons (BOP) and the courts. With the increased number of requests, there have been delays in providing inmate medical records to the courts, defense counsel, and probation offices in a timely manner to assess whether an inmate may qualify for compassionate release based on medical needs.

Application: At present there have been delays obtaining inmates' medical records by the courts, probation officers, defense counsel, and inmates themselves due to limited BOP staff and the increase in such motions due to COVID-19. Under this provision, 18 U.S.C. § 3582(c)(1)(A) would be amended to add that if a motion for modification of an imposed term of imprisonment includes as a basis for relief that medical conditions warrant such a reduction, the defendant's BOP medical records must be made accessible "promptly" or in a time frame ordered by the court, to the court, the probation office, the attorney for the government, and the attorney for the inmate. Under 34 U.S.C. § 60541(d)(5), the BOP is already directed to "provide the United States Probation and Pretrial Services System with relevant information on the medical care needs and the mental health treatment needs of inmates scheduled for release from custody". The proposed amended to Section 3582 would be an expansion of this requirement and include an explicit directive that medical records be provided.

Proposed Legislative language:

SEC. ___ INCREASING ACCESS TO BOP MEDICAL RECORDS FOR COMPASSIONATE RELEASE MOTIONS

Section 3582(c)(1)(A) of title 18, United States Code, is amended by inserting the following after "Sentencing Commission" and before the semicolon: "If a motion for reduction of the imprisonment term includes as a basis for relief that the defendant's medical condition warrants a reduction, the Bureau of Prisons shall promptly produce the defendant's Bureau of Prisons medical records to the court, the probation office, the attorney for the government, and the attorney for the inmate. If additional time is required by the Bureau of Prisons to produce such records, they shall be produced in a time frame ordered by the court"

Preserve Existing Article III Judicial Resources

Description: Preserve and maximize existing judicial resource by converting existing temporary judgeships to permanent status.

Justification: When the courts reconstitute after the COVID-19 pandemic, the strain will be even greater since there will be a backlog of cases that could not be adjudicated during the pandemic. The conversion of temporary judgeships will ensure these judicial resources are not lost and would help ease that strain by providing permanent help in particular courts where help is needed now more than ever. The Judiciary requested this change prior to the pandemic; however, the pandemic has highlighted the strain that many courts are experiencing due to overwhelming caseloads and an inadequate number of judges.

Application: Convert the following eight existing temporary judgeships to permanent status:

- 1 – Kansas
- 1 – Missouri Eastern
- 1 – Arizona
- 1 – California Central
- 1 – Florida Southern
- 1 – New Mexico
- 1 – North Carolina Western
- 1 – Texas Eastern

For your information, two additional temporary judgeships exist – one each in Alabama Northern and Hawaii.

Proposed Legislative language:

A bill has been introduced in the Senate to accomplish the conversion of the eight temporary judgeships requested by this proposal. S. 3086, the “Temporary Judgeship Conversion Act of 2019,” was introduced by Senator Moran (KS) on December 18, 2019 and referred to the Senate Committee on the Judiciary. That bill language follows:

SEC. __ DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) In General.--The existing judgeships for the district of Kansas and the eastern district of Missouri authorized by section 203(c) of the Judicial Improvements Act of 1990 (Public Law 101-650; 28 U.S.C. 133 note) and the existing judgeships for the eastern district of Texas, the district of Arizona, the central district of California, the southern district of Florida, the western district of North Carolina, and the district of New Mexico authorized by section 312(c) of the 21st Century Department of Justice Appropriations Authorization Act (Public Law 107-273; 28 U.S.C. 133 note), as of the effective date of this Act, shall be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall hold the office under section 133 of title 28, United States Code, as amended by this Act.

(b) Tables.--In order that the table contained in section 133(a) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsection (a)--

(1) the item relating to Arizona is amended to read as follows:

``Arizona..... 13";

(2) the item relating to California is amended to read as follows:

``California:

Northern..... 14

Eastern..... 6

Central..... 28

Southern..... 13";

(3) the item relating to Florida is amended to read as follows:

``Florida:

Northern.....4

Middle..... 15

Southern..... 18";

(4) the item relating to Kansas is amended to read as follows:

``Kansas.....6";

(5) the item relating to Missouri is amended to read as follows:

``Missouri:

Eastern..... 7

Western.....5

Eastern and Western.....2";

(6) the item relating to New Mexico is amended to read as follows:

``New Mexico..... 7";

(7) the item relating to North Carolina is amended to read as follows:

``North Carolina:

Eastern..... 4

Middle.....4

Western.....5"; and

(8) by striking the item relating to Texas and inserting the following:

``Texas:

Northern..... 12

Southern..... 19

Eastern.....8

Western.....13".

