

PROTECTING THE HEALTH AND WELLNESS OF BABIES  
AND PREGNANT WOMEN IN CUSTODY ACT

SEPTEMBER 24, 2020.—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. 7718]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7718) to address the health needs of incarcerated women related to pregnancy and childbirth, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary .....	1
Background and Need for the Legislation .....	2
Hearings .....	9
Committee Consideration .....	9
Committee Votes .....	9
Committee Oversight Findings .....	9
New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate .....	9
Duplication of Federal Programs .....	10
Performance Goals and Objectives .....	10
Advisory on Earmarks .....	10
Section-by-Section Analysis .....	10
Changes in Existing Law Made by the Bill, as Reported .....	13

**Purpose and Summary**

H.R. 7718, the “Protecting the Health and Wellness of Babies and Pregnant Women in Custody Act,” would: (1) require the Bureau of Justice Statistics to collect and report data relating to the demographics and physical and mental health needs of incarcerated women who are pregnant, in labor, or in post-partum recovery, at the Federal, State, tribal, and local levels; (2) ensure that appropriate medical services and programs related to pregnancy

and childbirth are provided in the Bureau of Prisons (BOP) and made available to women in custody; (3) prohibit the use of restraints or restrictive housing, while in BOP or U.S. Marshals Service custody, during the period of pregnancy, labor, and postpartum recovery, unless these measures are necessary; (4) provide education and technical assistance by the National Institute of Corrections to state and local corrections facilities on appropriate medical care for pregnant women; (5) ensure training of BOP correctional officers at facilities housing women and of deputy U.S. Marshals, on the requirements of the bill; (6) order GAO studies on services and protections provided for pregnant incarcerated women in local and State correctional settings and in Federal pretrial detention facilities; and (7) authorize the Attorney General to make grants to State, tribal, and local governments, to promote and support the health needs of incarcerated pregnant women.

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

#### *A. The Rise of Women and Girls in the Criminal Justice System*

Over the past four decades, the total U.S. prison population has skyrocketed. There are almost 2.3 million people currently in our nation's prisons and jails,<sup>1</sup> which represents a more than 500% increase over the last 40 years. During the period from 1980 to the present, the federal prison population has grown from approximately 25,000 to 180,000—an increase of over 600%.<sup>2</sup> A topic that is not as widely discussed is the fact that women are the fastest-growing segment of the incarcerated population.<sup>3</sup> In the same time period, the number of women in the state prison population has grown by 834%, at more than double the pace of men.<sup>4</sup>

Today, the overall incarcerated population has begun to decrease slightly, although almost all of the reduction has been among men, and the proportion of incarcerated women remains on the rise.<sup>5</sup> Since 2000, the jail incarceration rate for women has risen 26% while the rate for men has fallen by 5%.<sup>6</sup>

In addition, at the present time, there are more women in prison than at any point in U.S. history. Nationally, 64 out of every 100,000 women were in prison in 2016.<sup>7</sup> Since 2013, the percentage of women prosecuted federally has consistently hovered around 13 percent.<sup>8</sup> At the state level, the rate at which women are incarcerated varies greatly. The state with the highest rate of female imprisonment is Oklahoma and the states with the lowest incarceration rates for women are Rhode Island and Massachusetts.<sup>9</sup> In 35 states, women's incarceration numbers have been higher than

<sup>1</sup> Pete Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2019*, Prison Policy Initiative (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html>.

<sup>2</sup> Federal Bureau of Prisons, *Statistics: Total Federal Inmates*, [https://www.bop.gov/about/statistics/population\\_statistics.jsp](https://www.bop.gov/about/statistics/population_statistics.jsp).

<sup>3</sup> Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth*, Prison Policy Initiative (Jan. 9, 2019), [https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html).

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Prison Policy Initiative, *State Policy Drivers of Prison Growth*, [https://www.prisonpolicy.org/images/women\\_overtime\\_rates\\_1922\\_2015.png](https://www.prisonpolicy.org/images/women_overtime_rates_1922_2015.png).

<sup>7</sup> The Sentencing Project, *Incarcerated Women and Girls* (May 10, 2018), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

<sup>8</sup> U.S. Sentencing Commission, *Quick Facts—Women in the Federal Offender Population* (July 2018), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Female\\_Offenders\\_FY17.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Female_Offenders_FY17.pdf).

men's, and in a few states, the growth of women's prison populations have counteracted any reductions in men's incarceration numbers.<sup>10</sup>

Further, women in jail are the fastest growing correctional population in the country, increasing 14-fold between 1970 and 2014.<sup>11</sup> This trend is even greater in small counties, where there has been a 31-fold increase between 1970 and 2014.<sup>12</sup> A Significantly, nearly half of all incarcerated women are held in jails.<sup>13</sup>

The explanation for exactly why women's representation in the criminal justice system has grown at twice the pace of men's does not yet exist because data on women have long been obscured by the larger scale of men's incarceration.<sup>14</sup> While policy makers have traditionally overlooked incarcerated women, this policy of neglect cannot continue as the number of women in prisons continues to increase.<sup>15</sup>

### *B. Pregnant Women in Prison*

It is difficult to know precisely how many pregnant women are in prison, and their pregnancy outcomes, because most of the data available is out of date and the methodology for gathering this information varies.<sup>16</sup> Data on maternal health and pregnancy outcomes are not recorded in national health statistics databases and there is no federal agency that collects data on pregnancy in prison.<sup>17</sup> As Dr. Carolyn Sufrin, an obstetrician and researcher at Johns Hopkins School of Medicine stated in testimony to the U.S. Commission on Civil Rights: "Women who don't count are not counted. That is the lack of any comprehensive or updated statistics about pregnancy among women behind bars signals the systematic disregard in the carceral system, and indeed our country, for incarcerated pregnant people".<sup>18</sup> That said, most studies find that somewhere between 3% and 6% of women entering the prison system are pregnant, with the highest rates of pregnancies being in local jails.<sup>19</sup> Statistics from the Bureau of Prisons show that there were 171 pregnancies in federal prison in 2018.<sup>20</sup>

<sup>10</sup> Sawyer, *supra* note 3.

<sup>11</sup> Vera Institute, *Overlooked: Women and Jails in an Era of Reform* (Apr. 2016), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy\\_downloads/overlooked-women-and-jails-report-updated.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf).

<sup>12</sup> *Id.* at 6.

<sup>13</sup> Aleks Kajstura, *Women's Mass Incarceration: The Whole Pie 2018* (Nov. 13, 2018), Prison Policy Initiative, <https://www.prisonpolicy.org/reports/pie2018women.html>.

<sup>14</sup> *Id.*

<sup>15</sup> Kerry Blakinger, *Can We Build a Better Women's Prison*, Wash. Post Mag. (Oct. 28, 2019), <https://www.washingtonpost.com/magazine/2019/10/28/prisons-jails-are-designed-men-can-we-build-better-womens-prison/?arc404=true>.

<sup>16</sup> Carolyn Sufrin et al., *Pregnancy Outcomes in US Prisons, 2016–2017*, Am. J. of Pub. Health, Vol. 106, No. 20 (May 2019) (hereinafter "Pregnancy Outcomes").

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Comm'n on Civil Rights, *Women in Prison: Seeking Justice Behind Bars* at 101 (Feb. 2020) (hereinafter "Women in Prison").

