

115TH CONGRESS
2D SESSION

S. 2937

To protect children affected by immigration enforcement actions.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2018

Ms. SMITH (for herself, Mr. BENNET, Mr. BLUMENTHAL, Mr. BOOKER, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. GILLIBRAND, Ms. HARRIS, Mr. HEINRICH, Ms. HIRONO, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mrs. MURRAY, Mr. REED, Mr. SANDERS, Mr. UDALL, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. KAINE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect children affected by immigration enforcement actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLES.**

4 This Act may be cited as the “Humane Enforcement
5 and Legal Protections for Separated Children Act” or the
6 “HELP Separated Children Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) APPREHENSION.—The term “apprehension”
2 means the detention or arrest by officials of the De-
3 partment or cooperating entities.

4 (2) CHILD.—The term “child” means an indi-
5 vidual who is younger than 18 years of age.

6 (3) CHILD WELFARE AGENCY.—The term
7 “child welfare agency” means a State or local agen-
8 cy responsible for child welfare services under sub-
9 titles B and E of title IV of the Social Security Act
10 (42 U.S.C. 601 et seq.).

11 (4) COOPERATING ENTITY.—The term “cooper-
12 ating entity” means a State or local entity acting
13 under agreement with the Secretary.

14 (5) DEPARTMENT.—The term “Department”
15 means the Department of Homeland Security.

16 (6) DETENTION FACILITY.—The term “deten-
17 tion facility” means a Federal, State, or local gov-
18 ernment facility, or a privately owned and operated
19 facility, that is used, in whole or in part, to hold in-
20 dividuals under the authority of the Director of U.S.
21 Immigration and Customs Enforcement, including
22 facilities that hold such individuals under a contract
23 or agreement with the Director.

24 (7) IMMIGRATION ENFORCEMENT ACTION.—The
25 term “immigration enforcement action” means the

1 apprehension of 1 or more individuals whom the De-
2 partment has reason to believe are removable from
3 the United States by the Secretary or a cooperating
4 entity.

5 (8) PARENT.—The term “parent” means—

6 (A) a biological or adoptive parent of a
7 child, whose parental rights have not been relin-
8 quished or terminated under State law or the
9 law of a foreign country; or

10 (B) a legal guardian under State law or
11 the law of a foreign country.

12 (9) SECRETARY.—The term “Secretary” means
13 the Secretary of Homeland Security.

14 **SEC. 3. APPREHENSION PROCEDURES FOR IMMIGRATION**
15 **ENFORCEMENT-RELATED ACTIVITIES.**

16 (a) APPREHENSION PROCEDURES.—In any immigra-
17 tion enforcement action, the Secretary and cooperating en-
18 tities shall—

19 (1) as soon as possible, but generally not later
20 than 2 hours after an immigration enforcement ac-
21 tion, inquire whether an individual is a parent or
22 primary caregiver of a child in the United States
23 and provide any such individuals with—

1 (A) the opportunity to make a minimum of
2 2 telephone calls to arrange for the care of such
3 child in the individual's absence; and

4 (B) contact information for—

5 (i) child welfare agencies and family
6 courts in the same jurisdiction as the child;
7 and

8 (ii) consulates, attorneys, and legal
9 service providers capable of providing free
10 legal advice or representation regarding
11 child welfare, child custody determinations,
12 and immigration matters;

13 (2) notify the child welfare agency with jurisdic-
14 tion over the child if—

15 (A) the child's parent or primary caregiver
16 is unable to make care arrangements for the
17 child; or

18 (B) the child is in imminent risk of serious
19 harm;

20 (3) ensure that personnel of the Department
21 and cooperating entities do not, absent medical ne-
22 cessity or extraordinary circumstances—

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

1 (B) compel or request children to interpret
2 or translate for interviews of their parents or of
3 other individuals who are encountered as part
4 of an immigration enforcement action;

5 (4) absent extraordinary circumstances, ensure
6 that individuals who are the subject of an immigra-
7 tion enforcement action and are parents of children
8 in the United States who are present during the ac-
9 tion are given an opportunity—

10 (A) to communicate with their child, in-
11 cluding through physical contact;

12 (B) to reassure their child; and

13 (C) to share information regarding care ar-
14 rangements for their child while the parent is
15 detained; and

16 (5) ensure that any parent or primary caregiver
17 of a child in the United States—

18 (A) absent medical necessity or extraor-
19 dinary circumstances, is not transferred from
20 his or her area of apprehension until the indi-
21 vidual—

22 (i) has made arrangements for the
23 care of such child; or

24 (ii) if such arrangements are unavail-
25 able or the individual is unable to make

1 such arrangements, is informed of the care
2 arrangements made for the child and of a
3 means to maintain communication with the
4 child;

5 (B) absent medical necessity or extraor-
6 dinary circumstances, and to the extent prac-
7 ticable, is placed in a detention facility that is—

8 (i) proximate to the location of appre-
9 hension; and

10 (ii) proximate to the child's habitual
11 place of residence; and

12 (C) receives due consideration of the best
13 interests of such child in any decision or action
14 relating to his or her detention, release, or
15 transfer between detention facilities.

