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S. 2135

To require U.S. Customs and Border Protection to perform an initial health screening on detainees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2019

Mr. UDALL (for himself, Mr. BROWN, and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require U.S. Customs and Border Protection to perform an initial health screening on detainees, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Humanitarian Standards for Individuals in Customs and
6 Border Protection Custody Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Initial health screening protocol.
 Sec. 4. Water, sanitation, and hygiene.
 Sec. 5. Food and nutrition.
 Sec. 6. Shelter.
 Sec. 7. Coordination and surge capacity.
 Sec. 8. Training.
 Sec. 9. Interfacility transfer of care.
 Sec. 10. Planning and initial implementation.
 Sec. 11. Contractor compliance.
 Sec. 12. Inspections.
 Sec. 13. GAO report.
 Sec. 14. Rule of construction.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) INTERPRETATION SERVICES.—The term
 4 “interpretation services” includes translation serv-
 5 ices that are performed either in-person or through
 6 a telephone or video service.

7 (2) CHILD.—The term “child” has the meaning
 8 given the term in section 101(b)(1) of the Immigra-
 9 tion and Nationality Act (8 U.S.C. 1101(b)(1)).

10 (3) U.S. CUSTOMS AND BORDER PROTECTION
 11 FACILITY.—The term “U.S. Customs and Border
 12 Protection Facility” includes—

- 13 (A) U.S. Border Patrol stations;
- 14 (B) ports of entry;
- 15 (C) checkpoints;
- 16 (D) forward operating bases;
- 17 (E) secondary inspection areas; and
- 18 (F) short-term custody facilities.

19 (4) FORWARD OPERATING BASE.—The term
 20 “forward operating base” means a permanent facil-

1 ity established by CBP in forward or remote loca-
2 tions, and designated as such by CBP.

3 **SEC. 3. INITIAL HEALTH SCREENING PROTOCOL.**

4 (a) IN GENERAL.—The Commissioner of U.S. Cus-
5 toms and Border Protection (referred to in this Act as
6 the “Commissioner”), in consultation with the Secretary
7 of Health and Human Services, the Administrator of the
8 Health Resources and Services Administration, and non-
9 governmental experts in the delivery of health care in hu-
10 manitarian crises and in the delivery of health care to chil-
11 dren, shall develop guidelines and protocols for the provi-
12 sion of health screenings and appropriate medical care for
13 individuals in the custody of U.S. Customs and Border
14 Protection (referred to in this Act as “CBP”), as required
15 under this section.

16 (b) INITIAL SCREENING AND MEDICAL ASSESS-
17 MENT.—The Commissioner shall ensure that any indi-
18 vidual who is detained in the custody of CBP (referred
19 to in this Act as a “detainee”) receives an initial in-person
20 screening by a licensed medical professional in accordance
21 with the standards described in subsection (c)—

22 (1) to assess and identify any illness, condition,
23 or age-appropriate mental or physical symptoms that
24 may have resulted from distressing or traumatic ex-
25 periences;

1 (2) to identify acute conditions and high-risk
2 vulnerabilities; and

3 (3) to ensure that appropriate healthcare is
4 provided to individuals as needed, including pedi-
5 atric, obstetric, and geriatric care.

6 (c) STANDARDIZATION OF INITIAL SCREENING AND
7 MEDICAL ASSESSMENT.—

8 (1) IN GENERAL.—The initial screening and
9 medical assessment required under subsection (b)
10 shall include—

11 (A) an interview and the use of a stand-
12 ardized medical intake questionnaire or the
13 equivalent;

14 (B) screening of vital signs, including pulse
15 rate, body temperature, blood pressure, oxygen
16 saturation, and respiration rate;

17 (C) screening for blood glucose for known
18 or suspected diabetics;

19 (D) weight assessment of detainees who
20 are younger than 12 years of age;

21 (E) a physical examination; and

22 (F) a risk assessment and the development
23 of a plan for monitoring and care, as appro-
24 priate.

1 (2) PRESCRIPTION MEDICATION.—The medical
2 professional conducting the initial screening and
3 medical assessment shall review any prescribed
4 medication that is in the detainee’s possession or
5 that was confiscated by CBP upon arrival and deter-
6 mine if the medication may be kept by the detainee
7 for use during detention, properly stored by CBP
8 with appropriate access for use during detention, or
9 maintained with the detained individual’s personal
10 property. A detainee may not be denied the use of
11 necessary and appropriate medication for the man-
12 agement of the detainee’s chronic illness.

13 (3) RULE OF CONSTRUCTION.—Nothing in this
14 subsection may be construed as requiring detainees
15 to disclose their medical status or history.