<sup>19</sup> E. Ann Carson, *Prisoners in 2014*, Bureau of Justice Statistics, Sep. 2015, <https://www.bjs.gov/content/pub/pdf/p14.pdf> (noting that in a 2004 survey, 3% of women in federal prisons and 4% of state prisoners were pregnant at their intake); see also Am. College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee Opinion No. 511 (Nov. 2011), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2011/11/health-care-for-pregnant-and-postpartum-incarcerated-women-and-adolescent-female.pdf> (stating that 6–10% of incarcerated women are pregnant, with most pregnancies concentrated in local jails.)

<sup>20</sup> E. Ann Carson, *Data Collected Under the First Step Act 2019*, Bureau of Justice Statistics (Mar. 2020), <https://www.bjs.gov/content/pub/pdf/dcf19.pdf>

### C. Prenatal Care in Prison

United States prisons and jails are required to provide adequate health care to people in their care;<sup>21</sup> however, as with most aspects of prison, correctional health care systems were originally created to serve a predominantly male population.<sup>22</sup> While the prison health care system is barely adequate for men, it fails to meet incarcerated women's basic needs.<sup>23</sup> The situation is even more dire for pregnant women in prison who have additional and unique health needs.

A significant portion of women come into the prison system with a history of poverty, substance abuse, and trauma and abuse.<sup>24</sup> Women who enter prison are also less likely to have had access to regular health care before their incarceration, especially appropriate prenatal care.<sup>25</sup> Moreover, women in prison are more likely to suffer from undiagnosed chronic illnesses, such as diabetes and high blood pressure, that can cause a high-risk pregnancy.<sup>26</sup> Despite the presence of these risk factors, most jails and prisons in most states do not screen women at intake, for pregnancy.<sup>27</sup>

Although most state prison systems require some form of medically provided prenatal care, the level of care varies widely from state to state.<sup>28</sup> Forty-three states do not require medical examinations as part of prenatal care.<sup>29</sup> Forty-one states do not require prenatal nutrition counseling or the provision of appropriate nutrition to incarcerated women.<sup>30</sup> Additionally, there are no detailed federal standards to ensure that women are actually receiving appropriate care. This helps to explain why a survey by the Bureau of Justice Statistics found that only half (54%) of pregnant women in prison reported receiving some form of prenatal care while incarcerated.<sup>31</sup> More alarming, 45 states do not have arrangements with local hospitals for deliveries.<sup>32</sup>

In addition to proper medical care, incarcerated pregnant women also need proper nutrition in order to have a healthy pregnancy. A pregnant woman needs to eat an extra 300 calories a day consisting of a balanced diet of grains, fruits, and vegetables.<sup>33</sup> Despite these minimum recommended nutritional guidelines, far too many pregnant women in prison do not have access to appropriate nutrition. For example, in one prison in Arizona, pregnant women were

<sup>21</sup> See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

<sup>22</sup> Penal Reform International, *Women in Prison: Incarcerated in a Man's World*, Penal Reform Briefing No.3 (2008), at 3.

<sup>23</sup> *Women in Prison*, at 98–99.

<sup>24</sup> *Pregnancy Outcomes*, at 799.

<sup>25</sup> 25 The Rebecca Project for Human Rights & National Women's Law Center, *Mothers Behind Bars: A State-by-State Report Card and Analysis of Federal Policies on Conditions of Confinement for Pregnant and Parenting Women and the Effect on their Children*, at 11 (Oct. 2010) (hereinafter "Mothers Behind Bars"), <https://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> Laura M. Maruschak, *Medical Problems of Jail Inmates* (NCJ–210696), Bureau of Justice Statistics Special Report. U.S. Dept of Just. (2006), <http://www.bjs.gov/content/pub/pdf/mpji.pdf>.

<sup>28</sup> *Mothers Behind Bars*, at 6.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See Laura M. Maruschak, *Medical Problems of Prisoners*, Bureau of Justice Statistics, U.S. Dept of Just. (last revised Apr. 22, 2008), <https://www.bjs.gov/content/pub/pdf/mpp.pdf>.

<sup>32</sup> *Mothers Behind Bars*, at 6.

<sup>33</sup> American Pregnancy Association, *Pregnancy Nutrition*, <https://americanpregnancy.org/pregnancy-health/pregnancy-nutrition/>.

provided only an extra peanut butter sandwich and a carton of milk.<sup>34</sup>

Failure to provide comprehensive health care to pregnant women leads to poor health outcomes for both the mother and the child, including early labor and low birth weight.<sup>35</sup> Babies born with a low birth weight are at increased risk for a variety of developmental problems related to health, psychological adjustment, and intellectual functioning.<sup>36</sup>

#### D. Use of Restraints

Prisons have routinely used restraints, also known as shackles, on both men and women while they receive medical care. While this practice is gender neutral, it fails to account for the unique medical needs of pregnant women. The use of restraints, often referred to as “shackling,” has serious health impacts on pregnant women, both before and during labor as well as during the postpartum period.

According to the American Medical Association, “us[ing] shackles to restrain a pregnant woman during the birthing process is a barbaric practice that needlessly inflicts excruciating pain and humiliation.”<sup>37</sup> The use of shackles during labor exacerbates pain, inhibits diagnosis of complications, and limits movement during the birthing process.<sup>38</sup> Shackles also impede a doctor’s ability to diagnose and treat labor complications, not to mention making it difficult to perform any emergency life-saving procedures.<sup>39</sup>

The use of shackles on pregnant women is harmful even when a woman is not in labor. Yet shackles are routinely used during transport to court appearances and even to doctor visits.<sup>40</sup> Use of shackles increases the likelihood that a woman will trip because pregnancy shifts the center of gravity and wrist constraints make it difficult for a woman to break her fall, making it more likely that she will fall directly on her stomach.<sup>41</sup> Additionally, belly chains can cause bruising around the stomach and make it more difficult for doctors to test for causes of pregnancy complications, such as infections and preterm bleeding.<sup>42</sup> Considering that most women in prison have committed non-violent offenses, the practice of shackling pregnant women cannot be justified.

<sup>34</sup> Lauren Castle, *Arizona Prisons Have a History of Women Giving Birth in their Cells*, Ariz. Republic (June 4, 2019), <https://www.azcentral.com/story/news/local/arizona/2019/06/04/arizona-prisons-history-women-giving-birth-cells-health-care-department-corrections/1306184001/>.

<sup>35</sup> Kenneth Leveno, *Prenatal Care and the Low Birth Weight Infant*, 66 J. Amer. Coll. Obstetricians and Gynecologists No. 5 (Nov. 1985), at 1.

<sup>36</sup> Stephen Morse, et al., *Early School-age Outcomes of Late Preterm Infants*, Pediatrics (Apr. 2009).

<sup>37</sup> Amer. Med. Ass’n, An “Act to Prohibit the Shackling of Pregnant Prisoners” Model State Legislation, file:///C:/Users/ebayisa/Downloads/shackling-pregnant-prisoners-issue-brief%20(11).pdf.

<sup>38</sup> Amer. Coll. of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee Opinion No. 511 (Nov 2011).

<sup>39</sup> Women in Prison, at 105.