Emergency Supplemental Judgeships

Description: It has been decades since the Judiciary's judgeships needs were comprehensively addressed by Congress, and the pandemic has further highlighted the strain many courts are experiencing due to overwhelming caseloads and an inadequate number of judges. This proposal would add seven additional judgeships to a subset of courts that are in extreme need.

Justification: When the courts reconstitute after the COVID-19 pandemic, the strain will be even greater since there will be a backlog of cases that could not be adjudicated during the pandemic. Two of the districts in extreme need of additional judgeships, the Eastern District of California and the District of Arizona, have declared judicial emergencies (under 18 U.S.C. § 3714) due to the effects of the pandemic. These declarations were made because those two courts have calendars that are so congested that they are unable to meet certain statutory time limits to hear cases. Those time limits are suspended due to the anticipated backlog of cases. All seven of these additional judgeships will be paramount to their courts post-pandemic to help those courts reconstitute and recover.

Application: The Judiciary requested additional judgeships prior to the pandemic. Seven additional judgeships, which were included in the Judicial Conference judgeships request submitted last year, would be added as follows:

- 1 – Indiana Southern
- 1 – Delaware
- 1 – New Jersey
- 1 – Texas Western
- 1 – Arizona
- 1 – Florida Southern
- 1 – California Eastern

Proposed Legislative language: See attached language.

SEC. ____ DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) The President shall appoint, by and with the advice and consent of the Senate:

- (1) 1 additional district judge for the district of Arizona;
- (2) 1 additional district judge for the eastern district of California;
- (3) 1 additional district judge for the district of Delaware;
- (4) 1 additional district judge for the southern district of Florida;
- (5) 1 additional district judge for the southern district of Indiana;
- (6) 1 additional district judge for the district of New Jersey;
- (7) 1 additional district judge for the western district of Texas.

(b) TABLES. In order that the table contained in section 133(a) of title 28, United States Code, will, with respect to each judicial district, reflect the changes in the total number of permanent district judgeships authorized as a result of subsection (a)—

(1) the item relating to Arizona is amended to read as follows:

``Arizona..... 13";

(2) the item relating to California is amended to read as follows:

``California:
Northern..... 14
Eastern..... 7
Central..... 27
Southern..... 13";

(3) the item relating to Delaware is amended to read as follows:

``Delaware... .. 5";

(4) the item relating to Florida is amended to read as follows:

``Florida:
Northern..... 4
Middle..... 15
Southern..... 18";

(5) the item relating to Indiana is amended to read as follows:

``Indiana:
Northern..... 5
Southern..... 6";

(6) the item relating to New Jersey is amended to read as follows:

``New Jersey 18"; and

(7) by striking the item relating to Texas and inserting the following:

``Texas:
Northern..... 12
Southern..... 19
Eastern..... 7
Western..... 14".

(c) AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including such sums as may be necessary to provide appropriate space and facilities for the judicial positions created by this Act.

Additional Senior Judge Resources for the U.S. Territorial District Courts

Description: Amend the retirement provisions for judges of the federal district courts of the U.S. territories to permit judges of those courts who have completed a full term and have at least 15 years of service to immediately serve the court as senior judges.

Justification: This provision will have an immediate benefit to the judiciary by allowing a judge who has just completed his term on the U.S. District Court for the Virgin Islands to assume senior status at once (and be able to assist the court with its caseload) rather than having to wait a number of years until attaining age 65, as required under current law. This will provide an additional resource to the court at a time when the ability for visiting judges to travel to fill the gap is effectively nullified, given the prevalence of COVID-19 and associated shelter-in-place orders. The territorial district courts have active dockets. Increasing the availability of senior judges, as provided for in this proposal, would provide a key resource for the federal judiciary in the Territories during this time of crisis and will ensure continued functioning of the territorial district courts without disruption of functions or compromise of Constitutional safeguards.

Application: There are three U.S. district courts in the U.S. territories – Guam, the Virgin Islands, and the Northern Mariana Islands (NMI), with four judgeships (two in the Virgin Islands and one each in Guam and NMI). The judges of these courts are appointed by the President and confirmed by the Senate for a term of 10-years or until their successor is appointed. The current retirement statute does not allow district judges in the Territories who have completed a term of service to immediately enter senior service if they are under the age of 65. This provision would allow judges who have completed a term and have at least 15 years of service to serve the court as senior judges before reaching age 65. Currently, Guam and the Virgin Islands have no senior judges. NMI has one senior judge who lives in Idaho and cannot now travel to NMI. If the term of service for each of the current judges in the Territories ends during the course of this pandemic, under the current statutory scheme, *none* of the judges would be able to serve as a senior judge. This provision would provide, over the next 16 months, as many as four senior judges – two for the Virgin Islands, one for Guam, and one for NMI.

