

116TH CONGRESS
2^D SESSION

H. R. 7718

AN ACT

To address the health needs of incarcerated women related to pregnancy and childbirth, 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.**

2 This Act may be cited as the “Protecting the Health
3 and Wellness of Babies and Pregnant Women in Custody
4 Act”.

5 **SEC. 2. DATA COLLECTION.**

6 (a) IN GENERAL.—Beginning not later than 1 year
7 after the date of the enactment of this Act, pursuant to
8 the authority under section 302 of the Omnibus Crime
9 Control and Safe Streets Act of 1968 (34 U.S.C. 10132),
10 the Director of the Bureau of Justice Statistics shall in-
11 clude in the National Prisoner Statistics Program and An-
12 nual Survey of Jails statistics relating to the health needs
13 of incarcerated pregnant women in the criminal justice
14 system at the Federal, State, tribal, and local levels, in-
15 cluding—

16 (1) demographic and other information about
17 incarcerated women who are pregnant, in labor, or
18 in postpartum recovery, including the race, ethnicity,
19 and age of the pregnant woman;

20 (2) the provision of pregnancy care and services
21 provided for such women, including—

22 (A) whether prenatal, delivery, and post-
23 delivery check-up visits were scheduled and pro-
24 vided;

25 (B) whether a social worker, psychologist,
26 doula or other support person, or pregnancy or

1 parenting program was offered and provided
2 during pregnancy and delivery;

3 (C) whether a nursery or residential pro-
4 gram to keep mothers and infants together
5 post-delivery was offered and whether such a
6 nursery or residential program was provided;

7 (D) the number of days the mother stayed
8 in the hospital post-delivery;

9 (E) the number of days the infant re-
10 mained with the mother post-delivery; and

11 (F) the number of days the infant re-
12 mained in the hospital after the mother was
13 discharged;

14 (3) the location of the nearest hospital with a
15 licensed obstetrician-gynecologist in proximity to
16 where the inmate is housed and the length of travel
17 required to transport the inmate;

18 (4) whether a written policy or protocol is in
19 place to respond to unexpected childbirth, labor, de-
20 liveries, and medical complications related to the
21 pregnancies of incarcerated pregnant women and for
22 incarcerated pregnant women experiencing labor or
23 medical complications related to pregnancy outside
24 of a hospital;

1 (5) the number of incarcerated women who are
2 determined by a health care professional to have a
3 high-risk pregnancy;

4 (6) the total number of incarcerated pregnant
5 women and the number of incarcerated women who
6 became pregnant while incarcerated;

7 (7) the number of incidents in which an incar-
8 cerated woman who is pregnant, in labor, or in
9 postpartum recovery is placed in restrictive housing,
10 the reason for such restriction or placement, and the
11 circumstances under which each incident occurred,
12 including the duration of time in restrictive housing,
13 during—

14 (A) pregnancy;

15 (B) labor;

16 (C) delivery;

17 (D) postpartum recovery; and

18 (E) the 6-month period after delivery; and

19 (8) the disposition of the custody of the infant
20 post-delivery.

21 (b) PERSONALLY IDENTIFIABLE INFORMATION.—

22 Data collected under this paragraph may not contain any
23 personally identifiable information of any incarcerated
24 pregnant woman.

1 **SEC. 3. CARE FOR FEDERALLY INCARCERATED WOMEN RE-**
2 **LATED TO PREGNANCY AND CHILDBIRTH.**

3 (a) IN GENERAL.—The Director of the Bureau of
4 Prisons shall ensure that appropriate services and pro-
5 grams are provided to women in custody, to address the
6 health and safety needs of such women related to preg-
7 nancy and childbirth. The warden of each Bureau of Pris-
8 ons facility that houses women shall ensure that these
9 services and programs are implemented for women in cus-
10 tody at that facility.

11 (b) SERVICES AND PROGRAMS PROVIDED.—The Di-
12 rector of the Bureau of Prisons shall ensure that the fol-
13 lowing services and programs are available to women in
14 custody:

15 (1) ACCESS TO COMPLETE APPROPRIATE
16 HEALTH SERVICES FOR THE LIFE CYCLE OF
17 WOMEN.—The Director of the Bureau of Prisons
18 shall provide to each woman in custody who is of re-
19 productive age pregnancy testing, contraception, and
20 testing for sexually transmitted diseases and provide
21 each woman with the option to decline such services.

22 (2) COMPLIANCE WITH PROTOCOLS RELATING
23 TO HEALTH OF A PREGNANT WOMAN.—On confirma-
24 tion of the pregnancy of a woman in custody by clin-
25 ical diagnostics and assessment, the chief health
26 care professional of a Bureau of Prisons facility that

1 houses women shall ensure that a summary of all
2 appropriate protocols directly pertaining to the safe-
3 ty and well-being of the woman are provided to the
4 woman and that such protocols are complied with,
5 including an assessment of undue safety risks and
6 necessary changes to accommodate the woman where
7 and when appropriate, as it relates to—

8 (A) housing or transfer to a lower bunk for
9 safety reasons;

10 (B) appropriate bedding or clothing to re-
11 spond to a woman’s changing physical require-
12 ments and the temperature in housing units;

13 (C) regular access to water and bathrooms;

