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1ST SESSION

H. R. 3239

IN THE SENATE OF THE UNITED STATES

JULY 25, 2019

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To require U.S. Customs and Border Protection to perform an initial health screening on detainees, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Humanitarian Standards for Individuals in Customs and
 4 Border Protection Custody Act”.

5 (b) **TABLE OF CONTENTS.**—The table of contents of
 6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Initial health screening protocol.
- Sec. 3. Water, sanitation and hygiene.
- Sec. 4. Food and nutrition.
- Sec. 5. Shelter.
- Sec. 6. Coordination and Surge capacity.
- Sec. 7. Training.
- Sec. 8. Interfacility transfer of care.
- Sec. 9. Planning and initial implementation.
- Sec. 10. Contractor compliance.
- Sec. 11. Inspections.
- Sec. 12. GAO report.
- Sec. 13. Rules of construction.
- Sec. 14. Definitions.
- Sec. 15. Sense of Congress.

7 **SEC. 2. INITIAL HEALTH SCREENING PROTOCOL.**

8 (a) **IN GENERAL.**—The Commissioner of U.S. Cus-
 9 toms and Border Protection (referred to in this Act as
 10 the “Commissioner”), in consultation with the Secretary
 11 of Health and Human Services, the Administrator of the
 12 Health Resources and Services Administration, and non-
 13 governmental experts in the delivery of health care in hu-
 14 manitarian crises and in the delivery of health care to chil-
 15 dren, shall develop guidelines and protocols for the provi-
 16 sion of health screenings and appropriate medical care for
 17 individuals in the custody of U.S. Customs and Border

1 Protection (referred to in this Act as “CBP”), as required
2 under this section.

3 (b) INITIAL SCREENING AND MEDICAL ASSESS-
4 MENT.—The Commissioner shall ensure that any indi-
5 vidual who is detained in the custody of CBP (referred
6 to in this Act as a “detainee”) receives an initial in-person
7 screening by a licensed medical professional in accordance
8 with the standards described in subsection (c)—

9 (1) to assess and identify any illness, condition,
10 or age-appropriate mental or physical symptoms that
11 may have resulted from distressing or traumatic ex-
12 periences;

13 (2) to identify acute conditions and high-risk
14 vulnerabilities; and

15 (3) to ensure that appropriate healthcare is
16 provided to individuals as needed, including pedi-
17 atric, obstetric, and geriatric care.

18 (c) STANDARDIZATION OF INITIAL SCREENING AND
19 MEDICAL ASSESSMENT.—

20 (1) IN GENERAL.—The initial screening and
21 medical assessment shall include—

22 (A) an interview and the use of a stand-
23 ardized medical intake questionnaire or the
24 equivalent;

1 (B) screening of vital signs, including pulse
2 rate, body temperature, blood pressure, oxygen
3 saturation, and respiration rate;

4 (C) screening for blood glucose for known
5 or suspected diabetics;

6 (D) weight assessment of detainees under
7 12 years of age;

8 (E) a physical examination; and

9 (F) a risk-assessment and the development
10 of a plan for monitoring and care, when appro-
11 priate.

12 (2) PRESCRIPTION MEDICATION.—The medical
13 professional shall review any prescribed medication
14 that is in the detainee’s possession or that was con-
15 fiscated by CBP upon arrival and determine if the
16 medication may be kept by the detainee for use dur-
17 ing detention, properly stored by CBP with appro-
18 priate access for use during detention, or maintained
19 with the detained individual’s personal property. A
20 detainee may not be denied the use of necessary and
21 appropriate medication for the management of the
22 detainee’s illness.

23 (3) RULE OF CONSTRUCTION.—Nothing in this
24 subsection shall be construed as requiring detainees
25 to disclose their medical status or history.

1 (d) TIMING.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the initial screening and medical assess-
4 ment described in subsections (b) and (c) shall take
5 place as soon as practicable, but not later than 12
6 hours after a detainee’s arrival at a CBP facility.

7 (2) HIGH PRIORITY INDIVIDUALS.—The initial
8 screening and medical assessment described in sub-
9 sections (b) and (c) shall take place as soon as prac-
10 ticable, but not later than 6 hours after a detainee’s
11 arrival at a CBP facility if the individual reasonably
12 self-identifies as having a medical condition that re-
13 quires prompt medical attention or is—

14 (A) exhibiting signs of acute or potentially
15 severe physical or mental illness, or otherwise
16 has an acute or chronic physical or mental dis-
17 ability or illness;

18 (B) pregnant;

19 (C) a child (with priority given, as appro-
20 priate, to the youngest children); or

21 (D) elderly.

