

116TH CONGRESS  
2D SESSION

# H. R. 7718

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 22, 2020

Ms. BASS (for herself, Mr. RESCHENTHALER, Ms. CLARK of Massachusetts, and Mrs. LESKO) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. DATA COLLECTION.**

8 (a) IN GENERAL.—Beginning not later than 1 year  
9 after the date of the enactment of this Act, pursuant to  
10 the authority under section 302 of the Omnibus Crime

1 Control and Safe Streets Act of 1968 (34 U.S.C. 10132),  
2 the Director of the Bureau of Justice Statistics shall in-  
3 clude in the National Prisoner Statistics Program and An-  
4 nual Survey of Jails statistics relating to the health needs  
5 of incarcerated pregnant women in the criminal justice  
6 system at the Federal, State, tribal, and local levels, in-  
7 cluding—

8 (1) demographic and other information about  
9 incarcerated women who are pregnant, in labor, or  
10 in postpartum recovery, including the race, ethnicity,  
11 and age of the pregnant woman;

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

14 (A) whether prenatal, delivery, and post-  
15 delivery check-up visits were scheduled and pro-  
16 vided;

17 (B) whether a social worker, psychologist,  
18 doula or other support person, or pregnancy or  
19 parenting program was offered and provided  
20 during pregnancy and delivery;

21 (C) whether a nursery or residential pro-  
22 gram to keep mothers and infants together  
23 post-delivery was offered and whether such a  
24 nursery or residential program was provided;

1 (D) the number of days the mother stayed  
2 in the hospital post-delivery;

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

5 (F) the number of days the infant re-  
6 mained in the hospital after the mother was  
7 discharged;

8 (3) the location of the nearest hospital with a  
9 licensed obstetrician-gynecologist in proximity to  
10 where the inmate is housed and the length of travel  
11 required to transport the inmate;

12 (4) whether a written policy or protocol is in  
13 place to respond to unexpected childbirth, labor, de-  
14 liveries, and medical complications related to the  
15 pregnancies of incarcerated pregnant women and for  
16 incarcerated pregnant women experiencing labor or  
17 medical complications related to pregnancy outside  
18 of a hospital;

19 (5) the number of incarcerated women who are  
20 determined by a health care professional to have a  
21 high-risk pregnancy;

22 (6) the total number of incarcerated pregnant  
23 women and the number of incarcerated women who  
24 became pregnant while incarcerated;



1 ons facility that houses women shall ensure that these  
2 services and programs are implemented for women in cus-  
3 tody at that facility.

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

8 (1) ACCESS TO COMPLETE APPROPRIATE  
9 HEALTH SERVICES FOR THE LIFE CYCLE OF  
10 WOMEN.—The Director of the Bureau of Prisons  
11 shall provide to each woman in custody who is of re-  
12 productive age pregnancy testing, contraception, and  
13 testing for sexually transmitted diseases and provide  
14 each woman with the option to decline such services.

15 (2) COMPLIANCE WITH PROTOCOLS RELATING  
16 TO HEALTH OF A PREGNANT WOMAN.—On confirma-  
17 tion of the pregnancy of a woman in custody by clin-  
18 ical diagnostics and assessment, the chief health  
19 care professional of a Bureau of Prisons facility that  
20 houses women shall ensure that a summary of all  
21 appropriate protocols directly pertaining to the safe-  
22 ty and well-being of the woman are provided to the  
23 woman and that such protocols are complied with,  
24 including an assessment of undue safety risks and

1 necessary changes to accommodate the woman where  
2 and when appropriate, as it relates to—

3 (A) housing or transfer to a lower bunk for  
4 safety reasons;

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

8 (C) regular access to water and bathrooms;

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

17 (i) any appropriate dietary supple-  
18 ment, including prenatal vitamins;

19 (ii) timely and regular nutritious  
20 meals;

21 (iii) additional caloric content in  
22 meals provided;

23 (iv) a prohibition on withholding food  
24 from an incarcerated pregnant woman or  
25 serving any food that is used as a punish-