16 (d) TIMING.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), the initial screening and medical assess-
19 ment required under this section shall take place as
20 soon as practicable, but not later than 12 hours
21 after a detainee’s arrival at a CBP facility.

22 (2) HIGH-PRIORITY INDIVIDUALS.—The initial
23 screening and medical assessment required under
24 this section shall take place as soon as practicable,
25 but not later than 6 hours after a detainee’s arrival

1 at a CBP facility if the individual reasonably self-
2 identifies as having a medical condition that requires
3 prompt medical attention or is—

4 (A) exhibiting signs of acute or potentially
5 severe physical or mental illness, or otherwise
6 has an acute or chronic physical or mental dis-
7 ability or illness;

8 (B) pregnant;

9 (C) a child (with priority given, as appro-
10 priate, to the youngest children); or

11 (D) elderly.

12 (e) FURTHER CARE.—

13 (1) IN GENERAL.—If, as a result of the initial
14 health screening and medical assessment, the li-
15 censed medical professional conducting the screening
16 or assessment determines that 1 or more of the de-
17 tainee’s vital sign measurements are outside normal
18 ranges in accordance with the National Emergency
19 Services Education Standards, or if the detainee is
20 identified as high-risk or in need of medical inter-
21 vention, the detainee shall be provided, as expedi-
22 tiously as possible, with an in-person or technology-
23 facilitated medical consultation with a licensed emer-
24 gency care professional.

25 (2) RE-EVALUATION.—

1 (A) IN GENERAL.—Detainees described in
2 paragraph (1) shall be reevaluated within 24
3 hours and monitored thereafter as determined
4 by an emergency care professional.

5 (B) REEVALUATION PRIOR TO TRANSPOR-
6 TATION.—In addition to the reevaluations
7 under subparagraph (A), detainees shall have
8 all vital signs reevaluated and be cleared as safe
9 to travel by a medical professional before being
10 transported.

11 (3) PSYCHOLOGICAL AND MENTAL CARE.—The
12 Commissioner shall ensure that detainees who have
13 experienced physical or sexual violence or who have
14 experienced events that may cause severe trauma or
15 toxic stress, are provided access to basic, humane,
16 and supportive psychological assistance.

17 (f) INTERPRETERS.—To ensure that health
18 screenings and medical care required under this section
19 are carried out in the best interests of the detainee, the
20 Commissioner shall ensure that language-appropriate in-
21 terpretation services, including indigenous languages, are
22 provided to each detainee and that each detainee is in-
23 formed of the availability of interpretation services.

1 (g) CHAPERONES.—To ensure that health screenings
2 and medical care required under this section are carried
3 out in the best interests of the detainee—

4 (1) the Commissioner shall establish guidelines
5 for and ensure the presence of chaperones for all de-
6 tainees during medical screenings and examinations
7 consistent with relevant guidelines in the American
8 Medical Association and American Association of
9 Pediatrics Code of Medical Ethics; and

10 (2) to the extent practicable, the physical exam-
11 ination of a child shall always be performed in the
12 presence of a parent or legal guardian or in the
13 presence of the detainee’s closest present adult rel-
14 ative if a parent or legal guardian is unavailable.

15 (h) DOCUMENTATION.—The Commissioner shall en-
16 sure that the health screenings and medical care required
17 under this section, along with any other medical evalua-
18 tions and interventions for detainees, are documented in
19 accordance with commonly accepted standards in the
20 United States for medical record documentation. Such
21 documentation shall be provided to any individual who re-
22 ceived a health screening and subsequent medical treat-
23 ment upon release from CBP custody.

24 (i) INFRASTRUCTURE AND EQUIPMENT.—The Com-
25 missioner or the Administrator of General Services shall

1 ensure that each location to which detainees are first
2 transported after an initial encounter with an agent or of-
3 ficer of CBP has—

4 (1) a private space that provides a comfortable
5 and considerate atmosphere for the patient and that
6 ensures the patient’s dignity and right to privacy
7 during the health screening and medical assessment
8 and any necessary follow-up care;

9 (2) all necessary and appropriate medical equip-
10 ment and facilities to conduct the health screenings
11 and follow-up care required under this section, to
12 treat trauma, to provide emergency care, including
13 resuscitation of individuals of all ages, and to pre-
14 vent the spread of communicable diseases;

15 (3) basic over-the-counter medications appro-
16 priate for all age groups; and

17 (4) appropriate transportation to medical facili-
18 ties in the case of a medical emergency, or an on-
19 call service with the ability to arrive at the CBP fa-
20 cility within 30 minutes.

