

Oppose S.J.Res. 47—CRA Would Send More Than 3,000 Low-Risk, Nonviolent Individuals Back to Prison

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act.¹ Sec. 12003 of the CARES Act provided the Bureau of Prisons with authority “to place” individuals into home confinement for the length of the “covered emergency period.” The authority to place individuals into home confinement ended 30 days after the termination of the national emergency related to COVID-19.

The specific provision of the CARES Act, 12003(b)(2), states, “During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate.” (Emphasis added.)

In December 2021, the Office of Legal Counsel (OLC) issued an opinion stating that “[n]othing in the CARES Act or any other statute convinces us that the expiration of the power to lengthen home confinement placements necessarily operates to shorten home confinement placements that were already lawfully lengthened.”² In April 2023, the Department of Justice (DOJ) published the final rule relating to home confinement under the CARES Act.³ DOJ received only one comment against the proposed rule and 66 comments in support. The rule went into effect on May 4.

S.J.Res. 47 would nullify the rule under the Congressional Review Act and return nearly 3,400 nonviolent individuals who have a minimal or low risk of recidivism and who have started the process of rebuilding their back to prison.

About the DOJ Home Confinement Rule

- The OLC opinion correctly reads Sec. 12003(b)(2) to apply only to placement of an individual into home confinement and that nothing in the CARES Act or any other statute requires these individuals to return to prison.
- A memorandum issued by the Bureau of Prisons (BOP), cited in the rule, lists several criteria that were assessed before individuals were placed into home confinement. These criteria included ensuring that the individual had a minimal or low risk on their most recent PATTERN score; had not committed a violent offense, sex offense, or terrorism-related offense; and that the individual was in a low- or minimum-security facility.⁴
- Between March 2020 and June 2023, more than 13,000 individuals were placed into home confinement under the CARES Act.
- As of August, nearly 3,400 were in home confinement. These individuals remain in the custody of the BOP while in home confinement.
 - The cost of incarcerating an individual is \$120.59 per day while home confinement costs only \$55.26 per day. Annualized, the total cost of incarceration for all of these individuals is \$148,507,791 per year compared to \$68,053,243 for home confinement.
 - These individuals have taken significant rehabilitative steps in home confinement, including securing employment, becoming members of church and faith groups,

¹ Pub.L. No. 116-136

² Office of Legal Counsel, Discretion to Continue at Home-Confinement Placement of Federal Prisoners After the COVID-19 Emergency,” December 21, 2021, https://www.justice.gov/d9/opinions/attachments/2021/12/21/2021-12-21-home-confinement_slip_op.pdf.

³ 88 FR 19830

⁴ Federal Bureau of Prisons, “Memorandum for Chief Executive Officers,” April 13, 2021, https://www.bop.gov/foia/docs/Home%20Confinement%20memo_2021_04_13.pdf.

enrolling in college, volunteering in their communities, caring for elderly parents and children, and mending relationships with families.

- As of September 1, only 27 people placed into home confinement have committed new crimes.
 - This is a new crime rate of 0.19 percent. Only five of the 27 committed a new violent offense.
 - For comparison, BOP's website references an "overall recidivism rate (as defined by a rearrest or return to any jurisdiction's custody) is around 43% which is lower than most studies of state prisoners using comparable definitions and methodologies."⁵
 - The recidivism rate of beneficiaries of the First Step Act is 12.4 percent.⁶
- There is accountability for these individuals because, as noted, they remain the custody of the BOP until the completion of their sentence.
 - As the rule notes, "Before being placed in home confinement, inmates sign agreements that require consent to submit to home visits and drug and alcohol testing, acknowledgment of monitoring requirements, and an affirmation that they will not engage in criminal behavior or possess firearms. Under these agreements, individuals placed in home confinement are subject to electronic monitoring; check-in requirements; drug and alcohol testing; and transfer back to secure correctional facilities for any significant disciplinary infractions or violations of the agreement."
 - As of May, only 521 people had violated the terms of home confinement and returned to prison. This represents just under 4 percent of those placed into home confinement.

We urge all senators to oppose S.J.Res. 47 should it come to the floor for a vote.

Please reach out to Jason Pye at the Due Process Institute at jason@idueprocess.org or JC Hendrickson at the Justice Action Network at jc@justiceactionnetwork.org if you have any questions.

⁵ Federal Bureau of Prisons, "About Our Agency," Accessed November 2, 2023, <https://www.bop.gov/about/agency>.

⁶ U.S. Department of Justice, "First Step Act Annual Report," April 2023, <https://www.ojp.gov/first-step-act-annual-report-april-2023>.