1           ment, including nutraloaf or any food simi-  
2           lar to nutraloaf that is not considered a  
3           nutritious meal; and

4           (v) such other modifications to the  
5           diet of the woman as the Director of the  
6           Bureau of Prisons determines to be nec-  
7           essary after consultation with the Sec-  
8           retary of Health and Human Services and  
9           consideration of such recommendations as  
10          the Secretary may provide;

11          (E) modified recreation and transpor-  
12          tation, in accordance with standards within the  
13          obstetrical and gynecological care community,  
14          to prevent overexertion or prolonged periods of  
15          inactivity; and

16          (F) such other changes to living conditions  
17          as the Director of the Bureau of Prisons may  
18          require after consultation with the Secretary of  
19          Health and Human Services and consideration  
20          of such recommendations as the Secretary may  
21          provide.

22          (3) EDUCATION AND SUPPORT SERVICES.—

23          (A) PREGNANCY IN CUSTODY.—In the case  
24          of a woman who is pregnant at intake or who  
25          becomes pregnant while in custody, that woman

1 shall, at intake or not later than 48 hours after  
2 pregnancy is confirmed, as appropriate, receive  
3 prenatal education, counseling, and birth sup-  
4 port services provided by a provider trained to  
5 provide such services, including—

6 (i) information about the parental  
7 rights of the woman, including the right to  
8 place the child in kinship care, and notice  
9 of the rights of the child;

10 (ii) information about family preserva-  
11 tion support services that are available to  
12 the woman;

13 (iii) information about the nutritional  
14 standards referred to in paragraph (2)(D);

15 (iv) information pertaining to the  
16 health and safety risks of pregnancy, child-  
17 birth, and parenting, including postpartum  
18 depression;

19 (v) information on breastfeeding, lac-  
20 tation, and breast health;

21 (vi) appropriate educational materials,  
22 resources, and services related to preg-  
23 nancy, childbirth, and parenting;

24 (vii) information and notification serv-  
25 ices for incarcerated parents regarding the

1 risk of debt repayment obligations associ-  
2 ated with their child's participation in so-  
3 cial welfare programs, including assistance  
4 under any State program funded under  
5 part A of title IV of the Social Security  
6 Act (42 U.S.C. 601 et seq.) or benefits  
7 under the supplemental nutrition assist-  
8 ance program, as defined in section 3 of  
9 the Food and Nutrition Act of 2008 (7  
10 U.S.C. 2012), or any State program car-  
11 ried out under that Act; and

12 (viii) information from the Office of  
13 Child Support Enforcement of the Depart-  
14 ment of Health and Human Services re-  
15 garding seeking or modifying child support  
16 while incarcerated, including how to par-  
17 ticipate in the Bureau of Prison's Inmate  
18 Financial Responsibility Program under  
19 subpart B of title 28, Code of Federal  
20 Regulations (or any successor program).

21 (B) BIRTH WHILE IN CUSTODY OR PRIOR  
22 TO CUSTODY.—In the case of a woman who  
23 gave birth in custody or who experienced any  
24 other pregnancy outcome during the 6-month  
25 period immediately preceding intake, that

1 woman shall receive counseling provided by a li-  
2 censed or certified provider trained to provide  
3 such services, including—

4 (i) information about the parental  
5 rights of the woman, including the right to  
6 place the child in kinship care, and notice  
7 of the rights of the child; and

8 (ii) information about family preserva-  
9 tion support services that are available to  
10 the woman.

11 (4) TESTING.—Not later than 1 day after an  
12 incarcerated woman notifies an employee of the Bu-  
13 reau of Prisons that the woman may be pregnant,  
14 a Bureau of Prisons healthcare care professional  
15 shall administer a pregnancy test to determine  
16 whether the woman is pregnant.

