

111TH CONGRESS  
2D SESSION

# S. 3522

To protect children affected by immigration enforcement actions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 22, 2010

Mr. FRANKEN (for himself, Mr. KOHL, Mr. MENENDEZ, Ms. KLOBUCHAR, Mr. FEINGOLD, Mr. DURBIN, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To protect children affected by immigration enforcement actions, 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.**

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:

9 (1) APPREHENSION.—The term “apprehension”  
10 means the detention, arrest, or custody by officials

1 of the Department of Homeland Security or cooper-  
2 ating entities.

3 (2) CHILD.—The term “child” has the meaning  
4 given to the term in section 101(b)(1) of the Immi-  
5 gration and Nationality Act (8 U.S.C. 1101(b)(1)).

6 (3) CHILD WELFARE AGENCY.—The term  
7 “child welfare agency” means the State or local  
8 agency responsible for child welfare services under  
9 subtitles B and E of title IV of the Social Security  
10 Act (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, or at the request of, the De-  
14 partment of Homeland Security.

15 (5) DETENTION FACILITY.—The term “deten-  
16 tion facility” means a Federal, State, or local gov-  
17 ernment facility, or a privately owned and operated  
18 facility, that is used to hold individuals suspected or  
19 found to be in violation of the Immigration and Na-  
20 tionality Act (8 U.S.C. 1101 et seq.).

21 (6) IMMIGRATION ENFORCEMENT ACTION.—The  
22 term “immigration enforcement action” means the  
23 apprehension of, detention of, or request for or  
24 issuance of a detainer for, 1 or more individuals for  
25 suspected or confirmed violations of the Immigration

1 and Nationality Act (8 U.S.C. 1101 et seq.) by the  
2 Department of Homeland Security or cooperating  
3 entities.

4 (7) LOCAL EDUCATION AGENCY.—The term  
5 “local education agency” has the meaning given to  
6 the term in section 9101 of the Elementary and Sec-  
7 ondary Education Act of 1965 (20 U.S.C. 7801).

8 (8) NGO.—The term “NGO” means a non-  
9 governmental organization that provides social serv-  
10 ices or humanitarian assistance to the immigrant  
11 community.

12 **SEC. 3. APPREHENSION PROCEDURES FOR IMMIGRATION**  
13 **ENFORCEMENT-RELATED ACTIVITIES.**

14 (a) NOTIFICATION.—

15 (1) ADVANCE NOTIFICATION.—Subject to para-  
16 graph (2), when conducting any immigration en-  
17 forcement action, the Department of Homeland Se-  
18 curity and cooperating entities shall notify the Gov-  
19 ernor of the State, the local child welfare agency,  
20 and relevant State and local law enforcement before  
21 commencing the action, or, if advance notification is  
22 not possible, immediately after commencing such ac-  
23 tion, of—

1 (A) the approximate number of individuals  
2 to be targeted in the immigration enforcement  
3 action; and

4 (B) the primary language or languages be-  
5 lieved to be spoken by individuals at the tar-  
6 geted site.

7 (2) HOURS OF NOTIFICATION.—Whenever pos-  
8 sible, advance notification should occur during busi-  
9 ness hours and allow the notified entities sufficient  
10 time to identify resources to conduct the interviews  
11 described in subsection (b)(1).

12 (3) OTHER NOTIFICATION.—When conducting  
13 any immigration action, the Department of Home-  
14 land Security and cooperating entities shall notify  
15 the relevant local education agency and local NGOs  
16 of the information described in paragraph (1) imme-  
17 diately after commencing the action.

18 (b) APPREHENSION PROCEDURES.—In any immigra-  
19 tion enforcement action, the Department of Homeland Se-  
20 curity and cooperating entities shall—

21 (1) as soon as possible and not later than 6  
22 hours after an immigration enforcement action, pro-  
23 vide licensed social workers or case managers em-  
24 ployed or contracted by the child welfare agency or  
25 local NGOs with confidential access to screen and

1 interview individuals apprehended in such immigra-  
2 tion enforcement action to assist the Department of  
3 Homeland Security or cooperating entity in deter-  
4 mining if such individuals are parents, legal guard-  
5 ians, or primary caregivers of a child in the United  
6 States;

7 (2) as soon as possible and not later than 8  
8 hours after an immigration enforcement action, pro-  
9 vide any apprehended individual believed to be a  
10 parent, legal guardian, or primary caregiver of a  
11 child in the United States with—

12 (A) free, confidential telephone calls, in-  
13 cluding calls to child welfare agencies, attor-  
14 neys, and legal services providers, to arrange  
15 for the care of children or wards, unless the De-  
16 partment of Homeland Security has reasonable  
17 grounds to believe that providing confidential  
18 phone calls to the individual would endanger  
19 public safety or national security; and

20 (B) contact information for—

21 (i) child welfare agencies in all 50  
22 States, the District of Columbia, all United  
23 States territories, counties, and local juris-  
24 dictions; and

1                   (ii) attorneys and legal service pro-  
2                   viders capable of providing free legal advice  
3                   or free legal representation regarding child  
4                   welfare, child custody determinations, and  
5                   immigration matters;

6                   (3) ensure that personnel of the Department of  
7                   Homeland Security and cooperating entities do  
8                   not—

9                   (A) interview individuals in the immediate  
10                  presence of children; or

11                  (B) compel or request children to translate  
12                  for interviews of other individuals who are en-  
13                  countered as part of an immigration enforce-  
14                  ment action; and

15                  (4) ensure that any parent, legal guardian, or  
16                  primary caregiver of a child in the United States—

17                  (A) receives due consideration of the best  
18                  interests of his or her children or wards in any  
19                  decision or action relating to his or her deten-  
20                  tion, release, or transfer between detention fa-  
21                  cilities; and

22                  (B) is not transferred from his or her ini-  
23                  tial detention facility or to the custody of the  
24                  Department of Homeland Security until the in-  
25                  dividual—

1 (i) has made arrangements for the  
2 care of his or her children or wards; or

3 (ii) if such arrangements are impos-  
4 sible, is informed of the care arrangements  
5 made for the children and of a means to  
6 maintain communication with the children.

7 (c) NONDISCLOSURE AND RETENTION OF INFORMA-  
8 TION ABOUT APPREHENDED INDIVIDUALS AND THEIR  
9 CHILDREN.—

10 (1) IN GENERAL.—Information collected by  
11 child welfare agencies and NGOs in the course of  
12 the screenings and interviews described in subsection  
13 (b)(1) about an individual apprehended in an immi-  
14 gration enforcement action may not be disclosed to  
15 Federal, State, or local government entities or to  
16 any person, except pursuant to written authorization  
17 from the individual or his or her legal counsel.

18 (2) CHILD WELFARE AGENCY OR NGO REC-  
19 OMMENDATION.—Notwithstanding paragraph (1), a  
20 child welfare agency or NGO may—

21 (A) submit a recommendation to the De-  
22 partment of Homeland Security or cooperating  
23 entities regarding whether an apprehended indi-  
24 vidual is a parent, legal guardian, or primary

1           caregiver who is eligible for the protections pro-  
2           vided under this Act; and

3                   (B) disclose information that is necessary  
4           to protect the safety of the child, to allow for  
5           the application of subsection (b)(4)(A), or to  
6           prevent reasonably certain death or substantial  
7           bodily harm.

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

11           (a) IN GENERAL.—The Secretary of Homeland Secu-  
12 rity shall ensure that all detention facilities operated by  
13 or under agreement with the Department of Homeland Se-  
14 curity implement procedures to ensure that the best inter-  
15 est of the child, including the best outcome for the family  
16 of the child, can be considered in any decision and action  
17 relating to the custody of children whose parent, legal  
18 guardian, or primary caregiver is detained as the result  
19 of an immigration enforcement action.

20           (b) ACCESS TO CHILDREN, STATE AND LOCAL  
21 COURTS, CHILD WELFARE AGENCIES, AND CONSULAR  
22 OFFICIALS.—At all detention facilities operated by, or  
23 under agreement with, the Department of Homeland Se-  
24 curity, the Secretary of Homeland Security shall—



1           (1) ensure that individuals who are detained by  
2           reason of their immigration status may receive the  
3           screenings and interviews described in section  
4           3(b)(1) not later than 6 hours after their arrival at  
5           the detention facility;

6           (2) ensure that individuals who are detained by  
7           reason of their immigration status and are believed  
8           to be parents, legal guardians, or primary caregivers  
9           of children in the United States are—

10                   (A) permitted daily phone calls and regular  
11                   contact visits with their children or wards;

12                   (B) able to participate fully, and to the ex-  
13                   tent possible in-person, in all family court pro-  
14                   ceedings and any other proceeding impacting  
15                   upon custody of their children or wards;

16                   (C) able to fully comply with all family  
17                   court or child welfare agency orders impacting  
18                   upon custody of their children or wards;

19                   (D) provided with contact information for  
20                   family courts in all 50 States, the District of  
21                   Columbia, all United States territories, coun-  
22                   ties, and local jurisdictions;

23                   (E) granted free and confidential telephone  
24                   calls to child welfare agencies and family  
25                   courts;

1 (F) granted free and confidential telephone  
2 calls and confidential in-person visits with at-  
3 torneys, legal representatives, and consular offi-  
4 cials;

5 (G) provided United States passport appli-  
6 cations for the purpose of obtaining travel docu-  
7 ments for their children or wards;

8 (H) granted adequate time before removal  
9 to obtain passports and other necessary travel  
10 documents on behalf of their children or wards  
11 if such children or wards will accompany them  
12 on their return to their country of origin or join  
13 them in their country of origin; and

14 (I) provided with the access necessary to  
15 obtain birth records or other documents re-  
16 quired to obtain passports for their children or  
17 wards; and

18 (3) facilitate the ability of detained parents,  
19 legal guardians, and primary caregivers to share in-  
20 formation regarding travel arrangements with their  
21 children or wards, child welfare agencies, or other  
22 caregivers well in advance of the detained individ-  
23 ual's departure from the United States.

1 **SEC. 5. MEMORANDA OF UNDERSTANDING.**

2       The Secretary of Homeland Security shall develop  
3 and implement memoranda of understanding or protocols  
4 with child welfare agencies and NGOs regarding the best  
5 ways to cooperate and facilitate ongoing communication  
6 between all relevant entities in cases involving a child  
7 whose parent, legal guardian, or primary caregiver has  
8 been apprehended or detained in an immigration enforce-  
9 ment action to protect the best interests of the child and  
10 the best outcome for the family of the child.

11 **SEC. 6. MANDATORY TRAINING.**

12       The Secretary of Homeland Security, in consultation  
13 with the Secretary of Health and Human Services and  
14 independent child welfare experts, shall require and pro-  
15 vide in-person training on the protections required under  
16 sections 3 and 4 to all personnel of the Department of  
17 Homeland Security and of States and local entities acting  
18 under agreement with the Department of Homeland Secu-  
19 rity who regularly come into contact with children or par-  
20 ents in the course of conducting immigration enforcement  
21 actions.

22 **SEC. 7. RULEMAKING.**

23       Not later than 120 days after the date of the enact-  
24 ment of this Act, the Secretary of Homeland Security shall  
25 promulgate regulations to implement this Act.

**1 SEC. 8. SEVERABILITY.**

2       If any provision of this Act or amendment made by  
3 this Act, or the application of a provision or amendment  
4 to any person or circumstance, is held to be unconstitu-  
5 tional, the remainder of this Act and amendments made  
6 by this Act, and the application of the provisions and  
7 amendment to any person or circumstance, shall not be  
8 affected by the holding.

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