14 (D) a diet that complies with the nutri-
15 tional standards established by the Secretary of
16 Agriculture and the Secretary of Health and
17 Human Services in the Dietary Guidelines for
18 Americans report published pursuant to section
19 301 of the National Nutrition Monitoring and
20 Related Research Act of 1990 (7 U.S.C.
21 5341(a)(3)), and that includes—

22 (i) any appropriate dietary supple-
23 ment, including prenatal vitamins;

24 (ii) timely and regular nutritious
25 meals;

1 (iii) additional caloric content in
2 meals provided;

3 (iv) a prohibition on withholding food
4 from an incarcerated pregnant woman or
5 serving any food that is used as a punish-
6 ment, including nutraloaf or any food simi-
7 lar to nutraloaf that is not considered a
8 nutritious meal; and

9 (v) such other modifications to the
10 diet of the woman as the Director of the
11 Bureau of Prisons determines to be nec-
12 essary after consultation with the Sec-
13 retary of Health and Human Services and
14 consideration of such recommendations as
15 the Secretary may provide;

16 (E) modified recreation and transpor-
17 tation, in accordance with standards within the
18 obstetrical and gynecological care community,
19 to prevent overexertion or prolonged periods of
20 inactivity; and

21 (F) such other changes to living conditions
22 as the Director of the Bureau of Prisons may
23 require after consultation with the Secretary of
24 Health and Human Services and consideration

1 of such recommendations as the Secretary may
2 provide.

3 (3) EDUCATION AND SUPPORT SERVICES.—

4 (A) PREGNANCY IN CUSTODY.—In the case
5 of a woman who is pregnant at intake or who
6 becomes pregnant while in custody, that woman
7 shall, at intake or not later than 48 hours after
8 pregnancy is confirmed, as appropriate, receive
9 prenatal education, counseling, and birth sup-
10 port services provided by a provider trained to
11 provide such services, including—

12 (i) information about the parental
13 rights of the woman, including the right to
14 place the child in kinship care, and notice
15 of the rights of the child;

16 (ii) information about family preserva-
17 tion support services that are available to
18 the woman;

19 (iii) information about the nutritional
20 standards referred to in paragraph (2)(D);

21 (iv) information pertaining to the
22 health and safety risks of pregnancy, child-
23 birth, and parenting, including postpartum
24 depression;

1 (v) information on breastfeeding, lac-
2 tation, and breast health;

3 (vi) appropriate educational materials,
4 resources, and services related to preg-
5 nancy, childbirth, and parenting;

6 (vii) information and notification serv-
7 ices for incarcerated parents regarding the
8 risk of debt repayment obligations associ-
9 ated with their child's participation in so-
10 cial welfare programs, including assistance
11 under any State program funded under
12 part A of title IV of the Social Security
13 Act (42 U.S.C. 601 et seq.) or benefits
14 under the supplemental nutrition assist-
15 ance program, as defined in section 3 of
16 the Food and Nutrition Act of 2008 (7
17 U.S.C. 2012), or any State program car-
18 ried out under that Act; and

19 (viii) information from the Office of
20 Child Support Enforcement of the Depart-
21 ment of Health and Human Services re-
22 garding seeking or modifying child support
23 while incarcerated, including how to par-
24 ticipate in the Bureau of Prison's Inmate
25 Financial Responsibility Program under

1 subpart B of title 28, Code of Federal
2 Regulations (or any successor program).

3 (B) BIRTH WHILE IN CUSTODY OR PRIOR
4 TO CUSTODY.—In the case of a woman who
5 gave birth in custody or who experienced any
6 other pregnancy outcome during the 6-month
7 period immediately preceding intake, that
8 woman shall receive counseling provided by a li-
9 censed or certified provider trained to provide
10 such services, including—

11 (i) information about the parental
12 rights of the woman, including the right to
13 place the child in kinship care, and notice
14 of the rights of the child; and

15 (ii) information about family preserva-
16 tion support services that are available to
17 the woman.

18 (4) TESTING.—Not later than 1 day after an
19 incarcerated woman notifies an employee of the Bu-
20 reau of Prisons that the woman may be pregnant,
21 a Bureau of Prisons healthcare care professional
22 shall administer a pregnancy test to determine
23 whether the woman is pregnant.

24 (5) EVALUATIONS.—Each woman in custody
25 who is pregnant or whose pregnancy results in a

1 birth or any other pregnancy outcome during the 6-
2 month period immediately preceding intake or any
3 time in custody thereafter shall be evaluated not
4 later than 4 days after intake or confirmation of
5 pregnancy through evidence-based screening and as-
6 sessment for substance use disorders or mental
7 health conditions, including postpartum depression
8 or depression related to a pregnancy outcome or
9 early child care. Screening shall include identifica-
10 tion of any of the following risk factors:

11 (A) An existing mental or physical health
12 condition or substance use disorder.

13 (B) Being underweight or overweight.

14 (C) Multiple births or a previous still birth.

15 (D) A history of preeclampsia.

16 (E) A previous Caesarean section.

17 (F) A previous miscarriage.

18 (G) Being older than 35 or younger than
19 15.

20 (H) Being diagnosed with the human im-
21 munodeficiency virus, hepatitis, diabetes, or hy-
22 pertension.

