

107TH CONGRESS  
1ST SESSION

# S. 121

To establish an Office of Children’s Services within the Department of Justice to coordinate and implement Government actions involving unaccompanied alien children, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Ms. FEINSTEIN (for herself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To establish an Office of Children’s Services within the Department of Justice to coordinate and implement Government actions involving unaccompanied alien children, 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; REFERENCES IN ACT; TABLE OF**  
4 **CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Unaccompanied Alien Child Protection Act of 2001”.

7 (b) REFERENCES IN ACT.—Except as specifically  
8 provided in this Act, whenever in this Act an amendment

1 or repeal is expressed as an amendment to or repeal of  
 2 a provision, the reference shall be deemed to be made to  
 3 the Immigration and Nationality Act (8 U.S.C. 1101 et  
 4 seq.).

5 (c) TABLE OF CONTENTS.—The table of contents of  
 6 this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

#### TITLE I—STRUCTURAL CHANGES

- Sec. 101. Establishment of the Office of Children’s Services.
- Sec. 102. Establishment of Interagency Task Force on Unaccompanied Alien Children.
- Sec. 103. Effective date.

#### TITLE II—PAROLE, CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

- Sec. 201. Parole and custody of unaccompanied alien children.
- Sec. 202. Family reunification for unaccompanied alien children with relatives in the United States.
- Sec. 203. Appropriate conditions for detention of unaccompanied alien children.
- Sec. 204. Repatriated unaccompanied alien children.
- Sec. 205. Establishing the age of an unaccompanied alien child.
- Sec. 206. Effective date.

#### TITLE III—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

- Sec. 301. Right of unaccompanied children to guardians ad litem.
- Sec. 302. Right of unaccompanied children to counsel.
- Sec. 303. Effective date.

#### TITLE IV—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

- Sec. 401. Special immigrant juvenile visa.
- Sec. 402. Training for officials who come into contact with alien children.
- Sec. 403. Child status protection.
- Sec. 404. Effective dates.

#### TITLE V—CHILDREN REFUGEE AND ASYLUM SEEKERS

- Sec. 501. Guidelines for Children’s Asylum Claims.
- Sec. 502. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.
- Sec. 503. Unaccompanied refugee children.

#### TITLE VI—REPORTS TO CONGRESS

Sec. 601. General Accounting Office report.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

Sec. 701. Authorization of appropriations.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are to—

3 (1) recognize the special needs and cir-  
4 cumstances unaccompanied alien children encounter  
5 when navigating the immigration system of the  
6 United States;

7 (2) establish new governmental structures to  
8 ensure that the United States Government meets the  
9 special needs of unaccompanied alien children;

10 (3) ensure that United States Government au-  
11 thorities hold the best interests of the child para-  
12 mount when making decisions regarding an unac-  
13 companied alien child;

14 (4) establish Government policy in favor of fam-  
15 ily reunification whenever possible and, when family  
16 reunification is not possible, placement of unaccom-  
17 panied alien children in foster care with qualified,  
18 adult guardians or with voluntary agencies, rather  
19 than placing such children in detention;

20 (5) provide minimum standards for custody of  
21 unaccompanied alien children;

22 (6) ensure that unaccompanied alien children in  
23 immigration proceedings have appointed counsel and

1 guardians ad litem, and that such counsel and  
 2 guardians ad litem have access to the child;

3 (7) ensure that children awaiting adjudication  
 4 of their immigration status not “age-out” while  
 5 awaiting processing by the Service of their petitions  
 6 and applications; and

7 (8) strengthen opportunities for permanent pro-  
 8 tection of such children for whom such protection is  
 9 warranted.

10 **SEC. 3. DEFINITIONS.**

11 (a) IN GENERAL.—In this Act:

12 (1) DIRECTOR.—The term “Director” means  
 13 the Director of the Office.

14 (2) OFFICE.—The term “Office” means the Of-  
 15 fice of Children’s Services established by section  
 16 101.

17 (3) SERVICE.—The term “Service” means the  
 18 Immigration and Naturalization Service.

19 (4) UNACCOMPANIED ALIEN CHILD.—The term  
 20 “unaccompanied alien child” means a child who—

21 (A) has no lawful immigration status in  
 22 the United States;

23 (B) has not attained the age of 18; and

24 (C) with respect to whom—

1 (i) there is no parent or legal guard-  
2 ian in the United States; or

3 (ii) no parent or legal guardian in the  
4 United States is available to provide care  
5 and physical custody.

6 (5) VOLUNTARY AGENCY.—The term “vol-  
7 untary agency” means a private, nonprofit voluntary  
8 agency with expertise in meeting the legal, cultural,  
9 and psychological needs of unaccompanied alien chil-  
10 dren.

11 (b) AMENDMENTS TO THE IMMIGRATION AND NA-  
12 TIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is  
13 amended by adding at the end the following new para-  
14 graphs:

15 “(50) The term ‘unaccompanied alien child’ means  
16 a child who—

17 “(A) has no lawful immigration status in the  
18 United States;

19 “(B) has not attained the age of 18; and

20 “(C) with respect to whom—

21 “(i) there is no parent or legal guardian in  
22 the United States; or

23 “(ii) no parent or legal guardian in the  
24 United States is able to provide care and phys-  
25 ical custody.