21 (j) PERSONNEL.—The Commissioner or the Adminis-
22 trator of General Services shall ensure that each location
23 to which detainees are first transported after an initial en-
24 counter has onsite at least 1 licensed medical professional
25 to conduct health screenings. Other personnel that are or

1 may be necessary for carrying out the functions described
 2 in this section, such as licensed emergency care profes-
 3 sionals, specialty physicians (including physicians special-
 4 izing in pediatrics, family medicine, obstetrics and gyne-
 5 cology, geriatric medicine, internal medicine, and infec-
 6 tious diseases), nurse practitioners, other nurses, physi-
 7 cian assistants, licensed social workers, mental health pro-
 8 fessionals, public health professionals, dietitians, inter-
 9 preters, and chaperones, shall be located on site to the
 10 extent practicable, or if not practicable, shall be available
 11 on call.

12 (k) ETHICAL GUIDELINES.—The Commissioner shall
 13 ensure that all medical assessments and procedures con-
 14 ducted pursuant to this section are conducted in accord-
 15 ance with ethical guidelines in the applicable medical field,
 16 and respect human dignity.

17 **SEC. 4. WATER, SANITATION, AND HYGIENE.**

18 The Commissioner shall ensure that detainees have
 19 access to—

20 (1) not less than 1 gallon of drinking water per
 21 day, and age-appropriate fluids as needed;

22 (2) a private, safe, clean, and reliable perma-
 23 nent or portable toilet with proper waste disposal
 24 and a hand washing station, with not less than 1

1 toilet available for every 12 male detainees, and 1
2 toilet for every 8 female detainees;

3 (3) a clean diaper changing facility, which in-
4 cludes proper waste disposal, a hand washing sta-
5 tion, and unrestricted access to diapers;

6 (4) the opportunity to bathe daily in a perma-
7 nent or portable shower that is private and secure;
8 and

9 (5) products for individuals of all age groups
10 and with disabilities to maintain basic personal hy-
11 giene, including soap, a toothbrush, toothpaste,
12 adult diapers, and feminine hygiene products, as well
13 as receptacles for the proper storage and disposal of
14 such products.

15 **SEC. 5. FOOD AND NUTRITION.**

16 The Commissioner shall ensure that detainees have
17 access to—

18 (1) 3 meals per day including—

19 (A) in the case of an individual who is at
20 least 12 years of age, a diet that contains not
21 less than 2,000 calories per day; and

22 (B) in the case of a child who is younger
23 than 12 years of age, a diet that contains an
24 appropriate number of calories per day based
25 on the child's age and weight;

1 (2) accommodations for any dietary needs or
2 restrictions; and

3 (3) access to food in a manner that follows ap-
4 plicable food safety standards.

5 **SEC. 6. SHELTER.**

6 The Commissioner shall ensure that each facility at
7 which a detainee is detained meets the following require-
8 ments:

9 (1) Except as provided in paragraph (2), males
10 and females shall be detained separately.

11 (2) In the case of a minor child arriving in the
12 United States with an adult relative or legal guard-
13 ian, such child shall be detained with such relative
14 or legal guardian unless such an arrangement poses
15 safety or security concerns. In no case shall a minor
16 who is detained apart from an adult relative or legal
17 guardian as a result of such safety or security con-
18 cerns be detained with other adults.

19 (3) In the case of an unaccompanied minor ar-
20 riving in the United States without an adult relative
21 or legal guardian, such child shall be detained in an
22 age-appropriate facility and shall not be detained
23 with adults.

1 (4) A detainee with a temporary or permanent
2 disability shall be held in a manner that provides for
3 his or her safety, comfort, and security.

4 (5) No detainee shall be placed in a room for
5 any period of time if the detainee's placement would
6 exceed the maximum occupancy level as determined
7 by the appropriate building code, fire marshall, or
8 other authority.

9 (6) Each detainee shall be provided with tem-
10 perature appropriate clothing and bedding.

11 (7) The facility shall be well lit and well venti-
12 lated, with the humidity and temperature kept at
13 comfortable levels (between 68 and 74 degrees Fahr-
14 enheit).

15 (8) Detainees who are in custody for more than
16 48 hours shall have access to the outdoors for not
17 less than 1 hour during the daylight hours during
18 each 24-hour period.

19 (9) Detainees shall have the ability to practice
20 their religion or not to practice a religion, as appli-
21 cable.

22 (10) Detainees shall have access to lighting and
23 noise levels that are safe and conducive for sleeping
24 throughout the night between the hours of 10 p.m.
25 and 6 a.m.

1 (11) Officers, employees, and contracted per-
2 sonnel of CBP shall—

3 (A) follow medical standards for the isola-
4 tion and prevention of communicable diseases;
5 and

6 (B) ensure the physical and mental safety
7 of lesbian, gay, bisexual, transgender, and
8 intersex detainees.

