

## S 1129

Unaccompanied Alien Child Protection Act of 2004

**Congress:** 108 (2003–2005, Ended)

**Chamber:** Senate

**Policy Area:** Immigration

**Introduced:** May 22, 2003

**Current Status:** Referred to the House Committee on the Judiciary.

**Latest Action:** Referred to the House Committee on the Judiciary. (Nov 16, 2004)

**Official Text:** <https://www.congress.gov/bill/108th-congress/senate-bill/1129>

### Sponsor

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**Name:** Sen. Feinstein, Dianne [D-CA]

**Party:** Democratic • **State:** CA • **Chamber:** Senate

## Cosponsors (35 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Brownback, Sam [R-KS]	R · KS		May 22, 2003
Sen. Cantwell, Maria [D-WA]	D · WA		May 22, 2003
Sen. DeWine, Mike [R-OH]	R · OH		May 22, 2003
Sen. Feingold, Russell D. [D-WI]	D · WI		May 22, 2003
Sen. Kennedy, Edward M. [D-MA]	D · MA		May 22, 2003
Sen. Lautenberg, Frank R. [D-NJ]	D · NJ		May 22, 2003
Sen. Voinovich, George V. [R-OH]	R · OH		May 22, 2003
Sen. Landrieu, Mary L. [D-LA]	D · LA		Jun 19, 2003
Sen. Leahy, Patrick J. [D-VT]	D · VT		Jun 19, 2003
Sen. Clinton, Hillary Rodham [D-NY]	D · NY		Jun 23, 2003
Sen. Specter, Arlen [R-PA]	R · PA		Jun 23, 2003
Sen. Edwards, John [D-NC]	D · NC		Jun 24, 2003
Sen. Bingaman, Jeff [D-NM]	D · NM		Jun 25, 2003
Sen. Kerry, John F. [D-MA]	D · MA		Jun 26, 2003
Sen. Murray, Patty [D-WA]	D · WA		Jul 15, 2003
Sen. Durbin, Richard J. [D-IL]	D · IL		Jul 30, 2003
Sen. Collins, Susan M. [R-ME]	R · ME		Sep 3, 2003
Sen. Johnson, Tim [D-SD]	D · SD		Sep 17, 2003
Sen. Kohl, Herb [D-WI]	D · WI		Nov 24, 2003
Sen. Sarbanes, Paul S. [D-MD]	D · MD		Feb 27, 2004
Sen. Schumer, Charles E. [D-NY]	D · NY		Mar 1, 2004
Sen. Chafee, Lincoln [R-RI]	R · RI		Mar 2, 2004
Sen. Mikulski, Barbara A. [D-MD]	D · MD		Mar 24, 2004
Sen. Graham, Bob [D-FL]	D · FL		Mar 30, 2004
Sen. Breaux, John B. [D-LA]	D · LA		Apr 5, 2004
Sen. Corzine, Jon S. [D-NJ]	D · NJ		Apr 19, 2004
Sen. Dodd, Christopher J. [D-CT]	D · CT		Jun 14, 2004
Sen. Levin, Carl [D-MI]	D · MI		Jun 16, 2004
Sen. Hagel, Chuck [R-NE]	R · NE		Jun 21, 2004
Sen. Inouye, Daniel K. [D-HI]	D · HI		Jun 23, 2004
Sen. Stevens, Ted [R-AK]	R · AK		Jun 24, 2004
Sen. McCain, John [R-AZ]	R · AZ		Jun 25, 2004
Sen. Murkowski, Lisa [R-AK]	R · AK		Jun 25, 2004
Sen. Akaka, Daniel K. [D-HI]	D · HI		Jul 6, 2004
Sen. Jeffords, James M. [I-VT]	I · VT		Jul 16, 2004

## Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	Senate	Reported By	Jun 3, 2004
Judiciary Committee	House	Referred To	Nov 16, 2004

## Subjects & Policy Tags

Policy Area:

Immigration

## Related Bills

Bill	Relationship	Last Action
108 HR 3361	Related bill	<b>Dec 10, 2003:</b> Referred to the Subcommittee on Immigration, Border Security, and Claims.

Unaccompanied Alien Child Protection Act of 2004 - **Title I: Custody, Release, Family Reunification, and Detention** - (Sec. 101) Addresses the care and custody of unaccompanied alien children (UACs), defined as children under the age of 18 with no lawful immigration status and no parent or legal guardian in the United States who is available to provide care and physical custody.

