

PREGNANT WOMEN IN CUSTODY ACT

SEPTEMBER 13, 2022.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 6878]

The Committee on the Judiciary, to whom was referred the bill  
(H.R. 6878) to address the health needs of incarcerated women re-  
lated to pregnancy and childbirth, and for other purposes, having  
considered the same, reports favorably thereon with an amendment  
and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all that follows after the enacting clause and insert the  
following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pregnant Women in Custody Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) IN CUSTODY.—The term “in custody”, with respect to an individual, means  
that the individual is under the supervision of a Federal, State, Tribal, or local  
correctional facility, including a pretrial, juvenile, medical, or mental health fa-

cility and a facility operated under a contract with the Federal Government or a State, Tribal, or local government.

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

(3) POSTPARTUM RECOVERY.—The term “postpartum recovery” has the meaning given that term in section 4051(c) of title 18, United States Code, as added by this Act.

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

(5) RESTRICTIVE HOUSING.—The term “restrictive housing” has the meaning given that term in section 4322 of title 18, United States Code, as added by this Act.

### SEC. 3. DATA COLLECTION.

(a) IN GENERAL.—Beginning not later than 1 year after the date of enactment of this Act, pursuant to the authority under section 302 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10132), the Director of the Bureau of Justice Statistics shall include in the National Prisoner Statistics Program and Annual Survey of Jails statistics relating to the health needs of incarcerated pregnant women in the criminal justice system at the Federal, State, Tribal, and local levels, including—

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

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

(A) whether prenatal, delivery, and post-delivery check-up visits were scheduled and provided;

(B) whether a social worker, psychologist, doula or other support person was offered and provided during pregnancy and delivery and post-delivery;

(C) whether a pregnancy or parenting program was offered and provided during pregnancy;

(D) whether a nursery or residential program to keep mothers and infants together post-delivery was offered and whether such a nursery or residential program was provided;

(E) the number of days the mother stayed in the hospital post-delivery;

(F) the number of days the infant remained with the mother post-delivery; and

(G) the number of days the infant remained in the hospital after the mother was discharged;

(3) the location of the nearest hospital with a licensed obstetrician-gynecologist in proximity to where the incarcerated pregnant woman is housed and the length of travel required to transport the woman;

(4) whether a written policy or protocol is in place—

(A) to respond to unexpected childbirth, labor, deliveries, or medical complications related to the pregnancies of incarcerated pregnant women; and

(B) for incarcerated pregnant women experiencing labor or medical complications related to pregnancy outside of a hospital;

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

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

(7) the number of incidents in which an incarcerated woman who is pregnant, in labor, or in postpartum recovery is placed in restrictive housing, the reason for such restriction or placement, and the circumstances under which each incident occurred, including the duration of time in restrictive housing, during—

(A) pregnancy;

(B) labor;

(C) delivery;

(D) postpartum recovery; and

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

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

(b) PERSONALLY IDENTIFIABLE INFORMATION.—Data collected under this section may not contain any personally identifiable information of any incarcerated pregnant woman or woman in postpartum recovery.

**SEC. 4. CARE FOR FEDERALLY INCARCERATED WOMEN RELATED TO PREGNANCY AND CHILDBIRTH.**

(a) **IN GENERAL.**—The Director of the Bureau of Prisons shall ensure that appropriate services and programs, as described in subsection (b), are provided to women in custody, to address the health and safety needs of such women related to pregnancy and childbirth. The warden of each Bureau of Prisons facility that houses women shall ensure that these services and programs are implemented for women in custody at that facility.

(b) **SERVICES AND PROGRAMS PROVIDED.**—The services and programs described in this subsection are the following:

(1) **ACCESS TO COMPLETE APPROPRIATE HEALTH SERVICES FOR THE LIFE CYCLE OF WOMEN.**—The Director of the Bureau of Prisons—

(A) shall provide to each woman in custody—

(i) pregnancy testing and testing for sexually transmitted diseases; and

(ii) the option to decline such testing; and

(B) at an inmate's request, shall provide contraception.

(2) **COMPLIANCE WITH PROTOCOLS RELATING TO HEALTH OF A PREGNANT WOMAN.**—On confirmation of the pregnancy of a woman in custody by clinical diagnostics and assessment, the chief health care professional of the Bureau of Prisons facility in which the woman is housed shall ensure that—

(A) a summary of all appropriate protocols directly pertaining to the safety and well-being of the woman are provided to the woman;

(B) such protocols are complied with; and

(C) such protocols include an assessment of undue safety risks and necessary changes to accommodate the woman where and when appropriate, as it relates to—

(i) housing or transfer to a lower bunk for safety reasons;

(ii) appropriate bedding or clothing to respond to the woman's changing physical requirements and the temperature in housing units;

(iii) regular access to water and bathrooms;

(iv) a diet that—

(I) complies with the nutritional standards established by the Secretary of Agriculture and the Secretary of Health and Human Services in the Dietary Guidelines for Americans report published pursuant to section 301(a)(3) of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341(a)(3)); and

(II) includes—

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

(bb) timely and regular nutritious meals;

(cc) additional caloric content in meals provided;

(dd) a prohibition on withholding food from the 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

(ee) 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;

(v) modified recreation and transportation, in accordance with standards within the obstetrical and gynecological care community, to prevent overexertion or prolonged periods of inactivity; and

(vi) such other changes to living conditions as the Director of the Bureau of Prisons may require after consultation with the Secretary of Health and Human Services and consideration of such recommendations as the Secretary may provide.

(3) **EDUCATION AND SUPPORT SERVICES.**—

(A) **PREGNANCY IN CUSTODY.**—A woman who is pregnant at intake or who becomes pregnant while in custody shall, not later than 14 days after the pregnant woman notifies a Bureau of Prisons official of the pregnancy, receive prenatal education, counseling, and birth support services provided by a 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;

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

(iii) information about the nutritional standards referred to in paragraph (2)(C)(iv);

(iv) information pertaining to the health and safety risks of pregnancy, childbirth, and parenting, including postpartum depression;

(v) information on breast-feeding, lactation, and breast health;

(vi) appropriate educational materials, resources, and services related to pregnancy, childbirth, and parenting;

(vii) information and notification services for incarcerated parents regarding the risk of debt repayment obligations associated with their child's participation in social welfare programs, including assistance under any State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or benefits under the supplemental nutrition assistance program, as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), or any State program carried 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 part 545 of title 28, Code of Federal Regulations (or any successor program).

