



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Hon. Richard J. Durbin
United States Senate
711 Hart Office Bldg.
Washington, D.C. 20510

Hon. Chuck Grassley
United States Senate
135 Hart Office Bldg.
Washington, D.C. 20510

Hon. Brian Schatz
United States Senate
722 Hart Office Bldg.
Washington, D.C. 20510

July 30, 2021

RE: Law Enforcement Leaders Support for the Emergency GRACE Act of 2021 (S. 2095)

We write on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration, a national coalition including over 200 current and former law enforcement officials, across the political spectrum, dedicated to protecting public safety and reducing unnecessary incarceration. We write to reaffirm our support for recently reintroduced **S. 2095, the Emergency Grants of Release and Compassion Effectively Act of 2021** (“Emergency GRACE Act”), which would expedite the federal compassionate release process during the COVID-19 pandemic and grant state prisons funding to protect incarcerated individuals and staff from COVID-19, among other critical provisions.¹

COVID-19 transmission rates behind bars remain concerning to this day. Since August 2020, when we supported the Emergency GRACE Act of 2020 (attached below), there have been 314,021 new positive COVID-19 cases and 1,632 new COVID-19 deaths among people incarcerated at the state and federal levels.² And despite the persistent threat of COVID-19, vaccination rates in federal facilities, in particular, remain low with only 58 percent of incarcerated people and just 52 percent of correctional staff fully vaccinated against COVID-19.³ With growing concern over the delta variant, incarcerated people, correctional officers, prison staff, and communities surrounding carceral facilities face continued risk of infection.⁴

The Bureau of Prisons’ (BOP) response to this dire situation has been inadequate. Despite receiving 31,000 requests for compassionate release between the onset of the pandemic in March 2020 and April 2021, BOP granted just 36 requests.⁵ This is down from the 55 requests that it granted in the year preceding the pandemic.⁶ By passing the Emergency GRACE Act, Congress can act swiftly to protect incarcerated people from COVID-19 and its variants, especially individuals with preexisting illnesses and the elderly who are most vulnerable.

As we detail in greater depth below, the Emergency GRACE Act would make the compassionate release process more efficient and prevent needless deaths and illness during, not only this pandemic, but also future public-health emergencies. We thus respectfully urge the Senate Committee on the Judiciary to swiftly pass the Emergency GRACE Act and continue to support it on the Senate floor.

Respectfully yours,



Ronal W. Serpas, Ph.D.

Executive Director

Law Enforcement Leaders to
Reduce Crime & Incarceration
Retired Police Superintendent
New Orleans, Louisiana

¹ Emergency GRACE Act of 2021, S. 2095, 117 Cong. (2021); *Following COVID-19 Outbreaks In Prisons Last Year, Schatz Reintroduces Bill To Improve Compassionate Release Process And Protect Public Health*, 2021, <https://www.schatz.senate.gov/press-releases/following-covid-19-outbreaks-in-prisons-last-year-schatz-reintroduces-bill-to-improve-compassionate-release-process-and-protect-public-health>; “Vulnerable Populations,” *Equal Justice Initiative*, April 16, 2021, <https://eji.org/news/covid-19s-impact-on-people-in-prison/>; *Bill Summary: The Emergency GRACE Act S. 3698 (Sens. Schatz and Durbin)*, Families Against Mandatory Minimums, 2020, <https://famm.org/wp-content/uploads/Emergency-GRACE-Act-Summary.pdf>.

² Between the onset of the pandemic and August 11, 2020, there were reports of 94,994 COVID-19 positive cases and 893 COVID-19 deaths among state and federal prisoners. Between the onset of the pandemic and July 28, 2021, there has been a total of 409,015 positive COVID-19 cases and 2,541 COVID-19 deaths reported among state and federal prisoners. For COVID-19 infection and death rates in state and federal carceral facilities, see “A State-by-State Look at Coronavirus in Prisons,” The Marshall Project, last modified July 1, 2021, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>; See also “National COVID-19 Statistics,” The COVID Prison Project, last modified July 28, 2021, <https://covidprisonproject.com/data/national-overview/>.

³ “COVID-19 Vaccines in State and Federal Prisons,” UCLA Law: Covid Behind Bars Data Project, last modified July 29, 2021, <https://uclacovidbehindbars.org>.

⁴ Wanda Bertram and Wendy Sawyer, “With the Majority of Corrections Officers Declining the COVID-19 Vaccine, incarcerated people are still at serious risk,” *Prison Policy Initiative*, April 22, 2021, <https://www.prisonpolicy.org/blog/2021/04/22/vaccinerefusal/>; Holly Ellyatt, “Delta Covid Variant has a new mutation called ‘delta plus’: Here’s what you need to know,” *CNBC*, June 24, 2021, <https://www.cnn.com/2021/06/24/delta-plus-covid-variant-heres-what-you-need-to-know.html>.