<sup>40</sup> Tori DeAngelis, *The Restraint of Pregnant Inmates*, 47 Monitor on Psych. No.6 (June 2016), at 26, <https://www.apa.org/monitor/2016/06/restraint-inmates>.

<sup>41</sup> Lauryn King, *Labor in Chains: The Shackling of Pregnant Inmates*, Policy Perspectives, 25 J. of Pub. Policy & Pub. Admin. (2018).

<sup>42</sup> Am. Coll. of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee Opinion No. 511 (Nov. 2011), <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2011/11/health-care-for-pregnant-and-postpartum-incarcerated-women-and-adolescent-female.pdf>

In 2008, the BOP ended the practice of routinely shackling pregnant women<sup>43</sup> and the First Step Act of 2018 outlawed the practice except in very limited circumstances.<sup>44</sup> Both the American Correctional Association and the National Commission on Correctional Healthcare have adopted standards opposing the use of shackles; however, these standards are only guidelines and are voluntary.<sup>45</sup>

While 18 states have explicitly banned the practice of shackling pregnant women, 32 states, as well as the Bureau of Immigration and Customs Enforcement, fail to limit the use of restraints on pregnant women during transportation, labor and delivery, and postpartum recuperation.<sup>46</sup> Several states still have no policy at all for limiting the use of restraints on women during pregnancy, leaving many pregnant women still subject to this painful and dangerous practice.<sup>47</sup>

### *E. Use of Restrictive Housing*

In 2016, the Department of Justice issued a report on the use of restrictive housing in correctional settings, including the Bureau of Prisons.<sup>48</sup> In order to be able to analyze and compare a variety of scenarios, the report settled on three specific elements or features that serve to define the term “restrictive housing”: (1) removal from the general inmate population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another prisoner; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.<sup>49</sup> The DOJ report concluded that restrictive housing “should be used rarely, applied fairly, and subjected to reasonable constraints” and noted that “[i]t is the responsibility of all governments to ensure that this practice is used only as necessary—and never as a default solution.”<sup>50</sup>

Restrictive housing has long been a feature of prison in the United States. The justifications for its use have varied over time, as has acceptance of the practice. Solitary confinement gained popularity in the late 18th and early 19th centuries, when prison reformers in Pennsylvania promoted it as a pathway to repentance and rehabilitation. Over time, however, critics questioned whether the total isolation of the “Pennsylvania System,” as the method was called, actually promoted the rehabilitation its adherents promised.<sup>51</sup> Some claimed that the extreme practices caused mental ill-

<sup>43</sup> Bureau of Prisons, *Program Statement No. 5538.05, Escorted Trips* (Oct. 6, 2008), [https://www.aclu.org/files/pdfs/prison/bop\\_policy\\_escorted\\_trips\\_p5538\\_05.pdf](https://www.aclu.org/files/pdfs/prison/bop_policy_escorted_trips_p5538_05.pdf)

<sup>44</sup> First Step Act of 2018, Pub. Law. 115–391 § 301 (codified as amended at 18 U.S.C. § 4233) (hereinafter “First Step Act”).

<sup>45</sup> Am. Correctional Ass’n, *Public Correctional Policy on the Use of Restraints with Pregnant Offenders*, No. 2012–1 (Aug. 27, 2017), [http://www.aca.org/ACA\\_Prod\\_IMIS/DOCS/Pubs/Policies/Updated%20PDFs/PUBLIC-%20CORRECTIONAL%20POLICY%20ON%20USE%20OF%20RESTRAINTS%20WITH%20-PREGNANT%20OFFENDERS.pdf](http://www.aca.org/ACA_Prod_IMIS/DOCS/Pubs/Policies/Updated%20PDFs/PUBLIC-%20CORRECTIONAL%20POLICY%20ON%20USE%20OF%20RESTRAINTS%20WITH%20-PREGNANT%20OFFENDERS.pdf); see also Nat’l Comm’n on Correctional Health Care, *Position Statement: Women’s Health Care in Correctional Settings* (Oct. 2014), <https://www.nchc.org/womens-health-care>.

<sup>46</sup> Am. Civ. Liberties Union, Reproductive Freedom Project, *Briefing Paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers* (Oct. 2012), [https://www.aclu.org/sites/default/files/field\\_document/anti-shackling\\_briefing\\_paper\\_stand\\_alone.pdf](https://www.aclu.org/sites/default/files/field_document/anti-shackling_briefing_paper_stand_alone.pdf)

<sup>47</sup> Mothers Behind Bars, at 17.

<sup>48</sup> U.S. Dep’t of Just., *Report and Recommendations Concerning the Use of Restrictive Housing* (Jan. 2016) (hereinafter “DOJ Report on Restrictive Housing”), <https://www.justice.gov/archives/dag/file/815551/download>.

<sup>49</sup> *Id.* at 3.

<sup>50</sup> *Id.* at 1–2.

<sup>51</sup> Barbara Belbot, Eastern State Penitentiary, in *Encyclopedia of Prisons and Correctional Facilities* (Mary Bosworth ed., 2005).

ness, yet, even as solitary confinement declined in use, some prisons still used segregated housing to isolate the most difficult and disruptive prisoners.<sup>52</sup>

The 1970s and early 1980s marked the beginning of a “modern” era in restrictive housing, where factors like prison overcrowding, scaling back of programming, and increased violence led to the development of methods to control the prisoner population and where placing the most disruptive prisoners in restrictive housing was often considered the quickest and most effective solution.<sup>53</sup> By 1999, more than 30 states operated some form of supermax facility.<sup>54</sup>

In the 1990s and 2000s, correctional systems worked hard to manage their growing prison populations. As with many other prison systems, BOP experienced a substantial increase in the total number of inmates—but without a corresponding increase in the number of correctional staff.<sup>55</sup> The rising prisoner-to-officer ratio put additional stress on BOP operations. In response to a spike in prison violence, BOP implemented several measures, including harsher penalties for those who violated disciplinary rules and creation of restrictive housing units.<sup>56</sup> At the present time, BOP oversees 135 institutions, 122 of which are managed by BOP, and 13 of which are run by private contractors.<sup>57</sup> Most BOP facilities include space dedicated for restrictive housing.<sup>58</sup>

In a 2018 study titled “Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems,” the Vera Institute described the contemporary state of restrictive housing in the United States as follows:

Although cell size, recreational areas, and other characteristics of restrictive housing units varied, incarcerated people in these units were typically held in stark, isolated environments with little sensory stimulation or social interaction. Many cells were small and sparsely furnished, and some had no windows or natural light. Opportunities for therapeutic programming or any form of productive activity were scarce.

In the most restrictive housing, people were held in their cells for around 23 hours a day. They received up to one hour of out-of-cell recreation, often held in a small caged area or a bare concrete space, sometimes with limited access to fresh air and direct sunlight. In some systems, barred indoor enclosures were used for recreation at times.<sup>59</sup>

But in recent years, a growing chorus of correctional officials, policymakers, and reform advocates has called for substantial limitations on the use of restrictive housing, in the United States and

<sup>52</sup> DOJ Report on Restrictive Housing, at 6–7.

<sup>53</sup> *Id.* at 7 (citing CNA Analysis & Solutions, *Federal Bureau of Prisons: Special Housing Unit Review and Assessment* 25–28 (2014)).