Proposed Legislative language: A bill has been introduced in the House to accomplish this proposal. H.R. 6593, the “Territorial Judgeship Retirement Equity Act of 2020,” was introduced by Delegates San Nicolas (Guam), Sablan (Northern Marianas Islands), and Plaskett (Virgin Islands), on April 21, 2020. See attached bill.



(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R.

To amend certain retirement provisions for judges serving in territorial district courts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SAN NICOLAS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend certain retirement provisions for judges serving in territorial district courts, 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 “Territorial Judgeship
5 Retirement Equity Act of 2020”.

6 **SEC. 2. RETIREMENT FOR JUDGES IN TERRITORIES AND**
7 **POSSESSIONS.**

8 (a) JUDGES IN TERRITORIES AND POSSESSIONS.—
9 Section 373 of title 28, United States Code, is amended—

1 (1) by striking subsection (a) and redesignating
2 subsection (b) as subsection (a);

3 (2) in subsection (a), as redesignated by para-
4 graph (1), by striking “The age and service require-
5 ments for retirement under subsection (a) of this
6 section” and inserting “IN GENERAL—A judge of
7 the District Court of Guam, the District Court of
8 the Northern Mariana Islands, or the District Court
9 of the Virgin Islands who retires from office after
10 attaining the age and meeting the service require-
11 ments (whether continuous or otherwise) of this sub-
12 section shall during the remainder of the judge’s
13 lifetime receive an annuity equal to the salary the
14 judge is receiving at the time the judge retires. The
15 age and service requirements for retirement under
16 this subsection”;

17 (3) by inserting after subsection (a), as redesign-
18 ated by paragraph (1), the following new sub-
19 section:

20 “(b) SPECIAL RULE FOR RETIREMENT FOR JUDGES
21 IN TERRITORIES AND POSSESSIONS.—

22 “(1) IN GENERAL.—Notwithstanding subsection
23 (a), a judge of the District Court of Guam, the Dis-
24 trict Court of the Northern Mariana Islands, or the
25 District Court of the Virgin Islands, who is not re-

1 appointed following the expiration of the term of of-
2 fice of such judge, and who retires upon the comple-
3 tion of such term shall, upon attaining the age of
4 fifty years and during the remainder of the judge's
5 lifetime, receive an annuity equal to the salary the
6 judge is receiving at the time the judge retires, if—

7 “(A) such judge has served a term of ten
8 years as a judge on a court identified in this
9 subsection;

10 “(B) such judge advised the President, in
11 writing, that they are willing to accept re-
12 appointment as a judge on the court on which
13 the judge is serving—

14 “(i) not earlier than nine months and
15 not later than six months before the date
16 that is ten years after the date on which
17 the judge was appointed to the court on
18 which the judge is serving; and

19 “(ii) not later than sixty days after
20 each Congress is convened following the
21 Congress that is in session at the time of
22 the initial notification required under
23 clause (i);

24 A judge or former judge who is receiving an an-
25 nuity pursuant to this subsection and who

1 thereafter accepts compensation for civil office
2 or employment by the Government of the
3 United States (other than the performance of
4 judicial duties pursuant to recall under sub-
5 section (c)) or in the practice of law represents
6 (or supervises or directs the representation of)
7 a client in making any civil claim against the
8 United States or any agency thereof shall for-
9 feit all rights to an annuity under this sub-
10 section for the period in which such compensa-
11 tion is received or legal representation is under-
12 taken.

13 “(2) APPLICATION DATE.—

14 “(A) IN GENERAL.—A judge of the Dis-
15 trict Court of Guam, the District Court of the
16 Northern Mariana Islands, or the District
17 Court of the Virgin Islands, in active service,
18 shall be subject to the requirements of this sub-
19 section beginning on January 1, 2019.