17 (5) EVALUATIONS.—Each woman in custody  
18 who is pregnant or whose pregnancy results in a  
19 birth or any other pregnancy outcome during the 6-  
20 month period immediately preceding intake or any  
21 time in custody thereafter shall be evaluated not  
22 later than 4 days after intake or confirmation of  
23 pregnancy through evidence-based screening and as-  
24 sessment for substance use disorders or mental  
25 health conditions, including postpartum depression

1 or depression related to a pregnancy outcome or  
2 early child care. Screening shall include identifica-  
3 tion of any of the following risk factors:

4 (A) An existing mental or physical health  
5 condition or substance use disorder.

6 (B) Being underweight or overweight.

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

8 (D) A history of preeclampsia.

9 (E) A previous Caesarean section.

10 (F) A previous miscarriage.

11 (G) Being older than 35 or younger than  
12 15.

13 (H) Being diagnosed with the human im-  
14 munodeficiency virus, hepatitis, diabetes, or hy-  
15 pertension.

16 (I) Such other risk factors as the chief  
17 health care professional of a Bureau of Prisons  
18 facility that houses women may determine to be  
19 appropriate.

20 (6) UNEXPECTED BIRTHS RULEMAKING.—Not  
21 later than 180 days after the date of enactment of  
22 this Act, the Attorney General shall make rules es-  
23 tablishing procedures for responding to unexpected  
24 childbirth deliveries, labor complications, and med-  
25 ical complications related to pregnancy if a woman

1 in custody is unable to access a hospital in a timely  
2 manner.

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

8 (A) Treatment shall include participation  
9 in a support group, including a 12-step pro-  
10 gram, such as Alcoholics Anonymous, Narcotics  
11 Anonymous, and Cocaine Anonymous or a com-  
12 parable nonreligious program.

13 (B) Treatment may include psychosocial  
14 interventions and medication.

15 (C) In the case that adequate treatment  
16 cannot be provided to a woman in custody in a  
17 Bureau of Prisons facility, the Director of the  
18 Bureau of Prisons shall transfer the woman to  
19 a residential reentry program that offers such  
20 treatment pursuant to section 508 of the Public  
21 Health Service Act (42 U.S.C. 290bb–1).

22 (D) To the extent practicable, treatment  
23 for substance use disorders provided pursuant  
24 to this section shall be conducted in a licensed  
25 hospital.

1 **SEC. 4. USE OF RESTRICTIVE HOUSING AND RESTRAINTS**  
2 **ON INCARCERATED PREGNANT WOMEN DUR-**  
3 **ING PREGNANCY, LABOR, AND POSTPARTUM**  
4 **RECOVERY PROHIBITED.**

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

7 **“§ 4322. Use of restraints and restrictive housing on**  
8 **incarcerated women during the period of**  
9 **pregnancy, labor, and postpartum recov-**  
10 **ery prohibited and to improve pregnancy**  
11 **care for women in Federal prisons**

12 “(a) PROHIBITION.—Except as provided in sub-  
13 section (b), beginning on the date on which pregnancy is  
14 confirmed by a health care professional and ending not  
15 earlier than 12 weeks after delivery, an incarcerated  
16 woman in the custody of the Bureau of Prisons, or in the  
17 custody of the United States Marshals Service pursuant  
18 to section 4086, shall not be placed in restraints or held  
19 in restrictive housing.

20 “(b) EXCEPTIONS.—

21 “(1) USE OF RESTRAINTS.—The prohibition  
22 under subsection (a) shall not apply if the senior  
23 Bureau of Prisons official or United States Marshals  
24 Service official overseeing women’s health and serv-  
25 ices and a health care professional responsible for  
26 the health and safety of the incarcerated woman de-

1       termines that the use of restraints is appropriate for  
2       the medical safety of the woman, and the health care  
3       professional reviews such determination not later  
4       than every 6 hours after such use is initially ap-  
5       proved until such use is terminated.