<sup>54</sup> Chase Riveland, Nat’l Inst. of Corrections, *Supermax Prisons: Overview and General Considerations* (1999).

<sup>55</sup> DOJ Report on Restrictive Housing, at 8.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.*

<sup>59</sup> Léon Digard, *et al.*, Vera Inst., *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems* (May 2018) (hereinafter “Vera Study”), <https://www.vera.org/rethinking-restrictive-housing>.

abroad.<sup>60</sup> In response, a number of correctional systems have modified their restrictive housing programs, resulting in significant declines in their segregation populations.<sup>61</sup> In the First Step Act, for instance, Congress required annual reporting by BOP of “the number of prisoners who have been placed in solitary confinement at any time during the previous year”<sup>62</sup> and prohibited “room confinement” for juveniles (defined as “the involuntary placement of a covered juvenile alone in a cell, room, or area for any reason”) for any reason other than as a temporary response to the juvenile’s behavior that “poses a serious and immediate risk of physical harm to any individual . . .”<sup>63</sup>

According to a report by the Liman Center at Yale Law School, 27 states and the federal government have proposed or enacted legislation to regulate the use of restrictive housing.<sup>64</sup> On July 1, 2019, there were eight states (Arkansas, Georgia, Maryland, Massachusetts, Minnesota, Montana, New Jersey, and Texas) that had enacted legislation limiting the use of restrictive housing.<sup>65</sup> Massachusetts, Minnesota, Montana, and New Jersey passed general restrictions on the use of solitary confinement.<sup>66</sup> The bills in Arkansas, Georgia, Maryland, and Texas related to specific subpopulations of prisoners: pregnant women and individuals under age 18 or under age 21.<sup>67</sup> In addition, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, and Virginia, as well as the federal government (in the First Step Act), had enacted legislation requiring data collection in restrictive housing.<sup>68</sup>

According to the Vera study, over 150 years of research in psychiatry, neuroscience, epidemiology, and anthropology has documented the harmful effects of restrictive housing on the health and well-being of incarcerated people.<sup>69</sup> This evidence confirms what is perhaps understood intuitively: the practice can result in physical and psychological damage that can persist even after release.<sup>70</sup> Indeed, in June 2015, Supreme Court Justice Anthony Kennedy issued a five-page concurrence in *Davis v. Ayala*, in which he criticized the practice of placing inmates in “near-total isolation.”<sup>71</sup> In that opinion, Justice Kennedy also raised the possibility that the Court could address the issue of restrictive housing more directly in the future, writing that, “[i]n a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to determine whether workable alternative systems for long-term confinement exist and, if so, whether a correctional system should be required to adopt them.”<sup>72</sup>

Significantly, although it did not focus specifically on pregnant or postpartum women, the 2016 DOJ report singled out pregnant

<sup>60</sup> DOJ Report on Restrictive Housing, at 9.

<sup>61</sup> *Id.*

<sup>62</sup> First Step Act § 610.

<sup>63</sup> First Step Act § 613 (codified at 18 USC 5043(b)).

<sup>64</sup> Arianna Zoghi, Liman Center at Yale Law School, *Regulating Restrictive Housing: State and Federal Legislation on Solitary Confinement as of July 1, 2019—A Research Brief* (last revised July 18, 2019), at 1, [https://law.yale.edu/sites/default/files/area/center/liman/document/restrictive\\_housing\\_legislation\\_research\\_brief.pdf](https://law.yale.edu/sites/default/files/area/center/liman/document/restrictive_housing_legislation_research_brief.pdf).

<sup>65</sup> *Id.* at 2.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Vera Study.

<sup>70</sup> *Id.*

<sup>71</sup> 576 U.S. 257, 289 (2015) (Kennedy, J., concurring).

<sup>72</sup> *Id.* at 289–90.



women as a particularly vulnerable subgroup when it comes to the use of restrictive housing. The report made two key recommendations for implementation by the BOP:

(1) Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should not be placed in restrictive housing.

(2) In very rare situations, a woman who is pregnant, is postpartum, recently had a miscarriage, or recently had a terminated pregnancy may be placed in restrictive housing as a temporary response to behavior that poses a serious and immediate risk of physical harm. Even in such cases, this decision must be approved by the agency's senior official overseeing women's programs and services, in consultation with senior officials in health services, and must be reviewed every 24 hours.<sup>73</sup>

### **Hearings**

The July 16, 2019 hearing of the Subcommittee on Crime, Terrorism and Homeland Security on "Women and Girls in the Criminal Justice System" provided information used to develop this bipartisan bill.

### **Committee Consideration**

On September 15, 2020, the Committee met in open session and ordered the bill, H.R. 7718, favorably reported, by voice vote, a quorum being present.

### **Committee Votes**

No record votes occurred during the Committee's consideration of H.R. 7718.

### **Committee Oversight Findings**

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

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

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office (CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any

<sup>73</sup> DOJ Report on Restrictive Housing, at 101–02.

new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

### **Duplication of Federal Programs**

No provision of H.R. 7718 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 7718 would put in place a number of measures to ensure the health and safety of pregnant and post-partum women in the custody of the BOP and the USMS, including prohibiting the use of restraints and restrictive housing (except in very limited circumstances); direct GAO studies pertaining to the services and protections provided for pregnant incarcerated women in local and State correctional settings and in Federal pretrial facilities; and create a grant program to authorize the Attorney General to make grants to State, tribal, and local governments, to promote the health needs of incarcerated pregnant women in the criminal justice system.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 7718 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.

*Section 1. Short Title.* Section 1 sets forth the short title of the bill as the “Protecting the Health and Wellness of Babies and Pregnant Women in Custody Act.”

*Sec. 2. Data Collection.* Section 2 would require the Director of the Bureau of Justice Statistics, within one year of enactment of the bill, to collect and include in the National Prisoner Statistics Program and Annual Survey of Jails data relating to the demographics and physical and mental health needs of incarcerated women who are pregnant, in labor, or in post-partum recovery, at the Federal, State, tribal, and local levels.

*Sec. 3. Care for Federally Incarcerated Women Related to Pregnancy and Childbirth.* Section 3 would require the Director of the Bureau of Prisons (BOP) to ensure that appropriate medical services and programs are provided and made available to women in custody and would make the warden of each BOP facility that houses women responsible for ensuring that such services and programs are implemented in their facility. Section 3 would also direct the Attorney General to make rules establishing procedures for responding to unexpected childbirth deliveries, labor complications,

and medical complications related to pregnancy, in the event a woman in custody is unable to access a hospital in a timely manner. In addition, a pregnant woman in BOP custody who is diagnosed with having a substance use or mental health disorder would be entitled to treatment specifically targeted to address those issues, including treatment in a licensed hospital (if suffering from a substance use disorder) and transfer to a residential reentry program offering adequate treatment if such treatment cannot be provided in custody in a BOP facility.

