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S. 4984

To report data on COVID–19 immigration detention facilities and local correctional facilities that contract with U.S. Immigration and Customs Enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2020

Ms. WARREN (for herself, Mr. BOOKER, Mr. MARKEY, Mr. VAN HOLLEN, Mr. SANDERS, Mr. BLUMENTHAL, Mr. DURBIN, Mr. MERKLEY, Ms. BALDWIN, Ms. KLOBUCHAR, Ms. HIRONO, Mr. WYDEN, Mr. CASEY, Ms. CORTEZ MASTO, and Ms. ROSEN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To report data on COVID–19 immigration detention facilities and local correctional facilities that contract with U.S. Immigration and Customs Enforcement, 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 “COVID–19 in Immi-
5 gration Detention Data Transparency Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **CBP DETENTION FACILITY.**—The term
4 “CBP detention facility” means any facility used by
5 U.S. Customs and Border Protection to detain non-
6 citizens.

7 (2) **CDC DIRECTOR.**—The term “CDC Direc-
8 tor” means the Director of the Centers for Disease
9 Control and Prevention.

10 (3) **CONTRACT DETENTION FACILITY.**—The
11 term “contract detention facility” means any facility
12 used for the detention of noncitizens that is operated
13 by a government agency or a private entity that has
14 contracted with U.S. Immigration and Customs En-
15 forcement, U.S. Customs and Border Protection, or
16 the Office of Refugee Resettlement to provide such
17 detention services, including service processing cen-
18 ters, juvenile detention facilities, family residential
19 centers, facilities holding noncitizens awaiting re-
20 moval, and similar facilities operating under an
21 intergovernmental service agreement with any of
22 such Federal agencies, including intergovernmental
23 agreements with the United States Marshals Service.

24 (4) **COVID-19.**—The term “COVID-19”
25 means the 2019 novel coronavirus disease caused by
26 the SARS-CoV-2 virus.

1 (5) COVID-19 DIAGNOSTIC TEST.—The term
2 “COVID-19 diagnostic test” means a test—

3 (A) that is an in vitro diagnostic product
4 (as defined in section 809.3 of title 21, Code of
5 Federal Regulations) for the detection of
6 SARS-CoV-2; and

7 (B) the administration of which—

8 (i) is approved, cleared, or authorized
9 under section 510(k), 513, 515, or 564 of
10 the Federal Food, Drug, and Cosmetic Act
11 (21 U.S.C. 360(k), 360c, 360e, 360bbb-3);

12 (ii) the developer has requested, or in-
13 tends to request, emergency use authoriza-
14 tion under section 564 of the Federal
15 Food, Drug, and Cosmetic Act (21 U.S.C.
16 360bbb-3), unless and until the emergency
17 use authorization request under such sec-
18 tion 564 has been denied or the developer
19 of such test does not submit a request
20 under such section within a reasonable
21 timeframe;

22 (iii) is developed in and authorized by
23 a State that has notified the Secretary of
24 Health and Human Services of its inten-

tion to review tests intended to diagnose
COVID-19; or

(iv) is another test that the Secretary
determines appropriate in guidance.

(6) COVID-19 EMERGENCY DATA COLLECTION
PERIOD.—The term “COVID-19 emergency data
collection period” means the period beginning on the
date of enactment of this Act and ending on the
date that is 1 year after the date on which the pub-
lic health emergency declaration under section 319
of the Public Health Service Act (42 U.S.C. 247d),
with respect to COVID-19, terminates.

(7) FACILITY STAFF.—The term “facility staff”
includes all individuals who work in a detention fa-
cility, including any individual who regularly reports
for work within the detention facility, regardless of
the actual employer of such individual.

(8) ICE DETENTION FACILITY.—The term
“ICE detention facility” means any facility used by
U.S. Immigration and Customs Enforcement to de-
tain noncitizens, including service processing centers.

(9) ORR CONTRACTED FACILITY OR PRO-
GRAM.—The term “ORR contracted facility or pro-
gram” means any facility or program in which unac-
companied noncitizen children are in the care and

1 custody of the Department of Health and Human
2 Services.

