

117TH CONGRESS
1ST SESSION

S. 341

To provide justice for incarcerated moms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 2021

Mr. BOOKER (for himself, Mr. DURBIN, and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide justice for incarcerated moms, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice for Incarcer-
5 ated Moms Act”.

6 **SEC. 2. ENDING THE SHACKLING OF PREGNANT INDIVID-**
7 **UALS.**

8 (a) IN GENERAL.—Beginning on the date that is 6
9 months after the date of enactment of this Act, and annu-
10 ally thereafter, in each State that receives a grant under

1 subpart 1 of part E of title I of the Omnibus Crime Con-
 2 trol and Safe Streets Act of 1968 (34 U.S.C. 10151 et
 3 seq.) (commonly referred to as the “Edward Byrne Memo-
 4 rial Justice Grant Program”) and that does not have in
 5 effect throughout the State for such fiscal year laws re-
 6 stricting the use of restraints on pregnant individuals in
 7 prison that are substantially similar to the rights, proce-
 8 dures, requirements, effects, and penalties set forth in sec-
 9 tion 4322 of title 18, United States Code, the amount of
 10 such grant that would otherwise be allocated to such State
 11 under such subpart for the fiscal year shall be decreased
 12 by 25 percent.

13 (b) REALLOCATION.—Amounts not allocated to a
 14 State for failure to comply with subsection (a) shall be
 15 reallocated in accordance with subpart 1 of part E of title
 16 I of the Omnibus Crime Control and Safe Streets Act of
 17 1968 (34 U.S.C. 10151 et seq.) to States that have com-
 18 plied with such subsection.

19 **SEC. 3. CREATING MODEL PROGRAMS FOR THE CARE OF**
 20 **INCARCERATED INDIVIDUALS IN THE PRE-**
 21 **NATAL AND POSTPARTUM PERIODS.**

22 (a) ESTABLISHMENT.—

23 (1) IN GENERAL.—Not later than 1 year after
 24 the date of enactment of this Act, the Attorney Gen-
 25 eral, acting through the Director of the Bureau of

1 Prisons, shall establish, in not fewer than 6 Bureau
2 of Prisons facilities, programs to optimize maternal
3 health outcomes for pregnant and postpartum indi-
4 viduals incarcerated in such facilities.

5 (2) REQUIRED CONSULTATION.—The Attorney
6 General shall establish the programs authorized
7 under paragraph (1) in consultation with stake-
8 holders such as—

9 (A) relevant community-based organiza-
10 tions, particularly organizations that represent
11 incarcerated and formerly incarcerated individ-
12 uals and organizations that seek to improve ma-
13 ternal health outcomes for pregnant and
14 postpartum individuals from racial and ethnic
15 minority groups;

16 (B) relevant organizations representing pa-
17 tients, with a particular focus on patients from
18 racial and ethnic minority groups;

19 (C) organizations representing maternity
20 care providers and maternal health care edu-
21 cation programs;

22 (D) perinatal health workers; and

23 (E) researchers and policy experts in fields
24 related to maternal health care for incarcerated
25 individuals.

1 (b) START DATE.—Each facility selected under sub-
2 section (a) shall begin facility programs not later than 18
3 months after the date of enactment of this Act.

4 (c) FACILITY PRIORITY.—In carrying out subsection
5 (a), the Director shall give priority to a facility based on—

6 (1) the number of pregnant and postpartum in-
7 dividuals incarcerated in such facility and, among
8 such individuals, the number of pregnant and
9 postpartum individuals from racial and ethnic mi-
10 nority groups; and

11 (2) the extent to which the leaders of such facil-
12 ity have demonstrated a commitment to developing
13 exemplary programs for pregnant and postpartum
14 individuals incarcerated in such facility.

15 (d) PROGRAM DURATION.—The programs established
16 under this section shall be for a 5-year period.

