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2D SESSION

S. 4096

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

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2022

Mr. LUJÁN (for himself, Mr. HEINRICH, and Mrs. FEINSTEIN) 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 all 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 U.S. Cus-
6 toms and 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. Government Accountability Office report.
- Sec. 14. Publication of data on complaints of sexual abuse at U.S. Customs and Border Protection facilities.
- Sec. 15. Rules of construction.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) CBP.—The term “CBP” means U.S. Customs and Border Protection.

5 (2) CHILD.—The term “child” has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

8 (3) COMMISSIONER.—The term “Commissioner” means the Commissioner of U.S. Customs and Border Protection.

11 (4) DETAINEE.—The term “detainee” means any individual who is detained in the custody of CBP.

14 (5) FORWARD OPERATING BASE.—The term “forward operating base” means a permanent facility established by CBP in forward or remote locations, and designated by CBP.

18 (6) INTERPRETATION SERVICES.—The term “interpretation services” includes translation serv-

1 ices that are performed either in person or through
2 a telephone or video service.

3 (7) U.S. CUSTOMS AND BORDER PROTECTION
4 FACILITY.—The term “U.S. Customs and Border
5 Protection facility” includes—

6 (A) U.S. Border Patrol stations;

7 (B) ports of entry;

8 (C) checkpoints;

9 (D) forward operating bases;

10 (E) secondary inspection areas; and

11 (F) short-term custody facilities.

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

13 (a) IN GENERAL.—The Commissioner, in consulta-
14 tion with the Secretary of Health and Human Services,
15 the Administrator of the Health Resources and Services
16 Administration, and nongovernmental experts in the deliv-
17 ery of health care in humanitarian crises and in the deliv-
18 ery of health care to children, shall develop guidelines and
19 protocols for the provision of health screenings and appro-
20 priate medical care for detainees, as required under this
21 section.

22 (b) INITIAL SCREENING AND MEDICAL ASSESS-
23 MENT.—The Commissioner shall ensure that all detainees
24 receive an initial in-person screening by a licensed medical

1 professional in accordance with the standards described in
2 subsection (c)—

3 (1) to assess and identify any illness, condition,
4 or age-appropriate mental or physical symptoms that
5 may have resulted from distressing or traumatic ex-
6 periences;

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

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

12 (c) STANDARDIZATION OF INITIAL SCREENING AND
13 MEDICAL ASSESSMENT.—

14 (1) IN GENERAL.—The initial screening and
15 medical assessment of detainees shall include—

16 (A) an interview and the use of a stand-
17 ardized medical intake questionnaire or the
18 equivalent;

19 (B) screening of vital signs, including pulse
20 rate, body temperature, blood pressure, oxygen
21 saturation, and respiration rate;

22 (C) screening for blood glucose for known
23 or suspected diabetics;

24 (D) weight assessment of detainees young-
25 er than 12 years of age;

1 (E) a physical examination; and

2 (F) a risk assessment and the development
3 of a plan for monitoring and care, as appro-
4 priate.

5 (2) PRESCRIPTION MEDICATION.—

6 (A) IN GENERAL.—The medical profes-
7 sional conducting the screening pursuant to
8 subsection (b) shall—

9 (i) review any prescribed medication
10 that is in the detainee’s possession or that
11 was confiscated by CBP upon arrival; and

12 (ii) determine if such medication
13 should be—

14 (I) kept by the detainee for use
15 during detention;

16 (II) properly stored by CBP, with
17 appropriate access for use during de-
18 tention; or

19 (III) maintained with the de-
20 tained individual’s personal property.

21 (B) RIGHT TO MEDICATION.—A detainee
22 may not be denied the use of necessary and ap-
23 propriate medication for the management of the
24 detainee’s illness.

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

4 (d) TIMING.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), the initial screening and medical assess-
7 ment described in subsections (b) and (c) shall take
8 place as soon as practicable, but not later than 12
9 hours after a detainee’s arrival at a CBP facility.

10 (2) HIGH PRIORITY INDIVIDUALS.—The initial
11 screening and medical assessment referred to in
12 paragraph (1) shall take place as soon as prac-
13 ticable, but not later than 6 hours after a detainee’s
14 arrival at a CBP facility if the individual—

15 (A) reasonably self-identifies as having a
16 medical condition that requires prompt medical
17 attention; or

18 (B) is—

19 (i) exhibiting signs of acute or poten-
20 tially severe physical or mental illness, or
21 otherwise has an acute or chronic physical
22 or mental disability or illness;

23 (ii) pregnant;

24 (iii) a child (with priority given, as ap-
25 propriate, to the youngest children); or

1 (iv) elderly.