*Sec. 4. Use of Restrictive Housing and Restraints on Incarcerated Pregnant Women During Pregnancy, Labor, and Postpartum Recovery Prohibited.* Section 4 would amend Title 18 of the United States Code to prohibit the use of restraints or restrictive housing during the period of pregnancy, labor, and postpartum recovery and to improve pregnancy care for women in Federal prisons. The prohibition on restraints and restrictive housing would apply in the case of pregnant women in BOP and U.S. Marshals Service (USMS) custody from the moment a pregnancy is confirmed, extending at least through 12 weeks after delivery, except if certain senior officials within the BOP or USMS and health care professionals determine that restraints are appropriate for the medical safety of the woman (subject to ongoing review). With regards to placement of pregnant women in BOP restrictive housing, an exception is contemplated if certain senior BOP officials make an individualized determination that restrictive housing is required as a temporary response to behavior that poses a serious and immediate risk of physical harm, but subject to ongoing review and monitoring as well as the development of an individualized plan to move the woman to less restrictive housing within a reasonable amount of time (not to exceed 2 days). Section 4 would require comprehensive and detailed reporting on the use, and rationale for the use, of restraints and restrictive housing involving pregnant women, both to the Directors of the BOP and the USMS (as applicable in the particular case) and to Congress every 6 months for a period of 10 years. Finally, this section would direct the Directors of the BOP and the USMS to establish processes for incarcerated persons to report violations of the provisions of this section, require notification to all necessary facility staff about a pregnancy and a pregnant woman's rights, and prohibit retaliation for reporting violations.

*Sec. 5. Treatment of Women with High-Risk Pregnancies.* Section 5 would amend Title 18 of the United States Code to add a section requiring the director of the BOP to provide appropriate care for women with high-risk pregnancies (i.e., those which "threaten[] the health or life of the woman or pregnancy as determined by a health care professional"), including obstetrical and gynecological care during pregnancy and postpartum recovery. Section 5 would also require the director of the BOP to transfer a woman deemed to have a high-risk pregnancy, who agrees to be transferred, to a residential reentry center with adequate care, during her pregnancy and during the period of postpartum recovery. If a proper residential reentry center is not available, Section 5 would direct that the woman be transferred to alternative housing, including with a family member. Any time served in the residential reentry center under these circumstances would be credited toward service of the woman's in-custody sentence.

*Sec. 6. Exemption of Incarcerated Pregnant Women from the Requirements for Suits by Prisoners.* This section would exempt incarcerated pregnant women from the requirements outlined in the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997e, for prisoner lawsuits.

*Sec. 7. Definitions.* This section includes definitions for key terms used in the bill, specifically what is meant by “in custody” (a broad term encompassing Federal, State, tribal or local correctional facilities, including pretrial and contract facilities), “other pregnancy outcome” (a pregnancy that ends in a stillbirth, miscarriage, or ectopic pregnancy), “postpartum recovery” (a 12-week period, or longer, as determined by a health care professional, following delivery), “restraints” (any physical or mechanical device used to control movement), and “restrictive housing” (removal from the general inmate population, whether voluntary or involuntary; placement in a locked room or cell, whether alone or with another inmate; and inability to leave that room or cell for the vast majority of the day).

*Sec. 8. Education and Technical Assistance.* Section 8 would require the Director of the National Institute of Corrections to provide education and technical assistance to state and local correctional facilities that house women regarding safe and appropriate medical care for pregnant women, including on the dangers and potential mental health consequences of the use of restraints and restrictive housing and on alternatives to their use.

*Sec. 9. Bureau of Prisons Staff and U.S. Marshals Training.* This section would require the Director of the BOP and the Director of the USMS to ensure training of BOP correctional officers at facilities housing women and of deputy U.S. Marshals, on the requirements of the bill. It would also ensure that training for new hires is completed within 30 days of hiring or beginning employment. Section 9 would mandate that the Director of the BOP and the USMS develop, and incorporate into their trainings, guidelines on the treatment of incarcerated women during pregnancy, labor, and postpartum recovery, to include guidelines on proper transportation, housing, nutritional requirements, and the right of a health care professional to request that restraints not be used.

*Sec. 10. GAO Study on State and Local Correctional Facilities.* Section 10 would direct the Comptroller General to conduct a study of services and protections provided for pregnant incarcerated women in local and State correctional settings, including policies on obstetrical and gynecological care, education on nutrition, health and safety risks associated with pregnancy, mental health and substance use treatment, access to prenatal and post-delivery support services and programs, the use of restraints and restrictive housing placement, and the extent to which the intent of such policies is fulfilled.

*Sec. 11. GAO Study on Federal Pretrial Detention Facilities.* Section 11 would direct the Comptroller General to conduct a study of services and protections provided for pregnant women who are incarcerated in Federal pretrial detention facilities (i.e., State, local, private, or other facilities under contract with the USMS for the purpose of housing Federal pretrial detainees), including what available data indicate about pregnant women detained or held in Federal pretrial detention facilities, existing USMS policies and standards that address the care of pregnant women in Federal pre-

trial detention facilities, and what is known about the care provided to pregnant women in Federal pretrial detention facilities. The Comptroller General would be directed to submit a report to Congress regarding the results of the study not later than two years after the enactment of the bill, identifying best practices for ensuring that Federal pretrial detention facilities implement services and protections for pregnant women consistent with the bill, as well as making recommendations for implementing such best practices within all Federal pretrial detention facilities.

*Sec. 12. PWIC Grant Program.* Section 12 would amend the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.) by adding section 508, the Pregnant Women in Custody Grant Program, the “PWIC Act of 2020,” to authorize the Attorney General to make grants (of up to five years in length) to State, tribal, and local governments, to promote the health needs of incarcerated pregnant women in the criminal justice system. Authorized uses of the grant funds include promotion of the safety and wellness of pregnant women in custody; provision of obstetrical and gynecological care; facilitation of resources and support services for nutrition and physical and mental health; establishment of policies limiting the use of restraints on pregnant women in custody; and maintenance, establishment and building of post-delivery lactation and nursery care or residential programs that keep the infant with the mother and to promote and facilitate bonding skills for incarcerated pregnant women and women with dependent children. Eligible applicants for grant funds would be State or territory departments of corrections; tribal entities that operate a correctional facility; units of local government that operate a prison or jail that houses women; and local nonprofit organizations with expertise in providing health services to incarcerated pregnant women that have partnered with a States or units of local government that operate correctional facilities. This section would provide an explicit exception from the general rule against the use of grant funds for construction, to allow for the construction of rooms to facilitate lactation, nursery, obstetrical, or gynecological services. When determining which jurisdictions should be awarded funds, this subsection would require the Attorney General to give priority to States or units of local government that have enacted laws or policies and implemented services or pilot programs for incarcerated pregnant women aimed at enhancing the safety and wellness of pregnant women in custody. This section would authorize \$5,000,000 for fiscal years 2021 through 2023 and \$6,000,000 for fiscal years 2024 and 2025 and would require that recipients of funds adhere to the nondiscrimination provisions of the Violence Against Women Act of 1994.

*Sec. 13. Placement in Prerelease Custody.* This section would amend section 3624(c) of Title 18, which provides for placement of BOP prisoners in prerelease custody, to allow placement of a pregnant woman in prerelease custody for the two months immediately prior to her due date, if her due date falls within the final year of her term of imprisonment.

