

116TH CONGRESS
1ST SESSION

S. 1894

To require the Secretary of Homeland Security to use alternatives to detention for certain vulnerable immigrant populations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2019

Ms. CORTEZ MASTO (for herself, Mr. MARKEY, Mrs. GILLIBRAND, Mr. BLUMENTHAL, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the Secretary of Homeland Security to use alternatives to detention for certain vulnerable immigrant populations, 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 “Alternatives to Deten-
5 tion Act of 2019”.

6 **SEC. 2. ALTERNATIVES TO DETENTION UNDER IMMIGRA-**
7 **TION LAWS.**

8 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—The Secretary shall establish
2 programs to provide alternatives to detention under
3 the immigration laws.

4 (2) AVAILABILITY.—The programs under para-
5 graph (1) shall be available to an alien regardless of
6 whether—

7 (A) a decision on a charge of removability
8 with respect to the alien is pending; or

9 (B) the alien is subject to an order of re-
10 moval.

11 (3) CONTINUUM OF SUPERVISION.—The pro-
12 grams under paragraph (1) shall provide for a con-
13 tinuum of supervision mechanisms and options, in-
14 cluding community-based supervision and commu-
15 nity support.

16 (4) CONTRACTS WITH NONGOVERNMENTAL OR-
17 GANIZATIONS.—The Secretary may contract with
18 one or more nongovernmental organizations to pro-
19 vide services under this subsection and subsection
20 (b).

21 (b) RESTORATION OF THE FAMILY CASE MANAGE-
22 MENT PROGRAM.—Not later than 7 days after the date
23 of the enactment of this Act, the Secretary shall fully re-
24 store the U.S. Immigration and Customs Enforcement

1 Family Case Management Program as the program ex-
2 isted on January 21, 2016, which shall—

3 (1) provide community supervision and commu-
4 nity support services, including case management
5 services, appearance services, and screening of aliens
6 who have been detained; and

7 (2) be carried out through a contract with a
8 nongovernmental organization that has dem-
9 onstrated expertise in providing such supervision
10 and support services.

11 (c) DETERMINATION OF VULNERABLE POPULATION
12 OR CAREGIVER STATUS REQUIRED.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (3) and subject to paragraph (2), not later
15 than 72 hours after taking an individual into cus-
16 tody under the immigration laws, the Secretary, the
17 Commissioner of U.S. Customs and Border Protec-
18 tion, an immigration officer, or an immigration
19 judge shall make an individualized determination
20 with respect to—

21 (A) whether the individual may participate
22 in an alternatives to detention program, includ-
23 ing the Family Case Management Program de-
24 scribed in subsection (b); and

25 (B) the appropriate level of supervision.

1 (2) PRESUMPTION FOR PLACEMENT IN ALTER-
2 NATIVES TO DETENTION PROGRAM.—

3 (A) IN GENERAL.—There shall be a pre-
4 sumption for placement in an alternatives to de-
5 tention program that is a community-based su-
6 pervision program for any alien who is—

7 (i) taken into the physical custody of
8 the Department of Homeland Security;
9 and

10 (ii) a member of a vulnerable popu-
11 lation, a parent of a child under 18 years
12 of age, a dependent caregiver, or a family
13 caregiver.

14 (B) EXCEPTION.—The presumption de-
15 scribed in subparagraph (A) shall not apply if
16 the Secretary, the Commissioner of U.S. Cus-
17 toms and Border Protection, an immigration of-
18 ficer, or an immigration judge specifically deter-
19 mines that the alien is a threat to himself or
20 herself or the public.

21 (3) EXCEPTIONS.—Alternatives to detention
22 programs shall not be available to any individual—

23 (A) detained under section 236A of the
24 Immigration and Nationality Act (8 U.S.C.
25 1226a); or

1 (B) for whom release on bond or recog-
2 nizance is determined to be a sufficient measure
3 to ensure appearances at immigration pro-
4 ceedings and public safety.

