

Union Calendar No. 436

116TH CONGRESS
2^D SESSION

H. R. 7718

[Report No. 116–536]

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

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

SEPTEMBER 24, 2020

Additional sponsors: Mrs. RODGERS of Washington, Mrs. WATSON COLEMAN, Ms. LEE of California, Ms. SPEIER, Mrs. WALORSKI, Mr. CHABOT, Mrs. WAGNER, Mrs. LAWRENCE, Mr. CARSON of Indiana, Mr. BLUMENAUER, Ms. NORTON, Ms. MENG, Ms. ADAMS, Ms. BONAMICI, Ms. WASSERMAN SCHULTZ, Ms. SEWELL of Alabama, Mrs. BUSTOS, Ms. KAPTUR, Mrs. BEATTY, Mr. VELA, Ms. ROYBAL-ALLARD, Mr. BROWN of Maryland, Mr. HASTINGS, Mrs. HAYES, Mr. THOMPSON of Mississippi, Mr. CÁRDENAS, Mr. RYAN, Ms. BLUNT ROCHESTER, Mr. CORREA, Ms. JACKSON LEE, Mr. COHEN, and Ms. GARCIA of Texas

SEPTEMBER 24, 2020

Reported from the Committee on the Judiciary; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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
11 Control and Safe Streets Act of 1968 (34 U.S.C. 10132),
12 the Director of the Bureau of Justice Statistics shall in-
13 clude in the National Prisoner Statistics Program and An-
14 nual Survey of Jails statistics relating to the health needs
15 of incarcerated pregnant women in the criminal justice
16 system at the Federal, State, tribal, and local levels, in-
17 cluding—

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

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

1 (A) whether prenatal, delivery, and post-
2 delivery check-up visits were scheduled and pro-
3 vided;

4 (B) whether a social worker, psychologist,
5 doula or other support person, or pregnancy or
6 parenting program was offered and provided
7 during pregnancy and delivery;

8 (C) whether a nursery or residential pro-
9 gram to keep mothers and infants together
10 post-delivery was offered and whether such a
11 nursery or residential program was provided;

12 (D) the number of days the mother stayed
13 in the hospital post-delivery;

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

16 (F) the number of days the infant re-
17 mained in the hospital after the mother was
18 discharged;

19 (3) the location of the nearest hospital with a
20 licensed obstetrician-gynecologist in proximity to
21 where the inmate is housed and the length of travel
22 required to transport the inmate;

23 (4) whether a written policy or protocol is in
24 place to respond to unexpected childbirth, labor, de-
25 liveries, and medical complications related to the

1 pregnancies of incarcerated pregnant women and for
2 incarcerated pregnant women experiencing labor or
3 medical complications related to pregnancy outside
4 of a hospital;

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

8 (6) the total number of incarcerated pregnant
9 women and the number of incarcerated women who
10 became pregnant while incarcerated;

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

18 (A) pregnancy;

19 (B) labor;

20 (C) delivery;

21 (D) postpartum recovery; and

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

23 (8) the disposition of the custody of the infant
24 post-delivery.

1 (b) PERSONALLY IDENTIFIABLE INFORMATION.—

2 Data collected under this paragraph may not contain any
3 personally identifiable information of any incarcerated
4 pregnant woman.

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

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

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

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

1 (2) COMPLIANCE WITH PROTOCOLS RELATING
2 TO HEALTH OF A PREGNANT WOMAN.—On confirma-
3 tion of the pregnancy of a woman in custody by clin-
4 ical diagnostics and assessment, the chief health
5 care professional of a Bureau of Prisons facility that
6 houses women shall ensure that a summary of all
7 appropriate protocols directly pertaining to the safe-
8 ty and well-being of the woman are provided to the
9 woman and that such protocols are complied with,
10 including an assessment of undue safety risks and
11 necessary changes to accommodate the woman where
12 and when appropriate, as it relates to—

13 (A) housing or transfer to a lower bunk for
14 safety reasons;

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

18 (C) regular access to water and bathrooms;

19 (D) a diet that complies with the nutri-
20 tional standards established by the Secretary of
21 Agriculture and the Secretary of Health and
22 Human Services in the Dietary Guidelines for
23 Americans report published pursuant to section
24 301 of the National Nutrition Monitoring and

