

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for enhanced protections for vulnerable unaccompanied alien children and female detainees.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. HIRONO to the amendment (No. 22) proposed by Ms. HIRONO

Viz:

1 In lieu of the matter proposed to be inserted, insert
2 the following:

3 **SEC. 3611. PROTECTING CHILD TRAFFICKING VICTIMS.**

4 (a) SHORT TITLE.—This section may be cited as the
5 “Child Trafficking Victims Protection Act”.

6 (b) DEFINED TERM.—In this section, the term “un-
7 accompanied alien children” has the meaning given such
8 term in section 462 of the Homeland Security Act of 2002
9 (6 U.S.C. 279).

10 ~~(c) MANDATORY TRAINING.—The Secretary, in con-~~
11 ~~sultation with the Secretary of Health and Human Serv-~~

1 ices and independent child welfare experts, shall mandate
2 appropriate training of all personnel who come into con-
3 tact with unaccompanied alien children in the relevant
4 legal authorities, policies, practices, and procedures per-
5 taining to this vulnerable population.

6 ^c~~(a)~~ CARE AND TRANSPORTATION.—Notwithstanding
7 any other provision of law, the Secretary shall ensure that
8 all unaccompanied alien children who will undergo any im-
9 migration proceedings before the Department or the Exec-
10 utive Office for Immigration Review are duly transported
11 and placed in the care and legal and physical custody of
12 the Office of Refugee Resettlement not later than 72
13 hours after their apprehension absent exceptional cir-
14 cumstances, including a natural disaster or comparable
15 emergency beyond the control of the Secretary or the Of-
16 fice of Refugee Resettlement. The Secretary, to the extent
17 practicable, shall ensure that female officers are continu-
18 ously present during the transfer and transport of female
19 detainees who are in the custody of the Department.

20 ^d~~(e)~~ QUALIFIED RESOURCES.—

21 (1) IN GENERAL.—The Secretary shall provide
22 adequately trained and qualified staff and resources,
23 including the accommodation of child welfare offi-
24 cials, in accordance with subsection (f), at U.S. Cus-

1 toms and Border Protection ports of entry and sta-
2 tions.

3 (2) CHILD WELFARE PROFESSIONALS.—The
4 Secretary of Health and Human Services, in con-
5 sultation with the Secretary, shall hire, on a full- or
6 part-time basis, child welfare professionals who will
7 provide assistance, either in person or by other ap-
8 propriate methods of communication, in not fewer
9 than 7 of the U.S. Customs and Border Protection
10 offices or stations with the largest number of unac-
11 panied alien child apprehensions in the previous
12 fiscal year.

13 ^e
~~(f)~~ CHILD WELFARE PROFESSIONALS.—

14 (1) IN GENERAL.—The Secretary, in consulta-
15 tion with the Secretary of Health and Human Serv-
16 ices, shall ensure that qualified child welfare profes-
17 sionals with expertise in culturally competent, trau-
18 ma-centered, and developmentally appropriate inter-
19 viewing skills are available at each major port of
20 entry described in subsection (e).

21 (2) DUTIES.—Child welfare professionals de-
22 scribed in paragraph (1) shall—

23 (A) develop guidelines for treatment of un-
24 accompanied alien children in the custody of the
25 Department;

1 (B) conduct screening of all unaccom-
2 panied alien children in accordance with section
3 235(a)(4) of the William Wilberforce Traf-
4 ficking Victims Protection Reauthorization Act
5 of 2008 (8 U.S.C. 1232(a)(4));

6 (C) notify the Department and the Office
7 of Refugee Resettlement of children that poten-
8 tially meet the notification and transfer require-
9 ments set forth in subsections (a) and (b) of
10 section 235 of such Act (8 U.S.C. 1232); and

11 (D) interview adult relatives accompanying
12 unaccompanied alien children; and

13 (E) provide an initial family relationship
14 and trafficking assessment and recommenda-
15 tions regarding unaccompanied alien children's
16 initial placements to the Office of Refugee Re-
17 settlement, which shall be conducted in accord-
18 ance with the time frame set forth in sub-
19 sections (a)(4) and (b)(3) of section 235 of
20 such Act (8 U.S.C. 1232); and

21 (F) ensure that each unaccompanied alien
22 child in the custody of U.S. Customs and Bor-
23 der Protection—

24 (i) receives emergency medical care
25 when necessary;

