116TH CONGRESS
1ST SESSION

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”.

VerDate Sep 11 2014 04:05 Mar 15, 2019 Jkt 089200 PO 00000 Frm 00001 Fmt 6652 Sfmt 6201 E:\BILLS\S648.IS S648kjohnson on DSK79L0C42 with BILLS
SEC. 2. LIMITATION ON DETENTION OF PREGNANT WOMEN
AND MOTHERS OF NEWBORNS.

(a) Presumption of Release.—

(1) In general.—Except as provided in para-}

graph (2), the Secretary—

(A) shall not detain a person under any

provision of the Immigration and Nationality

Act (8 U.S.C. 1101 et seq.) during pregnancy

or postpartum recovery, pending a decision with

respect to whether the person is to be removed

from the United States; and

(B) shall immediately release any detainee

found to be pregnant.

(2) Exceptions.—The Secretary may detain

pursuant to the Immigration and Nationality Act (8

U.S.C. 1101 et seq.) a person during pregnancy or

postpartum recovery under extraordinary circum-

stances in which the Secretary makes an individual-

ized determination that credible, reasonable grounds

exist to believe that the person presents an imme-

diate and serious threat of hurting herself or others.

(3) Removal.—In a case in which detention is

the least restrictive means of effectuating the re-

moval from the United States of a pregnant person

who is the subject of a final order of deportation or

removal, the Secretary may, solely for the purpose of
such removal, detain the pregnant person for a period that is—

(A) the shortest possible period immediately preceding the removal of the person from the United States; and

(B) not more than 5 days.

(b) Weekly Review Required.—

(1) In general.—With respect to a detainee detained under paragraph (2) of subsection (a), not less frequently than once each week, the Secretary shall conduct an individualized review to determine whether the detainee continues to be subject to detention under that paragraph.

(2) Release.—In the case of a determination under paragraph (1) that a pregnant detainee is not subject to detention under subsection (a)(2), not later than 1 day after the date on which the Secretary makes the determination, the Secretary shall release the detainee.

SEC. 3. HUMANE TREATMENT OF PREGNANT WOMEN WHILE IN DETENTION.

(a) Prohibition on Restraint of Pregnant Detainees.—
(1) PROHIBITION.—Except as provided in paragraph (2), a detention facility shall not use a restraint on a detainee—

(A) known to be pregnant, including during—

(i) labor;

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

(iii) delivery; or

(B) during postpartum recovery.

(2) USE OF RESTRAINTS FOR MEDICAL PURPOSES AND IN EXTRAORDINARY CIRCUMSTANCES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), subject to subparagraph (B), use of a restraint on a detainee described in paragraph (1) may be permitted only—

(i) for a medical purpose if the lead medical staff of the detention facility who is a licensed health care provider has ordered the use of the restraint for the medical purpose; or

(ii) in an extraordinary circumstance, except for a medical purpose, in which the facility administrator has ordered the use
of the restraint after making an individualized determination that—

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

(II) reasonable grounds exist to believe the detainee presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method.

(B) REQUIREMENT FOR LEAST RESTRICTIVE RESTRAINTS.—In the rare event of an extraordinary circumstance described in subparagraph (A)(ii), only the least restrictive restraint necessary shall be used, except that—

(i) if a doctor, nurse, or other health professional treating a detainee described in paragraph (1) requests that a restraint not be used, the detention officer accompanying the detainee shall immediately remove any restraint;

(ii) under no circumstance shall a leg, waist, or four-point restraint be used;
(iii) under no circumstance shall a wrist restraint be used to bind the hands of a detainee described in paragraph (1) behind her back or to another person; and

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

(3) RECORD OF EXTRAORDINARY CIRCUMSTANCES.—

(A) REQUIREMENTS.—If a restraint is used on a detainee pursuant to paragraph (2)(A), not later than 5 days after the date on which the restraint was used, the facility administrator shall—

(i) make a written finding that describes the extraordinary circumstance that dictated the use of the restraint; and

(ii) submit the finding to the Director.

(B) RETENTION.—

(i) DETENTION FACILITY.—With respect to a written finding under subparagraph (A)(i), the facility administrator shall—

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

(II) shall make the finding available for public inspection.

(ii) Immigration and Customs Enforcement.—With respect to a written finding submitted to the Director under subparagraph (A)(ii), the Director shall maintain the written finding and make the finding available for public inspection.

