

# Calendar No. 541

108TH CONGRESS  
2D SESSION

# S. 1129

To provide for the protection of unaccompanied alien children, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mrs. FEINSTEIN (for herself, Mr. BROWNBACK, Mr. VOINOVICH, Ms. CANTWELL, Mr. DEWINE, Mr. LAUTENBERG, Mr. FEINGOLD, Mr. KENNEDY, Ms. LANDRIEU, Mr. LEAHY, Mrs. CLINTON, Mr. SPECTER, Mr. EDWARDS, Mr. BINGAMAN, Mr. KERRY, Mrs. MURRAY, Mr. DURBIN, Ms. COLLINS, Mr. JOHNSON, Mr. KOHL, Mr. SARBANES, Mr. SCHUMER, Mr. CHAFEE, Ms. MIKULSKI, Mr. GRAHAM of Florida, Mr. BREAU, and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 3, 2004

Reported by Mr. HATCH, with an amendment in the nature of a substitute

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To provide for the protection of 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Unaccompanied Alien Child Protection Act of 2003”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

**TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND  
DETENTION**

Sec. 101. Procedures when encountering unaccompanied alien children.

Sec. 102. Family reunification for unaccompanied alien children with relatives  
in the United States.

Sec. 103. Appropriate conditions for detention of unaccompanied alien children.

Sec. 104. Repatriated unaccompanied alien children.

Sec. 105. Establishing the age of an unaccompanied alien child.

Sec. 106. Effective date.

**TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO  
GUARDIANS AD LITEM AND COUNSEL**

Sec. 201. Guardians ad litem.

Sec. 202. Counsel.

Sec. 203. Effective date; applicability.

**TITLE III—STRENGTHENING POLICIES FOR PERMANENT  
PROTECTION OF ALIEN CHILDREN**

Sec. 301. Special immigrant juvenile visa.

Sec. 302. Training for officials and certain private parties who come into con-  
tact with unaccompanied alien children.

Sec. 303. Report.

Sec. 304. Effective date.

**TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS**

Sec. 401. Guidelines for children’s asylum claims.

Sec. 402. Unaccompanied refugee children.

Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-  
like circumstances.

**TITLE V—AUTHORIZATION OF APPROPRIATIONS**

Sec. 501. Authorization of appropriations.

**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF  
2002**

Sec. 601. Additional responsibilities and powers of the Office of Refugee Reset-  
tlement with respect to unaccompanied alien children.

Sec. 602. Technical corrections.

Sec. 603. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 (a) **IN GENERAL.**—In this Act:

3 (1) **COMPETENT.**—The term “competent”, in  
4 reference to counsel, means an attorney who com-  
5 plies with the duties set forth in this Act and—

6 (A) is a member in good standing of the  
7 bar of the highest court of any State, posses-  
8 sion, territory, Commonwealth, or the District  
9 of Columbia;

10 (B) is not under any order of any court  
11 suspending, enjoining, restraining, disbarring,  
12 or otherwise restricting the attorney in the  
13 practice of law; and

14 (C) is properly qualified to handle matters  
15 involving unaccompanied immigrant children or  
16 is working under the auspices of a qualified  
17 nonprofit organization that is experienced in  
18 handling such matters.

19 (2) **DIRECTOR.**—The term “Director” means  
20 the Director of the Office.

21 (3) **DIRECTORATE.**—The term “Directorate”  
22 means the Directorate of Border and Transportation  
23 Security established by section 401 of the Homeland  
24 Security Act of 2002 (6 U.S.C. 201).

1           (4) OFFICE.—The term “Office” means the Of-  
 2           fice of Refugee Resettlement as established by see-  
 3           tion 411 of the Immigration and Nationality Act (8  
 4           U.S.C. 1521).

5           (5) SECRETARY.—The term “Secretary” means  
 6           the Secretary of Homeland Security.

7           (6) UNACCOMPANIED ALIEN CHILD.—The term  
 8           “unaccompanied alien child” has the same meaning  
 9           as is given the term in section 462(g)(2) of the  
 10          Homeland Security Act of 2002 (6 U.S.C.  
 11          279(g)(2)).

12          (7) VOLUNTARY AGENCY.—The term “vol-  
 13          untary agency” means a private, nonprofit voluntary  
 14          agency with expertise in meeting the cultural, devel-  
 15          opmental, or psychological needs of unaccompanied  
 16          alien children, as certified by the Director of the Of-  
 17          fice of Refugee Resettlement.

18          (b) AMENDMENTS TO THE IMMIGRATION AND NA-  
 19          TIONALITY ACT.—Section 101(a) of the Immigration and  
 20          Nationality Act (8 U.S.C. 1101(a)) is amended by adding  
 21          at the end the following:

22               “(51) The term ‘unaccompanied alien child’ means  
 23          a child who—

24                       “(A) has no lawful immigration status in the  
 25          United States;

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

2 “(C) with respect to whom—

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

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

8 “(52) The term ‘unaccompanied refugee children’  
9 means persons described in paragraph (42) who—

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

11 “(B) with respect to whom there are no parents  
12 or legal guardians available to provide care and  
13 physical custody.”.

14 **TITLE I—CUSTODY, RELEASE,**  
15 **FAMILY REUNIFICATION, AND**  
16 **DETENTION**

17 **SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOM-**  
18 **PANIED ALIEN CHILDREN.**

19 (a) UNACCOMPANIED CHILDREN FOUND ALONG THE  
20 UNITED STATES BORDER OR AT UNITED STATES PORTS  
21 OF ENTRY.—

22 (1) IN GENERAL.—Subject to paragraph (2), if  
23 an immigration officer finds an unaccompanied alien  
24 child who is described in paragraph (2) at a land  
25 border or port of entry of the United States and de-

1 termines that such child is inadmissible under the  
2 Immigration and Nationality Act (8 U.S.C. 1101 et  
3 seq.); the officer shall—

4 (A) permit such child to withdraw the  
5 child's application for admission pursuant to  
6 section 235(a)(4) of the Immigration and Na-  
7 tionality Act (8 U.S.C. 1225(a)(4)); and

8 (B) return such child to the child's country  
9 of nationality or country of last habitual resi-  
10 dence.

11 (2) SPECIAL RULE FOR CONTIGUOUS COUN-  
12 TRIES.—

13 (A) IN GENERAL.—Any child who is a na-  
14 tional or habitual resident of a country that is  
15 contiguous with the United States and that has  
16 an agreement in writing with the United States  
17 providing for the safe return and orderly repa-  
18 triation of unaccompanied alien children who  
19 are nationals or habitual residents of such  
20 country shall be treated in accordance with  
21 paragraph (1), unless a determination is made  
22 on a case-by-case basis that—

23 (i) such child is a national or habitual  
24 resident of a country described in subpara-  
25 graph (A);

1           (ii) such child has a fear of returning  
2           to the child's country of nationality or  
3           country of last habitual residence owing to  
4           a fear of persecution;

5           (iii) the return of such child to the  
6           child's country of nationality or country of  
7           last habitual residence would endanger the  
8           life or safety of such child; or

9           (iv) the child cannot make an inde-  
10          pendent decision to withdraw the child's  
11          application for admission due to age or  
12          other lack of capacity.

13          (B) RIGHT OF CONSULTATION.—Any child  
14          described in subparagraph (A) shall have the  
15          right to consult with a consular officer from the  
16          child's country of nationality or country of last  
17          habitual residence prior to repatriation, as well  
18          as consult with the Office, telephonically, and  
19          such child shall be informed of that right in the  
20          child's native language.

21          (3) RULE FOR APPREHENSIONS AT THE BOR-  
22          DER.—The custody of unaccompanied alien children  
23          not described in paragraph (2) who are apprehended  
24          at the border of the United States or at a United

1 States port of entry shall be treated in accordance  
 2 with the provisions of subsection (b).

3 (b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN  
 4 CHILDREN FOUND IN THE INTERIOR OF THE UNITED  
 5 STATES.—

6 (1) ESTABLISHMENT OF JURISDICTION.—

7 (A) IN GENERAL.—Except as otherwise  
 8 provided under subparagraphs (B) and (C) and  
 9 subsection (a), the care and custody of all unac-  
 10 companied alien children, including responsi-  
 11 bility for their detention, where appropriate,  
 12 shall be under the jurisdiction of the Office.

13 (B) EXCEPTION FOR CHILDREN WHO HAVE  
 14 COMMITTED CRIMES.—Notwithstanding sub-  
 15 paragraph (A), the Directorate shall retain or  
 16 assume the custody and care of any unaccom-  
 17 panied alien child who—

18 (i) has been charged with any felony,  
 19 excluding offenses proscribed by the Immi-  
 20 gration and Nationality Act (8 U.S.C.  
 21 1101 et seq.); while such charges are pend-  
 22 ing; or

23 (ii) has been convicted of any such fel-  
 24 ony.



1           (C) EXCEPTION FOR CHILDREN WHO  
2 THREATEN NATIONAL SECURITY.—Notwith-  
3 standing subparagraph (A), the Directorate  
4 shall retain or assume the custody and care of  
5 an unaccompanied alien child if the Secretary  
6 has substantial evidence, based on an individ-  
7 ualized determination, that such child could  
8 personally endanger the national security of the  
9 United States.

10           (D) TRAFFICKING VICTIMS.—For purposes  
11 of section 462 of the Homeland Security Act of  
12 2002 (6 U.S.C. 279) and this Act, an unaccom-  
13 panied alien child who is eligible for services au-  
14 thorized under the Victims of Trafficking and  
15 Violence Protection Act of 2000 (Public Law  
16 106–386), shall be considered to be in the cus-  
17 tody of the Office.

18           (2) NOTIFICATION.—

19           (A) IN GENERAL.—The Secretary shall  
20 promptly notify the Office upon—

21                   (i) the apprehension of an unaccom-  
22 panied alien child;

23                   (ii) the discovery that an alien in the  
24 custody of the Directorate is an unaccom-  
25 panied alien child;

1           (iii) any claim by an alien in the cus-  
2           tody of the Directorate that such alien is  
3           under the age of 18; or

4           (iv) any suspicion that an alien in the  
5           custody of the Directorate who has claimed  
6           to be over the age of 18 is actually under  
7           the age of 18.

8           (B) SPECIAL RULE.—In the case of an  
9           alien described in clause (iii) or (iv) of subpara-  
10          graph (A), the Director shall make an age de-  
11          termination in accordance with section 105 and  
12          take whatever other steps are necessary to de-  
13          termine whether or not such alien is eligible for  
14          treatment under section 462 of the Homeland  
15          Security Act of 2002 (6 U.S.C. 279) or this  
16          Act.

17          (3) TRANSFER OF UNACCOMPANIED ALIEN  
18          CHILDREN.—

19           (A) TRANSFER TO THE OFFICE.—The care  
20           and custody of an unaccompanied alien child  
21           shall be transferred to the Office—

22           (i) in the case of a child not described  
23           in subparagraph (B) or (C) of paragraph  
24           (1), not later than 72 hours after the ap-  
25           prehension of such child; or

1           (ii) in the case of a child whose cus-  
2           tody and care has been retained or as-  
3           sumed by the Directorate pursuant to sub-  
4           paragraph (B) or (C) of paragraph (1);  
5           immediately following a determination that  
6           the child no longer meets the description  
7           set forth in such subparagraphs:

8           (B) ~~TRANSFER TO THE DIRECTORATE.—~~  
9           Upon determining that a child in the custody of  
10          the Office is described in subparagraph (B) or  
11          (C) of paragraph (1), the Director shall  
12          promptly make arrangements to transfer the  
13          care and custody of such child to the Direc-  
14          torate.

15          (c) ~~AGE DETERMINATIONS.—~~In any case in which  
16          the age of an alien is in question and the resolution of  
17          questions about the age of such alien would affect the  
18          alien's eligibility for treatment under section 462 of the  
19          Homeland Security Act of 2002 (6 U.S.C. 279) or this  
20          Act, a determination of whether or not such alien meets  
21          the age requirements for treatment under this Act shall  
22          be made by the Director in accordance with section 105.

1 **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
2 **ALIEN CHILDREN WITH RELATIVES IN THE**  
3 **UNITED STATES.**

4 (a) **PLACEMENT AUTHORITY.—**

5 (1) **ORDER OF PREFERENCE.—**Subject to the  
6 discretion of the Director under paragraph (4) and  
7 section 103(a)(2), an unaccompanied alien child in  
8 the custody of the Office shall be promptly placed  
9 with 1 of the following individuals or entities in the  
10 following order of preference:

11 (A) A parent who seeks to establish cus-  
12 tody, as described in paragraph (3)(A).