1 (ii) receives emergency medical and
2 mental health care that complies with the
3 standards adopted pursuant to section 8(c)
4 of the Prison Rape Elimination Act of
5 2003 (42 U.S.C. 15607(c)) whenever nec-
6 essary, including in cases in which a child
7 is at risk to harm himself, herself, or oth-
8 ers;

9 (iii) is provided with climate appro-
10 priate clothing, shoes, basic personal hy-
11 giene and sanitary products, a pillow, lin-
12 ens, and sufficient blankets to rest at a
13 comfortable temperature;

14 (iv) receives adequate nutrition;

15 (v) enjoys a safe and sanitary living
16 environment;

17 (vi) has access to daily recreational
18 programs and activities if held for a period
19 longer than 24 hours;

20 (vii) has access to legal services and
21 consular officials; and

22 (viii) is permitted to make supervised
23 phone calls to family members.

24 (3) FINAL DETERMINATIONS.—The Office of
25 Refugee Resettlement in accordance with applicable

1 policies and procedures for sponsors, shall submit
2 final determinations on family relationships to the
3 Secretary, who shall consider such adult relatives for
4 community-based support alternatives to detention.

5 (4) REPORT.—Not later than 18 months after
6 the date of the enactment of this Act, and annually
7 thereafter, the Secretary shall submit a report to
8 Congress that—

9 (A) describes the screening procedures
10 used by the child welfare professionals to screen
11 unaccompanied alien children;

12 (B) assesses the effectiveness of such
13 screenings; and

14 (C) includes data on all unaccompanied
15 alien children who were screened by child wel-
16 fare professionals;

17 ^f~~(g)~~ IMMEDIATE NOTIFICATION.—The Secretary shall
18 notify the Office of Refugee Resettlement of an unaccom-
19 panied alien child in the custody of the Department as
20 soon as practicable, but ^{generally} not later than 48 hours after the
21 Department encounters the child, to effectively and effi-
22 ciently coordinate the child's transfer to and placement
23 with the Office of Refugee Resettlement.

24 ⁹~~(h)~~ NOTICE OF RIGHTS AND RIGHT TO ACCESS TO
25 COUNSEL.—

1 (1) IN GENERAL.—The Secretary shall ensure
2 that all unaccompanied alien children, upon appre-
3 hension, are provided—

4 (A) an interview and screening with a child
5 welfare professional described in subsection
6 (f)(1); and

7 (B) an orientation and oral and written
8 notice of their rights under the Immigration
9 and Nationality Act, including—

10 (i) their right to relief from removal;

11 (ii) their right to confer with counsel
12 (as guaranteed under section 292 of such
13 Act (8 U.S.C. 1362)), family, or friends
14 while in the temporary custody of the De-
15 partment; and

16 (iii) relevant complaint mechanisms to
17 report any abuse or misconduct they may
18 have experienced.

19 (2) LANGUAGES.—The Secretary shall ensure
20 that—

21 (A) the video orientation and written no-
22 tice of rights described in paragraph (1) is
23 available in English and in the 5 most common
24 native languages spoken by the unaccompanied

1 children held in custody at that location during
2 the preceding fiscal year; and

3 (B) the oral notice of rights is available in
4 English and in the most common native lan-
5 guage spoken by the unaccompanied children
6 held in custody at that location during the pre-
7 ceding fiscal year.

8 ^b (S) CONFIDENTIALITY.—The Secretary of Health and
9 Human Services shall maintain the privacy and confiden-
10 tiality of all information gathered in the course of pro-
11 viding care, custody, placement and follow-up services to
12 unaccompanied alien children, consistent with the best in-
13 terest of the unaccompanied alien child, by not disclosing
14 such information to other government agencies or non-
15 parental third parties unless such disclosure is—

16 (1) recorded in writing and placed in the child's
17 file;

18 (2) in the child's best interest; and

19 (3)(A) authorized by the child or by an ap-
20 proved sponsor in accordance with section 235 of the
21 William Wilberforce Trafficking Victims Protection
22 Reauthorization Act of 2008 (8 U.S.C. 1232) and
23 the Health Insurance Portability and Accountability
24 Act (Public Law 104–191); or

1 (B) provided to a duly recognized law enforce-
2 ment entity to prevent imminent and serious harm
3 to another individual.

