

112TH CONGRESS
1ST SESSION

S. 1399

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

IN THE SENATE OF THE UNITED STATES

JULY 21, 2011

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

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:

1 (1) APPREHENSION.—The term “apprehension”
2 means the detention, arrest, or custody by officials
3 of the Department or cooperating entities.

4 (2) CHILD.—Except as otherwise specifically
5 provided, the term “child” has the meaning given to
6 the term in section 101(b)(1) of the Immigration
7 and Nationality Act (8 U.S.C. 1101(b)(1)).

8 (3) CHILD WELFARE AGENCY.—The term
9 “child welfare agency” means the State or local
10 agency responsible for child welfare services under
11 subtitles B and E of title IV of the Social Security
12 Act (42 U.S.C. 601 et seq.).

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

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

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

24 (7) IMMIGRATION ENFORCEMENT ACTION.—The
25 term “immigration enforcement action” means the

1 apprehension of, detention of, or request for or
2 issuance of a detainer for, 1 or more individuals for
3 suspected or confirmed violations of the Immigration
4 and Nationality Act (8 U.S.C. 1101 et seq.) by the
5 Secretary or a cooperating entity.

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

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

14 (10) SECRETARY.—Except as otherwise specifi-
15 cally provided, the term “Secretary” means the Sec-
16 retary of the Department.

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

19 (a) NOTIFICATION.—

20 (1) ADVANCE NOTIFICATION.—Subject to para-
21 graph (2), when conducting any immigration en-
22 forcement action, the Secretary and cooperating en-
23 tities shall notify the Governor of the State, the local
24 child welfare agency, and relevant State and local
25 law enforcement before commencing the action, or,

1 if advance notification is not possible, immediately
2 after commencing such action, of—

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

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

9 (2) HOURS OF NOTIFICATION.—To the extent
10 possible, the advance notification required by para-
11 graph (1) should occur during business hours and
12 allow the notified entities sufficient time to identify
13 resources to conduct the interviews described in sub-
14 section (b)(1).

15 (3) OTHER NOTIFICATION.—When conducting
16 any immigration action, the Secretary and cooper-
17 ating entities shall notify the relevant local edu-
18 cational agency and local NGOs of the information
19 described in paragraph (1) immediately after com-
20 mencing the action.

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

24 (1) as soon as possible and not later than 6
25 hours after an immigration enforcement action, pro-

1 vide licensed social workers or case managers em-
2 ployed or contracted by the child welfare agency or
3 local NGOs with confidential access to screen and
4 interview individuals apprehended in such immigra-
5 tion enforcement action to assist the Secretary or co-
6 operating entity in determining if such individuals
7 are parents, legal guardians, or primary caregivers
8 of a child in the United States;

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

14 (A) free, confidential telephone calls, in-
15 cluding calls to child welfare agencies, attor-
16 neys, and legal services providers, to arrange
17 for the care of children or wards, unless the
18 Secretary has reasonable grounds to believe
19 that providing confidential phone calls to the in-
20 dividual would endanger public safety or na-
21 tional security; and

22 (B) contact information for—

23 (i) child welfare agencies in all 50
24 States, the District of Columbia, all United

1 States territories, counties, and local juris-
2 dictions; and

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

8 (3) ensure that personnel of the Department
9 and cooperating entities do not—

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

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

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

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

23 (B) is not transferred from his or her ini-
24 tial detention facility or to the custody of the
25 Secretary until the individual—

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) may not be disclosed to Federal, State, or
14 local government entities or to any person, except
15 pursuant to written authorization from the indi-
16 vidual or his or her legal counsel.

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

20 (A) submit a recommendation to the Sec-
21 retary or a cooperating entity regarding wheth-
22 er an apprehended individual is a parent, legal
23 guardian, or primary caregiver who is eligible
24 for the protections provided under this Act; and

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

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

9 (a) IN GENERAL.—The Secretary shall ensure that
 10 all detention facilities operated by or under agreement
 11 with the Department implement procedures to ensure that
 12 the best interest of the child, including a preference for
 13 family unity wherever appropriate, is considered in any de-
 14 cision and action relating to the custody of children whose
 15 parent, legal guardian, or primary caregiver is detained
 16 as the result of an immigration enforcement action.

17 (b) ACCESS TO CHILDREN, STATE AND LOCAL
 18 COURTS, CHILD WELFARE AGENCIES, AND CONSULAR
 19 OFFICIALS.—At all detention facilities operated by, or
 20 under agreement with, the Department, the Secretary
 21 shall—

22 (1) prominently post in a manner accessible to
 23 detainees and visitors and include in detainee hand-
 24 books information on the protections of this Act as

1 well as information on potential eligibility for parole
2 or release;

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

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

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

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

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

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

1 (E) granted free and confidential telephone
2 calls to child welfare agencies and family courts
3 as often as is necessary to ensure that the best
4 interest of the child, including a preference for
5 family unity whenever appropriate, can be con-
6 sidered;

7 (F) granted free and confidential telephone
8 calls and confidential in-person visits with at-
9 torneys, legal representatives, and consular offi-
10 cials;

11 (G) provided United States passport appli-
12 cations for the purpose of obtaining travel docu-
13 ments for their children or wards;

14 (H) granted adequate time before removal
15 to obtain passports and other necessary travel
16 documents on behalf of their children or wards
17 if such children or wards will accompany them
18 on their return to their country of origin or join
19 them in their country of origin; and

20 (I) provided with the access necessary to
21 obtain birth records or other documents re-
22 quired to obtain passports for their children or
23 wards; and

24 (4) facilitate the ability of detained parents,
25 legal guardians, and primary caregivers to share in-

1 formation regarding travel arrangements with their
2 children or wards, child welfare agencies, or other
3 caregivers well in advance of the detained individ-
4 ual's departure from the United States.

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

6 The Secretary shall develop and implement memo-
7 randa of understanding or protocols with child welfare
8 agencies and NGOs regarding the best ways to cooperate
9 and facilitate ongoing communication between all relevant
10 entities in cases involving a child whose parent, legal
11 guardian, or primary caregiver has been apprehended or
12 detained in an immigration enforcement action to protect
13 the best interests of the child, including a preference for
14 family unity whenever appropriate.

15 **SEC. 6. MANDATORY TRAINING.**

16 The Secretary, in consultation with the Secretary of
17 Health and Human Services and independent child welfare
18 experts, shall require and provide in-person training on
19 the protections required under sections 3 and 4 to all per-
20 sonnel of the Department and of States and local entities
21 acting under agreement with the Department who regu-
22 larly come into contact with children or parents in the
23 course of conducting immigration enforcement actions.

1 **SEC. 7. RULEMAKING.**

2 Not later than 120 days after the date of the enact-
3 ment of this Act, the Secretary shall promulgate regula-
4 tions to implement 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;

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;

10 (4) the number of such children who remained
11 in the United States after the removal of a parent;

12 (5) the age of each such child at the time a
13 parent is removed; and

14 (6) the number of instances in which such a
15 child whose parent is apprehended, detained, or re-
16 moved is referred to the local child welfare agency
17 by officers or employees of the Department.

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