2 (e) FURTHER CARE.—

3 (1) IN GENERAL.—If, as a result of the initial
4 health screening and medical assessment described
5 in subsections (b) and (c), the licensed medical pro-
6 fessional conducting such screening or assessment
7 determines that 1 or more of the detainee’s vital
8 sign measurements are significantly outside normal
9 ranges, in accordance with the National Emergency
10 Services Education Standards, or if the detainee is
11 identified as high risk or in need of medical inter-
12 vention, the detainee shall be provided, as expedi-
13 tiously as possible, with an in-person or technology-
14 facilitated medical consultation with a licensed emer-
15 gency care professional.

16 (2) REEVALUATION.—

17 (A) IN GENERAL.—Each detainee de-
18 scribed in paragraph (1)—

19 (i) shall be reevaluated not later than
20 24 hours after the consultation required
21 under such paragraph; and

22 (ii)(I) shall be monitored thereafter as
23 determined by an emergency care profes-
24 sional; or

1 (II) if the detainee is a child, shall be
 2 monitored thereafter as determined by a li-
 3 censed emergency care professional with a
 4 background in pediatric care.

5 (B) REEVALUATION BEFORE TRAVEL.—In
 6 addition to the reevaluations required under
 7 subparagraph (A), detainees described in para-
 8 graph (1), before travel—

9 (i) shall have all of their vital signs
 10 reevaluated; and

11 (ii) shall be cleared by a medical pro-
 12 fessional as being able to travel safely.

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

19 (f) INTERPRETERS.—To ensure that health
 20 screenings and medical care required under this section
 21 are carried out in the best interests of the detainee, the
 22 Commissioner shall ensure that—

23 (1) language-appropriate interpretation serv-
 24 ices, including interpretation of indigenous lan-
 25 guages, are provided to each detainee; and

1 (2) each detainee is informed of the availability
2 of such interpretation services.

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

6 (1) the Commissioner shall establish guidelines
7 for, and ensure the presence of, chaperones for all
8 detainees during medical screenings and examina-
9 tions in accordance with relevant guidelines in the
10 American Medical Association Code of Medical Eth-
11 ics and recommendations of the American Academy
12 of Pediatrics; and

13 (2) to the extent practicable, the physical exam-
14 ination of a child shall always be performed in the
15 presence of—

16 (A) a parent or legal guardian; or

17 (B) the detainee's closest present adult rel-
18 ative, if a parent or legal guardian is unavail-
19 able.

20 (h) DOCUMENTATION.—The Commissioner shall en-
21 sure that—

22 (1) the health screenings and medical care re-
23 quired under this section and any other medical
24 evaluations and interventions for detainees are docu-
25 mented in accordance with commonly accepted

1 standards in the United States for medical record
2 documentation; and

3 (2) such documentation is provided to any indi-
4 vidual who received a health screening and subse-
5 quent medical treatment upon release from CBP
6 custody.

7 (i) INFRASTRUCTURE AND EQUIPMENT.—The Com-
8 missioner or the Administrator of General Services shall
9 ensure that each location to which detainees are first
10 transported after an initial encounter with an agent or of-
11 ficer of CBP has—

12 (1) a private space that—

13 (A) provides a comfortable and considerate
14 atmosphere for the patient; and

15 (B) ensures the patient’s dignity and right
16 to privacy during the health screening and med-
17 ical assessment and any necessary follow-up
18 care;

19 (2) all necessary and appropriate medical equip-
20 ment and facilities—

21 (A) to conduct the health screenings and
22 follow-up care required under this section;

23 (B) to treat trauma;

24 (C) to provide emergency care, including
25 resuscitation of individuals of all ages; and

1 (D) to prevent the spread of communicable
2 diseases;

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

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

9 (j) PERSONNEL.—The Commissioner or the Adminis-
10 trator of General Services, as the case may be, shall en-
11 sure that each location to which detainees are first trans-
12 ported after an initial encounter has—

13 (1) at least 1 licensed medical professional on
14 site to conduct health screenings; and

15 (2) other personnel that are or may be nec-
16 essary for carrying out the functions described in
17 subsection (e), such as licensed emergency care pro-
18 fessionals, specialty physicians (including physicians
19 specializing in pediatrics, family medicine, obstetrics
20 and gynecology, geriatric medicine, internal medi-
21 cine, and infectious diseases), nurse practitioners,
22 other nurses, physician assistants, licensed social
23 workers, mental health professionals, public health
24 professionals, dietitians, interpreters, and chap-

1 erones, on site to the extent practicable, or, if not
2 practicable, available on call.

3 (k) **ETHICAL GUIDELINES.**—The Commissioner shall
4 ensure that all medical assessments and procedures con-
5 ducted pursuant to this section are conducted in accord-
6 ance with ethical guidelines in the applicable medical field
7 and respect human dignity.