5 (d) COORDINATOR OF ALTERNATIVES TO DETEN-
6 TION.—

7 (1) IN GENERAL.—Not later than 30 days after
8 the date of the enactment of this Act, the Secretary
9 shall—

10 (A) establish within the Department of
11 Homeland Security the position of Coordinator
12 of Alternatives to Detention (referred to in this
13 subsection as the “Coordinator”), which shall
14 report directly to the Secretary; and

15 (B) appoint the Coordinator.

16 (2) RESOURCES.—The Secretary shall make
17 available to the Coordinator such personnel, funds,
18 and other resources as may be appropriate to enable
19 the Coordinator to carry out the mission under para-
20 graph (3)(A).

21 (3) MISSION AND DUTIES.—

22 (A) MISSION.—The mission of the Coordi-
23 nator shall be to coordinate, in collaboration
24 with the executive departments, the use of al-
25 ternatives to detention programs.

1 (B) DUTIES OF COORDINATOR.—

2 (i) IN GENERAL.—The Coordinator
3 shall—

4 (I) serve as the primary point of
5 contact within the executive branch
6 for Congress, State and local govern-
7 ments, the private sector, and commu-
8 nity leaders with respect to the alter-
9 natives to detention programs; and

10 (II) in coordination with the ex-
11 ecutive departments, with respect to
12 Congress, State and local govern-
13 ments, the private sector, and commu-
14 nity leaders, manage information flow
15 about, requests for actions relating to,
16 and discussions on such programs.

17 (ii) REPORTS REQUIRED.—

18 (I) MONTHLY REPORTS.—Not
19 later than 30 days after the date of
20 the appointment of the Coordinator,
21 and every 30 days thereafter, the Co-
22 ordinator shall submit to Congress a
23 report that includes—

1 (aa) the number of individ-
2 uals detained under the immigra-
3 tion laws—

4 (AA) pending a decision
5 on whether the individual is
6 to be removed; and

7 (BB) after the issuance
8 of a removal order;

9 (bb) an assessment whether
10 any individual described in item
11 (aa) is subject to the special rule
12 under subsection (c)(2); and

13 (cc) the number of individ-
14 uals participating in an alter-
15 natives to detention program es-
16 tablished under subsection (a),
17 disaggregated by the level of su-
18 pervision of such individuals.

19 (II) ANNUAL REPORTS.—Not
20 later than one year after the date of
21 the appointment of the Coordinator,
22 and annually thereafter, the Coordi-
23 nator shall submit to Congress a re-
24 port that includes—

1 (aa) guidance and require-
2 ments for referral and placement
3 decisions in alternatives to deten-
4 tion programs;

5 (bb) information on enroll-
6 ment in alternatives to detention
7 programs, disaggregated by field
8 office;

9 (cc) information on the
10 length of enrollment in alter-
11 natives to detention programs,
12 disaggregated by type of alter-
13 native to detention program; and

14 (dd) information on the pop-
15 ulation enrolled in alternatives to
16 detention programs, disaggre-
17 gated by type of alternative to
18 detention program and point of
19 apprehension.

20 (C) DUTIES OF EXECUTIVE DEPART-
21 MENTS.—The heads of the executive depart-
22 ments shall—

23 (i) respond promptly to any request
24 by the Coordinator;

1 (ii) consistent with applicable law,
 2 provide such information as the Coordi-
 3 nator considers necessary to carry out the
 4 mission of the Coordinator; and

5 (iii) otherwise cooperate with the Co-
 6 ordinator to the maximum extent prac-
 7 ticable to facilitate the performance of the
 8 mission under subparagraph (A).

9 (e) GAO STUDY AND REPORT.—The Comptroller
 10 General of the United States shall—

11 (1) conduct a study on the use and effectiveness
 12 of the alternatives to detention programs established
 13 under subsection (a); and

14 (2) not later than two years after the date of
 15 the enactment of this Act, submit to Congress a re-
 16 port on the results of the study under paragraph
 17 (1).

