

109TH CONGRESS
1ST SESSION

S. 119

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

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. SCHUMER, Mr. HAGEL, Mr. DURBIN, Mr. DEWINE, Ms. CANTWELL, Mr. INOUE, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Unaccompanied Alien Child Protection Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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 Resettlement 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—

5 (A) complies with the duties set forth in
6 this Act;

1 (B) is a member in good standing of the
2 bar of the highest court of any State, posses-
3 sion, territory, Commonwealth, or the District
4 of Columbia;

5 (C) is not under any order of any court
6 suspending, enjoining, restraining, disbaring,
7 or otherwise restricting the attorney in the
8 practice of law; and

9 (D) is properly qualified to handle matters
10 involving unaccompanied immigrant children or
11 is working under the auspices of a qualified
12 nonprofit organization that is experienced in
13 handling such matters.

14 (2) DIRECTOR.—The term “Director” means
15 the Director of the Office.

16 (3) DIRECTORATE.—The term “Directorate”
17 means the Directorate of Border and Transportation
18 Security established by section 401 of the Homeland
19 Security Act of 2002 (6 U.S.C. 201).

20 (4) OFFICE.—The term “Office” means the Of-
21 fice of Refugee Resettlement established by section
22 411 of the Immigration and Nationality Act (8
23 U.S.C. 1521).

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

1 (6) UNACCOMPANIED ALIEN CHILD.—The term
2 “unaccompanied alien child” has the meaning given
3 the term in section 462(g)(2) of the Homeland Security
4 Act of 2002 (6 U.S.C. 279(g)(2)).

5 (7) VOLUNTARY AGENCY.—The term “vol-
6 untary agency” means a private, nonprofit voluntary
7 agency with expertise in meeting the cultural, devel-
8 opmental, or psychological needs of unaccompanied
9 alien children, as certified by the Director.

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

14 “(51) The term ‘unaccompanied alien child’ means
15 a child who—

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

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

19 “(C) with respect to whom—

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

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

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

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

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

7 (c) RULE OF CONSTRUCTION.—A department or
8 agency of a State, or an individual or entity appointed by
9 a State court or juvenile court located in the United
10 States, acting in loco parentis, shall not be considered a
11 legal guardian for purposes of section 462 of the Home-
12 land Security Act of 2002 (6 U.S.C. 279) or this Act.

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

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

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

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

1 Immigration and Nationality Act (8 U.S.C. 1101 et
2 seq.), the officer shall—

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

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

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

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

22 (i) such child is a national or habitual
23 resident of a country described in this sub-
24 paragraph;

1 (ii) such child does not have a fear of
2 returning to the child's country of nation-
3 ality or country of last habitual residence
4 owing to 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 not endanger
8 the life or safety of such child; and

9 (iv) the child is able to 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, and shall be informed of that right in the
16 child's native language—

17 (i) to consult with a consular officer
18 from the child's country of nationality or
19 country of last habitual residence prior to
20 repatriation; and

21 (ii) to consult, telephonically, with the
22 Office.

23 (3) RULE FOR APPREHENSIONS AT THE BOR-
24 DER.—The custody of unaccompanied alien children
25 not described in paragraph (2) who are apprehended

1 at the border of the United States or at a United
2 States port of entry shall be treated in accordance
3 with subsection (b).

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

7 (1) ESTABLISHMENT OF JURISDICTION.—

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

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

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

24 (ii) has been convicted of any such fel-
25 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 such alien is eligible for treat-
14 ment under section 462 of the Homeland Secu-
15 rity Act of 2002 (6 U.S.C. 279) or this Act.

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

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

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

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; or

8 (iii) in the case of a child who was
9 previously released to an individual or enti-
10 ty described in section 102(a)(1), upon a
11 determination by the Director that such in-
12 dividual or entity is no longer able to care
13 for the child.

14 (B) TRANSFER TO THE DIRECTORATE.—

15 Upon determining that a child in the custody of
16 the Office is described in subparagraph (B) or
17 (C) of paragraph (1), the Director shall trans-
18 fer the care and custody of such child to the
19 Directorate.

20 (C) PROMPTNESS OF TRANSFER.—In the

21 event of a need to transfer a child under this
22 paragraph, the sending office shall make
23 prompt arrangements to transfer such child and
24 the receiving office shall make prompt arrange-
25 ments to receive such child.