20 “(B) EXCEPTION TO ADVICE REQUIRE-
21 MENT.—A judge of the District Court of Guam,
22 the District Court of the Northern Mariana Is-
23 lands, or the District Court of the Virgin Is-
24 lands, in active service on January 1, 2019,

1 shall be deemed to have met the advice require-
2 ment under paragraph (1)(B).”;

3 (4) in subsection (c)—

4 (A) in the matter preceding paragraph (1)
5 by inserting “REQUIREMENTS FOR SENIOR
6 JUDGE”;

7 (B) in paragraph (1)—

8 (i) by striking “Any” and inserting
9 “A”; and

10 (ii) by striking “this section may elect
11 to become a senior judge of the court upon
12 which he served before retiring.” and in-
13 serting “subsection (a) or (b), with 15
14 years or more of judicial service (whether
15 continuous or otherwise), may elect to be-
16 come a senior judge of the court upon
17 which the judge served before retiring. Any
18 judge or former judge who is receiving an
19 annuity pursuant to subsection (b) , with
20 less than 15 years of judicial service
21 (whether continuous or otherwise), may
22 elect to become a senior judge of the court
23 upon which the judge served before retir-
24 ing upon attaining the age of sixty-five
25 years.”;

1 (C) in paragraph (2), by striking “he” and
2 inserting “the judge”;

3 (D) in paragraph (3), by striking “he” and
4 inserting “the senior judge”;

5 (E) in paragraph (4)—

6 (i) by striking “Any” and inserting
7 “A”; and

8 (ii) by striking “subsection (a) of this
9 section” and inserting “subsection (a) or
10 (b)”; and

11 (F) in paragraph (5), by striking “Any”
12 and inserting “A”;

13 (5) in subsection (d), by striking “Any” and in-
14 serting “EMPLOYMENT OF SENIOR JUDGE—A”;

15 (6) in subsection (f), by striking “Service” and
16 inserting “COMPUTATION OF AGGREGATE JUDICIAL
17 SERVICE—Service”

18 (7) in subsection (e)—

19 (A) by striking “Any” and inserting
20 “MENTAL OR PHYSICAL DISABILITY—A”;

21 (B) by striking “who is removed by the
22 President of the United States” and inserting
23 “who has served at least five years (whether
24 continuous or otherwise) and who retires or is
25 removed from office”;

1 (C) by striking “or who is not reappointed
2 (as judge of such court),”;

3 (D) by striking “, upon attaining the age
4 of sixty-five years or upon relinquishing office if
5 he is then beyond the age of sixty-five years, (1)
6 if his judicial service, continuous or otherwise,
7 aggregates fifteen years or more, to receive dur-
8 ing the remainder of his life an annuity equal
9 to the salary he received when he left office, or
10 (2) if his judicial service, continuous or other-
11 wise, aggregated less than fifteen years but not
12 less than ten years,”;

13 (E) by striking “his life an annuity equal
14 to that proportion of such salary which the ag-
15 gregate number of his years of his judicial serv-
16 ice bears to fifteen.” and inserting “the judge’s
17 lifetime—”; and

18 (F) by adding at the end the following new
19 paragraphs:

20 “(1) an annuity equal to 50 percent of the sal-
21 ary payable to a judge on a court identified in this
22 subsection in regular active service, if before retire-
23 ment or removal such judge served less than 10
24 years; or

1 “(2) an annuity equal to the salary payable to
2 a judge on a court identified in this subsection in
3 regular active service, if before retirement or re-
4 moval such judge served at least 10 years.’”;

5 (8) in subsection (g)—

6 (A) by striking “Any retired judge” and
7 inserting “COST OF LIVING ADJUSTMENT—A
8 retired judge”;

9 (B) by striking “under subsection (a)” and
10 inserting “under subsection (a) or (b), with at
11 least 15 years of judicial service (whether con-
12 tinuous or otherwise), or is entitled to receive
13 an annuity under subsection (e)”;

14 (C) by striking “him” and inserting “such
15 judge”; and

16 (D) by striking “95” and inserting “100”.

17 (b) **EFFECTIVE DATE.**—The amendments made by
18 this section shall take effect on the date of the enactment
19 of this Act.

Eliminating Inefficient and Unfair Annual Leave Treatment for Senior Court Executives, as Exacerbated by the COVID-19 National Emergency

Description: This proposal addresses a fundamental disparity, as exacerbated by the COVID-19 national emergency, between the treatment of certain senior court unit executives and their counterparts in the executive and legislative branches with respect to their ability to carryover unused annual leave in excess of 240 hours. The proposal would allow certain court unit executives to carryover up to 720 hours of annual leave like most comparable senior level executives in the executive and legislative branches. Currently, court unit executives may only carryover 240 hours of annual leave.

