

119TH CONGRESS
1ST SESSION

S. _____

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 and the Homeland Security Act of 2002 to enhance efforts to combat the trafficking of children.

IN THE SENATE OF THE UNITED STATES

Mr. CORNYN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 and the Homeland Security Act of 2002 to enhance efforts to combat the trafficking of children.

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 “Kayla Hamilton Act”.

5 **SEC. 2. PLACEMENT DETERMINATIONS FOR UNACCOM-**
6 **PANIED ALIEN CHILDREN.**

7 Section 462(b)(2) of the Homeland Security Act of
8 2002 (6 U.S.C. 279(b)(2)) is amended to read as follows:

1 “(2) PLACEMENT DETERMINATIONS FOR UNAC-
2 COMPANIED ALIEN CHILDREN.—The Director of the
3 Office of Refugee Resettlement shall make deter-
4 minations under paragraph (1)(C) in accordance
5 with section 235(c)(2) of the William Wilberforce
6 Trafficking Victims Protection Reauthorization Act
7 of 2008 (8 U.S.C. 1232(c)(2)).”.

8 **SEC. 3. ENHANCING EFFORTS TO COMBAT THE TRAF-**
9 **FICKING OF CHILDREN.**

10 Section 235(c) of the William Wilberforce Trafficking
11 Victims Protection Reauthorization Act of 2008 (8 U.S.C.
12 1232(c)) is amended—

13 (1) in paragraph (2), to read as follows:

14 “(2) SAFE AND SECURE PLACEMENTS.—

15 “(A) INITIAL ACTIONS.—The Secretary of
16 Health and Human Services may not make a
17 placement determination under this paragraph
18 for an unaccompanied alien child who is in Fed-
19 eral custody by reason of the immigration sta-
20 tus of that child until the Secretary does the
21 following:

22 “(i) CONSULTATIONS.—The Secretary
23 of Health and Human Services shall con-
24 sult with the Secretary of Homeland Secu-

1 rity and the Attorney General (including
2 appropriate juvenile justice officials)—

3 “(I) to ensure that the unaccom-
4 panied alien child will appear for all
5 immigration, administrative, and judi-
6 cial hearings or proceedings in which
7 the child is involved;

8 “(II) to ensure that the unaccom-
9 panied alien child will be protected
10 from smugglers, traffickers, gangs,
11 and others who might seek to vic-
12 timize or otherwise engage the child in
13 criminal, harmful, or exploitative ac-
14 tivity; and

15 “(III) to determine if the unac-
16 panied alien child—

17 “(aa) is a flight risk;

18 “(bb) is a danger to self, an-
19 other individual, or the commu-
20 nity; or

21 “(cc) has been arrested for,
22 charged with, or convicted of any
23 criminal offense in the United
24 States or in his or her country of

1 citizenship, nationality, or last
2 habitual residence.

3 “(ii) SCREENING FOR GANG RELATED
4 ACTIVITY; REQUIREMENT TO OBTAIN
5 CRIMINAL RECORDS.—In the case of an
6 unaccompanied alien child 12 years of age
7 or older, the Secretary of Health and
8 Human Services shall—

9 “(I) contact the consulate or em-
10 bassy of the country of citizenship,
11 nationality, or last habitual residence
12 for the unaccompanied alien child to
13 obtain any relevant arrest records,
14 pending criminal charges, or convic-
15 tion documents involving such child;
16 and

17 “(II) conduct an examination of
18 the unaccompanied alien child to de-
19 termine if such child has any gang-re-
20 lated tattoos and other gang-related
21 markings.

22 “(B) PLACEMENT GENERALLY.—

23 “(i) IN GENERAL.—Except as other-
24 wise provided in this paragraph, an unac-
25 companied alien child who is in the custody

1 of the Department of Health and Human
2 Services shall be promptly placed in the
3 least restrictive setting that is in the best
4 interest of the child.