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

11              “(3) ACCESS TO CARE.—Immediately upon the  
12      cessation of the use of restraints or restrictive hous-  
13      ing as outlined in this subsection, the Director of the  
14      Bureau of Prisons or the United States Marshal  
15      Service shall provide the incarcerated woman with  
16      immediate access to physical and mental health as-  
17      sessments and all recommended treatment.

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

20              “(A) RESTRICTIVE HOUSING.—The prohi-  
21      bition under subsection (a) relating to restric-  
22      tive housing shall not apply if the Director of  
23      the Bureau of Prisons or a senior Bureau of  
24      Prisons official overseeing women’s health and  
25      services, in consultation with senior officials in

1 health services, makes an individualized deter-  
2 mination that restrictive housing is required as  
3 a temporary response to behavior that poses a  
4 serious and immediate risk of physical harm.

5 “(B) REVIEW.—The official who makes a  
6 determination under subparagraph (A) shall re-  
7 view such determination every 4 hours for the  
8 purpose of removing an incarcerated woman as  
9 quickly as feasible from restrictive housing.

10 “(C) RESTRICTIVE HOUSING PLAN.—The  
11 official who makes a determination under sub-  
12 paragraph (A) shall develop an individualized  
13 plan to move an incarcerated woman to less re-  
14 strictive housing within a reasonable amount of  
15 time, not to exceed 2 days.

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

19 “(i) monitored every hour;

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

22 “(iii) prohibited from being placed in  
23 solitary confinement if the incarcerated  
24 woman is in her third trimester.

25 “(c) REPORTS.—

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

14                   “(A) A description of all attempts to use  
15 alternative interventions and sanctions before  
16 the restraints were used.

17                   “(B) A description of the circumstances  
18 that led to the use of restraints.

19                   “(C) Strategies the facility is putting in  
20 place to identify more appropriate alternative  
21 interventions should a similar situation arise  
22 again.

23           “(2) REPORT TO CONGRESS.—Beginning on the  
24 date that is 6 months after the date of enactment  
25 of the Protecting the Health and Wellness of Babies

1 and Pregnant Women in Custody Act, and every 6  
2 months thereafter for a period of 10 years, the At-  
3 torney General shall submit to the Committees on  
4 the Judiciary of the House of Representatives and  
5 the Senate a report on—

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

8 “(B) the details of the use of restraints,  
9 including the type of restraints used and length  
10 of time during which restraints were used; and

11 “(C) any resulting physical effects on the  
12 prisoner observed by or known to the correc-  
13 tions official or United States Marshal, as ap-  
14 plicable.

15 “(3) REPORT TO THE DIRECTOR AND HEALTH  
16 CARE PROFESSIONAL AFTER PLACEMENT IN RE-  
17 STRICTIVE HOUSING.—If an official identified in  
18 subsection (b)(3), correctional officer, or United  
19 States Marshal places or causes an incarcerated  
20 woman to be placed in restrictive housing under  
21 such subsection, that official, correctional officer, or  
22 United States Marshal shall submit, not later than  
23 30 days after placing or causing the placement of  
24 the incarcerated woman in restrictive housing, to the  
25 Director of the Bureau of Prisons or the Director of

1 the United States Marshals Service, as applicable,  
2 and to the health care professional responsible for  
3 the health and safety of the woman, a written report  
4 which describes the facts and circumstances sur-  
5 rounding the restrictive housing placement, and in-  
6 cludes the following:

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

9 “(B) The details of the placement, includ-  
10 ing length of time of placement and how fre-  
11 quently and how many times the determination  
12 was made subsequent to the initial determina-  
13 tion to continue the restrictive housing place-  
14 ment.

15 “(C) A description of all attempts to use  
16 alternative interventions and sanctions before  
17 the restrictive housing was used.

18 “(D) Any resulting physical effects on the  
19 woman observed by or reported by the health  
20 care professional responsible for the health and  
21 safety of the woman.

22 “(E) Strategies the facility is putting in  
23 place to identify more appropriate alternative  
24 interventions should a similar situation arise  
25 again.