3 (10) PUBLIC HEALTH EMERGENCY.—The term
4 “public health emergency” means—

5 (A) a national emergency involving Federal
6 primary responsibility determined to exist by
7 the President under section 501(b) of the Rob-
8 ert T. Stafford Disaster Relief and Emergency
9 Assistance Act (42 U.S.C. 5191(b)) with re-
10 spect to a communicable disease;

11 (B) a national emergency declared by the
12 President under sections 201 and 301 of the
13 National Emergencies Act (50 U.S.C. 1621 and
14 1631) with respect to a communicable disease;

15 (C) a national public health emergency de-
16 clared by the Secretary of Health and Human
17 Services under section 319 of the Public Health
18 Service Act (42 U.S.C. 247d); or

19 (D) a global pandemic declared by the
20 World Health Organization.

21 **SEC. 3. COVID-19 DATA COLLECTION REQUIREMENTS.**

22 (a) FEDERAL DETENTION FACILITIES.—The Direc-
23 tor of U.S. Immigration and Customs Enforcement, the
24 Commissioner of U.S. Customs and Border Protection, the
25 Director of the Office of Refugee Resettlement, and any

1 senior official acting in, or performing the duties of, any
2 such position shall, during the COVID–19 emergency data
3 collection period—

4 (1) post daily updates on the public website of
5 the applicable agency containing the information de-
6 scribed in section 5 with respect to staff working at
7 ICE detention facilities, CBP detention facilities, or
8 ORR contracted facilities or programs, respectively,
9 and noncitizens detained at such facilities or served
10 by such programs;

11 (2) archive, on a weekly basis, the data de-
12 scribed in paragraph (1) so that it remains publicly
13 accessible and in a machine readable format; and

14 (3) beginning not later than the earlier of the
15 date that is 14 days after the date on which the
16 CDC Director publishes the guidance required under
17 section 4(a) or 45 days after the date of the enact-
18 ment of this Act, submit weekly reports to the CDC
19 Director containing the information described in sec-
20 tion 5.

21 (b) CONTRACT DETENTION FACILITIES.—

22 (1) IN GENERAL.—Beginning not later than the
23 earlier of the date that is 14 days after the date on
24 which the CDC Director publishes the guidance re-
25 quired under section 4(a) or 45 days after the date

1 of the enactment of this Act, the head of each con-
2 tract detention facility shall—

3 (A) submit weekly reports to the Federal
4 agency with which the facility is under contract
5 and the public health authority of the State in
6 which the facility is located containing the data
7 described in section 5 with respect to staff
8 working at such facility and noncitizens de-
9 tained at such facility;

10 (B) post weekly updates containing the
11 data described in subparagraph (A) on the pub-
12 lic website of the facility, if the facility has a
13 public website, in a machine readable format,
14 and archive prior updates so that they remain
15 publicly accessible; and

16 (C) submit weekly reports containing the
17 data referred to in subparagraph (A) to—

18 (i) the Immigration Detention Om-
19 budsman designated pursuant to section
20 405 of the Homeland Security Act of 2002
21 (6 U.S.C. 205); and

22 (ii) the Office for Civil Rights and
23 Civil Liberties of the Department of
24 Homeland Security.

1 (2) SUBMISSION OF INFORMATION TO THE
2 CDC.—Not later than 24 hours after a Federal agen-
3 cy receives the data described in paragraph (1), the
4 head of such agency shall—

5 (A) submit such data to the CDC Director;
6 and

7 (B) post such data to the public website of
8 the agency, which shall be archived weekly and
9 shall remain publically accessible in a machine
10 readable format.

11 (c) USE OF EXISTING APPROPRIATIONS.—

12 (1) DEPARTMENT OF HEALTH AND HUMAN
13 SERVICES.—The Department of Health and Human
14 Services such use amounts otherwise appropriated
15 for the Office of Refugee Resettlement to carry out
16 its responsibilities under this section.