23 (I) Such other risk factors as the chief
24 health care professional of a Bureau of Prisons

1 facility that houses women may determine to be
2 appropriate.

3 (6) UNEXPECTED BIRTHS RULEMAKING.—Not
4 later than 180 days after the date of enactment of
5 this Act, the Attorney General shall make rules es-
6 tablishing procedures for responding to unexpected
7 childbirth deliveries, labor complications, and med-
8 ical complications related to pregnancy if a woman
9 in custody is unable to access a hospital in a timely
10 manner.

11 (7) TREATMENT.—In the case of any woman in
12 custody who, after an evaluation under paragraph
13 (4), is diagnosed as having a substance use disorder
14 or a mental health disorder, that woman shall be en-
15 titled to treatment in accordance with the following:

16 (A) Treatment shall include participation
17 in a support group, including a 12-step pro-
18 gram, such as Alcoholics Anonymous, Narcotics
19 Anonymous, and Cocaine Anonymous or a com-
20 parable nonreligious program.

21 (B) Treatment may include psychosocial
22 interventions and medication.

23 (C) In the case that adequate treatment
24 cannot be provided to a woman in custody in a
25 Bureau of Prisons facility, the Director of the

1 Bureau of Prisons shall transfer the woman to
2 a residential reentry program that offers such
3 treatment pursuant to section 508 of the Public
4 Health Service Act (42 U.S.C. 290bb–1).

5 (D) To the extent practicable, treatment
6 for substance use disorders provided pursuant
7 to this section shall be conducted in a licensed
8 hospital.

9 **SEC. 4. USE OF RESTRICTIVE HOUSING AND RESTRAINTS**
10 **ON INCARCERATED PREGNANT WOMEN DUR-**
11 **ING PREGNANCY, LABOR, AND POSTPARTUM**
12 **RECOVERY PROHIBITED.**

13 (a) IN GENERAL.—Section 4322 of title 18, United
14 States Code, is amended to read as follows:

15 **“§ 4322. Use of restraints and restrictive housing on**
16 **incarcerated women during the period of**
17 **pregnancy, labor, and postpartum recov-**
18 **ery prohibited and to improve pregnancy**
19 **care for women in Federal prisons**

20 “(a) PROHIBITION.—Except as provided in sub-
21 section (b), beginning on the date on which pregnancy is
22 confirmed by a health care professional and ending not
23 earlier than 12 weeks after delivery, an incarcerated
24 woman in the custody of the Bureau of Prisons, or in the
25 custody of the United States Marshals Service pursuant

1 to section 4086, shall not be placed in restraints or held
2 in restrictive housing.

3 “(b) EXCEPTIONS.—

4 “(1) USE OF RESTRAINTS.—The prohibition
5 under subsection (a) shall not apply if the senior
6 Bureau of Prisons official or United States Marshals
7 Service official overseeing women’s health and serv-
8 ices and a health care professional responsible for
9 the health and safety of the incarcerated woman de-
10 termines that the use of restraints is appropriate for
11 the medical safety of the woman, and the health care
12 professional reviews such determination not later
13 than every 6 hours after such use is initially ap-
14 proved until such use is terminated.

15 “(2) SITUATIONAL USE.—The individualized de-
16 termination described under paragraph (1) shall only
17 apply to a specific situation and must be reaffirmed
18 through the same process to use restraints again in
19 any future situation involving the same woman.

20 “(3) ACCESS TO CARE.—Immediately upon the
21 cessation of the use of restraints or restrictive hous-
22 ing as outlined in this subsection, the Director of the
23 Bureau of Prisons or the United States Marshal
24 Service shall provide the incarcerated woman with

1 immediate access to physical and mental health as-
2 sements and all recommended treatment.

3 “(4) RESPONSE TO BEHAVIORAL RISKS IN THE
4 BUREAU OF PRISONS.—

5 “(A) RESTRICTIVE HOUSING.—The prohi-
6 bition under subsection (a) relating to restric-
7 tive housing shall not apply if the Director of
8 the Bureau of Prisons or a senior Bureau of
9 Prisons official overseeing women’s health and
10 services, in consultation with senior officials in
11 health services, makes an individualized deter-
12 mination that restrictive housing is required as
13 a temporary response to behavior that poses a
14 serious and immediate risk of physical harm.

15 “(B) REVIEW.—The official who makes a
16 determination under subparagraph (A) shall re-
17 view such determination every 4 hours for the
18 purpose of removing an incarcerated woman as
19 quickly as feasible from restrictive housing.

20 “(C) RESTRICTIVE HOUSING PLAN.—The
21 official who makes a determination under sub-
22 paragraph (A) shall develop an individualized
23 plan to move an incarcerated woman to less re-
24 strictive housing within a reasonable amount of
25 time, not to exceed 2 days.

1 “(D) MONITORING.—An incarcerated
2 woman who is placed in restrictive housing pur-
3 suant to this paragraph shall be—

4 “(i) monitored every hour;

5 “(ii) placed in a location visible to cor-
6 rectional officers; and

7 “(iii) prohibited from being placed in
8 solitary confinement if the incarcerated
9 woman is in her third trimester.