1 “(51) The term ‘unaccompanied refugee children’  
2 means persons described in paragraph (42) who—

3 “(A) have not attained the age of 18; and

4 “(B) with respect to whom there are no parents  
5 or legal guardians available to provide care and  
6 physical custody.”.

## 7 **TITLE I—STRUCTURAL CHANGES**

### 8 **SEC. 101. ESTABLISHMENT OF THE OFFICE OF CHILDREN’S** 9 **SERVICES.**

10 (a) ESTABLISHMENT.—

11 (1) IN GENERAL.—There is established within  
12 the Department of Justice the Office of Children’s  
13 Services. The Office shall not be an office within the  
14 Immigration and Naturalization Service.

15 (2) COMPONENTS.—The Office shall include  
16 such other components, staff, and resources as the  
17 Attorney General may determine necessary to carry  
18 out the purposes of this Act.

19 (b) RESPONSIBILITIES OF OFFICE.—Under the gen-  
20 eral authority of the Attorney General, the Office shall be  
21 responsible for coordinating and implementing law and  
22 policy for unaccompanied alien children who come into the  
23 custody of the Department of Justice.

24 (c) DIRECTOR OF THE OFFICE OF CHILDREN’S  
25 SERVICES.—

1           (1) IN GENERAL.—The Office shall be headed  
2           by a Director of Children’s Services, who shall be  
3           appointed by and report directly to the Attorney  
4           General.

5           (2) COMPENSATION AT LEVEL IV OF EXECU-  
6           TIVE SCHEDULE.—Section 5315 of title 5, United  
7           States Code, is amended by adding at the end the  
8           following:  
9           “Director of the Office of Children’s Services, De-  
10          partment of Justice.”.

11          (3) DUTIES.—The Director shall be responsible  
12          for—

13                (A) ensuring that the best interests of the  
14                child are held paramount in any immigration  
15                proceeding or action involving an unaccom-  
16                panied alien child;

17                (B) making custody, release, and detention  
18                determinations for all unaccompanied alien chil-  
19                dren apprehended by the Attorney General or  
20                who otherwise come into the custody of the De-  
21                partment of Justice (in consultation with juve-  
22                nile justice professionals, where appropriate);

23                (C) implementing the custody, release, and  
24                detention determinations made by the Office;

1 (D) implementing, in consultation with the  
2 voluntary agencies, policies with respect to the  
3 care and detention of unaccompanied alien chil-  
4 dren;

5 (E) chairing the Interagency Task Force  
6 on Unaccompanied Alien Children established  
7 in section 103;

8 (F) identifying a sufficient number of  
9 qualified persons, entities, and facilities to  
10 house unaccompanied alien children in accord-  
11 ance with sections 202 and 203;

12 (G) overseeing the persons, entities, and  
13 facilities described in sections 202 and 203 to  
14 ensure their compliance with such provisions;

15 (H) compiling, updating, and publishing on  
16 a quarterly basis a State-by-State list of profes-  
17 sionals or other entities qualified to contract  
18 with the Office to provide the services described  
19 in sections 301 and 302;

20 (I) maintaining statistical information and  
21 other data on unaccompanied alien children in  
22 the Office's custody and care, and reporting  
23 quarterly to the Judiciary Committees of the  
24 House of Representatives and Senate on such



1 data, including with respect to each unaccom-  
2 panied alien child—

3 (i) biographical information such as  
4 the child's name, gender, date of birth,  
5 country of birth, and country of habitual  
6 residence;

7 (ii) the date on which the child came  
8 into the custody of the Department of Jus-  
9 tice;

10 (iii) information relating to the child's  
11 placement, removal, or release from each  
12 facility in which the child has resided;

13 (iv) in any case in which the child is  
14 placed in detention, an explanation relating  
15 to the detention; and

16 (v) information relating to the dispo-  
17 sition of any actions in which the child is the  
18 subject;

19 (J) collecting and compiling statistical in-  
20 formation from the Service, including Border  
21 Patrol and inspections officers, on the unaccom-  
22 panied alien children with whom they come into  
23 contact; and

1 (K) conducting investigations and inspec-  
2 tions of facilities and other entities in which un-  
3 accompanied alien children reside.

4 (4) DUTIES WITH RESPECT TO FOSTER CARE.—

5 In carrying out the duties described in paragraph  
6 (3)(F), the Director shall assess the extent to which  
7 the refugee children foster care system utilized pur-  
8 suant to section 412(d)(2) of the Immigration and  
9 Nationality Act can feasibly be expanded for the  
10 placement of unaccompanied alien children.

11 (5) POWERS.—In carrying out the duties speci-  
12 fied in paragraph (3), the Director shall have the  
13 power to—

14 (A) contract with service providers to per-  
15 form the services described in sections 202,  
16 203, 301, and 302; and

17 (B) compel compliance with the terms and  
18 conditions set forth in section 203, including  
19 the power to terminate the contracts of pro-  
20 viders that are not in compliance with such con-  
21 ditions and reassign any unaccompanied alien  
22 child to a similar facility that is in compliance  
23 with such section.

24 (d) NO EFFECT ON INS, EOIR, AND DEPARTMENT  
25 OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing

1 in this Act may be construed to transfer the responsibility  
2 for adjudicating benefit determinations under the Immi-  
3 gration and Nationality Act from the authority of any offi-  
4 cial of the Service, the Executive Office of Immigration  
5 Review of the Department of Justice, or the Department  
6 of State.