Related Research Act of 1990 (7 U.S.C.
5341(a)(3)), and that includes—

(i) any appropriate dietary supplement, including prenatal vitamins;

(ii) timely and regular nutritious meals;

(iii) additional caloric content in meals provided;

(iv) a prohibition on withholding food from an incarcerated pregnant woman or serving any food that is used as a punishment, including nutraloaf or any food similar to nutraloaf that is not considered a nutritious meal; and

(v) such other modifications to the diet of the woman as the Director of the Bureau of Prisons determines to be necessary after consultation with the Secretary of Health and Human Services and consideration of such recommendations as the Secretary may provide;

(E) modified recreation and transportation, in accordance with standards within the obstetrical and gynecological care community,

1 to prevent overexertion or prolonged periods of
2 inactivity; and

3 (F) such other changes to living conditions
4 as the Director of the Bureau of Prisons may
5 require after consultation with the Secretary of
6 Health and Human Services and consideration
7 of such recommendations as the Secretary may
8 provide.

9 (3) EDUCATION AND SUPPORT SERVICES.—

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

18 (i) information about the parental
19 rights of the woman, including the right to
20 place the child in kinship care, and notice
21 of the rights of the child;

22 (ii) information about family preserva-
23 tion support services that are available to
24 the woman;

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

3 (iv) information pertaining to the
4 health and safety risks of pregnancy, child-
5 birth, and parenting, including postpartum
6 depression;

7 (v) information on breastfeeding, lac-
8 tation, and breast health;

9 (vi) appropriate educational materials,
10 resources, and services related to preg-
11 nancy, childbirth, and parenting;

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

(viii) information from the Office of Child Support Enforcement of the Department of Health and Human Services regarding seeking or modifying child support while incarcerated, including how to participate in the Bureau of Prison's Inmate Financial Responsibility Program under subpart B of title 28, Code of Federal Regulations (or any successor program).

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

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

(ii) information about family preservation support services that are available to the woman.

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

7 (5) EVALUATIONS.—Each woman in custody
8 who is pregnant or whose pregnancy results in a
9 birth or any other pregnancy outcome during the 6-
10 month period immediately preceding intake or any
11 time in custody thereafter shall be evaluated not
12 later than 4 days after intake or confirmation of
13 pregnancy through evidence-based screening and as-
14 sessment for substance use disorders or mental
15 health conditions, including postpartum depression
16 or depression related to a pregnancy outcome or
17 early child care. Screening shall include identifica-
18 tion of any of the following risk factors:

19 (A) An existing mental or physical health
20 condition or substance use disorder.

21 (B) Being underweight or overweight.

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

23 (D) A history of preeclampsia.

24 (E) A previous Caesarean section.

25 (F) A previous miscarriage.

1 (G) Being older than 35 or younger than
2 15.

3 (H) Being diagnosed with the human im-
4 munodeficiency virus, hepatitis, diabetes, or hy-
5 pertension.

6 (I) Such other risk factors as the chief
7 health care professional of a Bureau of Prisons
8 facility that houses women may determine to be
9 appropriate.

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

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

23 (A) Treatment shall include participation
24 in a support group, including a 12-step pro-
25 gram, such as Alcoholics Anonymous, Narcotics

1 Anonymous, and Cocaine Anonymous or a com-
2 parable nonreligious program.

3 (B) Treatment may include psychosocial
4 interventions and medication.

5 (C) In the case that adequate treatment
6 cannot be provided to a woman in custody in a
7 Bureau of Prisons facility, the Director of the
8 Bureau of Prisons shall transfer the woman to
9 a residential reentry program that offers such
10 treatment pursuant to section 508 of the Public
11 Health Service Act (42 U.S.C. 290bb–1).

12 (D) To the extent practicable, treatment
13 for substance use disorders provided pursuant
14 to this section shall be conducted in a licensed
15 hospital.

