



Summary of S. 2561

Protection of Children Act of 2016

February 2016

Senators Jeff Sessions (R-AL) and Ron Johnson (R-WI) introduced the “Protection of Children Act” to ensure the prompt return of unaccompanied alien minors (UACs) who illegally cross the border. The companion bill in the House (H.R. 1149) was introduced by Rep. John Carter (R-TX) in 2015. These bills close the loophole in the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) that prevents the quick return of UACs from Central America.

The bill establishes the same removal process for all UACs, regardless of their country of origin. Section 2 amends TVPRA Section 235(a) to establish the same removal process for all UACs, regardless of their country of origin, when the DHS Secretary determines they are not victims of trafficking nor have a credible fear of persecution from their home country. (p. 2) The bill also authorizes the Secretary of State to negotiate agreements with all countries for the return of UACs. (p. 3)

Why this Bill is Necessary.

Under current law, UACs from Mexico and Canada (contiguous countries) can be promptly returned home while UACs from the rest of the world are given additional layers of process. This loophole in the TVPRA, combined with President Obama’s refusal to enforce our immigration laws, has caused a surge of UACs from Central America to unlawfully cross the Southern border. Once here, they are given a court date several years down the road and then released into the interior of the country. Fully aware that the Obama administration will not track them down, nearly 90% failing to appear at their immigration court hearings.

The bill requires the prompt return of all UACs who are not victims of trafficking. Section 2 amends TVPRA Section 235(a) by requiring (“shall”) immigration officers to place UACs in removal proceedings rather than having the discretion (“may”) to return UACs. (pp. 2-3) The bill

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establishes the requirement that UACs appear before an immigration judge within 14 days after being screened. (p. 4)

The bill eliminates the requirement that all UACs be transferred to HHS custody. Section 2 amends TVPRA Section 235(b) to establish different federal custody rules depending on whether the UAC is a legitimate victim of trafficking. If the UAC is a legitimate victim of trafficking, DHS is required to transfer the minor to Department of Health and Human Services (HHS) custody within 30 days after making the eligibility determination. If the UAC is not a victim of trafficking, DHS “may” transfer custody of the minor to HHS but is not required to do so. (pp. 4-5)

The bill requires the collection of background information on individuals who obtain custody of UACs within the U.S. Section 2 amends TVPRA Section 235(c) to require the collection of the following information before the UAC is placed in the custody of an individual: (1) name of the individual; (2) social security number of the individual; (3) date of birth of the individual; (4) location of residence where the UAC will be placed; (5) individual’s immigration status, if known; and (6) contact information. (pp. 5-6) For UACs placed into custody within the U.S. between June 15, 2012 and the enactment of this bill, HHS must collect this information and provide it to DHS within 90 days. (p. 6) The bill also requires the DHS Secretary to investigate the immigration status of all individuals whose status is unknown and initiate removal proceedings for all illegal aliens who have obtained custody of UACs. (pp. 6-7)

The bill prohibits the use of taxpayer funds to pay for attorneys for UACs. Section 2 amends TVPRA Section 235(c) to prohibit the use of federal taxpayer dollars to provide attorneys to represent UACs. This section clarifies that the UACs who are legitimate victims of trafficking are only entitled to have “access to counsel” (“at no expense to the Government”) rather than guaranteed counsel to represent them. (p. 7)

The bill closes the loophole that allows UACs to have two asylum hearings instead of one. Section 4 strikes INA Section 208(b)(3)(C) which granted asylum officers initial jurisdiction over asylum claims filed by UACs. (p. 8)

The bill closes the loophole for Special Immigrant Juvenile status. Section 3 amends INA Section 101(a)(27)(J)(i) to require that a child be abandoned by both parents to receive Special Immigrant Juvenile status rather than abandoned by one parent (and potentially living with the other). (p. 8)

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