7 **SEC. 102. ESTABLISHMENT OF INTERAGENCY TASK FORCE**  
8 **ON UNACCOMPANIED ALIEN CHILDREN.**

9 (a) ESTABLISHMENT.—There is established an Inter-  
10 agency Task Force on Unaccompanied Alien Children.

11 (b) COMPOSITION.—The Task Force shall consist of  
12 the following members:

13 (1) The Deputy Attorney General.

14 (2) The Commissioner of Immigration and Nat-  
15 uralization.

16 (3) The Assistant Secretary of State for Popu-  
17 lation, Refugees, and Migration.

18 (4) The Director of the Office of Refugee Re-  
19 settlement of the Department of Health and Human  
20 Services.

21 (5) The Director.

22 (6) Such other officials in the executive branch  
23 of Government as may be designated by the Presi-  
24 dent.

1 (c) CHAIRMAN.—The Task Force shall be chaired by  
2 the Deputy Attorney General.

3 (d) ACTIVITIES OF THE TASK FORCE.—In consulta-  
4 tion with nongovernmental organizations, the Task Force  
5 shall—

6 (1) coordinate the implementation of this Act;

7 (2) measure and evaluate the progress of the  
8 United States in treating unaccompanied alien chil-  
9 dren in United States custody; and

10 (3) expand interagency procedures to collect  
11 and organize data, including significant research and  
12 resource information on the needs and treatment of  
13 unaccompanied alien children in the custody of the  
14 United States Government.

15 **SEC. 103. EFFECTIVE DATE.**

16 This title shall take effect 180 days after the date  
17 of enactment of this Act.

18 **TITLE II—PAROLE, CUSTODY,**  
19 **RELEASE, FAMILY REUNIFI-**  
20 **CATION, AND DETENTION**

21 **SEC. 201. PAROLE AND CUSTODY OF UNACCOMPANIED**  
22 **ALIEN CHILDREN.**

23 (a) PAROLE OF UNACCOMPANIED ALIEN CHIL-  
24 DREN.—Notwithstanding section 241(a)(5) of the Immi-  
25 gration and Nationality Act, an unaccompanied alien child

1 found in the United States shall, in accordance with sec-  
2 tions 202 and 203 of this Act, be promptly paroled into  
3 the United States for urgent humanitarian reasons under  
4 section 212(d)(5) of the Immigration and Nationality Act.

5 (b) CUSTODY OF UNACCOMPANIED ALIEN CHIL-  
6 DREN.—

7 (1) ESTABLISHMENT OF JURISDICTION.—The  
8 custody of all unaccompanied alien children, includ-  
9 ing responsibility for their detention, where appro-  
10 priate, shall be under the jurisdiction of the Office.

11 (2) NOTIFICATION.—Upon apprehension of an  
12 unaccompanied alien child, the Attorney General  
13 shall promptly notify the Office.

14 (3) PHYSICAL TRANSFER OF UNACCOMPANIED  
15 ALIEN CHILDREN.—Not later than 72 hours after  
16 apprehension of an unaccompanied alien child, the  
17 physical custody of such child shall be transferred to  
18 the Office.

19 **SEC. 202. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
20 **ALIEN CHILDREN WITH RELATIVES IN THE**  
21 **UNITED STATES.**

22 (a) PLACEMENT AUTHORITY.—

23 (1) ORDER OF PREFERENCE.—Subject to At-  
24 torney General’s discretion under paragraph 4 and  
25 § 203(a)(2), an unaccompanied alien child paroled

1 into the United States under section 201(a) shall be  
2 promptly placed with one of the following individuals  
3 in the following order of preference:

4 (A) A parent.

5 (B) A legal guardian.

6 (C) An adult relative.

7 (D) An entity designated by the parent or  
8 legal guardian that is capable and willing to  
9 care for the child's well-being.

10 (E) A State-licensed juvenile shelter, group  
11 home, or foster home willing to accept legal cus-  
12 tody of the child.

13 (F) An adult or entity seeking custody of  
14 the child when it appears that there is no other  
15 likely alternative to long-term detention and  
16 family reunification does not appear to be a  
17 reasonable alternative.

18 (2) HOME STUDY.—Notwithstanding the provi-  
19 sions of paragraph (1), no unaccompanied alien child  
20 shall be placed with a person or entity unless a valid  
21 home-study conducted by an agency of the State of  
22 the child's proposed residence, by an agency author-  
23 ized by that State to conduct such a study, or by an  
24 appropriate voluntary agency contracted with the  
25 Office to conduct such studies has found that the

1 person or entity is capable of providing for the  
2 child's physical and mental well-being.

3 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO  
4 CUSTODY OF UNACCOMPANIED ALIEN CHILD.—If an  
5 unaccompanied alien child is placed with any person  
6 or entity other than a parent or legal guardian, but  
7 subsequent to that placement a parent or legal  
8 guardian seeks to establish custody, the Director  
9 shall assess the suitability of placing the child with  
10 the parent or legal guardian and shall make a writ-  
11 ten determination on the child's placement within 30  
12 days.

13 (4) PROTECTION FROM SMUGGLERS.—The Di-  
14 rector shall take steps to ensure that unaccompanied  
15 alien children are protected from smugglers or oth-  
16 ers seeking to victimize or otherwise engage such  
17 children in criminal, harmful, or exploitative activity.