1 (c) AGE DETERMINATIONS.—In any case in which
2 the age of an alien is in question and the resolution of
3 questions about the age of such alien would affect the
4 alien’s eligibility for treatment under section 462 of the
5 Homeland Security Act of 2002 (6 U.S.C. 279) or this
6 Act, a determination of whether or not such alien meets
7 such age requirements shall be made by the Director in
8 accordance with section 105.

9 **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**
10 **ALIEN CHILDREN WITH RELATIVES IN THE**
11 **UNITED STATES.**

12 (a) PLACEMENT AUTHORITY.—

13 (1) ORDER OF PREFERENCE.—Subject to the
14 discretion of the Director under paragraph (4), sec-
15 tion 103(a)(2), and section 462(b)(2) of the Home-
16 land Security Act of 2002 (6 U.S.C. 279(b)(2)), an
17 unaccompanied alien child in the custody of the Of-
18 fice shall be promptly placed with 1 of the following
19 individuals or entities in the following order of pref-
20 erence:

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

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

25 (C) An adult relative.

1 (D) An individual or entity designated by
2 the parent or legal guardian that is capable and
3 willing to care for the well-being of the child.

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

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

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

1 (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO
2 CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

3 (A) PLACEMENT WITH PARENT OR LEGAL
4 GUARDIAN.—If an unaccompanied alien child is
5 placed with any person or entity other than a
6 parent or legal guardian, and subsequent to
7 that placement a parent or legal guardian seeks
8 to establish custody, the Director shall—

9 (i) assess the suitability of placing the
10 child with the parent or legal guardian;
11 and

12 (ii) make a written determination on
13 the child's placement within 30 days.

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

16 (i) supersede obligations under any
17 treaty or other international agreement to
18 which the United States is a party, includ-
19 ing The Hague Convention on the Civil As-
20 pects of International Child Abduction, the
21 Vienna Declaration and Program of Ac-
22 tion, and the Declaration of the Rights of
23 the Child; or

24 (ii) limit any right or remedy under
25 such international agreement.

1 (4) PROTECTION FROM SMUGGLERS AND TRAF-
2 FICKERS.—

3 (A) POLICIES AND PROGRAMS.—

4 (i) IN GENERAL.—The Director shall
5 establish policies and programs to ensure
6 that unaccompanied alien children are pro-
7 tected from smugglers, traffickers, or other
8 persons seeking to victimize or otherwise
9 engage such children in criminal, harmful,
10 or exploitative activity.

11 (ii) WITNESS PROTECTION PROGRAMS
12 INCLUDED.—Programs established pursu-
13 ant to clause (i) may include witness pro-
14 tection programs.

15 (B) CRIMINAL INVESTIGATIONS AND PROS-
16 ECUTIONS.—Any officer or employee of the Of-
17 fice or the Department of Homeland Security,
18 and any grantee or contractor of the Office,
19 who suspects any individual of involvement in
20 any activity described in subparagraph (A) shall
21 report such individual to Federal or State pros-
22 ecutors for criminal investigation and prosecu-
23 tion.

24 (C) DISCIPLINARY ACTION.—Any officer or
25 employee of the Office or the Department of

1 Homeland Security, and any grantee or con-
2 tractor of the Office, who suspects an attorney
3 of involvement in any activity described in sub-
4 paragraph (A) shall report the individual to the
5 State bar association of which the attorney is a
6 member, or to other appropriate disciplinary
7 authorities, for appropriate disciplinary action,
8 which may include private or public admonition
9 or censure, suspension, or disbarment of the at-
10 torney from the practice of law.

11 (5) GRANTS AND CONTRACTS.—The Director
12 may award grants to, and enter into contracts with,
13 voluntary agencies to carry out this section or sec-
14 tion 462 of the Homeland Security Act of 2002 (6
15 U.S.C. 279).

16 (6) REIMBURSEMENT OF STATE EXPENSES.—
17 The Director may reimburse States for any expenses
18 they incur in providing assistance to unaccompanied
19 alien children who are served pursuant to this Act
20 or section 462 of the Homeland Security Act of
21 2002 (6 U.S.C. 279).

22 (b) CONFIDENTIALITY.—All information obtained by
23 the Office relating to the immigration status of a person
24 described in subparagraphs (A), (B), and (C) of sub-
25 section (a)(1) shall remain confidential and may be used

1 only for the purposes of determining such person's quali-
 2 fications under subsection (a)(1).

