

Humane Enforcement and Legal Protections for Separated Children Act

Or

“HELP Separated Children Act.”

*Section-by-Section Summary prepared by the First Focus Campaign for Children,
Lutheran Immigration and Refugee Service, and Women’s Refugee Commission*

Section 1. Short Title

The title of the bill is the “Humane Enforcement and Legal Protections for Separated Children Act” (“HELP Separated Children Act”).

Section 2. Definitions

- (1) Defines “apprehension” as detention, arrest, or custody by Department of Homeland Security (DHS) or cooperating entities.
- (2) Defines “Child Welfare Agency” as the state or local agency responsible for child welfare services under subtitles B and E of Title IV of the Social Security Act.
- (3) Defines “immigration enforcement action” as the apprehension of, detention of, or request for or issuance of a detainer for an individual(s) for suspected or confirmed violations under the Immigration and Nationality Act by DHS or cooperating entities.
- (4) Defines “NGO” as a nongovernmental organization that provides social services or humanitarian assistance to the immigrant community.

Section 3. Apprehension Procedures for Immigration Enforcement-Related Activities

(a) Notification

(1) Advance Notification. When conducting an immigration enforcement action, and subject to hours of notification, the Secretary and cooperating entities shall notify in advance, or if not possible immediately after, the Governor of the state, the local child welfare agency, and relevant state and local law enforcement of—

- (A) the approximate number of targeted individuals and;
- (B) the primary language(s) of targeted population.

(2) Hours of Notification. To the extent possible advance notification should occur during business hours and allow licensed social workers and case managers of child welfare agencies or NGOs sufficient time to locate resources.

(3) Other Notification. When conducting an immigration enforcement action, the Secretary and cooperating entities shall notify the relevant local education agency and local NGOs immediately after commencing the immigration enforcement action.

(b) Apprehension Procedures. The Secretary and cooperating entities shall—

(1) Within 6 hours of an immigration enforcement action, allow licensed social workers or case managers employed by the child welfare agency or local NGOs confidential access to screen individuals apprehended to assist DHS and cooperating entities in determining if they are parents, legal guardians, or primary caregivers of a child in the United States.

(2) Within 8 hours of an immigration enforcement action, any apprehended individual believed to fall into one of the above categories shall be provided with –

(A) free, confidential telephone calls to arrange for the care of children, unless the Secretary has reasonable grounds to believe this would create a security risk; and

(B) contact information for—

(i) child welfare agencies in all 50 States, county and local jurisdictions, the District of Columbia, and all United States territories; and

(ii) attorneys and legal service providers capable of providing free legal advice or free legal representation regarding child welfare, child custody, and immigration matters.

(3) ensure that DHS and cooperating entity personnel do not—

(A) interview individuals in the immediate presence of children; or

(B) compel or request children to translate during such interviews;

(4) ensure that any parent, legal guardian, or primary caregiver of a child in the United States—

(A) receives due consideration of the best interests of his or her children in any decisions or actions relating to his or her detention, release or transfer;

(B) is not transferred from the initial detention facility until the individual has made child care arrangements for the children or, if that is not possible, is informed of alternative care arrangements made for the children and how to maintain communication with them.

(c) Nondisclosure and Retention of Information about Apprehended Individuals and Their Children –

(1) In General— Information collected by child welfare agencies and NGOs during screenings and interviews shall not be disclosed to Federal, State, or local government entities or to any person without an authorized release.

(2) A Child Welfare Agency or NGO Recommendation. A child welfare agency or NGO may –

(a) submit a recommendation to DHS or a cooperating entity regarding whether an apprehended individual is eligible for the protections provided under this Act;

(b) disclose information necessary to protect the safety of the child, that may impact the decision to release or transfer of an apprehended individual, or to prevent reasonably certain death or substantial bodily harm.

Section 4. Access to Children, Local and State Courts, Child Welfare Agencies, and Consular Officials

(a) In General— The Secretary of Homeland Security shall ensure that all detention facilities operated by or under agreement with DHS take steps to ensure that the best interest of the child, including a preference for family unity whenever appropriate, is considered in decisions relating to the custody of children whose parent, legal guardian, or primary caretaker is detained.

(b) Access To Children, Local and State Courts, Child Welfare Agencies, and Consular Officials—At all detention facilities operated by or under agreement with DHS, the Secretary of Homeland Security shall--

- (1) post accessible information on the protections of the bill, as well as information regarding eligibility for parole or release, and include this information in detainee handbooks;
- (2) ensure that individuals who are detained receive screenings and interviews within 6 hours of their arrival at the detention facility;
- (3) ensure that detained individuals, who are parents, legal guardians, or primary caregivers of children in the United States are—
 - (A) permitted daily phone calls and regular contact visits with their children;
 - (B) able to participate fully, and to the extent possible in-person, in all family court proceedings impacting custody of their children;
 - (C) able to fully comply with all family court orders impacting custody of their children;
 - (D) provided with contact information for family courts in all 50 States, county and local jurisdictions, the District of Columbia, and U.S. territories;
 - (E) granted free and confidential telephone calls to child welfare agencies and family courts as often as necessary;
 - (F) granted free and confidential telephone calls and confidential in-person visits with attorneys and consular officials;
 - (G) provided United States passport applications in order to obtain travel documents for their children;
 - (H) granted adequate time before removal to obtain a passport and other necessary travel documents on behalf of their children if their children will accompany them on their return to their country of origin;
 - (I) provided with the access necessary to obtain birth records and other documents for their children;

- (4) facilitate the ability of detained parents to share travel information with their children, caregivers, or child welfare agencies well in advance of the detained individual's departure from the United States.

Section 5. Memoranda of Understanding

The Secretary of Homeland Security shall develop and implement memoranda of understanding with child welfare agencies and NGOs regarding the best ways to cooperate and have ongoing communication between all relevant parties in cases involving a child whose parent, legal guardian or primary caregiver has been apprehended or detained.

Section 6. Mandatory Training

The Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and independent child welfare experts, shall require and provide in-person training on the protections of section 3 and section 4 of this Act to all personnel and to DHS and cooperating entities who regularly come into contact with children or parents in the course of conducting immigration enforcement actions.

Section 7. Rulemaking

Within 120 days of this Act's enactment, the Secretary shall develop regulations to implement this Act.

Section 8. Severability

If any provision of this Act or amendment made to it is found to be unconstitutional, the remainder of the Act will not be affected.

Section 9. Report on Protections for Children Impacted by Immigration Enforcement Activities

(a) Requirements for Reports - Within one year of enactment of the Act, the Secretary shall submit an annual report to Congress describing the impact of immigration enforcement activities on children, including those that are U.S. citizens.

(b) Content – The report shall include—

- (1) the number of parents of U.S. citizen children who are removed from the U.S.;
- (2) The number of occasions both parents or the primary caretaker is removed;
- (3) The number if U.S. citizen children who leave the U.S. with parents who are removed);
- (4) the number of U.S. citizen children who remain in the U.S. after a parent is removed;
- (5) the age of U.S. citizen children at the time of a parent's removal; and
- (6) the number of instances in which a U.S. citizen child is referred to the local child welfare agency by DHS.