(B) BIRTH WHILE IN CUSTODY OR PRIOR TO CUSTODY.—A woman who, while in custody or during the 6-month period immediately preceding intake, gave birth or experienced any other pregnancy outcome 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.

(4) EVALUATIONS.—

(A) IN GENERAL.—Each woman in custody who is pregnant or whose pregnancy results in a birth or any other pregnancy outcome during the 6-month period immediately preceding intake or any time in custody thereafter shall be evaluated as soon as practicable after intake or confirmation of pregnancy through evidence-based screening and assessment for substance use disorders or mental health conditions, including postpartum depression or depression related to pregnancy, birth, or any other pregnancy outcome or early child care.

(B) RISK FACTORS.—Screening under subparagraph (A) shall include identification of any of the following risk factors:

(i) An existing mental or physical health condition or substance use disorder.

(ii) Being underweight or overweight.

(iii) Multiple births or a previous still birth.

(iv) A history of preeclampsia.

(v) A previous Caesarean section.

(vi) A previous miscarriage.

(vii) Being older than 35 or younger than 15.

(viii) Being diagnosed with the human immunodeficiency virus, hepatitis, diabetes, or hypertension.

(ix) Such other risk factors as the chief health care professional of the Bureau of Prisons facility that house the woman may determine to be appropriate.

(5) UNEXPECTED BIRTHS RULEMAKING.—The Director of the Bureau of Prisons shall provide services to respond to unexpected childbirth deliveries, labor complications, and medical complications related to pregnancy if a woman in custody is unable to access a hospital in a timely manner in accordance with rules promulgated by the Attorney General, which shall be promulgated not later than 180 days after the date of enactment of this Act.

(6) TREATMENT.—The Director of the Bureau of Prisons shall use best efforts to provide a woman in custody who is pregnant and diagnosed with having a substance use disorder or a mental health disorder with appropriate evidence-based treatment.

**SEC. 5. USE OF RESTRICTIVE HOUSING ON INCARCERATED PREGNANT WOMEN DURING PREGNANCY, LABOR, AND POSTPARTUM RECOVERY PROHIBITED.**

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

**“§ 4322. Use of restrictive housing on incarcerated women during the period of pregnancy, labor, and postpartum recovery prohibited**

“(a) PROHIBITION.—Except as provided in subsection (b), during the period beginning on the date on which pregnancy is confirmed by a health care professional and ending not earlier than 12 weeks after delivery, an incarcerated woman in the custody of the Bureau of Prisons, or in the custody of the United States Marshals Service pursuant to section 4086, shall not be held in restrictive housing.

“(b) EXCEPTIONS.—

“(1) RESTRICTIVE HOUSING.—Subject to paragraph (4), the prohibition under subsection (a) relating to restrictive housing shall not apply if the Director of the Bureau of Prisons or a senior Bureau of Prisons official overseeing women’s health and services, in consultation with senior officials in health services, makes an individualized determination that restrictive housing is required as a temporary response to behavior that poses a serious and immediate risk of physical harm.

“(2) REVIEW.—The official who makes a determination under subparagraph (A) shall review such determination daily for the purpose of removing an incarcerated woman as quickly as feasible from restrictive housing.

“(3) RESTRICTIVE HOUSING PLAN.—The official who makes a determination under subparagraph (A) shall develop an individualized plan to move an incarcerated woman to less restrictive housing within a reasonable amount of time.

“(4) PROHIBITION ON SOLITARY CONFINEMENT.—An incarcerated woman who is placed in restrictive housing under this subsection may not be placed in solitary confinement if the incarcerated woman is in her third trimester.

“(c) REPORTS.—

“(1) REPORT TO DIRECTORS AND HEALTH CARE PROFESSIONAL AFTER PLACEMENT IN RESTRICTIVE HOUSING.—Not later than 30 days after the date on which an incarcerated woman is placed in restrictive housing under subsection (b), the applicable official identified in subsection (b)(1), correctional officer, or United States Marshal shall submit to the Director of the Bureau of Prisons or the Director of the United States Marshals Service, as applicable, and to the health care professional responsible for the health and safety of the woman, a written report which describes the facts and circumstances surrounding the restrictive housing placement, and includes the following:

“(A) The reasoning upon which the determination for the placement was made.

“(B) The details of the placement, including length of time of placement and how frequently and how many times the determination was made subsequent to the initial determination to continue the restrictive housing placement.

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

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

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

“(2) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of the Pregnant Women in Custody Act, and every 180 days thereafter for a period of 10 years, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the placement of incarcerated women in restrictive housing under subsection (b), which shall include the information described in paragraph (1).

“(d) NOTICE.—Not later than 24 hours after the confirmation of the pregnancy of an incarcerated woman by a health care professional, that woman shall be notified, orally and in writing, by an appropriate health care professional, correctional officer, or United States Marshal, as applicable—

“(1) of the restrictions on the use of restrictive housing placements under this section;

“(2) of the right of the incarcerated woman to make a confidential report of a violation of restrictions on the use of restrictive housing placement; and

“(3) that the facility staff have been advised of all rights of the incarcerated woman under subsection (a).

“(e) VIOLATION REPORTING PROCESS.—Not later than 180 days after the date of enactment of the Pregnant Women in Custody Act, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall establish processes through which an incarcerated person may report a violation of this section.

“(f) NOTIFICATION OF RIGHTS.—The warden of the Bureau of Prisons facility where a pregnant woman is in custody shall notify necessary facility staff of the pregnancy and of the rights of the incarcerated pregnant woman under subsection (a).

“(g) RETALIATION.—It shall be unlawful for any Bureau of Prisons or United States Marshals Service employee to retaliate against an incarcerated person for reporting under the processes established under subsection (e) a violation of subsection (a).

“(h) EDUCATION.—Not later than 90 days after the date of enactment of the Pregnant Women in Custody Act, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each—

“(1) develop education guidelines regarding the physical and mental health needs of incarcerated pregnant women, and the use of restrictive housing placements on incarcerated women during the period of pregnancy, labor, and postpartum recovery; and

“(2) incorporate such guidelines into appropriate education programs.