17 (2) U.S. IMMIGRATION AND CUSTOMS ENFORCE-
18 MENT.—U.S. Immigration and Customs Enforce-
19 ment shall use amounts otherwise appropriated to
20 the Custody Operations Account to carry out its re-
21 sponsibilities under this section.

22 (3) U.S. CUSTOMS AND BORDER PROTEC-
23 TION.—U.S. Customs and Border Protection shall
24 use amounts otherwise appropriated to the Procure-

1 ment, Construction, and Improvements Account to
2 carry out its responsibilities under this section.

3 **SEC. 4. CDC REPORTS.**

4 (a) GUIDANCE.—Not later than 30 days after the
5 date of enactment of this Act, the CDC Director shall
6 issue guidance for immigration detention facilities regard-
7 ing—

8 (1) the categories of data required to be re-
9 ported under this Act; and

10 (2) how the CDC Director will determine
11 whether a Federal or State agency is in compliance
12 with the requirements under this Act.

13 (b) PUBLICATION ON WEBSITE.—

14 (1) IN GENERAL.—Not later than 7 days after
15 data is reported to the Centers for Disease Control
16 and Prevention pursuant to section 3, the CDC Di-
17 rector shall make such data available to the public
18 on the website of the Centers for Disease Control
19 and Prevention, including all data reported by U.S.
20 Immigration and Customs Enforcement, U.S. Cus-
21 toms and Border Protection, and the Office of Ref-
22 ugee Resettlement.

23 (2) WEEKLY ARCHIVAL.—The data referred to
24 in paragraph (1) shall be archived weekly and shall

1 remain publically accessible in a machine readable
2 format.

3 (c) REPORTS TO CONGRESS.—Not later than 60 days
4 after the date of the enactment of this Act, and monthly
5 thereafter during the COVID–19 emergency data collec-
6 tion period, the CDC Director shall submit a report to
7 Committee on Health, Education, Labor, and Pensions of
8 the Senate, the Committee on the Judiciary of the Senate,
9 the Committee on Homeland Security of the House of
10 Representatives, and the Committee on the Judiciary of
11 the House of Representatives that—

12 (1) summarizes the information submitted by
13 U.S. Immigration and Customs Enforcement, U.S.
14 Customs and Border Protection, the Office of Ref-
15 ugee Resettlement, and State public health authori-
16 ties pursuant to section 3; and

17 (2) analyzes the trends and patterns of the dis-
18 ease outbreak and the care provided in immigration
19 detention facilities and contracted facilities.

20 **SEC. 5. COVID–19 DATA.**

21 (a) IN GENERAL.—The data described in this section
22 is the following data with respect to each ICE, CBP, ORR,
23 and contract detention facility:

24 (1) TESTING NUMBERS.—Data related to
25 COVID–19 diagnostic testing by such facilities, in-

cluding cumulative and new (since the previous weekly report) counts of—

(A) the number of detained noncitizens tested for COVID–19, including the dates on which such tests were administered, disaggregated by—

(i) first-time COVID–19 diagnostic tests and retests; and

(ii) symptomatic and asymptomatic;

(B) the number of detained noncitizens who have requested COVID–19 testing, including the number of such requests that were denied and the reasons for such denials;

(C) the number of facility staff tested for COVID–19, disaggregated by first-time COVID–19 diagnostic tests and retests; and

(D) the COVID–19 diagnostic test developer and test name for each COVID–19 diagnostic test conducted.

(2) TEST RESULTS.—Data related to COVID–19 diagnostic testing outcomes, including cumulative and new (since the previous weekly report) counts of—

1 (A) the number of confirmed active cases
2 of COVID-19 among detained noncitizens,
3 disaggregated by—

4 (i) first-time COVID-19 diagnostic
5 tests and retests; and

6 (ii) the COVID-19 diagnostic test de-
7 veloper and test name for each COVID-19
8 diagnostic test used to confirm each active
9 case;

10 (B) the number of confirmed negative
11 cases of COVID-19 among detained nonciti-
12 zens, disaggregated—