18 (5) GRANTS AND CONTRACTS.—The Director is  
19 authorized to make grants to, and enter into con-  
20 tracts with, voluntary agencies to carry out the pro-  
21 visions of this section.

22 (6) REIMBURSEMENT OF STATE EXPENSES.—  
23 The Director is authorized to reimburse States for  
24 any expenses they incur in providing assistance to

1 unaccompanied alien children who are served pursu-  
2 ant to this Act.

3 (b) CONFIDENTIALITY.—All information relating to  
4 the immigration status of a person listed in subsection (a)  
5 shall remain confidential and may be used only for the  
6 purposes of determining such person’s qualifications under  
7 subsection (a)(1).

8 **SEC. 203. APPROPRIATE CONDITIONS FOR DETENTION OF**  
9 **UNACCOMPANIED ALIEN CHILDREN.**

10 (a) STANDARDS FOR PLACEMENT.—

11 (1) Except as provided in paragraph (2), an un-  
12 accompanied alien child shall not be placed in an  
13 adult detention facility or a facility housing delin-  
14 quent children.

15 (2) An unaccompanied alien child who has ex-  
16 hibited a pattern of violent or serious criminal be-  
17 havior that endangers himself or others may be de-  
18 tained in conditions appropriate to the behavior in a  
19 facility appropriate for delinquent children.

20 (3) In the case of a placement of a child with  
21 an entity described in section 202(a)(1)(e), the enti-  
22 ty must be licensed by an appropriate State agency  
23 to provide residential, group, child welfare, or foster  
24 care services for dependent children.



1           (4) The conditions of such placements must be  
2           in keeping with the best interests of the child. At  
3           a minimum, the Director shall develop standards for  
4           conditions of detention in such placements that pro-  
5           vide for—

6                   (A) educational services appropriate to the  
7           child;

8                   (B) medical care;

9                   (C) mental health care, including treat-  
10          ment of trauma;

11                  (D) access to telephones;

12                  (E) access to legal services;

13                  (F) access to interpreters;

14                  (G) supervision by professionals trained in  
15          the care of children, taking into account the  
16          special cultural, linguistic, and experiential  
17          needs of children in immigration proceedings;

18                  (H) recreational programs and activities;

19                  (I) spiritual and religious needs; and

20                  (J) dietary needs.

21          (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-  
22          rector shall develop procedures prohibiting the unreason-  
23          able use of—

24                  (1) shackling, handcuffing, or other restraints  
25          on children;

1 (2) solitary confinement; or

2 (3) pat or strip searches.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
4 tion shall be construed to supersede procedures favoring  
5 release of children to appropriate adults or entities or  
6 placement in the least secure setting possible, as defined  
7 in the August 12, 1996, Stipulated Settlement Agreement  
8 under *Flores v. Reno*. The Director shall ensure that such  
9 practices are in accordance with this section to ensure that  
10 children are promptly placed with appropriate parties or  
11 placed in appropriate shelter or foster care in keeping with  
12 the best interests of the child.

13 **SEC. 204. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
14 **DREN.**

15 (a) **ASSESSMENT BEFORE REPATRIATION.**—No un-  
16 accompanied alien child may be repatriated to a country  
17 unless an appropriate voluntary agency has conducted an  
18 assessment of the country conditions and the Office has  
19 conducted an assessment of the suitability of the place-  
20 ment of the child to ensure that the child can be repatri-  
21 ated in a manner deemed appropriate for the child’s well  
22 being.

23 (b) **REPORT ON THE FATE OF REPATRIATED UNAC-**  
24 **COMPANIED CHILDREN.**—Beginning not later than 18  
25 months after the date of enactment of this Act, and annu-

1 ally thereafter, the Director shall submit a report to the  
2 Judiciary Committees of the House of Representatives and  
3 Senate on the treatment of unaccompanied alien children  
4 ordered removed from the United States under section  
5 240 of the Immigration and Nationality Act. Such report  
6 shall include at a minimum the following information:

7           (1) The number of alien children ordered re-  
8           moved and the number of alien children actually re-  
9           moved from the United States;

10           (2) The type of immigration relief sought and  
11           denied to such alien children.

12           (3) The nationalities, ages, and gender of such  
13           alien children.

14           (4) The procedures used to effect the removal  
15           of alien children from the United States.

16           (5) Steps taken to ensure that alien children re-  
17           moved to their countries of origin are returned safe-  
18           ly and humanely.

19 **SEC. 205. ESTABLISHING THE AGE OF AN UNACCOMPANIED**  
20 **ALIEN CHILD.**

21           The Director shall develop procedures that permit the  
22 presentation and consideration of a variety of forms of evi-  
23 dence, including testimony of a child and other persons,  
24 to determine an unaccompanied alien child's age for pur-  
25 poses of placement, custody, parole, and detention. Such

1 procedures shall allow the appeal of a determination to  
 2 an immigration judge. Dental radiographs shall not be the  
 3 sole means of determining age.

4 **SEC. 206. EFFECTIVE DATE.**

5 This title shall become effective 180 days after the  
 6 date of enactment of this Act. The provisions of this title  
 7 shall apply to all unaccompanied children in the custody  
 8 of the Department of Justice on or after the date of enact-  
 9 ment of this Act.