4 §) OTHER POLICIES AND PROCEDURES.—The Sec-
5 retary shall adopt fundamental child protection policies
6 and procedures—

7 (1) for reliable age determinations of children,
8 developed in consultation with medical and child wel-
9 fare experts, which exclude the use of fallible foren-
10 sic testing of children's bone and teeth;

11 (2) to utilize all legal authorities to defer the
12 child's removal if the child faces a risk of life-threat-
13 ening harm upon return including due to the child's
14 mental health or medical condition; and

15 (3) to ensure, in accordance with the Juvenile
16 Justice and Delinquency Prevention Act of 1974 (42
17 U.S.C. 5601 et seq.), that unaccompanied alien chil-
18 dren, while in detention, are—

19 (A) physically separated from any adult
20 who is not an immediate family member; and

21 (B) separated from—

22 (i) immigration detainees and inmates
23 with criminal convictions;

24 (ii) pretrial inmates facing criminal
25 prosecution; and

1 (iii) inmates exhibiting violent behav-
2 ior.

3 j
(k) REPATRIATION AND REINTEGRATION PRO-
4 GRAM.—

5 (1) IN GENERAL.—The Administrator of the
6 United States Agency for International Develop-
7 ment, in conjunction with the Secretary, the Sec-
8 retary of Health and Human Services, the Attorney
9 General, international organizations, and nongovern-
10 mental organizations in the United States with ex-
11 pertise in repatriation and reintegration, shall create
12 a multi-year program to develop and implement best
13 practices and sustainable programs in the United
14 States and within the country of return to ensure
15 the safe and sustainable repatriation and reintegra-
16 tion of unaccompanied alien children into their coun-
17 try of nationality or of last habitual residence, in-
18 cluding placement with their families, legal guard-
19 ians, or other sponsoring agencies.

20 (2) REPORT ON REPATRIATION AND RE-
21 INTEGRATION OF UNACCOMPANIED ALIEN CHIL-
22 DREN.—Not later than 18 months after the date of
23 the enactment of this Act, and annually thereafter,
24 the Administrator of the Agency for International
25 Development shall submit a substantive report to the

1 Committee on the Judiciary of the Senate and the
2 Committee on the Judiciary of the House of Rep-
3 resentatives on efforts to improve repatriation and
4 reintegration programs for unaccompanied alien chil-
5 dren.

6 (1) TRANSFER OF FUNDS.—

7 (1) AUTHORIZATION.—The Secretary, in ac-
8 cordance with a written agreement between the Sec-
9 retary and the Secretary of Health and Human
10 Services, shall transfer such amounts as may be nec-
11 essary to carry out the duties described in subsection
12 (f)(2) from amounts appropriated for U.S. Customs
13 and Border Protection to the Department of Health
14 and Human Services.

15 (2) REPORT.—Not later than 15 days before
16 any proposed transfer under paragraph (1), the Sec-
17 retary of Health and Human Services, in consulta-
18 tion with the Secretary, shall submit a detailed ex-
19 penditure plan that describes the actions proposed to
20 be taken with amounts transferred under such para-
21 graph to—

22 (A) the Committee on Appropriations of
23 the Senate; and

24 (B) the Committee on Appropriations of
25 the House of Representatives.

1 **SEC. 3612. BEST INTERESTS OF THE CHILD.**

2 (a) IN GENERAL.—In all procedures and decisions
3 concerning unaccompanied immigrant children that are
4 made by Federal agencies, private agencies subcontracted
5 by the Federal Government, and Federal courts of law,
6 pursuant to the Immigration and Nationality Act (8
7 U.S.C. 1101 et seq.), and regulations implementing such
8 Act, the best interests of the child shall be a primary con-
9 sideration.

10 (b) JUVENILE COURT DETERMINATIONS.—Best in-
11 terests determinations made by a juvenile court (as de-
12 fined in section 204.11(a) of title 8, Code of Federal Regu-
13 lations) shall be conclusive in assessing the best interests
14 of the child under this section.

15 (c) FACTORS.—In assessing the best interests of the
16 child, the entities referred to in subsection (a) shall con-
17 sider, in the context of the child's age and developmental
18 needs—

19 (1) the views of the minor;

20 (2) safety and security considerations of the
21 child;

22 (3) family unity;

23 (4) the minor's well-being and development,
24 taking into particular consideration the minor's eth-
25 nic, religious, cultural, and linguistic background;

26 and

1 ~~(5) access to education.~~

2 ²
2 **SEC. 361~~8~~. RULE OF CONSTRUCTION.**

3 Nothing in this subtitle may be construed to preempt
4 or alter any other rights or remedies, including any causes
5 of action, available under any Federal or State law.

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6 **SEC. 361~~4~~. REGULATIONS.**