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

9 The Commissioner shall ensure that detainees have
10 access to—

11 (1) not less than 1 gallon of drinking water per
12 person per day, in addition any other age-appro-
13 priate fluids that may be needed;

14 (2) a private, safe, clean, and reliable perma-
15 nent or portable toilet with proper waste disposal
16 and a hand washing station, with not fewer than 1
17 toilet available for every 12 male detainees, and not
18 fewer than 1 toilet available for every 8 female de-
19 tainees;

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

23 (4) the opportunity to bathe daily in a perma-
24 nent or portable shower that is private and secure;
25 and

1 (5) products for individuals of all age groups
2 and for individuals with disabilities to maintain basic
3 personal hygiene, including soap, a toothbrush,
4 toothpaste, adult diapers, feminine hygiene products,
5 and receptacles for the proper storage and disposal
6 of such products.

7 **SEC. 5. FOOD AND NUTRITION.**

8 The Commissioner shall ensure that detainees have
9 access to—

10 (1) 3 meals per day, including—

11 (A) for individuals 12 years of age or
12 older, a diet that contains not less than 2,000
13 calories per day; and

14 (B) for children younger than 12 years of
15 age, a diet that contains an appropriate number
16 of calories per day based on the child's age and
17 weight;

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

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

22 **SEC. 6. SHELTER.**

23 The Commissioner shall ensure that in each facility
24 at which a detainee is detained—

1 (1) except as provided in paragraph (2), males
2 and females are detained separately;

3 (2) for any minor child arriving in the United
4 States with an adult relative or legal guardian, such
5 child—

6 (A) is detained with such relative or legal
7 guardian unless such an arrangement poses
8 safety or security concerns; and

9 (B) if such child is detained apart from an
10 adult relative or legal guardian as a result of
11 such safety or security concerns, is not detained
12 with adults;

13 (3) for any unaccompanied minor arriving in
14 the United States without an adult relative or legal
15 guardian, such child is detained in an age-appro-
16 priate facility and not detained with adults;

17 (4) a detainee with a temporary or permanent
18 disability is held in an accessible location and in a
19 manner that provides for his or her safety, comfort,
20 and security, with accommodations provided to the
21 extent needed;

22 (5) no detainee is placed in a room for any pe-
23 riod if such placement would exceed the maximum
24 occupancy level as determined by the appropriate
25 building code, fire marshal, or other authority;

1 (6) each detainee is provided with temperature
2 appropriate clothing and bedding;

3 (7) the facility is well lit and well ventilated,
4 with the humidity and temperature kept at com-
5 fortable levels (between 68 and 74 degrees Fahr-
6 enheit);

7 (8) detainees who are in custody for more than
8 48 hours are given access to the outdoors for not
9 less than 1 hour during the daylight hours during
10 each 24-hour period;

11 (9) detainees are allowed to practice their reli-
12 gion or to not practice a religion, as they may de-
13 cide;

14 (10) detainees are given access to lighting and
15 noise levels that are safe and conducive for sleeping
16 throughout the night between the hours of 10:00
17 p.m. and 6:00 a.m.;

18 (11) CBP officers, employees, and contracted
19 personnel—

20 (A) follow medical standards for the isola-
21 tion and prevention of communicable diseases;
22 and

23 (B) ensure the physical and mental safety
24 of detainees who identify as lesbian, gay, bisex-
25 ual, transgender, or intersex;

1 (12) the facility has video monitoring—

2 (A) to provide for the safety of the detain-
3 ees; and

4 (B) to prevent sexual abuse and physical
5 harm of vulnerable detainees;

6 (13) there is posted or otherwise made available
7 in all areas where detainees are located a language
8 appropriate “Detainee Bill of Rights” (including in-
9 digenous languages), which specifies all rights af-
10 farded to detainees under this Act; and

11 (14) the facility certifies that—

12 (A) the video monitoring required under
13 paragraph (12) is properly working at all times;
14 and

15 (B) the videos resulting from video moni-
16 toring are preserved for at least 90 days.

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

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

1 **SEC. 8. TRAINING.**

2 The Commissioner shall ensure that CBP personnel
3 assigned to each short-term custodial facility are profes-
4 sionally trained, including by receiving such continuing
5 education as the Commissioner determines appropriate, in
6 all subjects necessary to ensure compliance with this Act,
7 including—

8 (1) humanitarian response protocols and stand-
9 ards;

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

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

14 (4) procedures to report incidents of suspected
15 child sexual abuse and exploitation directly to the
16 National Center for Missing and Exploited Children.

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

18 (a) TRANSFER.—When a detainee is discharged from
19 a medical facility or emergency services department, the
20 Commissioner shall ensure that responsibility of care is
21 transferred from the medical facility or emergency services
22 department to an accepting licensed CBP health care pro-
23 vider.

24 (b) RESPONSIBILITIES OF ACCEPTING PROVIDERS.—
25 Each accepting licensed CBP health care provider shall
26 review the medical facility or emergency department's

1 evaluation, diagnosis, treatment, management, and dis-
2 charge care instructions—

3 (1) to assess the safety of the discharge and
4 transfer; and

5 (2) to provide necessary follow-up care.