17 (e) PROGRAMS.—Bureau of Prisons facilities selected
18 by the Director shall establish programs for pregnant and
19 postpartum incarcerated individuals, and such pro-
20 grams—

21 (1) may—

22 (A) provide access to perinatal health
23 workers from pregnancy through the
24 postpartum period;

1 (B) provide access to healthy foods and
2 counseling on nutrition, recommended activity
3 levels, and safety measures throughout preg-
4 nancy;

5 (C) train correctional officers to ensure
6 that pregnant incarcerated individuals receive
7 safe and respectful treatment;

8 (D) train medical personnel to ensure that
9 pregnant incarcerated individuals receive trau-
10 ma-informed, culturally congruent care that
11 promotes the health and safety of the pregnant
12 individuals;

13 (E) provide counseling and treatment for
14 individuals who have suffered from—

15 (i) diagnosed mental or behavioral
16 health conditions, including trauma and
17 substance use disorders;

18 (ii) trauma or violence, including do-
19 mestic violence;

20 (iii) human immunodeficiency virus;

21 (iv) sexual abuse;

22 (v) pregnancy or infant loss; or

23 (vi) chronic conditions;

(F) provide evidence-based pregnancy and childbirth education, parenting support, and other relevant forms of health literacy;

(G) provide clinical education opportunities to maternity care providers in training to expand pathways into maternal health care careers serving incarcerated individuals;

(H) offer opportunities for postpartum individuals to maintain contact with the individual's newborn child to promote bonding, including enhanced visitation policies, access to prison nursery programs, or breastfeeding support;

(I) provide reentry assistance, particularly to—

(i) ensure access to health insurance coverage and transfer of health records to community providers if an incarcerated individual exits the criminal justice system during such individual's pregnancy or in the postpartum period; and

(ii) connect individuals exiting the criminal justice system during pregnancy or in the postpartum period to community-based resources, such as referrals to health care providers, substance use disorder

1 treatments, and social services that ad-
 2 dress social determinants maternal of
 3 health; or

4 (J) establish partnerships with local public
 5 entities, private community entities, community-
 6 based organizations, Indian Tribes and tribal
 7 organizations (as such terms are defined in sec-
 8 tion 4 of the Indian Self-Determination and
 9 Education Assistance Act (25 U.S.C. 5304)),
 10 and urban Indian organizations (as such term
 11 is defined in section 4 of the Indian Health
 12 Care Improvement Act (25 U.S.C. 1603)) to es-
 13 tablish or expand pretrial diversion programs as
 14 an alternative to incarceration for pregnant and
 15 postpartum individuals; and

16 (2) may include—

17 (A) evidence-based childbirth education or
 18 parenting classes;

19 (B) prenatal health coordination;

20 (C) family and individual counseling;

21 (D) evidence-based screenings, education,
 22 and, as needed, treatment for mental and be-
 23 havioral health conditions, including drug and
 24 alcohol treatments;

25 (E) family case management services;

1 (F) domestic violence education and pre-
2 vention;

3 (G) physical and sexual abuse counseling;
4 and

5 (H) programs to address social deter-
6 minants of health such as employment, housing,
7 education, transportation, and nutrition.

8 (f) IMPLEMENTATION AND REPORTING.—A selected
9 facility shall be responsible for—

10 (1) implementing programs, which may include
11 the programs described in subsection (e); and

12 (2) not later than 3 years after the date of en-
13 actment of this Act, and 6 years after the date of
14 enactment of this Act, reporting results of the pro-
15 grams to the Director, including information de-
16 scribing—

17 (A) relevant quantitative indicators of suc-
18 cess in improving the standard of care and
19 health outcomes for pregnant and postpartum
20 incarcerated individuals in the facility, including
21 data stratified by race, ethnicity, sex, gender,
22 age, geography, disability status, the category
23 of the criminal charge against such individual,
24 rates of pregnancy-related deaths, pregnancy-
25 associated deaths, cases of infant mortality and

1 morbidity, rates of preterm births and low-
2 birthweight births, cases of severe maternal
3 morbidity, cases of violence against pregnant or
4 postpartum individuals, diagnoses of maternal
5 mental or behavioral health conditions, and
6 other such information as appropriate;

7 (B) relevant qualitative and quantitative
8 evaluations from pregnant and postpartum in-
9 carcerated individuals who participated in such
10 programs, including measures of patient-re-
11 ported experience of care; and

12 (C) strategies to sustain such programs
13 after fiscal year 2026 and expand such pro-
14 grams to other facilities.