10 “(c) REPORTS.—

11 “(1) REPORT TO THE DIRECTOR AND HEALTH
12 CARE PROFESSIONAL AFTER THE USE OF RE-
13 STRAINTS.—If an official identified in subsection
14 (b)(1) or a correctional officer uses restraints on an
15 incarcerated woman under subsection (b), that offi-
16 cial (or an officer or marshal designated by that offi-
17 cial) or correctional officer shall submit, not later
18 than 30 days after placing the woman in restraints,
19 to the Director of the Bureau of Prisons or the Di-
20 rector of the U.S. Marshal Service, as applicable, a
21 written report which describes the facts and cir-
22 cumstances surrounding the use of restraints, and
23 includes each of the following:

1 “(A) A description of all attempts to use
2 alternative interventions and sanctions before
3 the restraints were used.

4 “(B) A description of the circumstances
5 that led to the use of restraints.

6 “(C) Strategies the facility is putting in
7 place to identify more appropriate alternative
8 interventions should a similar situation arise
9 again.

10 “(2) REPORT TO CONGRESS.—Beginning on the
11 date that is 6 months after the date of enactment
12 of the Protecting the Health and Wellness of Babies
13 and Pregnant Women in Custody Act, and every 6
14 months thereafter for a period of 10 years, the At-
15 torney General shall submit to the Committees on
16 the Judiciary of the House of Representatives and
17 the Senate a report on—

18 “(A) the reasoning upon which the deter-
19 mination to use restraints was made;

20 “(B) the details of the use of restraints,
21 including the type of restraints used and length
22 of time during which restraints were used; and

23 “(C) any resulting physical effects on the
24 prisoner observed by or known to the correc-

1 tions official or United States Marshal, as ap-
2 plicable.

3 “(3) REPORT TO THE DIRECTOR AND HEALTH
4 CARE PROFESSIONAL AFTER PLACEMENT IN RE-
5 STRICTIVE HOUSING.—If an official identified in
6 subsection (b)(3), correctional officer, or United
7 States Marshal places or causes an incarcerated
8 woman to be placed in restrictive housing under
9 such subsection, that official, correctional officer, or
10 United States Marshal shall submit, not later than
11 30 days after placing or causing the placement of
12 the incarcerated woman in restrictive housing, to the
13 Director of the Bureau of Prisons or the Director of
14 the United States Marshals Service, as applicable,
15 and to the health care professional responsible for
16 the health and safety of the woman, a written report
17 which describes the facts and circumstances sur-
18 rounding the restrictive housing placement, and in-
19 cludes the following:

20 “(A) The reasoning upon which the deter-
21 mination for the placement was made.

22 “(B) The details of the placement, includ-
23 ing length of time of placement and how fre-
24 quently and how many times the determination
25 was made subsequent to the initial determina-

1 tion to continue the restrictive housing place-
2 ment.

3 “(C) A description of all attempts to use
4 alternative interventions and sanctions before
5 the restrictive housing was used.

6 “(D) Any resulting physical effects on the
7 woman observed by or reported by the health
8 care professional responsible for the health and
9 safety of the woman.

10 “(E) Strategies the facility is putting in
11 place to identify more appropriate alternative
12 interventions should a similar situation arise
13 again.

14 “(4) REPORT TO CONGRESS.—Beginning on the
15 date that is 6 months after the date of enactment
16 of the Protecting the Health and Wellness of Babies
17 and Pregnant Women in Custody Act, and every 6
18 months thereafter for a period of 10 years, the At-
19 torney General shall submit to the Committees on
20 the Judiciary of the House of Representatives and
21 the Senate a report on the information described in
22 paragraph (3).

23 “(d) NOTICE.—Not later than 24 hours after the con-
24 firmation of an incarcerated woman’s pregnancy by a
25 health care professional, that woman shall be notified,

1 orally and in writing, by an appropriate health care profes-
2 sional, correctional officer, or United States Marshal, as
3 applicable—

4 “(1) of the restrictions on the use of restraints
5 and restrictive housing placements under this sec-
6 tion;

7 “(2) of the incarcerated woman’s right to make
8 a confidential report of a violation of restrictions on
9 the use of restraints or restrictive housing place-
10 ment; and

11 “(3) that the facility staff have been advised of
12 all rights of the incarcerated woman under sub-
13 section (a).

14 “(e) VIOLATION REPORTING PROCESS.—Not later
15 than 180 days after the date of enactment of this Act,
16 the Director of the Bureau of Prisons and the Director
17 of the United States Marshals Service shall establish proc-
18 esses through which an incarcerated person may report
19 a violation of this section.

20 “(f) NOTIFICATION OF RIGHTS.—The warden of the
21 Bureau of Prisons facility where a pregnant woman is in
22 custody shall notify necessary facility staff of the preg-
23 nancy and of the incarcerated pregnant woman’s rights
24 under subsection (a).

1 “(g) RETALIATION.—It shall be unlawful for any Bu-
2 reau of Prisons or United States Marshal Service em-
3 ployee to retaliate against an incarcerated person for re-
4 porting under the provisions of subsection (e) a violation
5 of subsection (a).

6 “(h) EDUCATION.—Not later than 90 days after the
7 date of enactment of the Protecting the Health and
8 Wellness of Babies and Pregnant Women in Custody Act,
9 the Director of the Bureau of Prisons and the Director
10 of the United States Marshals Service shall each develop
11 education guidelines regarding the physical and mental
12 health needs of incarcerated pregnant women, and the use
13 of restraints and restrictive housing placements on incar-
14 cerated women during the period of pregnancy, labor, and
15 postpartum recovery, and shall incorporate such guidelines
16 into appropriate education programs.