10 **TITLE III—ACCESS BY UNAC-**  
 11 **COMPANIED ALIEN CHIL-**  
 12 **DREN TO GUARDIANS AD**  
 13 **LITEM AND COUNSEL**

14 **SEC. 301. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO**  
 15 **GUARDIANS AD LITEM.**

16 (a) GUARDIAN AD LITEM.—

17 (1) APPOINTMENT.—The Director shall appoint  
 18 a guardian ad litem who meets the qualifications de-  
 19 scribed in paragraph (2) for each unaccompanied  
 20 alien child not later than 72 hours after the Office  
 21 assumes physical or constructive custody of such  
 22 child. The Director is encouraged, wherever prac-  
 23 ticable, to contract with a voluntary agency for the  
 24 selection of an individual to be appointed as a  
 25 guardian ad litem under this paragraph.

1           (2) QUALIFICATIONS OF GUARDIAN AD  
2 LITEM.—

3           (A) No person shall serve as a guardian ad  
4 litem who is not—

5                   (i) a child welfare professional or  
6 other individual who has received training  
7 in child welfare matters; and

8                   (ii) possessing of special training on  
9 the nature of problems encountered by un-  
10 accompanied alien children.

11           (B) A guardian ad litem shall not be an  
12 employee of the Service.

13           (3) DUTIES.—The guardian ad litem shall—

14                   (A) conduct interviews with the child in a  
15 manner that is appropriate, taking into account  
16 the child's age;

17                   (B) investigate the facts and circumstances  
18 relevant to such child's presence in the United  
19 States, including facts and circumstances aris-  
20 ing in the country of the child's nationality or  
21 last habitual residence and facts and cir-  
22 cumstances arising subsequent to the child's de-  
23 parture from such country;

24                   (C) develop recommendations on whether it  
25 is in the child's best interests to voluntarily de-

1 part from the United States or apply for relief  
2 from removal;

3 (D) develop recommendations on issues  
4 relative to the child's custody, detention, and  
5 release;

6 (E) ensure that the child's best interests  
7 are promoted while the child participates in, or  
8 is subject to, proceedings or actions under the  
9 Immigration and Nationality Act;

10 (F) ensure that the child understands such  
11 determinations and proceedings; and

12 (G) report findings and recommendations  
13 to the Director and to the Executive Office of  
14 Immigration Review.

15 (4) TERMINATION OF APPOINTMENT.—The  
16 guardian ad litem shall carry out the duties de-  
17 scribed in paragraph (3) until—

18 (A) they are completed,

19 (B) the child departs the United States,

20 (C) the child is granted permanent resi-  
21 dent status in the United States,

22 (D) the child attains the age of 18, or

23 (E) the child is placed in the custody of a  
24 parent or legal guardian,

25 whichever occurs first.

1 (5) POWERS.—The guardian ad litem—

2 (A) shall have reasonable access to the  
3 child at all times, including while such child is  
4 being held in detention or in the care of a foster  
5 family;

6 (B) shall be permitted to review all records  
7 and information relating to such proceedings  
8 that are not deemed privileged or classified;

9 (C) may seek independent evaluations of  
10 the child;

11 (D) shall be present at all hearings involv-  
12 ing the child that are held in connection with  
13 proceedings under the Immigration and Nation-  
14 ality Act; and

15 (E) shall be permitted to consult with the  
16 child during any hearing or interview involving  
17 such child.

18 (b) TRAINING.—The Director shall provide profes-  
19 sional training for all persons serving as guardians ad  
20 litem under this section in the circumstances and condi-  
21 tions that unaccompanied alien children face as well as  
22 in the various immigration benefits for which such a child  
23 might be eligible.

1 **SEC. 302. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO**  
2 **COUNSEL.**

3 (a) **ACCESS TO COUNSEL.**—The Director shall ensure  
4 that all unaccompanied alien children shall have counsel,  
5 including, if necessary, counsel appointed by the Director  
6 at the expense of the Government.

7 (b) **APPOINTMENT.**—In appointing such counsel, the  
8 Director is encouraged, wherever practicable, to contract  
9 with legal service providers with expertise in meeting the  
10 legal needs of unaccompanied alien children in immigra-  
11 tion proceedings.

12 (c) **DUTIES.**—Counsel shall represent the unaccom-  
13 panied alien child in all proceedings and actions relating  
14 to the child’s immigration status or other actions involving  
15 the Service.

16 (d) **ACCESS TO CHILD.**—Counsel shall have access to  
17 the unaccompanied alien child, including while the child  
18 is being held in detention or in the care of a foster family.

19 (e) **TERMINATION OF APPOINTMENT.**—Counsel shall  
20 carry out the duties described in subsection (c) until—

21 (1) they are completed,

22 (2) the child departs the United States,

23 (3) the child is granted withholding of removal  
24 under section 241(b)(3) of the Immigration and Na-  
25 tionality Act,



1           (4) the child is granted protection under the  
2           Convention Against Torture,

3           (5) the child is granted asylum in the United  
4           States under section 208 of the Immigration and  
5           Nationality Act,

6           (6) the child is granted permanent resident sta-  
7           tus in the United States, or

8           (7) the child attains 18 years of age,  
9           whichever occurs first.