22 (e) FURTHER CARE.—

23 (1) IN GENERAL.—If, as a result of the initial
24 health screening and medical assessment, the li-
25 censed medical professional conducting the screening

1 or assessment determines that one or more of the
2 detainee's vital sign measurements are significantly
3 outside normal ranges in accordance with the Na-
4 tional Emergency Services Education Standards, or
5 if the detainee is identified as high-risk or in need
6 of medical intervention, the detainee shall be pro-
7 vided, as expeditiously as possible, with an in-person
8 or technology-facilitated medical consultation with a
9 licensed emergency care professional.

10 (2) RE-EVALUATION.—

11 (A) IN GENERAL.—Detainees described in
12 paragraph (1) shall be re-evaluated within 24
13 hours and monitored thereafter as determined
14 by an emergency care professional (and in the
15 care of a consultation provided to a child, with
16 a licensed emergency care professional with a
17 background in pediatric care).

18 (B) REEVALUATION PRIOR TO TRANSPOR-
19 TATION.—In addition to the re-evaluations
20 under subparagraph (A), detainees shall have
21 all vital signs re-evaluated and be cleared as
22 safe to travel by a medical professional prior to
23 transportation.

24 (3) PSYCHOLOGICAL AND MENTAL CARE.—The
25 Commissioner shall ensure that detainees who have

1 experienced physical or sexual violence or who have
2 experienced events that may cause severe trauma or
3 toxic stress, are provided access to basic, humane,
4 and supportive psychological assistance.

5 (f) INTERPRETERS.—To ensure that health
6 screenings and medical care required under this section
7 are carried out in the best interests of the detainee, the
8 Commissioner shall ensure that language-appropriate in-
9 terpretation services, including indigenous languages, are
10 provided to each detainee and that each detainee is in-
11 formed of the availability of interpretation services.

12 (g) CHAPERONES.—To ensure that health screenings
13 and medical care required under this section are carried
14 out in the best interests of the detainee—

15 (1) the Commissioner shall establish guidelines
16 for and ensure the presence of chaperones for all de-
17 tainees during medical screenings and examinations
18 consistent with relevant guidelines in the American
19 Medical Association Code of Medical Ethics, and
20 recommendations of the American Academy of Pedi-
21 atrics; and

22 (2) to the extent practicable, the physical exam-
23 ination of a child shall always be performed in the
24 presence of a parent or legal guardian or in the

1 presence of the detainee's closest present adult relative if a parent or legal guardian is unavailable.

2
3 (h) DOCUMENTATION.—The Commissioner shall ensure that the health screenings and medical care required
4 under this section, along with any other medical evaluations and interventions for detainees, are documented in
5 accordance with commonly accepted standards in the
6 United States for medical record documentation. Such
7 documentation shall be provided to any individual who received a health screening and subsequent medical treatment upon release from CBP custody.

8
9 (i) INFRASTRUCTURE AND EQUIPMENT.—The Commissioner or the Administrator of General Services shall
10 ensure that each location to which detainees are first
11 transported after an initial encounter with an agent or officer of CBP has the following:

12
13 (1) A private space that provides a comfortable and considerate atmosphere for the patient and that
14 ensures the patient's dignity and right to privacy during the health screening and medical assessment
15 and any necessary follow-up care.

16
17 (2) All necessary and appropriate medical equipment and facilities to conduct the health
18 screenings and follow-up care required under this
19 section, to treat trauma, to provide emergency care,
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1 including resuscitation of individuals of all ages, and
2 to prevent the spread of communicable diseases.

3 (3) Basic over-the-counter medications appro-
4 priate for all age groups.

5 (4) Appropriate transportation to medical facili-
6 ties in the case of a medical emergency, or an on-
7 call service with the ability to arrive at the CBP fa-
8 cility within 30 minutes.