13 (B) A legal guardian who seeks to estab-  
14 lish custody, as described in paragraph (3)(A).

15 (C) An adult relative.

16 (D) An entity designated by the parent or  
17 legal guardian that is capable and willing to  
18 care for the well-being of the child.

19 (E) A State-licensed juvenile shelter, group  
20 home, or foster care program willing to accept  
21 physical custody of the child.

22 (F) A qualified adult or entity seeking cus-  
23 tody of the child when it appears that there is  
24 no other likely alternative to long-term deten-  
25 tion and family reunification does not appear to  
26 be a reasonable alternative. For purposes of

1           this subparagraph, the qualification of the adult  
2           or entity shall be decided by the Office.

3           ~~(2)~~    SUITABILITY    ASSESSMENT.—Notwith-  
4           standing paragraph ~~(1)~~, no unaccompanied alien  
5           child shall be placed with a person or entity unless  
6           a valid suitability assessment conducted by an agen-  
7           cy of the State of the child's proposed residence, by  
8           an agency authorized by that State to conduct such  
9           an assessment, or by an appropriate voluntary agen-  
10          cy contracted with the Office to conduct such assess-  
11          ments has found that the person or entity is capable  
12          of providing for the child's physical and mental well-  
13          being.

14          ~~(3)~~    RIGHT OF PARENT OR LEGAL GUARDIAN TO  
15          CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

16          (A)    PLACEMENT WITH PARENT OR LEGAL  
17          GUARDIAN.—If an unaccompanied alien child is  
18          placed with any person or entity other than a  
19          parent or legal guardian, but subsequent to  
20          that placement a parent or legal guardian seeks  
21          to establish custody, the Director shall assess  
22          the suitability of placing the child with the par-  
23          ent or legal guardian and shall make a written  
24          determination on the child's placement within  
25          30 days.

1 (B) RULE OF CONSTRUCTION.—Nothing in  
2 this Act shall be construed to—

3 (i) supersede obligations under any  
4 treaty or other international agreement to  
5 which the United States is a party, includ-  
6 ing The Hague Convention on the Civil As-  
7 pects of International Child Abduction, the  
8 Vienna Declaration and Program of Ac-  
9 tion, and the Declaration of the Rights of  
10 the Child; or

11 (ii) limit any right or remedy under  
12 such international agreement.

13 (4) PROTECTION FROM SMUGGLERS AND TRAF-  
14 FICKERS.—

15 (A) POLICIES AND PROGRAMS.—

16 (i) IN GENERAL.—The Director shall  
17 establish policies and programs to ensure  
18 that unaccompanied alien children are pro-  
19 tected from smugglers, traffickers, or other  
20 persons seeking to victimize or otherwise  
21 engage such children in criminal, harmful,  
22 or exploitative activity.

23 (ii) WITNESS PROTECTION PROGRAMS  
24 INCLUDED.—The programs established

1           pursuant to clause (i) may include witness  
2           protection programs.

3           ~~(B) CRIMINAL INVESTIGATIONS AND PROS-~~  
4           ~~ECUTIONS.—~~Any officer or employee of the Of-  
5           fice or the Department of Homeland Security,  
6           and any grantee or contractor of the Office,  
7           who suspects any individual of being involved in  
8           any activity described in subparagraph (A) shall  
9           report such individual to Federal or State pros-  
10          ecutors for criminal investigation and prosecu-  
11          tion.

12          ~~(C) DISCIPLINARY ACTION.—~~Any officer or  
13          employee of the Office or the Department of  
14          Homeland Security, and any grantee or con-  
15          tractor of the Office, who suspects an attorney  
16          of being involved in any activity described in  
17          subparagraph (A) shall report the individual to  
18          the State bar association of which the attorney  
19          is a member, or to other appropriate discipli-  
20          nary authorities, for appropriate disciplinary ac-  
21          tion that may include private or public admoni-  
22          tion or censure, suspension, or disbarment of  
23          the attorney from the practice of law.

24          ~~(5) GRANTS AND CONTRACTS.—~~Subject to the  
25          availability of appropriations, the Director may

1 make grants to, and enter into contracts with, vol-  
2 untary agencies to carry out section 462 of the  
3 Homeland Security Act of 2002 (6 U.S.C. 279) or  
4 to carry out this section.

5 (6) REIMBURSEMENT OF STATE EXPENSES.—

6 Subject to the availability of appropriations, the Di-  
7 rector may reimburse States for any expenses they  
8 incur in providing assistance to unaccompanied alien  
9 children who are served pursuant to section 462 of  
10 the Homeland Security Act of 2002 (6 U.S.C. 279)  
11 or this Act.

12 (b) CONFIDENTIALITY.—All information obtained by  
13 the Office relating to the immigration status of a person  
14 described in subsection (a) shall remain confidential and  
15 may be used only for the purposes of determining such  
16 person's qualifications under subsection (a)(1).

17 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**  
18 **UNACCOMPANIED ALIEN CHILDREN.**

19 (a) STANDARDS FOR PLACEMENT.—

20 (1) PROHIBITION OF DETENTION IN CERTAIN  
21 FACILITIES.—Except as provided in paragraph (2),  
22 an unaccompanied alien child shall not be placed in  
23 an adult detention facility or a facility housing delin-  
24 quent children.



1           (2) DETENTION IN APPROPRIATE FACILITIES.—

2           An unaccompanied alien child who has exhibited a  
3           violent or criminal behavior that endangers others  
4           may be detained in conditions appropriate to the be-  
5           havior in a facility appropriate for delinquent chil-  
6           dren.

7           (3) STATE LICENSURE.—In the case of a place-  
8           ment of a child with an entity described in section  
9           102(a)(1)(E), the entity must be licensed by an ap-  
10          propriate State agency to provide residential, group,  
11          child welfare, or foster care services for dependent  
12          children.

13          (4) CONDITIONS OF DETENTION.—

14                 (A) IN GENERAL.—The Director shall pro-  
15                 mulgate regulations incorporating standards for  
16                 conditions of detention in such placements that  
17                 provide for—

18                         (i) educational services appropriate to  
19                         the child;

20                         (ii) medical care;

21                         (iii) mental health care, including  
22                         treatment of trauma, physical and sexual  
23                         violence, or abuse;

24                         (iv) access to telephones;

25                         (v) access to legal services;

1                   (vi) access to interpreters;

2                   (vii) supervision by professionals  
3                   trained in the care of children, taking into  
4                   account the special cultural, linguistic, and  
5                   experiential needs of children in immigra-  
6                   tion proceedings;

7                   (viii) recreational programs and activi-  
8                   ties;

9                   (ix) spiritual and religious needs; and

10                  (x) dietary needs.

11                  (B) NOTIFICATION OF CHILDREN.—Regu-  
12                  lations promulgated in accordance with sub-  
13                  paragraph (A) shall provide that all children  
14                  are notified orally and in writing of such stand-  
15                  ards in the child's native language.

16                  (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-  
17                  rector and the Secretary shall develop procedures prohib-  
18                  iting the unreasonable use of—

19                   (1) shackling, handcuffing, or other restraints  
20                   on children;

21                   (2) solitary confinement; or

22                   (3) pat or strip searches.

23                  (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
24                  tion shall be construed to supersede procedures favoring  
25                  release of children to appropriate adults or entities or

1 placement in the least secure setting possible, as defined  
2 in the Stipulated Settlement Agreement under Flores v.  
3 Reno.

4 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
5 **DREN.**

6 (a) COUNTRY CONDITIONS.—

7 (1) SENSE OF CONGRESS.—It is the sense of  
8 Congress that, to the extent consistent with the trea-  
9 ties and other international agreements to which the  
10 United States is a party, and to the extent prac-  
11 ticable, the United States Government should under-  
12 take efforts to ensure that it does not repatriate  
13 children in its custody into settings that would  
14 threaten the life and safety of such children.

15 (2) ASSESSMENT OF CONDITIONS.—

16 (A) IN GENERAL.—The Secretary of State  
17 shall include each year in the State Department  
18 Country Report on Human Rights, an assess-  
19 ment of the degree to which each country pro-  
20 tects children from smugglers and traffickers.

21 (B) FACTORS FOR ASSESSMENT.—The Of-  
22 fice shall consult the State Department Country  
23 Report on Human Rights and the Victims of  
24 Trafficking and Violence Protection Act of  
25 2000: Trafficking in Persons Report in assess-

1           ing whether to repatriate an unaccompanied  
2           alien child to a particular country.

3           (b) REPORT ON REPATRIATION OF UNACCOMPANIED  
4 ALIEN CHILDREN.—

5           (1) IN GENERAL.—Not later than 18 months  
6           after the date of enactment of this Act, and annually  
7           thereafter, the Director shall submit a report to the  
8           Committees on the Judiciary of the House of Rep-  
9           resentatives and the Senate on efforts to repatriate  
10          unaccompanied alien children.

11          (2) CONTENTS.—The report submitted under  
12          paragraph (1) shall include, at a minimum, the fol-  
13          lowing information:

14                (A) The number of unaccompanied alien  
15                children ordered removed and the number of  
16                such children actually removed from the United  
17                States.

18                (B) A description of the type of immigra-  
19                tion relief sought and denied to such children.

20                (C) A statement of the nationalities, ages,  
21                and gender of such children.

22                (D) A description of the procedures used  
23                to effect the removal of such children from the  
24                United States.

1           (E) A description of steps taken to ensure  
2           that such children were safely and humanely re-  
3           patriated to their country of origin.

4           (F) Any information gathered in assess-  
5           ments of country and local conditions pursuant  
6           to subsection (a)(2).

7   **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**  
8           **ALIEN CHILD.**

9           (a) **IN GENERAL.**—The Director shall develop proce-  
10          dures to determine the age of an alien in the custody of  
11          the Department of Homeland Security or the Office, when  
12          the age of the alien is at issue. Such procedures shall per-  
13          mit the presentation of multiple forms of evidence, includ-  
14          ing testimony of the child, to determine the age of the  
15          unaccompanied alien for purposes of placement, custody,  
16          parole, and detention. Such procedures shall allow the ap-  
17          peal of a determination to an immigration judge.

18          (b) **PROHIBITION ON SOLE MEANS OF DETERMINING**  
19          **AGE.**—Neither radiographs nor the attestation of an alien  
20          shall be used as the sole means of determining age for  
21          the purposes of determining an alien’s eligibility for treat-  
22          ment under section 462 of the Homeland Security Act of  
23          2002 (6 U.S.C. 279) or this Act.

1       (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
 2 tion shall be construed to place the burden of proof in  
 3 determining the age of an alien on the government.

4 **SEC. 106. EFFECTIVE DATE.**

5       This title shall take effect 90 days after the date of  
 6 enactment of this Act.

7 **TITLE II—ACCESS BY UNACCOM-**  
 8 **PANIED ALIEN CHILDREN TO**  
 9 **GUARDIANS AD LITEM AND**  
 10 **COUNSEL**

11 **SEC. 201. GUARDIANS AD LITEM.**

12       (a) **ESTABLISHMENT OF GUARDIAN AD LITEM PRO-**  
 13 **GRAM.**—

14               (1) **APPOINTMENT.**—The Director may, in the  
 15 Director's discretion, appoint a guardian ad litem  
 16 who meets the qualifications described in paragraph  
 17 (2) for such child. The Director is encouraged, wher-  
 18 ever practicable, to contract with a voluntary agency  
 19 for the selection of an individual to be appointed as  
 20 a guardian ad litem under this paragraph.

21               (2) **QUALIFICATIONS OF GUARDIAN AD**  
 22 **LITEM.**—

23                       (A) **IN GENERAL.**—No person shall serve  
 24 as a guardian ad litem unless such person—

1           (i) is a child welfare professional or  
2           other individual who has received training  
3           in child welfare matters; and

4           (ii) possesses special training on the  
5           nature of problems encountered by unac-  
6           companied alien children.

7           (B) PROHIBITION.—A guardian ad litem  
8           shall not be an employee of the Directorate, the  
9           Office, or the Executive Office for Immigration  
10          Review.

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

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

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

22           (C) work with counsel to identify the  
23           child's eligibility for relief from removal or vol-  
24           untary departure by sharing with counsel infor-  
25           mation collected under subparagraph (B);

1           (D) develop recommendations on issues  
2 relative to the child's custody, detention, re-  
3 lease, and repatriation;

4           (E) take reasonable steps to ensure that  
5 the best interests of the child are promoted  
6 while the child participates in, or is subject to,  
7 proceedings or matters under the Immigration  
8 and Nationality Act (8 U.S.C. 1101 et seq.);

9           (F) take reasonable steps to ensure that  
10 the child understands the nature of the legal  
11 proceedings or matters and determinations  
12 made by the court, and ensure that all informa-  
13 tion is conveyed in an age-appropriate manner;  
14 and

15           (G) report factual findings relating to—

16                 (i) information gathered pursuant to  
17 subparagraph (B);

18                 (ii) the care and placement of the  
19 child during the pendency of the pro-  
20 ceedings or matters; and

21                 (iii) any other information gathered  
22 pursuant to subparagraph (D).