15 (g) REPORT.—Not later than 6 years after the date
16 of enactment of this Act, the Director shall submit to the
17 Attorney General and to the Congress a report describing
18 the results of the programs funded under this section.

19 (h) OVERSIGHT.—Not later than 1 year after the
20 date of enactment of this Act, the Attorney General shall
21 award a contract to an independent organization or inde-
22 pendent organizations to conduct oversight of the pro-
23 grams described in subsection (e).

1 (i) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to carry out this section
 3 \$10,000,000 for each of fiscal years 2022 through 2026.

4 **SEC. 4. GRANT PROGRAM TO IMPROVE MATERNAL HEALTH**
 5 **OUTCOMES FOR INDIVIDUALS IN STATE AND**
 6 **LOCAL PRISONS AND JAILS.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—Not later than 1 year after
 9 the date of enactment of this Act, the Attorney Gen-
 10 eral, acting through the Director of the Bureau of
 11 Justice Assistance, shall award Justice for Incarcer-
 12 ated Moms grants to States to establish or expand
 13 programs in State and local prisons and jails for
 14 pregnant and postpartum incarcerated individuals.

15 (2) REQUIRED CONSULTATION.—The Attorney
 16 General shall award the grants authorized under
 17 paragraph (1) in consultation with stakeholders such
 18 as—

19 (A) relevant community-based organiza-
 20 tions, particularly organizations that represent
 21 incarcerated and formerly incarcerated individ-
 22 uals and organizations that seek to improve ma-
 23 ternal health outcomes for pregnant and
 24 postpartum individuals from racial and ethnic
 25 minority groups;

1 (B) relevant organizations representing pa-
2 tients, with a particular focus on patients from
3 racial and ethnic minority groups;

4 (C) organizations representing maternity
5 care providers and maternal health care edu-
6 cation programs;

7 (D) perinatal health workers; and

8 (E) researchers and policy experts in fields
9 related to maternal health care for incarcerated
10 individuals.

11 (b) APPLICATIONS.—Each applicant for a grant
12 under this section shall submit to the Director of the Bu-
13 reau of Justice Assistance an application at such time, in
14 such manner, and containing such information as the Di-
15 rector may require.

16 (c) USE OF FUNDS.—A State that is awarded a grant
17 under this section shall use such grant to establish or ex-
18 pand programs for pregnant and postpartum incarcerated
19 individuals, and such programs—

20 (1) may—

21 (A) provide access to perinatal health
22 workers from pregnancy through the post-
23 partum period;

24 (B) provide access to healthy foods and
25 counseling on nutrition, recommended activity

1 levels, and safety measures throughout preg-
2 nancy;

3 (C) train correctional officers to ensure
4 that pregnant incarcerated individuals receive
5 safe and respectful treatment;

6 (D) train medical personnel to ensure that
7 pregnant incarcerated individuals receive trau-
8 ma-informed, culturally congruent care that
9 promotes the health and safety of the pregnant
10 individuals;

11 (E) provide counseling and treatment for
12 individuals who have suffered from—

13 (i) diagnosed mental or behavioral
14 health conditions, including trauma and
15 substance use disorders;

16 (ii) trauma or violence, including do-
17 mestic violence;

18 (iii) human immunodeficiency virus;

19 (iv) sexual abuse;

20 (v) pregnancy or infant loss; or

21 (vi) chronic conditions;

22 (F) provide evidence-based pregnancy and
23 childbirth education, parenting support, and
24 other relevant forms of health literacy;

1 (G) provide clinical education opportunities
2 to maternity care providers in training to ex-
3 pand pathways into maternal health care ca-
4 reers serving incarcerated individuals;

5 (H) offer opportunities for postpartum in-
6 dividuals to maintain contact with the individ-
7 ual's newborn child to promote bonding, includ-
8 ing enhanced visitation policies, access to prison
9 nursery programs, or breastfeeding support;