5 “(ii) PROHIBITION ON RELEASE ON
6 OWN RECOGNIZANCE.—An unaccompanied
7 alien child may not be released on his or
8 her own recognizance.

9 “(C) PLACEMENT OF CERTAIN UNACCOM-
10 PANIED ALIEN CHILDREN IN SECURE FACILI-
11 TIES.—In the case of an unaccompanied alien
12 child 12 years of age or older, the unaccom-
13 panied alien child shall be placed in a secure fa-
14 cility for the duration of any immigration pro-
15 ceedings (and, if ordered removed, until such
16 unaccompanied alien child is removed) if the
17 unaccompanied alien child—

18 “(i) is a flight risk; or

19 “(ii) is a danger to self, other individ-
20 uals, or the community, including if the
21 unaccompanied alien child—

22 “(I) has a gang-related tattoo or
23 any other gang-related marking;

24 “(II) has been convicted of a se-
25 rious criminal offense (as defined in

1 section 101(h) of the Immigration and
2 Nationality Act (8 U.S.C. 1101(h))
3 in any State or territory of the United
4 States or in the unaccompanied alien
5 child's country of citizenship, nation-
6 ality, or last habitual residence;

7 “(III) has been convicted of any
8 aggravated felony (as defined in sec-
9 tion 101(a)(43) of the Immigration
10 and Nationality Act (8 U.S.C.
11 1101(a)(43)); or

12 “(IV) has, for conduct in connec-
13 tion with gang affiliation or gang ac-
14 tivity in any State or territory of the
15 United States or in the unaccom-
16 panied alien child's country of citizen-
17 ship, nationality, or last habitual resi-
18 dence—

19 “(aa) any arrest record;

20 “(bb) any pending criminal
21 charge;

22 “(cc) any other pending pro-
23 ceeding; or

24 “(dd) any conviction.

1 “(D) PROHIBITIONS ON PLACEMENT OF
2 UNACCOMPANIED ALIEN CHILDREN WITH CER-
3 TAIN INDIVIDUALS.—The Secretary of Health
4 and Human Services shall not place an unac-
5 companied alien child in the custody of any in-
6 dividual who is one or more of the following:

7 “(i) SECURE AND STABLE SPON-
8 SORS.—An individual who is not a United
9 States citizen or a lawful permanent resi-
10 dent of the United States.

11 “(ii) INDIVIDUALS WITH CRIMINAL
12 HISTORY.—An individual who has been
13 convicted of, or who resides in a household
14 with an individual who has been convicted
15 of—

16 “(I) a sex offense (as defined in
17 section 111(5) of the Sex Offender
18 Registration and Notification Act (34
19 U.S.C. 20911(5)));

20 “(II) a crime involving severe
21 forms of trafficking in persons (as de-
22 fined in section 103(11) of the Traf-
23 ficking Victims Protection Act of
24 2000 (22 U.S.C. 7102(11)));

1 “(III) a crime of domestic vio-
2 lence (as defined in section
3 40002(a)(12) of the Violence Against
4 Women Act of 1994 (34 U.S.C.
5 12291(a)(12)));

6 “(IV) a crime of child abuse and
7 neglect (as defined in section 3 of the
8 Child Abuse Prevention and Treat-
9 ment Act (Public Law 93–247; 42
10 U.S.C. 5101 note));

11 “(V) murder, manslaughter, or
12 an attempt to commit murder or man-
13 slaughter (as defined in sections 1111,
14 1112, and 1113 of title 18, United
15 States Code);

16 “(VI) a crime involving the re-
17 ceipt, distribution, or possession of a
18 visual depiction of a minor engaging
19 in sexually explicit conduct (as de-
20 scribed in section 2252 of title 18,
21 United States Code);

22 “(VII) any crime for which an
23 alien is required to be taken into cus-
24 tody pursuant to section 236(c)(1) of

1 the Immigration and Nationality Act
2 (8 U.S.C. 1226(c)(1));

3 “(VIII) any aggravated felony (as
4 defined in section 101 of the Immi-
5 gration and Nationality Act);