Directs immigration officers who find UACs at U.S. land borders or ports of entry to permit them to withdraw their applications for admission and return to their country of nationality or last habitual residence if it is determined on a case-by-case basis that such UACs: (1) are nationals or habitual residents of contiguous countries that have an agreement with the United States providing for their safe return and orderly repatriation; (2) do not have a fear of persecution upon their return; (3) would not be endangered upon their return; and (4) are able to make an independent decision to withdraw their application for admission. States that such UACs shall have the right to consult with a consular officer prior to repatriation and with the Office of Refugee Resettlement (the Office) at the Department of Health and Human Services.

Gives the Office jurisdiction over the care and custody of all other UACs including trafficking victims, except those charged with or convicted of felonies (excluding offenses proscribed by the Immigration and Nationality Act) or who threaten national security, whose custody and care is vested in the Directorate of Border and Transportation Security (the Directorate) at the Department of Homeland Security (DHS).

Requires the Secretary of Homeland Security (the Secretary) to notify the Office promptly of the apprehension or discovery of UACs, any claim by an alien in the Directorate's custody that such alien is under the age of 18, or any suspicion that such alien is under the age of 18.

Provides for the prompt transfer of UACs between the Office and the Directorate according to their jurisdiction.

(Sec. 102) Specifies the following order of preference for placing UACs, subject to the discretion of the Director of the Office (the Director) and a suitability assessment by the State of the child's proposed residence or a voluntary agency contracted with the Office: (1) parents; (2) legal guardians; (3) adult relatives; (4) individuals or entities designated by parents or legal guardians; (5) State-licensed juvenile shelters, group homes, or foster care programs; or (6) qualified adults or entities seeking custody of the child when there is no other likely alternative to long-term detention and family reunification is not reasonable.

Requires the Director to assess the suitability of placing UACs with a parent or legal guardian who is seeking custody subsequent to placement with other persons or entities and to make a determination on placement within 30 days.

Requires the Director to establish policies and programs, including witness protection programs, to ensure that UACs are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage them in criminal, harmful, or exploitative activity. Requires officers or employees of the DHS to report persons suspected of such activity to Federal or State prosecutors and, if the person is an attorney, to the appropriate State bar association.

Authorizes the Director to make grants to, and enter into contracts with, voluntary agencies for the care and placement of UACs and to reimburse States for any expenses they incur in providing assistance to UACs who are served under the UAC provisions of the Homeland Security Act of 2002 (HSA).

Requires all information obtained by the Office relating to the immigration status of parents, legal guardians, or adult relatives of UACs to remain confidential and to be used only for the purpose of determining suitability for placement.

Requires the Secretary of Health and Human Services or the Secretary to disclose information furnished in connection with the placement provisions of this Act to: (1) law enforcement entities in connection with the investigation or prosecution of specified criminal or national security offenses when such information is requested in writing; or (2) an official coroner for purposes of identifying a deceased individual. Prescribes a fine of not more than \$10,000 for the unauthorized use of information.

(Sec. 103) Prohibits the placement of UACs in adult detention facilities, or in facilities housing delinquent children unless they exhibit violent or criminal behavior.

Requires the Director and the Secretary to promulgate regulations incorporating standards for the conditions of detention of UACs that provide for: (1) child-appropriate educational services; (2) medical care; (3) mental health care; (4) access to telephones; (5) access to legal services; (6) access to interpreters; (7) supervision by professionals trained in the care of children; (8) recreational programs and activities; (9) spiritual and religious needs; and (10) dietary needs. Requires oral and written notification of such standards to all UACs in their native language.

Requires the Director and the Secretary to develop procedures prohibiting the unreasonable use of: (1) shackling, handcuffing, or other restraints on children; (2) solitary confinement; or (3) pat or strip searches.

States that nothing in this Act's provisions on placement and detention standards shall be construed as superseding procedures favoring the release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

(Sec. 104) Expresses the sense of Congress that, to the extent practicable and consistent with U.S. treaty obligations, the U.S. Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten their life and safety.

Requires the Secretary of State to include in each year's State Department Country Report on Human Rights an assessment of the degree to which each country protects children from smugglers and traffickers. Requires the Directorate to consult that report and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate a UAC to a particular country.

Requires the Secretary of Homeland Security to submit annual reports to the House and Senate Judiciary Committees on efforts to repatriate UACs.

