

117TH CONGRESS
1ST SESSION

S. 2128

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

JUNE 17, 2021

Mrs. MURRAY (for herself, Mr. BLUMENTHAL, Mr. MARKEY, Mr. REED, Mr. COONS, Ms. WARREN, Ms. KLOBUCHAR, Mr. MENENDEZ, Ms. SMITH, Mr. BOOKER, Mrs. GILLIBRAND, Ms. DUCKWORTH, Ms. BALDWIN, Mr. LEAHY, Ms. HIRONO, Mrs. FEINSTEIN, Mr. WYDEN, Ms. CORTEZ MASTO, and Mr. PADILLA) 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 an individual under
7 any provision of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101 et seq.) during preg-
9 nancy or postpartum recovery, pending a deci-
10 sion with respect to whether the individual is to
11 be removed 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.) an individual during pregnancy
17 or postpartum recovery under extraordinary cir-
18 cumstances in which the Secretary makes an individ-
19 ualized determination that credible, reasonable
20 grounds exist to believe that the individual presents
21 an immediate and serious threat of hurting them-
22 selves or others.

23 (3) **REMOVAL.**—In a case in which detention is
24 the least restrictive means of effectuating the re-
25 moval from the United States of a pregnant indi-
26 vidual subject to a final order of deportation or re-

1 moval, the Secretary may, solely for the purpose of
2 such deportation or removal, detain the pregnant in-
3 dividual for a period that is—

4 (A) the shortest possible period imme-
5 diately preceding the deportation or removal of
6 the individual from the United States; and

7 (B) not more than 5 days.

8 (b) WEEKLY REVIEW REQUIRED.—

9 (1) IN GENERAL.—With respect to a detainee
10 detained under paragraph (2) of subsection (a), not
11 less frequently than weekly, the Secretary shall con-
12 duct an individualized review to determine whether
13 the detainee continues to be subject to detention
14 under that paragraph.

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

21 **SEC. 3. HUMANE TREATMENT OF PREGNANT WOMEN**

22 **WHILE IN DETENTION.**

23 (a) PROHIBITION ON RESTRAINT OF PREGNANT DE-
24 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 4-point restraint be used;

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

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

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 medical purpose or extraor-
 17 dinary circumstance that dictated the use
 18 of the restraint; and

19 (ii) submit the finding to the Director.

20 (B) RETENTION.—

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

1 (I) keep the finding on file at the
 2 applicable detention facility for not
 3 less than 5 years after the date on
 4 which the restraint was used; and

5 (II) make the finding available
 6 for public inspection.

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

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

20 (b) PROHIBITION ON PRESENCE OF DETENTION OF-
 21 FICERS.—

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

1 nancy of a detainee, unless specifically requested by
2 medical personnel.

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

6 (A) be female, if practicable; and

7 (B) remain at a reasonable distance from
8 the detainee and toward the detainee’s head to
9 protect detainee’s privacy.

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

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

20 (1) routine or specialized prenatal care;

21 (2) comprehensive counseling and assistance;

22 (3) postpartum follow-up;

23 (4) lactation services; and

24 (5) abortion services.

1 **SEC. 4. NOTICE OF RIGHTS AND TRAINING.**

2 (a) NOTICE OF DETAINEE RIGHTS.—The Secretary
3 shall provide to each detainee, in the detainee’s native lan-
4 guage, notice of the detainee’s rights under this Act.

5 (b) TRAINING FOR DHS EMPLOYEES.—At the time
6 of hiring, and annually thereafter, the Secretary shall pro-
7 vide training on the requirements of this Act to each em-
8 ployee of the Department of Homeland Security who has
9 a role in the detention or care of a pregnant detainee or
10 a postpartum parent of a newborn detained under the Im-
11 migration and Nationality Act (8 U.S.C. 1101 et seq.).