13 (i) by first-time COVID-19 diagnostic
14 tests and retests; and

15 (ii) the COVID-19 diagnostic test de-
16 veloper and test name for each COVID-19
17 diagnostic test used to confirm each nega-
18 tive case;

19 (C) the number of confirmed active cases
20 of COVID-19 among detention facility staff,
21 disaggregated by—

22 (i) first-time COVID-19 diagnostic
23 tests and retests; and

24 (ii) the COVID-19 diagnostic test de-
25 veloper and test name for each COVID-19

1 diagnostic test used to confirm each active
2 case;

3 (D) the number of confirmed negative
4 cases of COVID–19 among detention facility
5 staff, disaggregated by—

6 (i) first-time COVID–19 diagnostic
7 tests and retests; and

8 (ii) the COVID–19 diagnostic test de-
9 veloper and test name for each COVID–19
10 diagnostic test used to confirm each nega-
11 tive case;

12 (E) the number of COVID–19 diagnostic
13 tests pending results, disaggregated by detained
14 noncitizens and detention facility staff;

15 (F) the average time between testing a de-
16 tained person for COVID–19 and receiving the
17 results of the COVID–19 diagnostic test; and

18 (G) the average time between testing a de-
19 tention facility employee for COVID–19 and re-
20 ceiving the results of the COVID–19 diagnostic
21 test.

22 (3) CASE OUTCOMES.—COVID–19 case out-
23 comes, including cumulative and new (since the pre-
24 vious report) counts of—

1 (A) the number of detained noncitizens
2 hospitalized for a case of COVID–19, including
3 the locations of the hospitals at which the non-
4 citizens are receiving treatment;

5 (B) the number of detained noncitizens
6 who have recovered from COVID–19;

7 (C) the number of detained noncitizens
8 currently in quarantine and the number of de-
9 tained noncitizens in medical isolation for infec-
10 tion with or exposure to COVID–19;

11 (D) the number of detained noncitizens
12 who have completed quarantine and the number
13 of detained noncitizens who have been released
14 from medical isolation;

15 (E) the number of detained noncitizens
16 identified as having one or more COVID–19
17 risk factors;

18 (F) the number of noncitizens who have
19 been released from detention because of one or
20 more COVID–19 risk factors, disaggregated by
21 their applicable risk factor;

22 (G) the number of detained noncitizens
23 with active COVID–19 cases in the previous
24 weekly report who are not included in the
25 present report, disaggregated by the specific

1 reason for such exclusion, including release,
2 negative COVID–19 test, transfer, and absence
3 of COVID–19 symptoms;

4 (H) the number of detained noncitizens
5 who have died from COVID–19;

6 (I) the number of detained noncitizens who
7 died after testing positive for COVID–19, but
8 the official cause of death was not COVID–19;

9 (J) the number of detention facility staff
10 hospitalized for a case of COVID–19;

11 (K) the number of detention facility staff
12 who have recovered from COVID–19; and

13 (L) the number of detention facility staff
14 who have died from a case of COVID–19.

15 (4) GENERAL MEDICAL ATTENTION.—The num-
16 ber of detained noncitizens who have requested gen-
17 eral medical attention, including the number of such
18 requests that were denied and the reasons for such
19 denials.

20 (5) DAILY POPULATION.—Average daily popu-
21 lation of detained noncitizens for the week preceding
22 the COVID–19 emergency data collection period and
23 for all weeks during such period.

24 (6) TRANSFERRED NONCITIZENS.—Data re-
25 lated to the COVID–19 testing, results, and case

1 outcomes (at the time of release) of noncitizens who
2 were transferred between detention facilities during
3 the reporting period, including—

4 (A) the number of all individuals who were
5 transferred, including—

6 (i) the dates on which such transfers
7 occurred;

8 (ii) the number of such noncitizens
9 who were tested and received a result be-
10 fore their transfer; and

11 (iii) the number of such noncitizens
12 who were not tested or did not receive a
13 result before their transfer;

14 (B) the purposes of such transfers;

15 (C) the dates on which COVID–19 testing
16 occurred during the transfer process;

17 (D) the number of transferees who tested
18 positive at any point during the transfer proc-
19 ess; and

20 (E) the number of positive COVID–19
21 cases in the transferring facility and in the ar-
22 riving facility at the time of each such transfer.