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

7 (a) **PLANNING.**—Not later than 60 days after the
8 date of the enactment of this Act, the Secretary of Home-
9 land Security shall submit a detailed plan to Congress that
10 describes the timeline, process, and challenges of imple-
11 menting the requirements under this Act.

12 (b) **IMPLEMENTATION.**—The Secretary of Homeland
13 Security shall ensure that the requirements under this Act
14 are implemented not later than 6 months after the date
15 of the enactment of this Act.

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

17 The Secretary of Homeland Security shall ensure
18 that all personnel contracted to carry out this Act comply
19 with the requirements under this Act.

20 **SEC. 12. INSPECTIONS.**

21 (a) **IN GENERAL.**—The Inspector General of the De-
22 partment of Homeland Security shall—

23 (1) conduct unannounced inspections of ports of
24 entry, border patrol stations, and detention facilities
25 administered by CBP or contractors of CBP; and

1 (2) submit to Congress—

2 (A) reports on the results of the inspec-
3 tions conducted pursuant to paragraph (1); and

4 (B) other reports related to custody oper-
5 ations.

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

9 (1) the degree of compliance by CBP with the
10 requirements under this Act;

11 (2) remedial actions taken by CBP;

12 (3) the health needs of detainees; and

13 (4) the degree of compliance with part 115 of
14 title 6, Code of Federal Regulations (commonly
15 known as the “Standards to Prevent, Detect, and
16 Respond to Sexual Abuse and Assault in Confine-
17 ment Facilities”).

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

21 **SEC. 13. GOVERNMENT ACCOUNTABILITY OFFICE REPORT.**

22 (a) IN GENERAL.—The Comptroller General of the
23 United States—

24 (1) not later than 6 months after the date of
25 the enactment of this Act, shall commence a study

1 on implementation of, and compliance with, this Act;
2 and

3 (2) not later than 1 year after the date of the
4 enactment of this Act, shall submit a report to Con-
5 gress containing the results of the study required
6 under paragraph (1).

7 (b) ISSUES TO BE STUDIED.—The study required
8 under subsection (a)(1) shall examine—

9 (1) the management and oversight by CBP of
10 ports of entry, border patrol stations, and other de-
11 tention facilities, including the extent to which CBP
12 and the Department of Homeland Security have ef-
13 fective processes in place to comply with the require-
14 ments under this Act; and

15 (2) the extent to which CBP personnel, in car-
16 rying out this Act, make abusive, derisive, profane,
17 or harassing statements or gestures, or engage in
18 any other conduct evidencing hatred or invidious
19 prejudice to or about 1 person or group on account
20 of race, color, religion, national origin, sex, sexual
21 orientation, age, or disability, including on social
22 media.

1 **SEC. 14. PUBLICATION OF DATA ON COMPLAINTS OF SEX-**
2 **UAL ABUSE AT U.S. CUSTOMS AND BORDER**
3 **PROTECTION FACILITIES.**

4 Not later than 90 days after the date of the enact-
5 ment of this Act, the Secretary of Homeland Security, act-
6 ing in coordination with the Office of Inspector General
7 and the Office for Civil Rights and Civil Liberties of the
8 Department of Homeland Security, shall publicly release
9 aggregate data on complaints of sexual abuse at CBP fa-
10 cilities on its website on a quarterly basis, excluding any
11 personally identifiable information that may compromise
12 the confidentiality of individuals who reported such abuse.

13 **SEC. 15. RULES OF CONSTRUCTION.**

14 Nothing in this Act may be construed as—

15 (1) authorizing CBP to detain individuals for
16 longer than 72 hours;

17 (2) contradicting the March 7, 2014, Depart-
18 ment of Homeland Security rule adopting Standards
19 to Prevent, Detect, and Respond to Sexual Abuse
20 and Assault in Confinement Facilities, which in-
21 cludes a zero tolerance policy prohibiting all forms
22 of sexual abuse and assault of individuals in U.S.
23 Customs and Border Protection custody, including
24 in holding facilities, during transport, and during
25 processing;

1 (3) contradicting current protocols related to
2 Department of Homeland Security background
3 checks in the hiring process;

4 (4) restricting the Department of Homeland Se-
5 curity from denying employment to, or terminating
6 the employment of, any individual who—

7 (A) would be or is involved with the han-
8 dling or processing at holding facilities, during
9 transport, or during processing, or care of de-
10 tainees, including the care of children; and

11 (B) has been convicted of a sex crime or
12 other offense involving a child victim; or

13 (5) affecting the obligation to fully comply with
14 all applicable immigration laws, including being sub-
15 ject to any penalties, fines, or other sanctions.

○