

116TH CONGRESS
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S. 648

To ensure the humane treatment of pregnant women by reinstating the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of pregnant detainees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2019

Mrs. MURRAY (for herself, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Mr. DURBIN, Ms. DUCKWORTH, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. MURPHY, Mr. REED, Mr. SANDERS, Ms. SMITH, Mr. UDALL, Ms. WARREN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure the humane treatment of pregnant women by reinstating the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of pregnant detainees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Shackling and
5 Detaining Pregnant Women Act”.

1 **SEC. 2. LIMITATION ON DETENTION OF PREGNANT WOMEN**
2 **AND MOTHERS OF NEWBORNS.**

3 (a) **PRESUMPTION OF RELEASE.**—

4 (1) **IN GENERAL.**—Except as provided in para-
5 graph (2), the Secretary—

6 (A) shall not detain a person under any
7 provision of the Immigration and Nationality
8 Act (8 U.S.C. 1101 et seq.) during pregnancy
9 or postpartum recovery, pending a decision with
10 respect to whether the person is to be removed
11 from the United States; and

12 (B) shall immediately release any detainee
13 found to be pregnant.

14 (2) **EXCEPTIONS.**—The Secretary may detain
15 pursuant to the Immigration and Nationality Act (8
16 U.S.C. 1101 et seq.) a person during pregnancy or
17 postpartum recovery under extraordinary circum-
18 stances in which the Secretary makes an individual-
19 ized determination that credible, reasonable grounds
20 exist to believe that the person presents an imme-
21 diate and serious threat of hurting herself or others.

22 (3) **REMOVAL.**—In a case in which detention is
23 the least restrictive means of effectuating the re-
24 moval from the United States of a pregnant person
25 who is the subject of a final order of deportation or
26 removal, the Secretary may, solely for the purpose of

1 such removal, detain the pregnant person for a pe-
 2 riod that is—

3 (A) the shortest possible period imme-
 4 diately preceding the removal of the person
 5 from the United States; and

6 (B) not more than 5 days.

7 (b) WEEKLY REVIEW REQUIRED.—

8 (1) IN GENERAL.—With respect to a detainee
 9 detained under paragraph (2) of subsection (a), not
 10 less frequently than once each week, the Secretary
 11 shall conduct an individualized review to determine
 12 whether the detainee continues to be subject to de-
 13 tention under that paragraph.

14 (2) RELEASE.—In the case of a determination
 15 under paragraph (1) that a pregnant detainee is not
 16 subject to detention under subsection (a)(2), not
 17 later than 1 day after the date on which the Sec-
 18 retary makes the determination, the Secretary shall
 19 release the detainee.

20 **SEC. 3. HUMANE TREATMENT OF PREGNANT WOMEN**
 21 **WHILE IN DETENTION.**

22 (a) PROHIBITION ON RESTRAINT OF PREGNANT DE-
 23 TAINÉES.—

1 (1) PROHIBITION.—Except as provided in para-
2 graph (2), a detention facility shall not use a re-
3 straint on a detainee—

4 (A) known to be pregnant, including dur-
5 ing—

6 (i) labor;

7 (ii) transport to a medical facility or
8 birthing center; and

9 (iii) delivery; or

10 (B) during postpartum recovery.

11 (2) USE OF RESTRAINTS FOR MEDICAL PUR-
12 POSES AND IN EXTRAORDINARY CIRCUMSTANCES.—

13 (A) IN GENERAL.—Notwithstanding para-
14 graph (1), subject to subparagraph (B), use of
15 a restraint on a detainee described in para-
16 graph (1) may be permitted only—

17 (i) for a medical purpose if the lead
18 medical staff of the detention facility who
19 is a licensed health care provider has or-
20 dered the use of the restraint for the med-
21 ical purpose; or

22 (ii) in an extraordinary circumstance,
23 except for a medical purpose, in which the
24 facility administrator has ordered the use

1 of the restraint after making an individual-
2 ized determination that—

3 (I) credible, reasonable grounds
4 exist to believe the detainee presents
5 an immediate and serious threat of
6 hurting staff or others; or

7 (II) reasonable grounds exist to
8 believe the detainee presents an imme-
9 diate and credible risk of escape that
10 cannot be reasonably minimized
11 through any other method.