“(i) DEFINITION.—In this section, the term ‘restrictive housing’ means any type of detention that involves—

“(1) removal from the general inmate population, whether voluntary or involuntary;

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

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

(b) CLERICAL AMENDMENT.—The table of sections for chapter 317 of title 18, United States Code, is amended by striking the item relating to section 4322 and inserting the following:

“4322. Use of restrictive housing on incarcerated women during the period of pregnancy, labor, and postpartum recovery prohibited.”.

#### SEC. 6. TREATMENT OF WOMEN WITH HIGH-RISK PREGNANCIES.

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

##### “§ 4052. Treatment of incarcerated pregnant women

“(a) HIGH-RISK PREGNANCY HEALTH CARE.—The Director of the Bureau of Prisons shall ensure that each incarcerated pregnant woman receives an evaluation to determine if the pregnancy is high-risk and, if so, receives healthcare appropriate for a high-risk pregnancy, including obstetrical and gynecological care, during pregnancy and postpartum recovery.

“(b) HIGH-RISK PREGNANCIES.—

“(1) IN GENERAL.—The Director of the Bureau of Prisons shall transfer to a Residential Reentry Center with adequate health care during her pregnancy and postpartum recovery any incarcerated woman who—

“(A) is determined by a health care professional to have a high-risk pregnancy; and

“(B) agrees to be transferred.

“(2) PRIORITY.—The Residential Reentry Center to which an incarcerated pregnant woman is transferred under paragraph (1) shall, to the extent practicable, be in a geographical location that is close to the family members of the incarcerated pregnant woman.

“(3) TRANSPORTATION.—To transport an incarcerated pregnant woman to a Residential Reentry Center, the Director of the Bureau of Prisons shall provide to the woman a mode of transportation that a healthcare professional has determined to be safe for transporting the pregnant woman.

“(4) SERVICE OF SENTENCE.—Any time accrued at a Residential Reentry Center or alternative housing as a result of a transfer made under this section shall be credited toward service of the incarcerated pregnant woman’s sentence.

“(c) DEFINITIONS.—In this section:

“(1) HEALTH CARE PROFESSIONAL.—The term ‘health care professional’ means—

“(A) a doctor of medicine or osteopathy who is authorized to diagnose and treat physical or mental health conditions under the laws of the State in which the doctor practices and where the facility is located;

“(B) any physician’s assistant or nurse practitioner who is supervised by a doctor of medicine or osteopathy described in subparagraph (A); or

“(C) any other person determined by the Director of the Bureau of Prisons to be capable of providing health care services.

“(2) HIGH-RISK PREGNANCY.—The term ‘high-risk pregnancy’ means, with respect to an incarcerated woman, that the pregnancy threatens the health or life of the woman or pregnancy, as determined by a health care professional.

“(3) POSTPARTUM RECOVERY.—The term ‘postpartum recovery’ means the 3-month period beginning on the date on which an incarcerated pregnant woman gives birth, or longer as determined by a health care professional following delivery, and shall include the entire period that the incarcerated pregnant woman is in the hospital or infirmary.

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

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

“4052. Treatment of incarcerated pregnant women.”.

#### SEC. 7. REPORTING REQUIREMENT REGARDING CLAIMS FILED BY PREGNANT INMATES.

The Director of the Federal Bureau of Prisons shall make publicly available on the website of the Federal Bureau of Prisons on an annual basis the following information:

- (1) The total number of Administrative Remedy appeals related to pregnant inmates that were filed during the previous year.
- (2) The total number of institution-level Requests for Administrative Remedy related to pregnant inmates that were filed during the previous year.
- (3) The total number of informal requests for administrative remedy related to pregnant inmates that were filed during the previous year.
- (4) The total number of requests or appeals related to pregnant inmates during the previous year that were not resolved before the inmate gave birth or that were mooted because the inmate’s pregnancy ended.
- (5) The average amount of time that each category of request or appeal took to resolve during the previous year.
- (6) The shortest and longest amounts of time that a request or appeal in each category that was resolved in the last year took to resolve.

#### SEC. 8. EDUCATION AND TECHNICAL ASSISTANCE.

The Director of the National Institute of Corrections shall provide education and technical assistance, in conjunction with the appropriate public agencies, at State and local correctional facilities that house women and facilities in which incarcerated women go into labor and give birth, in order to educate the employees of such facilities, including health personnel, on the dangers and potential mental health consequences associated with the use of restrictive housing and restraints on incarcerated women during pregnancy, labor, and postpartum recovery, and on alternatives to the use of restraints and restrictive housing placement.

#### SEC. 9. BUREAU OF PRISONS STAFF AND UNITED STATES MARSHALS TRAINING.

(a) BUREAU OF PRISONS TRAINING.—

(1) IN GENERAL.—

(A) INITIAL TRAINING.—Not later than 180 days after the date of enactment of this Act, the Director of the Bureau of Prisons shall provide training to carry out the requirements of this Act and the amendments made by this Act to each correctional officer at any Bureau of Prisons facility that houses women who is employed on the date of enactment of this Act.

(B) SUBSEQUENT TRAINING.—After the initial training provided under subparagraph (A), the Director of the Bureau of Prisons shall provide training to carry out the requirements of this Act and the amendments made by this Act twice each year to each correctional officer at any Bureau of Prisons facility that houses women.

(2) NEW HIRES.—

(A) DEFINITION.—In this paragraph, the term “covered new correctional officer” means an individual appointed to a position as a correctional officer at a Bureau of Prisons facility that houses women on or after the date that is 180 days after the date of enactment of this Act.

(B) TRAINING.—The Director of the Bureau of Prisons shall train each covered new correctional officer to carry out the requirements of this Act and the amendments made by this Act not later than 30 days after the date on which the covered new correctional officer is appointed.

(b) UNITED STATES MARSHALS TRAINING.—

(1) IN GENERAL.—On and after the date that is 180 days after the date of enactment of this Act, the Director of the United States Marshals Service shall ensure that each Deputy United States Marshal has received training pursuant to the guidelines described in subsection (c).

(2) NEW HIRES.—

(A) DEFINITION.—In this paragraph, the term “new Deputy United States Marshal” means an individual appointed to a position as a Deputy United States Marshal after the date of enactment of this Act.