17 “(i) DEFINITION.—In this section:

18 “(1) RESTRAINTS.—The term ‘restraints’
19 means any physical or mechanical device used to
20 control the movement of an incarcerated pregnant
21 woman’s body, limbs, or both.

22 “(2) RESTRICTIVE HOUSING.—The term ‘re-
23 strictive housing’ means any type of detention that
24 involves—

1 “(A) removal from the general inmate pop-
2 ulation, whether voluntary or involuntary;

3 “(B) placement in a locked room or cell,
4 whether alone or with another inmate; and

5 “(C) inability to leave the room or cell for
6 the vast majority of the day.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of chapter 317 of title 18, United States
9 Code, is amended by amending the item relating to section
10 4322 to read as follows:

 “4322. Use of restraints and restrictive housing on incarcerated women during
 the period of pregnancy, labor, and postpartum recovery pro-
 hibited and to improve pregnancy care for women in Federal
 prisons.”.

11 **SEC. 5. TREATMENT OF WOMEN WITH HIGH-RISK PREG-**
12 **NANCIES.**

13 (a) IN GENERAL.—Chapter 303 of title 18, United
14 States Code, is amended by adding at the end the fol-
15 lowing:

16 **“§ 4051. Treatment of incarcerated pregnant women**

17 “(a) HIGH-RISK PREGNANCY HEALTH CARE.—The
18 Director of the Bureau of Prisons shall ensure that each
19 incarcerated pregnant woman receives health care appro-
20 priate for a high-risk pregnancy, including obstetrical and
21 gynecological care, during pregnancy and post-partum re-
22 covery.

23 “(b) HIGH-RISK PREGNANCIES.—

1 “(1) IN GENERAL.—The Director of the Bureau
2 of Prisons shall transfer any incarcerated woman,
3 who is determined by a health care professional to
4 have a high-risk pregnancy and who agrees to be
5 transferred, to a Residential Reentry Center with
6 adequate health care during her pregnancy and post-
7 partum recovery.

8 “(2) PRIORITY.—The Residential Reentry Cen-
9 ter to which an incarcerated pregnant woman is
10 transferred pursuant to paragraph (1) shall be in a
11 geographical location that is close to the family
12 members of the incarcerated pregnant woman. In
13 the case that a Residential Reentry Center is un-
14 available, the incarcerated pregnant woman shall be
15 transferred to alternative housing, including housing
16 with a family member.

17 “(3) TRANSPORTATION.—To transport an in-
18 carcerated pregnant woman to a Residential Reentry
19 Center, the Director of the Bureau of Prisons shall
20 provide to the woman a mode of transportation that
21 has been approved by the woman’s health care pro-
22 fessional, at no expense to the woman.

23 “(4) MONITORING.—In the case that an incar-
24 cerated pregnant woman transferred to alternative
25 housing pursuant to this section is monitored elec-

1 tronically, an ankle monitor may not be used on the
2 woman, unless there is no feasible alternative for
3 monitoring the woman.

4 “(5) SERVICE OF SENTENCE.—Any time ac-
5 crued at a Residential Reentry Center or alternative
6 housing as a result of a transfer made pursuant to
7 this section shall be credited toward service of the
8 incarcerated pregnant woman’s sentence.

9 “(6) CREDIT FOR PRETRIAL CUSTODY.—In the
10 case of an incarcerated pregnant woman, any time
11 accrued in pretrial custody shall be credited toward
12 service of the woman’s sentence.

13 “(c) DEFINITIONS.—In this section:

14 “(1) FAMILY MEMBER.—The term ‘family
15 member’ means any individual related by blood or
16 affinity whose close association with the incarcerated
17 pregnant woman is the equivalent of a family rela-
18 tionship, including a parent, sibling, child, or indi-
19 vidual standing in loco parentis.

20 “(2) RESIDENTIAL REENTRY CENTER.—The
21 term ‘Residential Reentry Center’ means a Bureau
22 of Prisons contracted residential reentry center.

23 “(3) HEALTH CARE PROFESSIONAL.—

24 “(A) IN GENERAL.—The term ‘health care
25 professional’ means—

1 “(i) a doctor of medicine or osteop-
2 athy who is authorized to practice medicine
3 or surgery by the State in which the doctor
4 practices;

5 “(ii) any physician’s assistant or
6 nurse practitioner who is supervised by a
7 doctor of medicine or osteopathy described
8 in clause (i); or

9 “(iii) any other person determined by
10 the Secretary to be capable of providing
11 health care services.

12 “(B) OTHER HEALTH CARE SERVICES.—A
13 person is capable of providing health care serv-
14 ices if the person is—

15 “(i) a podiatrist, dentist, clinical psy-
16 chologist, optometrist, or chiropractor (lim-
17 ited to treatment consisting of manual ma-
18 nipulation of the spine to correct a sub-
19 luxation as demonstrated by X-ray to
20 exist) authorized to practice in the State
21 and performing within the scope of their
22 practice as defined under State law;

23 “(ii) a nurse practitioner, nurse-mid-
24 wife, clinical social worker, or physician’s
25 assistant who is authorized to practice

1 under State law and who is performing
2 within the scope of their practice as de-
3 fined under State law; and

4 “(iii) any health care professional
5 from whom an employer or the employer’s
6 group health plan’s benefits manager will
7 accept certification of the existence of a se-
8 rious health condition to substantiate a
9 claim for benefits.