12 (B) REQUIREMENT FOR LEAST RESTRIC-
13 TIVE RESTRAINTS.—In the rare event of an ex-
14 traordinary circumstance described in subpara-
15 graph (A)(ii), only the least restrictive restraint
16 necessary shall be used, except that—

17 (i) if a doctor, nurse, or other health
18 professional treating a detainee described
19 in paragraph (1) requests that a restraint
20 not be used, the detention officer accom-
21 panying the detainee shall immediately re-
22 move any restraint;

23 (ii) under no circumstance shall a leg,
24 waist, or four-point restraint be used;

1 (iii) under no circumstance shall a
 2 wrist restraint be used to bind the hands
 3 of a detainee described in paragraph (1)
 4 behind her back or to another person; and

5 (iv) under no circumstance shall any
 6 restraint be used on any detainee who is in
 7 labor or delivery.

8 (3) RECORD OF EXTRAORDINARY CIR-
 9 CUMSTANCES.—

10 (A) REQUIREMENTS.—If a restraint is
 11 used on a detainee pursuant to paragraph
 12 (2)(A), not later than 5 days after the date on
 13 which the restraint was used, the facility ad-
 14 ministrator shall—

15 (i) make a written finding that de-
 16 scribes the extraordinary circumstance that
 17 dictated the use of the restraint; and

18 (ii) submit the finding to the Director.

19 (B) RETENTION.—

20 (i) DETENTION FACILITY.—With re-
 21 spect to a written finding under subpara-
 22 graph (A)(i), the facility administrator
 23 shall—

24 (I) keep the finding on file at the
 25 applicable detention facility for not

1 less than 5 years after the date on
2 which the restraint was used; and

3 (II) shall make the finding avail-
4 able for public inspection.

5 (ii) IMMIGRATION AND CUSTOMS EN-
6 FORCEMENT.—With respect to a written
7 finding submitted to the Director under
8 subparagraph (A)(ii), the Director shall
9 maintain the written finding and make the
10 finding available for public inspection.

11 (iii) PRIVACY.—With respect to a
12 written finding made available for public
13 inspection under clause (i) or (ii), the indi-
14 vidualy identifying information of a de-
15 tainee shall not be made available for pub-
16 lic inspection without the prior written
17 consent of the detainee.

18 (b) PROHIBITION ON PRESENCE OF DETENTION OF-
19 FICERS.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), no detention officer shall be present in
22 the room during a pelvic exam, labor, delivery, or
23 treatment of any other symptom relating to a preg-
24 nancy of a detainee, unless specifically requested by
25 medical personnel.

1 (2) EXCEPTION.—If the presence of a detention
2 officer is requested by medical personnel, the deten-
3 tion officer shall—

4 (A) be female, if practicable; and

5 (B) remain at a reasonable distance from
6 the detainee and toward her head to protect her
7 privacy.

8 (3) USE OF RESTRAINTS.—If a restraint is used
9 on a detainee pursuant to subsection (a)(2)(A), a de-
10 tention officer shall remain immediately outside the
11 room at all times so that the officer may promptly
12 remove the restraint if requested by medical per-
13 sonnel, as required by subsection (a)(2)(B)(i).

14 (c) ACCESS TO SERVICES.—A pregnant detainee shall
15 have access to health care services, including comprehen-
16 sive services relating to reproductive health care and preg-
17 nancy, including—

18 (1) routine or specialized prenatal care;

19 (2) comprehensive counseling and assistance;

20 (3) postpartum follow-up;

21 (4) lactation services; and

22 (5) abortion services.

23 **SEC. 4. REPORTING; RULEMAKING.**

24 (a) REPORTS.—

1 (1) REPORTS BY FACILITY ADMINISTRATORS.—
2 Not later than 30 days after the end of each quarter
3 of a fiscal year, the facility administrator of each de-
4 tention facility that detained a pregnant detainee
5 during the quarter shall submit to the Secretary a
6 written report that includes, with respect to the
7 quarter, the following:

8 (A) An account of every instance of the
9 use of a restraint on a pregnant detainee, in-
10 cluding the justification for such restraint and
11 the name of the facility administrator who
12 made the individualized determination under
13 section 3(a)(2)(A)(ii).