⁵ Kerry Blakinger and Joseph Neff, “31,000 Prisoners Sought Compassionate Release During COVID-19. The Bureau of Prisons Approved 36,” *The Marshall Project*, June 11, 2021, <https://www.themarshallproject.org/2021/06/11/31-000-prisoners-sought-compassionate-release-during-covid-19-the-bureau-of-prisons-approved-36>.

⁶ Blakinger and Neff, *supra* note 5.



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Hon. Mitch McConnell
United States Senate
317 Russell Office Building
Washington, D.C. 20510

Hon. Richard J. Durbin
United States Senate
711 Hart Office Building
Washington, D.C. 20510

Hon. Charles E. Schumer
United States Senate
322 Hart Office Building
Washington, D.C. 20510

Hon. Brian Schatz
United States Senate
722 Hart Office Building
Washington, D.C. 20510

August 7, 2020

RE: Law Enforcement Leaders Support for Emergency GRACE Act of 2020 (S. 3698)

Dear Majority Leader McConnell, Minority Leader Schumer, Senator Schatz, and Senator Durbin:

As a national coalition of current and former police chiefs, sheriffs, head prosecutors, and correctional directors, we urge you to prioritize and immediately pass Senate Bill S. 3698, the Emergency GRACE Act of 2020, or include the bill's key provisions, discussed below, in the next coronavirus relief package. The Senate returned this July at a critical moment in our nation's history. While the country responds to civil uprisings and calls for ambitious reforms to policing and law enforcement practices, the novel coronavirus continues to threaten the lives of thousands of Americans behind bars.

The Emergency GRACE Act would provide specific relief for those incarcerated federally, as well as state funding to respond to the coronavirus. With over 2.2 million people behind bars, living in congregate prison settings that severely heighten the risk of infection as the pandemic continues to rapidly spread, the next COVID package should include legislative directives and funding to help those incarcerated at both the federal and state levels.¹

There are nearly 160,000 individuals behind bars in federal prisons, of whom nearly 20 percent are aged 51 and older.² As of today, there have been more than 11,213 documented cases of COVID-19 in federal prisons, and despite efforts by the federal Bureau of Prisons (BOP), only approximately five percent of the federal incarcerated population has been released.³ As the nation continues to battle the pandemic, it is imperative that federal compassionate releases are safely expedited.⁴

Holding vulnerable, often elderly offenders in federal prisons during the COVID-19 pandemic does little to promote public safety or health. Prisons and jails have quickly proved to be significant transmission vectors for the pandemic, with the vast majority of the largest COVID-19 outbreaks in



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the United States having originated in a jail or prison.⁵ Moreover, a recent study shows that people in prison are 550 percent more likely to contract COVID-19 and 300 percent more likely to die from the disease if they contract it.⁶

To help stem the spread, the Emergency GRACE Act addresses the urgent need for BOP facilities to follow CDC recommendations to limit transmission of the coronavirus. Specifically, the bill directs the BOP Director to implement all procedures recommended by the CDC, including “robust and ongoing testing, providing adequate soap, medical care, comprehensive sanitation and cleaning of facilities, personal protective equipment, and other safety measures” in BOP facilities, and ensuring that these protections are readily available to anyone incarcerated, working, or volunteering at these facilities.

But relief is also needed for the people behind bars in state and local jurisdictions. With nearly 1.3 million people in state prisons, at least 75,426 people have tested positive for COVID-19 as of August 4.⁷ The Emergency GRACE Act would appropriate \$50 million of otherwise unappropriated funds for fiscal year 2020 to the Department of Justice’s State & Local Law Enforcement Assistance fund to assist correctional departments and agencies in providing more robust coronavirus relief. The funding would be awarded to correctional departments and agencies so they may test those in prison for the coronavirus; identify high-risk people incarcerated in state prison; and assist such individuals in the preparation of requests for compassionate release, medical or elderly parole, and other sentence reductions on the basis of age or medical condition. Additionally, the bill would allow incarcerated people to access Medicaid in the 30 days leading up to release, which will help ensure that they can access health care upon their release.

Further delays to adequate protections for vulnerable incarcerated people will exacerbate the severe risks these susceptible individuals face behind bars, while also endangering the broader prison population, correctional officers, and the communities surrounding these facilities.⁸ For all of these reasons, we urge the Senate to pass the bipartisan Emergency GRACE Act promptly or to include the relief afforded by the bill in the next COVID stimulus package.