10 “(C) AUTHORIZED TO PRACTICE IN THE
11 STATE.—The term ‘authorized to practice in
12 the State’ means that a professional must be
13 authorized to diagnose and treat physical or
14 mental health conditions under the laws of the
15 State in which the professional practices and
16 where the facility is located.

17 “(4) HIGH-RISK PREGNANCY.—The term ‘high-
18 risk pregnancy’ means, with respect to an incarcer-
19 ated woman, that the pregnancy threatens the
20 health or life of the woman or pregnancy, as deter-
21 mined by a health care professional.

22 “(5) POST-PARTUM RECOVERY.—The term
23 ‘post-partum recovery’ means the 3-month period be-
24 ginning on the date on which an incarcerated preg-
25 nant woman gives birth.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-
2 tions for chapter 303 of title 18, United States Code, is
3 amended by adding at the end the following:

“4051. Treatment of incarcerated pregnant women.”.

4 **SEC. 6. EXEMPTION OF INCARCERATED PREGNANT WOMEN**
5 **FROM THE REQUIREMENTS FOR SUITS BY**
6 **PRISONERS.**

7 Section 7 of the Civil Rights of Institutionalized Per-
8 sons Act (42 U.S.C. 1997e) is amended—

9 (1) in subsection (a), by inserting after the pe-
10 riod at the end the following: “This subsection shall
11 not apply with respect to an incarcerated pregnant
12 woman who brings an action relating to or affecting
13 the woman’s pregnancy.”; and

14 (2) in subsection (d)(1), insert “, except an in-
15 carcerated pregnant woman,” before “who is con-
16 fined”.

17 **SEC. 7. DEFINITIONS.**

18 In this Act:

19 (1) **IN CUSTODY.**—The term “in custody”
20 means, with respect to an individual, that the indi-
21 vidual is under the supervision of a Federal, State,
22 tribal or local correctional facility, including pretrial
23 and contract facilities, and juvenile or medical or
24 mental health facilities.

1 (2) OTHER PREGNANCY OUTCOME.—The term
2 “other pregnancy outcome” means a pregnancy that
3 ends in stillbirth, miscarriage, or ectopic pregnancy.

4 (3) POSTPARTUM RECOVERY.—The term “post-
5 partum recovery” means the 12-week period, or
6 longer as determined by the health care professional
7 responsible for the health and safety of the incarcer-
8 ated pregnant woman, following delivery, and shall
9 include the entire period that the incarcerated preg-
10 nant woman is in the hospital or infirmary.

11 (4) RESTRAINTS.—The term “restraints”
12 means any physical or mechanical device used to
13 control the movement of an incarcerated pregnant
14 woman’s body, limbs, or both.

15 (5) RESTRICTIVE HOUSING.—The term “re-
16 strictive housing” means any type of detention that
17 involves—

18 (A) removal from the general inmate popu-
19 lation, whether voluntary or involuntary;

20 (B) placement in a locked room or cell,
21 whether alone or with another inmate; and

22 (C) inability to leave the room or cell for
23 the vast majority of the day.

1 **SEC. 8. EDUCATION AND TECHNICAL ASSISTANCE.**

2 The Director of the National Institute of Corrections
3 shall provide education and technical assistance, in con-
4 junction with the appropriate public agencies, at State and
5 local correctional facilities that house women and facilities
6 in which incarcerated women go into labor and give birth,
7 in order to educate the employees of such facilities, includ-
8 ing health personnel, on the dangers and potential mental
9 health consequences associated with the use of restrictive
10 housing and restraints on incarcerated women during
11 pregnancy, labor, and postpartum recovery, and on alter-
12 natives to the use of restraints and restrictive housing
13 placement.

14 **SEC. 9. BUREAU OF PRISONS STAFF AND U.S. MARSHALS**
15 **TRAINING.**

16 (a) BUREAU OF PRISONS TRAINING.—Beginning not
17 later than 180 days after the date of enactment of this
18 Act, and biannually thereafter, the Director of the Bureau
19 of Prisons shall train each correctional officer at any Bu-
20 reau of Prisons women’s facility to carry out the require-
21 ments of this Act.

22 (b) NEW HIRES.—Beginning not later than 180 days
23 after the date of enactment of this Act, the Director of
24 the Bureau of Prisons shall train any newly hired correc-
25 tional officer at a Bureau of Prisons facility that houses

1 women to carry out the requirements of this Act not later
2 than 30 days after the date on which the officer is hired.

3 (c) U.S. MARSHAL TRAINING.—Beginning not later
4 than 180 days after the date of enactment of this Act,
5 and biannually thereafter, the Director of the U.S. Mar-
6 shals Service shall ensure that each Deputy U.S. Marshal
7 is trained pursuant to the guidelines described in sub-
8 section (d). Newly hired deputies shall receive such train-
9 ing not later than 30 days after the date on which such
10 deputy starts employment.