10 (I) provide reentry assistance, particularly
11 to—

12 (i) ensure access to health insurance
13 coverage and transfer of health records to
14 community providers if an incarcerated in-
15 dividual exits the criminal justice system
16 during such individual's pregnancy or in
17 the postpartum period; and

18 (ii) connect individuals exiting the
19 criminal justice system during pregnancy
20 or in the postpartum period to community-
21 based resources, such as referrals to health
22 care providers, substance use disorder
23 treatments, and social services that ad-
24 dress social determinants of maternal
25 health; or

(J) establish partnerships with local public entities, private community entities, community-based organizations, Indian Tribes and tribal organizations (as such terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), and urban Indian organizations (as such term is defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)) to establish or expand pretrial diversion programs as an alternative to incarceration for pregnant and postpartum individuals; and

(2) may include—

(A) evidence-based childbirth education or parenting classes;

(B) prenatal health coordination;

(C) family and individual counseling;

(D) evidence-based screenings, education, and, as needed, treatment for mental and behavioral health conditions, including drug and alcohol treatments;

(E) family case management services;

(F) domestic violence education and prevention;

1 (G) physical and sexual abuse counseling;
2 and

3 (H) programs to address social deter-
4 minants of health such as employment, housing,
5 education, transportation, and nutrition.

6 (d) PRIORITY.—In awarding grants under this sec-
7 tion, the Director of the Bureau of Justice Assistance
8 shall give priority to applicants based on—

9 (1) the number of pregnant and postpartum in-
10 dividuals incarcerated in the State and, among such
11 individuals, the number of pregnant and postpartum
12 individuals from racial and ethnic minority groups;
13 and

14 (2) the extent to which the State has dem-
15 onstrated a commitment to developing exemplary
16 programs for pregnant and postpartum individuals
17 incarcerated in the prisons and jails in the State.

18 (e) GRANT DURATION.—A grant awarded under this
19 section shall be for a 5-year period.

20 (f) IMPLEMENTING AND REPORTING.—A State that
21 receives a grant under this section shall be responsible
22 for—

23 (1) implementing the program funded by the
24 grant; and

1 (2) not later than 3 years after the date of en-
2 actment of this Act, and 6 years after the date of
3 enactment of this Act, reporting results of such pro-
4 gram to the Attorney General, including information
5 describing—

6 (A) relevant quantitative indicators of the
7 program’s success in improving the standard of
8 care and health outcomes for pregnant and
9 postpartum incarcerated individuals in the facil-
10 ity, including data stratified by race, ethnicity,
11 sex, gender, age, geography, disability status,
12 category of the criminal charge against such in-
13 dividual, incidence rates of pregnancy-related
14 deaths, pregnancy-associated deaths, cases of
15 infant mortality and morbidity, rates of preterm
16 births and low-birthweight births, cases of se-
17 vere maternal morbidity, cases of violence
18 against pregnant or postpartum individuals, di-
19 agnoses of maternal mental or behavioral health
20 conditions, and other such information as ap-
21 propriate;

22 (B) relevant qualitative and quantitative
23 evaluations from pregnant and postpartum in-
24 carcerated individuals who participated in such

1 programs, including measures of patient-re-
2 ported experience of care; and

3 (C) strategies to sustain such programs be-
4 yond the duration of the grant and expand such
5 programs to other facilities.

6 (g) REPORT.—Not later than 6 years after the date
7 of enactment of this Act, the Attorney General shall sub-
8 mit to the Congress a report describing the results of such
9 grant programs.

10 (h) OVERSIGHT.—Not later than 1 year after the
11 date of enactment of this Act, the Attorney General shall
12 award a contract to an independent organization or inde-
13 pendent organizations to conduct oversight of the pro-
14 grams described in subsection (c).

15 (i) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to carry out this section
17 \$10,000,000 for each of fiscal years 2022 through 2026.

