

118TH CONGRESS  
1ST SESSION

# S. 2864

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

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2023

Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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. Cus-  
 4 toms and Border Protection.

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

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

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

13 (5) FORWARD OPERATING BASE.—The term  
 14 “forward operating base” means a permanent facil-  
 15 ity that has been established by CBP in a forward  
 16 or remote location and has been so designated by  
 17 CBP.

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

1       ices that are performed in person or through a tele-  
2       phone 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 health care 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 being transported to another  
9 location—

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

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

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

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



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

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

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

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

16          (2) to the extent practicable, the physical exam-  
17          ination of a child shall always be performed in the  
18          presence of—

19                  (A) a parent or legal guardian; or

20                  (B) the detainee’s closest present adult rel-  
21          ative, if a parent or legal guardian is unavail-  
22          able.

23          (h) DOCUMENTATION.—The Commissioner shall en-  
24          sure that—

1           (1) the health screenings and medical care re-  
2           quired under this section and any other medical  
3           evaluations and interventions for detainees are docu-  
4           mented in accordance with commonly accepted  
5           standards in the United States for medical record  
6           documentation; and

7           (2) such documentation is provided to any indi-  
8           vidual who received a health screening and subse-  
9           quent medical treatment upon release from CBP  
10          custody.

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

16                (1) a private space that—

17                    (A) provides a comfortable and considerate  
18                    atmosphere for the patient; and

19                    (B) ensures the patient’s dignity and right  
20                    to privacy during the health screening and med-  
21                    ical assessment and any necessary follow-up  
22                    care;

23                (2) all necessary and appropriate medical equip-  
24          ment and facilities—

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

3 (B) to treat trauma;

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

6 (D) to prevent the spread of communicable  
7 diseases;

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

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

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

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

20 (2) other personnel that are or may be nec-  
21 essary for carrying out the functions described in  
22 subsection (e), such as licensed emergency care pro-  
23 fessionals, specialty physicians (including physicians  
24 specializing in pediatrics, family medicine, obstetrics  
25 and gynecology, geriatric medicine, internal medi-

1 cine, and infectious diseases), nurse practitioners,  
2 other nurses, physician assistants, licensed social  
3 workers, mental health professionals, public health  
4 professionals, dieticians, interpreters, and chap-  
5 erones, on site to the extent practicable, or, if not  
6 practicable, available on call.

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

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

13 The Commissioner shall ensure that all detainees  
14 have access to—

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

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

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

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

7           (5) products for individuals of all age groups  
8           and for individuals with disabilities to maintain basic  
9           personal hygiene, including soap, a toothbrush,  
10          toothpaste, adult diapers, feminine hygiene products,  
11          and receptacles for the proper storage and disposal  
12          of such products.

13 **SEC. 5. FOOD AND NUTRITION.**

14          The Commissioner shall ensure that detainees have  
15          access to—

16           (1) 3 meals per day, including—

17           (A) for individuals 12 years of age or  
18           older, a diet that contains not fewer than 2,000  
19           calories per day; and

20           (B) for children younger than 12 years of  
21           age, a diet that contains an appropriate number  
22           of calories per day based on the child's age and  
23           weight;

24           (2) accommodations for any dietary needs or  
25           restrictions; and

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

3 **SEC. 6. SHELTER.**

4           The Commissioner shall ensure that in each facility  
5 at which a detainee is detained—

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

8           (2) for any minor child arriving in the United  
9           States with an adult relative or legal guardian, such  
10          child—

11                   (A) is detained with such relative or legal  
12                   guardian unless such an arrangement poses  
13                   safety or security concerns; and

14                   (B) if such child is detained apart from an  
15                   adult relative or legal guardian as a result of  
16                   such safety or security concerns, is not detained  
17                   with adults;

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

22           (4) a detainee with a temporary or permanent  
23           disability is held in an accessible location and in a  
24           manner that provides for his or her safety, comfort,

1 and security, with accommodations provided to the  
2 extent needed;

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

7 (6) each detainee is provided with temperature  
8 appropriate clothing and bedding;

9 (7) the facility is well lit and well ventilated,  
10 with the humidity and temperature kept at com-  
11 fortable levels (between 68 and 74 degrees Fahr-  
12 enheit);

13 (8) detainees who are in custody for more than  
14 48 hours are given access to the outdoors for not  
15 less than 1 hour during the daylight hours during  
16 each 24-hour period;

17 (9) detainees are allowed to practice their reli-  
18 gion or to not practice a religion, at their discretion;

19 (10) detainees are given access to lighting and  
20 noise levels that are safe and conducive for sleeping  
21 throughout the night between the hours of 10:00  
22 p.m. and 6:00 a.m.;

23 (11) CBP officers, employees, and contracted  
24 personnel—

1 (A) follow medical standards for the isola-  
2 tion and prevention of communicable diseases;  
3 and

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

7 (12) the facility has video monitoring—

8 (A) to provide for the safety of the detain-  
9 ees; and

10 (B) to prevent sexual abuse and physical  
11 harm of vulnerable detainees;

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

17 (14) the facility certifies that—

18 (A) the video monitoring required under  
19 paragraph (12) is properly working at all times;  
20 and

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

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

24 The Secretary of Homeland Security shall enter into  
25 memoranda of understanding with appropriate Federal



1 agencies, such as the Department of Health and Human  
2 Services, and applicable government emergency relief serv-  
3 ices, and shall enter into contracts with health care, public  
4 health, social work, and transportation professionals, for  
5 purposes of addressing surge capacity and ensuring com-  
6 pliance with this Act.