10          (f) NOTICE TO COUNSEL DURING IMMIGRATION PRO-  
11          CEEDINGS.—

12           (1) Except when otherwise required in an emer-  
13           gency situation involving the physical safety of the  
14           child, counsel shall be given prompt and adequate  
15           notice of all immigration matters affecting or involv-  
16           ing an unaccompanied alien child, including adju-  
17           dications, proceedings, and processing, before such  
18           actions are taken.

19           (2) An unaccompanied alien child may not give  
20           consent to any immigration action, including con-  
21           senting to voluntary departure, unless first afforded  
22           an opportunity to consult with counsel.

23          (g) ACCESS TO RECOMMENDATIONS OF GUARDIAN  
24          AD LITEM.—Counsel shall be afforded an opportunity to  
25          review the recommendation by the guardian ad litem af-

1 fecting or involving a client who is an unaccompanied alien  
2 child.

3 **SEC. 303. EFFECTIVE DATE.**

4 This title shall become effective 180 days after the  
5 date of enactment of this Act. The provisions of this title  
6 shall apply to all unaccompanied children in the custody  
7 of the Department of Justice on, before, or after the date  
8 of enactment of this Act.

9 **TITLE IV—STRENGTHENING**  
10 **POLICIES FOR PERMANENT**  
11 **PROTECTION OF ALIEN CHIL-**  
12 **DREN**

13 **SEC. 401. SPECIAL IMMIGRANT JUVENILE VISA.**

14 (a) J VISA.—Section 101(a)(27)(J) (8 U.S.C.  
15 1101(a)(27)(J)) is amended to read as follows:

16 “(J) an immigrant who is present in the United  
17 States—

18 “(i) who has been declared dependent on a  
19 juvenile court located in the United States or  
20 whom such a court has legally committed to, or  
21 placed under the custody of, a department or  
22 agency of a State, or an individual or entity ap-  
23 pointed by a State, and who has been deemed  
24 eligible by that court for long-term foster care

1 due to abuse, neglect, or abandonment, or a  
2 similar basis found under State law;

3 “(ii) for whom it has been determined in  
4 administrative or judicial proceedings that it  
5 would not be in the alien’s best interest to be  
6 returned to the alien’s or parent’s previous  
7 country of nationality or country of last habit-  
8 ual residence; and

9 “(iii) for whom the Office of Children’s  
10 Services of the Department of Justice has cer-  
11 tified to the Commissioner that the classifica-  
12 tion of an alien as a special immigrant under  
13 this subparagraph has not been made solely to  
14 provide an immigration benefit to that alien;

15 except that no natural parent or prior adoptive par-  
16 ent of any alien provided special immigrant status  
17 under this subparagraph shall thereafter, by virtue  
18 of such parentage, be accorded any right, privilege,  
19 or status under this Act;”.

20 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8  
21 U.S.C. 1255(h)(2)) is amended—

22 (1) by amending subparagraph (A) to read as  
23 follows:

24 “(A) paragraphs (1), (4), (5), (6), and  
25 (7)(A) of section 212(a) shall not apply;”;

1           (2) in subparagraph (B), by striking the period  
2 and inserting “, and”; and

3           (3) by adding at the end the following new sub-  
4 paragraph:

5                   “(C) the Attorney General may waive  
6 paragraphs (2)(A) and (2)(B) in the case of an  
7 offense which arose as a consequence of the  
8 child being unaccompanied.”.

9           (c) TRANSITION RULE.—

10           (1) IN GENERAL.—An alien described in para-  
11 graph (2) who files an application under section  
12 101(a)(27)(J), as amended by subsection (a), before  
13 the end of the period described in paragraph (3)  
14 shall not be denied such visa solely on the basis of  
15 the alien’s age and state of emancipation at the time  
16 of final adjudication of the application.

17           (2) CRITERIA FOR TRANSITIONAL ELIGI-  
18 BILITY.—Paragraph (1) shall apply to an alien who,  
19 on or after November 29, 1990, was under the juris-  
20 diction of State-licensed foster care and who—

21                   (A) was a dependent of a juvenile court or  
22 other court of competent jurisdiction on or after  
23 such date;

1 (B) was emancipated from such State fos-  
2 ter care system on or before the date of enact-  
3 ment of this Act; and

4 (C) with respect to whom no application  
5 for a visa under section 101(a)(27)(J) of the  
6 Immigration and Nationality Act was filed prior  
7 to the date of enactment of this Act.

8 (3) PERIOD OF APPLICABILITY.—No alien may  
9 apply for relief under this section later than three  
10 years after the effective date of this title or two  
11 years after the promulgation of any regulation im-  
12 plementing this title, whichever is later.

13 **SEC. 402. TRAINING FOR OFFICIALS WHO COME INTO CON-**  
14 **TACT WITH UNACCOMPANIED ALIEN CHIL-**  
15 **DREN.**

16 The Attorney General, acting jointly with the Sec-  
17 retary of Health and Human Services, shall provide train-  
18 ing for State and county officials, such training to be  
19 available to child welfare specialists, teachers, public coun-  
20 sel, juvenile counsel, and juvenile judges who come into  
21 contact with unaccompanied alien children. The training  
22 shall provide education on the processes pertaining to un-  
23 accompanied alien children with pending immigration sta-  
24 tus and the available relief. The Director shall be respon-  
25 sible for establishing a core curriculum that can be incor-

1 porated into currently existing education, training, or ori-  
2 entation modules or formats that are currently used by  
3 these professionals.