6 “(IX) any crime defined as a fel-
7 ony by the relevant jurisdiction (Fed-
8 eral, State, tribal, or local);

9 “(X) any crime punishable by
10 more than 1 year of imprisonment; or

11 “(XI) any other criminal offense
12 as designated by the Attorney Gen-
13 eral, in the Attorney General’s sole
14 and unreviewable discretion.”; and

15 (2) in paragraph (3)—

16 (A) in subparagraph (A), by striking “Sub-
17 ject to the requirements of subparagraph (B)”
18 and inserting “Subject to the requirements of
19 subparagraphs (B) and (D)”; and

20 (B) by inserting at the end the following:

21 “(D) INFORMATION ABOUT INDIVIDUALS
22 WITH WHOM CHILDREN ARE PLACED.—Before
23 placing a child with any individual, the Sec-
24 retary of Health and Human Services shall pro-
25 vide to the Secretary of Homeland Security,

1 with regard to the individual with whom the
2 child will be placed and each adult resident of
3 the individual's household, information on—

4 “(i) the name of the individual and
5 each adult resident of the individual's
6 household;

7 “(ii) the social security number or in-
8 dividual taxpayer identification number of
9 the individual and each adult resident of
10 the individual's household;

11 “(iii) the date of birth of the indi-
12 vidual and of each adult resident of the in-
13 dividual's household;

14 “(iv) the physical location and address
15 of the individual's residence where the
16 child will be placed;

17 “(v) the immigration status of the in-
18 dividual and each adult resident of the in-
19 dividual's household;

20 “(vi) contact information for the indi-
21 vidual and for each adult resident of the
22 individual's household, including telephone
23 numbers, email addresses, and work tele-
24 phone numbers (if available); and

1 “(vii) the results of all background
2 and criminal records checks conducted on
3 the individual and each adult resident of
4 the individual’s household, which shall in-
5 clude at a minimum an investigation of the
6 Dru Sjodin National Sex Offender Public
7 Website, a public records background
8 check, and a national criminal history
9 background check based on fingerprints.”.

10 **SEC. 4. CONSTRUCTION; SEVERABILITY.**

11 Any provision of the this Act or an amendment made
12 by this Act held to be invalid or unenforceable by its
13 terms, or as applied to any person or circumstance, shall
14 be construed so as to give it the maximum effect permitted
15 by law, unless such holding shall be utterly invalid or un-
16 enforceable, in which event such provision shall be deemed
17 severable from this Act and shall not affect the remainder
18 of this Act, or the application of such provision to other
19 persons not similarly situated or to other, dissimilar cir-
20 cumstances.

21 **SEC. 5. EXEMPTION FROM PAPERWORK REDUCTION ACT**
22 **AND THE ADMINISTRATIVE PROCEDURE ACT.**

23 (a) PAPERWORK REDUCTION ACT.—Nothing in this
24 Act may be construed to require the Secretary of Home-
25 land Security, the Secretary of Health and Human Serv-

ices, the Secretary of State, or the Attorney General to comply with the requirements of chapter 35 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act”) if such individuals determine that compliance would impede the immediate implementation of this Act or the amendments made by this Act.

(b) ADMINISTRATIVE PROCEDURE ACT.—Nothing in this Act may be construed to require the Secretary of Homeland Security, the Secretary of Health and Human Services, the Secretary of State, or the Attorney General to promulgate regulations under subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the “Administrative Procedure Act”), if such individuals determine that compliance would impede the immediate implementation of this Act or the amendments made by this Act.

SEC. 6. EFFECTIVE DATE; APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this shall take effect on the date of the enactment of this Act.

(b) APPLICABILITY.—This Act and the amendments made by this Act shall apply to any release and custody determinations for an unaccompanied alien child (as defined in section 642(g)(2) of the Homeland Security Act of 2002), that are pending or occur on or after the date

1 of the enactment of this Act, and all release redetermina-
2 tions.