(B) TRAINING.—Not later than 30 days after the date on which a new Deputy United States Marshal is appointed, the new Deputy United States Marshal shall receive training pursuant to the guidelines described in subsection (c).

(c) GUIDELINES.—

(1) IN GENERAL.—The Director of the Bureau of Prisons and the United States Marshals Service shall each develop guidelines on the treatment of incarcerated women during pregnancy, labor, and postpartum recovery and incorporate such guidelines in the training required under this section.

(2) CONTENTS.—The guidelines developed under paragraph (1) shall include guidance on—

- (A) the transportation of incarcerated pregnant women;
- (B) housing of incarcerated pregnant women;
- (C) nutritional requirements for incarcerated pregnant women; and
- (D) the right of a health care professional to request that restraints not be used.

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

The Comptroller General of the United States shall conduct a study of services and protections provided for pregnant incarcerated women in local and State correctional settings, including—

(1) policies on—

- (A) obstetrical and gynecological care;
- (B) education on nutritional issues and health and safety risks associated with pregnancy;
- (C) mental health and substance use treatment;
- (D) access to prenatal and post-delivery support services and programs; and
- (E) the use of restraints and restrictive housing placement; and

(2) the extent to which the intent of such policies is fulfilled.

**SEC. 11. DETERMINATION OF BUDGETARY EFFECTS.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

## **Purpose and Summary**

H.R. 6878, the “Pregnant Women in Custody Act,” introduced by Representative Karen Bass (D–CA), along with 23 bipartisan co-sponsors, would establish federal policies to prohibit the use of restrictive housing and restraints on pregnant inmates and develop a national standard of care to address the pregnancy-related needs of incarcerated women, including access to prenatal and post-delivery care and support. The bill requires the Federal Bureau of Prisons (BOP) to collect data on the health care needs of pregnant women in custody and requires the Government Accountability Office (GAO) to study current practices for pregnant women in state and local jails and prisons.

## **Background and Need for the Legislation**

### **I. RATES OF PREGNANT WOMEN IN CUSTODY**

In the United States, 64.6 women per 100,000 are incarcerated.<sup>1</sup> The U.S. has the second highest rate of incarcerating women internationally, second only to Thailand.<sup>2</sup> The number of women incarcerated has grown significantly in recent decades and most women are incarcerated during their reproductive years. There are an esti-

<sup>1</sup> Susan Hatters Friedman, MD, Aimee Kaempf, MD, and Sarah Kauffman, MD, The Realities of Pregnancy and Mothering While Incarcerated, *J Am Acad Psychiatry Law* 48(3) online, 2020. DOI:10.29158/JAAPL.003924–20, <http://jaapl.org/content/early/2020/05/13/JAAPL.003924-20>.

<sup>2</sup> *Id.*



mated 58,000 admissions of pregnant women into jails and prisons every year.<sup>3</sup> GAO studies have shown that from 2017 to 2019 there were at least 1,200 pregnant women in the custody of the United States Marshals Service (USMS) and 524 pregnant women in BOP custody.<sup>4</sup>

According to a recent “Pregnancy in Prison Statistics” study, there are an estimated 8,000 admissions of pregnant women with opioid use disorder (OUD) into prisons and jails each year, but long-term treatment using medication is the exception, not the rule. The study also found that only one-third of prisons and jails had any written policy about breastfeeding or lactation, and even where policies supporting lactation did exist, relatively few women were actually breastfeeding or pumping.

The impact of incarceration on pregnant women is complex and far-reaching. The reality of pregnancy, delivery, and post-partum recovery while incarcerated requires significant medical and physical health care interventions and broader protections in order to address the trauma both mothers and newborns experience.

## II. USE OF RESTRICTIVE HOUSING

The use of restrictive housing on incarcerated pregnant women is extremely dangerous to the health of mothers, their pregnancies, and their babies. Unfortunately, these practices remain legal and practiced widely in the BOP and state corrections systems. These extreme methods of restraint and confinement are not only unhealthy in pregnancy but can also be actively harmful. Placement of pregnant women in solitary confinement creates a serious risk of mental and physical harm and results in deprivation of critical nutritional and medical care. The use of restraints can cause injuries to mothers and their babies including physical trauma due to falls, increased pain during labor from bone separation and muscle tears, blocked circulation, and even miscarriage.

This legislation builds on an important provision in the bipartisan First Step Act,<sup>5</sup> which prohibited the use of restraints on pregnant women in BOP custody. This bill expands the prohibition to include restrictive housing and solitary confinement. The United Nations Special Rapporteur on Torture stated in a recent report that solitary confinement can “trigger and exacerbate psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities.”<sup>6</sup> Additionally, he stated that “the severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.” He called the use of solitary confinement “deliberate infliction of severe mental pain or suffering” and stated that it “may well amount to psychological tor-

<sup>3</sup> Leah Wang, Unsupportive environments and limited policies: Pregnancy, postpartum, and birth during incarceration, Prison Policy Initiative, August 19, 2021, [https://www.prisonpolicy.org/blog/2021/08/19/pregnancy\\_studies/](https://www.prisonpolicy.org/blog/2021/08/19/pregnancy_studies/).

<sup>4</sup> GAO Report: Pregnant Women in DOJ Custody: U.S. Marshals Service and Bureau of Prisons Should Better Align Policies with National Guidelines, January 25, 2021, <https://www.gao.gov/products/gao-21-147>.

<sup>5</sup> FIRST STEP Act, H.R. 5682, 115th Cong. (2018).

<sup>6</sup> United Nations, United States: prolonged solitary confinement amounts to psychological torture, says UN expert, February 28, 2020, <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

ture.” For pregnant women in particular, the use of solitary confinement can further damage their physical and mental wellbeing, along with the health of their baby.

### III. HEALTH CARE FOR PREGNANT WOMEN AND INFANTS

Prenatal care significantly improves pregnancy outcomes and the health of mothers as well as their babies.<sup>7</sup> Appropriate nutrition and regular evaluations of the mother’s health is crucial to ensure a healthy pregnancy. While incarcerated, many women lack access to the types of food and nutrition they need. Transport to medical appointments can often include difficult restraints and shackling. While the prohibitions in the First Step Act helped reduce the number of pregnant women in BOP custody who are restrained, they did not apply to the higher proportion of women incarcerated in state and local facilities.