9 (12) The facility shall have video-monitoring to
10 provide for the safety of the detained population and
11 to prevent sexual abuse and physical harm of vulner-
12 able detainees.

13 **SEC. 7. COORDINATION AND SURGE CAPACITY.**

14 The Secretary of Homeland Security shall enter into
15 memoranda of understanding with appropriate Federal
16 agencies, such as the Department of Health and Human
17 Services, and applicable emergency government relief serv-
18 ices, as well as contracts with health care, public health,
19 social work, and transportation professionals, for purposes
20 of addressing surge capacity and ensuring compliance with
21 this Act.

22 **SEC. 8. TRAINING.**

23 The Commissioner shall ensure that CBP personnel
24 assigned to each short-term custodial facility are profes-
25 sionally trained, including continuing education as the

1 Commissioner deems appropriate, in all subjects necessary
2 to ensure compliance with this Act, including—

3 (1) humanitarian response protocols and stand-
4 ards;

5 (2) indicators of physical and mental illness,
6 and medical distress in children and adults;

7 (3) indicators of child sexual exploitation and
8 effective responses to missing migrant children; and

9 (4) procedures to report incidents of suspected
10 child sexual abuse and exploitation directly to the
11 National Center for Missing and Exploited Children.

12 **SEC. 9. INTERFACILITY TRANSFER OF CARE.**

13 (a) TRANSFER.—When a detainee is discharged from
14 a medical facility or emergency department, the Commis-
15 sioner shall ensure that responsibility of care is trans-
16 ferred from the medical facility or emergency department
17 to an accepting licensed health care provider of CBP.

18 (b) RESPONSIBILITIES OF ACCEPTING PROVIDERS.—
19 An accepting licensed health care provider receiving a de-
20 tainee shall review the medical facility or emergency de-
21 partment's evaluation, diagnosis, treatment, management,
22 and discharge care instructions with respect to the de-
23 tainee to assess the safety of the discharge and transfer
24 and to provide necessary follow-up care.

1 **SEC. 10. PLANNING AND INITIAL IMPLEMENTATION.**

2 (a) PLANNING.—Not later than 60 days after the
3 date of enactment of this Act, the Secretary of Homeland
4 Security shall submit a detailed plan to Congress that de-
5 lineates the timeline, process, and challenges of carrying
6 out the requirements of this Act.

7 (b) IMPLEMENTATION.—The Secretary of Homeland
8 Security shall ensure that the requirements of this Act are
9 implemented not later than 6 months after the date of
10 the enactment of this Act.

11 **SEC. 11. CONTRACTOR COMPLIANCE.**

12 The Secretary of Homeland Security shall ensure
13 that all personnel contracted to carry out this Act do so
14 in accordance with the requirements under this Act.

15 **SEC. 12. INSPECTIONS.**

16 (a) IN GENERAL.—The Inspector General of the De-
17 partment of Homeland Security shall—

18 (1) conduct unannounced inspections of ports of
19 entry, border patrol stations, and detention facilities
20 administered by CBP or contractors of CBP; and

21 (2) submit reports to Congress that—

22 (A) describe the results of the inspections
23 conducted pursuant to paragraph (1); and

24 (B) relate to custody operations.

1 (b) PARTICULAR ATTENTION.—In carrying out sub-
2 section (a), the Inspector General shall pay particular at-
3 tention to—

4 (1) the degree of compliance by CBP with the
5 requirements under this Act;

6 (2) remedial actions taken by CBP; and

7 (3) the health needs of detainees.

8 (c) ACCESS TO FACILITIES.—The Commissioner may
9 not deny a Member of Congress entrance to any facility
10 or building used, owned, or operated by CBP.

11 **SEC. 13. GAO REPORT.**

12 (a) IN GENERAL.—The Comptroller General of the
13 United States shall—

14 (1) not later than 6 months after the date of
15 the enactment of this Act, commence a study on im-
16 plementation of, and compliance with, this Act; and

17 (2) not later than 1 year after the date of the
18 enactment of this Act, submit a report to Congress
19 on the results of such study.

20 (b) ISSUES TO BE STUDIED.—The study required
21 under subsection (a) shall examine the management and
22 oversight by CBP of ports of entry, border patrol stations,
23 and other detention facilities, including the extent to
24 which CBP and the Department of Homeland Security
25 have effective processes in place to comply with this Act.

1 **SEC. 14. RULE OF CONSTRUCTION.**

- 2 Nothing in this Act may be construed to authorize
3 CBP to detain individuals for longer than 72 hours.

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