(iii) Privacy.—With respect to a written finding made available for public inspection under clause (i) or (ii), the individually identifying information of a detainee shall not be made available for public inspection without the prior written consent of the detainee.

(b) Prohibition on Presence of Detention Officers.—

(1) In General.—Except as provided in paragraph (2), no detention officer shall be present in the room during a pelvic exam, labor, delivery, or treatment of any other symptom relating to a pregnancy of a detainee, unless specifically requested by medical personnel.
(2) EXCEPTION.—If the presence of a detention officer is requested by medical personnel, the detention officer shall—

(A) be female, if practicable; and

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

(3) USE OF RESTRAINTS.—If a restraint is used on a detainee pursuant to subsection (a)(2)(A), a detention officer shall remain immediately outside the room at all times so that the officer may promptly remove the restraint if requested by medical personnel, as required by subsection (a)(2)(B)(i).

(e) ACCESS TO SERVICES.—A pregnant detainee shall have access to health care services, including comprehensive services relating to reproductive health care and pregnancy, including—

(1) routine or specialized prenatal care;

(2) comprehensive counseling and assistance;

(3) postpartum follow-up;

(4) lactation services; and

(5) abortion services.

SEC. 4. REPORTING; RULEMAKING.

(a) REPORTS.—
(1) Reports by facility administrators.—Not later than 30 days after the end of each quarter of a fiscal year, the facility administrator of each detention facility that detained a pregnant detainee during the quarter shall submit to the Secretary a written report that includes, with respect to the quarter, the following:

(A) An account of every instance of the use of a restraint on a pregnant detainee, including the justification for such restraint and the name of the facility administrator who made the individualized determination under section 3(a)(2)(A)(ii).

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

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

(D) The number of pregnant detainees detained longer than 15 days.

(E) The number of pregnant detainees detained longer than 30 days.

(2) Audit and reports by Secretary.—Not later than 90 days after the end of each fiscal year, the Secretary shall—
(A) complete an audit of the information submitted under subparagraphs (B) through (E) of paragraph (1); and

(B) submit to the appropriate committees of Congress a report that includes all of the information submitted to the Secretary under paragraph (1), disaggregated by facility.

(3) Privacy.—A report submitted under this subsection shall not contain the individually identifying information of any detainee.

(4) Public inspection.—

(A) In general.—Except as provided in subparagraph (B), a report submitted under this subsection shall be made available for public inspection.

(B) Facility administrator.—A report submitted under this subsection that is made available for public inspection shall not contain the name of the facility administrator otherwise included under paragraph (1)(A).

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

SEC. 5. DEFINITIONS.

In this Act:
(1) **Appropriate Committees of Congress.**—The term “appropriate committees of Congress” means—

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

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

(2) **Detainee.**—The term “detainee” includes any adult or juvenile person detained by any Federal, State, or local law enforcement agency (including under contract or agreement with such agency) under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) **Detention Facility.**—The term “detention facility” means a Federal, State, or local government facility, or a privately owned and operated facility, that is used, in whole or in part, to hold individuals under the authority of the Director of U.S. Immigration and Customs Enforcement or the Commissioner of U.S. Customs and Border Protection, including a facility that—
(A) holds such individuals under a contract or agreement with the Director or Commissioner; or

(B) is used, in whole or in part, to hold individuals pursuant to an immigration detainer or similar request.

(4) DETENTION OFFICER.—The term “detention officer” means an individual who works at a detention facility, including an individual who works at a detention facility pursuant to contract or subcontract.

(5) DIRECTOR.—The term “Director” means the Director of U.S. Immigration and Customs Enforcement.

(6) FACILITY ADMINISTRATOR.—The term “facility administrator” means the official who is responsible for oversight of a detention facility or the designee of such official.

(7) POSTPARTUM RECOVERY.—The term “postpartum recovery” means the 6-week period, or longer, as determined by the licensed health care provider of a person, following delivery, including the entire period during which the person is in a medical facility, birthing center, or infirmary after birth.
(8) RERAINT.—The term “restraint” means any physical restraint or mechanical device used to control the movement of the body or limbs of a detainee body, including—

(A) flex cuffs;
(B) soft restraints;
(C) hard metal handcuffs;
(D) a black box;
(E) Chubb cuffs;
(F) leg irons;
(G) belly chains;
(H) a security (tether) chain; and
(I) a convex shield.

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