Justification: In direct response to the COVID-19 pandemic, many judicial branch senior executives have been required to undertake extraordinary and extended efforts, without taking any annual leave, to ensure the federal judiciary continues to function and meet its constitutional mandates. Thus, it is highly unlikely that these employees will be able to take time off now or in the next several months, at a minimum. Based on preliminary information on both leave taken and future leave requests made by senior court executives for the period January 1 to April 30 of this year, their current and anticipated leave usage is less than 50 percent of the leave taken and/or planned for the comparable period in both 2018 and 2019.

Application: Senior executives within the federal government are often unable to use all their accrued annual leave given their critical management responsibilities. For this reason, senior executives throughout the executive and legislative branches have long been granted statutory authority to carry over up to 720 hours of accrued annual leave for use in future years. Unfortunately, similar authority has not been extended to senior executives in the federal courts, the Federal Judicial Center, or the U.S. Sentencing Commission, even as these senior executives experience similar management demands and significant limitations on their ability to take leave. This proposal addresses this disparity by extending to specified senior court executives the same authority to carryover up to 720 hours of annual leave as is currently authorized for senior executives throughout the rest of the federal government.

Legislation: This proposal principally consists of the text of H.R. 5735, the “Judicial Branch Senior Executive Leave Efficiency and Modernization Act of 2020,” a bipartisan measure that would extend the authority to carryover up to 720 hours of annual leave to circuit executives, district court executives, clerks of court, chief probation officers, chief pretrial services officers, senior staff attorneys, chief pre- argument attorneys, bankruptcy administrators, and circuit librarians as well as a limited number of specific senior positions within the Federal Judicial Center and the Sentencing Commission. In addition, the proposal would apply to the clerk of the Foreign Intelligence Surveillance Court, the clerk of the Bankruptcy Appellate Panel, and the clerk and panel executive of the Judicial Panel on Multidistrict Litigation. H.R. 5735 was introduced on January 30, 2020 by Representatives Jamie Raskin (MD) and Martha Roby (AL). Proposed bill language is attached.

SEC. ___ CARRY OVER OF ANNUAL LEAVE FOR CERTAIN SENIOR POSITIONS IN THE JUDICIAL BRANCH OF GOVERNMENT.

Paragraph (1) of section 6394(f) of title 5, United States Code, is amended—

- (1) subparagraph (G), by striking ``or" at the end;
- (2) in the first subparagraph (H) (relating to Library of Congress positions), by striking the period at the end and inserting a semicolon;
- (3) by redesignating the second subparagraph (H) (relating to positions in the United States Secret Service Uniformed Division) as subparagraph (I);
- (4) in subparagraph (I), as redesignated by paragraph (3), by striking the period at the end and inserting “;or”; and
- (5) by adding at the end the following:
 - “(J) any of the following positions within the judicial branch of Government:
 - “(i) Bankruptcy Administrator as described in section 302(d)(3)(I) of Public Law 99-554.
 - “(ii) Circuit executive appointed under section 332(e) of title 28.
 - “(iii) Chief circuit librarian appointed under section 713(a) of title 28.
 - “(iv) Senior staff attorney appointed under section 715(a) of title 28.
 - “(v) Federal public defender appointed under section 3006A(g)(2)(A) of title 18.
 - “(vi) Chief pretrial services officer appointed under section 3152(c) of title 18.
 - “(vii) Chief probation officer appointed under section 3602(c) of title 18.
 - “(viii) Any clerk appointed pursuant to section 156(b), 711(a), 751(a), 791(a), or 871 of title 28, but not including any chief deputy clerk, assistant clerk, or deputy clerk appointed under such sections.
 - “(ix) District Court Executive.
 - “(x) Chief Circuit Mediator.
 - “(xi) The Director, the Deputy Director, the Director of the Education Division, the Director of the Research Division, and the Director of the Information Technology Office within the Federal Judicial Center.
 - “(xii) The Staff Director, the Deputy Staff Director, the General Counsel, the Director of Education and Sentencing Practices, the Director of Research and Data, the Director of Legislative and Public Affairs, and the Director of Administration within the United States Sentencing Commission.
 - “(xiii) The clerk of court for the United States Foreign Intelligence Surveillance Court.
 - “(xiv) The clerk of court and Panel Executive for the United States Judicial Panel on Multidistrict Litigation.
 - “(xv) The clerk of court for the Bankruptcy Appellate Panel.”.

Amendments to Statutory Bankruptcy Code Deadlines

Description: Provide bankruptcy courts with authority to extend and toll statutory deadlines and time periods during the COVID-19 national emergency, where there is currently no flexibility to do so in either the Bankruptcy Code or other federal statutes.