16 (b) REQUESTS TO STATE AND LOCAL ENTITIES.—

17 If the Secretary requests a State or local entity to hold
18 in custody an individual whom the Department has reason
19 to believe is removable pending transfer of such individual
20 to the custody of the Secretary or to a detention facility,
21 the Secretary shall request that the State or local entity
22 provide the individual the protections specified in para-
23 graphs (1) and (2) of subsection (a) if such individual is
24 the parent or primary caregiver of a child in the United
25 States.

1 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
 2 SERVED.—Nothing in this section may be construed to im-
 3 pede, delay, or limit the obligations of the Secretary, the
 4 Attorney General, or the Secretary of Health and Human
 5 Services under—

6 (1) section 235 of the William Wilberforce
 7 Trafficking Victims Protection Reauthorization Act
 8 of 2008 (8 U.S.C. 1232);

9 (2) section 462 of the Homeland Security Act
 10 of 2002 (6 U.S.C. 279); or

11 (3) the Stipulated Settlement Agreement filed
 12 in the United States District Court for the Central
 13 District of California on January 17, 1997 (CV 85–
 14 4544–RJK) (commonly known as the “Flores Settle-
 15 ment Agreement”).

16 **SEC. 4. ACCESS TO CHILDREN, STATE AND LOCAL COURTS,**
 17 **CHILD WELFARE AGENCIES, AND CONSULAR**
 18 **OFFICIALS.**

19 At all detention facilities, the Secretary shall—

20 (1) prominently post, in a manner accessible to
 21 detainees and visitors, and include in detainee hand-
 22 books—

23 (A) information regarding the protections
 24 required under this Act; and

1 (B) information regarding potential eligi-
2 bility for parole or release;

3 (2) absent extraordinary circumstances, ensure
4 that individuals who are detained by the Department
5 and are parents or legal guardians of children in the
6 United States are—

7 (A) permitted regular phone calls and con-
8 tact visits with their children;

9 (B) provided with contact information for
10 child welfare agencies and family courts in the
11 relevant jurisdictions;

12 (C) given the opportunity to participate
13 fully and, to the extent possible, in person—

14 (i) in all family court proceedings; and

15 (ii) in any other proceedings that may
16 impact their right to custody of their chil-
17 dren;

18 (D) granted free and confidential telephone
19 calls to relevant child welfare agencies and fam-
20 ily courts as often as is necessary to ensure
21 that the best interest of their children, includ-
22 ing a preference for family unity whenever ap-
23 propriate, can be considered in child welfare
24 agency or family court proceedings;

1 (E) able to fully comply with all family
2 court or child welfare agency orders impacting
3 custody of their children;

4 (F) provided access to United States pass-
5 port applications or other relevant travel docu-
6 ment applications for the purpose of obtaining
7 travel documents for their children;

8 (G) afforded timely access to a notary pub-
9 lic for the purpose of applying for a passport
10 for their children or executing guardianship or
11 other agreements to ensure the safety of their
12 children; and

13 (H) granted adequate time and oppor-
14 tunity before removal to obtain passports,
15 apostilled birth certificates, travel documents,
16 and other necessary records on behalf of their
17 children if such children will accompany them
18 on their return to their country of origin or join
19 them in their country of origin; and

20 (3) if doing so would not impact public safety
21 or national security, facilitate the ability of detained
22 alien parents and primary caregivers to share infor-
23 mation regarding travel arrangements with their
24 consulate, children, child welfare agencies, or other

1 caregivers in advance of the detained alien individ-
2 ual's departure from the United States.

3 **SEC. 5. MANDATORY TRAINING.**

4 The Secretary, in consultation with the Secretary of
5 Health and Human Services and independent child welfare
6 and family law experts, shall develop and provide training
7 on the protections required under sections 3 and 4 to all
8 personnel of the Department, cooperating entities, and de-
9 tention facilities operated by or under agreement with the
10 Department who—

11 (1) regularly engage in immigration enforce-
12 ment actions, including detention; and

13 (2) in the course of such actions, come into con-
14 tact with individuals who are parents or primary
15 caregivers of children in the United States.

16 **SEC. 6. RULEMAKING.**

17 Not later than 180 days after the date of the enact-
18 ment of this Act, the Secretary shall promulgate regula-
19 tions to implement sections 3 and 4.

20 **SEC. 7. SEVERABILITY.**

21 If any provision of this Act, any amendment made
22 by this Act, or the application of any such provision or
23 amendment to any person or circumstance is held to be
24 unconstitutional, the remaining provisions of this Act, the
25 remaining amendments made by this Act, and the applica-

- 1 tion of such provisions and amendments to any person or
- 2 circumstance shall not be affected by such holding.