Respectfully yours,

Ronal W. Serpas, Ph.D.
Executive Director
Law Enforcement Leaders to
Reduce Crime & Incarceration
Former Police Superintendent
New Orleans, Louisiana

Taryn A. Merkl
Senior Counsel
Law Enforcement Leaders to
Reduce Crime & Incarceration
Former Assistant U.S. Attorney
Eastern District of New York



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To Reduce Crime & Incarceration

Eric Atkinson

Police Chief
Menomonie, Wisconsin

Kami Chavis

Former Assistant U.S. Attorney
District of Columbia

John Choi

County Attorney
Ramsey County, St. Paul, Minnesota

Brendan Cox

Director of Policing Strategies
LEAD National Support Bureau
Former Police Chief
Albany, New York

John Diaz

Director
Department of Adult and Juvenile Detention
King County, Washington
Former Police Chief
Seattle, Washington

Thomas Donovan

Attorney General
Vermont

Richard Doran

Former Attorney General
Florida

Dean Esserman

Senior Counselor
Police Foundation
Former Police Chief
New Haven, Connecticut

Neill Franklin

Executive Director
Law Enforcement Action Partnership



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Hal Hardin

Board of Directors Member
National Association of Former United States Attorneys
Former U.S. Attorney
Middle District of Tennessee

Peter Holmes

City Attorney
Seattle, Washington

John Hummel

District Attorney
Deschutes County, Oregon

Kevin Joyce

Sheriff
Cumberland County, Maine

Chris Magnus

Police Chief
Tucson, Arizona

Beth McCann

District Attorney
Denver, Colorado

Joel Merry

Sheriff
Sagadahoc County, Maine

Mark Osler

Former Assistant U.S. Attorney
Eastern District of Michigan

Brad Pigott

Former U.S. Attorney
Southern District of Mississippi

Bryan Porter

Commonwealth's Attorney
Alexandria, Virginia



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Karl A. Racine

Attorney General
Washington, District of Columbia

Rick Raemisch

Former Executive Director
Colorado Department of Corrections
Former Sheriff
Dane County, Wisconsin

Dan Satterberg

Prosecuting Attorney
King County, Washington

Thomas B. Wine

Commonwealth's Attorney
Jefferson County, Kentucky

¹ Lauren-Brooke Eisen, *Covid-19 Continues Its Toll on Jails and Prisons*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/covid-19-continues-its-toll-jails-and-prisons>.

² Federal Bureau of Prisons, “BOP Statistics: Average Inmate Age,” accessed August 6, 2020, https://www.bop.gov/about/statistics/statistics_inmate_age.jsp.

³ *Ibid*; Federal Bureau of Prisons, “COVID-19 Coronavirus,” accessed August 6, 2020, <https://www.bop.gov/coronavirus/>; Federal Bureau of Prisons, “Population Statistics,” accessed August 6, 2020, https://www.bop.gov/about/statistics/population_statistics.jsp; Federal Bureau of Prisons, “Frequently Asked Questions regarding potential inmate home confinement in response to the COVID-19 pandemic,” accessed August 6, 2020, <https://www.bop.gov/coronavirus/faq.jsp> (indicating that 7,378 people in federal prison had been released on home confinement as of August 6, 2020).

⁴ If enacted, the Emergency GRACE Act would waive the administrative exhaustion requirement for people in federal custody who are seeking compassionate release under 18 U.S.C. § 3582. Another proposal is to modify that requirement, as proposed in the COVID-19 Safer Detention Act, S. 4034. In the next coronavirus relief package, we urge Congress to eliminate or modify the administrative exhaustion requirement of § 3582 in light of the novel coronavirus. The current timeline, including the time for the BOP to evaluate a request and the time for appeals, is up to 135 days — which is far too long given the rapid spread of COVID-19.

⁵ “Coronavirus in the U.S.: Latest Map and Case Count,” *New York Times*, accessed August 6, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#clusters>.

⁶ Brendan Saloner, Kalind Parish, and Julie A. Ward, “COVID-19 Cases and Deaths in Federal and State Prisons,” *Journal of the American Medical Association* (2020), <https://jamanetwork.com/journals/jama/fullarticle/2768249>.

⁷ Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, Prison Policy Initiative, 2020, <https://www.prisonpolicy.org/reports/pie2020.html>; *A State-by-State Look at Coronavirus in Prisons*, The Marshall Project, accessed August 7, 2020, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>.

⁸ Lauren-Brooke Eisen, *How Coronavirus Could Affect U.S. Jails and Prisons*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/how-coronavirus-could-affect-us-jails-and-prisons>.