In addition to adequate prenatal care, postpartum care is also a critical component to ensure the health and well-being of the mother and her baby. Participation in post-delivery mother-infant residency or nursery programs is associated with lower recidivism rates and improved odds that mothers and babies will remain together, reducing the risk of babies entering the foster care system.

### IV. PREGNANT WOMEN IN CUSTODY ACT OF 2022

The “Pregnant Women in Custody Act of 2022” makes changes to federal law to protect the health and safety of pregnant women in BOP custody. It also requires data collection and studies to better understand the needs of pregnant women in custody. This bipartisan bill is supported widely by health and safety organizations including The American Psychological Association (APA), the National Alliance on Mental Illness (NAMI), the Association of Maternal & Child Health Programs (AMCHP), Dream Corps (formerly #cut50), Vera Institute for Justice, R Street Institute, and the American Conservative Union.

### Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearings were used to develop H.R. 6878: On January 21, 2022, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on “The First Step Act, The Pandemic, and Compassionate Release: What Are the Next Steps for the Federal Bureau of Prisons?” The witnesses were Homer Venters, Adjunct Clinical Associate Professor, NYU School of Global Public Health; Alison Guernsey, Clinical Associate Professor of Law, University of Iowa College of Law; Gwen Levi, Baltimore, MD; Melissa Hamilton, Professor of Law and Criminal Justice, University of Surrey, School of Law; Gretta L. Goodwin, Director, Homeland Security and Justice, U.S. Government Accountability Office; and Julie Kelly, Senior Contributor, American Greatness. The witnesses discussed conditions at BOP, including the treatment of pregnant women in custody.

<sup>7</sup>Tayebi T, Zahrani ST, Mohammadpour R. Relationship between adequacy of prenatal care utilization index and pregnancy outcomes. *Iran J Nurs Midwifery Res.* 2013 Sep;18(5):360–6. PMID: 24403937; PMCID: PMC3877457. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3877457/>.

In addition, on February 3, 2022, the Subcommittee held a hearing on “Oversight of the Federal Bureau of Prisons.” The sole witness was Michael Carvajal, Director, Federal Bureau of Prisons. Members had an opportunity to discuss a variety of issues affecting BOP, including the health and safety of pregnant women in custody.

### **Committee Consideration**

On July 13, 2022, the Committee met in open session and ordered the bill, H.R. 6878, favorably reported with an amendment in the nature of a substitute, by a voice vote, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of House rule XIII, the following rollcall vote occurred during the Committee’s consideration of H.R. 6878:

1. An amendment by Mr. Johnson of Louisiana to prohibit the Bureau of Prisons from performing an abortion at a BOP facility was defeated by a rollcall vote of 15–22. The vote was as follows:

Roll Call No. 7

Date: 7/13/22

## COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 1 (Am) to HR 6578 offered by Rep. Johnson (LA)

☐ PASSED

☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)			
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES.
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)			
Matt Gaetz (FL-01)	✓		
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)			
Greg Steube (FL-17)	✓		
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)	✓		
Chip Roy (TX-21)	✓		
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)	✓		
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	15	22	

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

### **Committee Estimate of Budgetary Effects**

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

### **New Budget Authority and Congressional Budget Office Cost Estimate**

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of the bill.

### **Duplication of Federal Programs**

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 6878 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 6878 would increase the health and safety of pregnant women incarcerated in federal custody by establishing federal policies to prohibit the use of restrictive housing and restraints on pregnant inmates and developing a national standard of care to address the pregnancy-related needs of incarcerated women, including access to prenatal and post-delivery care and support.

### **Advisory on Earmarks**

In accordance with clause 9 of House rule XXI, H.R. 6878 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short Title.* Section 1 provides the short title of the bill, which is the “Pregnant Women in Custody Act of 2022.”

*Sec. 2. Definitions.* Section 2 defines relevant terms.

*Sec. 3. Data Collection.* Section 3 requires the Director of the Bureau of Justice Statistics to include statistics related to the health needs of incarcerated pregnant women within its National Prisoner Statistics Program and Annual Survey of Jails. It specifies several required data inputs including: demographic information, provision

of pregnancy care and services, location of the nearest hospital with a licensed obstetrician-gynecologist related to where the incarcerated person is housed, whether a written policy or protocol is in place to respond to unexpected childbirth or other medical emergencies, the number of incarcerated pregnant women with a high-risk pregnancy, the total number of incarcerated pregnant women, number of incidents where an incarcerated pregnant woman is placed in restrictive housing, and the disposition of the custody of the infant post-delivery.

*Sec. 4. Care for Federally Incarcerated Women Related to Pregnancy and Childbirth.* Section 4 requires the Director of the Bureau of Prisons to ensure that appropriate services and programs are provided to pregnant women in custody. Required services and programs include access to complete appropriate health services, compliance with protocols relating to health of a pregnant woman, provision of prenatal education and counseling, appropriate testing, and medical evaluation. It also requires the Attorney General to make rules establishing procedures for responding to unexpected childbirth deliveries, labor complications, and medical complications related to pregnancy while in custody and provides for appropriate services for pregnant women in custody who have been diagnosed as having a substance use disorder or mental health disorder.

*Sec. 5. Use of Restrictive Housing on Incarcerated Pregnant Women During Pregnancy, Labor, and Postpartum Recovery Prohibited.* Section 5 prohibits the use of restrictive housing for pregnant women in custody unless there is a determination, by law enforcement officials in cooperation with a health care professional, that it is appropriate for the medical safety of the woman. Any exception to this prohibition must be based on an individualized determination and only apply to a specific situation. Any incarcerated woman placed in restrictive housing under this title shall receive frequent monitoring, and solitary confinement within the third trimester is strictly prohibited. Additionally, this section requires a report to the Director and health care professional after the use of restraints or restrictive housing, and a report to Congress six months after the date of enactment of this Act. Women must be informed both orally and in writing of the rights and prohibitions within 24 hours of the confirmation of an incarcerated woman's pregnancy by a health care professional. It also requires the Director of BOP and the Director of the USMS to develop education guidelines regarding the physical and mental health needs of incarcerated pregnant women.