18 **SEC. 5. GAO REPORT.**

19 (a) IN GENERAL.—Not later than 2 years after the
20 date of enactment of this Act, the Comptroller General
21 of the United States shall submit to Congress a report
22 on adverse maternal and infant health outcomes among
23 incarcerated individuals and infants born to such individ-
24 uals, with a particular focus on racial and ethnic dispari-

1 ties in maternal and infant health outcomes for incarcer-
2 ated individuals.

3 (b) CONTENTS OF REPORT.—The report described in
4 this section shall include—

5 (1) to the extent practicable—

6 (A) the number of pregnant individuals
7 who are incarcerated in Bureau of Prisons fa-
8 cilities;

9 (B) the number of incarcerated individuals,
10 including those incarcerated in Federal, State,
11 and local correctional facilities, who have expe-
12 rienced a pregnancy-related death, pregnancy-
13 associated death, or the death of an infant in
14 the most recent 10 years of available data;

15 (C) the number of cases of severe maternal
16 morbidity among incarcerated individuals, in-
17 cluding those incarcerated in Federal, State,
18 and local detention facilities, in the most recent
19 10 years of available data;

20 (D) the number of preterm and low-birth-
21 weight births of infants born to incarcerated in-
22 dividuals, including those incarcerated in Fed-
23 eral, State, and local correctional facilities, in
24 the most recent 10 years of available data; and

1 (E) statistics on the racial and ethnic dis-
 2 parities in maternal and infant health outcomes
 3 and severe maternal morbidity rates among in-
 4 carcerated individuals, including those incarcer-
 5 ated in Federal, State, and local detention fa-
 6 cilities;

7 (2) in the case that the Comptroller General of
 8 the United States is unable determine the informa-
 9 tion required in subparagraphs (A) through (C) of
 10 paragraph (1), an assessment of the barriers to de-
 11 termining such information and recommendations
 12 for improvements in tracking maternal health out-
 13 comes among incarcerated individuals, including
 14 those incarcerated in Federal, State, and local deten-
 15 tion facilities;

16 (3) causes of adverse maternal health outcomes
 17 that are unique to incarcerated individuals, including
 18 those incarcerated in Federal, State, and local deten-
 19 tion facilities;

20 (4) causes of adverse maternal health outcomes
 21 and severe maternal morbidity that are unique to in-
 22 carcerated individuals from racial and ethnic minor-
 23 ity groups;

24 (5) recommendations to reduce maternal mor-
 25 tality and severe maternal morbidity among incar-

1 cerated individuals and to address racial and ethnic
 2 disparities in maternal health outcomes for incarcer-
 3 ated individuals in Bureau of Prisons facilities and
 4 State and local prisons and jails; and

5 (6) such other information as may be appro-
 6 priate to reduce the occurrence of adverse maternal
 7 health outcomes among incarcerated individuals and
 8 to address racial and ethnic disparities in maternal
 9 health outcomes for such individuals.

10 **SEC. 6. MACPAC REPORT.**

11 (a) IN GENERAL.—Not later than 2 years after the
 12 date of enactment of this Act, the Medicaid and CHIP
 13 Payment and Access Commission (referred to in this sec-
 14 tion as “MACPAC”) shall publish a report on the implica-
 15 tions of pregnant and postpartum incarcerated individuals
 16 being ineligible for medical assistance under a State plan
 17 under title XIX of the Social Security Act (42 U.S.C.
 18 1396 et seq.) that contains the information described in
 19 subsection (b).

20 (b) INFORMATION DESCRIBED.—The information de-
 21 scribed in this subsection includes—

22 (1) information on the effect of ineligibility for
 23 medical assistance under a State plan under title
 24 XIX of the Social Security Act (42 U.S.C. 1396 et
 25 seq.) on maternal health outcomes for pregnant and

1 postpartum incarcerated individuals, concentrating
2 on the effects of such ineligibility for pregnant and
3 postpartum individuals from racial and ethnic mi-
4 nority groups; and

5 (2) the potential implications on maternal
6 health outcomes resulting from suspending eligibility
7 for medical assistance under a State plan under
8 such title when a pregnant or postpartum individual
9 is incarcerated.

○