11 (d) GUIDELINES.—The Director of the Bureau of
12 Prisons and the United States Marshals Service shall each
13 develop guidelines on the treatment of incarcerated women
14 during pregnancy, labor, and postpartum recovery and in-
15 corporate such guidelines in the training required under
16 this section. Such guidelines shall include guidance on—

17 (1) the transportation of incarcerated pregnant
18 women;

19 (2) housing of incarcerated pregnant women;

20 (3) nutritional requirements for incarcerated
21 pregnant women; and

22 (4) the right of a health care professional to re-
23 quest that restraints not be used.

1 **SEC. 10. GAO STUDY ON STATE AND LOCAL CORRECTIONAL**
2 **FACILITIES.**

3 The Comptroller General of the United States shall
4 conduct a study of services and protections provided for
5 pregnant incarcerated women in local and State correc-
6 tional settings, including policies on obstetrical and gyne-
7 cological care, education on nutrition, health and safety
8 risks associated with pregnancy, mental health and sub-
9 stance use treatment, access to prenatal and post-delivery
10 support services and programs, the use of restraints and
11 restrictive housing placement, and the extent to which the
12 intent of such policies are fulfilled.

13 **SEC. 11. GAO STUDY ON FEDERAL PRETRIAL DETENTION**
14 **FACILITIES.**

15 (a) STUDY.—The Comptroller General of the United
16 States shall conduct a study of services and protections
17 provided for pregnant women who are incarcerated in Fed-
18 eral pretrial detention facilities. Specifically, the study
19 shall examine—

20 (1) what available data indicate about pregnant
21 women detained or held in Federal pretrial detention
22 facilities;

23 (2) existing U.S. Marshals Service policies and
24 standards that address the care of pregnant women
25 in Federal pretrial detention facilities; and

1 (3) what is known about the care provided to
2 pregnant women in Federal pretrial detention facili-
3 ties.

4 (b) REPORT AND BEST PRACTICES.—Not later than
5 2 years after the date of enactment of this Act, the Comp-
6 troller General shall submit a report of the results of the
7 study conducted under subsection (a) to the Committee
8 on the Judiciary of the Senate and the Committee on the
9 Judiciary of the House of Representatives. The report
10 shall identify best practices for ensuring that Federal pre-
11 trial detention facilities implement services and protec-
12 tions for pregnant women consistent with this Act and
13 shall provide recommendations on how to implement these
14 best practices among all Federal pretrial detention facili-
15 ties.

16 (c) DEFINITION.—For purposes of this section, the
17 term “Federal pretrial detention facilities” includes State,
18 local, private, or other facilities under contract with the
19 U.S. Marshals Service for the purpose of housing Federal
20 pretrial detainees.

21 **SEC. 12. PWIC GRANT PROGRAM.**

22 Section 508 of the Omnibus Crime Control and Safe
23 Streets Act of 1968 (34 U.S.C. 10151 et seq.) is amended
24 to read as follows:

1 **“SEC. 508. PREGNANT WOMEN IN CUSTODY GRANT PRO-**
2 **GRAM.**

3 “(a) **SHORT TITLE.**—This section may be cited as the
4 ‘Pregnant Women in Custody Grant Program of 2020’ or
5 the ‘PWIC Act of 2020’.

6 “(b) **ESTABLISHMENT.**—The Attorney General may
7 make grants to eligible entities that have established a
8 program to promote the health needs of incarcerated preg-
9 nant women in the criminal justice system at the State,
10 tribal, and local levels or have declared their intent to es-
11 tablish such a program. Eligible entities shall—

12 “(1) promote the safety and wellness of preg-
13 nant women in custody;

14 “(2) provide services for obstetrical and gynecolo-
15 gical care, for women in custody;

16 “(3) facilitate resources and support services
17 for nutrition and physical and mental health, for
18 women in custody;

19 “(4) establish and maintain policies that are
20 substantially similar to the limitations imposed
21 under section 4322 of title 18, United States Code,
22 limiting the use of restraints on pregnant women in
23 custody; and

24 “(5) maintain, establish, or build post-delivery
25 lactation and nursery care or residential programs to
26 keep the infant with the mother and to promote and

1 facilitate bonding skills for incarcerated pregnant
2 women and women with dependent children.

3 “(c) GRANT PERIOD.—A grant awarded under this
4 section shall be for a period of not more than 5 years.

5 “(d) ELIGIBLE ENTITY.—An entity is eligible for a
6 grant under this section if the entity is—

7 “(1) a State or territory department of correc-
8 tions;

9 “(2) a tribal entity that operates a correctional
10 facility; or

11 “(3) a unit of local government that operates a
12 prison or jail that houses women; or

13 “(4) a locally-based nonprofit organization, that
14 has partnered with a State or unit of local govern-
15 ment that operates a correctional facility, with ex-
16 pertise in providing health services to incarcerated
17 pregnant women.

18 “(e) APPLICATION.—To receive a grant under this
19 section, an eligible entity shall submit an application to
20 the Attorney General at such time, in such manner, and
21 containing such information as the Attorney General may
22 require, including a detailed description of the need for
23 the grant and an account of the number of individuals the
24 grantee expects to benefit from the grant.

1 “(f) ADMINISTRATIVE COSTS.—Not more than 5 per-
2 cent of a grant awarded under this section may be used
3 for costs incurred to administer such grant.

