

Stop Shackling and Detaining Pregnant Women Act

U.S. Senator Patty Murray

BACKGROUND

In March, despite statements of opposition and letters signed by more than 250 civil and human rights organizations¹ the Trump Administration publicly announced it had ended the policy of presumed release of pregnant women and youth in immigration detention. The administration rescinded the policy—in secret—in December.² According to an internal memo published on March 29, 2018, ICE no longer honors the previous policy, and instead makes a “case-by-case custody determination taking any special factors into account” when considering pregnant women and youth.³ Prior to December 2017, U.S. Immigration and Customs Enforcement (ICE) only detained a pregnant woman or youth if she was a threat to herself or others, or was a public safety risk. Between December and April ICE detained more than 500 pregnant women.⁴ Under the new policy, pregnant women in ICE detention do not have access to appropriate prenatal medical care and have miscarried in ICE custody.⁵

The American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Academy of Family Physicians wrote, “[t]he decision puts the health of women and adolescents and their pregnancies at great risk.”⁶ Shackling places women who are already at high-risk for pregnancy-related complications in more danger, interferes with safe medical practice and with normal labor and delivery, and puts the health of women and their pregnancies at great risk.⁷

LEGISLATIVE SUMMARY

To protect the health and safety of pregnant women and youth in detention, the *Stop Shackling and Detaining Pregnant Women Act* will reinstate the presumption of release of pregnant women and youth, set minimum standards for health care, prohibit shackling, and require public reporting on the detention of pregnant women.

- Reinstates the presumption of release of pregnant women and youth, with exceptions only when the DHS Secretary makes an individualized determination that credible, reasonable grounds exist to believe that the person presents an immediate and serious threat of hurting herself or others. If detained, only the least restrictive means of detention are permitted with a weekly review mandated.
- Prohibits the shackling of pregnant women in custody at any time during pregnancy, labor, and postpartum recovery.
- Sets a minimum standards of comprehensive health care for any pregnant women or youth in custody including: routine or specialized prenatal care, comprehensive counseling, postpartum follow-up services, lactation services, and abortion services.
- Requires pregnant women and youth in custody are given privacy during a pelvic exam, labor, delivery, or treatment of any other symptom relating to a pregnancy.
- Requires public quarterly reporting on detention of pregnant women and youth, including audits and reports to Congress.

¹ Letter to ICE Acting Director Homan (April 11, 2018) <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/ICE%20sign-on%20letter%20FINAL%204.11.18.pdf>

² Lopez, Victoria , “Working to Uncover How ICE Treats Pregnant Women in Detention” (May 3, 2018) <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/working-uncover-how-ice-treats-pregnant-women>

³ The Hill, “ICE Will Detain Pregnant Women, Ending Previous Policy” (March 29, 2018) <http://thehill.com/latino/380827-ice-will-detain-pregnant-women-ending-previous-policy>

⁴ NPR, “Pregnant and Detained” (April 6, 2018) <https://www.npr.org/2018/04/05/599802820/pregnant-and-detained>

⁵ BuzzFeed, “Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed” (July 9, 2018) https://www.buzzfeed.com/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.odgNJmwNW#.raoDd49D0

⁶ American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, and the American Academy of Family Physicians, Letter to ICE Acting Director Homan (March 30, 2018) <https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/2018ACOG-AAP-AAFP-LTRtoICE.pdf?dmc=1&ts=20180703T2345467948>

⁷ American College of Obstetricians and Gynecologists, “Health Care for Unauthorized Immigrants” (March 2015) <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>