#### 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 II—CRIMINAL PROCEDURE**

\* \* \* \* \*

**CHAPTER 229—POSTSENTENCE ADMINISTRATION**

\* \* \* \* \*

**SUBCHAPTER C—IMPRISONMENT**

\* \* \* \* \*

**§ 3624. Release of a prisoner**

(a) **DATE OF RELEASE.**—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) **CREDIT TOWARD SERVICE OF SENTENCE FOR SATISFACTORY BEHAVIOR.**—(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence of up to 54 days for each year of the prisoner's sentence imposed by the court, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

(3) The Attorney General shall ensure that the Bureau of Prisons has in effect an optional General Educational Development pro-

gram for inmates who have not earned a high school diploma or its equivalent.

(4) Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

(c) PRERELEASE CUSTODY.—

(1) IN GENERAL.—The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility. *Notwithstanding any other provision of this paragraph, in the case of a pregnant woman in custody, if that woman's due date is within the final year of her term of imprisonment, that woman may be placed into prerelease custody beginning not earlier than the date that is 2 months prior to that woman's due date.*

(2) HOME CONFINEMENT AUTHORITY.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.

(3) ASSISTANCE.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) NO LIMITATIONS.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

(5) REPORTING.—Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and number of prisoners not being placed in community corrections facilities for each reason set forth, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

(6) ISSUANCE OF REGULATIONS.—The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Reauthorization Act of 2018, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is—

(A) conducted in a manner consistent with section 3621(b) of this title;

(B) determined on an individual basis; and

(C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community.

(d) ALLOTMENT OF CLOTHING, FUNDS, AND TRANSPORTATION.— Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner with—

(1) suitable clothing;

(2) an amount of money, not more than \$500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) SUPERVISION AFTER RELEASE.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(f) MANDATORY FUNCTIONAL LITERACY REQUIREMENT.—

(1) The Attorney General shall direct the Bureau of Prisons to have in effect a mandatory functional literacy program for all mentally capable inmates who are not functionally literate in each Federal correctional institution within 6 months from the date of the enactment of this Act.

(2) Each mandatory functional literacy program shall include a requirement that each inmate participate in such program for a mandatory period sufficient to provide the inmate with an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to successful completion of such programs shall be developed and implemented.

(3) As used in this section, the term "functional literacy" means—



(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test.

(5) The Chief Executive Officer of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.

(g) PRERELEASE CUSTODY OR SUPERVISED RELEASE FOR RISK AND NEEDS ASSESSMENT SYSTEM PARTICIPANTS.—

(1) ELIGIBLE PRISONERS.—This subsection applies in the case of a prisoner (as such term is defined in section 3635) who—

(A) has earned time credits under the risk and needs assessment system developed under subchapter D (referred to in this subsection as the “System”) in an amount that is equal to the remainder of the prisoner’s imposed term of imprisonment;

(B) has shown through the periodic risk reassessments a demonstrated recidivism risk reduction or has maintained a minimum or low recidivism risk, during the prisoner’s term of imprisonment;

(C) has had the remainder of the prisoner’s imposed term of imprisonment computed under applicable law; and

(D)(i) in the case of a prisoner being placed in prerelease custody, the prisoner—

(I) has been determined under the System to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner; or

(II) has had a petition to be transferred to prerelease custody or supervised release approved by the warden of the prison, after the warden’s determination that—

(aa) the prisoner would not be a danger to society if transferred to prerelease custody or supervised release;

(bb) the prisoner has made a good faith effort to lower their recidivism risk through participation in recidivism reduction programs or productive activities; and

(cc) the prisoner is unlikely to recidivate; or

(ii) in the case of a prisoner being placed in supervised release, the prisoner has been determined under the System to be a minimum or low risk to recidivate pursuant to the last reassessment of the prisoner.

(2) TYPES OF PRERELEASE CUSTODY.—A prisoner shall be placed in prerelease custody as follows:

(A) HOME CONFINEMENT.—

(i) IN GENERAL.—A prisoner placed in prerelease custody pursuant to this subsection who is placed in home confinement shall—

(I) be subject to 24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time, in the case of any violation of subclause (II);

(II) remain in the prisoner's residence, except that the prisoner may leave the prisoner's home in order to, subject to the approval of the Director of the Bureau of Prisons—

(aa) perform a job or job-related activities, including an apprenticeship, or participate in job-seeking activities;

(bb) participate in evidence-based recidivism reduction programming or productive activities assigned by the System, or similar activities;

(cc) perform community service;

(dd) participate in crime victim restoration activities;

(ee) receive medical treatment;

(ff) attend religious activities; or

(gg) participate in other family-related activities that facilitate the prisoner's successful reentry such as a family funeral, a family wedding, or to visit a family member who is seriously ill; and

(III) comply with such other conditions as the Director determines appropriate.

(ii) ALTERNATE MEANS OF MONITORING.—If the electronic monitoring of a prisoner described in clause (i)(I) is infeasible for technical or religious reasons, the Director of the Bureau of Prisons may use alternative means of monitoring a prisoner placed in home confinement that the Director determines are as effective or more effective than the electronic monitoring described in clause (i)(I).

(iii) MODIFICATIONS.—The Director of the Bureau of Prisons may modify the conditions described in clause (i) if the Director determines that a compelling reason exists to do so, and that the prisoner has demonstrated exemplary compliance with such conditions.

(iv) DURATION.—Except as provided in paragraph (4), a prisoner who is placed in home confinement shall remain in home confinement until the prisoner has served not less than 85 percent of the prisoner's imposed term of imprisonment.

(B) RESIDENTIAL REENTRY CENTER.—A prisoner placed in prerelease custody pursuant to this subsection who is placed at a residential reentry center shall be subject to such conditions as the Director of the Bureau of Prisons determines appropriate.

(3) SUPERVISED RELEASE.—If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of

supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.

(4) DETERMINATION OF CONDITIONS.—In determining appropriate conditions for prisoners placed in prerelease custody pursuant to this subsection, the Director of the Bureau of Prisons shall, to the extent practicable, provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody, so as to most effectively prepare such prisoners for reentry.

(5) VIOLATIONS OF CONDITIONS.—If a prisoner violates a condition of the prisoner's prerelease custody, the Director of the Bureau of Prisons may impose such additional conditions on the prisoner's prerelease custody as the Director of the Bureau of Prisons determines appropriate, or revoke the prisoner's prerelease custody and require the prisoner to serve the remainder of the term of imprisonment to which the prisoner was sentenced, or any portion thereof, in prison. If the violation is nontechnical in nature, the Director of the Bureau of Prisons shall revoke the prisoner's prerelease custody.

(6) ISSUANCE OF GUIDELINES.—The Attorney General, in consultation with the Assistant Director for the Office of Probation and Pretrial Services, shall issue guidelines for use by the Bureau of Prisons in determining—

(A) the appropriate type of prerelease custody or supervised release and level of supervision for a prisoner placed on prerelease custody pursuant to this subsection; and

(B) consequences for a violation of a condition of such prerelease custody by such a prisoner, including a return to prison and a reassessment of evidence-based recidivism risk level under the System.

(7) AGREEMENTS WITH UNITED STATES PROBATION AND PRETRIAL SERVICES.—The Director of the Bureau of Prisons shall, to the greatest extent practicable, enter into agreements with United States Probation and Pretrial Services to supervise prisoners placed in home confinement under this subsection. Such agreements shall—

(A) authorize United States Probation and Pretrial Services to exercise the authority granted to the Director pursuant to paragraphs (3) and (4); and

(B) take into account the resource requirements of United States Probation and Pretrial Services as a result of the transfer of Bureau of Prisons prisoners to prerelease custody or supervised release.