14 (B) The number of pregnant detainees
15 held at the facility.

16 (C) The average length of detention of
17 pregnant detainees.

18 (D) The number of pregnant detainees de-
19 tained longer than 15 days.

20 (E) The number of pregnant detainees de-
21 tained longer than 30 days.

22 (2) AUDIT AND REPORTS BY SECRETARY.—Not
23 later than 90 days after the end of each fiscal year,
24 the Secretary shall—

1 (A) complete an audit of the information
2 submitted under subparagraphs (B) through
3 (E) of paragraph (1); and

4 (B) submit to the appropriate committees
5 of Congress a report that includes all of the in-
6 formation submitted to the Secretary under
7 paragraph (1), disaggregated by facility.

8 (3) PRIVACY.—A report submitted under this
9 subsection shall not contain the individually identi-
10 fying information of any detainee.

11 (4) PUBLIC INSPECTION.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), a report submitted under
14 this subsection shall be made available for pub-
15 lic inspection.

16 (B) FACILITY ADMINISTRATOR.—A report
17 submitted under this subsection that is made
18 available for public inspection shall not contain
19 the name of the facility administrator otherwise
20 included under paragraph (1)(A).

21 (b) RULEMAKING.—The Secretary and the Attorney
22 General shall adopt regulations or policies to carry out this
23 Act at every detention facility.

24 **SEC. 5. DEFINITIONS.**

25 In this Act:

1 (1) APPROPRIATE COMMITTEES OF CON-
2 GRESS.—The term “appropriate committees of Con-
3 gress” means—

4 (A) the Committee on the Judiciary and
5 the Committee on Appropriations of the Senate;
6 and

7 (B) Committee on the Judiciary and the
8 Committee on Appropriations of the House of
9 Representatives.

10 (2) DETAINEE.—The term “detainee” includes
11 any adult or juvenile person detained by any Fed-
12 eral, State, or local law enforcement agency (includ-
13 ing under contract or agreement with such agency)
14 under the Immigration and Nationality Act (8
15 U.S.C. 1101 et seq.).

16 (3) DETENTION FACILITY.—The term “deten-
17 tion facility” means a Federal, State, or local gov-
18 ernment facility, or a privately owned and operated
19 facility, that is used, in whole or in part, to hold in-
20 dividuals under the authority of the Director of U.S.
21 Immigration and Customs Enforcement or the Com-
22 missioner of U.S. Customs and Border Protection,
23 including a facility that—

1 (A) holds such individuals under a contract
2 or agreement with the Director or Commis-
3 sioner; or

4 (B) is used, in whole or in part, to hold in-
5 dividuals pursuant to an immigration detainer
6 or similar request.

7 (4) DETENTION OFFICER.—The term “deten-
8 tion officer” means an individual who works at a de-
9 tention facility, including an individual who works at
10 a detention facility pursuant to contract or sub-
11 contract.

12 (5) DIRECTOR.—The term “Director” means
13 the Director of U.S. Immigration and Customs En-
14 forcement.

15 (6) FACILITY ADMINISTRATOR.—The term “fa-
16 cility administrator” means the official who is re-
17 sponsible for oversight of a detention facility or the
18 designee of such official.

19 (7) POSTPARTUM RECOVERY.—The term
20 “postpartum recovery” means the 6-week period, or
21 longer, as determined by the licensed health care
22 provider of a person, following delivery, including the
23 entire period during which the person is in a medical
24 facility, birthing center, or infirmary after birth.

1 (8) RESTRAINT.—The term “restraint” means
2 any physical restraint or mechanical device used to
3 control the movement of the body or limbs of a de-
4 tainee body, including—

5 (A) flex cuffs;

6 (B) soft restraints;

7 (C) hard metal handcuffs;

8 (D) a black box;

9 (E) Chubb cuffs;

10 (F) leg irons;

11 (G) belly chains;

12 (H) a security (tether) chain; and

13 (I) a convex shield.

14 (9) SECRETARY.—The term “Secretary” means
15 the Secretary of Homeland Security.

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