

114TH CONGRESS
1ST SESSION

H. R. 3606

To provide for enhanced protections for vulnerable unaccompanied alien children and female detainees.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2015

Ms. ROYBAL-ALLARD introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Foreign Affairs, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for enhanced protections for vulnerable unaccompanied alien children and female detainees.

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 “Child Trafficking Vic-
5 tims Protection Act”.

6 **SEC. 2. PROTECTING CHILD TRAFFICKING VICTIMS.**

7 (a) **DEFINED TERM.**—In this section, the term “un-
8 accompanied alien children” has the meaning given such

1 term in section 462 of the Homeland Security Act of 2002
2 (6 U.S.C. 279).

3 (b) MANDATORY TRAINING.—The Secretary of
4 Homeland Security, in consultation with the Secretary of
5 Health and Human Services and independent child welfare
6 experts, shall mandate appropriate training of all per-
7 sonnel who come into contact with unaccompanied alien
8 children in the relevant legal authorities, policies, prac-
9 tices, and procedures pertaining to this vulnerable popu-
10 lation.

11 (c) CARE AND TRANSPORTATION.—Notwithstanding
12 any other provision of law, the Secretary of Homeland Se-
13 curity shall ensure that all unaccompanied alien children
14 who will undergo any immigration proceedings before the
15 Secretary or the Executive Office for Immigration Review
16 are duly transported and placed in the care and legal and
17 physical custody of the Director of the Office of Refugee
18 Resettlement not later than 72 hours after their apprehen-
19 sion, absent exceptional circumstances. In exceptional cir-
20 cumstances, such as an influx of children or a natural dis-
21 aster, the Secretary of Homeland Security shall make
22 emergency funds available to the Director of the Office
23 of Refugee Resettlement, to the extent and in such
24 amounts as are provided in advance in appropriations
25 Acts, for the operation of emergency shelters. The Sec-

1 retary of Homeland Security, to the extent practicable,
2 shall ensure that female officers are continuously present
3 during the transfer and transport of female detainees who
4 are in the custody of the Secretary.

5 (d) QUALIFIED RESOURCES.—

6 (1) IN GENERAL.—The Secretary of Homeland
7 Security shall provide adequately trained and quali-
8 fied staff and resources, including child welfare pro-
9 fessionals in accordance with subsection (e), at U.S.
10 Customs and Border Protection ports of entry and
11 stations.

12 (2) CHILD WELFARE PROFESSIONALS.—The
13 Secretary of Homeland Security, in consultation
14 with the Secretary of Health and Human Services,
15 shall hire or contract with, on a full- or part-time
16 basis, child welfare professionals who will provide as-
17 sistance in the U.S. Customs and Border Protection
18 offices or stations having in their custody an average
19 of 25 or more children a day in the past fiscal year,
20 and subject to review based upon the current fiscal
21 year's monthly statistical reports.

22 (e) CHILD WELFARE PROFESSIONALS.—

23 (1) IN GENERAL.—The Secretary, in consulta-
24 tion with the Secretary of Health and Human Serv-
25 ices, shall ensure that qualified child welfare profes-

1 sionals, licensed in social work, or other comparable
2 training and expertise, and with expertise in cul-
3 turally competent, trauma-centered, and develop-
4 mentally appropriate interviewing skills are available
5 at ports of entry and stations as described in sub-
6 section (d). Child welfare professionals shall be pro-
7 ficient in the most common languages spoken by
8 children apprehended at the border. In the case
9 where one is not available, an interpreter shall be
10 used.

