

113TH CONGRESS
2D SESSION

H. R. 5879

To provide protection for children affected by the immigration laws of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2014

Ms. ROYBAL-ALLARD introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide protection for children affected by the immigration laws of the United States, 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 or arrest by officials of the De-

1 partment of Homeland Security or cooperating enti-
2 ties.

3 (2) CHILD.—The term “child” means an indi-
4 vidual who has not attained 18 years of age.

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

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

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

15 (6) 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, in whole or in part, to hold in-
19 dividuals under the authority of the Director of U.S.
20 Immigration and Customs Enforcement, including
21 facilities that hold such individuals under a contract
22 or agreement with the Director.

23 (7) IMMIGRATION ENFORCEMENT ACTION.—The
24 term “immigration enforcement action” means the
25 apprehension of one or more individuals whom the

1 Department has reason to believe are removable
2 from the United States by the Secretary or a cooper-
3 ating entity.

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

8 (9) PARENT.—The term “parent” means a bio-
9 logical or adoptive parent of a child, whose parental
10 rights have not been relinquished or terminated
11 under State law or the law of a foreign country, or
12 a legal guardian under State law or the law of a for-
13 eign country.

14 (10) SECRETARY.—The term “Secretary”
15 means the Secretary of Homeland Security.

16 **SEC. 3. APPREHENSION PROCEDURES FOR IMMIGRATION**
17 **ENFORCEMENT-RELATED ACTIVITIES.**

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

21 (1) as soon as possible, but generally not later
22 than 2 hours after an immigration enforcement ac-
23 tion, inquire whether an individual is a parent or
24 primary caregiver of a child in the United States
25 and notify any such individual, in a language that

1 he or she understands, that he or she is entitled
2 to—

3 (A) the opportunity to make a minimum of
4 2 telephone calls to arrange for the care of such
5 child in the individual's absence; and

6 (B) contact information for—

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

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

15 (2) notify the child welfare agency with jurisdic-
16 tion over the child if the child's parent or primary
17 caregiver is unable to make care arrangements for
18 the child or if the child is in imminent risk of seri-
19 ous harm;

20 (3) ensure that personnel of the Department
21 and cooperating entities do not, absent medical ne-
22 cessity or extraordinary circumstances, interview in-
23 dividuals in the immediate presence of children over
24 the age of 2 unless the parent or primary caregiver
25 gives permission, or compel or request children to in-

1 interpret or translate for interviews of their parents or
2 of other individuals who are encountered as part of
3 an immigration enforcement action;

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

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

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

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

18 (B) absent medical necessity or extraor-
19 dinary circumstances is placed in a detention
20 facility either—

21 (i) proximate to the location of appre-
22 hension; or

23 (ii) proximate to the individual's ha-
24 bitual place of residence; and

1 (iii) absent medical necessity or ex-
2 traordinary circumstances, is not trans-
3 ferred from such facility unless necessary
4 to facilitate participation in child welfare
5 proceedings; and

6 (C) receives due consideration of the best
7 interests of such child in any decision or action
8 relating to his or her detention, release, or
9 transfer between detention facilities; and

10 (5) issue guidance prohibiting personnel of the
11 Department and cooperating entities from appre-
12 hending persons on the premises or in the immediate
13 vicinity of day care centers, head start centers,
14 schools, school bus stops, recreation centers, legal
15 service providers, courts, funeral homes, cemeteries,
16 colleges, victim services agencies, social service agen-
17 cies, hospitals, health care clinics, community cen-
18 ters, and places of worship, absent exceptional cir-
19 cumstances.

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

21 If the Secretary requests a State or local entity to hold
22 in custody an individual who the Department has reason
23 to believe is removable pending transfer of that individual
24 to the custody of the Secretary or to a detention facility,
25 the Secretary shall also request that the State or local en-

1 tity provide the individual the protections specified in
2 paragraphs (1) and (2) of subsection (a), if that individual
3 is found to be the parent or primary caregiver of a child
4 in the United States.