Justification: Courts, clerks, and parties may be unable to meet statutory deadlines or act as required within those time periods due to emergency conditions as a result of the COVID-19 national emergency declaration that materially affect the functioning of a particular bankruptcy court.

Application: Provide bankruptcy courts with authority to extend and toll statutory deadlines and time periods during the COVID-19 national emergency, where there is currently no flexibility to do so in either the Bankruptcy Code or other federal statutes, upon a finding that the emergency conditions due to the national emergency declaration materially affect the functioning of a particular bankruptcy court. While some bankruptcy courts have entered general orders based on the COVID-19 crisis that extend certain statutory deadlines, many bankruptcy judges have stated that they feel uncomfortable with the scope of their apparent authority pursuant to general orders, and that a statutory fix is necessary. The Bankruptcy Code includes many deadlines for the court, the clerk, and parties in bankruptcy cases, as well as time periods that expire by operation of law.

Proposed Legislative language: See attached language.

SEC. _____ EXTENSION OF TIME IN BANKRUPTCY CASES

(a) Definition.—In this section, the term “covered emergency period” means the period beginning on the date on which the President declared a national emergency under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19) and ending on the date that is 30 days after the date on which the national emergency declaration terminates.

(b) Emergency Authority to Extend Deadlines and Time Periods.

(1) When a provision of title 11 or chapter 6 of title 28, United States Code:

(A) requires or allows a court, clerk, or any party in interest to take an action, to commence a proceeding, to file a motion, to file or send a document, or to hold a hearing by a specified deadline, or

(B) creates or sets forth a time period that ends or expires by operation of law; and

(2) the chief judge of a bankruptcy court (or, if the chief judge is unavailable, the most senior available active bankruptcy judge or the chief judge or circuit justice of the circuit that includes the bankruptcy court) finds that emergency conditions due to the national emergency declared by the President of the United States under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19) will materially affect the functioning of a particular bankruptcy court of the United States; then

(3) the judge or justice making the finding in subsection (b)(2) of this section may:

(A) extend or toll such deadline or time period for all cases and proceedings in the district (or specific cases or proceedings), for a period of time not to exceed the duration of the emergency or major disaster declaration; or

(B) authorize any other judge in the district to extend or toll such deadline or time period in a specific case or proceeding, for a period of time not to exceed the duration of the emergency or major disaster declaration.

(c) Deadlines and Time Periods Upon Termination of Emergency Authority.—Upon termination of the authority under subsection (e) of this section, any deadline or time period extended or tolled under subsection (b)(3) of this section shall be extended or tolled beyond the date on which such authority under subsection (e) terminates for an additional period that is the later of: (1) thirty (30) days or (2) the period of time originally required, imposed, or allowed by title 11 or chapter 6 of title 28, or applicable non-bankruptcy law. On request of a party in interest, and for good cause shown after notice and a hearing, the court may shorten the length of an additional period under this subsection.

(d) Exceptions to Emergency Authority.—On request of a party in interest, and for good cause shown after notice and a hearing, the court may in a specific case or proceeding waive any extension or tolling of a deadline or time period under subsection (b) or (c) of this section.

(e) Termination of Emergency Authority.—The authority and specific authorizations provided under subsection (b) of this section shall terminate on the earlier of—

(1) the last day of the covered emergency period; or

(2) the date on which the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available active bankruptcy judge or the chief judge or circuit justice of the circuit that includes the bankruptcy court) finds that emergency conditions no longer materially affect the functioning of that particular bankruptcy court.

Authorize 60-day Extension of Statutory Deadline for Dodd-Frank Report as a Result of COVID-19 National Emergency

Description: This proposal would extend for approximately 60 days the date on which this report is due from July 21, 2020 to September 18, 2020. Pursuant to 12 U.S.C. § 5382(e)(1), the Director of the Administrative Office of the U.S. Courts (AO) must study and submit to Congress a report on the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code. In recognition of the fact that the completion of this study – which requires comprehensive input from various parties in the bankruptcy community as well as from the federal judiciary – will likely be impeded by the COVID-19 pandemic.

Justification: To assist in the preparation of this study, the AO Director appointed a Dodd-Frank Study Working Group in 2019, whose members are primarily bankruptcy judges sitting in New York, Delaware, Michigan, and Maryland, areas where the COVID-19 pandemic has been particularly devastating. In turn, the Task Force’s ability to obtain the information from the bankruptcy community necessary to complete this study and prepare the report may be delayed. Accordingly, the proposal seeks an approximate 60-day extension of the statutory due date to ensure compliance.

