

116TH CONGRESS
2D SESSION

H. R. 9039

To require the Secretary of Homeland Security to operate alternatives to detention programs, to prioritize certain vulnerable populations for those programs, and to require the Secretary to justify the allocation of resources and decisions on whether to detain people based on ensuring compliance with immigration proceedings in the most cost-effective ways possible, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 21, 2020

Mr. AMASH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To require the Secretary of Homeland Security to operate alternatives to detention programs, to prioritize certain vulnerable populations for those programs, and to require the Secretary to justify the allocation of resources and decisions on whether to detain people based on ensuring compliance with immigration proceedings in the most cost-effective ways possible, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “ ‘Practical Alternatives
3 to Detention Act’ ”.

4 **SEC. 2. ALTERNATIVES TO DETENTION.**

5 (a) IN GENERAL.—Not later than one year after the
6 date of the enactment of this Act, the Secretary of Home-
7 land Security shall fully implement and use alternatives
8 to detention programs, including a family case manage-
9 ment program, in accordance with this section.

10 (b) SCREENING.—The Secretary shall screen aliens
11 who are in the custody of the Department of Homeland
12 Security to determine whether their compliance with the
13 immigration laws (as such term is defined in section 101
14 of the Immigration and Nationality Act (8 U.S.C. 1101))
15 and immigration court proceedings could likely be secured
16 through participation in an alternatives to detention pro-
17 gram, and shall enroll qualifying aliens in such programs
18 in accordance with the program requirements described in
19 subsection (d). The Secretary shall prioritize screening
20 and enrolling in such programs the following aliens:

21 (1) Aliens who are pregnant.

22 (2) Aliens who have serious or ongoing medical
23 or mental health needs or a disability.

24 (3) Aliens who are being detained with one or
25 more of their children who are under the age of 18,
26 or who are caregivers for any family member in the

1 United States who has a serious or ongoing medical
2 or mental health need or a disability.

3 (4) Asylum seekers and torture survivors who
4 have demonstrated a credible fear of persecution or
5 a reasonable fear of torture.

6 (5) Any other aliens the Secretary determines
7 appropriate to prioritize.

8 (6) During any declared public health emer-
9 gency declared by the Secretary of Health and
10 Human Services under section 319 of the Public
11 Health Service Act (42 U.S.C. 247d), aliens at ele-
12 vated risk of—

13 (A) death, injury, or serious illness from
14 possible exposure in detention to a disease re-
15 lated to the public health emergency; or

16 (B) developing a disorder from possible ex-
17 posure in detention to a disease related to the
18 public health emergency.

19 (c) CERTAIN ALIENS INELIGIBLE.—An alien shall
20 not be eligible for an alternatives to detention program
21 under this section if—

22 (1) the alien is subject to mandatory detention
23 under section 236A of the Immigration and Nation-
24 ality Act (8 U.S.C. 1226a); or

1 (2) the alien, in the discretion of the Secretary,
2 presents a flight risk, a risk to others, or a risk to
3 national security, and the risk cannot be reasonably
4 mitigated through an alternatives to detention pro-
5 gram.

6 (d) PROGRAM REQUIREMENTS.—The alternatives to
7 detention programs used pursuant to this section shall use
8 evidence-based practices demonstrated to mitigate the
9 risks described in subsection (c)(2) and promote compli-
10 ance with the immigration laws in a cost efficient manner.

11 (e) QUARTERLY REPORTS.—Not later than 90 days
12 after the date of the enactment of this Act, and every 90
13 days thereafter, the Secretary shall submit to the appro-
14 priate congressional committees reports on the following:

15 (1) Aliens who were detained in the custody of
16 the Department of Homeland Security at any point
17 during the previous 90-day period, including, with
18 respect to such period, the following information:

19 (A) The number of aliens subject to man-
20 datory detention under section 236A of the Im-
21 migration and Nationality Act (8 U.S.C.
22 1226a) who were detained for 90 days or more,
23 and a description of the reason or reasons for
24 each such detention.

1 (B) The number of aliens detained for 7
2 days or more, and the number of such aliens
3 who—

4 (i) had a serious or ongoing medical
5 or mental health need or disability;

6 (ii) were detained with one or more
7 children under the alien's care;

8 (iii) are asylum seekers or torture sur-
9 vivors who have demonstrated a credible
10 fear of persecution or a reasonable fear of
11 torture; or

12 (iv) were detained during a public
13 health emergency declared by the Secretary
14 of Health and Human Services under sec-
15 tion 319 of the Public Health Service Act
16 (42 U.S.C. 247d), and were at elevated
17 risk of—

18 (I) death, injury, or serious ill-
19 ness from possible exposure in deten-
20 tion to a disease related to the public
21 health emergency; or

22 (II) developing a disorder from
23 possible exposure in detention to a
24 disease related to the public health
25 emergency.