5 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
6 SERVED.—The provisions of this section shall not be con-
7 strued to impede, delay, or in any way limit the obligations
8 of the Secretary, the Attorney General, or the Secretary
9 of Health and Human Services under section 235 of the
10 William Wilberforce Trafficking Victims Protection Reau-
11 thorization Act of 2008 (8 U.S.C. 1232) or section 462
12 of the Homeland Security Act of 2002 (6 U.S.C. 279).

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

16 (a) IN GENERAL.—The Secretary shall ensure that
17 all detention facilities operated by or under agreement
18 with the Department implement procedures to ensure that
19 the best interest of the child, including a preference for
20 family unity wherever appropriate, can be considered in
21 any decision and action relating to the custody of children
22 whose parent, legal guardian, or primary caregiver is de-
23 tained as the result of an immigration enforcement action.

24 (b) DETENTION PROCEDURES.—At all detention fa-
25 cilities, the Secretary shall—

1 (1) prominently post in a manner accessible to
2 detainees and visitors and include in detainee hand-
3 books information on the protections of this Act as
4 well as information on potential eligibility for parole
5 or release;

6 (2) absent extraordinary circumstances, ensure
7 that individuals who are detained by the Department
8 and are parents of children in the United States
9 are—

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

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

15 (C) able to participate fully, and to the ex-
16 tent possible in-person, in all family court pro-
17 ceedings and any other proceedings that may
18 impact their right to custody of their children;

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

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

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

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

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

20 (3) where doing so would not impact public
21 safety or national security, facilitate the ability of
22 detained alien parents and primary caregivers to re-
23 unify with their children by sharing information re-
24 garding travel arrangements with their consulate,
25 children, child welfare agencies, or other caregivers

1 in advance of the detained alien individual's depar-
2 ture from the United States.

3 **SEC. 5. MEMORANDA OF UNDERSTANDING.**

4 The Secretary, in consultation with the Department
5 of Health and Human Services, shall develop and imple-
6 ment memoranda of understanding or protocols with child
7 welfare agencies and NGOs regarding the best ways to co-
8 operate and facilitate ongoing communication between all
9 relevant entities in cases involving a child whose parent,
10 legal guardian, or primary caregiver has been apprehended
11 or detained in an immigration enforcement action to pro-
12 tect the best interests of the child, including a preference
13 for family unity whenever appropriate.

14 **SEC. 6. MANDATORY TRAINING.**

15 The Secretary, in consultation with the Secretary of
16 Health and Human Services, the Secretary of State, the
17 Attorney General, and independent child welfare and fam-
18 ily law experts, shall develop and provide training on the
19 protections required under sections 3 and 4 to all per-
20 sonnel of the Department, cooperating entities, and deten-
21 tion facilities operated by or under agreement with the De-
22 partment who regularly engage in immigration enforce-
23 ment actions and in the course of such actions come into
24 contact with individuals who are parents or primary care-
25 givers of children in the United States.

1 **SEC. 7. RULEMAKING.**

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

5 **SEC. 8. SEVERABILITY.**

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

13 **SEC. 9. REPORT ON PROTECTIONS FOR CHILDREN IM-**
14 **PACTED BY IMMIGRATION ENFORCEMENT**
15 **ACTIVITIES.**

16 (a) **REQUIREMENT FOR REPORT.**—Not later than 1
17 year after the date of the enactment of this Act, and annu-
18 ally thereafter, the Secretary shall submit to Congress a
19 report that describes the impact of immigration enforce-
20 ment activities on children, including children who are citi-
21 zens of the United States.

22 (b) **CONTENT.**—The report submitted under sub-
23 section (a) shall include for the previous 1-year period an
24 assessment of—

1 (1) the number of individuals removed from the
2 United States who are the parent of a child who is
3 a citizen of the United States;

4 (2) the number of occasions in which both par-
5 ents or the primary caretaker of such a child was re-
6 moved from the United States; and

7 (3) the number of children who are citizens of
8 the United States who leave the United States with
9 parents who are removed.

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