

HEROES Act, H. 6800
Bill Summary (Youth Justice Provisions)

Introduced in the House on May 12, 2020, the HEROES Act was passed in a vote of 208-199 just three days later and then sent to the Senate where it has yet to be taken up for consideration. The bill contains a series of provisions related to youth justice, including the following:

Title VII-
SEC. 130702-

Communication Services: Places caps on how much individuals, including youth in juvenile detention facilities, can be charged for communication services, requiring that all such charges be “just and reasonable” and that charges that are not just and reasonable should be deemed unlawful.

TITLE XI-
Sect. 191101

Release: Beginning on the date a national emergency is declared related to a communicable disease, and continuing for 60 days after the emergency is lifted, judicial officers are to release young people alleged to have committed delinquent acts to their parent, guardian, custodian, or other responsible party (including the director of a shelter-care facility) upon their promise to bring the young person back before the appropriate court when requested by the judicial officer.

- **Exception:** A young person can be held pending trial only if, at a hearing where they are represented by counsel, the government’s attorney is able to show “by clear and convincing evidence based on individualized facts that detention is necessary because the youth’s release will pose a specific and substantial risk that the youth will use violent force against a reasonably identifiable person and that no conditions of release will reasonably mitigate that risk.” In no case may a judicial officer order detention if it will compromise the young person’s access to adequate medical treatment, medications, or their ability to privately consult with counsel and meaningfully prepare a defense.

Detention: If detention is ordered, it is to be the least restrictive and safest environment possible, keeping the national emergency related to communicable disease in mind.

In such cases, a written detention order must be issued which includes the following:

- findings of fact
- the reasons for the detention;
- a description of the risk identified as the reason for detention;
- an explanation of why no conditions will reasonably mitigate the risk identified as the reason for detention;
- a statement that detention will not compromise the young person’s access to adequate medical treatment, medications, or their ability to privately consult with counsel and meaningfully prepare a defense; and

- a statement establishing that the detention environment is the least restrictive and safest possible.

SEC. 191102-

Automatic Revocation: During a national emergency relating to a communicable disease and continuing for the 60 days following, a court is not required to revoke a defendant’s probation or supervised release based on a finding that the defendant refused to comply with drug treatment. This includes individuals adjudicated delinquent under the Federal Juvenile Delinquency Act and applies to persons serving time in official detention for a revocation of juvenile probation or supervised release.

SEC. 191103-

Temporary Release of Persons Awaiting Designation or Transportation: During a covered emergency period, the court may, upon motion, order a temporary release for a limited period of time of individuals who are awaiting designation or transportation to a Bureau of Prisons or other facility for service of sentence or official detention. This includes individuals adjudicated delinquent under the Federal Juvenile Delinquency Act. Such releases will be for the purpose of avoiding or mitigating the risks associated with imprisonment during the covered emergency period, and can be due either to the place of the individual’s imprisonment or specifically with respect to the individual.

PART OO-

Sect. 3062 –

Release of vulnerable and low risk populations: Provides for a grant program administered by the Attorney General to States and units of local government that operate correctional facilities, to “establish and implement policies and procedures to prevent, detect, and stop the presence and spread of COVID–19 among arrestees, detainees, inmates, correctional facility staff, and visitors to the facilities.”

To be eligible for such grants, states and local governments must release or have a plan to release detainees, including:

- “juveniles”
- those who do “not pose a risk of serious, imminent injury to a reasonably identifiable person”
- individuals with serious chronic medical conditions, including heart disease, cancer, diabetes, HIV, sickle cell anemia, a neurological disease that interferes with the ability to cough or breathe, chronic lung disease, asthma, or respiratory illness
- pregnant women
- individuals with weakened immune systems and
- individuals who have a health condition or disability that makes them vulnerable to COVID–19.

To apply for these grants, states and local governments must set facility-specific target capacities for each facility that would receive funding through the program. Target

capacities should be based on the number of people who can be safely incarcerated at the facility based on CDC guidelines.

Correctional facilities that receive funds under this section may not use isolation in a punitive or non-medical manner as a way of achieving specific target capacities.

\$500 million would be made available through this program to:

- test all arrestees, detainees, and inmates, and initiate treatment for COVID–19, and transfer of such an individual for an appropriate treatment at external medical facility, as needed;
- test for COVID–19 among correctional facility staff, volunteers, visitors, including family members and attorneys, court personnel that have regular contact with arrestees, detainees, and inmates, law enforcement officers who transport arrestees, detainees, and inmates; and personnel outside the correctional facility who provide medical treatment to arrestees, detainees, and inmates;
- curtail booking and in-facility processing for individuals who have committed technical parole or probation violations; and
- provide transition and reentry support services to released individuals including programs that increase access to and participation in reentry services; promote a reduction in recidivism rates; facilitate engagement in educational programs, job training, or employment; place reentering individuals in safe and sanitary temporary transitional housing; facilitate the enrollment of reentering individuals with a history of substance use disorder in medication-assisted treatment and a referral to overdose prevention services, mental health services, or other medical services; and facilitate family reunification or support services, as needed.

Sect. 3063-

JJDPA Emergency Funding: \$75 million would be authorized for OJJDP to grant to states in 2020 and 2021 for:

- rapid mass testing for COVID–19 in youth facilities, as well as notification of the results of such tests to youth and authorized family members or legal guardians. This would include policies and procedures for non-punitive quarantine that does not involve solitary confinement, and provide for examination by a doctor for any youth who tests positive for COVID–19;
- examine all pre- and post-adjudication release processes and mechanisms applicable to youth and begin employing these as quickly as possible;
- provide youth in out of home placements with continued access to appropriate education;
- provide youth with access to legal counsel through confidential visits or teleconferencing;
- provide staff and youth with appropriate personal protective equipment, hand washing facilities, toiletries, and medical care to reduce the spread of the virus;
- provide youth with frequent and no cost calls home to parents, legal guardians, and other family members;
- advance policies and procedures for youth delinquency program proceedings (including court proceedings) and probation conditions so that in-person reporting

- requirements for youth are replaced with virtual or telephonic appearances without penalty;
- expand opportunities for youth to participate in community-based services and social services through videoconferencing or teleconferencing;
 - place a moratorium on all requirements for youth to attend and pay for court and probation ordered programs, community service, and labor, that violate any applicable social distancing or stay at home order.

Sect. 3064-

Reporting:

The Attorney General shall submit a report to Congress showing how grants were administered and:

- the number of persons (including minors) in the custody of correctional facilities where activities are carried out using grant amounts, including incarcerated persons released on parole, community supervision, good time or early release, clemency or commutation, as a result of the national emergency
- disaggregated by type of offense, age, race, sex, and ethnicity.

SEC. 191108

Fines and Fees: The Attorney General is authorized to provide \$150 million in grants for FY20, '21 and '22. These grants will go to states and local courts to help them continue operations during this period. To be eligible to receive these grants, a court must implement a moratorium on the imposition and collection of fines and fees. Priority will be given to applicants that implement a moratorium on the imposition and collection of fines and fees related to juvenile delinquency proceedings for fiscal years 2020 through 2022.