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



1           (A) those duties are completed;

2           (B) the child departs the United States;

3           (C) the child is granted permanent resi-  
4 dent status in the United States;

5           (D) the child attains the age of 18; or

6           (E) the child is placed in the custody of a  
7 parent or legal guardian;

8 whichever occurs first.

9           (5) POWERS.—The guardian ad litem—

10           (A) shall have reasonable access to the  
11 child, including access while such child is being  
12 held in detention or in the care of a foster fam-  
13 ily;

14           (B) shall be permitted to review all records  
15 and information relating to such proceedings  
16 that are not deemed privileged or classified;

17           (C) may seek independent evaluations of  
18 the child;

19           (D) shall be notified in advance of all hear-  
20 ings or interviews involving the child that are  
21 held in connection with proceedings or matters  
22 under the Immigration and Nationality Act (8  
23 U.S.C. 1101 et seq.); and shall be given a rea-  
24 sonable opportunity to be present at such hear-  
25 ings or interviews;

1           ~~(E)~~ shall be permitted to consult with the  
 2           child during any hearing or interview involving  
 3           such child; and

4           ~~(F)~~ shall be provided at least 24 hours ad-  
 5           vance notice of a transfer of that child to a dif-  
 6           ferent placement, absent compelling and un-  
 7           usual circumstances warranting the transfer of  
 8           such child prior to notification.

9           ~~(b) TRAINING.~~—The Director shall provide profes-  
 10          sional training for all persons serving as guardians ad  
 11          litem under this section in the—

12           ~~(1)~~ circumstances and conditions that unaccom-  
 13          panied alien children face; and

14           ~~(2)~~ various immigration benefits for which such  
 15          alien child might be eligible.

16          ~~(c) PILOT PROGRAM.~~—

17           ~~(1) IN GENERAL.~~—Not later than 180 days  
 18          after the date of enactment of this Act, the Director  
 19          shall establish and begin to carry out a pilot pro-  
 20          gram to test the implementation of subsection ~~(a)~~.

21           ~~(2) PURPOSE.~~—The purpose of the pilot pro-  
 22          gram established pursuant to paragraph ~~(1)~~ is to—

23           ~~(A)~~ study and assess the benefits of pro-  
 24          viding guardians ad litem to assist unaccom-

1           panied alien children involved in immigration  
2           proceedings or matters;

3           (B) assess the most efficient and cost-ef-  
4           fective means of implementing the guardian ad  
5           litem provisions in this section; and

6           (C) assess the feasibility of implementing  
7           such provisions on a nationwide basis for all un-  
8           accompanied alien children in the care of the  
9           Office.

10       (3) SCOPE OF PROGRAM.—

11           (A) SELECTION OF SITE.—The Director  
12           shall select 3 sites in which to operate the pilot  
13           program established pursuant to paragraph (1).

14           (B) NUMBER OF CHILDREN.—To the  
15           greatest extent possible, each site selected  
16           under subparagraph (A) should have at least 25  
17           children held in immigration custody at any  
18           given time.

19           (4) REPORT TO CONGRESS.—Not later than 1  
20           year after the date on which the first pilot program  
21           is established pursuant to paragraph (1), the Direc-  
22           tor shall report to the Committees on the Judiciary  
23           of the Senate and the House of Representatives on  
24           subparagraphs (A) through (C) of paragraph (2).

1 **SEC. 202. COUNSEL.**

2 ~~(a) ACCESS TO COUNSEL.—~~

3 ~~(1) IN GENERAL.—~~The Director shall ensure  
4 that all unaccompanied alien children in the custody  
5 of the Office, or in the custody of the Directorate,  
6 who are not described in section 101(a)(2) shall  
7 have competent counsel to represent them in immi-  
8 gration proceedings or matters.

9 ~~(2) PRO BONO REPRESENTATION.—~~To the max-  
10 imum extent practicable, the Director shall utilize  
11 the services of competent pro bono counsel who  
12 agree to provide representation to such children  
13 without charge.

14 ~~(3) GOVERNMENT-FUNDED LEGAL REPRESENTATION AS A LAST RESORT.—~~

16 ~~(A) APPOINTMENT OF COMPETENT COUNSEL.—~~Notwithstanding section 292 of the Im-  
17 migration and Nationality Act (8 U.S.C. 1362)  
18 or any other provision of law, if no competent  
19 counsel is available to represent an unaccom-  
20 panied alien child without charge, the Director  
21 shall appoint competent counsel for such child  
22 at the expense of the Government.

24 ~~(B) LIMITATION ON ATTORNEY FEES.—~~  
25 Counsel appointed under subparagraph (A)  
26 shall not be compensated at a rate in excess of

1 the rate provided under section 3006A of title  
2 18, United States Code.

3 (C) AVAILABILITY OF FUNDING.—In ear-  
4 rying out this paragraph, the Director may  
5 make use of funds derived from any source des-  
6 ignated by the Secretary of Health and Human  
7 Services from discretionary funds available to  
8 the Department of Health and Human Services.

9 (D) ASSUMPTION OF THE COST OF GOV-  
10 ERNMENT-PAID COUNSEL.—In the case of a  
11 child for whom counsel is appointed under sub-  
12 paragraph (A) who is subsequently placed in  
13 the physical custody of a parent or legal guard-  
14 ian, such parent or legal guardian may elect to  
15 retain the same counsel to continue representa-  
16 tion of the child, at no expense to the Govern-  
17 ment, beginning on the date that the parent or  
18 legal guardian assumes physical custody of the  
19 child.

20 (4) DEVELOPMENT OF NECESSARY INFRA-  
21 STRUCTURES AND SYSTEMS.—In ensuring that legal  
22 representation is provided to such children, the Di-  
23 rector shall develop the necessary mechanisms to  
24 identify entities available to provide such legal as-

1       sistance and representation and to recruit such enti-  
2       ties.

3           (5) ~~CONTRACTING AND GRANT MAKING AU-~~  
4       ~~THORITY.—~~

5           (A) ~~IN GENERAL.—~~Subject to the avail-  
6       ability of appropriations, the Director shall  
7       enter into contracts with or make grants to na-  
8       tional nonprofit agencies with relevant expertise  
9       in the delivery of immigration-related legal serv-  
10      ices to children in order to carry out this sub-  
11      section. National nonprofit agencies may enter  
12      into subcontracts with or make grants to pri-  
13      vate voluntary agencies with relevant expertise  
14      in the delivery of immigration-related legal serv-  
15      ices to children in order to carry out this sub-  
16      section.

17           (B) ~~INELIGIBILITY FOR GRANTS AND CON-~~  
18      ~~TRACTS.—~~In making grants and entering into  
19      contracts with agencies in accordance with sub-  
20      paragraph (A), the Director shall ensure that  
21      no such agency receiving funds under this sub-  
22      section is a grantee or contractee for more than  
23      1 of the following services:

24           (i) Services provided under section  
25           102.

1 (ii) Services provided under section  
2 201.

3 (iii) Services provided under para-  
4 graph (2).

5 (iv) Services provided under para-  
6 graph (3).

7 (6) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

9 (A) DEVELOPMENT OF GUIDELINES.—The  
10 Executive Office for Immigration Review, in  
11 consultation with voluntary agencies and na-  
12 tional experts, shall develop model guidelines  
13 for the legal representation of alien children in  
14 immigration proceedings based on the children's  
15 asylum guidelines, the American Bar Associa-  
16 tion Model Rules of Professional Conduct, and  
17 other relevant domestic or international sources.

18 (B) PURPOSE OF GUIDELINES.—The  
19 guidelines developed in accordance with sub-  
20 paragraph (A) shall be designed to help protect  
21 a child from any individual suspected of involve-  
22 ment in any criminal, harmful, or exploitative  
23 activity associated with the smuggling or traf-  
24 ficking of children, while ensuring the fairness

1 of the removal proceeding in which the child is  
2 involved.

3 (C) IMPLEMENTATION.—The Executive  
4 Office for Immigration Review shall adopt the  
5 guidelines developed in accordance with sub-  
6 paragraph (A) and submit them for adoption by  
7 national, State, and local bar associations.

8 (b) DUTIES.—Counsel shall—

9 (1) represent the unaccompanied alien child in  
10 all proceedings and matters relating to the immigra-  
11 tion status of the child or other actions involving the  
12 Directorate;

13 (2) appear in person for all individual merits  
14 hearings before the Executive Office for Immigration  
15 Review and interviews involving the Directorate; and

16 (3) owe the same duties of undivided loyalty,  
17 confidentiality, and competent representation to the  
18 child as is due an adult client.

19 (c) ACCESS TO CHILD.—

20 (1) IN GENERAL.—Counsel shall have reason-  
21 able access to the unaccompanied alien child, includ-  
22 ing access while the child is being held in detention,  
23 in the care of a foster family, or in any other setting  
24 that has been determined by the Office.



1           (2) RESTRICTION ON TRANSFERS.—Absent  
2 compelling and unusual circumstances, no child who  
3 is represented by counsel shall be transferred from  
4 the child's placement to another placement unless  
5 advance notice of at least 24 hours is made to coun-  
6 sel of such transfer.

7           (d) TERMINATION OF APPOINTMENT.—Counsel ap-  
8 pointed under subsection (a)(3) shall carry out the duties  
9 described in subsection (b) until—

10           (1) those duties are completed;

11           (2) the child departs the United States;

12           (3) the child is granted withholding of removal  
13 under section 241(b)(3) of the Immigration and Na-  
14 tionality Act (8 U.S.C. 1231(b)(3));

15           (4) the child is granted protection under the  
16 Convention Against Torture;

17           (5) the child is granted asylum in the United  
18 States under section 208 of the Immigration and  
19 Nationality Act (8 U.S.C. 1158);

20           (6) the child is granted permanent resident sta-  
21 tus in the United States; or

22           (7) the child attains 18 years of age;

23 whichever occurs first.

24           (e) NOTICE TO COUNSEL DURING IMMIGRATION  
25 PROCEEDINGS.—

1           (1) **IN GENERAL.**—Except when otherwise re-  
2           quired in an emergency situation involving the phys-  
3           ical safety of the child, counsel shall be given prompt  
4           and adequate notice of all immigration matters af-  
5           fecting or involving an unaccompanied alien child,  
6           including adjudications, proceedings, and processing,  
7           before such actions are taken.

8           (2) **OPPORTUNITY TO CONSULT WITH COUN-**  
9           **SEL.**—An unaccompanied alien child in the custody  
10          of the Office may not give consent to any immigra-  
11          tion action, including consenting to voluntary depart-  
12          ure, unless first afforded an opportunity to consult  
13          with counsel.

14          (f) **ACCESS TO RECOMMENDATIONS OF GUARDIAN**  
15 **AD LITEM.**—Counsel shall be afforded an opportunity to  
16 review the recommendation by the guardian ad litem af-  
17 fecting or involving a client who is an unaccompanied alien  
18 child.

19 **SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

20          (a) **EFFECTIVE DATE.**—This title shall take effect  
21 180 days after the date of enactment of this Act.

22          (b) **APPLICABILITY.**—The provisions of this title shall  
23 apply to all unaccompanied alien children in Federal cus-  
24 tody on, before, or after the effective date of this title.

1 **TITLE III—STRENGTHENING**  
2 **POLICIES FOR PERMANENT**  
3 **PROTECTION OF ALIEN CHIL-**  
4 **DREN**

5 **SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.**

6 (a) ~~J VISA.~~—Section 101(a)(27)(J) of the Immigra-  
7 tion and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is  
8 amended to read as follows:

9 “(J) an immigrant under the age of 21 on the  
10 date of application who is present in the United  
11 States—

12 “(i) who by a court order, which shall be  
13 binding on the Secretary of Homeland Security  
14 for purposes of adjudications under this sub-  
15 paragraph, was declared dependent on a juve-  
16 nile court located in the United States or whom  
17 such a court has legally committed to, or placed  
18 under the custody of, a department or agency  
19 of a State, or an individual or entity appointed  
20 by a State or juvenile court located in the  
21 United States, due to abuse, neglect, or aban-  
22 donment, or a similar basis found under State  
23 law;

24 “(ii) for whom it has been determined in  
25 administrative or judicial proceedings that it

1 would not be in the alien's best interest to be  
2 returned to the alien's or parent's previous  
3 country of nationality or country of last habit-  
4 ual residence; and

5 “(iii) with respect to a child in Federal  
6 custody, for whom the Office of Refugee Reset-  
7 tlement of the Department of Health and  
8 Human Services has certified to the Director of  
9 the Bureau of Citizenship and Immigration  
10 Services that the classification of an alien as a  
11 special immigrant under this subparagraph has  
12 not been made solely to provide an immigration  
13 benefit to that alien;

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

19 (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) of  
20 the Immigration and Nationality Act (8 U.S.C.  
21 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:

4                     “(C) the Secretary of Homeland Security  
5                     may waive subparagraphs (A) and (B) of para-  
6                     graph (2) of section 212(a) in the case of an of-  
7                     fense which arose as a consequence of the child  
8                     being unaccompanied.”.