4 “(g) CONSTRUCTION COSTS.—Notwithstanding any
5 other provision of this Act, no funds provided under this
6 section may be used, directly or indirectly, for construction
7 projects, other than new construction or upgrade to a fa-
8 cility used to provide lactation, nursery, obstetrical, or
9 gynecological services.

10 “(h) PRIORITY FUNDING FOR STATES THAT PRO-
11 VIDE PROGRAMS AND SERVICES FOR INCARCERATED
12 WOMEN RELATED TO PREGNANCY AND CHILDBIRTH.—
13 In determining the amount provided to a State or unit
14 of local government under this section, the Attorney Gen-
15 eral shall give priority to States or units of local govern-
16 ment that have enacted laws or policies and implemented
17 services or pilot programs for incarcerated pregnant
18 women aimed at enhancing the safety and wellness of
19 pregnant women in custody, including providing services
20 for obstetrical and gynecological care, resources and sup-
21 port services for nutrition and physical and mental health,
22 and post-delivery lactation and nursery care or residential
23 programs to keep the infant with the mother and to pro-
24 mote and facilitate bonding skills for incarcerated preg-
25 nant women and women with dependent children.

1 “(i) SUBGRANT PRIORITY.—A State that receives a
2 grant under this section shall prioritize subgrants to a unit
3 of local government within the State that has established
4 a pilot program that enhances safety and wellness of preg-
5 nant women in custody.

6 “(j) FEDERAL SHARE.—

7 “(1) IN GENERAL.—The Federal share of a
8 grant under this section may not exceed 75 percent
9 of the total costs of the projects described in the
10 grant application.

11 “(2) WAIVER.—The requirement of paragraph
12 (1) may be waived by the Assistant Attorney Gen-
13 eral upon a determination that the financial cir-
14 cumstances affecting the applicant warrant a finding
15 that such a waiver is equitable.

16 “(k) COMPLIANCE AND REDIRECTION OF FUNDS.—

17 “(1) IN GENERAL.—Not later than 1 year after
18 an eligible entity receives a grant under this section,
19 such entity shall implement a policy that is substan-
20 tially similar to the policy under section 3 of Pro-
21 tecting the Health and Wellness of Babies and Preg-
22 nant Women in Custody Act.

23 “(2) EXTENSION.—The Attorney General may
24 provide a 120-day extension to an eligible entity that

1 is making good faith efforts to collect the informa-
2 tion required under paragraph (1).

3 “(l) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section,
5 to remain available until expended—

6 “(1) for fiscal year 2021, \$5,000,000;

7 “(2) for fiscal year 2022, \$5,000,000;

8 “(3) for fiscal year 2023, \$5,000,000;

9 “(4) for fiscal year 2024, \$6,000,000; and

10 “(5) for fiscal year 2025, \$6,000,000.

11 “(m) FUNDS TO BE SUPPLEMENTAL.—To receive a
12 grant under this section, the eligible entity shall certify
13 to the Attorney General that the amounts received under
14 the grant shall be used to supplement, not supplant, non-
15 Federal funds that would otherwise be available for pro-
16 grams or services in the prison where funds will be used.

17 “(n) UNOBLIGATED AND UNSPENT FUNDS.—Funds
18 made available pursuant to this section that remain unob-
19 ligated for a period of 6 months after the end of the fiscal
20 year for which the funds have been appropriated shall be
21 awarded to other recipients of this grant.

22 “(o) CIVIL RIGHTS OBLIGATION.—A recipient of a
23 grant under this section shall be subject to the non-
24 discrimination requirement under section 40002(b)(13) of

1 the Violence Against Women Act of 1994 (34 U.S.C.
2 12291(b)(13)).

3 “(p) DEFINITIONS.—In this section, the term ‘in cus-
4 tody’ means, with respect to an individual, that the indi-
5 vidual is under the supervision of a Federal, State, tribal,
6 or local correctional facility, including pretrial and con-
7 tract facilities, and juvenile or medical or mental health
8 facilities.”.

9 **SEC. 13. PLACEMENT IN PRERELEASE CUSTODY.**

10 Section 3624(c)(1) of title 18, United States Code,
11 is amended by adding at the end the following: “Notwith-
12 standing any other provision of this paragraph, in the case
13 of a pregnant woman in custody, if that woman’s due date
14 is within the final year of her term of imprisonment, that
15 woman may be placed into prerelease custody beginning
16 not earlier than the date that is 2 months prior to that
17 woman’s due date.”.

18 **SEC. 14. DETERMINATION OF BUDGETARY EFFECTS.**

19 The budgetary effects of this Act, for the purpose of
20 complying with the Statutory Pay-As-You-Go Act of 2010,
21 shall be determined by reference to the latest statement
22 titled “Budgetary Effects of PAYGO Legislation” for this
23 Act, submitted for printing in the Congressional Record
24 by the Chairman of the House Budget Committee, pro-

1 vided that such statement has been submitted prior to the
2 vote on passage.

Passed the House of Representatives October 1,
2020.

Attest:

Clerk.

116TH CONGRESS
2^D SESSION

H. R. 7718

AN ACT

To address the health needs of incarcerated women related to pregnancy and childbirth, and for other purposes.