16 **SEC. 4. USE OF RESTRICTIVE HOUSING AND RESTRAINTS**
17 **ON INCARCERATED PREGNANT WOMEN DUR-**
18 **ING PREGNANCY, LABOR, AND POSTPARTUM**
19 **RECOVERY PROHIBITED.**

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

1 **“§ 4322. Use of restraints and restrictive housing on**
2 **incarcerated women during the period of**
3 **pregnancy, labor, and postpartum recov-**
4 **ery prohibited and to improve pregnancy**
5 **care for women in Federal prisons**

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

14 “(b) EXCEPTIONS.—

15 “(1) USE OF RESTRAINTS.—The prohibition
16 under subsection (a) shall not apply if the senior
17 Bureau of Prisons official or United States Marshals
18 Service official overseeing women’s health and serv-
19 ices and a health care professional responsible for
20 the health and safety of the incarcerated woman de-
21 termines that the use of restraints is appropriate for
22 the medical safety of the woman, and the health care
23 professional reviews such determination not later
24 than every 6 hours after such use is initially ap-
25 proved until such use is terminated.

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

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

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

15 “(A) RESTRICTIVE HOUSING.—The prohi-
16 bition under subsection (a) relating to restric-
17 tive housing shall not apply if the Director of
18 the Bureau of Prisons or a senior Bureau of
19 Prisons official overseeing women’s health and
20 services, in consultation with senior officials in
21 health services, makes an individualized deter-
22 mination that restrictive housing is required as
23 a temporary response to behavior that poses a
24 serious and immediate risk of physical harm.

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

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

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

15 “(i) monitored every hour;

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

18 “(iii) prohibited from being placed in
19 solitary confinement if the incarcerated
20 woman is in her third trimester.

21 “(c) REPORTS.—

22 “(1) REPORT TO THE DIRECTOR AND HEALTH
23 CARE PROFESSIONAL AFTER THE USE OF RE-
24 STRAINTS.—If an official identified in subsection
25 (b)(1) or a correctional officer uses restraints on an

1 incarcerated woman under subsection (b), that offi-
2 cial (or an officer or marshal designated by that offi-
3 cial) or correctional officer shall submit, not later
4 than 30 days after placing the woman in restraints,
5 to the Director of the Bureau of Prisons or the Di-
6 rector of the U.S. Marshal Service, as applicable, a
7 written report which describes the facts and cir-
8 cumstances surrounding the use of restraints, and
9 includes each of the following:

10 “(A) A description of all attempts to use
11 alternative interventions and sanctions before
12 the restraints were used.

13 “(B) A description of the circumstances
14 that led to the use of restraints.

15 “(C) Strategies the facility is putting in
16 place to identify more appropriate alternative
17 interventions should a similar situation arise
18 again.

19 “(2) REPORT TO CONGRESS.—Beginning on the
20 date that is 6 months after the date of enactment
21 of the Protecting the Health and Wellness of Babies
22 and Pregnant Women in Custody Act, and every 6
23 months thereafter for a period of 10 years, the At-
24 torney General shall submit to the Committees on

1 the Judiciary of the House of Representatives and
2 the Senate a report on—

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

5 “(B) the details of the use of restraints,
6 including the type of restraints used and length
7 of time during which restraints were used; and

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

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

1 which describes the facts and circumstances sur-
2 rounding the restrictive housing placement, and in-
3 cludes the following:

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

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

12 “(C) A description of all attempts to use
13 alternative interventions and sanctions before
14 the restrictive housing was used.

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

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

23 “(4) 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 the information described in
6 paragraph (3).

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

13 “(1) of the restrictions on the use of restraints
14 and restrictive housing placements under this sec-
15 tion;

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

20 “(3) that the facility staff have been advised of
21 all rights of the incarcerated woman under sub-
22 section (a).

23 “(e) VIOLATION REPORTING PROCESS.—Not later
24 than 180 days after the date of enactment of this Act,
25 the Director of the Bureau of Prisons and the Director

1 of the United States Marshals Service shall establish proc-
2 esses through which an incarcerated person may report
3 a violation of this section.