(Sec. 105) Requires the Director to develop procedures for promptly determining the age of aliens in the custody of the DHS or the Office when age is at issue. Requires such procedures to: (1) permit the presentation of multiple forms of evidence, including the testimony of the child, to determine the age of UACs for purposes of placement, custody, parole, and detention; and (2) provide for appeals of age determinations to an immigration judge. Requires the Secretary to give the Office reasonable access to aliens in the Secretary's custody for purpose of such determinations.

Prohibits the use of radiographs or attestations of aliens as the sole means of determining age for purposes of UAC provisions of the HSA or this Act.

**Title II: Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel** - (Sec. 201) Authorizes the Director to appoint qualified and duly trained guardians ad litem for UACs. Encourages the Director to contract with voluntary agencies for the selection of such individuals. Prohibits the appointment of employees of the Directorate, the Office, or the Executive Office for Immigration Review (EOIR).

Requires such guardians ad litem to: (1) conduct age-appropriate interviews with the child; (2) investigate the facts and circumstances relevant to the child's presence in the United States; (3) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing information collected during such investigation; (4) develop recommendations regarding the child's custody, detention, release, and repatriation; (5) take reasonable steps to ensure that the child's best interests are promoted during immigration proceedings; (6) take reasonable steps to ensure that the child understands the nature of legal proceedings and determinations made by the court and ensure that information is conveyed in an age-appropriate manner; and (7) report specified factual findings.

Lists the powers of guardians ad litem, including: (1) the right to reasonable access to the child; (2) permission to review records and information relating to proceedings unless privileged or classified; (3) authority to seek independent evaluations of the child; (4) the right to be notified in advance of immigration hearings or interviews involving the child and to be given a reasonable opportunity to be present at such hearings or interviews; (4) permission to consult with the child during any hearing or interview involving the child; and (5) the right to at least 24 hours advance notice of a transfer of the child absent compelling and unusual circumstances.

Requires the Director to provide professional training to persons serving as guardians ad litem on the circumstances and conditions facing UACs and various immigration benefits for which UACs may be eligible.

Requires the Director to implement a pilot program for the appointment of guardians ad litem under this Act at three sites, each of which should have at least 25 children in immigration custody at any given time, and to report to the House and Senate Judiciary Committees on the program within one year of implementation of the first such program.

(Sec. 202) States that the Director shall ensure that all UACs in the Custody of the Office or the Directorate, except those being repatriated to a contiguous country pursuant to this Act, have competent counsel to represent them in immigration proceedings or matters. Requires the Director to use the services of competent pro bono counsel to provide representation and to ensure that specified placements of UACs are made in cities where there is a demonstrated capacity for such representation.

Requires the Director to enter into contracts with or make grants to nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children to carry out this Act. Authorizes such nonprofit agencies to enter into subcontracts with or make grants to private voluntary agencies for services.

Requires EOIR to develop and implement model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources. Directs that such guidelines must be designed to help protect children from individuals suspected of involvement in criminal, harmful, or exploitative activity associated with trafficking or smuggling children while ensuring the fairness of removal proceedings in which such children are involved.

Requires counsel for UACs to: (1) represent UACs in all proceedings and matters relating to their immigration status or other actions involving the Directorate; (2) appear in person for all individual merits hearings before the EOIR and interviews involving the Directorate; and (3) owe the same duties of undivided loyalty, confidentiality, and competent representation to such children as is due adult clients.

States that counsel shall: (1) have reasonable access to UACs; (2) be given 24 hours advance notice of a transfer absent compelling and unusual circumstances; and (3) except in emergency situations involving the child's physical safety, be given prompt and adequate notice of all immigration matters affecting or involving UACs.

Bars UACs in the custody of the Office from consenting to immigration actions, including voluntary departure, unless first afforded an opportunity to consult with counsel.

Requires counsel to be given an opportunity to review guardian ad litem recommendations affecting or involving a UAC client.

(Sec. 203) Makes the provisions of this Title applicable to all UACs in Federal custody on, before, or after its effective date (180 days after enactment of this Act).

**Title III: Strengthening Policies for Permanent Protection of Alien Children** - (Sec. 301) Amends the Immigration and Nationality Act to specify that: (1) aliens seeking special immigrant juvenile (SIJ) status must be 18 years of age and under on the date of application; (2) court orders declaring such aliens dependent on a juvenile court located in the United States or placing them in the custody of a State entity due to abuse, neglect, abandonment or similar grounds shall be binding on the Secretary for purposes of SIJ adjudications; and (3) the Office must certify to the Director that SIJ classifications with respect to alien children in Federal custody have not been made solely to provide immigration benefits.