*Sec. 6. Treatment of Women With High-Risk Pregnancies.* Section 6 requires that the Director of BOP ensures each incarcerated pregnant person receive health care appropriate for a high-risk pregnancy and post-partum recovery. This includes appropriate transfer to a geographically appropriate residential reentry center or alternative housing for the duration of the pregnancy and recovery. Medically appropriate transportation shall be provided at no cost to the woman and electronic ankle monitors must be limited to circumstances where no feasible monitoring alternative is available.

*Sec. 7. Reporting Requirement Regarding Claims Filed By Pregnant Inmates.* Section 7 requires the Director of BOP to report the

number of administrative claims and appeals made by an incarcerated pregnant person and the amount of time it took to resolve those claims and appeals.

*Sec. 8. Education and Technical Assistance.* Section 8 requires the Director of the National Institute of Corrections to provide education and technical assistance on the dangers and potential mental health consequences associated with the use of restrictive housing and restraints on incarcerated women during pregnancy, labor, and postpartum recovery as well as available alternatives to these types of measures.

*Sec. 9. Bureau of Prisons Staff and U.S. Marshals Training.* Section 9 requires the BOP and USMS to train each correctional officer at any covered women's correctional facility on how to appropriately carry out this act. Such training must occur no later than 180 days after enactment for existing employees and no later than 30 days for any new employee after such officer is hired. Furthermore, guidelines shall be developed on the treatment of incarcerated women during pregnancy, labor, or postpartum, and these guidelines must be incorporated into the required training.

*Sec. 10. GAO Study on State and Local Correctional Facilities.* Section 10 requires a GAO study of the services and protections provided for pregnant women incarcerated in local and state correctional settings.

*Sec. 11. Determination of Budgetary Effects.* Section 11 requires any budgetary effects to be submitted for printing in the Congressional Record by the Chair of the Senate Budget Committee.

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

## **TITLE 18, UNITED STATES CODE**

\* \* \* \* \*

## **PART III—PRISONS AND PRISONERS**

\* \* \* \* \*

### **CHAPTER 303—BUREAU OF PRISONS**

Sec.

\* \* \* \* \*

4052. *Treatment of incarcerated pregnant women.*

\* \* \* \* \*

#### **§4052. Treatment of incarcerated pregnant women**

(a) *HIGH-RISK PREGNANCY HEALTH CARE.*—*The Director of the Bureau of Prisons shall ensure that each incarcerated pregnant woman receives an evaluation to determine if the pregnancy is high-*

risk and, if so, receives healthcare appropriate for a high-risk pregnancy, including obstetrical and gynecological care, during pregnancy and postpartum recovery.

(b) *HIGH-RISK PREGNANCIES.*—

(1) *IN GENERAL.*—The Director of the Bureau of Prisons shall transfer to a Residential Reentry Center with adequate health care during her pregnancy and postpartum recovery any incarcerated woman who—

(A) is determined by a health care professional to have a high-risk pregnancy; and

(B) agrees to be transferred.

(2) *PRIORITY.*—The Residential Reentry Center to which an incarcerated pregnant woman is transferred under paragraph (1) shall, to the extent practicable, be in a geographical location that is close to the family members of the incarcerated pregnant woman.

(3) *TRANSPORTATION.*—To transport an incarcerated pregnant woman to a Residential Reentry Center, the Director of the Bureau of Prisons shall provide to the woman a mode of transportation that a healthcare professional has determined to be safe for transporting the pregnant woman.

(4) *SERVICE OF SENTENCE.*—Any time accrued at a Residential Reentry Center or alternative housing as a result of a transfer made under this section shall be credited toward service of the incarcerated pregnant woman's sentence.

(c) *DEFINITIONS.*—In this section:

(1) *HEALTH CARE PROFESSIONAL.*—The term “health care professional” means—

(A) a doctor of medicine or osteopathy who is authorized to diagnose and treat physical or mental health conditions under the laws of the State in which the doctor practices and where the facility is located;

(B) any physician's assistant or nurse practitioner who is supervised by a doctor of medicine or osteopathy described in subparagraph (A); or

(C) any other person determined by the Director of the Bureau of Prisons to be capable of providing health care services.

(2) *HIGH-RISK PREGNANCY.*—The term “high-risk pregnancy” means, with respect to an incarcerated woman, that the pregnancy threatens the health or life of the woman or pregnancy, as determined by a health care professional.

(3) *POSTPARTUM RECOVERY.*—The term “postpartum recovery” means the 3-month period beginning on the date on which an incarcerated pregnant woman gives birth, or longer as determined by a health care professional following delivery, and shall include the entire period that the incarcerated pregnant woman is in the hospital or infirmary.

(4) *RESIDENTIAL REENTRY CENTER.*—The term “Residential Reentry Center” means a Bureau of Prisons contracted residential reentry center.

**§ 4051. Treatment of primary caretaker parents and other individuals**

(a) *DEFINITIONS.*—In this section—



(1) the term “correctional officer” means a correctional officer of the Bureau of Prisons;

(2) the term “covered institution” means a Federal penal or correctional institution;

(3) the term “Director” means the Director of the Bureau of Prisons;

(4) the term “post-partum recovery” means the first 12-week period of post-partum recovery after giving birth;

(5) the term “primary caretaker parent” has the meaning given the term in section 31903 of the Family Unity Demonstration Project Act (34 U.S.C. 12242);

(6) the term “prisoner” means an individual who is incarcerated in a Federal penal or correctional institution, including a vulnerable person; and

(7) the term “vulnerable person” means an individual who—

(A) is under 21 years of age or over 60 years of age;

(B) is pregnant;

(C) is victim or witness of a crime;

(D) has filed a nonfrivolous civil rights claim in Federal or State court; or

(E) during the period of incarceration, has been determined to have experienced or to be experiencing severe trauma or to be the victim of gender-based violence—

(i) by any court or administrative judicial proceeding;

(ii) by any corrections official;

(iii) by the individual’s attorney or legal service provider; or

(iv) by the individual.

(b) GEOGRAPHIC PLACEMENT.—

(1) ESTABLISHMENT OF OFFICE.—The Director shall establish within the Bureau of Prisons an office that determines the placement of prisoners.

(2) PLACEMENT OF PRISONERS.—In determining the placement of a prisoner, the office established under paragraph (1) shall—

(A) if the prisoner has children, consider placing the prisoner as close to the children as possible; and

(B) consider any other factor that the office determines to be appropriate.