(8) ASSISTANCE.—United States Probation and Pretrial Services shall, to the greatest extent practicable, offer assistance to any prisoner not under its supervision during prerelease custody under this subsection.

(9) MENTORING, REENTRY, AND SPIRITUAL SERVICES.—Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring, reentry, or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated, except that the warden of the facil-

ity at which the prisoner was incarcerated may waive the requirement under this paragraph if the warden finds that the provision of such services would pose a significant security risk to the prisoner, persons who provide such services, or any other person. The warden shall provide written notice of any such waiver to the person providing such services and to the prisoner.

(10) TIME LIMITS INAPPLICABLE.—The time limits under subsections (b) and (c) shall not apply to prerelease custody under this subsection.

(11) PRERELEASE CUSTODY CAPACITY.—The Director of the Bureau of Prisons shall ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners.

\* \* \* \* \*

**PART III—PRISONS AND PRISONERS**

\* \* \* \* \*

**CHAPTER 303—BUREAU OF PRISONS**

Sec.

\* \* \* \* \*

4050. Secure firearms storage.

4051. *Treatment of incarcerated pregnant women.*

\* \* \* \* \*

**§4051. *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 health care appropriate for a high-risk pregnancy, including obstetrical and gynecological care, during pregnancy and post-partum recovery.*

(b) **HIGH-RISK PREGNANCIES.**—

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

(2) **PRIORITY.**—*The Residential Reentry Center to which an incarcerated pregnant woman is transferred pursuant to paragraph (1) shall be in a geographical location that is close to the family members of the incarcerated pregnant woman. In the case that a Residential Reentry Center is unavailable, the incarcerated pregnant woman shall be transferred to alternative housing, including housing with a family member.*

(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 has been approved by the woman's health care professional, at no expense to the woman.*

(4) **MONITORING.**—*In the case that an incarcerated pregnant woman transferred to alternative housing pursuant to this*

section is monitored electronically, an ankle monitor may not be used on the woman, unless there is no feasible alternative for monitoring the woman.

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

(6) *CREDIT FOR PRETRIAL CUSTODY.*—In the case of an incarcerated pregnant woman, any time accrued in pretrial custody shall be credited toward service of the woman’s sentence.

(c) *DEFINITIONS.*—In this section:

(1) *FAMILY MEMBER.*—The term “family member” means any individual related by blood or affinity whose close association with the incarcerated pregnant woman is the equivalent of a family relationship, including a parent, sibling, child, or individual standing in loco parentis.

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

(3) *HEALTH CARE PROFESSIONAL.*—

(A) *IN GENERAL.*—The term “health care professional” means—

(i) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;

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

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

(B) *OTHER HEALTH CARE SERVICES.*—A person is capable of providing health care services if the person is—

(i) a podiatrist, dentist, clinical psychologist, optometrist, or chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(ii) a nurse practitioner, nurse-midwife, clinical social worker, or physician’s assistant who is authorized to practice under State law and who is performing within the scope of their practice as defined under State law; and

(iii) any health care professional from whom an employer or the employer’s group health plan’s benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

(C) *AUTHORIZED TO PRACTICE IN THE STATE.*—The term “authorized to practice in the State” means that a professional must be authorized to diagnose and treat physical or mental health conditions under the laws of the State in which the professional practices and where the facility is located.

(4) *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.

(5) *POST-PARTUM RECOVERY.*—The term “post-partum recovery” means the 3-month period beginning on the date on which an incarcerated pregnant woman gives birth.

\* \* \* \* \*

**CHAPTER 317—INSTITUTIONS FOR WOMEN**

Sec.

4321. Board of Advisers.

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

*4322. Use of restraints and restrictive housing on incarcerated women during the period of pregnancy, labor, and postpartum recovery prohibited and to improve pregnancy care for women in Federal prisons.*

\* \* \* \* \*

**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 restraints and restrictive housing on incarcerated women during the period of pregnancy, labor, and postpartum recovery prohibited and to improve pregnancy care for women in Federal prisons**

(a) PROHIBITION.—*Except as provided in subsection (b), 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 placed in restraints or held in restrictive housing.*

(b) EXCEPTIONS.—



(1) *USE OF RESTRAINTS.*—The prohibition under subsection (a) shall not apply if the senior Bureau of Prisons official or United States Marshals Service official overseeing women's health and services and a health care professional responsible for the health and safety of the incarcerated woman determines that the use of restraints is appropriate for the medical safety of the woman, and the health care professional reviews such determination not later than every 6 hours after such use is initially approved until such use is terminated.

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

(3) *ACCESS TO CARE.*—Immediately upon the cessation of the use of restraints or restrictive housing as outlined in this subsection, the Director of the Bureau of Prisons or the United States Marshal Service shall provide the incarcerated woman with immediate access to physical and mental health assessments and all recommended treatment.

(4) *RESPONSE TO BEHAVIORAL RISKS IN THE BUREAU OF PRISONS.*—

(A) *RESTRICTIVE HOUSING.*—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.

(B) *REVIEW.*—The official who makes a determination under subparagraph (A) shall review such determination every 4 hours for the purpose of removing an incarcerated woman as quickly as feasible from restrictive housing.

(C) *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, not to exceed 2 days.

(D) *MONITORING.*—An incarcerated woman who is placed in restrictive housing pursuant to this paragraph shall be—

- (i) monitored every hour;
- (ii) placed in a location visible to correctional officers; and
- (iii) prohibited from being placed in solitary confinement if the incarcerated woman is in her third trimester.

(c) *REPORTS.*—

(1) *REPORT TO THE DIRECTOR AND HEALTH CARE PROFESSIONAL AFTER THE USE OF RESTRAINTS.*—If an official identified in subsection (b)(1) or a correctional officer uses restraints on an incarcerated woman under subsection (b), that official (or an officer or marshal designated by that official) or correctional officer shall submit, not later than 30 days after placing the

woman in restraints, to the Director of the Bureau of Prisons or the Director of the U.S. Marshal Service, as applicable, a written report which describes the facts and circumstances surrounding the use of restraints, and includes each of the following:

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

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

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

(2) REPORT TO CONGRESS.—Beginning on the date that is 6 months after the date of enactment of the Protecting the Health and Wellness of Babies and Pregnant Women in Custody Act, and every 6 months thereafter for a period of 10 years, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on—

(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.

(3) REPORT TO THE DIRECTOR AND HEALTH CARE PROFESSIONAL AFTER PLACEMENT IN RESTRICTIVE HOUSING.—If an official identified in subsection (b)(3), correctional officer, or United States Marshal places or causes an incarcerated woman to be placed in restrictive housing under such subsection, that official, correctional officer, or United States Marshal shall submit, not later than 30 days after placing or causing the placement of the incarcerated woman in restrictive housing, 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.

(4) REPORT TO CONGRESS.—Beginning on the date that is 6 months after the date of enactment of the Protecting the Health and Wellness of Babies and Pregnant Women in Custody Act, and every 6 months thereafter for a period of 10 years, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the information described in paragraph (3).