18 (f) DEFINITIONS.—In this section:

19 (1) DEPENDENT CAREGIVER.—The term “de-
 20 pendent caregiver” means an individual who lives
 21 with, and provides more than ½ of the financial
 22 support required by, a family member who is—

23 (A) under 18 years of age; or

1 (B) unable to engage in substantial em-
2 ployment due to a physical or mental health
3 condition or disability.

4 (2) EXECUTIVE DEPARTMENTS.—The term “ex-
5 ecutive departments” has the meaning given the
6 term in section 101 of title 5, United States Code.

7 (3) FAMILY CAREGIVER.—The term “family
8 caregiver” means an individual who lives with, and
9 provides more than ½ of the personal care required
10 by, a family member who is—

11 (A) under 18 years of age; or

12 (B) unable to engage in substantial em-
13 ployment due to a physical or mental health
14 condition or disability.

15 (4) FAMILY MEMBER.—The term “family mem-
16 ber”, with respect to an individual receiving personal
17 care services or financial support, means an indi-
18 vidual who is—

19 (A) a parent or legal guardian;

20 (B) a spouse;

21 (C) a child;

22 (D) a step-family member; or

23 (E) an extended family member.

24 (5) IMMIGRATION LAWS.—The term “immigra-
25 tion laws” has the meaning given the term in section

1 101(a)(17) of the Immigration and Nationality Act
2 (8 U.S.C. 1101(a)(17)).

3 (6) LEGAL GUARDIAN.—The term “legal guard-
4 ian” means a legal guardian under State law or the
5 law of a foreign country.

6 (7) MEMBER OF A VULNERABLE POPU-
7 LATION.—The term “member of a vulnerable popu-
8 lation” means an individual who—

9 (A) is an asylum seeker or is otherwise
10 seeking lawful status;

11 (B) is a victim of torture or trafficking;

12 (C) has special religious, cultural, or spir-
13 itual considerations;

14 (D) is pregnant or nursing;

15 (E) is under 21 years of age;

16 (F) is older than 60 years of age;

17 (G) identifies as gay, lesbian, bisexual,
18 transgender, or intersex;

19 (H) is a victim or witness of a crime;

20 (I) has a mental disorder or physical dis-
21 ability; or

22 (J) is experiencing severe trauma or is a
23 survivor of torture or gender-based violence, as
24 determined by an immigration judge or the Sec-
25 retary based on information obtained—

- 1 (i) by the attorney or legal services
2 provider of the individual during intake; or
3 (ii) through credible reporting by the
4 individual.

5 (8) PARENT.—The term “parent” means a bio-
6 logical or adoptive parent of a child, whose parental
7 rights have not been relinquished or terminated
8 under State law or the law of a foreign country.

9 (9) SECRETARY.—The term “Secretary” means
10 the Secretary of Homeland Security.

11 **SEC. 3. SAVINGS PROVISIONS.**

12 (a) FEDERAL LAW.—Nothing in this Act may be con-
13 strued to supersede or modify—

14 (1) the William Wilberforce Trafficking Victims
15 Protection Reauthorization Act of 2008 (8 U.S.C.
16 1232 et seq.);

17 (2) the Stipulated Settlement Agreement filed
18 in the United States District Court for the Central
19 District of California on January 17, 1997 (CV 85–
20 4544–RJK) (commonly known as the “Flores Settle-
21 ment Agreement”);

22 (3) the Homeland Security Act of 2002 (6
23 U.S.C. 101 et seq.); or

1 (4) any applicable Federal child welfare law, in-
2 cluding the Adoption and Safe Families Act of 1997
3 (Public Law 105–89).

4 (b) STATE LAW.—Nothing in this Act may be con-
5 strued to supersede or modify any applicable State child
6 welfare laws.