(c) PROHIBITION ON PLACEMENT OF PREGNANT PRISONERS OR PRISONERS IN POST-PARTUM RECOVERY IN SEGREGATED HOUSING UNITS.—

(1) PLACEMENT IN SEGREGATED HOUSING UNITS.—A covered institution may not place a prisoner who is pregnant or in post-partum recovery in a segregated housing unit unless the prisoner presents an immediate risk of harm to the prisoner or others.

(2) RESTRICTIONS.—Any placement of a prisoner described in paragraph (1) in a segregated housing unit shall be limited and temporary.

(d) INTAKE AND ASSESSMENTS.—The Director shall assess the need for family-focused programming at intake, such as questions about children, gauge interest in parenting resources, and concerns about their child or caregiving, and administer ongoing assessment

to better inform, identify, and make recommendations about the mother's parental role and familial needs.

(e) PARENTING CLASSES.—The Director shall provide voluntary parenting classes to each prisoner who is a primary caretaker parent, and such classes shall be made available to prisoners with limited English proficiency in compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(f) TRAUMA SCREENING.—The Director shall provide training, including cultural competency training, to each correctional officer and each employee of the Bureau of Prisons who regularly interacts with prisoners, including each instructor and health care professional, to enable those correctional officers and employees to—

(1) identify a prisoner who may have a mental or physical health need relating to trauma the prisoner has experienced; and

(2) refer a prisoner described in paragraph (1) to the proper health care professional for diagnosis and treatment.

(g) FAMILY NEEDS TRAINING.—The Director shall provide training to correctional officers and employees of the Bureau of Prisons who engage with prisoners' families on—

(1) how to interact with children in an age-appropriate manner, and the children's caregivers;

(2) basic childhood and adolescent development information; and

(3) basic customer service skills.

(h) INMATE HEALTH.—

(1) HEALTH CARE ACCESS.—The Director shall ensure that all prisoners receive adequate health care.

(2) HYGIENIC PRODUCTS.—The Director shall make essential hygienic products, including shampoo, toothpaste, toothbrushes, and any other hygienic product that the Director determines appropriate, available without charge to prisoners. The Director shall make rules—

(A) on the distribution and accessibility of sanitary products to prisoners, to ensure each prisoner who requires these products receives a quantity the prisoner deems sufficient; and

(B) providing that no visitor is prohibited from visiting a prisoner due to the visitor's use of sanitary products.

(3) GYNECOLOGIST ACCESS.—The Director shall ensure that all prisoners have access to a gynecologist as appropriate.

(4) RELATION TO OTHER LAWS.—Nothing in paragraph (1) shall be construed to affect the requirements under the Prison Rape Elimination Act of 2003 (34 U.S.C. 30301 et seq.).

\* \* \* \* \*

## CHAPTER 317—INSTITUTIONS FOR WOMEN

Sec.

\* \* \* \* \*

[4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited.]

4322. *Use of restrictive housing on incarcerated women during the period of pregnancy, labor, and postpartum recovery prohibited.*

\* \* \* \* \*

**§ 4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited**

[(a) PROHIBITION.—Except as provided in subsection (b), beginning on the date on which pregnancy is confirmed by a healthcare professional, and ending at the conclusion of postpartum recovery, a prisoner in the custody of the Bureau of Prisons, or in the custody of the United States Marshals Service pursuant to section 4086, shall not be placed in restraints.

[(b) EXCEPTIONS.—

[(1) IN GENERAL.—The prohibition under subsection (a) shall not apply if—

[(A) an appropriate corrections official, or a United States marshal, as applicable, makes a determination that the prisoner—

[(i) is an immediate and credible flight risk that cannot reasonably be prevented by other means; or

[(ii) poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means; or

[(B) a healthcare professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner.

[(2) LEAST RESTRICTIVE RESTRAINTS.—In the case that restraints are used pursuant to an exception under paragraph (1), only the least restrictive restraints necessary to prevent the harm or risk of escape described in paragraph (1) may be used.

[(3) APPLICATION.—

[(A) IN GENERAL.—The exceptions under paragraph (1) may not be applied—

[(i) to place restraints around the ankles, legs, or waist of a prisoner;

[(ii) to restrain a prisoner's hands behind her back;

[(iii) to restrain a prisoner using 4-point restraints;

or

[(iv) to attach a prisoner to another prisoner.

[(B) MEDICAL REQUEST.—Notwithstanding paragraph (1), upon the request of a healthcare professional who is responsible for the health and safety of a prisoner, a corrections official or United States marshal, as applicable, shall refrain from using restraints on the prisoner or shall remove restraints used on the prisoner.

[(c) REPORTS.—

[(1) REPORT TO THE DIRECTOR AND HEALTHCARE PROFESSIONAL.—If a corrections official or United States marshal uses restraints on a prisoner under subsection (b)(1), that official or marshal shall submit, not later than 30 days after placing the prisoner in restraints, to the Director of the Bureau of Prisons or the Director of the United States Marshals Service, as applicable, and to the healthcare professional responsible for the health and safety of the prisoner, a written report that describes the facts and circumstances surrounding the use of restraints, and includes—

[(A) the reasoning upon which the determination to use restraints was made;

[(B) the details of the use of restraints, including the type of restraints used and length of time during which restraints were used; and

[(C) any resulting physical effects on the prisoner observed by or known to the corrections official or United States marshal, as applicable.

[(2) SUPPLEMENTAL REPORT TO THE DIRECTOR.—Upon receipt of a report under paragraph (1), the healthcare professional responsible for the health and safety of the prisoner may submit to the Director such information as the healthcare professional determines is relevant to the use of restraints on the prisoner.

[(3) REPORT TO JUDICIARY COMMITTEES.—

[(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and annually thereafter, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each submit to the Judiciary Committee of the Senate and of the House of Representatives a report that certifies compliance with this section and includes the information required to be reported under paragraph (1).

[(B) PERSONALLY IDENTIFIABLE INFORMATION.—The report under this paragraph shall not contain any personally identifiable information of any prisoner.