9           (c) **ELIGIBILITY FOR ASSISTANCE.**—A child who has  
10          been granted relief under section 101(a)(27)(J) of the Im-  
11          migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),  
12          as amended by subsection (a), shall be eligible for all funds  
13          made available under section 412(d) of that Act (8 U.S.C.  
14          1522(d)) until such time as the child attains the age des-  
15          ignated in section 412(d)(2)(B) of that Act (8 U.S.C.  
16          1522(d)(2)(B)), or until the child is placed in a permanent  
17          adoptive home, whichever occurs first.

18          **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**  
19                                     **PARTIES WHO COME INTO CONTACT WITH**  
20                                     **UNACCOMPANIED ALIEN CHILDREN.**

21          (a) **TRAINING OF STATE AND LOCAL OFFICIALS AND**  
22          **CERTAIN PRIVATE PARTIES.**—The Secretary of Health  
23          and Human Services, acting jointly with the Secretary,  
24          shall provide appropriate training to be available to State  
25          and county officials, child welfare specialists, teachers,

1 public counsel, and juvenile judges who come into contact  
2 with unaccompanied alien children. The training shall pro-  
3 vide education on the processes pertaining to unaccom-  
4 panied alien children with pending immigration status and  
5 on the forms of relief potentially available. The Director  
6 shall be responsible for establishing a core curriculum that  
7 can be incorporated into education, training, or orienta-  
8 tion modules or formats that are currently used by these  
9 professionals.

10 (b) TRAINING OF DIRECTORATE PERSONNEL.—The  
11 Secretary, acting jointly with the Secretary of Health and  
12 Human Services, shall provide specialized training to all  
13 personnel of the Directorate who come into contact with  
14 unaccompanied alien children. In the case of Border Pa-  
15 trol agents and immigration inspectors, such training shall  
16 include specific training on identifying children at the  
17 United States borders or at United States ports of entry  
18 who have been victimized by smugglers or traffickers, and  
19 children for whom asylum or special immigrant relief may  
20 be appropriate, including children described in section  
21 101(a)(2).

22 **SEC. 303. REPORT.**

23 Not later than January 31, 2004, and annually there-  
24 after, the Secretary of Health and Human Services shall  
25 submit a report for the previous fiscal year to the Commit-

tees on the Judiciary of the House of Representatives and the Senate that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

**SEC. 304. EFFECTIVE DATE.**

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

**TITLE IV—CHILDREN REFUGEE  
AND ASYLUM SEEKERS**

**SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its “Guidelines for Children’s Asylum Claims”, dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Nat-

1 uralization Service (and its successor entities) in an effort  
2 to facilitate the handling of children's asylum claims. Con-  
3 gress calls upon the Executive Office for Immigration Re-  
4 view of the Department of Justice to adopt the "Guide-  
5 lines for Children's Asylum Claims" in its handling of chil-  
6 dren's asylum claims before immigration judges and the  
7 Board of Immigration Appeals.

8 (b) TRAINING.—The Secretary shall provide periodic  
9 comprehensive training under the "Guidelines for Chil-  
10 dren's Asylum Claims" to asylum officers, immigration  
11 judges, members of the Board of Immigration Appeals,  
12 and immigration officers who have contact with children  
13 in order to familiarize and sensitize such officers to the  
14 needs of children asylum seekers. Voluntary agencies shall  
15 be allowed to assist in such training.

16 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

17 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-  
18 DREN.—Section 207(e) of the Immigration and Nation-  
19 ality Act (8 U.S.C. 1157(e)) is amended—

20 (1) by redesignating paragraphs (3), (4), (5),  
21 (6), and (7) as paragraphs (4), (5), (6), (7), and  
22 (8), respectively; and

23 (2) by inserting after paragraph (2) the fol-  
24 lowing:



1           “(3) An analysis of the worldwide situation  
2           faced by unaccompanied refugee children, by region,  
3           which shall include an assessment of—

4                   “(A) the number of unaccompanied refugee  
5           children, by region;

6                   “(B) the capacity of the Department of  
7           State to identify such refugees;

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

10                  “(D) the capacity of the voluntary agency  
11           community to resettle such refugees in the  
12           United States;

13                  “(E) the degree to which the United States  
14           plans to resettle such refugees in the United  
15           States in the coming fiscal year; and

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

19           (b) TRAINING ON THE NEEDS OF UNACCOMPANIED  
20           REFUGEE CHILDREN.—Section 207(f)(2) of the Immigra-  
21           tion and Nationality Act (8 U.S.C. 1157(f)(2)) is amended  
22           by—

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

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

4 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**  
5 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**  
6 **CUMSTANCES.**

7           (a) **PLACEMENT IN REMOVAL PROCEEDINGS.**—Any  
8 unaccompanied alien child apprehended by the Direc-  
9 torate, except for an unaccompanied alien child subject to  
10 exceptions under paragraph (1)(A) or (2) of section  
11 (101)(a) of this Act, shall be placed in removal pro-  
12 ceedings under section 240 of the Immigration and Na-  
13 tionality Act (8 U.S.C. 1229a).

14           (b) **EXCEPTION FROM TIME LIMIT FOR FILING ASY-**  
15 **LUM APPLICATION.**—Section 208(a)(2) of the Immigra-  
16 tion and Nationality Act (8 U.S.C. 1158(a)(2)) is amend-  
17 ed by adding at the end the following:

18                       “(E) **APPLICABILITY.**—Subparagraphs (A)  
19 and (B) shall not apply to an unaccompanied  
20 child as defined in section 101(a)(51).”.

21 **TITLE V—AUTHORIZATION OF**  
22 **APPROPRIATIONS**

23 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

24           (a) **IN GENERAL.**—There are authorized to be appro-  
25 priated such sums as may be necessary to carry out—

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

3           (2) this Act.

4           (b) AVAILABILITY OF FUNDS.—Amounts appro-  
5           priated pursuant to subsection (a) are authorized to re-  
6           main available until expended.

7           **TITLE VI—AMENDMENTS TO THE**  
8           **HOMELAND SECURITY ACT**  
9           **OF 2002**

10          **SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF**  
11                                   **THE OFFICE OF REFUGEE RESETTLEMENT**  
12                                   **WITH RESPECT TO UNACCOMPANIED ALIEN**  
13                                   **CHILDREN.**

14          (a) ADDITIONAL RESPONSIBILITIES OF THE DIREC-  
15          TOR.—Section 462(b)(1) of the Homeland Security Act of  
16          2002 (6 U.S.C. 279(b)(1)) is amended—

17                   (1) in subparagraph (K), by striking “and” at  
18                   the end;

19                   (2) in subparagraph (L), by striking the period  
20                   at the end and inserting “, including regular follow-  
21                   up visits to such facilities, placements, and other en-  
22                   tities, to assess the continued suitability of such  
23                   placements; and”;

24                   (3) by adding at the end the following:

1           ~~“(M) ensuring minimum standards of care for~~  
2           ~~all unaccompanied alien children—~~

3                   ~~“(i) for whom detention is necessary; and~~

4                   ~~“(ii) who reside in settings that are alter-~~  
5                   ~~native to detention.”.~~

6           ~~(b) ADDITIONAL POWERS OF THE DIRECTOR.—Sec-~~  
7           ~~tion 462(b) of the Homeland Security Act of 2002 (6~~  
8           ~~U.S.C. 279(b)) is amended by adding at the end the fol-~~  
9           ~~lowing:~~

10           ~~“(4) POWERS.—In carrying out the duties~~  
11           ~~under paragraph (3), the Director shall have the~~  
12           ~~power to—~~

13                   ~~“(A) contract with service providers to per-~~  
14                   ~~form the services described in sections 102,~~  
15                   ~~103, 201, and 202 of the Unaccompanied Alien~~  
16                   ~~Child Protection Act of 2003; and~~

17                   ~~“(B) compel compliance with the terms~~  
18                   ~~and conditions set forth in section 103 of the~~  
19                   ~~Unaccompanied Alien Child Protection Act of~~  
20                   ~~2003, including the power to—~~

21                           ~~“(i) declare providers to be in breach~~  
22                           ~~and seek damages for noncompliance;~~

23                           ~~“(ii) terminate the contracts of pro-~~  
24                           ~~viders that are not in compliance with such~~  
25                           ~~conditions; and~~

1                   “(iii) reassign any unaccompanied  
2                   alien child to a similar facility that is in  
3                   compliance with such section.”.

4           (e) CLARIFICATION OF DIRECTOR’S AUTHORITY TO  
5 HIRE PERSONNEL.—Section 462(f)(3) of the Homeland  
6 Security Act of 2002 (6 U.S.C. 279(f)(3)) is amended—

7                   (1) by striking “(3) TRANSFER AND ALLOCA-  
8                   TION OF APPROPRIATIONS AND PERSONNEL.—The  
9                   personnel” and inserting the following:

10                   “~~(3)~~ TRANSFER AND ALLOCATION OF APPRO-  
11                   PRIATIONS AND PERSONNEL.—

12                   “(A) IN GENERAL.—Except as provided in  
13                   subparagraph (B), the personnel”; and

14                   (2) by inserting at the end the following:

15                   “(B) EXCEPTION.—The Director may hire  
16                   and fix the level of compensation of an ade-  
17                   quate number of personnel to carry out the du-  
18                   ties of the Office. Notwithstanding the provi-  
19                   sions of subparagraph (A), the Director may  
20                   elect not to receive the transfer of any per-  
21                   sonnel of the Department of Justice employed  
22                   in connection with the functions transferred by  
23                   this section or, at the Director’s discretion, to  
24                   assign different duties to such personnel.”.

1 **SEC. 602. TECHNICAL CORRECTIONS.**

2 Section 462(b) of the Homeland Security Act of 2002  
3 (6 U.S.C. 279(b)), as amended by section 601, is amend-  
4 ed—

5 (1) in paragraph (3), by striking “paragraph  
6 (1)(G)” and inserting “paragraph (1)”; and

7 (2) by adding at the end the following:

8 “(5) STATUTORY CONSTRUCTION.—Nothing in  
9 paragraph (2)(B) may be construed to require that  
10 a bond be posted for unaccompanied alien children  
11 who are released to a qualified sponsor.”.

12 **SEC. 603. EFFECTIVE DATE.**

13 The amendments made by this title shall take effect  
14 as if enacted as part of the Homeland Security Act of  
15 2002 (6 U.S.C. 101 et seq.).

16 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

17 (a) *SHORT TITLE.*—*This Act may be cited as the “Un-*  
18 *accompanied Alien Child Protection Act of 2004”.*

19 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
20 *this Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Definitions.*

*TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND  
DETENTION*

*Sec. 101. Procedures when encountering unaccompanied alien children.*

*Sec. 102. Family reunification for unaccompanied alien children with relatives  
in the United States.*

*Sec. 103. Appropriate conditions for detention of unaccompanied alien children.*

*Sec. 104. Repatriated unaccompanied alien children.*

*Sec. 105. Establishing the age of an unaccompanied alien child.*

Sec. 106. *Effective date.*

*TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO  
GUARDIANS AD LITEM AND COUNSEL*

Sec. 201. *Guardians ad litem.*

Sec. 202. *Counsel.*

Sec. 203. *Effective date; applicability.*

*TITLE III—STRENGTHENING POLICIES FOR PERMANENT  
PROTECTION OF ALIEN CHILDREN*

Sec. 301. *Special immigrant juvenile visa.*

Sec. 302. *Training for officials and certain private parties who come into contact  
with unaccompanied alien children.*

Sec. 303. *Report.*

Sec. 304. *Effective date.*

*TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS*

Sec. 401. *Guidelines for children’s asylum claims.*

Sec. 402. *Unaccompanied refugee children.*

Sec. 403. *Exceptions for unaccompanied alien children in asylum and refugee-like  
circumstances.*

*TITLE V—AUTHORIZATION OF APPROPRIATIONS*

Sec. 501. *Authorization of appropriations.*

*TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF  
2002*

Sec. 601. *Additional responsibilities and powers of the Office of Refugee Resettle-  
ment with respect to unaccompanied alien children.*

Sec. 602. *Technical corrections.*

Sec. 603. *Effective date.*

**1 SEC. 2. DEFINITIONS.**

2       (a) *IN GENERAL.—In this Act:*

3               (1) *COMPETENT.—The term “competent”, in ref-*  
4       *erence to counsel, means an attorney who complies*  
5       *with the duties set forth in this Act and—*

6                       (A) *is a member in good standing of the bar*  
7       *of the highest court of any State, possession, ter-*  
8       *ritory, Commonwealth, or the District of Colum-*  
9       *bia;*

1           (B) is not under any order of any court  
2           suspending, enjoining, restraining, disbarring, or  
3           otherwise restricting the attorney in the practice  
4           of law; and

5           (C) is properly qualified to handle matters  
6           involving unaccompanied immigrant children or  
7           is working under the auspices of a qualified non-  
8           profit organization that is experienced in han-  
9           dling such matters.