1           “(4) REPORT TO CONGRESS.—Beginning on the  
2           date that is 6 months after the date of enactment  
3           of the Protecting the Health and Wellness of Babies  
4           and Pregnant Women in Custody Act, and every 6  
5           months thereafter for a period of 10 years, the At-  
6           torney General shall submit to the Committees on  
7           the Judiciary of the House of Representatives and  
8           the Senate a report on the information described in  
9           paragraph (3).

10          “(d) NOTICE.—Not later than 24 hours after the con-  
11          firmation of an incarcerated woman’s pregnancy by a  
12          health care professional, that woman shall be notified,  
13          orally and in writing, by an appropriate health care profes-  
14          sional, correctional officer, or United States Marshal, as  
15          applicable—

16                 “(1) of the restrictions on the use of restraints  
17                 and restrictive housing placements under this sec-  
18                 tion;

19                 “(2) of the incarcerated woman’s right to make  
20                 a confidential report of a violation of restrictions on  
21                 the use of restraints or restrictive housing place-  
22                 ment; and

23                 “(3) that the facility staff have been advised of  
24                 all rights of the incarcerated woman under sub-  
25                 section (a).

1       “(e) VIOLATION REPORTING PROCESS.—Not later  
2 than 180 days after the date of enactment of this Act,  
3 the Director of the Bureau of Prisons and the Director  
4 of the United States Marshals Service shall establish proc-  
5 esses through which an incarcerated person may report  
6 a violation of this section.

7       “(f) NOTIFICATION OF RIGHTS.—The warden of the  
8 Bureau of Prisons facility where a pregnant woman is in  
9 custody shall notify necessary facility staff of the preg-  
10 nancy and of the incarcerated pregnant woman’s rights  
11 under subsection (a).

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

17       “(h) EDUCATION.—Not later than 90 days after the  
18 date of enactment of the Protecting the Health and  
19 Wellness of Babies and Pregnant Women in Custody Act,  
20 the Director of the Bureau of Prisons and the Director  
21 of the United States Marshals Service shall each develop  
22 education guidelines regarding the physical and mental  
23 health needs of incarcerated pregnant women, and the use  
24 of restraints and restrictive housing placements on incar-  
25 cerated women during the period of pregnancy, labor, and

1 postpartum recovery, and shall incorporate such guidelines  
2 into appropriate education programs.

3 “(i) DEFINITION.—In this section:

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

8 “(2) RESTRICTIVE HOUSING.—The term ‘re-  
9 strictive housing’ means any type of detention that  
10 involves—

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

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

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

17 (b) CLERICAL AMENDMENT.—The table of sections  
18 at the beginning of chapter 317 of title 18, United States  
19 Code, is amended by amending the item relating to section  
20 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.”.

1 **SEC. 5. TREATMENT OF WOMEN WITH HIGH-RISK PREG-**  
2 **NANCIES.**

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

6 **“§ 4051. Treatment of incarcerated pregnant women**

7 “(a) HIGH-RISK PREGNANCY HEALTH CARE.—The  
8 Director of the Bureau of Prisons shall ensure that each  
9 incarcerated pregnant woman receives health care appro-  
10 priate for a high-risk pregnancy, including obstetrical and  
11 gynecological care, during pregnancy and post-partum re-  
12 covery.

13 “(b) HIGH-RISK PREGNANCIES.—

14 “(1) IN GENERAL.—The Director of the Bureau  
15 of Prisons shall transfer any incarcerated woman,  
16 who is determined by a health care professional to  
17 have a high-risk pregnancy and who agrees to be  
18 transferred, to a Residential Reentry Center with  
19 adequate health care during her pregnancy and post-  
20 partum recovery.

21 “(2) PRIORITY.—The Residential Reentry Cen-  
22 ter to which an incarcerated pregnant woman is  
23 transferred pursuant to paragraph (1) shall be in a  
24 geographical location that is close to the family  
25 members of the incarcerated pregnant woman. In  
26 the case that a Residential Reentry Center is un-

1 available, the incarcerated pregnant woman shall be  
2 transferred to alternative housing, including housing  
3 with a family member.