(d) NOTICE.—Not later than 24 hours after the confirmation of an incarcerated woman’s pregnancy 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 restraints and restrictive housing placements under this section;

(2) of the incarcerated woman’s right to make a confidential report of a violation of restrictions on the use of restraints or 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 this 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 incarcerated pregnant woman’s rights under subsection (a).

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

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

(i) DEFINITION.—In this section:

(1) 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.

(2) RESTRICTIVE HOUSING.—The term “restrictive housing” means any type of detention that involves—

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

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

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

\* \* \* \* \*

## CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT

\* \* \* \* \*

### SEC. 7. SUITS BY PRISONERS.

(a) **APPLICABILITY OF ADMINISTRATIVE REMEDIES.**—No action shall be brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted. *This subsection shall not apply with respect to an incarcerated pregnant woman who brings an action relating to or affecting the woman's pregnancy.*

(b) **FAILURE OF STATE TO ADOPT OR ADHERE TO ADMINISTRATIVE GRIEVANCE PROCEDURE.**—The failure of a State to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action under section 3 or 5 of this Act.

(c) **DISMISSAL.**—(1) The court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief.

(2) In the event that a claim is, on its face, frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief, the court may dismiss the underlying claim without first requiring the exhaustion of administrative remedies.

(d) **ATTORNEY'S FEES.**—(1) In any action brought by a prisoner, *except an incarcerated pregnant woman*, who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 2 of the Revised Statutes of the United States (42 U.S.C. 1988), such fees shall not be awarded, except to the extent that—

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 2 of the Revised Statutes; and

(B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

(ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

(2) Whenever a monetary judgment is awarded in an action described in paragraph (1), a portion of the judgment (not to exceed 25 percent) shall be applied to satisfy the amount of attorney's fees awarded against the defendant. If the award of attorney's fees is not greater than 150 percent of the judgment, the excess shall be paid by the defendant.

(3) No award of attorney's fees in an action described in paragraph (1) shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of title 18, United States Code, for payment of court-appointed counsel.

(4) Nothing in this subsection shall prohibit a prisoner from entering into an agreement to pay an attorney's fee in an amount greater than the amount authorized under this subsection, if the fee is paid by the individual rather than by the defendant pursuant to section 2 of the Revised Statutes of the United States (42 U.S.C. 1988).

(e) LIMITATION ON RECOVERY.—No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18, United States Code).

(f) HEARINGS.—(1) To the extent practicable, in any action brought with respect to prison conditions in Federal court pursuant to section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983), or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility, pretrial proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other telecommunications technology without removing the prisoner from the facility in which the prisoner is confined.

(2) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

(g) WAIVER OF REPLY.—(1) Any defendant may waive the right to reply to any action brought by a prisoner confined in any jail, prison, or other correctional facility under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) or any other Federal law. Notwithstanding any other law or rule of procedure, such waiver shall not constitute an admission of the allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed.

(2) The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits.

(h) DEFINITION.—As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

\* \* \* \* \*

---

**OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF  
1968**

\* \* \* \* \*

## TITLE I—JUSTICE SYSTEM IMPROVEMENT

\* \* \* \* \*

## PART E—BUREAU OF JUSTICE ASSISTANCE GRANT PROGRAMS

**Subpart 1—Edward Byrne Memorial Justice Assistance Grant Program**

\* \* \* \* \*

**[SEC. 508. AUTHORIZATION OF APPROPRIATIONS.**

¶There is authorized to be appropriated to carry out this subpart \$1,095,000,000 for each of the fiscal years 2006 through 2012.]

**SEC. 508. PREGNANT WOMEN IN CUSTODY GRANT PROGRAM.**

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

(b) *ESTABLISHMENT.*—The Attorney General may make grants to eligible entities that have established a program to promote the health needs of incarcerated pregnant women in the criminal justice system at the State, tribal, and local levels or have declared their intent to establish such a program. Eligible entities shall—

(1) promote the safety and wellness of pregnant women in custody;

(2) provide services for obstetrical and gynecological care, for women in custody;

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

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

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

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

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

(1) a State or territory department of corrections;

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

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

(4) a locally-based nonprofit organization, that has partnered with a State or unit of local government that operates a correctional facility, with expertise in providing health services to incarcerated pregnant women.

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

(f) *ADMINISTRATIVE COSTS.*—Not more than 5 percent of a grant awarded under this section may be used for costs incurred to administer such grant.

(g) *CONSTRUCTION COSTS.*—Notwithstanding any other provision of this Act, no funds provided under this section may be used, directly or indirectly, for construction projects, other than new construction or upgrade to a facility used to provide lactation, nursery, obstetrical, or gynecological services.

(h) *PRIORITY FUNDING FOR STATES THAT PROVIDE PROGRAMS AND SERVICES FOR INCARCERATED WOMEN RELATED TO PREGNANCY AND CHILDBIRTH.*—In determining the amount provided to a State or unit of local government under this section, the Attorney General shall give priority to States or units of local government that have enacted laws or policies and implemented services or pilot programs for incarcerated pregnant women aimed at enhancing the safety and wellness of pregnant women in custody, including providing services for obstetrical and gynecological care, resources and support services for nutrition and physical and mental health, and post-delivery lactation and nursery care or residential programs to keep the infant with the mother and to promote and facilitate bonding skills for incarcerated pregnant women and women with dependent children.

(i) *SUBGRANT PRIORITY.*—A State that receives a grant under this section shall prioritize subgrants to a unit of local government within the State that has established a pilot program that enhances safety and wellness of pregnant women in custody.

(j) *FEDERAL SHARE.*—

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

(2) *WAIVER.*—The requirement of paragraph (1) may be waived by the Assistant Attorney General upon a determination that the financial circumstances affecting the applicant warrant a finding that such a waiver is equitable.

(k) *COMPLIANCE AND REDIRECTION OF FUNDS.*—

(1) *IN GENERAL.*—Not later than 1 year after an eligible entity receives a grant under this section, such entity shall implement a policy that is substantially similar to the policy under section 3 of Protecting the Health and Wellness of Babies and Pregnant Women in Custody Act.

(2) *EXTENSION.*—The Attorney General may provide a 120-day extension to an eligible entity that is making good faith efforts to collect the information required under paragraph (1).

(l) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to carry out this section, to remain available until expended—

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

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

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

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

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

(m) *FUNDS TO BE SUPPLEMENTAL.*—To receive a grant under this section, the eligible entity shall certify to the Attorney General that the amounts received under the grant shall be used to supplement, not supplant, non-Federal funds that would otherwise be

available for programs or services in the prison where funds will be used.

(n) *UNOBLIGATED AND UNSPENT FUNDS.*—Funds made available pursuant to this section that remain unobligated for a period of 6 months after the end of the fiscal year for which the funds have been appropriated shall be awarded to other recipients of this grant.

(o) *CIVIL RIGHTS OBLIGATION.*—A recipient of a grant under this section shall be subject to the nondiscrimination requirement under section 40002(b)(13) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(b)(13)).

(p) *DEFINITIONS.*—In this section, the term “in custody” means, with respect to an individual, that the individual is under the supervision of a Federal, State, tribal, or local correctional facility, including pretrial and contract facilities, and juvenile or medical or mental health facilities.

\* \* \* \* \*