9 (j) PERSONNEL.—The Commissioner or the Adminis-
10 trator of General Services shall ensure that each location
11 to which detainees are first transported after an initial en-
12 counter has onsite at least one licensed medical profes-
13 sional to conduct health screenings. Other personnel that
14 are or may be necessary for carrying out the functions
15 described in subsection (e), such as licensed emergency
16 care professionals, specialty physicians (including physi-
17 cians specializing in pediatrics, family medicine, obstetrics
18 and gynecology, geriatric medicine, internal medicine, and
19 infectious diseases), nurse practitioners, other nurses,
20 physician assistants, licensed social workers, mental health
21 professionals, public health professionals, dietitians, inter-
22 preters, and chaperones, shall be located on site to the
23 extent practicable, or if not practicable, shall be available
24 on call.

1 (k) ETHICAL GUIDELINES.—The Commissioner shall
2 ensure that all medical assessments and procedures con-
3 ducted pursuant to this section are conducted in accord-
4 ance with ethical guidelines in the applicable medical field,
5 and respect human dignity.

6 **SEC. 3. WATER, SANITATION AND HYGIENE.**

7 The Commissioner shall ensure that detainees have
8 access to—

9 (1) not less than 1 gallon of drinking water per
10 person per day, and age-appropriate fluids as need-
11 ed;

12 (2) a private, safe, clean, and reliable perma-
13 nent or portable toilet with proper waste disposal
14 and a hand washing station, with not less than 1
15 toilet available for every 12 male detainees, and 1
16 toilet for every 8 female detainees;

17 (3) a clean diaper changing facility, which in-
18 cludes proper waste disposal, a hand washing sta-
19 tion, and unrestricted access to diapers;

20 (4) the opportunity to bathe daily in a perma-
21 nent or portable shower that is private and secure;
22 and

23 (5) products for individuals of all age groups
24 and with disabilities to maintain basic personal hy-
25 giene, including soap, a toothbrush, toothpaste,

1 adult diapers, and feminine hygiene products, as well
2 as receptacles for the proper storage and disposal of
3 such products.

4 **SEC. 4. FOOD AND NUTRITION.**

5 The Commissioner shall ensure that detainees have
6 access to—

7 (1) three meals per day including—

8 (A) in the case of an individual age 12 or
9 older, a diet that contains not less than 2,000
10 calories per day; and

11 (B) in the case of a child who is under the
12 age of 12, a diet that contains an appropriate
13 number of calories per day based on the child's
14 age and weight;

15 (2) accommodations for any dietary needs or
16 restrictions; and

17 (3) access to food in a manner that follows ap-
18 plicable food safety standards.

19 **SEC. 5. SHELTER.**

20 The Commissioner shall ensure that each facility at
21 which a detainee is detained meets the following require-
22 ments:

23 (1) Except as provided in paragraph (2), males
24 and females shall be detained separately.

1 (2) In the case of a minor child arriving in the
2 United States with an adult relative or legal guard-
3 ian, such child shall be detained with such relative
4 or legal guardian unless such an arrangement poses
5 safety or security concerns. In no case shall a minor
6 who is detained apart from an adult relative or legal
7 guardian as a result of such safety or security con-
8 cerns be detained with other adults.

9 (3) In the case of an unaccompanied minor ar-
10 riving in the United States without an adult relative
11 or legal guardian, such child shall be detained in an
12 age-appropriate facility and shall not be detained
13 with adults.

14 (4) A detainee with a temporary or permanent
15 disability shall be held in an accessible location and
16 in a manner that provides for his or her safety, com-
17 fort, and security, with accommodations provided as
18 needed.

19 (5) No detainee shall be placed in a room for
20 any period of time if the detainee's placement would
21 exceed the maximum occupancy level as determined
22 by the appropriate building code, fire marshal, or
23 other authority.

24 (6) Each detainee shall be provided with tem-
25 perature appropriate clothing and bedding.

1 (7) The facility shall be well lit and well venti-
2 lated, with the humidity and temperature kept at
3 comfortable levels (between 68 and 74 degrees Fahr-
4 enheit).

5 (8) Detainees who are in custody for more than
6 48 hours shall have access to the outdoors for not
7 less than 1 hour during the daylight hours during
8 each 24-hour period.

9 (9) Detainees shall have the ability to practice
10 their religion or not to practice a religion, as appli-
11 cable.

12 (10) Detainees shall have access to lighting and
13 noise levels that are safe and conducive for sleeping
14 throughout the night between the hours of 10 p.m.
15 and 6 a.m.

16 (11) Officers, employees, and contracted per-
17 sonnel of CBP shall—

18 (A) follow medical standards for the isola-
19 tion and prevention of communicable diseases;
20 and

21 (B) ensure the physical and mental safety
22 of detainees who identify as lesbian, gay, bisex-
23 ual, transgender, and intersex.