4 “(3) TRANSPORTATION.—To transport an in-  
5 carcerated pregnant woman to a Residential Reentry  
6 Center, the Director of the Bureau of Prisons shall  
7 provide to the woman a mode of transportation that  
8 has been approved by the woman’s health care pro-  
9 fessional, at no expense to the woman.

10 “(4) MONITORING.—In the case that an incar-  
11 cerated pregnant woman transferred to alternative  
12 housing pursuant to this section is monitored elec-  
13 tronically, an ankle monitor may not be used on the  
14 woman, unless there is no feasible alternative for  
15 monitoring the woman.

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

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

25 “(c) DEFINITIONS.—In this section:

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

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

10           “(3) HEALTH CARE PROFESSIONAL.—

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

13           “(i) a doctor of medicine or osteop-  
14 athy who is authorized to practice medicine  
15 or surgery by the State in which the doctor  
16 practices;

17           “(ii) any physician’s assistant or  
18 nurse practitioner who is supervised by a  
19 doctor of medicine or osteopathy described  
20 in clause (i); or

21           “(iii) any other person determined by  
22 the Secretary to be capable of providing  
23 health care services.

1           “(B) OTHER HEALTH CARE SERVICES.—A  
2 person is capable of providing health care serv-  
3 ices if the person is—

4           “(i) a podiatrist, dentist, clinical psy-  
5 chologist, optometrist, or chiropractor (lim-  
6 ited to treatment consisting of manual ma-  
7 nipulation of the spine to correct a sub-  
8 luxation as demonstrated by X-ray to  
9 exist) authorized to practice in the State  
10 and performing within the scope of their  
11 practice as defined under State law;

12           “(ii) a nurse practitioner, nurse-mid-  
13 wife, clinical social worker, or physician’s  
14 assistant who is authorized to practice  
15 under State law and who is performing  
16 within the scope of their practice as de-  
17 fined under State law; and

18           “(iii) any health care professional  
19 from whom an employer or the employer’s  
20 group health plan’s benefits manager will  
21 accept certification of the existence of a se-  
22 rious health condition to substantiate a  
23 claim for benefits.

24           “(C) AUTHORIZED TO PRACTICE IN THE  
25 STATE.—The term ‘authorized to practice in

1 the State’ means that a professional must be  
 2 authorized to diagnose and treat physical or  
 3 mental health conditions under the laws of the  
 4 State in which the professional practices and  
 5 where the facility is located.

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

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

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

“4051. Treatment of incarcerated pregnant women.”.

18 **SEC. 6. EXEMPTION OF INCARCERATED PREGNANT WOMEN**  
 19 **FROM THE REQUIREMENTS FOR SUITS BY**  
 20 **PRISONERS.**

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

23 (1) in subsection (a), by inserting after the pe-  
 24 riod at the end the following: “This subsection shall  
 25 not apply with respect to an incarcerated pregnant

1 woman who brings an action relating to or affecting  
2 the woman’s pregnancy.”; and

3 (2) in subsection (d)(1), insert “, except an in-  
4 carcerated pregnant woman,” before “who is con-  
5 fined”.

6 **SEC. 7. DEFINITIONS.**

7 In this Act:

8 (1) **IN CUSTODY.**—The term “in custody”  
9 means, with respect to an individual, that the indi-  
10 vidual is under the supervision of a Federal, State,  
11 tribal or local correctional facility, including pretrial  
12 and contract facilities, and juvenile or medical or  
13 mental health facilities.

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

17 (3) **POSTPARTUM RECOVERY.**—The term “post-  
18 partum recovery” means the 12-week period, or  
19 longer as determined by the health care professional  
20 responsible for the health and safety of the incarcer-  
21 ated pregnant woman, following delivery, and shall  
22 include the entire period that the incarcerated preg-  
23 nant woman is in the hospital or infirmary.