10          (2) *DIRECTOR*.—The term “Director” means the  
11          Director of the Office.

12          (3) *DIRECTORATE*.—The term “Directorate”  
13          means the Directorate of Border and Transportation  
14          Security established by section 401 of the Homeland  
15          Security Act of 2002 (6 U.S.C. 201).

16          (4) *OFFICE*.—The term “Office” means the Office  
17          of Refugee Resettlement as established by section 411  
18          of the Immigration and Nationality Act (8 U.S.C.  
19          1521).

20          (5) *SECRETARY*.—The term “Secretary” means  
21          the Secretary of Homeland Security.

22          (6) *UNACCOMPANIED ALIEN CHILD*.—The term  
23          “unaccompanied alien child” has the same meaning  
24          as is given the term in section 462(g)(2) of the Home-  
25          land Security Act of 2002 (6 U.S.C. 279(g)(2)).



1           (7) *VOLUNTARY AGENCY.*—*The term “voluntary*  
2 *agency” means a private, nonprofit voluntary agency*  
3 *with expertise in meeting the cultural, developmental,*  
4 *or psychological needs of unaccompanied alien chil-*  
5 *dren, as certified by the Director of the Office of Ref-*  
6 *ugee Resettlement.*

7           (b) *AMENDMENTS TO THE IMMIGRATION AND NATION-*  
8 *ALITY ACT.*—*Section 101(a) of the Immigration and Na-*  
9 *tionality Act (8 U.S.C. 1101(a)) is amended by adding at*  
10 *the end the following:*

11           “(51) *The term ‘unaccompanied alien child’ means a*  
12 *child who—*

13                   “(A) *has no lawful immigration status in the*  
14 *United States;*

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

16                   “(C) *with respect to whom—*

17                           “(i) *there is no parent or legal guardian in*  
18 *the United States; or*

19                           “(ii) *no parent or legal guardian in the*  
20 *United States is able to provide care and phys-*  
21 *ical custody.*

22           “(52) *The term ‘unaccompanied refugee children’*  
23 *means persons described in paragraph (42) who—*

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

1           “(B) with respect to whom there are no parents  
2           or legal guardians available to provide care and  
3           physical custody.”.

4           (c) *RULE OF CONSTRUCTION.*—A department or agen-  
5           cy of a State, or an individual or entity appointed by a  
6           State court or juvenile court located in the United States,  
7           acting in loco parentis, shall not be considered a legal  
8           guardian for purposes of section 462 of the Homeland Secu-  
9           rity Act of 2002 (6 U.S.C. 279) or this Act.

10       **TITLE I—CUSTODY, RELEASE,**  
11       **FAMILY REUNIFICATION, AND**  
12       **DETENTION**

13       **SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOM-**  
14       **PANIED ALIEN CHILDREN.**

15           (a) *UNACCOMPANIED CHILDREN FOUND ALONG THE*  
16       *UNITED STATES BORDER OR AT UNITED STATES PORTS*  
17       *OF ENTRY.*—

18           (1) *IN GENERAL.*—Subject to paragraph (2), if  
19       an immigration officer finds an unaccompanied alien  
20       child who is described in paragraph (2) at a land  
21       border or port of entry of the United States and deter-  
22       mines that such child is inadmissible under the Im-  
23       migration and Nationality Act (8 U.S.C. 1101 et  
24       seq.), the officer shall—

1           (A) permit such child to withdraw the  
2 child's application for admission pursuant to  
3 section 235(a)(4) of the Immigration and Na-  
4 tionality Act (8 U.S.C. 1225(a)(4)); and

5           (B) return such child to the child's country  
6 of nationality or country of last habitual resi-  
7 dence.

8           (2) *SPECIAL RULE FOR CONTIGUOUS COUN-*  
9 *TRIES.—*

10           (A) *IN GENERAL.—*Any child who is a na-  
11 tional or habitual resident of a country that is  
12 contiguous with the United States and that has  
13 an agreement in writing with the United States  
14 providing for the safe return and orderly repa-  
15 triation of unaccompanied alien children who  
16 are nationals or habitual residents of such coun-  
17 try shall be treated in accordance with para-  
18 graph (1), if a determination is made on a case-  
19 by-case basis that—

20           (i) such child is a national or habitual  
21 resident of a country described in subpara-  
22 graph (A);

23           (ii) such child does not have a fear of  
24 returning to the child's country of nation-

1                    *ality or country of last habitual residence*  
2                    *owing to a fear of persecution;*

3                    *(iii) the return of such child to the*  
4                    *child's country of nationality or country of*  
5                    *last habitual residence would not endanger*  
6                    *the life or safety of such child; and*

7                    *(iv) the child is able to make an inde-*  
8                    *pendent decision to withdraw the child's ap-*  
9                    *plication for admission due to age or other*  
10                   *lack of capacity.*

11                   *(B) RIGHT OF CONSULTATION.—Any child*  
12                   *described in subparagraph (A) shall have the*  
13                   *right to consult with a consular officer from the*  
14                   *child's country of nationality or country of last*  
15                   *habitual residence prior to repatriation, as well*  
16                   *as consult with the Office, telephonically, and*  
17                   *such child shall be informed of that right in the*  
18                   *child's native language.*

19                   *(3) RULE FOR APPREHENSIONS AT THE BOR-*  
20                   *DER.—The custody of unaccompanied alien children*  
21                   *not described in paragraph (2) who are apprehended*  
22                   *at the border of the United States or at a United*  
23                   *States port of entry shall be treated in accordance*  
24                   *with the provisions of subsection (b).*

1           **(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN**  
2 **CHILDREN FOUND IN THE INTERIOR OF THE UNITED**  
3 **STATES.—**

4           **(1) ESTABLISHMENT OF JURISDICTION.—**

5                   **(A) IN GENERAL.—***Except as otherwise pro-*  
6 *vided under subparagraphs (B) and (C) and*  
7 *subsection (a), the care and custody of all unac-*  
8 *companied alien children, including responsi-*  
9 *bility for their detention, where appropriate,*  
10 *shall be under the jurisdiction of the Office.*

11                   **(B) EXCEPTION FOR CHILDREN WHO HAVE**  
12 **COMMITTED CRIMES.—***Notwithstanding subpara-*  
13 *graph (A), the Directorate shall retain or assume*  
14 *the custody and care of any unaccompanied*  
15 *alien child who—*

16                           *(i) has been charged with any felony,*  
17 *excluding offenses proscribed by the Immi-*  
18 *gration and Nationality Act (8 U.S.C. 1101*  
19 *et seq.), while such charges are pending; or*

20                           *(ii) has been convicted of any such fel-*  
21 *ony.*

22                   **(C) EXCEPTION FOR CHILDREN WHO**  
23 **THREATEN NATIONAL SECURITY.—***Notwith-*  
24 *standing subparagraph (A), the Directorate shall*  
25 *retain or assume the custody and care of an un-*

1           *accompanied alien child if the Secretary has sub-*  
2           *stantial evidence, based on an individualized de-*  
3           *termination, that such child could personally en-*  
4           *danger the national security of the United*  
5           *States.*

6           (D) *TRAFFICKING VICTIMS.*—*For purposes*  
7           *of section 462 of the Homeland Security Act of*  
8           *2002 (6 U.S.C. 279) and this Act, an unaccom-*  
9           *panied alien child who is eligible for services au-*  
10          *thorized under the Victims of Trafficking and Vi-*  
11          *olence Protection Act of 2000 (Public Law 106-*  
12          *386), shall be considered to be in the custody of*  
13          *the Office.*

14          (2) *NOTIFICATION.*—

15               (A) *IN GENERAL.*—*The Secretary shall*  
16               *promptly notify the Office upon—*

17                       (i) *the apprehension of an unaccom-*  
18                       *panied alien child;*

19                       (ii) *the discovery that an alien in the*  
20                       *custody of the Directorate is an unaccom-*  
21                       *panied alien child;*

22                       (iii) *any claim by an alien in the cus-*  
23                       *tody of the Directorate that such alien is*  
24                       *under the age of 18; or*

1           *(iv) any suspicion that an alien in the*  
2           *custody of the Directorate who has claimed*  
3           *to be over the age of 18 is actually under*  
4           *the age of 18.*

5           *(B) SPECIAL RULE.—In the case of an alien*  
6           *described in clause (iii) or (iv) of subparagraph*  
7           *(A), the Director shall make an age determina-*  
8           *tion in accordance with section 105 and take*  
9           *whatever other steps are necessary to determine*  
10          *whether or not such alien is eligible for treat-*  
11          *ment under section 462 of the Homeland Secu-*  
12          *rity Act of 2002 (6 U.S.C. 279) or this Act.*

13          *(3) TRANSFER OF UNACCOMPANIED ALIEN CHIL-*  
14          *DREN.—*

15                 *(A) TRANSFER TO THE OFFICE.—The care*  
16                 *and custody of an unaccompanied alien child*  
17                 *shall be transferred to the Office—*

18                         *(i) in the case of a child not described*  
19                         *in subparagraph (B) or (C) of paragraph*  
20                         *(1), not later than 72 hours after a deter-*  
21                         *mination is made that such child is an un-*  
22                         *accompanied alien child;*

23                         *(ii) in the case of a child whose cus-*  
24                         *tody and care has been retained or assumed*  
25                         *by the Directorate pursuant to subpara-*

1           graph (B) or (C) of paragraph (1), imme-  
2           diately following a determination that the  
3           child no longer meets the description set  
4           forth in such subparagraphs; or

5           (iii) in the case of a child who was  
6           previously released to an individual de-  
7           scribed in subparagraph (A) or (B) of sec-  
8           tion 102(a)(1), upon a determination that  
9           such individual is no longer able to care for  
10          the child.

11          (B) *TRANSFER TO THE DIRECTORATE.*—

12          Upon determining that a child in the custody of  
13          the Office is described in subparagraph (B) or  
14          (C) of paragraph (1), the Director shall transfer  
15          the care and custody of such child to the Direc-  
16          torate.

17          (C) *PROMPTNESS OF TRANSFER.*—In the  
18          event of a need to transfer a child under this  
19          paragraph, the sending office shall make prompt  
20          arrangements to transfer such child and the re-  
21          ceiving office shall make prompt arrangements to  
22          receive such child.

