

**Dignity for Detained Immigrants Act**  
**Introduced by Reps. Adam Smith and Pramila Jayapal**  
**Section by Section Summary**

*Sec. 1. Short title.* Section 1 sets forth the short title of the bill as the “Dignity for Detained Immigrants Act.”

*Sec. 2. Standards for DHS Detention Facilities.* Section 2 requires that the Secretary of the Department of Homeland Security (DHS) set forth civil detention standards by rulemaking. The standards must provide, at minimum, the level of protections set forth in the American Bar Association’s Civil Immigration Detention Standards. The Secretary is required to review and update these standards, as needed, on a biennial basis.

*Sec. 3. Oversight and Transparency for DHS Detention Facilities.* Section 3 requires the DHS Office of the Inspector General (DHS OIG) to conduct unannounced inspections of every immigration detention facility not less than annually to ensure compliance with detention standards established in section 2. Not later than 60 days after conducting the inspection, DHS OIG will make a report of the inspection publicly available on the DHS website and submit the report to the Secretary.

In addition, section 3 mandates penalties for failure to comply with the detention standards established in section 2. Penalties shall be imposed when DHS OIG determines that a facility has failed to comply with the standards and that such noncompliance constitutes a deficiency that threatens the health, safety, or due process rights of detained people:

- (1) For facilities not owned by DHS: After an initial failure to comply within any 2-year period, the Secretary will impose a fine of not less than 10 percent of the value of the facility contract. If a facility violates the standards twice in any 2-year period, the Secretary shall transfer detained people to a facility in compliance with the standards and terminate the contract with the owner of the facility within 30 days of receiving notification of the violation from DHS OIG.
- (2) For DHS-owned facilities: The Secretary will issue a written warning containing recommended remedial measures within 30 days of being notified of the deficiency by DHS OIG. Remedial measures must be completed within 60 days of the warning being issued. For subsequent deficiencies on 2 occasions in any 2-year period, the Secretary shall move detained people to a facility in compliance with the standards, and suspend the use of the facility until the Inspector General certifies that the facility is in compliance and information on the remedial measures taken is made public on DHS’s website.

Section 3 also sets requirements for investigations into any deaths that occur in the custody of DHS. After the death of an individual in DHS custody, the Secretary must conduct an investigation no later than 30 days, which includes a root cause analysis performed in accordance with professional medical standards. No later than 60 days after the death, the Secretary shall publicly publish a report on the DHS website, describing the results of the investigation.

In addition, the Secretary is required to submit a report to Congress each year that details the inspections and oversight of detention facilities. The report must include a list of detention facilities

that failed to comply with detention standards under section 2, any remedial actions taken or that the Secretary plans to take, and whether the remedial actions were successful in coming into compliance with the standards.

This section also classifies the inspection reports, the death in custody reports, and contracts with private companies as records under the Freedom of Information Act.

Section 3 also requires DHS to publish on its website on the first day of each month, the following information about immigration detention facilities where people may be detained:

- (1) Name and location of each facility;
- (2) Whether the facility houses adults, children, or both;
- (3) As of the first day of the month, the number of beds available in each facility, disaggregated by gender;
- (4) Whether the facility is used to detain individuals for longer than 72 hours, or for longer than 7 days;
- (5) Average number of individuals detained in the facility for the current year, and for the preceding month, disaggregated by gender and classification as a child or as an adult
- (6) Whether the facility is in compliance with the detention standards created in section 2;
- (7) For facilities not owned by DHS, the type of contract in use at the facility; and
- (8) The average number of days that individuals have been detained at the facility during the preceding month.

Section 3 requires DHS to ensure that the online detainee locator system, or any successor system, is updated not later than 12 hours after an individual is taken into custody or released from DHS custody, transferred to, or detained in, a detention facility, or removed from the United States.

Further, section 3 requires DHS to collect and maintain the following information for every person in DHS custody:

- (1) Gender and age of the individual;
- (2) Date on which the individual was detained;
- (3) Whether the individual is considered a vulnerable person or a primary caregiver;
- (4) The provision of law under which the Secretary is authorized to detain the individual;
- (5) The location where the individual is detained;
- (6) Any transfer of the individual to another detention facility, and the reason for the transfer;
- (7) The status and basis of any removal proceedings;
- (8) The initial custody determination made by U.S. Immigration and Customs Enforcement (ICE)
- (9) If applicable, the date of the individual's release or removal, and the reason for release or removal; and
- (10) Whether the individual is subject to a final order of removal.

*Sec. 4. Cause of Action.* Section 4 allows individuals who are injured as a result of a violation of the detention standards described in section 2 to file a claim in district court. In addition, the court may order injunctive relief, compensatory damages, and attorney fees and costs.