23 (7) RELEASED NONCITIZENS.—Data related to
24 the COVID–19 testing, results, and case outcomes
25 (at the time of release) of noncitizens who were re-

1 leased from detention, and juvenile noncitizens who
2 were released from the custody of the Department of
3 Health and Human Services, during the reporting
4 period, disaggregated by the type of release, and in-
5 cluding—

6 (A) individuals released to alternatives to
7 detention programs as a result of the COVID–
8 19 public health emergency; and

9 (B) any recent positive COVID–19 tests
10 and referrals to external medical care.

11 (8) REMOVED NONCITIZENS.—Data related to
12 the COVID–19 testing, results, and case outcomes
13 (at the time of removal or expulsion) of noncitizens
14 who were deported from an ICE, CBP, ORR, or
15 contract detention facility during the reporting pe-
16 riod, including—

17 (A) any recent positive COVID–19 tests
18 and referrals to external medical care;

19 (B) the number of noncitizens removed or
20 expelled from the United States;

21 (C) the number of such noncitizens who
22 were tested and received a result before their
23 removal or expulsion; and

1 (D) the number of such noncitizens who
 2 were not tested or did not receive a result be-
 3 fore their removal or expulsion.

4 (b) DISAGGREGATION OF DATA.—

5 (1) IN GENERAL.—The data described in sub-
 6 section (a) shall be disaggregated by sex, sexual ori-
 7 entation, gender identity, age, race, ethnicity, dis-
 8 ability, last known place of residence, location at
 9 which the individual is being detained, nationality,
 10 and statutory authority for detention.

11 (2) EXCLUSION OF INDIVIDUALS INCARCER-
 12 ATED FOR NONIMMIGRATION REASONS AT CONTRACT
 13 DETENTION FACILITIES.—Data regarding individ-
 14 uals incarcerated at contract detention facilities for
 15 nonimmigration reasons shall be excluded from the
 16 data described in subsection (a).

17 (c) DETENTION PERIOD.—The data described in sub-
 18 section (a) with respect to detained noncitizens who are
 19 infected with COVID–19 shall include, to the extent prac-
 20 ticable, the period of their detention.

21 **SEC. 6. PRIVACY PROTECTIONS.**

22 (a) IN GENERAL.—Any data collected, stored, re-
 23 ceived, or published under this Act—

1 (1) shall be collected, stored, received, or pub-
 2 lished in a manner that protects the privacy of indi-
 3 viduals whose information is included in such data;

4 (2) shall be de-identified or anonymized in a
 5 manner that protects the identity of all individuals
 6 whose information is included in such data;

7 (3) shall comply with privacy protections pro-
 8 vided under the regulations promulgated under sec-
 9 tion 264(c) of the Health Insurance Portability and
 10 Accountability Act of 1996 (42 U.S.C. 1320d-2
 11 note); and

12 (4) shall be limited in use for the purpose of
 13 public health and be protected from all other inter-
 14 nal use by any entity that collects, stores, or receives
 15 the data, including use of such data in determina-
 16 tions of eligibility (or continued eligibility) in health
 17 plans, and from any other inappropriate uses.

18 (b) RESTRICTION ON USE OF COVID-19 STATUS IN
 19 IMMIGRATION PROCEEDINGS.—The Government may not
 20 use a noncitizen’s positive COVID-19 test, a noncitizen’s
 21 treatment for COVID-19 symptoms, or the state of the
 22 COVID-19 pandemic in the noncitizen’s country of origin
 23 as evidence against the noncitizen in any immigration pro-
 24 ceeding, including—

1 (1) a proceeding to determine if the noncitizen
2 is a public charge; and

3 (2) proceedings involving asylum, withholding of
4 removal, and protection under the Convention
5 against Torture and Other Cruel, Inhuman or De-
6 grading Treatment or Punishment, done at New
7 York December 10, 1984.