[(d) NOTICE.—Not later than 48 hours after the confirmation of a prisoner's pregnancy by a healthcare professional, that prisoner shall be notified by an appropriate healthcare professional, corrections official, or United States marshal, as applicable, of the restrictions on the use of restraints under this section.

[(e) VIOLATION REPORTING PROCESS.—The Director of the Bureau of Prisons, in consultation with the Director of the United States Marshals Service, shall establish a process through which a prisoner may report a violation of this section.

[(f) TRAINING.—

[(1) IN GENERAL.—The Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each develop training guidelines regarding the use of restraints on female prisoners during the period of pregnancy, labor, and postpartum recovery, and shall incorporate such guidelines into appropriate training programs. Such training guidelines shall include—

[(A) how to identify certain symptoms of pregnancy that require immediate referral to a healthcare professional;

[(B) circumstances under which the exceptions under subsection (b) would apply;

[(C) in the case that an exception under subsection (b) applies, how to apply restraints in a way that does not harm the prisoner, the fetus, or the neonate;

[(D) the information required to be reported under subsection (c); and

[(E) the right of a healthcare professional to request that restraints not be used, and the requirement under subsection (b)(3)(B) to comply with such a request.

[(2) DEVELOPMENT OF GUIDELINES.—In developing the guidelines required by paragraph (1), the Directors shall each consult with healthcare professionals with expertise in caring for women during the period of pregnancy and postpartum recovery.]

[(g) DEFINITIONS.—For purposes of this section:

[(1) POSTPARTUM RECOVERY.—The term “postpartum recovery” means the 12-week period, or longer as determined by the healthcare professional responsible for the health and safety of the prisoner, following delivery, and shall include the entire period that the prisoner is in the hospital or infirmary.]

[(2) PRISONER.—The term “prisoner” means a person who has been sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense, or a person in the custody of the Bureau of Prisons, including a person in a Bureau of Prisons contracted facility.]

[(3) RESTRAINTS.—The term “restraints” means any physical or mechanical device used to control the movement of a prisoner’s body, limbs, or both.]]

**§ 4322. *Use of restrictive housing on incarcerated women during the period of pregnancy, labor, and postpartum recovery prohibited***

(a) PROHIBITION.—*Except as provided in subsection (b), during the period beginning on the date on which pregnancy is confirmed by a health care professional and ending not earlier than 12 weeks after delivery, an incarcerated woman in the custody of the Bureau of Prisons, or in the custody of the United States Marshals Service pursuant to section 4086, shall not be held in restrictive housing.*

(b) EXCEPTIONS.—

(1) RESTRICTIVE HOUSING.—*Subject to paragraph (4), the prohibition under subsection (a) relating to restrictive housing shall not apply if the Director of the Bureau of Prisons or a senior Bureau of Prisons official overseeing women’s health and services, in consultation with senior officials in health services, makes an individualized determination that restrictive housing is required as a temporary response to behavior that poses a serious and immediate risk of physical harm.*

(2) REVIEW.—*The official who makes a determination under subparagraph (A) shall review such determination daily for the purpose of removing an incarcerated woman as quickly as feasible from restrictive housing.*

(3) RESTRICTIVE HOUSING PLAN.—*The official who makes a determination under subparagraph (A) shall develop an individualized plan to move an incarcerated woman to less restrictive housing within a reasonable amount of time.*

(4) PROHIBITION ON SOLITARY CONFINEMENT.—*An incarcerated woman who is placed in restrictive housing under this subsection may not be placed in solitary confinement if the incarcerated woman is in her third trimester.*

(c) REPORTS.—

(1) REPORT TO DIRECTORS AND HEALTH CARE PROFESSIONAL AFTER PLACEMENT IN RESTRICTIVE HOUSING.—*Not later than 30 days after the date on which an incarcerated woman is placed in restrictive housing under subsection (b), the applicable offi-*

cial identified in subsection (b)(1), correctional officer, or United States Marshal shall submit to the Director of the Bureau of Prisons or the Director of the United States Marshals Service, as applicable, and to the health care professional responsible for the health and safety of the woman, a written report which describes the facts and circumstances surrounding the restrictive housing placement, and includes the following:

(A) The reasoning upon which the determination for the placement was made.

(B) The details of the placement, including length of time of placement and how frequently and how many times the determination was made subsequent to the initial determination to continue the restrictive housing placement.

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

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

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

(2) **REPORT TO CONGRESS.**—Not later than 180 days after the date of enactment of the Pregnant Women in Custody Act, and every 180 days thereafter for a period of 10 years, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the placement of incarcerated women in restrictive housing under subsection (b), which shall include the information described in paragraph (1).

(d) **NOTICE.**—Not later than 24 hours after the confirmation of the pregnancy of an incarcerated woman by a health care professional, that woman shall be notified, orally and in writing, by an appropriate health care professional, correctional officer, or United States Marshal, as applicable—

(1) of the restrictions on the use of restrictive housing placements under this section;

(2) of the right of the incarcerated woman to make a confidential report of a violation of restrictions on the use of restrictive housing placement; and

(3) that the facility staff have been advised of all rights of the incarcerated woman under subsection (a).

(e) **VIOLATION REPORTING PROCESS.**—Not later than 180 days after the date of enactment of the Pregnant Women in Custody Act, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall establish processes through which an incarcerated person may report a violation of this section.

(f) **NOTIFICATION OF RIGHTS.**—The warden of the Bureau of Prisons facility where a pregnant woman is in custody shall notify necessary facility staff of the pregnancy and of the rights of the incarcerated pregnant woman under subsection (a).

(g) **RETALIATION.**—It shall be unlawful for any Bureau of Prisons or United States Marshals Service employee to retaliate against an incarcerated person for reporting under the processes established under subsection (e) a violation of subsection (a).

(h) *EDUCATION.*—Not later than 90 days after the date of enactment of the Pregnant Women in Custody Act, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each—

(1) develop education guidelines regarding the physical and mental health needs of incarcerated pregnant women, and the use of restrictive housing placements on incarcerated women during the period of pregnancy, labor, and postpartum recovery; and

(2) incorporate such guidelines into appropriate education programs.

(i) *DEFINITION.*—In this section, the term “restrictive housing” means any type of detention that involves—

(1) removal from the general inmate population, whether voluntary or involuntary;

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

(3) inability to leave the room or cell for the vast majority of the day.

\* \* \* \* \*