*Sec 5. DHS Detention Facility Construction and Maintenance.* Section 5 requires DHS to notify the Senate and House Committees on the Judiciary, House Committee on Homeland Security, and Senate Committee on Homeland Security and Governmental Affairs before initiating or entering into a contract for a detention facility or constructing a new facility or expanding an existing facility. The notification must be submitted not later than 180 days of the planned contract initiation or expansion, and include plans to construct or expand the facility, including the location, size, and capacity of the facility, anticipated timeline and cost of constructing or expanding the facility, and the intended population of the facility, including gender and ages.

In addition, section 5 phases out the use of private prisons and jails over a three-year period. Not later than 60 days after enactment, the Secretary shall develop and make publicly available a plan and timeline to implement this phase out. Three years after the date of enactment, all immigration detention facilities shall be owned and operated by DHS.

Lastly, section 5 prohibits the Secretary from initiating or extending any contract with public or private for-profit entities that own or operate a program or facility that provides non-residential detention-related activities for individuals subject to DHS monitoring beginning on the day of enactment. DHS shall terminate any existing contract not later than three years after enactment.

*Sec. 6. Appearance of Detained Aliens for Other Legal Matters.* This section requires that the Secretary promulgate a rule to ensure that detained individuals who are required to appear in Federal or State court for another matter are transported to such proceedings by an officer or employee of DHS

*Sec. 7. Procedures for Detaining Aliens.* Section 7 amends the Immigration and Nationality Act to require DHS to obtain a warrant from an immigration judge to arrest individuals. In the case of warrantless arrests, detained people must be provided with a probable cause hearing within 48 hours of arrest. This section also eliminates the minimum bond amount of \$1,500 and requires immigration judges to consider an individual's ability to pay when setting bond. The bond determination shall not impose financial hardship on the individual. Section 7 also eliminates indefinite, arbitrary detention, known as "mandatory detention," from the Immigration and Nationality Act. This would ensure that the government must prove an individual is a threat to the community and should remain in detention.

Under this section, the Secretary shall make an initial custody determination within 48 hours of taking the individual into custody, and provide that determination in writing to the individual. If the Secretary determines that releasing the individual will not reasonably assure that individual's appearance at immigration proceedings or releasing the individual will endanger the safety of another person or the community, the Secretary shall impose the least restrictive conditions. The least restrictive conditions may include secured or unsecured release on bond, or participation in an alternative to detention program. Any release conditions assigned under section 7 shall be reviewed by an immigration judge on a monthly basis. In addition, the individual can challenge the initial custody determination, in which case they shall be provided a hearing before an immigration judge within 72 hours after the initial custody determination.

Detained individuals will be provided with additional custody determinations every 60 days. In addition, if an immigration judge orders relief from removal for an individual, that individual shall be released from detention immediately. Relief from removal includes asylum or withholding, deferring, or cancellation of removal.

This section also creates a presumption of release and places the burden on the government to show that releasing the individual and the use of alternatives to detention will not assure the appearance of the individual at removal proceedings or that the individual is a threat to another person or the community. Pending criminal charges may not be the sole factor to justify continued detention.

Section 7 creates a special rule for vulnerable persons and primary caregivers. In addition to the requirements established in this section, the government must also show that it is unreasonable or not practicable to place individuals who are vulnerable persons or primary caregivers in a community-based supervision program. Vulnerable persons is defined as anyone who:

- (1) Is under 21 years of age or over 60 years of age
- (2) Is pregnant
- (3) Identifies as lesbian, gay, bisexual, transgender, or intersex
- (4) Is a victim or witness of a crime
- (5) Has filed a non-frivolous civil rights claim in Federal or State Court
- (6) Has a serious mental or physical illness or disability
- (7) Has been determined by an asylum officer in an interview under section 235 (b)(1)(B) of the INA to have a credible fear of persecution
- (8) Has been determined by an immigration judge or Secretary of DHS to be experiencing severe trauma or to be a survivor of torture or gender-based violence

Section 7 requires the Secretary to establish alternative to detention programs, such as community-based supervision programs. These programs can be contracted through nongovernment, community-based organizations. An immigration judge or the Secretary shall make individualized determinations regarding an individual's necessary level of supervision under these programs. Participation in this program may not be ordered in cases where there has been a determination that release on reasonable bond or recognizance will reasonably assure appearances in court proceedings.

Section 7 also requires a probable cause hearing within 48 hours of the individual being taken into custody, with the burden placed on the government to prove there is probable cause to believe that the individual does not have the right to enter or remain in the United States.

Individuals ordered removed will be provided with a custody redetermination hearing before an immigration judge within 72 hours. Those individuals will be detained prior to removal unless they can show that their removal is not reasonably foreseeable and that they do not pose a risk to individual or public safety. Individuals ordered removed cannot be detained for longer than 60 days unless the government can prove that the individual's removal is foreseeable or that their release poses a threat to public safety.