3 (c) REQUIRED DISCLOSURE.—The Secretary of
 4 Health and Human Services or the Secretary of Homeland
 5 Security shall provide the information furnished under
 6 this section, and any other information derived from such
 7 furnished information, to—

8 (1) a duly recognized law enforcement entity in
 9 connection with an investigation or prosecution of an
 10 offense described in paragraph (2) or (3) of section
 11 212(a) of the Immigration and Nationality Act (8
 12 U.S.C. 1182(a)), when such information is requested
 13 in writing by such entity; or

14 (2) an official coroner for purposes of affirma-
 15 tively identifying a deceased individual (whether or
 16 not such individual is deceased as a result of a
 17 crime).

18 (d) PENALTY.—Whoever knowingly uses, publishes,
 19 or permits information to be examined in violation of this
 20 section shall be fined not more than \$10,000.

21 **SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF**
 22 **UNACCOMPANIED ALIEN CHILDREN.**

23 (a) STANDARDS FOR PLACEMENT.—

24 (1) PROHIBITION OF DETENTION IN CERTAIN
 25 FACILITIES.—Except as provided in paragraph (2),

1 an unaccompanied alien child shall not be placed in
2 an adult detention facility or a facility housing delin-
3 quent children.

4 (2) DETENTION IN APPROPRIATE FACILITIES.—

5 An unaccompanied alien child who has exhibited a
6 violent or criminal behavior that endangers others
7 may be detained in conditions appropriate to such
8 behavior in a facility appropriate for delinquent chil-
9 dren.

10 (3) STATE LICENSURE.—A child shall not be

11 placed with an entity described in section
12 102(a)(1)(E), unless the entity is licensed by an ap-
13 propriate State agency to provide residential, group,
14 child welfare, or foster care services for dependent
15 children.

16 (4) CONDITIONS OF DETENTION.—

17 (A) IN GENERAL.—The Director and the
18 Secretary of Homeland Security shall promul-
19 gate regulations incorporating standards for
20 conditions of detention in such placements that
21 provide for—

22 (i) educational services appropriate to
23 the child;

24 (ii) medical care;

- 1 (iii) mental health care, including
2 treatment of trauma, physical and sexual
3 violence, or abuse;
- 4 (iv) access to telephones;
- 5 (v) access to legal services;
- 6 (vi) access to interpreters;
- 7 (vii) supervision by professionals
8 trained in the care of children, taking into
9 account the special cultural, linguistic, and
10 experiential needs of children in immigra-
11 tion proceedings;
- 12 (viii) recreational programs and activi-
13 ties;
- 14 (ix) spiritual and religious needs; and
15 (x) dietary needs.

16 (B) NOTIFICATION OF CHILDREN.—Regu-
17 lations promulgated under subparagraph (A)
18 shall provide that all children are notified of
19 such standards orally and in writing in the
20 child’s native language.

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

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

1 (2) solitary confinement; or

2 (3) pat or strip searches.

3 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-
4 tion shall be construed to supersede procedures favoring
5 release of children to appropriate adults or entities or
6 placement in the least secure setting possible, as defined
7 in the Stipulated Settlement Agreement under *Flores v.*
8 *Reno*.

9 **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-**
10 **DREN.**

11 (a) **COUNTRY CONDITIONS.**—

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

20 (2) **ASSESSMENT OF CONDITIONS.**—

21 (A) **IN GENERAL.**—The annual Country
22 Reports on Human Rights Practices published
23 by the Department of State shall contain an as-
24 sessment of the degree to which each country

1 protects children from smugglers and traf-
2 fickers.

3 (B) FACTORS FOR ASSESSMENT.—The Di-
4 rectorate shall consult the Country Reports on
5 Human Rights Practices and the Trafficking in
6 Persons Report in assessing whether to repa-
7 triate an unaccompanied alien child to a par-
8 ticular country.

9 (b) REPORT ON REPATRIATION OF UNACCOMPANIED
10 ALIEN CHILDREN.—

11 (1) IN GENERAL.—Not later than 18 months
12 after the date of enactment of this Act, and annually
13 thereafter, the Secretary shall submit a report to the
14 Committee on the Judiciary of the Senate and the
15 Committee on the Judiciary of the House of Rep-
16 resentatives on efforts to repatriate unaccompanied
17 alien children.

18 (2) CONTENTS.—The report submitted under
19 paragraph (1) shall include—

20 (A) the number of unaccompanied alien
21 children ordered removed and the number of
22 such children actually removed from the United
23 States;

24 (B) a description of the type of immigra-
25 tion relief sought and denied to such children;

1 (C) a statement of the nationalities, ages,
2 and gender of such children;

3 (D) a description of the procedures used to
4 effect the removal of such children from the
5 United States;

6 (E) a description of steps taken to ensure
7 that such children were safely and humanely re-
8 patriated to their country of origin; and

9 (F) any information gathered in assess-
10 ments of country and local conditions pursuant
11 to subsection (a)(2).

12 **SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED**
13 **ALIEN CHILD.**

14 (a) PROCEDURES.—

15 (1) IN GENERAL.—The Director shall develop
16 procedures to make a prompt determination of the
17 age of an alien in the custody of the Department of
18 Homeland Security or the Office, when the age of
19 the alien is at issue.

20 (2) EVIDENCE.—The procedures developed
21 under paragraph (1) shall—

22 (A) permit the presentation of multiple
23 forms of evidence, including testimony of the
24 child, to determine the age of the unaccom-

1 panied alien for purposes of placement, custody,
2 parole, and detention; and

3 (B) allow the appeal of a determination to
4 an immigration judge.

5 (3) ACCESS TO ALIEN.—The Secretary of
6 Homeland Security shall permit the Office to have
7 reasonable access to aliens in the custody of the Sec-
8 retary so as to ensure a prompt determination of the
9 age of such alien.

10 (b) PROHIBITION ON SOLE MEANS OF DETERMINING
11 AGE.—Radiographs or the attestation of an alien shall not
12 be used as the sole means of determining age for the pur-
13 poses of determining an alien’s eligibility for treatment
14 under this Act or section 462 of the Homeland Security
15 Act of 2002 (6 U.S.C. 279).

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

19 **SEC. 106. EFFECTIVE DATE.**

20 This title shall take effect on the date which is 90
21 days after the date of enactment of this Act.

1 **TITLE II—ACCESS BY UNACCOM-**
2 **PANIED ALIEN CHILDREN TO**
3 **GUARDIANS AD LITEM AND**
4 **COUNSEL**

5 **SEC. 201. GUARDIANS AD LITEM.**

6 (a) ESTABLISHMENT OF GUARDIAN AD LITEM PRO-
7 GRAM.—

8 (1) APPOINTMENT.—The Director may appoint
9 a guardian ad litem, who meets the qualifications
10 described in paragraph (2), for an unaccompanied
11 alien child. The Director is encouraged, wherever
12 practicable, to contract with a voluntary agency for
13 the selection of an individual to be appointed as a
14 guardian ad litem under this paragraph.

15 (2) QUALIFICATIONS OF GUARDIAN AD
16 LITEM.—

17 (A) IN GENERAL.—No person shall serve
18 as a guardian ad litem unless such person—

19 (i) is a child welfare professional or
20 other individual who has received training
21 in child welfare matters; and

22 (ii) possesses special training on the
23 nature of problems encountered by unac-
24 companied alien children.

1 (B) PROHIBITION.—A guardian ad litem
2 shall not be an employee of the Directorate, the
3 Office, or the Executive Office for Immigration
4 Review.

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

6 (A) conduct interviews with the child in a
7 manner that is appropriate, taking into account
8 the child’s age;

9 (B) investigate the facts and circumstances
10 relevant to the child’s presence in the United
11 States, including facts and circumstances—

12 (i) arising in the country of the child’s
13 nationality or last habitual residence; and

14 (ii) arising subsequent to the child’s
15 departure from such country;

16 (C) work with counsel to identify the
17 child’s eligibility for relief from removal or vol-
18 untary departure by sharing with counsel infor-
19 mation collected under subparagraph (B);

20 (D) develop recommendations on issues
21 relative to the child’s custody, detention, re-
22 lease, and repatriation;

23 (E) take reasonable steps to ensure that—

24 (i) the best interests of the child are
25 promoted while the child participates in, or

1 is subject to, proceedings or matters under
2 the Immigration and Nationality Act (8
3 U.S.C. 1101 et seq.);

4 (ii) the child understands the nature
5 of the legal proceedings or matters and de-
6 terminations made by the court, and that
7 all information is conveyed to the child in
8 an age-appropriate manner; and

9 (F) report factual findings relating to—

10 (i) information collected under sub-
11 paragraph (B);

12 (ii) the care and placement of the
13 child during the pendency of the pro-
14 ceedings or matters; and

15 (iii) any other information collected
16 under subparagraph (D).

17 (4) TERMINATION OF APPOINTMENT.—The
18 guardian ad litem shall carry out the duties de-
19 scribed in paragraph (3) until the earliest of the
20 date on which—

21 (A) those duties are completed;

22 (B) the child departs the United States;

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

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

1 (E) the child is placed in the custody of a
2 parent or legal guardian.

3 (5) POWERS.—The guardian ad litem—

4 (A) shall have reasonable access to the
5 child, including access while such child is being
6 held in detention or in the care of a foster fam-
7 ily;

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

11 (C) may seek independent evaluations of
12 the child;

13 (D) shall be notified in advance of all hear-
14 ings or interviews involving the child that are
15 held in connection with proceedings or matters
16 under the Immigration and Nationality Act (8
17 U.S.C. 1101 et seq.), and shall be given a rea-
18 sonable opportunity to be present at such hear-
19 ings or interviews;

20 (E) shall be permitted to consult with the
21 child during any hearing or interview involving
22 such child; and

23 (F) shall be provided at least 24 hours ad-
24 vance notice of a transfer of that child to a dif-
25 ferent placement, absent compelling and un-

1 usual circumstances warranting the transfer of
2 such child before such notification.

3 (b) TRAINING.—

4 (1) IN GENERAL.—The Director shall provide
5 professional training for all persons serving as
6 guardians ad litem under this section.

7 (2) TRAINING TOPICS.—The training provided
8 under paragraph (1) shall include training in—

9 (A) the circumstances and conditions that
10 unaccompanied alien children face; and

11 (B) various immigration benefits for which
12 such alien child might be eligible.

13 (c) PILOT PROGRAM.—

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

18 (2) PURPOSE.—The purpose of the pilot pro-
19 gram established under paragraph (1) is to—

20 (A) study and assess the benefits of pro-
21 viding guardians ad litem to assist unaccom-
22 panied alien children involved in immigration
23 proceedings or matters;

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

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

8 (3) SCOPE OF PROGRAM.—

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

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

17 (4) REPORT TO CONGRESS.—Not later than 1
18 year after the date on which the first pilot program
19 site is established under paragraph (1), the Director
20 shall submit a report on the achievement of the pur-
21 poses described in paragraph (2) to the Committee
22 on the Judiciary of the Senate and the Committee
23 on the Judiciary of the House of Representatives.

24 **SEC. 202. COUNSEL.**

25 (a) ACCESS TO COUNSEL.—

1 (1) IN GENERAL.—The Director should ensure
2 that all unaccompanied alien children in the custody
3 of the Office or the Directorate, who are not de-
4 scribed in section 101(a)(2), have competent counsel
5 to represent them in immigration proceedings or
6 matters.

7 (2) PRO BONO REPRESENTATION.—To the max-
8 imum extent practicable, the Director should—

9 (A) make every effort to utilize the services
10 of competent pro bono counsel who agree to
11 provide representation to such children without
12 charge; and

13 (B) ensure that placements made under
14 subparagraphs (D), (E), and (F) of section
15 102(a)(1) are in cities where there is a dem-
16 onstrated capacity for competent pro bono rep-
17 resentation.

18 (3) DEVELOPMENT OF NECESSARY INFRA-
19 STRUCTURES AND SYSTEMS.—In ensuring that legal
20 representation is provided to unaccompanied alien
21 children, the Director shall develop the necessary
22 mechanisms to identify entities available to provide
23 such legal assistance and representation and to re-
24 cruit such entities.

1 (4) CONTRACTING AND GRANT MAKING AU-
2 THORITY.—

3 (A) IN GENERAL.—The Director shall
4 enter into contracts with, or award grants to,
5 nonprofit agencies with relevant expertise in the
6 delivery of immigration-related legal services to
7 children in order to carry out the responsibil-
8 ities of this Act, including providing legal ori-
9 entation, screening cases for referral, recruiting,
10 training, and overseeing pro bono attorneys.

11 (B) SUBCONTRACTING.—Nonprofit agen-
12 cies may enter into subcontracts with, or award
13 grants to, private voluntary agencies with rel-
14 evant expertise in the delivery of immigration-
15 related legal services to children in order to
16 carry out this subsection.

17 (C) CONSIDERATIONS REGARDING GRANTS
18 AND CONTRACTS.—In awarding grants and en-
19 tering into contracts with agencies under this
20 paragraph, the Director shall take into consid-
21 eration the capacity of the agencies in question
22 to properly administer the services covered by
23 such grants or contracts without an undue con-
24 flict of interest.

1 (5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

2
3 (A) DEVELOPMENT OF GUIDELINES.—The
4 Executive Office for Immigration Review, in
5 consultation with voluntary agencies and national
6 experts, shall develop model guidelines
7 for the legal representation of alien children in
8 immigration proceedings. Such guidelines shall
9 be based on the children’s asylum guidelines,
10 the American Bar Association Model Rules of
11 Professional Conduct, and other relevant domestic
12 or international sources.

13 (B) PURPOSE OF GUIDELINES.—The
14 guidelines developed under subparagraph (A)
15 shall be designed to help protect each child
16 from any individual suspected of involvement in
17 any criminal, harmful, or exploitative activity
18 associated with the smuggling or trafficking of
19 children, while ensuring the fairness of the removal
20 proceeding in which the child is involved.

21 (C) IMPLEMENTATION.—The Executive
22 Office for Immigration Review shall adopt the
23 guidelines developed under subparagraph (A)
24 and submit the guidelines for adoption by national,
25 State, and local bar associations.

1 (b) DUTIES.—Counsel shall—

2 (1) represent the unaccompanied alien child in
3 all proceedings and matters relating to the immigra-
4 tion status of the child or other actions involving the
5 Directorate;

6 (2) appear in person for all individual merits
7 hearings before the Executive Office for Immigration
8 Review and interviews involving the Directorate; and

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

12 (c) ACCESS TO CHILD.—

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

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

24 (d) 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 (e) ACCESS TO RECOMMENDATIONS OF GUARDIAN
15 AD LITEM.—Counsel shall be given an opportunity to re-
16 view the recommendation by the guardian ad litem affect-
17 ing 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, who is 18 years of age or
10 younger on the date of application and who is
11 present in the United 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, abandon-
22 ment, or 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

1 returned to the alien’s or parent’s previous
2 country of nationality or country of last habit-
3 ual residence; and

4 “(iii) with respect to a child in Federal
5 custody, for whom the Office of Refugee Reset-
6 tlement of the Department of Health and
7 Human Services has certified to the Director of
8 the Bureau of Citizenship and Immigration
9 Services that the classification of an alien as a
10 special immigrant under this subparagraph has
11 not been made solely to provide an immigration
12 benefit to that 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
16 of such parentage, be accorded any right, privilege,
17 or status under this Act;”.

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

21 “(A) paragraphs (4), (5)(A), (6)(A), and
22 (7) of section 212(a) shall not apply; and”.

23 (c) ELIGIBILITY FOR ASSISTANCE.—A child who has
24 been granted relief under section 101(a)(27)(J) of the Im-
25 migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),

1 shall be eligible for all funds made available under section
2 412(d) of that Act (8 U.S.C. 1522(d)) until such time as
3 the child attains the age designated in section
4 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or
5 until the child is placed in a permanent adoptive home,
6 whichever occurs first.

7 (d) TRANSITION RULE.—Notwithstanding any other
8 provision of law, any child described in section
9 101(a)(27)(J) of the Immigration and Nationality Act (8
10 U.S.C. 1101(a)(27)(J)) who filed an application for a visa
11 before the date of enactment of this Act and who was 19,
12 20, or 21 years of age on the date such application was
13 filed shall not be denied a visa after the date of enactment
14 of this Act because of such alien’s age.

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

18 (a) TRAINING OF STATE AND LOCAL OFFICIALS AND
19 CERTAIN PRIVATE PARTIES.—

20 (1) IN GENERAL.—The Secretary of Health and
21 Human Services, acting jointly with the Secretary,
22 shall provide appropriate training to State and coun-
23 ty officials, child welfare specialists, teachers, public
24 counsel, and juvenile judges who come into contact
25 with unaccompanied alien children.

1 (2) CURRICULUM.—The training shall provide
2 education on the processes pertaining to unaccom-
3 panied alien children with pending immigration sta-
4 tus and on the forms of relief potentially available.
5 The Director shall be responsible for establishing a
6 core curriculum that can be incorporated into edu-
7 cation, training, or orientation modules or formats
8 that are currently used by these professionals.

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

20 **SEC. 303. REPORT.**

21 Not later than 1 year after the date of enactment
22 of this Act, and annually thereafter, the Secretary of
23 Health and Human Services shall submit a report for the
24 previous fiscal year to the Committee on the Judiciary of

1 the Senate and the Committee on the Judiciary of the
2 House of Representatives that contains—

3 (1) data related to the implementation of sec-
4 tion 462 of the Homeland Security Act (6 U.S.C.
5 279);

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

8 (3) data regarding the provision of guardian ad
9 litem and counsel services under this Act; and

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

13 **SEC. 304. EFFECTIVE DATE.**

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

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

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

20 (a) SENSE OF CONGRESS.—Congress commends the
21 Immigration and Naturalization Service for its issuance
22 of its “Guidelines for Children’s Asylum Claims”, dated
23 December 1998, and encourages and supports the imple-
24 mentation of such guidelines by the Immigration and Nat-
25 uralization Service (and its successor entities) in an effort

1 to facilitate the handling of children’s asylum claims. Con-
2 gress calls upon the Executive Office for Immigration Re-
3 view of the Department of Justice to adopt the “Guide-
4 lines for Children’s Asylum Claims” in its handling of chil-
5 dren’s asylum claims before immigration judges and the
6 Board of Immigration Appeals.

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

15 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

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

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

22 (2) by inserting after paragraph (2) the fol-
23 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), shall be placed in removal proceedings under sec-
12 tion 240 of the Immigration and Nationality Act (8 U.S.C.
13 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 alien 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 to the Department of Homeland Security, the De-

1 partment of Justice, and the Department of Health and
 2 Human Services, such sums as may be necessary to carry
 3 out—

4 (1) the provisions of section 462 of the Home-
 5 land Security Act of 2002 (6 U.S.C. 279); and

6 (2) the provisions of this Act.

7 (b) AVAILABILITY OF FUNDS.—Amounts appro-
 8 priated pursuant to subsection (a) shall remain available
 9 until expended.

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

13 **SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF**
 14 **THE OFFICE OF REFUGEE RESETTLEMENT**
 15 **WITH RESPECT TO UNACCOMPANIED ALIEN**
 16 **CHILDREN.**

17 (a) ADDITIONAL RESPONSIBILITIES OF THE DIREC-
 18 TOR.—Section 462(b)(1) of the Homeland Security Act of
 19 2002 (6 U.S.C. 279(b)(1)) is amended—

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

22 (2) in subparagraph (L), by striking the period
 23 at the end and inserting “, including regular follow-
 24 up visits to such facilities, placements, and other en-

1 titles, to assess the continued suitability of such
2 placements; and”); and

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

4 “(M) ensuring minimum standards of care
5 for all unaccompanied alien children—

6 “(i) for whom detention is necessary;

7 and

8 “(ii) who reside in settings that are
9 alternative to detention.”.

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

14 “(4) AUTHORITY.—In carrying out the duties
15 under paragraph (3), the Director is authorized to—

16 “(A) contract with service providers to per-
17 form the services described in sections 102,
18 103, 201, and 202 of the Unaccompanied Alien
19 Child Protection Act of 2005; and

20 “(B) compel compliance with the terms
21 and conditions set forth in section 103 of the
22 Unaccompanied Alien Child Protection Act of
23 2005, including the power to—

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

1 “(ii) terminate the contracts of pro-
2 viders that are not in compliance with such
3 conditions; and

4 “(iii) reassign any unaccompanied
5 alien child to a similar facility that is in
6 compliance with such section.”.

7 **SEC. 602. TECHNICAL CORRECTIONS.**

8 Section 462(b) of the Homeland Security Act of 2002
9 (6 U.S.C. 279(b)), as amended by section 601, is amend-
10 ed—

11 (1) in paragraph (3), by striking “paragraph
12 (1)(G)” and inserting “paragraph (1)”; and

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

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

18 **SEC. 603. EFFECTIVE DATE.**

19 The amendments made by this title shall take effect
20 as if included in the Homeland Security Act of 2002 (6
21 U.S.C. 101 et seq.).

○