24 (12) The facility shall have video-monitoring to
25 provide for the safety of the detained population and

1 to prevent sexual abuse and physical harm of vulner-
2 able detainees.

3 (13) The Commissioner shall ensure that lan-
4 guage-appropriate “Detainee Bill of Rights”, includ-
5 ing indigenous languages, are posted or otherwise
6 made available in all areas where detainees are lo-
7 cated. The “Detainee Bill of Rights” shall include
8 all rights afforded to the detainee under this Act.

9 (14) Video from video-monitoring must be pre-
10 served for 90 days and the detention facility must
11 maintain certified records that the video-monitoring
12 is properly working at all times.

13 **SEC. 6. COORDINATION AND SURGE CAPACITY.**

14 The Secretary of Homeland Security shall enter into
15 memoranda of understanding with appropriate Federal
16 agencies, such as the Department of Health and Human
17 Services, and applicable emergency government relief serv-
18 ices, as well as contracts with health care, public health,
19 social work, and transportation professionals, for purposes
20 of addressing surge capacity and ensuring compliance with
21 this Act.

22 **SEC. 7. TRAINING.**

23 The Commissioner shall ensure that CBP personnel
24 assigned to each short-term custodial facility are profes-
25 sionally trained, including continuing education as the

1 Commissioner deems appropriate, in all subjects necessary
2 to ensure compliance with this Act, including—

3 (1) humanitarian response protocols and stand-
4 ards;

5 (2) indicators of physical and mental illness,
6 and medical distress in children and adults;

7 (3) indicators of child sexual exploitation and
8 effective responses to missing migrant children; and

9 (4) procedures to report incidents of suspected
10 child sexual abuse and exploitation directly to the
11 National Center for Missing and Exploited Children.

12 **SEC. 8. INTERFACILITY TRANSFER OF CARE.**

13 (a) TRANSFER.—When a detainee is discharged from
14 a medical facility or emergency department, the Commis-
15 sioner shall ensure that responsibility of care is trans-
16 ferred from the medical facility or emergency department
17 to an accepting licensed health care provider of CBP.

18 (b) RESPONSIBILITIES OF ACCEPTING PROVIDERS.—
19 Such accepting licensed health care provider shall review
20 the medical facility or emergency department’s evaluation,
21 diagnosis, treatment, management, and discharge care in-
22 structions to assess the safety of the discharge and trans-
23 fer and to provide necessary follow-up care.

1 **SEC. 9. PLANNING AND INITIAL IMPLEMENTATION.**

2 (a) PLANNING.—Not later than 60 days after the
3 date of enactment of this Act, the Secretary of Homeland
4 Security shall submit to Congress a detailed plan delin-
5 eating the timeline, process, and challenges of carrying out
6 the requirements of this Act.

7 (b) IMPLEMENTATION.—The Secretary of Homeland
8 Security shall ensure that the requirements of this Act are
9 implemented not later than 6 months after the date of
10 enactment.

11 **SEC. 10. CONTRACTOR COMPLIANCE.**

12 The Secretary of Homeland Security shall ensure
13 that all personnel contracted to carry out this Act do so
14 in accordance with the requirements of this Act.

15 **SEC. 11. INSPECTIONS.**

16 (a) IN GENERAL.—The Inspector General of the De-
17 partment of Homeland Security shall—

18 (1) conduct unannounced inspections of ports of
19 entry, border patrol stations, and detention facilities
20 administered by CBP or contractors of CBP; and

21 (2) submit to Congress, reports on the results
22 of such inspections as well as other reports of the
23 Inspector General related to custody operations.

24 (b) PARTICULAR ATTENTION.—In carrying out sub-
25 section (a), the Inspector General of the Department of
26 Homeland Security shall pay particular attention to—

1 (1) the degree of compliance by CBP with the
2 requirements of this Act;

3 (2) remedial actions taken by CBP;

4 (3) the health needs of detainees; and

5 (4) the degree of compliance with part 115 of
6 title 6, Code of Federal Regulations (commonly
7 known as the “Standards To Prevent, Detect, and
8 Respond to Sexual Abuse and Assault in Confine-
9 ment Facilities”).

10 (c) ACCESS TO FACILITIES.—The Commissioner may
11 not deny a Member of Congress entrance to any facility
12 or building used, owned, or operated by CBP.