8 **SEC. 7. COVID-19 SAFETY PROTOCOLS AND PRACTICES.**

9 (a) IN GENERAL.—Not later than 30 days after the
10 date of the enactment of this Act, the Director of U.S.
11 Immigration and Customs Enforcement, the Commis-
12 sioner of U.S. Customs and Border Protection, the Direc-
13 tor of the Office of Refugee Resettlement, and any senior
14 official acting in, or performing the duties of, any such
15 position shall submit a report to the congressional commit-
16 tees referred to in section 4(c) that identifies, for each
17 detention facility under the jurisdiction of the applicable
18 agency head, including contract detention facilities, the
19 protocols and practices for protecting detainees from expo-
20 sure to the novel coronavirus (SARS-CoV-2), including—

21 (1) the health standards at the facility, includ-
22 ing—

23 (A) the standards for transfer to hospital
24 or other specialized care;

1 (B) the procedure for the detained person
2 to request and obtain a COVID–19 test and as-
3 sociated results; and

4 (C) detainee access to information about
5 the facility’s COVID–19 plans and protocols;

6 (2) the medical care provided to detainees, in-
7 cluding—

8 (A) the specific efforts to cohort smaller
9 groups of detained people;

10 (B) the specific efforts to provide humane
11 medical isolation to symptomatic people, and
12 separately, people who have tested positive for
13 COVID–19; and

14 (C) the standards for clinical monitoring of
15 symptomatic and COVID–19 positive detained
16 persons; and

17 (3) the sanitation practices at the facility, in-
18 cluding the frequency and amount of detainees’ ac-
19 cess to soap and masks.

20 (b) NOTIFICATION OF OUTBREAK OR EXPOSURE.—

21 Each detention facility shall create, share, and enforce a
22 process for notifying anyone who has recently entered or
23 visited such facility of any COVID–19 outbreak or expo-
24 sure at such facility.

1 **SEC. 8. ACCESS TO LEGAL COUNSEL.**

2 Not later than 30 days after the date of the enact-
3 ment of this Act, and monthly thereafter, the Director of
4 U.S. Immigration and Customs Enforcement, the Com-
5 missioner of U.S. Customs and Border Protection, the Di-
6 rector of the Office of Refugee Resettlement, the head of
7 each contract detention facility, and any senior official act-
8 ing in, or performing the duties of, any such position shall
9 submit a report to the congressional committees referred
10 to in section 4(c) that identifies, for each detention facility
11 for which he or she is responsible—

12 (1) the efforts made to ensure that each noncit-
13 izen detained in such facility has access to legal
14 counsel;

15 (2) if any detained noncitizen does not have ac-
16 cess to legal counsel, the changes being made to en-
17 sure universal access to legal counsel;

18 (3) the number of telephones are available to
19 detainees;

20 (4) the number of detainees who have used the
21 free telephone call minutes available to them;

22 (5) the number of detainees who have access to
23 video conference technology with their lawyers and
24 the number of detainees have used video conference
25 technology to communicate with their lawyers;

1 (6) the number of computers or internet-en-
 2 abled portable electronic devices available to detain-
 3 ees; and

4 (7) the process for notifying the public when
 5 the facility is locked down because of an outbreak,
 6 including the accommodations made during such
 7 lockdowns to provide detainees with increased access
 8 to telephones or videoconferencing.

9 **SEC. 9. RIGHT OF DETAINED NONCITIZENS TO ACCESS**
 10 **TEST RESULTS.**

11 The Director of U.S. Immigration and Customs En-
 12 forcement, the Commissioner of U.S. Customs and Border
 13 Protection, the Director of the Office of Refugee Resettle-
 14 ment, the head of each contract detention facility, and any
 15 senior official acting in, or performing the duties of, any
 16 such position shall ensure that each detained noncitizen
 17 receives the results of, and any medical records related
 18 to, any COVID–19 diagnostic test administered to the
 19 noncitizen, in the noncitizen’s preferred language, and in
 20 a private and confidential manner, not later than 24 hours
 21 after such results become available.

○