23          (c) *AGE DETERMINATIONS.*—In any case in which the  
24          age of an alien is in question and the resolution of questions  
25          about the age of such alien would affect the alien's eligibility



1 *for treatment under section 462 of the Homeland Security*  
2 *Act of 2002 (6 U.S.C. 279) or this Act, a determination*  
3 *of whether or not such alien meets such age requirements*  
4 *shall be made by the Director in accordance with section*  
5 *105.*

6 **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
7 **ALIEN CHILDREN WITH RELATIVES IN THE**  
8 **UNITED STATES.**

9 *(a) PLACEMENT AUTHORITY.—*

10 *(1) ORDER OF PREFERENCE.—Subject to the dis-*  
11 *cretion of the Director under section 462(b)(2) of the*  
12 *Homeland Security Act of 2002 (6 U.S.C. 279(b)(2))*  
13 *and under paragraph (4) of this subsection and sec-*  
14 *tion 103(a)(2) of this Act, an unaccompanied alien*  
15 *child in the custody of the Office shall be promptly*  
16 *placed with 1 of the following individuals or entities*  
17 *in the following order of preference:*

18 *(A) A parent who seeks to establish custody,*  
19 *as described in paragraph (3)(A).*

20 *(B) A legal guardian who seeks to establish*  
21 *custody, as described in paragraph (3)(A).*

22 *(C) An adult relative.*

23 *(D) An entity designated by the parent or*  
24 *legal guardian that is capable and willing to*  
25 *care for the well-being of the child.*

1           (E) *A State-licensed juvenile shelter, group*  
2           *home, or foster care program willing to accept*  
3           *physical custody of the child.*

4           (F) *A qualified adult or entity seeking cus-*  
5           *tody of the child when it appears that there is*  
6           *no other likely alternative to long-term detention*  
7           *and family reunification does not appear to be*  
8           *a reasonable alternative. For purposes of this*  
9           *subparagraph, the Office shall decide who is a*  
10           *qualified adult or entity and promulgate regula-*  
11           *tions in accordance with such decision.*

12           (2) *SUITABILITY ASSESSMENT.—Notwith-*  
13           *standing paragraph (1), no unaccompanied alien*  
14           *child shall be placed with a person or entity unless*  
15           *a valid suitability assessment conducted by an agency*  
16           *of the State of the child's proposed residence, by an*  
17           *agency authorized by that State to conduct such an*  
18           *assessment, or by an appropriate voluntary agency*  
19           *contracted with the Office to conduct such assessments*  
20           *has found that the person or entity is capable of pro-*  
21           *viding for the child's physical and mental well-being.*

22           (3) *RIGHT OF PARENT OR LEGAL GUARDIAN TO*  
23           *CUSTODY OF UNACCOMPANIED ALIEN CHILD.—*

24           (A) *PLACEMENT WITH PARENT OR LEGAL*  
25           *GUARDIAN.—If an unaccompanied alien child is*

1 placed with any person or entity other than a  
2 parent or legal guardian, but subsequent to that  
3 placement a parent or legal guardian seeks to es-  
4 tablish custody, the Director shall assess the suit-  
5 ability of placing the child with the parent or  
6 legal guardian and shall make a written deter-  
7 mination on the child's placement within 30  
8 days.

9 (B) *RULE OF CONSTRUCTION.*—Nothing in  
10 this Act shall be construed to—

11 (i) supersede obligations under any  
12 treaty or other international agreement to  
13 which the United States is a party, includ-  
14 ing The Hague Convention on the Civil As-  
15 pects of International Child Abduction, the  
16 Vienna Declaration and Program of Action,  
17 and the Declaration of the Rights of the  
18 Child; or

19 (ii) limit any right or remedy under  
20 such international agreement.

21 (4) *PROTECTION FROM SMUGGLERS AND TRAF-*  
22 *FICKERS.*—

23 (A) *POLICIES AND PROGRAMS.*—

24 (i) *IN GENERAL.*—The Director shall  
25 establish policies and programs to ensure

1           that unaccompanied alien children are pro-  
2           tected from smugglers, traffickers, or other  
3           persons seeking to victimize or otherwise en-  
4           gage such children in criminal, harmful, or  
5           exploitative activity.

6                   (ii) *WITNESS PROTECTION PROGRAMS*  
7           *INCLUDED.*—The programs established pur-  
8           suant to clause (i) may include witness pro-  
9           tection programs.

10                   (B) *CRIMINAL INVESTIGATIONS AND PROS-*  
11           *ECUTIONS.*—Any officer or employee of the Office  
12           or the Department of Homeland Security, and  
13           any grantee or contractor of the Office, who sus-  
14           pects any individual of being involved in any  
15           activity described in subparagraph (A) shall re-  
16           port such individual to Federal or State prosecu-  
17           tors for criminal investigation and prosecution.

18                   (C) *DISCIPLINARY ACTION.*—Any officer or  
19           employee of the Office or the Department of  
20           Homeland Security, and any grantee or con-  
21           tractor of the Office, who suspects an attorney of  
22           being involved in any activity described in sub-  
23           paragraph (A) shall report the individual to the  
24           State bar association of which the attorney is a  
25           member, or to other appropriate disciplinary au-

1            *thorities, for appropriate disciplinary action*  
2            *that may include private or public admonition*  
3            *or censure, suspension, or disbarment of the at-*  
4            *torney from the practice of law.*

5            (5) *GRANTS AND CONTRACTS.*—*Subject to the*  
6            *availability of appropriations, the Director may*  
7            *make grants to, and enter into contracts with, vol-*  
8            *untary agencies to carry out section 462 of the Home-*  
9            *land Security Act of 2002 (6 U.S.C. 279) or to carry*  
10           *out this section.*

11           (6) *REIMBURSEMENT OF STATE EXPENSES.*—  
12           *Subject to the availability of appropriations, the Di-*  
13           *rector may reimburse States for any expenses they*  
14           *incur in providing assistance to unaccompanied alien*  
15           *children who are served pursuant to section 462 of the*  
16           *Homeland Security Act of 2002 (6 U.S.C. 279) or*  
17           *this Act.*

18           (b) *CONFIDENTIALITY.*—*All information obtained by*  
19           *the Office relating to the immigration status of a person*  
20           *described in subparagraphs (A), (B), and (C) of subsection*  
21           *(a)(1) shall remain confidential and may be used only for*  
22           *the purposes of determining such person's qualifications*  
23           *under subsection (a)(1).*

24           (c) *REQUIRED DISCLOSURE.*—*The Secretary of Health*  
25           *and Human Services or the Secretary of Homeland Secu-*

1 rity shall provide the information furnished under this sec-  
 2 tion, and any other information derived from such fur-  
 3 nished information, to—

4 (1) a duly recognized law enforcement entity in  
 5 connection with an investigation or prosecution of an  
 6 offense described in paragraph (2) or (3) of section  
 7 212(a) of the Immigration and Nationality Act (8  
 8 U.S.C. 1182(a)), when such information is requested  
 9 in writing by such entity; or

10 (2) an official coroner for purposes of affirma-  
 11 tively identifying a deceased individual (whether or  
 12 not such individual is deceased as a result of a  
 13 crime).

14 (d) *PENALTY.*—Whoever knowingly uses, publishes, or  
 15 permits information to be examined in violation of this sec-  
 16 tion shall be fined not more than \$10,000.

17 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**  
 18 **UNACCOMPANIED ALIEN CHILDREN.**

19 (a) *STANDARDS FOR PLACEMENT.*—

20 (1) *PROHIBITION OF DETENTION IN CERTAIN FA-*  
 21 *CILITIES.*—Except as provided in paragraph (2), an  
 22 unaccompanied alien child shall not be placed in an  
 23 adult detention facility or a facility housing delin-  
 24 quent children.

1           (2) *DETENTION IN APPROPRIATE FACILITIES.*—  
2           *An unaccompanied alien child who has exhibited a*  
3           *violent or criminal behavior that endangers others*  
4           *may be detained in conditions appropriate to the be-*  
5           *havior in a facility appropriate for delinquent chil-*  
6           *dren.*

7           (3) *STATE LICENSURE.*—*In the case of a place-*  
8           *ment of a child with an entity described in section*  
9           *102(a)(1)(E), the entity must be licensed by an ap-*  
10           *propriate State agency to provide residential, group,*  
11           *child welfare, or foster care services for dependent*  
12           *children.*

13           (4) *CONDITIONS OF DETENTION.*—

14           (A) *IN GENERAL.*—*The Director and the*  
15           *Secretary of Homeland Security shall promul-*  
16           *gate regulations incorporating standards for con-*  
17           *ditions of detention in such placements that pro-*  
18           *vide for—*

19                   (i) *educational services appropriate to*  
20                   *the child;*

21                   (ii) *medical care;*

22                   (iii) *mental health care, including*  
23                   *treatment of trauma, physical and sexual*  
24                   *violence, or abuse;*

25                   (iv) *access to telephones;*

1                   (v) access to legal services;

2                   (vi) access to interpreters;

3                   (vii) supervision by professionals  
4                   trained in the care of children, taking into  
5                   account the special cultural, linguistic, and  
6                   experiential needs of children in immigra-  
7                   tion proceedings;

8                   (viii) recreational programs and ac-  
9                   tivities;

10                  (ix) spiritual and religious needs; and

11                  (x) dietary needs.

12                  (B) NOTIFICATION OF CHILDREN.—Regula-  
13                  tions promulgated in accordance with subpara-  
14                  graph (A) shall provide that all children are no-  
15                  tified orally and in writing of such standards in  
16                  the child's native language.

17                  (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-  
18                  rector and the Secretary shall develop procedures prohib-  
19                  iting the unreasonable use of—

20                    (1) shackling, handcuffing, or other restraints on  
21                    children;

22                    (2) solitary confinement; or

23                    (3) pat or strip searches.

24                  (c) RULE OF CONSTRUCTION.—Nothing in this section  
25                  shall be construed to supersede procedures favoring release



1 *of children to appropriate adults or entities or placement*  
2 *in the least secure setting possible, as defined in the Stipu-*  
3 *lated Settlement Agreement under Flores v. Reno.*

4 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
5 **DREN.**

6 (a) COUNTRY CONDITIONS.—

7 (1) SENSE OF CONGRESS.—*It is the sense of*  
8 *Congress that, to the extent consistent with the trea-*  
9 *ties and other international agreements to which the*  
10 *United States is a party, and to the extent prac-*  
11 *ticable, the United States Government should under-*  
12 *take efforts to ensure that it does not repatriate chil-*  
13 *dren in its custody into settings that would threaten*  
14 *the life and safety of such children.*

15 (2) ASSESSMENT OF CONDITIONS.—

16 (A) IN GENERAL.—*The Secretary of State*  
17 *shall include each year in the State Department*  
18 *Country Report on Human Rights, an assess-*  
19 *ment of the degree to which each country protects*  
20 *children from smugglers and traffickers.*

21 (B) FACTORS FOR ASSESSMENT.—*The Of-*  
22 *fice shall consult the State Department Country*  
23 *Report on Human Rights and the Victims of*  
24 *Trafficking and Violence Protection Act of 2000:*  
25 *Trafficking in Persons Report in assessing*

1           *whether to repatriate an unaccompanied alien*  
2           *child to a particular country.*

3           **(b) REPORT ON REPATRIATION OF UNACCOMPANIED**  
4 **ALIEN CHILDREN.—**

5           **(1) IN GENERAL.—***Not later than 18 months*  
6           *after the date of enactment of this Act, and annually*  
7           *thereafter, the Director shall submit a report to the*  
8           *Committees on the Judiciary of the House of Rep-*  
9           *resentatives and the Senate on efforts to repatriate*  
10          *unaccompanied alien children.*

11          **(2) CONTENTS.—***The report submitted under*  
12          *paragraph (1) shall include, at a minimum, the fol-*  
13          *lowing information:*

14                  **(A)** *The number of unaccompanied alien*  
15                  *children ordered removed and the number of such*  
16                  *children actually removed from the United*  
17                  *States.*

18                  **(B)** *A description of the type of immigra-*  
19                  *tion relief sought and denied to such children.*

20                  **(C)** *A statement of the nationalities, ages,*  
21                  *and gender of such children.*

22                  **(D)** *A description of the procedures used to*  
23                  *effect the removal of such children from the*  
24                  *United States.*

1           (E) *A description of steps taken to ensure*  
2           *that such children were safely and humanely re-*  
3           *patriated to their country of origin.*

4           (F) *Any information gathered in assess-*  
5           *ments of country and local conditions pursuant*  
6           *to subsection (a)(2).*

7   **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**  
8           **ALIEN CHILD.**

9           (a) *IN GENERAL.—The Director shall develop proce-*  
10          *dures to make a prompt determination of the age of an alien*  
11          *in the custody of the Department of Homeland Security or*  
12          *the Office, when the age of the alien is at issue. Such proce-*  
13          *dures shall permit the presentation of multiple forms of evi-*  
14          *dence, including testimony of the child, to determine the*  
15          *age of the unaccompanied alien for purposes of placement,*  
16          *custody, parole, and detention. Such procedures shall allow*  
17          *the appeal of a determination to an immigration judge. The*  
18          *Secretary of Homeland Security shall permit the Office to*  
19          *have reasonable access to aliens in the custody of the Sec-*  
20          *retary so as to ensure a prompt determination of the age*  
21          *of such alien.*

22          (b) *PROHIBITION ON SOLE MEANS OF DETERMINING*  
23          *AGE.—Neither radiographs nor the attestation of an alien*  
24          *shall be used as the sole means of determining age for the*  
25          *purposes of determining an alien's eligibility for treatment*

1 *under section 462 of the Homeland Security Act of 2002*  
 2 *(6 U.S.C. 279) or this Act.*

3 *(c) RULE OF CONSTRUCTION.—Nothing in this section*  
 4 *shall be construed to place the burden of proof in deter-*  
 5 *mining the age of an alien on the government.*

6 **SEC. 106. EFFECTIVE DATE.**

7 *This title shall take effect 90 days after the date of en-*  
 8 *actment of this Act.*

9 **TITLE II—ACCESS BY UNACCOM-**  
 10 **PANIED ALIEN CHILDREN TO**  
 11 **GUARDIANS AD LITEM AND**  
 12 **COUNSEL**

13 **SEC. 201. GUARDIANS AD LITEM.**

14 *(a) ESTABLISHMENT OF GUARDIAN AD LITEM PRO-*  
 15 *GRAM.—*

16 *(1) APPOINTMENT.—The Director may, in the*  
 17 *Director’s discretion, appoint a guardian ad litem*  
 18 *who meets the qualifications described in paragraph*  
 19 *(2) for such child. The Director is encouraged, wher-*  
 20 *ever practicable, to contract with a voluntary agency*  
 21 *for the selection of an individual to be appointed as*  
 22 *a guardian ad litem under this paragraph.*

23 *(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—*

24 *(A) IN GENERAL.—No person shall serve as*  
 25 *a guardian ad litem unless such person—*

1           (i) is a child welfare professional or  
2           other individual who has received training  
3           in child welfare matters; and

4           (ii) possesses special training on the  
5           nature of problems encountered by unac-  
6           panied alien children.