11 (2) DUTIES.—Child welfare professionals de-
12 scribed in paragraph (1) shall—

13 (A) develop guidelines for treatment of
14 children in the custody of the Commissioner of
15 U.S. Customs and Border Protection;

16 (B) ensure allegations of abuse or mis-
17 treatment are referred to the appropriate State
18 and Federal child protection authorities and
19 that the Commissioner of U.S. Customs and
20 Border Protection and the Director of the Of-
21 fice of Refugee Resettlement satisfy their obli-
22 gations under applicable child abuse reporting
23 laws by—

1 (i) ensuring that children can avail
2 themselves of relevant complaint mecha-
3 nisms to report abuse or misconduct;

4 (ii) reporting abuse or mistreatment
5 to State and Federal child protection au-
6 thorities as required, as well as Depart-
7 ment of Homeland Security Office of the
8 Inspector General, Office of Civil Rights
9 and Civil Liberties, U.S. Customs and Bor-
10 der Protection Internal Affairs Office, and
11 the Office of Refugee Resettlement; and

12 (iii) providing notice to area govern-
13 ment subcontracted legal service providers
14 regarding a child who has made an allega-
15 tion of abuse and directing provider to rel-
16 evant authorities regarding availability of
17 immigration and administrative relief for
18 individuals with pending civil rights com-
19 plaints;

20 (C) conduct screening of all unaccom-
21 panied alien children in accordance with section
22 235(a)(4) of the William Wilberforce Traf-
23 ficking Victims Protection Reauthorization Act
24 of 2008 (8 U.S.C. 1232(a)(4)) and refrain from
25 screening children from noncontiguous coun-

1 tries who will undergo screening at the Office of
2 Refugee Resettlement;

3 (D) notify the Secretary of Homeland Se-
4 curity and the Director of the Office of Refugee
5 Resettlement of children that potentially meet
6 the notification and transfer requirements, in-
7 cluding children for whom a determination can-
8 not be made, as set forth in subsections (a) and
9 (b) of section 235 of the William Wilberforce
10 Trafficking Victims Protection Reauthorization
11 Act of 2008 (8 U.S.C. 1232);

12 (E) provide a best interest placement rec-
13 ommendation for accompanied children and
14 families to the Director of U.S. Immigration
15 and Customs Enforcement that takes into con-
16 sideration the best interests of the child and ap-
17 plicable law, favoring a policy of release;

18 (F) interview adult relatives accompanying
19 unaccompanied alien children;

20 (G) provide an initial family relationship
21 and trafficking assessment and recommenda-
22 tions regarding unaccompanied alien children's
23 initial placements to the Director of the Office
24 of Refugee Resettlement, which shall be con-
25 ducted in accordance with the timeframe set

1 forth in subsections (a)(4) and (b)(3) of section
2 235 of the William Wilberforce Trafficking Vic-
3 tims Protection Reauthorization Act of 2008 (8
4 U.S.C. 1232);

5 (H) ensure that each child in the custody
6 of the Commissioner of U.S. Customs and Bor-
7 der Protection—

8 (i) receives emergency medical care
9 when necessary;

10 (ii) receives emergency medical and
11 mental health care that complies with the
12 standards adopted pursuant to section 8(c)
13 of the Prison Rape Elimination Act of
14 2003 (42 U.S.C. 15607(c)) whenever nec-
15 essary, including in cases in which a child
16 is at risk to harm himself, herself, or oth-
17 ers;

18 (iii) is provided with climate appro-
19 priate clothing, shoes, basic personal hy-
20 giene and sanitary products, a pillow, lin-
21 ens, and sufficient blankets to rest at a
22 comfortable temperature;

23 (iv) receives adequate nutrition;

24 (v) enjoys a safe and sanitary living
25 environment;

1 (vi) has access to daily recreational
2 programs and activities if held for a period
3 longer than 24 hours;

4 (vii) has regular access to legal serv-
5 ices and consular officials both in person
6 and telephonically; and

7 (viii) is permitted to make supervised
8 phone calls to family members;

9 (I) develop procedures to maintain the best
10 interests of the child in any migration deter-
11 rence programs for family units carried out at
12 a border, including—

13 (i) inquiring whether a child is trav-
14 eling with a parent or legal guardian;

15 (ii) ascertaining whether the removal
16 location of an apprehended parent or legal
17 guardian of the child presents any humani-
18 tarian concern or concern related to such
19 apprehended individual's physical safety;