Application: As amended, the change would provide an approximate 60-day extension to submit the report required by Section 5382(e)(1), from July 21, 2020 to September 18, 2020.

Proposed Legislative language:

SEC ____ EXTENSION OF STATUTORY DEADLINE FOR DODD-FRANK REPORT.

"The deadline set by 12 U.S.C. § 5382(e)(2), of no later than July 21, 2020, for the Administrative Office of the United States Courts to submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives a report summarizing the results of the studies conducted under 12 U.S.C. § 5382(e)(1), is hereby extended to September 18, 2020."

Ensuring Adequate Bankruptcy Judicial Resources

Description: Convert fourteen temporary bankruptcy judgeships to permanent status.

Justification: The economic impact of the COVID-19 pandemic in some respects exceeds that of the 2008 Great Recession. More than one in ten Americans is unemployed and various industries have been particularly devastated, including the retail, travel, and automotive sectors, among others. The expected increase in bankruptcy reorganization cases, particularly in Delaware, will likely result in a significant workload increase as these cases often involve very complex and time-consuming matters that require extensive judicial resources. The districts included in this request demonstrated a need for conversion of these positions to permanent status prior to the COVID-19 pandemic. Filings across the nation, including in each of the districts included in this request, are expected to increase significantly during the recovery from COVID-19. These temporary judgeships have expired or are due to expire in 2022 and 2024.

Application: Convert the following 14 temporary bankruptcy judgeships to permanent status:

- 7 – Delaware
- 1 – Puerto Rico
- 2 – Michigan Eastern
- 1 – Maryland
- 1 – Florida Middle
- 1 – Florida Southern

Proposed Legislative language: See attached language.

SEC. ____ CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.

(a) District of Delaware—

(1) The four (4) temporary bankruptcy judgeships authorized for the district of Delaware pursuant to section 1223(b)(1)(C) of Public Law 109-8 (2005), as extended by section 2(a)(1)(C) of Public Law 112-121 (2012) and further extended by section 1002(a)(1)(A) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code.

(2) The two (2) temporary bankruptcy judgeships authorized for the district of Delaware pursuant to section 1003(a)(1) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), are converted to permanent bankruptcy judgeships under section 152(a)(2) of title 28, United States Code.

(3) The temporary bankruptcy judgeship authorized for the district of Delaware pursuant to section 3(a)(3) of Public Law 102-361 (1992), as amended by section 307 of Title III of Public Law 104-317 (1996), and as extended by section 1223(c)(1) of Public Law 109-8 (2005), further extended by section 2(b)(1) of Public Law 112-121 (2012), and further extended by section 1002(b)(1) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(b) Middle District of Florida—The temporary bankruptcy judgeship authorized for the middle district of Florida pursuant to section 1003(a)(2) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(c) Southern District of Florida—One (1) of the temporary bankruptcy judgeships authorized for the southern district of Florida pursuant to section 1223(b)(1)(D) of Public Law 109-8 (2005), as extended by section 2(a)(1)(D) of Public Law 112-121 (2012) and further extended by section 1002(a)(1)(B) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(d) District of Maryland—One (1) of the temporary bankruptcy judgeships authorized for the district of Maryland pursuant to section 1223(b)(1)(F) of Public Law 109-8 (2005), as extended by section 2(a)(1)(F) of Public Law 112-121 (2012) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(e) Eastern District of Michigan—

(1) The temporary bankruptcy judgeship authorized for the eastern district of Michigan pursuant to section 1223(b)(1)(G) of Public Law 109-8 (2005), as extended by section 2(a)(1)(G) of Public Law 112-121 (2012) and further extended by section 1002(a)(1)(D) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(2) The temporary bankruptcy judgeship authorized for the eastern district of Michigan pursuant to section 1003(a)(3) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(f) District of Puerto Rico—

(1) The temporary bankruptcy judgeship authorized for the district of Puerto Rico pursuant to section 3(a)(7) of Public Law 102-361 (1992), as amended by section 307 of Title III of Public Law 104-317 (1996), and as extended by section 1223(c)(1) of Public Law 109-8 (2005), further extended by section 2(b)(1) of Public Law 112-121 (2012), and further extended by section 1002(b)(1) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(2) The temporary bankruptcy judgeship authorized for the district of Puerto Rico pursuant to section 1223(b)(1)(P) of Public Law 109-8 (2005), as extended by section 2(a)(1)(M) of Public Law 112-121 (2012) and further extended by section 1002(a)(1)(G) of Division B of Public Law 115-72 (2017) (28 U.S.C. 152 note), is converted to a permanent bankruptcy judgeship under section 152(a)(2) of title 28, United States Code.

