

116TH CONGRESS
1ST SESSION

H. R. 3451

To protect children affected by immigration enforcement actions.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2019

Ms. ROYBAL-ALLARD (for herself, Ms. VELÁZQUEZ, Ms. TITUS, Mr. PRICE of North Carolina, and Mr. ESPAILLAT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect children affected by immigration enforcement actions.

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 of
6 2019” or the “HELP Separated Children Act of 2019”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) APPREHENSION.—The term “apprehension”
2 means the detention or arrest by officials of the De-
3 partment or cooperating entities.

4 (2) CHILD.—The term “child” means an indi-
5 vidual who is younger than 18 years of age.

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

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

16 (6) DETENTION FACILITY.—The term “deten-
17 tion facility” means a Federal, State, or local gov-
18 ernment facility, or a privately owned and operated
19 facility, that is used, in whole or in part, to hold in-
20 dividuals under the authority of the Director of U.S.
21 Immigration and Customs Enforcement, including
22 facilities that hold such individuals under a contract
23 or agreement with the Director.

1 (7) IMMIGRATION ENFORCEMENT ACTION.—The
 2 term “immigration enforcement action” means the
 3 apprehension of 1 or more individuals whom—

4 (A) the Department has reason to believe
 5 are removable from the United States by the
 6 Secretary or a cooperating entity; and

7 (B) are apprehended by immigrations and
 8 customs enforcement or a cooperating entity.

9 (8) PARENT.—The term “parent” means—

10 (A) a biological or adoptive parent of a
 11 child, whose parental rights have not been relin-
 12 quished or terminated under State law or the
 13 law of a foreign country; or

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

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

18 **SEC. 3. APPREHENSION PROCEDURES FOR IMMIGRATION**
 19 **ENFORCEMENT-RELATED ACTIVITIES.**

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

23 (1) as soon as possible, but generally not later
 24 than 2 hours after an immigration enforcement ac-
 25 tion, inquire whether an individual is a parent or

1 primary caregiver of a child in the United States
2 and provide any such individuals with—

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—

17 (A) the child's parent or primary caregiver
18 is unable to make care arrangements for the
19 child; or

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

22 (3) ensure that personnel of the Department
23 and cooperating entities do not, absent medical ne-
24 cessity or extraordinary circumstances—

1 (A) interview individuals in the immediate
2 presence of children; or

3 (B) compel or request children to interpret
4 or translate for interviews of their parents or of
5 other individuals who are encountered as part
6 of an immigration enforcement action;

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

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

14 (B) to reassure their child;

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

18 (D) to communicate known medical ill-
19 nesses, including chronic illnesses, to the De-
20 partment prior to separation;

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

23 (A) absent medical necessity or extraor-
24 dinary circumstances, is not transferred from

1 his or her area of apprehension until the indi-
2 vidual—

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

5 (ii) if such arrangements are unavail-
6 able or the individual is unable to make
7 such arrangements, is informed of the care
8 arrangements made for the child and of a
9 means to maintain communication, includ-
10 ing telephonic and video conferencing com-
11 munication, with the child;

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

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

17 (ii) proximate to the child's habitual
18 place of residence; and

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

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

24 If the Secretary requests a State or local entity to hold
25 in custody an individual whom the Department has reason

1 to believe is removable pending transfer of such individual
2 to the custody of the Secretary or to a detention facility,
3 the Secretary shall request that the State or local entity
4 provide the individual the protections specified in para-
5 graphs (1) and (2) of subsection (a) if such individual is
6 the parent or primary caregiver of a child in the United
7 States.

8 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
9 SERVED.—Nothing in this section may be construed to im-
10 pede, delay, or limit the obligations of the Secretary, the
11 Attorney General, or the Secretary of Health and Human
12 Services under—

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

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

18 (3) the Stipulated Settlement Agreement filed
19 in the United States District Court for the Central
20 District of California on January 17, 1997 (CV 85–
21 4544–RJK) (commonly known as the “Flores Settle-
22 ment Agreement”).

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

4 At all detention facilities, the Secretary shall—

5 (1) prominently post, in a manner accessible to
6 detainees and visitors, and include in detainee hand-
7 books—

8 (A) information regarding the protections
9 required under this Act; and

10 (B) information regarding potential eligi-
11 bility for parole or release;

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

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

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

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

23 (i) in all family court proceedings; and

24 (ii) in any other proceedings that may
25 impact their right to custody of their chil-
26 dren;

1 (D) granted free and confidential telephone
2 calls to relevant child welfare agencies and fam-
3 ily courts as often as is necessary to ensure
4 that the best interest of their children, includ-
5 ing a preference for family unity whenever ap-
6 propriate, can be considered in child welfare
7 agency or family court proceedings;

8 (E) able to fully comply with all family
9 court or child welfare agency orders impacting
10 custody of their children;

11 (F) provided access to United States pass-
12 port applications or other relevant travel docu-
13 ment applications for the purpose of obtaining
14 travel documents for their children;

15 (G) afforded timely access to a notary pub-
16 lic for the purpose of applying for a passport
17 for their children or executing guardianship or
18 other agreements to ensure the safety of their
19 children; and

20 (H) granted adequate time and oppor-
21 tunity before removal to obtain passports,
22 apostilled birth certificates, travel documents,
23 and other necessary records on behalf of their
24 children if such children will accompany them

1 on their return to their country of origin or join
2 them in their country of origin; and
3 (3) if doing so would not impact public safety
4 or national security, facilitate the ability of detained
5 alien parents and primary caregivers to share infor-
6 mation regarding travel arrangements with their
7 consulate, children, child welfare agencies, or other
8 caregivers in advance of the detained alien individ-
9 ual's departure from the United States.

10 **SEC. 5. MANDATORY TRAINING.**

11 The Secretary, in consultation with the Secretary of
12 Health and Human Services and independent child welfare
13 and family law experts, shall develop and provide training
14 on the protections required under sections 3 and 4 to all
15 personnel of the Department, cooperating entities, and de-
16 tention facilities operated by or under agreement with the
17 Department who—

18 (1) regularly engage in immigration enforce-
19 ment actions, including detention; and

20 (2) in the course of such actions, come into con-
21 tact with individuals who are parents or primary
22 caregivers of children in the United States.

1 **SEC. 6. 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.

5 **SEC. 7. SEVERABILITY.**

6 If any provision of this Act, any amendment made
7 by this Act, or the application of any such provision or
8 amendment to any person or circumstance is held to be
9 unconstitutional, the remaining provisions of this Act, the
10 remaining amendments made by this Act, and the applica-
11 tion of such provisions and amendments to any person or
12 circumstance shall not be affected by such holding.

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