20 (iii) ensuring that, with respect to a
21 decision related to the removal or referral
22 for prosecution of such apprehended indi-
23 vidual, due consideration is given to—

24 (I) the best interests of such ap-
25 prehended individual's child, if any;

1 (II) family unity whenever pos-
2 sible; and

3 (III) other public interest factors,
4 including humanitarian concerns and
5 concerns related to such apprehended
6 individual's physical safety; and

7 (J) coordinate with the Mexican Consulate
8 to ensure the safe repatriation of Mexican chil-
9 dren.

10 (3) MONITORING.—The Secretary of Homeland
11 Security, in consultation with a child welfare profes-
12 sional, shall develop procedures to provide regular
13 access to nongovernmental organizations for human
14 rights monitoring.

15 (4) REPORT.—Not later than 18 months after
16 the date of the enactment of this Act, and annually
17 thereafter, the Secretary shall submit a report to
18 Congress that—

19 (A) describes the screening procedures
20 used by the child welfare professionals to screen
21 unaccompanied alien children and children ac-
22 companied by a parent or legal guardian;

23 (B) assesses the effectiveness of such
24 screenings; and

1 (C) includes data on all children who were
2 screened by child welfare professionals.

3 (f) IMMEDIATE NOTIFICATION.—The Secretary of
4 Homeland Security shall notify the Director of the Office
5 of Refugee Resettlement of an unaccompanied alien child
6 in the custody of the Secretary as soon as practicable, but
7 generally not later than 48 hours after the Secretary en-
8 counters the child, to effectively and efficiently coordinate
9 the child’s transfer to and placement with the Director
10 of the Office of Refugee Resettlement.

11 (g) NOTICE OF RIGHTS AND RIGHT TO ACCESS TO
12 COUNSEL.—

13 (1) IN GENERAL.—The Secretary shall ensure
14 that all children, upon apprehension, are provided—

15 (A) an interview and screening with a child
16 welfare professional described in subsection
17 (e)(1); and

18 (B) a video orientation, as well as an oral
19 and written notice, in a language they under-
20 stand, of their rights under the Immigration
21 and Nationality Act, including—

22 (i) their right to relief from removal;

23 (ii) their right to confer with counsel

24 (as guaranteed under section 292 of such
25 Act (8 U.S.C. 1362)), family, or friends

1 while in the temporary custody of the De-
2 partment; and

3 (iii) relevant complaint mechanisms to
4 report any abuse or misconduct they may
5 have experienced.

6 (2) LANGUAGES.—The Secretary shall ensure
7 that the video orientation described in paragraph (1)
8 is available in English and in the 5 most common
9 native languages spoken by children held in custody
10 at that location during the preceding fiscal year.

11 (h) CONFIDENTIALITY.—The Secretary of Health
12 and Human Services shall maintain the privacy and con-
13 fidentiality of all information gathered in the course of
14 providing care, custody, placement, and follow-up services
15 to unaccompanied alien children, consistent with the best
16 interest of the unaccompanied alien child, by not dis-
17 closing such information to other government agencies or
18 nonparental third parties unless such disclosure is—

19 (1) recorded in writing and placed in the child’s
20 file;

21 (2) in the child’s best interest; and

22 (3)(A) authorized by the child or by an ap-
23 proved sponsor in accordance with section 235 of the
24 William Wilberforce Trafficking Victims Protection
25 Reauthorization Act of 2008 (8 U.S.C. 1232) and

1 the Health Insurance Portability and Accountability
2 Act (Public Law 104–191); or

3 (B) provided to a duly recognized law enforce-
4 ment entity to prevent imminent and serious harm
5 to another individual.