7           (B) *PROHIBITION.*—A guardian ad litem  
8           shall not be an employee of the Directorate, the  
9           Office, or the Executive Office for Immigration  
10          Review.

11          (3) *DUTIES.*—The guardian ad litem shall—

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

15           (B) investigate the facts and circumstances  
16           relevant to such child's presence in the United  
17           States, including facts and circumstances arising  
18           in the country of the child's nationality or last  
19           habitual residence and facts and circumstances  
20           arising subsequent to the child's departure from  
21           such country;

22           (C) work with counsel to identify the child's  
23           eligibility for relief from removal or voluntary  
24           departure by sharing with counsel information  
25           collected under subparagraph (B);

1           (D) develop recommendations on issues rel-  
2           ative to the child's custody, detention, release,  
3           and repatriation;

4           (E) take reasonable steps to ensure that the  
5           best interests of the child are promoted while the  
6           child participates in, or is subject to, proceedings  
7           or matters under the Immigration and Nation-  
8           ality Act (8 U.S.C. 1101 et seq.);

9           (F) take reasonable steps to ensure that the  
10          child understands the nature of the legal pro-  
11          ceedings or matters and determinations made by  
12          the court, and ensure that all information is con-  
13          veyed in an age-appropriate manner; and

14          (G) report factual findings relating to—

15               (i) information gathered pursuant to  
16               subparagraph (B);

17               (ii) the care and placement of the child  
18               during the pendency of the proceedings or  
19               matters; and

20               (iii) any other information gathered  
21               pursuant to subparagraph (D).

22          (4) *TERMINATION OF APPOINTMENT.*—The  
23          guardian ad litem shall carry out the duties described  
24          in paragraph (3) until—

25               (A) those duties are completed;

1                   (B) the child departs the United States;

2                   (C) the child is granted permanent resident  
3 status in the United States;

4                   (D) the child attains the age of 18; or

5                   (E) the child is placed in the custody of a  
6 parent or legal guardian;

7 whichever occurs first.

8                   (5) POWERS.—The guardian ad litem—

9                   (A) shall have reasonable access to the child,  
10 including access while such child is being held in  
11 detention or in the care of a foster family;

12                   (B) shall be permitted to review all records  
13 and information relating to such proceedings  
14 that are not deemed privileged or classified;

15                   (C) may seek independent evaluations of the  
16 child;

17                   (D) shall be notified in advance of all hear-  
18 ings or interviews involving the child that are  
19 held in connection with proceedings or matters  
20 under the Immigration and Nationality Act (8  
21 U.S.C. 1101 et seq.), and shall be given a reason-  
22 able opportunity to be present at such hearings  
23 or interviews;

1           (E) shall be permitted to consult with the  
2           child during any hearing or interview involving  
3           such child; and

4           (F) shall be provided at least 24 hours ad-  
5           vance notice of a transfer of that child to a dif-  
6           ferent placement, absent compelling and unusual  
7           circumstances warranting the transfer of such  
8           child prior to notification.

9           (b) *TRAINING.*—The Director shall provide profes-  
10          sional training for all persons serving as guardians ad  
11          litem under this section in the—

12           (1) circumstances and conditions that unaccom-  
13          panied alien children face; and

14           (2) various immigration benefits for which such  
15          alien child might be eligible.

16          (c) *PILOT PROGRAM.*—

17           (1) *IN GENERAL.*—Not later than 180 days after  
18          the date of enactment of this Act, the Director shall  
19          establish and begin to carry out a pilot program to  
20          test the implementation of subsection (a).

21           (2) *PURPOSE.*—The purpose of the pilot program  
22          established pursuant to paragraph (1) is to—

23           (A) study and assess the benefits of pro-  
24          viding guardians ad litem to assist unaccom-



1            *panied alien children involved in immigration*  
2            *proceedings or matters;*

3            *(B) assess the most efficient and cost-effec-*  
4            *tive means of implementing the guardian ad*  
5            *litem provisions in this section; and*

6            *(C) assess the feasibility of implementing*  
7            *such provisions on a nationwide basis for all un-*  
8            *accompanied alien children in the care of the Of-*  
9            *fice.*

10          *(3) SCOPE OF PROGRAM.—*

11            *(A) SELECTION OF SITE.—The Director*  
12            *shall select 3 sites in which to operate the pilot*  
13            *program established pursuant to paragraph (1).*

14            *(B) NUMBER OF CHILDREN.—To the great-*  
15            *est extent possible, each site selected under sub-*  
16            *paragraph (A) should have at least 25 children*  
17            *held in immigration custody at any given time.*

18            *(4) REPORT TO CONGRESS.—Not later than 1*  
19            *year after the date on which the first pilot program*  
20            *is established pursuant to paragraph (1), the Director*  
21            *shall report to the Committees on the Judiciary of the*  
22            *Senate and the House of Representatives on subpara-*  
23            *graphs (A) through (C) of paragraph (2).*

24          **SEC. 202. COUNSEL.**

25            *(a) ACCESS TO COUNSEL.—*

1           (1) *IN GENERAL.*—*The Director shall ensure that*  
2 *all unaccompanied alien children in the custody of*  
3 *the Office, or in the custody of the Directorate, who*  
4 *are not described in section 101(a)(2) shall have com-*  
5 *petent counsel to represent them in immigration pro-*  
6 *ceedings or matters.*

7           (2) *PRO BONO REPRESENTATION.*—*To the max-*  
8 *imum extent practicable, the Director shall utilize the*  
9 *services of competent pro bono counsel who agree to*  
10 *provide representation to such children without*  
11 *charge. To the maximum extent practicable, the Di-*  
12 *rector shall ensure that placements made under sub-*  
13 *paragraphs (D), (E), and (F) of section 102(a)(1) are*  
14 *in cities where there is a demonstrated capacity for*  
15 *competent pro bono representation.*

16           (3) *DEVELOPMENT OF NECESSARY INFRASTRUC-*  
17 *TURES AND SYSTEMS.*—*In ensuring that legal rep-*  
18 *resentation is provided to such children, the Director*  
19 *shall develop the necessary mechanisms to identify en-*  
20 *tities available to provide such legal assistance and*  
21 *representation and to recruit such entities.*

22           (4) *CONTRACTING AND GRANT MAKING AUTHOR-*  
23 *ITY.*—

24                   (A) *IN GENERAL.*—*The Director shall enter*  
25 *into contracts with or make grants to nonprofit*

1            *agencies with relevant expertise in the delivery of*  
2            *immigration-related legal services to children in*  
3            *order to carry out the responsibilities of this Act,*  
4            *including but not limited to such activities as*  
5            *providing legal orientation, screening cases for*  
6            *referral, recruiting, training, and overseeing pro*  
7            *bono attorneys. Nonprofit agencies may enter*  
8            *into subcontracts with or make grants to private*  
9            *voluntary agencies with relevant expertise in the*  
10           *delivery of immigration-related legal services to*  
11           *children in order to carry out this subsection.*

12                    *(B) CONSIDERATIONS REGARDING GRANTS*  
13                    *AND CONTRACTS.—In making grants and enter-*  
14                    *ing into contracts with agencies in accordance*  
15                    *with subparagraph (A), the Director shall take*  
16                    *into consideration whether the agencies in ques-*  
17                    *tion are capable of properly administering the*  
18                    *services covered by such grants or contracts with-*  
19                    *out an undue conflict of interest.*

20                    *(5) MODEL GUIDELINES ON LEGAL REPRESENTA-*  
21                    *TION OF CHILDREN.—*

22                    *(A) DEVELOPMENT OF GUIDELINES.—The*  
23                    *Executive Office for Immigration Review, in*  
24                    *consultation with voluntary agencies and na-*  
25                    *tional experts, shall develop model guidelines for*

1           *the legal representation of alien children in im-*  
2           *migration proceedings based on the children's*  
3           *asylum guidelines, the American Bar Association*  
4           *Model Rules of Professional Conduct, and other*  
5           *relevant domestic or international sources.*

6                   *(B) PURPOSE OF GUIDELINES.—The guide-*  
7           *lines developed in accordance with subparagraph*  
8           *(A) shall be designed to help protect a child from*  
9           *any individual suspected of involvement in any*  
10          *criminal, harmful, or exploitative activity asso-*  
11          *ciated with the smuggling or trafficking of chil-*  
12          *dren, while ensuring the fairness of the removal*  
13          *proceeding in which the child is involved.*

14                   *(C) IMPLEMENTATION.—The Executive Of-*  
15          *fice for Immigration Review shall adopt the*  
16          *guidelines developed in accordance with subpara-*  
17          *graph (A) and submit them for adoption by na-*  
18          *tional, State, and local bar associations.*

19          *(b) DUTIES.—Counsel shall—*

20                   *(1) represent the unaccompanied alien child in*  
21          *all proceedings and matters relating to the immigra-*  
22          *tion status of the child or other actions involving the*  
23          *Directorate;*

1           (2) *appear in person for all individual merits*  
2 *hearings before the Executive Office for Immigration*  
3 *Review and interviews involving the Directorate; and*

4           (3) *owe the same duties of undivided loyalty,*  
5 *confidentiality, and competent representation to the*  
6 *child as is due an adult client.*

7           (c) *ACCESS TO CHILD.—*

8           (1) *IN GENERAL.—Counsel shall have reasonable*  
9 *access to the unaccompanied alien child, including*  
10 *access while the child is being held in detention, in*  
11 *the care of a foster family, or in any other setting*  
12 *that has been determined by the Office.*

13           (2) *RESTRICTION ON TRANSFERS.—Absent com-*  
14 *PELLING and unusual circumstances, no child who is*  
15 *represented by counsel shall be transferred from the*  
16 *child's placement to another placement unless advance*  
17 *notice of at least 24 hours is made to counsel of such*  
18 *transfer.*

19           (d) *NOTICE TO COUNSEL DURING IMMIGRATION PRO-*  
20 *CEEDINGS.—*

21           (1) *IN GENERAL.—Except when otherwise re-*  
22 *quired in an emergency situation involving the phys-*  
23 *ical safety of the child, counsel shall be given prompt*  
24 *and adequate notice of all immigration matters affect-*  
25 *ing or involving an unaccompanied alien child, in-*

1 *cluding adjudications, proceedings, and processing,*  
2 *before such actions are taken.*

3 (2) *OPPORTUNITY TO CONSULT WITH COUN-*  
4 *SEL.—An unaccompanied alien child in the custody*  
5 *of the Office may not give consent to any immigra-*  
6 *tion action, including consenting to voluntary depar-*  
7 *ture, unless first afforded an opportunity to consult*  
8 *with counsel.*

9 (e) *ACCESS TO RECOMMENDATIONS OF GUARDIAN AD*  
10 *LITEM.—Counsel shall be afforded an opportunity to review*  
11 *the recommendation by the guardian ad litem affecting or*  
12 *involving a client who is an unaccompanied alien child.*

13 **SEC. 203. EFFECTIVE DATE; APPLICABILITY.**

14 (a) *EFFECTIVE DATE.—This title shall take effect 180*  
15 *days after the date of enactment of this Act.*

16 (b) *APPLICABILITY.—The provisions of this title shall*  
17 *apply to all unaccompanied alien children in Federal cus-*  
18 *tody on, before, or after the effective date of this title.*

1 **TITLE III—STRENGTHENING**  
2 **POLICIES FOR PERMANENT**  
3 **PROTECTION OF ALIEN CHIL-**  
4 **DREN**

5 **SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.**

6 (a) *J VISA.*—Section 101(a)(27)(J) of the Immigration  
7 and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended  
8 to read as follows:

9 “(J) an immigrant under the age of 21 on the  
10 date of application who is present in the United  
11 States—

12 “(i) who by a court order, which shall be  
13 binding on the Secretary of Homeland Security  
14 for purposes of adjudications under this subpara-  
15 graph, was declared dependent on a juvenile  
16 court located in the United States or whom such  
17 a court has legally committed to, or placed under  
18 the custody of, a department or agency of a  
19 State, or an individual or entity appointed by  
20 a State or juvenile court located in the United  
21 States, due to abuse, neglect, or abandonment, or  
22 a similar basis found under State law;

23 “(ii) for whom it has been determined in  
24 administrative or judicial proceedings that it  
25 would not be in the alien’s best interest to be re-

1           *turned to the alien’s or parent’s previous country*  
2           *of nationality or country of last habitual resi-*  
3           *dence; and*

4                     *“(iii) with respect to a child in Federal cus-*  
5           *tody, for whom the Office of Refugee Resettlement*  
6           *of the Department of Health and Human Serv-*  
7           *ices has certified to the Director of the Bureau*  
8           *of Citizenship and Immigration Services that the*  
9           *classification of an alien as a special immigrant*  
10          *under this subparagraph has not been made sole-*  
11          *ly to provide an immigration benefit to that*  
12          *alien;*

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

18          ***(b) ADJUSTMENT OF STATUS.***—*Section 245(h)(2) of*  
19          *the Immigration and Nationality Act (8 U.S.C. 1255(h)(2))*  
20          *is amended—*

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

23                             *“(A) paragraphs (4), (5)(A), (6)(A), and (7)*  
24                     *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:*

4                   “(C) *the Secretary of Homeland Security*  
5                   *may waive section 212(a)(2)(D) in the case of an*  
6                   *offense which arose as a consequence of the child*  
7                   *being unaccompanied.”.*

8           (c) *ELIGIBILITY FOR ASSISTANCE.—A child who has*  
9           *been granted relief under section 101(a)(27)(J) of the Immi-*  
10           *gration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as*  
11           *amended by subsection (a), shall be eligible for all funds*  
12           *made available under section 412(d) of that Act (8 U.S.C.*  
13           *1522(d)) until such time as the child attains the age des-*  
14           *ignated in section 412(d)(2)(B) of that Act (8 U.S.C.*  
15           *1522(d)(2)(B)), or until the child is placed in a permanent*  
16           *adoptive home, whichever occurs first.*

17   **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**  
18                   **PARTIES WHO COME INTO CONTACT WITH**  
19                   **UNACCOMPANIED ALIEN CHILDREN.**

20           (a) *TRAINING OF STATE AND LOCAL OFFICIALS AND*  
21           *CERTAIN PRIVATE PARTIES.—The Secretary of Health and*  
22           *Human Services, acting jointly with the Secretary, shall*  
23           *provide appropriate training to be available to State and*  
24           *county officials, child welfare specialists, teachers, public*  
25           *counsel, and juvenile judges who come into contact with un-*

1 *accompanied alien children. The training shall provide edu-*  
2 *cation on the processes pertaining to unaccompanied alien*  
3 *children with pending immigration status and on the forms*  
4 *of relief potentially available. The Director shall be respon-*  
5 *sible for establishing a core curriculum that can be incor-*  
6 *porated into education, training, or orientation modules or*  
7 *formats that are currently used by these professionals.*

8       **(b) TRAINING OF DIRECTORATE PERSONNEL.**—*The*  
9 *Secretary, acting jointly with the Secretary of Health and*  
10 *Human Services, shall provide specialized training to all*  
11 *personnel of the Directorate who come into contact with un-*  
12 *accompanied alien children. In the case of Border Patrol*  
13 *agents and immigration inspectors, such training shall in-*  
14 *clude specific training on identifying children at the United*  
15 *States borders or at United States ports of entry who have*  
16 *been victimized by smugglers or traffickers, and children*  
17 *for whom asylum or special immigrant relief may be appro-*  
18 *priate, including children described in section 101(a)(2).*

19 **SEC. 303. REPORT.**

20       *Not later than 1 year after the date of enactment of*  
21 *this Act and annually thereafter, the Secretary of Health*  
22 *and Human Services shall submit a report for the previous*  
23 *fiscal year to the Committees on the Judiciary of the House*  
24 *of Representatives and the Senate that contains—*

1           (1) *data related to the implementation of section*  
2           *462 of the Homeland Security Act (6 U.S.C. 279);*

3           (2) *data regarding the care and placement of*  
4           *children in accordance with this Act;*

5           (3) *data regarding the provision of guardian ad*  
6           *litem and counsel services in accordance with this*  
7           *Act; and*

8           (4) *any other information that the Director or*  
9           *the Secretary of Health and Human Services deter-*  
10          *mines to be appropriate.*

11 **SEC. 304. EFFECTIVE DATE.**

12          *The amendment made by section 301 shall apply to*  
13 *all aliens who were in the United States before, on, or after*  
14 *the date of enactment of this Act.*

15          **TITLE IV—CHILDREN REFUGEE**  
16                    **AND ASYLUM SEEKERS**

17 **SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

18          (a) *SENSE OF CONGRESS.*—*Congress commends the*  
19 *Immigration and Naturalization Service for its issuance of*  
20 *its “Guidelines for Children’s Asylum Claims”, dated De-*  
21 *cember 1998, and encourages and supports the implementa-*  
22 *tion of such guidelines by the Immigration and Naturaliza-*  
23 *tion Service (and its successor entities) in an effort to facili-*  
24 *tate the handling of children’s asylum claims. Congress calls*  
25 *upon the Executive Office for Immigration Review of the*

1 *Department of Justice to adopt the “Guidelines for Chil-*  
 2 *dren’s Asylum Claims” in its handling of children’s asylum*  
 3 *claims before immigration judges and the Board of Immi-*  
 4 *gration Appeals.*

5       **(b) TRAINING.**—*The Secretary shall provide periodic*  
 6 *comprehensive training under the “Guidelines for Chil-*  
 7 *dren’s Asylum Claims” to asylum officers, immigration*  
 8 *judges, members of the Board of Immigration Appeals, and*  
 9 *immigration officers who have contact with children in*  
 10 *order to familiarize and sensitize such officers to the needs*  
 11 *of children asylum seekers. Voluntary agencies shall be al-*  
 12 *lowed to assist in such training.*

13 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

14       **(a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-**  
 15 **DREN.**—*Section 207(e) of the Immigration and Nationality*  
 16 *Act (8 U.S.C. 1157(e)) is amended—*

17               **(1)** *by redesignating paragraphs (3), (4), (5),*  
 18               **(6), and (7) as paragraphs (4), (5), (6), (7), and (8),**  
 19               *respectively; and*

20               **(2)** *by inserting after paragraph (2) the fol-*  
 21 *lowing:*

22               **“(3)** *An analysis of the worldwide situation*  
 23 *faced by unaccompanied refugee children, by region,*  
 24 *which shall include an assessment of—*

1           “(A) the number of unaccompanied refugee  
2 children, by region;

3           “(B) the capacity of the Department of  
4 State to identify such refugees;

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

7           “(D) the capacity of the voluntary agency  
8 community to resettle such refugees in the United  
9 States;

10           “(E) the degree to which the United States  
11 plans to resettle such refugees in the United  
12 States in the coming fiscal year; and

13           “(F) the fate that will befall such unaccom-  
14 panied refugee children for whom resettlement in  
15 the United States is not possible.”.

16       (b) TRAINING ON THE NEEDS OF UNACCOMPANIED  
17 REFUGEE CHILDREN.—Section 207(f)(2) of the Immigra-  
18 tion and Nationality Act (8 U.S.C. 1157(f)(2)) is amended  
19 by—

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

21           (2) inserting before the period at the end the fol-  
22 lowing: “, and instruction on the needs of unaccom-  
23 panied refugee children”.

1 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**  
2 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**  
3 **CUMSTANCES.**

4 (a) *PLACEMENT IN REMOVAL PROCEEDINGS.*—Any  
5 unaccompanied alien child apprehended by the Directorate,  
6 except for an unaccompanied alien child subject to excep-  
7 tions under paragraph (1)(A) or (2) of section (101)(a) of  
8 this Act, shall be placed in removal proceedings under sec-  
9 tion 240 of the Immigration and Nationality Act (8 U.S.C.  
10 1229a).

11 (b) *EXCEPTION FROM TIME LIMIT FOR FILING ASY-*  
12 *LUM APPLICATION.*—Section 208(a)(2) of the Immigration  
13 and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by  
14 adding at the end the following:

15 “(E) *APPLICABILITY.*—Subparagraphs (A)  
16 and (B) shall not apply to an unaccompanied  
17 alien child as defined in section 101(a)(51).”.

18 **TITLE V—AUTHORIZATION OF**  
19 **APPROPRIATIONS**

20 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) *IN GENERAL.*—There are authorized to be appro-  
22 priated to the Department of Homeland Security, the De-  
23 partment of Justice, and the Department of Health and  
24 Human Services, such sums as may be necessary to carry  
25 out—

1           (1) *section 462 of the Homeland Security Act of*  
2           *2002 (6 U.S.C. 279); and*

3           (2) *this Act.*

4           (b) *AVAILABILITY OF FUNDS.—Amounts appropriated*  
5           *pursuant to subsection (a) are authorized to remain avail-*  
6           *able until expended.*

7           **TITLE VI—AMENDMENTS TO THE**  
8           **HOMELAND SECURITY ACT OF**  
9           **2002**

10          **SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF**  
11                           **THE OFFICE OF REFUGEE RESETTLEMENT**  
12                           **WITH RESPECT TO UNACCOMPANIED ALIEN**  
13                           **CHILDREN.**

14          (a) *ADDITIONAL RESPONSIBILITIES OF THE DIREC-*  
15          *TOR.—Section 462(b)(1) of the Homeland Security Act of*  
16          *2002 (6 U.S.C. 279(b)(1)) is amended—*

17               (1) *in subparagraph (K), by striking “and” at*  
18               *the end;*

19               (2) *in subparagraph (L), by striking the period*  
20               *at the end and inserting “, including regular follow-*  
21               *up visits to such facilities, placements, and other enti-*  
22               *ties, to assess the continued suitability of such place-*  
23               *ments; and”;* and

24               (3) *by adding at the end the following:*

1           “(M) ensuring minimum standards of care for  
2 all unaccompanied alien children—

3                   “(i) for whom detention is necessary; and

4                   “(ii) who reside in settings that are alter-  
5 native to detention.”.

6           (b) *ADDITIONAL POWERS OF THE DIRECTOR.*—Section  
7 462(b) of the Homeland Security Act of 2002 (6 U.S.C.  
8 279(b)) is amended by adding at the end the following:

9           “(4) *POWERS.*—In carrying out the duties under  
10 paragraph (3), the Director shall have the power to—

11                   “(A) contract with service providers to per-  
12 form the services described in sections 102, 103,  
13 201, and 202 of the Unaccompanied Alien Child  
14 Protection Act of 2004; and

15                   “(B) compel compliance with the terms and  
16 conditions set forth in section 103 of the Unac-  
17 companied Alien Child Protection Act of 2004,  
18 including the power to—

19                   “(i) declare providers to be in breach  
20 and seek damages for noncompliance;

21                   “(ii) terminate the contracts of pro-  
22 viders that are not in compliance with such  
23 conditions; and



1                   “(iii) reassign any unaccompanied  
2                   alien child to a similar facility that is in  
3                   compliance with such section.”.

4 **SEC. 602. TECHNICAL CORRECTIONS.**

5           Section 462(b) of the Homeland Security Act of 2002  
6 (6 U.S.C. 279(b)), as amended by section 601, is amended—

7                   (1) in paragraph (3), by striking “paragraph  
8                   (1)(G)” and inserting “paragraph (1)”; and

9                   (2) by adding at the end the following:

10                   “(5) *STATUTORY CONSTRUCTION.*—Nothing in  
11                   paragraph (2)(B) may be construed to require that a  
12                   bond be posted for unaccompanied alien children who  
13                   are released to a qualified sponsor.”.

14 **SEC. 603. EFFECTIVE DATE.**

15           The amendments made by this title shall take effect  
16 as if enacted as part of the Homeland Security Act of 2002  
17 (6 U.S.C. 101 et seq.).

**Calendar No. 541**

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1129**

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**A BILL**

To provide for the protection of unaccompanied  
alien children, and for other purposes.

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JUNE 3, 2004

Reported with an amendment in the nature of a  
substitute