4 **SEC. 403. CHILD STATUS PROTECTION.**

5 (a) IMMIGRANT VISA ISSUANCE FOR CHILDREN WHO  
6 AGE-OUT WHILE AWAITING PROCESSING OF IMMEDIATE  
7 RELATIVE PETITIONS.—Section 201(b)(2)(A) (8 U.S.C.  
8 1151(b)(2)(A)) is amended by adding at the end the fol-  
9 lowing:

10 “(iii) In the case of an alien who is an unmar-  
11 ried child of a citizen of the United States on, be-  
12 fore, or after the date of enactment of this clause  
13 and who attains the age of 21 after the date on  
14 which a petition is filed with the Attorney General  
15 under section 204 to classify the alien as an imme-  
16 diate relative under this clause, such alien shall, for  
17 the purposes of this subsection, retain the legal sta-  
18 tus of child as defined in section 101(b)(2) of this  
19 Act, for the purposes of entitlement to obtaining an  
20 immigrant visa.

21 “(iv) In the case of an alien who was a child  
22 of a parent lawfully admitted for permanent resi-  
23 dence on the date on which a petition was filed with  
24 the Attorney General under section 204 to classify  
25 the alien as an immigrant under subsection

1       203(a)(2)(A) and whose parent subsequently became  
2       a naturalized citizen of the United States, such alien  
3       shall, for the purposes of this subsection, retain the  
4       legal status of child as defined in section 101(b)(2)  
5       of this Act, for the purposes of entitlement to ob-  
6       taining an immigrant visa, if the alien remains un-  
7       married.

8               “(v) In the case of an alien who was the mar-  
9       ried son or daughter of a United States citizen on  
10       the date on which a petition was filed with the At-  
11       torney General under section 204 to classify the  
12       alien as an immigrant under subsection 203(a)(3),  
13       who subsequently becomes unmarried, and who was  
14       under 21 years of age on the date of the legal termi-  
15       nation of the alien’s marriage, such alien shall retain  
16       the legal status of child as defined in section  
17       101(b)(2) of this Act, for the purposes of entitle-  
18       ment to obtaining an immigrant visa, if the alien re-  
19       mains unmarried.”.

20       (c) IMMIGRANT VISA ISSUANCE FOR CHILDREN WHO  
21       AGE-OUT WHILE AWAITING PROCESSING OF SECOND  
22       PREFERENCE PETITIONS.—Section 203(a)(2) (8 U.S.C.  
23       1153(a)(2)) is amended by adding at the end the following  
24       new subparagraph:

1           “(C) A child of an alien lawfully admitted  
2           for permanent residence for whom a family-  
3           sponsored immigrant petition has been ap-  
4           proved by the Attorney General and who has  
5           filed an application for an immigrant visa or  
6           adjustment of status, pursuant to such regula-  
7           tions as the Attorney General may prescribe be-  
8           fore attaining the age of 21, may retain the  
9           legal status of a child, as defined in section  
10          101(b)(1) of this Act, for purposes of allocation  
11          of visas, even if he or she attains the age of 21  
12          prior to obtaining an immigrant visa or adjust-  
13          ment of status, if the alien remains unmar-  
14          ried.”.

15          (d) IMMIGRANT VISA ISSUANCE FOR CHILDREN WHO  
16          AGE-OUT WHILE AWAITING PROCESSING OF OTHER  
17          FAMILY-BASED PREFERENCE, EMPLOYMENT, AND DI-  
18          VERSITY PETITIONS.—Section 203(d) (8 U.S.C. 1153(d))  
19          is amended to read as follows:

20          “(d) TREATMENT OF FAMILY MEMBERS.—

21                 “(1) A spouse or child as defined in subpara-  
22                 graph (A), (B), (C), (D), or (E) of section 101(b)(1)  
23                 shall, if not otherwise entitled to immigrant status  
24                 and the immediate issuance of a visa under sub-  
25                 section (a), (b), or (c), be entitled to the same sta-



1       tus, and the same order of consideration provided in  
2       the respective subsection, if accompanying or fol-  
3       lowing to join, the spouse or parent.

4               “(2) A child who is accompanying or following  
5       to join his or her parent under this section may re-  
6       tain the legal status of child as defined in section  
7       101(b)(2) of this Act, for purposes of entitlement to  
8       the same immigrant status of his or her parent, even  
9       if he or she attains the age of 21 prior to obtaining  
10      an immigrant visa or adjustment of status if—

11                   “(A) the child remains unmarried; and,

12                   “(B) the immigrant visa application filed  
13      on behalf of the child is filed prior to the child’s  
14      21st birthday.”.

15      (e)(1) Notwithstanding any other provision of law, an  
16      alien child who is accompanying or following to join his  
17      or her parent under any of the provisions of law specified  
18      in paragraph (2) may retain the legal status of child, as  
19      defined in section 101(b)(2) of the Immigration and Na-  
20      tionality Act, for purposes of entitlement to the same sta-  
21      tus of his or her parent, even if he or she attains the age  
22      of 21 prior to obtaining approval for status if—

23                   (A) the child remains unmarried; and

24                   (B) the application for such status was filed on  
25      behalf of the child prior to the child’s 21st birthday.

1       (2) The provisions of law specified in this paragraph  
2 are the following:

3           (A) Section 101(a)(27)(J) of the Immigration  
4 and Nationality Act.

5           (B) Section 208 of such Act.