24 (4) **RESTRAINTS.**—The term “restraints”  
25 means any physical or mechanical device used to

1 control the movement of an incarcerated pregnant  
2 woman's body, limbs, or both.

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

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

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

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

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

13 The Director of the National Institute of Corrections  
14 shall provide education and technical assistance, in con-  
15 junction with the appropriate public agencies, at State and  
16 local correctional facilities that house women and facilities  
17 in which incarcerated women go into labor and give birth,  
18 in order to educate the employees of such facilities, includ-  
19 ing health personnel, on the dangers and potential mental  
20 health consequences associated with the use of restrictive  
21 housing and restraints on incarcerated women during  
22 pregnancy, labor, and postpartum recovery, and on alter-  
23 natives to the use of restraints and restrictive housing  
24 placement.

1 **SEC. 9. BUREAU OF PRISONS STAFF AND U.S. MARSHALS**  
2 **TRAINING.**

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

9 (b) NEW HIRES.—Beginning not later than 180 days  
10 after the date of enactment of this Act, the Director of  
11 the Bureau of Prisons shall train any newly hired correc-  
12 tional officer at a Bureau of Prisons facility that houses  
13 women to carry out the requirements of this Act not later  
14 than 30 days after the date on which the officer is hired.

15 (c) U.S. MARSHAL TRAINING.—Beginning not later  
16 than 180 days after the date of enactment of this Act,  
17 and biannually thereafter, the Director of the U.S. Mar-  
18 shals Service shall ensure that each Deputy U.S. Marshal  
19 is trained pursuant to the guidelines described in sub-  
20 section (d). Newly hired deputies shall receive such train-  
21 ing not later than 30 days after the date on which such  
22 deputy starts employment.

23 (d) GUIDELINES.—The Director of the Bureau of  
24 Prisons and the United States Marshals Service shall each  
25 develop guidelines on the treatment of incarcerated women  
26 during pregnancy, labor, and postpartum recovery and in-

1 corporate such guidelines in the training required under  
2 this section. Such guidelines shall include guidance on—

3 (1) the transportation of incarcerated pregnant  
4 women;

5 (2) housing of incarcerated pregnant women;

6 (3) nutritional requirements for incarcerated  
7 pregnant women; and

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

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

12 The Comptroller General of the United States shall  
13 conduct a study of services and protections provided for  
14 pregnant incarcerated women in local and State correc-  
15 tional settings, including policies on obstetrical and gyne-  
16 cological care, education on nutrition, health and safety  
17 risks associated with pregnancy, mental health and sub-  
18 stance use treatment, access to prenatal and post-delivery  
19 support services and programs, the use of restraints and  
20 restrictive housing placement, and the extent to which the  
21 intent of such policies are fulfilled.

22 **SEC. 11. GAO STUDY ON FEDERAL PRETRIAL DETENTION**  
23 **FACILITIES.**

24 (a) STUDY.—The Comptroller General of the United  
25 States shall conduct a study of services and protections

1 provided for pregnant women who are incarcerated in Fed-  
2 eral pretrial detention facilities. Specifically, the study  
3 shall examine—

4 (1) what available data indicate about pregnant  
5 women detained or held in Federal pretrial detention  
6 facilities;

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

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

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

1 (c) DEFINITION.—For purposes of this section, the  
2 term “Federal pretrial detention facilities” includes State,  
3 local, private, or other facilities under contract with the  
4 U.S. Marshals Service for the purpose of housing Federal  
5 pretrial detainees.