12 **SEC. 5. REPORTING; RULEMAKING.**

13 (a) REPORTS.—

14 (1) REPORTS BY FACILITY ADMINISTRATORS.—
15 Not later than 30 days after the end of each quarter
16 fiscal year, the facility administrator of each deten-
17 tion facility that detained a pregnant detainee dur-
18 ing the quarter shall submit to the Secretary a writ-
19 ten report that includes, with respect to the deten-
20 tion facility during the quarter, the following:

21 (A) An account of every instance of the
22 use of a restraint on a pregnant detainee, in-
23 cluding the justification for such restraint and
24 the name of the facility administrator who
25 made the individualized determination under
26 section 3(a)(2)(A)(ii).

1 (B) The number of pregnant detainees
2 held at the detention facility.

3 (C) The average length of detention of
4 pregnant detainees.

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

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

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

12 (A) complete an audit of the information
13 submitted under subparagraphs (B) through
14 (E) of paragraph (1);

15 (B) submit to the appropriate committees
16 of Congress a report that includes all informa-
17 tion submitted under paragraph (1), disaggre-
18 gated by detention facility; and

19 (C) issue regulations in accordance with
20 national standards regarding minimum stand-
21 ards facilities should provide.

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

25 (4) PUBLIC INSPECTION.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), a report submitted under
3 this subsection shall be made available for pub-
4 lic inspection.

5 (B) FACILITY ADMINISTRATOR.—A report
6 submitted under this subsection that is made
7 available for public inspection shall not contain
8 the name of the facility administrator otherwise
9 included under paragraph (1)(A).

10 (b) RULEMAKING.—The Secretary and the Attorney
11 General shall adopt regulations or policies to carry out this
12 Act at each detention facility.

13 **SEC. 6. DEFINITIONS.**

14 In this Act:

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

18 (A) the Committee on the Judiciary and
19 the Committee on Appropriations of the Senate;
20 and

21 (B) the Committee on the Judiciary and
22 the Committee on Appropriations of the House
23 of Representatives.

24 (2) DETAINEE.—The term “detainee” includes
25 any adult or juvenile individual detained by any Fed-

1 eral, State, or local law enforcement agency (includ-
2 ing under contract or agreement with such agency)
3 under the Immigration and Nationality Act (8
4 U.S.C. 1101 et seq.).

5 (3) DETENTION FACILITY.—The term “deten-
6 tion facility” means a Federal, State, or local gov-
7 ernment facility, or a privately owned and operated
8 facility, that is used, in whole or in part, to hold in-
9 dividuals under the authority of the Director of U.S.
10 Immigration and Customs Enforcement or the Com-
11 missioner of U.S. Customs and Border Protection,
12 including a facility that—

13 (A) holds such individuals under a contract
14 or agreement with the Director or Commis-
15 sioner; or

16 (B) is used, in whole or in part, to hold in-
17 dividuals pursuant to an immigration detainer
18 or similar request.

19 (4) DETENTION OFFICER.—The term “deten-
20 tion officer” means an individual who works at a de-
21 tention facility, including an individual who works at
22 a detention facility pursuant to contract or sub-
23 contract.

1 (5) DIRECTOR.—The term “Director” means
2 the Director of U.S. Immigration and Customs En-
3 forcement.

4 (6) FACILITY ADMINISTRATOR.—The term “fa-
5 cility administrator” means the official responsible
6 for oversight of a detention facility or the designee
7 of such official.

8 (7) POSTPARTUM RECOVERY.—The term
9 “postpartum recovery” means the 1-year period, or
10 longer, as determined by the licensed health care
11 provider of the individual concerned, following deliv-
12 ery, including the entire period during which the in-
13 dividual is in a medical facility, birthing center, or
14 infirmary after birth.

15 (8) RESTRAINT.—The term “restraint” means
16 any physical restraint or mechanical device used to
17 control the movement of the body or limbs of a de-
18 tainee body, including—

- 19 (A) flex cuffs;
20 (B) soft restraints;
21 (C) hard metal handcuffs;
22 (D) a black box;
23 (E) Chubb cuffs;
24 (F) leg irons;
25 (G) belly chains;

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

2 (I) a convex shield.

3 (9) SECRETARY.—The term “Secretary” means

4 the Secretary of Homeland Security.

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