Excludes presence without admission or parole as a ground for inadmissibility with regard to aliens seeking SIJ status. Authorizes the Secretary to waive the additional grounds of prostitution and commercialized vice in the case of an offense which arose as the consequence of an alien child being unaccompanied.

Renders children granted relief under SIJ provisions eligible for the assistance made available to refugee children until they exceed the age of eligibility for such assistance or are placed in a permanent adoptive home, whichever occurs first.

States that children described in SIJ provisions who filed an application for a visa before enactment of this Act and who were 19, 20, or 21 years old on the date of such application shall not be denied a visa after enactment on the basis of their age.

(Sec. 302) Requires the Secretary of Health and Human Services and the Secretary to provide training to State and county officials, child welfare specialists, teachers, public counsel, juvenile judges, and Directorate personnel who come into contact with UACs.

(Sec. 303) Requires the Secretary of Health and Human Services to submit annual reports to the House and Senate Judiciary Committees on data relating to implementation of the UAC provisions of the HSA and this Act.

(Sec. 304) Makes the SIJ-related amendments of this Title applicable to all aliens who were in the United States before, on, or after enactment of this Act.

**Title IV: Children Refugee and Asylum Seekers** - (Sec. 401) Commends the (former) Immigration and Naturalization Service (INS) for its issuance of the Guidelines for Children's Asylum Claims and encourages implementation of such guidelines by the INS and its successor. Calls upon the EOIR to adopt such guidelines in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals (BIA).

Requires the Secretary to provide periodic comprehensive training under such guidelines to asylum officers, immigration judges, members of the BIA, and immigration officers who have contact with children. States that voluntary agencies shall be allowed to assist in such training.

(Sec. 402) Adds an analysis of the worldwide situation faced by unaccompanied refugee children to the list of information

to be shared with House and Senate Judiciary Committee members by the administration during required consultations on annual refugee admissions. Requires the Attorney General to provide all U.S. officials adjudicating refugee cases with instruction on the needs of unaccompanied refugee children.

(Sec. 403) Requires UACs apprehended by the Directorate, except those subject to special rules applicable to UACs from contiguous countries, to be placed in removal proceedings. Exempts UACs from safe third country and time limit bars to seeking asylum.

**Title V: Authorization of Appropriations** - (Sec. 501) Authorizes appropriations to carry out UAC provisions of the HSA and this Act.

**Title VI: Amendments to the Homeland Security Act of 2002** - (Sec. 601) Amends the HSA to make the Director responsible for: (1) continued assessments of the suitability of UAC placements; and (2) ensuring that minimum standards of care are met with regard to all UACs for whom detention is necessary and who reside in settings that are alternatives to detention.

Give the Director power to: (1) contract with service providers to perform those services relating to UAC placement and detention, the appointment of guardians ad litem, and the provision of counsel as provided by this Act; and (2) compel compliance with the detention standards set forth in this Act by declaring providers in breach and seeking damages, terminating the contracts of noncompliant providers, and reassigning UACs to compliant facilities.

(Sec. 602) Provides that the HSA's prohibition on the release of UACs upon their own recognizance may not be construed to require the posting of bond for such children who are released to a qualified sponsor.

(Sec. 603) States that the amendments made by this Title shall be effective as if enacted as part of the HSA.

## Actions Timeline

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- **Nov 16, 2004:** Received in the House.
- **Nov 16, 2004:** Message on Senate action sent to the House.
- **Nov 16, 2004:** Referred to the House Committee on the Judiciary.
- **Oct 11, 2004:** Measure laid before Senate by unanimous consent. (consideration: CR S11251-11260; text of measure as reported in Senate: CR S11251-11260)
- **Oct 11, 2004:** Passed/agreed to in Senate: Passed Senate with an amendment by Unanimous Consent.
- **Oct 11, 2004:** Passed Senate with an amendment by Unanimous Consent.
- **Jun 3, 2004:** Committee on the Judiciary. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Jun 3, 2004:** Committee on the Judiciary. Reported by Senator Hatch with an amendment in the nature of a substitute. Without written report.
- **Jun 3, 2004:** Committee on the Judiciary. Reported by Senator Hatch with an amendment in the nature of a substitute. Without written report.
- **Jun 3, 2004:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 541.
- **May 22, 2003:** Introduced in Senate
- **May 22, 2003:** Sponsor introductory remarks on measure. (CR S7019-7021)
- **May 22, 2003:** Read twice and referred to the Committee on the Judiciary. (text of measure as introduced: CR S7021-7026)