6 **SEC. 12. PWIC GRANT PROGRAM.**

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

10 **“SEC. 508. PREGNANT WOMEN IN CUSTODY GRANT PRO-**  
11 **GRAM.**

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

15 “(b) ESTABLISHMENT.—The Attorney General may  
16 make grants to eligible entities that have established a  
17 program to promote the health needs of incarcerated preg-  
18 nant women in the criminal justice system at the State,  
19 tribal, and local levels or have declared their intent to es-  
20 tablish such a program. Eligible entities shall—

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

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

1           “(3) facilitate resources and support services  
2           for nutrition and physical and mental health, for  
3           women in custody;

4           “(4) establish and maintain policies that are  
5           substantially similar to the limitations imposed  
6           under section 4322 of title 18, United States Code,  
7           limiting the use of restraints on pregnant women in  
8           custody; and

9           “(5) maintain, establish, or build post-delivery  
10          lactation and nursery care or residential programs to  
11          keep the infant with the mother and to promote and  
12          facilitate bonding skills for incarcerated pregnant  
13          women and women with dependent children.

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

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

18                 “(1) a State or territory department of correc-  
19                 tions;

20                 “(2) a tribal entity that operates a correctional  
21                 facility; or

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

24                 “(4) a locally-based nonprofit organization, that  
25                 has partnered with a State or unit of local govern-

1       ment that operates a correctional facility, with ex-  
2       pertise in providing health services to incarcerated  
3       pregnant women.

4       “(e) APPLICATION.—To receive a grant under this  
5       section, an eligible entity shall submit an application to  
6       the Attorney General at such time, in such manner, and  
7       containing such information as the Attorney General may  
8       require, including a detailed description of the need for  
9       the grant and an account of the number of individuals the  
10      grantee expects to benefit from the grant.

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

14      “(g) CONSTRUCTION COSTS.—Notwithstanding any  
15      other provision of this Act, no funds provided under this  
16      section may be used, directly or indirectly, for construction  
17      projects, other than new construction or upgrade to a fa-  
18      cility used to provide lactation, nursery, obstetrical, or  
19      gynecological services.

20      “(h) PRIORITY FUNDING FOR STATES THAT PRO-  
21      VIDE PROGRAMS AND SERVICES FOR INCARCERATED  
22      WOMEN RELATED TO PREGNANCY AND CHILDBIRTH.—  
23      In determining the amount provided to a State or unit  
24      of local government under this section, the Attorney Gen-  
25      eral shall give priority to States or units of local govern-

1 ment that have enacted laws or policies and implemented  
2 services or pilot programs for incarcerated pregnant  
3 women aimed at enhancing the safety and wellness of  
4 pregnant women in custody, including providing services  
5 for obstetrical and gynecological care, resources and sup-  
6 port services for nutrition and physical and mental health,  
7 and post-delivery lactation and nursery care or residential  
8 programs to keep the infant with the mother and to pro-  
9 mote and facilitate bonding skills for incarcerated preg-  
10 nant women and women with dependent children.

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

16 “(j) FEDERAL SHARE.—

17 “(1) IN GENERAL.—The Federal share of a  
18 grant under this section may not exceed 75 percent  
19 of the total costs of the projects described in the  
20 grant application.

21 “(2) WAIVER.—The requirement of paragraph  
22 (1) may be waived by the Assistant Attorney Gen-  
23 eral upon a determination that the financial cir-  
24 cumstances affecting the applicant warrant a finding  
25 that such a waiver is equitable.

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

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

8 “(2) EXTENSION.—The Attorney General may  
9 provide a 120-day extension to an eligible entity that  
10 is making good faith efforts to collect the informa-  
11 tion required under paragraph (1).

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

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

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

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

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

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

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

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

6           “(o) CIVIL RIGHTS OBLIGATION.—A recipient of a  
7 grant under this section shall be subject to the non-  
8 discrimination requirement under section 40002(b)(13) of  
9 the Violence Against Women Act of 1994 (34 U.S.C.  
10 12291(b)(13)).

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

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

18           Section 3624(c)(1) of title 18, United States Code,  
19 is amended by adding at the end the following: “Notwith-  
20 standing any other provision of this paragraph, in the case  
21 of a pregnant woman in custody, if that woman’s due date  
22 is within the final year of her term of imprisonment, that  
23 woman may be placed into prerelease custody beginning

- 1 not earlier than the date that is 2 months prior to that
- 2 woman's due date.”.

○