13 **SEC. 12. GAO REPORT.**

14 (a) IN GENERAL.—The Comptroller General of the
15 United States shall—

16 (1) not later than 6 months after the date of
17 enactment of this Act, commence a study on imple-
18 mentation of, and compliance with, this Act; and

19 (2) not later than 1 year after the date of en-
20 actment of this Act, submit a report to Congress on
21 the results of such study.

22 (b) ISSUES TO BE STUDIED.—The study required by
23 subsection (a) shall examine the management and over-
24 sight by CBP of ports of entry, border patrol stations, and
25 other detention facilities, including the extent to which

1 CBP and the Department of Homeland Security have ef-
2 fective processes in place to comply with this Act. The
3 study shall also examine the extent to which CBP per-
4 sonnel, in carrying out this Act, make abusive, derisive,
5 profane, or harassing statements or gestures, or engage
6 in any other conduct evidencing hatred or invidious preju-
7 dice to or about one person or group on account of race,
8 color, religion, national origin, sex, sexual orientation, age,
9 or disability, including on social media.

10 **SEC. 13. RULES OF CONSTRUCTION.**

11 Nothing in this Act may be construed—

12 (1) as authorizing CBP to detain individuals for
13 longer than 72 hours;

14 (2) as contradicting the March 7, 2014, De-
15 partment of Homeland Security rule adopting
16 Standards to Prevent, Detect, and Respond to Sex-
17 ual Abuse and Assault in Confinement Facilities,
18 which includes a zero tolerance policy prohibiting all
19 forms of sexual abuse and assault of individuals in
20 U.S. Customs and Border Protection custody, in-
21 cluding in holding facilities, during transport, and
22 during processing;

23 (3) as contradicting current protocols related to
24 Department background checks in the hiring proc-
25 ess;

1 (4) as restricting the Department from denying
2 employment to or terminating the employment of
3 any individual who would be or is involved with the
4 handling or processing at holding facilities, during
5 transport, or during processing, or care of detainees,
6 including the care of children, and has been con-
7 victed of a sex crime or other offense involving a
8 child victim; or

9 (5) as affecting the obligation to fully comply
10 with all applicable immigration laws, including being
11 subject to any penalties, fines, or other sanctions.

12 **SEC. 14. DEFINITIONS.**

13 In this Act:

14 (1) INTERPRETATION SERVICES.—The term
15 “interpretation services” includes translation serv-
16 ices that are performed either in-person or through
17 a telephone or video service.

18 (2) CHILD.—The term “child” has the meaning
19 given the term in section 101(b)(1) of the Immigra-
20 tion and Nationality Act (8 U.S.C. 1101(b)(1)).

21 (3) U.S. CUSTOMS AND BORDER PROTECTION
22 FACILITY.—The term “U.S. Customs and Border
23 Protection Facility” includes—

24 (A) U.S. Border Patrol stations;

25 (B) ports of entry;

- 1 (C) checkpoints;
- 2 (D) forward operating bases;
- 3 (E) secondary inspection areas; and
- 4 (F) short-term custody facilities.

5 (4) FORWARD OPERATING BASE.—The term
6 “forward operating base” means a permanent facil-
7 ity established by CBP in forward or remote loca-
8 tions, and designated as such by CBP.

9 (5) PUBLICATION OF DATA ON COMPLAINTS OF
10 SEXUAL ABUSE AT CBP FACILITIES.—Not later than
11 90 days after the date of enactment of this Act, the
12 Secretary of Homeland Security, acting in coordina-
13 tion with the Office of Inspector General and Office
14 for Civil Rights and Civil Liberties, shall publicly re-
15 lease aggregate data on complaints of sexual abuse
16 at CBP facilities on its website on a quarterly basis,
17 excluding any personally identifiable information
18 that may compromise the confidentiality of individ-
19 uals who reported abuse.

20 **SEC. 15. SENSE OF CONGRESS.**

21 It is the sense of the Congress that the men and
22 women of the U.S. Border Patrol should be commended
23 for continuing to carry out their duties in a professional
24 manner, including caring for the extraordinarily high
25 numbers of family units, unaccompanied alien children,

- 1 and single adults processed in United States Customs and
- 2 Border Protection facilities referenced in this Act.

Passed the House of Representatives July 24, 2019.

Attest: CHERYL L. JOHNSON,
Clerk.