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

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

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

25 “(i) DEFINITION.—In this section:

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

5 “(2) RESTRICTIVE HOUSING.—The term ‘re-
 6 strictive housing’ means any type of detention that
 7 involves—

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

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

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

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

18 **SEC. 5. TREATMENT OF WOMEN WITH HIGH-RISK PREG-**
 19 **NANCIES.**

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

1 **“§ 4051. Treatment of incarcerated pregnant women**

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

8 “(b) HIGH-RISK PREGNANCIES.—

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

16 “(2) PRIORITY.—The Residential Reentry Cen-
17 ter to which an incarcerated pregnant woman is
18 transferred pursuant to paragraph (1) shall be in a
19 geographical location that is close to the family
20 members of the incarcerated pregnant woman. In
21 the case that a Residential Reentry Center is un-
22 available, the incarcerated pregnant woman shall be
23 transferred to alternative housing, including housing
24 with a family member.

25 “(3) TRANSPORTATION.—To transport an in-
26 carcerated pregnant woman to a Residential Reentry

1 Center, the Director of the Bureau of Prisons shall
2 provide to the woman a mode of transportation that
3 has been approved by the woman's health care pro-
4 fessional, at no expense to the woman.

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

11 “(5) SERVICE OF SENTENCE.—Any time ac-
12 crued at a Residential Reentry Center or alternative
13 housing as a result of a transfer made pursuant to
14 this section shall be credited toward service of the
15 incarcerated pregnant woman's sentence.

16 “(6) CREDIT FOR PRETRIAL CUSTODY.—In the
17 case of an incarcerated pregnant woman, any time
18 accrued in pretrial custody shall be credited toward
19 service of the woman's sentence.

20 “(c) DEFINITIONS.—In this section:

21 “(1) FAMILY MEMBER.—The term ‘family
22 member’ means any individual related by blood or
23 affinity whose close association with the incarcerated
24 pregnant woman is the equivalent of a family rela-

1 tionship, including a parent, sibling, child, or indi-
2 vidual standing in loco parentis.

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

6 “(3) HEALTH CARE PROFESSIONAL.—

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

9 “(i) a doctor of medicine or osteop-
10 athy who is authorized to practice medicine
11 or surgery by the State in which the doctor
12 practices;

13 “(ii) any physician’s assistant or
14 nurse practitioner who is supervised by a
15 doctor of medicine or osteopathy described
16 in clause (i); or

17 “(iii) any other person determined by
18 the Secretary to be capable of providing
19 health care services.

20 “(B) OTHER HEALTH CARE SERVICES.—A
21 person is capable of providing health care serv-
22 ices if the person is—

23 “(i) a podiatrist, dentist, clinical psy-
24 chologist, optometrist, or chiropractor (lim-
25 ited to treatment consisting of manual ma-

1 nipulation of the spine to correct a sub-
2 luxation as demonstrated by X-ray to
3 exist) authorized to practice in the State
4 and performing within the scope of their
5 practice as defined under State law;

6 “(ii) a nurse practitioner, nurse-mid-
7 wife, clinical social worker, or physician’s
8 assistant who is authorized to practice
9 under State law and who is performing
10 within the scope of their practice as de-
11 fined under State law; and

12 “(iii) any health care professional
13 from whom an employer or the employer’s
14 group health plan’s benefits manager will
15 accept certification of the existence of a se-
16 rious health condition to substantiate a
17 claim for benefits.

18 “(C) AUTHORIZED TO PRACTICE IN THE
19 STATE.—The term ‘authorized to practice in
20 the State’ means that a professional must be
21 authorized to diagnose and treat physical or
22 mental health conditions under the laws of the
23 State in which the professional practices and
24 where the facility is located.

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

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

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

“4051. Treatment of incarcerated pregnant women.”.

13 **SEC. 6. EXEMPTION OF INCARCERATED PREGNANT WOMEN**
 14 **FROM THE REQUIREMENTS FOR SUITS BY**
 15 **PRISONERS.**

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

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

23 (2) in subsection (d)(1), insert “, except an in-
 24 carcerated pregnant woman,” before “who is con-
 25 fined”.

1 **SEC. 7. DEFINITIONS.**

2 In this Act:

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

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

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

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

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

- 1 (A) removal from the general inmate popu-
2 lation, 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 **SEC. 8. EDUCATION AND TECHNICAL ASSISTANCE.**

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

20 **SEC. 9. BUREAU OF PRISONS STAFF AND U.S. MARSHALS**
21 **TRAINING.**

22 (a) BUREAU OF PRISONS TRAINING.—Beginning not
23 later than 180 days after the date of enactment of this
24 Act, and biannually thereafter, the Director of the Bureau
25 of Prisons shall train each correctional officer at any Bu-

1 reau of Prisons women’s facility to carry out the require-
2 ments of this Act.