6           (C) The Nicaraguan and Central American Re-  
7 lief Act (as contained in Public Law 105–100; 8  
8 U.S.C. 1255 note).

9           (D) The Haitian Refugee Immigration Fairness  
10 Act of 1998 (as added by section 101(h) of division  
11 A of Public Law 105–277; 8 U.S.C. 1255 note).

12 **SEC. 404. EFFECTIVE DATES.**

13       (a) The amendment made by section 401 shall apply  
14 to all eligible children who were in the United States be-  
15 fore, on, or after the date of enactment of this Act.

16       (b) The amendments made by section 403 shall apply  
17 to all applications and petitions filed before, on, or after  
18 the date of enactment of this Act.

19       **TITLE V—CHILDREN REFUGEE**  
20       **AND ASYLUM SEEKERS**

21 **SEC. 501. GUIDELINES FOR CHILDREN’S ASYLUM CLAIMS.**

22       (a) SENSE OF CONGRESS.—Congress commends the  
23 Service for its issuance of its “Guidelines for Children’s  
24 Asylum Claims”, dated December 1998, and encourages  
25 and supports the Service’s implementation of such guide-

1 lines in an effort to facilitate the handling of children’s  
2 asylum claims. Congress calls upon the Executive Office  
3 for Immigration Review of the Department of Justice to  
4 adopt the “Guidelines for Children’s Asylum Claims” in  
5 its handling of children’s asylum claims before immigra-  
6 tion judges and the Board of Immigration Appeals.

7 (b) TRAINING.—The Attorney General shall provide  
8 at least annually comprehensive training under the  
9 “Guidelines for Children’s Asylum Claims” to asylum offi-  
10 cers, immigration judges, members of the Board of Immi-  
11 gration Appeals, and immigration officers who have con-  
12 tact with children in order to familiarize and sensitize such  
13 officers to the needs of children asylum seekers. Voluntary  
14 agencies shall be allowed to assist in such training.

15 **SEC. 502. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**  
16 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**  
17 **CUMSTANCES.**

18 (a) EXCEPTION FROM EXPEDITED REMOVAL.—Sec-  
19 tion 235(b)(1)(F) (8 U.S.C. 1225(b)(1)(F)) is amended  
20 by striking “an alien” and inserting “unaccompanied alien  
21 child or an alien”.

22 (b) EXCEPTION FROM TIME LIMIT FOR FILING ASY-  
23 LUM APPLICATION.—Section 208(a)(2) (8 U.S.C.  
24 1158(a)(2)) is amended by adding at the end the following  
25 new subparagraph:

1                   “(E) Subparagraphs (A) and (B) shall not  
2                   apply to an unaccompanied alien child.”.

3 **SEC. 503. UNACCOMPANIED REFUGEE CHILDREN.**

4           (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-  
5 DREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

6                   (1) by redesignating paragraphs (3) through  
7                   (7) as paragraphs (4) through (8); and

8                   (2) by inserting after paragraph (2) the fol-  
9                   lowing new paragraph:

10                   “(3) An analysis of the worldwide situation  
11                   faced by unaccompanied refugee children, by region.  
12                   Such analysis shall include an assessment of—

13                           “(A) the number of unaccompanied refugee  
14                           children, by region;

15                           “(B) the capacity of the Department of  
16                           State to identify such refugees;

17                           “(C) the capacity of the international com-  
18                           munity to care for and protect such refugees;

19                           “(D) the capacity of the voluntary agency  
20                           community to resettle such refugees in the  
21                           United States;

22                           “(E) the degree to which the United States  
23                           plans to resettle such refugees in the United  
24                           States in the coming fiscal year; and

1           “(F) the fate that will befall such unac-  
 2            companied refugee children for whom resettle-  
 3            ment in the United States is not possible.”.

4           (b) TRAINING ON THE NEEDS OF UNACCOMPANIED  
 5 REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C.  
 6 1157(f)(2)) is amended by—

7           (1) striking “and” after “countries,”; and

8           (2) inserting before the period at the end the  
 9            following: “, and instruction on the needs of unac-  
 10            companied refugee children”.

## 11           **TITLE VI—REPORTS TO** 12            **CONGRESS**

### 13   **SEC. 601. GENERAL ACCOUNTING OFFICE REPORT.**

14           Not later than 18 months after the date of enactment  
 15 of this Act, the Comptroller General of the United States  
 16 shall submit a report to the Judiciary Committees of the  
 17 Senate and House of Representatives concerning the im-  
 18 plementation of this Act. Such report shall assess the ef-  
 19 fectiveness of the Office in meeting the purposes of the  
 20 Act, and shall specifically include—

21           (1) the elements described in the report found  
 22            in section 101(c)(3)(I);

23           (2) the elements of the report described in sec-  
 24            tion 204; and

1           (3) the analysis described in section 207(e)(3)  
2           of the Immigration and Nationality Act, as added by  
3           section 503(a)(2) of this Act.

4       **TITLE VII—AUTHORIZATION OF**  
5       **APPROPRIATIONS**

6       **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

7           (a) IN GENERAL.—There are authorized to be appro-  
8           priated such sums as may be necessary to carry out the  
9           provisions of this Act.

10          (b) AVAILABILITY OF FUNDS.—Amounts appro-  
11          priated pursuant to subsection (a) are authorized to re-  
12          main available until expended.

○