6 (i) OTHER POLICIES AND PROCEDURES.—The Sec-
7 retary shall adopt fundamental child protection policies
8 and procedures—

9 (1) for reliable age determinations of children,
10 developed in consultation with medical and child wel-
11 fare experts, which exclude the use of fallible foren-
12 sic testing of children’s bone and teeth;

13 (2) to utilize all legal authorities to defer the
14 child’s removal if the child faces a risk of life-threat-
15 ening harm upon return including due to the child’s
16 mental health or medical condition; and

17 (3) to ensure, in accordance with the Juvenile
18 Justice and Delinquency Prevention Act of 1974 (42
19 U.S.C. 5601 et seq.), that unaccompanied alien chil-
20 dren, while in detention, are—

21 (A) physically separated from any adult
22 who is not an immediate family member; and

23 (B) separated from—

24 (i) immigration detainees and inmates
25 with criminal convictions;

- 1 (ii) pretrial inmates facing criminal
2 prosecution; and
3 (iii) inmates exhibiting violent behav-
4 ior.

5 (j) REPATRIATION AND REINTEGRATION PRO-
6 GRAM.—

7 (1) IN GENERAL.—The Administrator of the
8 United States Agency for International Develop-
9 ment, in conjunction with the Secretary of Home-
10 land Security, the Secretary of Health and Human
11 Services, the Attorney General, international organi-
12 zations, and nongovernmental organizations in the
13 United States with expertise in repatriation and re-
14 integration, shall ensure that programs in the
15 United States and within the country of return sup-
16 port the safe and sustainable repatriation and re-
17 integration of unaccompanied alien children into
18 their country of nationality or of last habitual resi-
19 dence, including placement with their families, legal
20 guardians, or other sponsoring agencies.

21 (2) SCOPE.—The process described in para-
22 graph (1) shall include—

23 (A) an identification of the expressed needs
24 of the child;

1 (B) the creation of partnerships with com-
2 munity based organizations that are linguis-
3 tically and culturally competent;

4 (C) the recognition of the need to include
5 the family unit in the process to help the child
6 reintegrate;

7 (D) the provision of a wide diversity of
8 services, including access to school, scholar-
9 ships, and vocational and skills training;

10 (E) procedures that outline safe repatri-
11 ation to ensure children are not returned to
12 harm or in other unsafe circumstances such as
13 during nighttime hours;

14 (F) procedures for when the exercise of
15 discretion should be exercised because it is not
16 in the child's best interest to be returned; and

17 (G) special considerations to address the
18 particular needs of returning girls are ad-
19 dressed, tender-aged children, or other vulner-
20 able children.

21 (3) REPORT ON REPATRIATION AND RE-
22 INTEGRATION OF UNACCOMPANIED ALIEN CHIL-
23 DREN.—Not later than 18 months after the date of
24 the enactment of this Act, and annually thereafter,
25 the Administrator of the Agency for International

1 Development shall submit a substantive report to the
2 Committee on the Judiciary of the House of Rep-
3 resentatives and the Committee on the Judiciary of
4 the Senate on efforts to improve repatriation and re-
5 integration programs for unaccompanied alien chil-
6 dren.

7 (k) TRANSFER OF FUNDS.—

8 (1) AUTHORIZATION.—The Secretary of Home-
9 land Security, in accordance with a written agree-
10 ment between the Secretary and the Secretary of
11 Health and Human Services, and to the extent and
12 in such amounts as are provided in advance in ap-
13 propriations Acts, shall transfer such amounts as
14 may be necessary to carry out the duties described
15 in subsections (c) and (e)(2) from amounts appro-
16 priated for U.S. Customs and Border Protection to
17 the Department of Health and Human Services.

18 (2) REPORT.—Not later than 15 days before
19 any proposed transfer under paragraph (1), the Sec-
20 retary of Health and Human Services, in consulta-
21 tion with the Secretary of Homeland Security, shall
22 submit a detailed expenditure plan that describes the
23 actions proposed to be taken with amounts trans-
24 ferred under such paragraph to—

1 (A) the Committee on Appropriations of
2 the House of Representatives; and

3 (B) the Committee on Appropriations of
4 the Senate.

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