1 (C) A description of the reason for the de-
2 tention of each alien described in each of
3 clauses (i), (ii), (iii), and (iv) of subparagraph
4 (B).

5 (D) The number of aliens detained for 48
6 hours or more who were pregnant, the duration
7 of each such alien's detention, and a description
8 of the reason or reasons for each such deten-
9 tion.

10 (E) The number of aliens who suffered
11 miscarriages while detained, and a description
12 of any medical services made available to each
13 such alien.

14 (2) Alternatives to detention programs, includ-
15 ing, for each such program, with respect to the pre-
16 vious 90-day period, the following information:

17 (A) The number of adults who participated
18 in the program, the number of their own chil-
19 dren under their care, and the number of any
20 other children under their care.

21 (B) The services provided and the levels of
22 monitoring maintained for aliens participating
23 in the program.

1 (C) The rates of participants' compliance
2 with immigration check-ins, court dates, and re-
3 moval proceedings.

4 (D) The number of participants who ab-
5 sconded.

6 (E) The per-participant costs of the pro-
7 gram.

8 The Secretary shall ensure that any information collected,
9 published, or otherwise made available under this sub-
10 section does not reveal personally identifiable information.

11 (f) ANNUAL REPORT.—Not later than 90 days after
12 the date of the enactment of this Act, and annually there-
13 after at the time of submission of the President's budget
14 request, the Secretary shall submit to the appropriate con-
15 gressional committees a strategy—

16 (1) to evaluate the costs and effectiveness of
17 different elements and combinations of elements of
18 alternatives to detention programs for different
19 groups of participants; and

20 (2) to allocate resources for detention programs
21 and alternatives to detention programs in such a
22 way as to minimize costs to the Federal Government
23 and maximize compliance with the immigration laws.

24 (g) COMPTROLLER GENERAL REPORT.—Not later
25 than one year after the date of the enactment of this Act,

1 and annually thereafter for the succeeding 5 years, the
2 Comptroller General of the United States shall submit to
3 the appropriate congressional committees the following:

4 (1) A report on the effectiveness of the alter-
5 natives to detention programs used pursuant to this
6 section at mitigating risks to public safety and na-
7 tional security and promoting compliance with the
8 immigration laws in a cost efficient manner.

9 (2) A report on the status of immigration court
10 backlogs, the causes for such backlogs, and rec-
11 ommendations for how many additional immigration
12 judges and support staff may be needed to facilitate
13 timely and fair immigration proceedings.

14 (h) CONTRACT AUTHORITY.—The Secretary may
15 enter into contracts with qualified nongovernmental enti-
16 ties to implement the alternatives to detention programs
17 required under this section.

18 (i) APPLICATION TO UNACCOMPANIED ALIEN CHIL-
19 DREN.—Nothing in this section shall be construed to mod-
20 ify the care and custody of unaccompanied alien children
21 (as such term is defined in section 462(g)(2) of the Home-
22 land Security Act (6 U.S.C. 279(g)(2))).

23 (j) DEFINITIONS.—In this section:

24 (1) APPROPRIATE CONGRESSIONAL COMMIT-
25 TEES.—The term “appropriate congressional com-

mittees” means the Committee on the Judiciary of the House of Representatives, the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Appropriations of the House of Representatives, the Committee on the Judiciary of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Appropriations of the Senate.

(2) FAMILY CASE MANAGEMENT PROGRAM.—

The term “family case management program” means an alternatives to detention program to support compliance of family units with immigration proceedings by providing services, which may include the following:

(A) Individualized family service plans.

(B) Information about options available to obtain legal counsel.

(C) Education about the family’s legal rights and responsibilities.

(D) Tracking and monitoring of immigration obligations, including attendance at immigration court proceedings.

(E) Assistance with transportation logistics, in the case of an emergency, to attend a

1 required U.S. Immigration and Customs En-
2 forcement check-in, a court appearance, or to
3 further removal.

4 (F) Reintegration planning for participants
5 who are returning to their home countries.

6 (3) EFFECTIVENESS.—The term “effectiveness”
7 means, with respect to an alternatives to detention
8 program, the rate of success of the program at se-
9 curing participants’ attendance at immigration
10 check-ins, court dates, and removal proceedings.

11 (4) FLIGHT RISK.—The term “flight risk”
12 means, with respect to an individual, that the Sec-
13 retary of Homeland Security has found, based on in-
14 dividualized facts, that the individual is more likely
15 than not to intentionally fail to appear at required
16 immigration court proceedings.

○