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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLES.

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

SEC. 2. DEFINITIONS.

In this Act:
(1) APPREHENSION.—The term “apprehension” means the detention or arrest by officials of the Department or cooperating entities.

(2) CHILD.—The term “child” means an individual who is younger than 18 years of age.

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

(4) COOPERATING ENTITY.—The term “cooperating entity” means a State or local entity acting under agreement with the Secretary.

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

(6) DETENTION FACILITY.—The term “detention facility” means a Federal, State, or local government facility, or a privately owned and operated facility, that is used, in whole or in part, to hold individuals under the authority of the Director of U.S. Immigration and Customs Enforcement, including facilities that hold such individuals under a contract or agreement with the Director.

(7) IMMIGRATION ENFORCEMENT ACTION.—The term “immigration enforcement action” means the
apprehension of 1 or more individuals whom the Depart-
ment has reason to believe are removable from
the United States by the Secretary or a cooperating
entity.

(8) PARENT.—The term “parent” means—

(A) a biological or adoptive parent of a
child, whose parental rights have not been relinqu-
ished or terminated under State law or the
law of a foreign country; or

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

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

SEC. 3. APPREHENSION PROCEDURES FOR IMMIGRATION
ENFORCEMENT-RELATED ACTIVITIES.

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

(1) as soon as possible, but generally not later
than 2 hours after an immigration enforcement ac-
tion, inquire whether an individual is a parent or
primary caregiver of a child in the United States
and provide any such individuals with—
(A) the opportunity to make a minimum of 2 telephone calls to arrange for the care of such child in the individual’s absence; and

(B) contact information for—

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

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

(2) notify the child welfare agency with jurisdiction over the child if—

(A) the child’s parent or primary caregiver is unable to make care arrangements for the child; or

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

(3) ensure that personnel of the Department and cooperating entities do not, absent medical necessity or extraordinary circumstances—

(A) interview individuals in the immediate presence of children; or
(B) compel or request children to interpret
or translate for interviews of their parents or of
other individuals who are encountered as part
of an immigration enforcement action;

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

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

(B) to reassure their child; and

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

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

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

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

(ii) if such arrangements are unavail-
able or the individual is unable to make
such arrangements, is informed of the care
arrangements made for the child and of a
means to maintain communication with the
child;

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

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

(ii) proximate to the child’s habitual
place of residence; and

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

(b) Requests to State and Local Entities.—
If the Secretary requests a State or local entity to hold
in custody an individual whom the Department has reason
to believe is removable pending transfer of such individual
to the custody of the Secretary or to a detention facility,
the Secretary shall request that the State or local entity
provide the individual the protections specified in para-
graphs (1) and (2) of subsection (a) if such individual is
the parent or primary caregiver of a child in the United
States.
(c) Protections Against Trafficking Preserved.—Nothing in this section may be construed to impede, delay, or limit the obligations of the Secretary, the Attorney General, or the Secretary of Health and Human Services under—

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

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

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

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

At all detention facilities, the Secretary shall—

(1) prominently post, in a manner accessible to detainees and visitors, and include in detainee handbooks—

(A) information regarding the protections required under this Act; and
(B) information regarding potential eligibility for parole or release;

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

(A) permitted regular phone calls and contact visits with their children;

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

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

(i) in all family court proceedings; and

(ii) in any other proceedings that may impact their right to custody of their children;

(D) granted free and confidential telephone calls to relevant child welfare agencies and family courts as often as is necessary to ensure that the best interest of their children, including a preference for family unity whenever appropriate, can be considered in child welfare agency or family court proceedings;
(E) able to fully comply with all family court or child welfare agency orders impacting custody of their children;

(F) provided access to United States passport applications or other relevant travel document applications for the purpose of obtaining travel documents for their children;

(G) afforded timely access to a notary public for the purpose of applying for a passport for their children or executing guardianship or other agreements to ensure the safety of their children; and

(H) granted adequate time and opportunity before removal to obtain passports, apostilled birth certificates, travel documents, and other necessary records on behalf of their children if such children will accompany them on their return to their country of origin or join them in their country of origin; and

(3) if doing so would not impact public safety or national security, facilitate the ability of detained alien parents and primary caregivers to share information regarding travel arrangements with their consulate, children, child welfare agencies, or other
caregivers in advance of the detained alien individual’s departure from the United States.

SEC. 5. MANDATORY TRAINING.

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

(1) regularly engage in immigration enforcement actions, including detention; and

(2) in the course of such actions, come into contact with individuals who are parents or primary caregivers of children in the United States.

SEC. 6. RULEMAKING.

Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement sections 3 and 4.

SEC. 7. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application of any such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of this Act, the 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.