(g) Technical Amendments. Section 152(a)(2) of title 28, United States Code, is amended—

- (1) in the item relating to the district of Delaware, by striking “1” and inserting “8”;
- (2) in the item relating to the middle district of Florida, by striking “8” and inserting “9”;
- (3) in the item relating to the southern district of Florida, by striking “5” and inserting “6”;
- (4) in the item relating to the district of Maryland, by striking “4” and inserting “5”;
- (5) in the item relating to the eastern district of Michigan, by striking “4” and inserting “6”; and
- (6) in the item relating to the district of Puerto Rico, by striking “2” and inserting “4”.

Temporary Suspension of the POWER Act Event Requirements

Description: Allow the suspension of the pro-bono legal education event requirements under the POWER Act for public safety reasons during the COVID-19 pandemic.

Justification: Judges and court personnel have canceled or postponed public events, including naturalization ceremonies, due to the COVID-19 pandemic. While public events emphasizing the importance of pro-bono services in domestic abuses cases are important, courts do not want to jeopardize public health by holding such events until health officials confirm that it is safe to do so.

Application: The POWER Act of 2018 requires courts to hold annual public events highlighting the importance of pro bono representation in domestic abuse cases. An annual report is due to Congress before the end of the calendar year. This proposal would allow the suspension of the requirement to hold public events under the POWER Act during the COVID-19 pandemic if the chief judge of a district makes a finding that to do so would jeopardize public health and safety.

Proposed Legislative language:

SEC. ____ TEMPORARY SUSPENSION OF THE POWER ACT EVENT REQUIREMENTS.

Section 3 of the POWER Act, Public Law 115-237, is amended to add section (d) as follows:

(d) PROTECTING PUBLIC HEALTH AND SAFETY.—Notwithstanding this section, the chief judge, or his or her designee, for each judicial district is not required to conduct any public event promoting pro bono legal services during fiscal year 2020 if the chief judge notifies the Director of the Administrative Office of the United States Courts by September 30 that conducting a public event would jeopardize public health or safety or violate state or local orders restricting public gatherings. A chief judge who provides notice pursuant to this provision is not required to submit a report under section 4.

Add a Federal Defender as an *Ex-officio*, Non-voting Member of the U.S. Sentencing Commission

Description: Add a Federal Defender as an *ex officio*, non-voting member of the U.S. Sentencing Commission.

Justification: During the pandemic, and in the aftermath of the pandemic, there will be a need to address what the “new normal” looks like in terms of appropriate sentencing policies and practices for the federal courts and the Sentencing Commission will serve a unique role in addressing these issues. One of the Commission’s principal purposes is to establish sentencing policies and practices for the federal courts. Each year, the Commission reviews and refines the guidelines in light of congressional action, decisions from courts of appeals, sentencing-related research, and input from the criminal justice community. Given the legislative changes that have already taken place in response to the pandemic, and the likelihood of even more legislative changes, there will be a need to reevaluate existing sentencing policies and practices for the federal courts.

Federal defenders are working on the front lines of the pandemic within the federal court system and have unique experiences and perspectives to contribute to any potential reevaluation of existing sentencing policies and practices – including the use of conditions of confinement as a factor in determining a sentence – especially given the adversary nature of our criminal justice system. The need for a defender voice is great, especially given that the Attorney General and U.S. Parole Commission have existing *ex-officio*, non-voting members. Adding a Defender as an *ex-officio*, non-voting member will help to make policy discussions more robust and assure that the any policy changes following the COVID-19 pandemic are truly representative of all the stakeholders within the criminal justice system.

Application: Support the existing JCUS policy of adding a Defender as an *ex-officio*, non-voting member of the U.S. Sentencing Commission.

Proposed Legislative language:

SEC. ___ FEDERAL DEFENDER REPRESENTATIVE AS A NON-VOTING MEMBER OF THE U.S. SENTENCING COMMISSION.

(a) Subsection (a) of section 991 of title 28, United States Code, is amended by striking “one nonvoting member.” at the end of the first sentence and inserting “two nonvoting members.”, and by inserting before the last sentence the following new sentence: “A federal defender representative designated by the Judicial Conference of the United States shall be a nonvoting member of the Commission.”.

(b) The final sentence of Section 235(b)(5) of Title II, Pub. L. No. 98-473 as amended, is amended by striking the phrase “nine members, including two *ex officio*, nonvoting members” and inserting “ten members, including three nonvoting members”.++