3 (b) NEW HIRES.—Beginning not later than 180 days
4 after the date of enactment of this Act, the Director of
5 the Bureau of Prisons shall train any newly hired correc-
6 tional officer at a Bureau of Prisons facility that houses
7 women to carry out the requirements of this Act not later
8 than 30 days after the date on which the officer is hired.

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

17 (d) GUIDELINES.—The Director of the Bureau of
18 Prisons and the United States Marshals Service shall each
19 develop guidelines on the treatment of incarcerated women
20 during pregnancy, labor, and postpartum recovery and in-
21 corporate such guidelines in the training required under
22 this section. Such guidelines shall include guidance on—

23 (1) the transportation of incarcerated pregnant
24 women;

25 (2) housing of incarcerated pregnant women;

1 (3) nutritional requirements for incarcerated
2 pregnant women; and

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

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

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

17 **SEC. 11. GAO STUDY ON FEDERAL PRETRIAL DETENTION**
18 **FACILITIES.**

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

1 (1) what available data indicate about pregnant
2 women detained or held in Federal pretrial detention
3 facilities;

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

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

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

22 (c) DEFINITION.—For purposes of this section, the
23 term “Federal pretrial detention facilities” includes State,
24 local, private, or other facilities under contract with the

1 U.S. Marshals Service for the purpose of housing Federal
2 pretrial detainees.

3 **SEC. 12. PWIC GRANT PROGRAM.**

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

7 **“SEC. 508. PREGNANT WOMEN IN CUSTODY GRANT PRO-**
8 **GRAM.**

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

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

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

20 “(2) provide services for obstetrical and gyneco-
21 logical care, for women in custody;

22 “(3) facilitate resources and support services
23 for nutrition and physical and mental health, for
24 women in custody;

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

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

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

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

15 “(1) a State or territory department of correc-
16 tions;

17 “(2) a tribal entity that operates a correctional
18 facility; or

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

21 “(4) a locally-based nonprofit organization, that
22 has partnered with a State or unit of local govern-
23 ment that operates a correctional facility, with ex-
24 pertise in providing health services to incarcerated
25 pregnant women.

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

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

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

17 “(h) PRIORITY FUNDING FOR STATES THAT PRO-
18 VIDE PROGRAMS AND SERVICES FOR INCARCERATED
19 WOMEN RELATED TO PREGNANCY AND CHILDBIRTH.—
20 In determining the amount provided to a State or unit
21 of local government under this section, the Attorney Gen-
22 eral shall give priority to States or units of local govern-
23 ment that have enacted laws or policies and implemented
24 services or pilot programs for incarcerated pregnant
25 women aimed at enhancing the safety and wellness of

1 pregnant women in custody, including providing services
2 for obstetrical and gynecological care, resources and sup-
3 port services for nutrition and physical and mental health,
4 and post-delivery lactation and nursery care or residential
5 programs to keep the infant with the mother and to pro-
6 mote and facilitate bonding skills for incarcerated preg-
7 nant women and women with dependent children.

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

13 “(j) FEDERAL SHARE.—

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

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

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

24 “(1) IN GENERAL.—Not later than 1 year after
25 an eligible entity receives a grant under this section,

1 such entity shall implement a policy that is substan-
 2 tially similar to the policy under section 3 of Pro-
 3 tecting the Health and Wellness of Babies and Preg-
 4 nant Women in Custody Act.

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

9 “(1) AUTHORIZATION OF APPROPRIATIONS.—There
 10 are authorized to be appropriated to carry out this section,
 11 to remain available until expended—

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

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

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

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

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

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

23 “(n) UNOBLIGATED AND UNSPENT FUNDS.—Funds
 24 made available pursuant to this section that remain unob-
 25 ligated for a period of 6 months after the end of the fiscal

1 year for which the funds have been appropriated shall be
2 awarded to other recipients of this grant.

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

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

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

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

Union Calendar No. 436

116TH CONGRESS
2^D Session

H. R. 7718

[Report No. 116-536]

A BILL

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

SEPTEMBER 24, 2020

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed