

108TH CONGRESS  
1ST SESSION

# H. R. 3361

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

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2003

Ms. LOFGREN (for herself, Mr. CANNON, Mr. CONYERS, Ms. HART, Mr. MEEK of Florida, Mr. SMITH of New Jersey, Ms. ROS-LEHTINEN, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on the Judiciary

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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,*

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 2003”.

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

See. 1. Short title; table of contents.

See. 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

- See. 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 reference to counsel, means an attorney who complies with the duties set forth in this Act and—
- 6 (A)** is a member in good standing of the bar of the highest court of any State, posses-

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

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

12 (2) DIRECTOR.—The term “Director” means  
13 the Director of the Office.

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

24 (6) UNACCOMPANIED ALIEN CHILD.—The term  
25 “unaccompanied alien child” has the same meaning

1 as is given the term in section 462(g)(2) of the  
2 Homeland Security Act of 2002 (6 U.S.C.  
3 279(g)(2)).

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

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

10 **SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOM-  
11 PANIED ALIEN CHILDREN.**

12       (a) UNACCOMPANIED CHILDREN FOUND ALONG THE  
13 UNITED STATES BORDER OR AT UNITED STATES PORTS  
14 OF ENTRY.—

15           (1) IN GENERAL.—Subject to paragraph (2), if  
16 an immigration officer finds an unaccompanied alien  
17 child who is described in paragraph (2) at a land  
18 border or port of entry of the United States and de-  
19 termines that such child is inadmissible under the  
20 Immigration and Nationality Act (8 U.S.C. 1101 et  
21 seq.), the officer shall—

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

(B) return such child to the child's country of nationality or country of last habitual residence.

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

18 (i) such child has a fear of returning  
19 to the child's country of nationality or  
20 country of last habitual residence owing to  
21 a fear of persecution;

22 (ii) the return of such child to the  
23 child's country of nationality or country of  
24 last habitual residence would endanger the  
25 life or safety of such child; or

1 (iii) the child cannot make an inde-  
2 pendent decision to withdraw the child's  
3 application for admission due to age or  
4 other lack of capacity.

5 (B) RIGHT OF CONSULTATION.—Any child  
6 described in subparagraph (A) shall have the  
7 right to consult with a consular officer from the  
8 child's country of nationality or country of last  
9 habitual residence prior to repatriation, as well  
10 as consult with the Office, telephonically, and  
11 such child shall be informed of that right in the  
12 child's native language.

19 (b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN  
20 CHILDREN FOUND IN THE INTERIOR OF THE UNITED  
21 STATES.—

22 (1) ESTABLISHMENT OF JURISDICTION.—

23 (A) IN GENERAL.—Except as otherwise  
24 provided under subparagraphs (B) and (C) and  
25 subsection (a), the care and custody of all unac-

1                   complicated alien children, including responsi-  
2                   bility for their detention, where appropriate,  
3                   shall be under the jurisdiction of the Office.

4 (B) EXCEPTION FOR CHILDREN WHO HAVE  
5 COMMITTED CRIMES.—Notwithstanding sub-  
6 paragraph (A), the Directorate shall retain or  
7 assume the custody and care of any unaccom-  
8 panied alien child who—

9 (i) has been charged with any felony,  
10 excluding offenses proscribed by the Immig-  
11 ration and Nationality Act (8 U.S.C.  
12 1101 et seq.), while such charges are pend-  
13 ing; or

14 (ii) has been convicted of any such fel-  
15 ony.

16 (C) EXCEPTION FOR CHILDREN WHO  
17 THREATEN NATIONAL SECURITY.—Notwith-  
18 standing subparagraph (A), the Directorate  
19 shall retain or assume the custody and care of  
20 an unaccompanied alien child if the Secretary  
21 has substantial evidence, based on an individ-  
22 ualized determination, that such child could  
23 personally endanger the national security of the  
24 United States.

1 (D) TRAFFICKING VICTIMS.—For purposes  
2 of section 462 of the Homeland Security Act of  
3 2002 (6 U.S.C. 279) and this Act, an unaccom-  
4 panied alien child who is eligible for services au-  
5 thorized under the Victims of Trafficking and  
6 Violence Protection Act of 2000 (Public Law  
7 106–386), shall be considered to be in the cus-  
8 tody of the Office.

## 9 (2) NOTIFICATION.—

10 (A) IN GENERAL.—The Secretary shall  
11 promptly notify the Office upon—

12 (i) the apprehension of an unaccom-  
13 panied alien child;

14 (ii) the discovery that an alien in the  
15 custody of the Directorate is an unaccom-  
16 panied alien child:

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

20 (iv) any suspicion that an alien in the  
21 custody of the Directorate who has claimed  
22 to be over the age of 18 is actually under  
23 the age of 18.

24 (B) SPECIAL RULE.—In the case of an  
25 alien described in clause (iii) or (iv) of subparagraph-

1 graph (A), the Director shall make an age de-  
2 termination in accordance with section 105 and  
3 take whatever other steps are necessary to de-  
4 termine whether or not such alien is eligible for  
5 treatment under section 462 of the Homeland  
6 Security Act of 2002 (6 U.S.C. 279) or this  
7 Act.

8 (3) TRANSFER OF UNACCOMPANIED ALIEN  
9 CHILDREN.—

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

13 (i) in the case of a child not described  
14 in subparagraph (B) or (C) of paragraph  
15 (1), not later than 72 hours after the ap-  
16 prehension of such child; or

17 (ii) in the case of a child whose cus-  
18 tody and care has been retained or as-  
19 sumed by the Directorate pursuant to sub-  
20 paragraph (B) or (C) of paragraph (1),  
21 immediately following a determination that  
22 the child no longer meets the description  
23 set forth in such subparagraphs.

24 (B) TRANSFER TO THE DIRECTORATE.—  
25 Upon determining that a child in the custody of

1           the Office is described in subparagraph (B) or  
2           (C) of paragraph (1), the Director shall  
3           promptly make arrangements to transfer the  
4           care and custody of such child to the Direc-  
5           torate.

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

14   **SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED**

15           **ALIEN CHILDREN WITH RELATIVES IN THE**

16           **UNITED STATES.**

17           (a) PLACEMENT AUTHORITY.—

18           (1) ORDER OF PREFERENCE.—Subject to the  
19           discretion of the Director under paragraph (4) and  
20           section 103(a)(2), an unaccompanied alien child in  
21           the custody of the Office shall be promptly placed  
22           with 1 of the following individuals or entities in the  
23           following order of preference:

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

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

2 (C) An adult relative.

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

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

5 (F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

6 (2) **SUITABILITY ASSESSMENT.**—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable

1 of providing for the child's physical and mental well-  
2 being.

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

5 (A) PLACEMENT WITH PARENT OR LEGAL  
6 GUARDIAN.—If an unaccompanied alien child is  
7 placed with any person or entity other than a  
8 parent or legal guardian, but subsequent to  
9 that placement a parent or legal guardian seeks  
10 to establish custody, the Director shall assess  
11 the suitability of placing the child with the par-  
12 ent or legal guardian and shall make a written  
13 determination on the child's placement within  
14 30 days.

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

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

1 (ii) limit any right or remedy under  
2 such international agreement.

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

## 5 (A) POLICIES AND PROGRAMS.—

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

13 (ii) WITNESS PROTECTION PROGRAMS  
14 INCLUDED.—The programs established  
15 pursuant to clause (i) may include witness  
16 protection programs.

1 (C) DISCIPLINARY ACTION.—Any officer or  
2 employee of the Office or the Department of  
3 Homeland Security, and any grantee or con-  
4 tractor of the Office, who suspects an attorney  
5 of being involved in any activity described in  
6 subparagraph (A) shall report the individual to  
7 the State bar association of which the attorney  
8 is a member, or to other appropriate discipli-  
9 nary authorities, for appropriate disciplinary ac-  
10 tion that may include private or public admoni-  
11 tion or censure, suspension, or disbarment of  
12 the attorney from the practice of law.

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

## 6 SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF

## 7 UNACCOMPANIED ALIEN CHILDREN.

8 (a) STANDARDS FOR PLACEMENT.—

## 1 (4) CONDITIONS OF DETENTION.—

2 (A) IN GENERAL.—The Director shall pro-  
3 mulgate regulations incorporating standards for  
4 conditions of detention in such placements that  
5 provide for—6 (i) educational services appropriate to  
7 the child;

8 (ii) medical care;

9 (iii) mental health care, including  
10 treatment of trauma, physical and sexual  
11 violence, or abuse;

12 (iv) access to telephones;

13 (v) access to legal services;

14 (vi) access to interpreters;

15 (vii) supervision by professionals  
16 trained in the care of children, taking into  
17 account the special cultural, linguistic, and  
18 experiential needs of children in immigra-  
19 tion proceedings;20 (viii) recreational programs and activi-  
21 ties;

22 (ix) spiritual and religious needs; and

23 (x) dietary needs.

24 (B) NOTIFICATION OF CHILDREN.—Regu-  
25 lations promulgated in accordance with sub-

1                   paragraph (A) shall provide that all children  
2                   are notified orally and in writing of such stand-  
3                   ards in the child's native language.

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

7                   (1) shackling, handcuffing, or other restraints  
8                   on children;  
9                   (2) solitary confinement; or  
10                  (3) pat or strip searches.

11                  (c) RULE OF CONSTRUCTION.—Nothing in this sec-  
12                  tion shall be construed to supersede procedures favoring  
13                  release of children to appropriate adults or entities or  
14                  placement in the least secure setting possible, as defined  
15                  in the Stipulated Settlement Agreement under Flores v.  
16                  Reno.

17                  **SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHIL-  
18                  DREN.**

19                  (a) COUNTRY CONDITIONS.—

20                  (1) SENSE OF CONGRESS.—It is the sense of  
21                  Congress that, to the extent consistent with the trea-  
22                  ties and other international agreements to which the  
23                  United States is a party, and to the extent prac-  
24                  ticable, the United States Government should under-  
25                  take efforts to ensure that it does not repatriate

1 children in its custody into settings that would  
2 threaten the life and safety of such children.

3 (2) ASSESSMENT OF CONDITIONS.—

4 (A) IN GENERAL.—The Secretary of State  
5 shall include each year in the State Department  
6 Country Report on Human Rights, an assess-  
7 ment of the degree to which each country pro-  
8 tects children from smugglers and traffickers.

9 (B) FACTORS FOR ASSESSMENT.—The Of-  
10 fice shall consult the State Department Country  
11 Report on Human Rights and the Victims of  
12 Trafficking and Violence Protection Act of  
13 2000: Trafficking in Persons Report in assess-  
14 ing whether to repatriate an unaccompanied  
15 alien child to a particular country.

16 (b) REPORT ON REPATRIATION OF UNACCOMPANIED  
17 ALIEN CHILDREN.—

18 (1) IN GENERAL.—Not later than 18 months  
19 after the date of enactment of this Act, and annually  
20 thereafter, the Director shall submit a report to the  
21 Committees on the Judiciary of the House of Rep-  
22 resentatives and the Senate on efforts to repatriate  
23 unaccompanied alien children.

4 (A) The number of unaccompanied alien  
5 children ordered removed and the number of  
6 such children actually removed from the United  
7 States.

(B) A description of the type of immigration relief sought and denied to such children.

10 (C) A statement of the nationalities, ages,  
11 and gender of such children.

12 (D) A description of the procedures used  
13 to effect the removal of such children from the  
14 United States.

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

18 (F) Any information gathered in assessments  
19 of country and local conditions pursuant  
20 to subsection (a)(2).

21 SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED  
22 ALIEN CHILD.

23 (a) IN GENERAL.—The Director shall develop proce-  
24 dures to determine the age of an alien in the custody of  
25 the Department of Homeland Security or the Office, when

1 the age of the alien is at issue. Such procedures shall per-  
2 mit the presentation of multiple forms of evidence, includ-  
3 ing testimony of the child, to determine the age of the  
4 unaccompanied alien for purposes of placement, custody,  
5 parole, and detention. Such procedures shall allow the ap-  
6 peal of a determination to an immigration judge.

7 (b) PROHIBITION ON SOLE MEANS OF DETERMINING  
8 AGE.—Neither radiographs nor the attestation of an alien  
9 shall be used as the sole means of determining age for  
10 the purposes of determining an alien's eligibility for treat-  
11 ment under section 462 of the Homeland Security Act of  
12 2002 (6 U.S.C. 279) or this Act.

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

16 **SEC. 106. EFFECTIVE DATE.**

17 This title shall take effect 90 days after the date of  
18 enactment of this Act.

19 **TITLE II—ACCESS BY UNACCOM-  
20 PANIED ALIEN CHILDREN TO  
21 GUARDIANS AD LITEM AND  
22 COUNSEL**

23 **SEC. 201. GUARDIANS AD LITEM.**

24 (a) ESTABLISHMENT OF GUARDIAN AD LITEM PRO-  
25 GRAM.—

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

12 (i) is a child welfare professional or  
13 other individual who has received training  
14 in child welfare matters; and

15 (ii) possesses special training on the  
16 nature of problems encountered by unac-  
17 companied alien children.

18 (B) PROHIBITION.—A guardian ad litem  
19 shall not be an employee of the Directorate, the  
20 Office, or the Executive Office for Immigration  
21 Review.

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

23 (A) conduct interviews with the child in a  
24 manner that is appropriate, taking into account  
25 the child's age;

1 (B) investigate the facts and circumstances  
2 relevant to such child's presence in the United  
3 States, including facts and circumstances arising  
4 in the country of the child's nationality or  
5 last habitual residence and facts and circumstances  
6 arising subsequent to the child's de-  
7 parture from such country;

8 (C) work with counsel to identify the  
9 child's eligibility for relief from removal or vol-  
10 untary departure by sharing with counsel infor-  
11 mation collected under subparagraph (B);

12 (D) develop recommendations on issues  
13 relative to the child's custody, detention, re-  
14 lease, and repatriation;

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

20 (F) take reasonable steps to ensure that  
21 the child understands the nature of the legal  
22 proceedings or matters and determinations  
23 made by the court, and ensure that all informa-  
24 tion is conveyed in an age-appropriate manner;  
25 and

1 (G) report factual findings relating to—  
2 (i) information gathered pursuant to  
3 subparagraph (B);  
4 (ii) the care and placement of the  
5 child during the pendency of the pro-  
6 ceedings or matters; and  
7 (iii) any other information gathered  
8 pursuant to subparagraph (D).

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

12 (A) those duties are completed;  
13 (B) the child departs the United States;  
14 (C) the child is granted permanent resi-  
15 dent status in the United States;  
16 (D) the child attains the age of 18; or  
17 (E) the child is placed in the custody of a  
18 parent or legal guardian;

19 whichever occurs first.

20 (5) POWERS.—The guardian ad litem—  
21 (A) shall have reasonable access to the  
22 child, including access while such child is being  
23 held in detention or in the care of a foster fam-  
24 ily;

1 (B) shall be permitted to review all records  
2 and information relating to such proceedings  
3 that are not deemed privileged or classified;

4 (C) may seek independent evaluations of  
5 the child;

6 (D) shall be notified in advance of all hear-  
7 ings or interviews involving the child that are  
8 held in connection with proceedings or matters  
9 under the Immigration and Nationality Act (8  
0 U.S.C. 1101 et seq.), and shall be given a rea-  
1 sonable opportunity to be present at such hear-  
2 ings or interviews;

13 (E) shall be permitted to consult with the  
14 child during any hearing or interview involving  
15 such child; and

16 (F) shall be provided at least 24 hours ad-  
17 vance notice of a transfer of that child to a dif-  
18 ferent placement, absent compelling and un-  
19 usual circumstances warranting the transfer of  
20 such child prior to notification.

21 (b) TRAINING.—The Director shall provide profes-  
22 sional training for all persons serving as guardians ad  
23 litem under this section in the—

24 (1) circumstances and conditions that unaccom-  
25 panied alien children face; and

### 3 (c) PILOT PROGRAM.—

10 (A) study and assess the benefits of pro-  
11 viding guardians ad litem to assist unaccom-  
12 panied alien children involved in immigration  
13 proceedings or matters;

14 (B) assess the most efficient and cost-ef-  
15 fective means of implementing the guardian ad  
16 litem provisions in this section; and

17 (C) assess the feasibility of implementing  
18 such provisions on a nationwide basis for all un-  
19 accompanied alien children in the care of the  
20 Office.

### 21 (3) SCOPE OF PROGRAM.—

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

1 (B) NUMBER OF CHILDREN.—To the  
2 greatest extent possible, each site selected  
3 under subparagraph (A) should have at least 25  
4 children held in immigration custody at any  
5 given time.

6 (4) REPORT TO CONGRESS.—Not later than 1  
7 year after the date on which the first pilot program  
8 is established pursuant to paragraph (1), the Direc-  
9 tor shall report to the Committees on the Judiciary  
10 of the Senate and the House of Representatives on  
11 subparagraphs (A) through (C) of paragraph (2).

12 SEC. 202. COUNSEL.

13 (a) ACCESS TO COUNSEL.—

11 (B) LIMITATION ON ATTORNEY FEES.—  
12 Counsel appointed under subparagraph (A)  
13 shall not be compensated at a rate in excess of  
14 the rate provided under section 3006A of title  
15 18, United States Code.

16 (C) AVAILABILITY OF FUNDING.—In car-  
17 rying out this paragraph, the Director may  
18 make use of funds derived from any source des-  
19 ignated by the Secretary of Health and Human  
20 Services from discretionary funds available to  
21 the Department of Health and Human Services.

22 (D) ASSUMPTION OF THE COST OF GOV-  
23 ERNMENT-PAID COUNSEL.—In the case of a  
24 child for whom counsel is appointed under sub-  
25 paragraph (A) who is subsequently placed in

1           the physical custody of a parent or legal guard-  
2           ian, such parent or legal guardian may elect to  
3           retain the same counsel to continue representa-  
4           tion of the child, at no expense to the Govern-  
5           ment, beginning on the date that the parent or  
6           legal guardian assumes physical custody of the  
7           child.

8           (4) DEVELOPMENT OF NECESSARY INFRA-  
9           STRUCTURES AND SYSTEMS.—In ensuring that legal  
10           representation is provided to such children, the Di-  
11           rector shall develop the necessary mechanisms to  
12           identify entities available to provide such legal as-  
13           sistance and representation and to recruit such enti-  
14           ties.

15           (5) CONTRACTING AND GRANT MAKING AU-  
16           THORITY.—

17           (A) IN GENERAL.—Subject to the avail-  
18           ability of appropriations, the Director shall  
19           enter into contracts with or make grants to na-  
20           tional nonprofit agencies with relevant expertise  
21           in the delivery of immigration-related legal serv-  
22           ices to children in order to carry out this sub-  
23           section. National nonprofit agencies may enter  
24           into subcontracts with or make grants to pri-  
25           vate voluntary agencies with relevant expertise

1 in the delivery of immigration-related legal serv-  
2 ices to children in order to carry out this sub-  
3 section.

4 (B) INELIGIBILITY FOR GRANTS AND CON-  
5 TRACTS.—In making grants and entering into  
6 contracts with agencies in accordance with sub-  
7 paragraph (A), the Director shall ensure that  
8 no such agency receiving funds under this sub-  
9 section is a grantee or contractee for more than  
10 1 of the following services:

11 (i) Services provided under section  
12 102.

13 (ii) Services provided under section  
14 201

15 (iii) Services provided under para-  
16 graph (2).

17 (iv) Services provided under para-  
18 graph (3)

19 (6) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN —  
20

1 immigration proceedings based on the children's  
2 asylum guidelines, the American Bar Associa-  
3 tion Model Rules of Professional Conduct, and  
4 other relevant domestic or international sources.

5 (B) PURPOSE OF GUIDELINES.—The  
6 guidelines developed in accordance with sub-  
7 paragraph (A) shall be designed to help protect  
8 a child from any individual suspected of involve-  
9 ment in any criminal, harmful, or exploitative  
10 activity associated with the smuggling or traf-  
11 ficking of children, while ensuring the fairness  
12 of the removal proceeding in which the child is  
13 involved.

14 (C) IMPLEMENTATION.—The Executive  
15 Office for Immigration Review shall adopt the  
16 guidelines developed in accordance with sub-  
17 paragraph (A) and submit them for adoption by  
18 national, 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;

7 (c) ACCESS TO CHILD.—

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

22 (1) those duties are completed;

23 (2) the child departs the United States;

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

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

13 (e) NOTICE TO COUNSEL DURING IMMIGRATION  
14 PROCEEDINGS.—

1       ture, unless first afforded an opportunity to consult  
2       with counsel.

3       (f) ACCESS TO RECOMMENDATIONS OF GUARDIAN  
4 AD LITEM.—Counsel shall be afforded an opportunity to  
5 review the recommendation by the guardian ad litem af-  
6 fecting or involving a client who is an unaccompanied alien  
7 child.

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

9       (a) EFFECTIVE DATE.—This title shall take effect  
10 180 days after the date of enactment of this Act.

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

14 **TITLE           III—STRENGTHENING  
15           POLICIES FOR PERMANENT  
16           PROTECTION OF ALIEN CHIL-  
17           DREN**

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

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

22           “(J) an immigrant under the age of 21 on the  
23           date of application who is present in the United  
24           States—

1                     “(i) who by a court order, which shall be  
2                     binding on the Secretary of Homeland Security  
3                     for purposes of adjudications under this sub-  
4                     paragraph, was declared dependent on a juve-  
5                     nile court located in the United States or whom  
6                     such a court has legally committed to, or placed  
7                     under the custody of, a department or agency  
8                     of a State, or an individual or entity appointed  
9                     by a State or juvenile court located in the  
10                    United States, due to abuse, neglect, or aban-  
11                    donment, or a similar basis found under State  
12                    law;

13                    “(ii) for whom it has been determined in  
14                    administrative or judicial proceedings that it  
15                    would not be in the alien’s best interest to be  
16                    returned to the alien’s or parent’s previous  
17                    country of nationality or country of last habit-  
18                    ual residence; and

19                    “(iii) with respect to a child in Federal  
20                    custody, for whom the Office of Refugee Reset-  
21                    tlement of the Department of Health and  
22                    Human Services has certified to the Director of  
23                    the Bureau of Citizenship and Immigration  
24                    Services that the classification of an alien as a  
25                    special immigrant under this subparagraph has

1           not been made solely to provide an immigration  
2           benefit to that alien;

3           except that no natural parent or prior adoptive par-  
4           ent of any alien provided special immigrant status  
5           under this subparagraph shall thereafter, by virtue  
6           of such parentage, be accorded any right, privilege,  
7           or status under this Act;”.

8           (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) of  
9   the Immigration and Nationality Act (8 U.S.C.  
10 1255(h)(2)) is amended—

11           (1) by amending subparagraph (A) to read as  
12           follows:

13           “(A) paragraphs (1), (4), (5), (6), and  
14           (7)(A) of section 212(a) shall not apply;”;

15           (2) in subparagraph (B), by striking the period  
16           and inserting “; and”; and

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

18           “(C) the Secretary of Homeland Security  
19           may waive subparagraphs (A) and (B) of para-  
20           graph (2) of section 212(a) in the case of an of-  
21           fense which arose as a consequence of the child  
22           being unaccompanied.”.

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

7 **SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**  
8 **PARTIES WHO COME INTO CONTACT WITH**  
9 **UNACCOMPANIED ALIEN CHILDREN.**

10 (a) TRAINING OF STATE AND LOCAL OFFICIALS AND  
11 CERTAIN PRIVATE PARTIES.—The Secretary of Health  
12 and Human Services, acting jointly with the Secretary,  
13 shall provide appropriate training to be available to State  
14 and county officials, child welfare specialists, teachers,  
15 public counsel, and juvenile judges who come into contact  
16 with unaccompanied alien children. The training shall pro-  
17 vide education on the processes pertaining to unaccom-  
18 panied alien children with pending immigration status and  
19 on the forms of relief potentially available. The Director  
20 shall be responsible for establishing a core curriculum that  
21 can be incorporated into education, training, or orienta-  
22 tion modules or formats that are currently used by these  
23 professionals.

24 (b) TRAINING OF DIRECTORATE PERSONNEL.—The  
25 Secretary, acting jointly with the Secretary of Health and

1 Human Services, shall provide specialized training to all  
2 personnel of the Directorate who come into contact with  
3 unaccompanied alien children. In the case of Border Pa-  
4 trol agents and immigration inspectors, such training shall  
5 include specific training on identifying children at the  
6 United States borders or at United States ports of entry  
7 who have been victimized by smugglers or traffickers, and  
8 children for whom asylum or special immigrant relief may  
9 be appropriate, including children described in section  
10 101(a)(2).

**11 SEC. 303. REPORT.**

12 Not later than January 31, 2004, and annually there-  
13 after, the Secretary of Health and Human Services shall  
14 submit a report for the previous fiscal year to the Commit-  
15 tees on the Judiciary of the House of Representatives and  
16 the Senate that contains—

17 (1) data related to the implementation of sec-  
18 tion 462 of the Homeland Security Act (6 U.S.C.  
19 279);  
20 (2) data regarding the care and placement of  
21 children in accordance with this Act;  
22 (3) data regarding the provision of guardian ad  
23 litem and counsel services in accordance with this  
24 Act; and

#### 4 SEC. 304. EFFECTIVE DATE.

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

## 10 SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

11 (a) SENSE OF CONGRESS.—Congress commends the  
12 Immigration and Naturalization Service for its issuance  
13 of its “Guidelines for Children’s Asylum Claims”, dated  
14 December 1998, and encourages and supports the imple-  
15 mentation of such guidelines by the Immigration and Nat-  
16 uralization Service (and its successor entities) in an effort  
17 to facilitate the handling of children’s asylum claims. Con-  
18 gress calls upon the Executive Office for Immigration Re-  
19 view of the Department of Justice to adopt the “Guide-  
20 lines for Children’s Asylum Claims” in its handling of chil-  
21 dren’s asylum claims before immigration judges and the  
22 Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the “Guidelines for Children’s Asylum Claims” to asylum officers, immigration

1 judges, members of the Board of Immigration Appeals,  
2 and immigration officers who have contact with children  
3 in order to familiarize and sensitize such officers to the  
4 needs of children asylum seekers. Voluntary agencies shall  
5 be allowed to assist in such training.

6 **SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.**

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

10 (1) by redesignating paragraphs (3), (4), (5),  
11 (6), and (7) as paragraphs (4), (5), (6), (7), and  
12 (8), respectively; and

13 (2) by inserting after paragraph (2) the fol-  
14 lowing:

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

18 “(A) the number of unaccompanied refugee  
19 children, by region;

20 “(B) the capacity of the Department of  
21 State to identify such refugees;

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

1                   “(D) the capacity of the voluntary agency  
2                   community to resettle such refugees in the  
3                   United States;

4                   “(E) the degree to which the United States  
5                   plans to resettle such refugees in the United  
6                   States in the coming fiscal year; and

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

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

14                (1) striking “and” after “countries,”; and  
15                (2) inserting before the period at the end the  
16                following: “, and instruction on the needs of unac-  
17                panied refugee children”.

18 **SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**  
19                **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**  
20                **CUMSTANCES.**

21                (a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any  
22 unaccompanied alien child apprehended by the Direc-  
23 torate, except for an unaccompanied alien child subject to  
24 exceptions under paragraph (1)(A) or (2) of section  
25 (101)(a) of this Act, shall be placed in removal pro-

1 ceedings under section 240 of the Immigration and Na-  
2 tionality Act (8 U.S.C. 1229a).

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

7 “(E) APPLICABILITY.—Subparagraphs (A)  
8 and (B) shall not apply to an unaccompanied  
9 child as defined in section 101(a)(51).”.

## 10 **TITLE V—AUTHORIZATION OF 11 APPROPRIATIONS**

### 12 **SEC. 501. AUTHORIZATION OF APPROPRIATIONS.**

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

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

18 (b) AVAILABILITY OF FUNDS.—Amounts appro-  
19 priated pursuant to subsection (a) are authorized to re-  
20 main available until expended.

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

4   **SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF**  
5           **THE OFFICE OF REFUGEE RESETTLEMENT**  
6           **WITH RESPECT TO UNACCOMPANIED ALIEN**  
7           **CHILDREN.**

8       (a) ADDITIONAL RESPONSIBILITIES OF THE DIREC-  
9   TOR.—Section 462(b)(1) of the Homeland Security Act of  
10 2002 (6 U.S.C. 279(b)(1)) is amended—

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

13           (2) in subparagraph (L), by striking the period  
14 at the end and inserting “, including regular follow-  
15 up visits to such facilities, placements, and other en-  
16 tities, to assess the continued suitability of such  
17 placements; and”; and

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

19           “(M) ensuring minimum standards of care for  
20 all unaccompanied alien children—

21           “(i) for whom detention is necessary; and  
22           “(ii) who reside in settings that are alter-  
23 native to detention.”.

24       (b) ADDITIONAL POWERS OF THE DIRECTOR.—Sec-  
25 tion 462(b) of the Homeland Security Act of 2002 (6

1 U.S.C. 279(b)) is amended by adding at the end the fol-  
2 lowing:

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

6                     “(A) contract with service providers to per-  
7                 form the services described in sections 102,  
8                 103, 201, and 202 of the Unaccompanied Alien  
9                 Child Protection Act of 2003; and

10                   “(B) compel compliance with the terms  
11                 and conditions set forth in section 103 of the  
12                 Unaccompanied Alien Child Protection Act of  
13                 2003, including the power to—

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

16                     “(ii) terminate the contracts of pro-  
17                 viders that are not in compliance with such  
18                 conditions; and

19                     “(iii) reassign any unaccompanied  
20                 alien child to a similar facility that is in  
21                 compliance with such section.”.

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

4                   “(3) TRANSFER AND ALLOCATION OF APPRO-  
5                   PRIATIONS AND PERSONNEL.—

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

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

## 19 SEC. 602. TECHNICAL CORRECTIONS.

20 Section 462(b) of the Homeland Security Act of 2002  
21 (6 U.S.C. 279(b)), as amended by section 601, is amend-  
22 ed—

23 (1) in paragraph (3), by striking “paragraph  
24 (1)(G)” and inserting “paragraph (1)”; and  
25 (2) by adding at the end the following:

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

5 **SEC. 603. EFFECTIVE DATE.**

6           The amendments made by this title shall take effect  
7           as if enacted as part of the Homeland Security Act of  
8           2002 (6 U.S.C. 101 et seq.).

○