7 **SEC. 8. TRAINING.**

8 The Commissioner shall ensure that CBP personnel  
9 assigned to each short-term custodial facility are profes-  
10 sionally trained, including by receiving such continuing  
11 education as the Commissioner determines appropriate, in  
12 all subjects necessary to ensure compliance with this Act,  
13 including—

14 (1) humanitarian response protocols and stand-  
15 ards;

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

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

20 (4) procedures to report incidents of suspected  
21 child sexual abuse and exploitation directly to the  
22 National Center for Missing and Exploited Children.

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

24 (a) TRANSFER.—When a detainee is discharged from  
25 a medical facility or emergency services department, the

1 Commissioner shall ensure that responsibility of care is  
2 transferred from the medical facility or emergency services  
3 department to an accepting licensed CBP health care pro-  
4 vider.

5 (b) RESPONSIBILITIES OF ACCEPTING PROVIDERS.—  
6 Each accepting licensed CBP health care provider shall  
7 review the medical facility or emergency department’s  
8 evaluation, diagnosis, treatment, management, and dis-  
9 charge care instructions—

10 (1) to assess the safety of the discharge and  
11 transfer; and

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

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

14 (a) PLANNING.—Not later than 60 days after the  
15 date of the enactment of this Act, the Secretary of Home-  
16 land Security shall submit a detailed plan to Congress that  
17 describes the timeline, process, and challenges of imple-  
18 menting the requirements under this Act.

19 (b) IMPLEMENTATION.—The Secretary of Homeland  
20 Security shall ensure that the requirements under this Act  
21 are implemented not later than 6 months after the date  
22 of the enactment of this Act.

1 **SEC. 11. CONTRACTOR COMPLIANCE.**

2 The Secretary of Homeland Security shall ensure  
3 that all personnel contracted to carry out this Act comply  
4 with the requirements under this Act.

5 **SEC. 12. INSPECTIONS.**

6 (a) IN GENERAL.—The Inspector General of the De-  
7 partment of Homeland Security shall—

8 (1) conduct unannounced inspections of ports of  
9 entry, border patrol stations, and detention facilities  
10 administered by CBP or contractors of CBP; and

11 (2) submit to Congress—

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

14 (B) other reports related to custody oper-  
15 ations.

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

19 (1) the degree of compliance by CBP with the  
20 requirements under this Act;

21 (2) remedial actions taken by CBP;

22 (3) the health needs of detainees; and

23 (4) the degree of compliance with part 115 of  
24 title 6, Code of Federal Regulations (commonly  
25 known as the “Standards to Prevent, Detect, and

1 Respond to Sexual Abuse and Assault in Confine-  
2 ment Facilities”).

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

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

7 (a) IN GENERAL.—The Comptroller General of the  
8 United States—

9 (1) not later than 6 months after the date of  
10 the enactment of this Act, shall commence a study  
11 on implementation of, and compliance with, this Act;  
12 and

13 (2) not later than 1 year after the date of the  
14 enactment of this Act, shall submit a report to Con-  
15 gress containing the results of the study required  
16 under paragraph (1).

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

19 (1) the management and oversight by CBP of  
20 ports of entry, border patrol stations, and other de-  
21 tention facilities, including the extent to which CBP  
22 and the Department of Homeland Security have ef-  
23 fective processes in place to comply with the require-  
24 ments under this Act; and

1           (2) the extent to which CBP personnel, in car-  
2           rying out this Act, make abusive, derisive, profane,  
3           or harassing statements or gestures, or engage in  
4           any other conduct evidencing hatred or invidious  
5           prejudice to or about 1 person or group on account  
6           of race, color, religion, national origin, sex, sexual  
7           orientation, age, or disability, including on social  
8           media.

9   **SEC. 14. PUBLICATION OF DATA ON COMPLAINTS OF SEX-**  
10                           **UAL ABUSE AT U.S. CUSTOMS AND BORDER**  
11                           **PROTECTION FACILITIES.**

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

21   **SEC. 15. RULES OF CONSTRUCTION.**

22           Nothing in this Act may be construed as—

23           (1) authorizing CBP to detain individuals for  
24           longer than 72 hours;

1           (2) contradicting the March 7, 2014, Depart-  
2           ment of Homeland Security rule adopting Standards  
3           to Prevent, Detect, and Respond to Sexual Abuse  
4           and Assault in Confinement Facilities, which in-  
5           cludes a zero tolerance policy prohibiting all forms  
6           of sexual abuse and assault of individuals in U.S.  
7           Customs and Border Protection custody, including  
8           in holding facilities, during transport, and during  
9           processing;

10           (3) contradicting current protocols related to  
11           Department of Homeland Security background  
12           checks in the hiring process;

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

16                   (A) would be or is involved with the han-  
17                   dling or processing at holding facilities, during  
18                   transport, or during processing, or care of de-  
19                   tainees, including the care of children; and

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

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

○