

Senate -- Key Legislation Impacting Family Separation at the U.S./Mexico Border

(as of August 13, 2018)

	“Keep Families Together Act” (S. 3036)	“Protect Kids and Parents Act” (S. 3091)	“Keep Families Together and Enforce the Law Act” (S. 3093)	“Reunite Every Unaccompanied Newborn Infant, Toddler and other children Expediently Act” (REUNITE Act) (S. 3227)	“Humane Treatment of Migrant Children Act” (S. 3263)
Introduction:	Sen. Dianne Feinstein (D-CA) on June 7, 2018	Sen. Ted Cruz (R-TX) on June 19, 2018	Sen. Thom Tillis (R-NC) on June 20, 2018	Sen. Kamala Harris (D-CA) on July 17, 2018	Sen. Richard Durbin (D-IL) on July 25, 2018
Cosponsors (as of 8/13/18):	48 total (46 Democrats; 2 Independents)	21 Republicans	39 Republicans	16 total (15 Democrats; 1 Independent)	None
Purpose:	Limits family separation at the border by including a prohibition on family separation except in certain instances (see below in “Limitation on Separation”).	Limits family separation at the border by expanding detention of asylum-seeking families. Overrides “Flores Settlement” protections for detention of accompanied children and expedites the asylum process for certain families.	Limits family separation at the border by expanding family detention. Overrides “Flores Settlement” protections for detention of accompanied children.	Addresses reunification of families separated at the border. Limits use of DNA testing for purposes of reunification and adds privacy protections. Requires use of alternatives to detention, including the Family Case Management Program (FCMP).	Limits family separation at the border, provides access to counsel for unaccompanied children, and improves standards for immigration detention.

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Discusses Use of Family Detention?	Yes. Includes a presumption that it is not in the best interest of families and children to be detained.	Yes. States that children are to be detained with their asylum-seeking parents/legal guardians. Specifically, seeks to override the Flores Settlement Agreement by requiring that the Department of Homeland Security (DHS) keep asylum-seeking parents/legal guardians in family detention with their children during the pendency of their asylum or withholding of removal proceedings. <i>*S. 3091 only applies to asylum-seeking families who have sought asylum or withholding of removal within 48 hours of detention. (See page 23 line 4-6.)</i>	Yes. States that children are to be detained with their parents. Specifically, prohibits DHS from following the Flores Settlement Agreement and requires parents arriving with children to be kept in family detention during the pendency of their criminal or civil proceedings, with limited exceptions. States that family detention centers must be: secure, safe, and provide families with suitable living accommodations, access to drinking water and foods, and medical assistance during emergencies.	Yes. States that parents or legal guardians are to be released on bond, parole, or alternative to detention program unless DHS demonstrates that there is a substantial risk that the individual is likely to cause harm to himself or others. Within 72 hours, the individual has the opportunity to appeal this determination before an immigration judge.	Yes. Includes a presumption that it is not in the best interest of families and children to be detained

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Detention Beds?	No. Not included in text.	Yes. Authorizes “necessary” appropriations for 2019-2021 to maintain family detention centers.	Yes. Requires DHS to enter into an agreement with the Department of Justice (DOJ) to secure additional family detention centers, and requires DHS to increase the number of family detention beds by at least 1,000.	No. Not explicitly included in text. However, does reallocate \$50 million from ICE’s FY 2018 enforcement, detention, and removal operation funding to carry out reunifications and alternatives to detention.	No. Not included in text.
Limitation on Family Separation at the Border?	Yes. Designated officers cannot separate a child from a parent/legal guardian at a Port of Entry (POE) or within 100 miles of the border unless certain circumstances occur. Separation cannot be used for the sole policy goal of deterring migration. States a presumption of family unity and that sibling groups should be kept together.	Yes. States a presumption of family unity and that sibling groups should be kept together.	Yes. See “Family Detention” above.	No. Not explicitly included in text. But see “Procedures for Parents Attempting to Locate Their Separated Children?” below.	Yes. Designated officers cannot separate a child from a parent/legal guardian at a Port of Entry (POE) or within 100 miles of the border unless certain circumstances occur. Separation cannot be used for the sole policy goal of deterring migration.

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Allows for Separation in Certain Limited Circumstances?	<p>Yes. Separation may occur if:</p> <p>(1) A state court terminates parental rights or determines separation is in the best interest of the child;</p> <p>(2) A state child welfare agency determines that separation is in the best interest of the child; or</p> <p>(3) The Chief Patrol Agent or Area Port Director authorizes separation due to findings that: (i) the child is a victim of or is at risk of trafficking; (ii) there is a strong likelihood that the adult is not the child’s parent/legal guardian; (iii) the child is in danger of abuse or neglect by the parent/legal guardian; or (iv) the child is a danger to himself or others.</p>	<p>Yes. Separation may occur if:</p> <p>(1) There is release of the child to a non-detained parent/legal guardian, when available in the U.S.;</p> <p>(2) If the parent(s) in detention consent(s) to separation;</p> <p>(3) A state court terminates parental rights or determines separation is in the best interest of the child;</p> <p>(4) A state child welfare agency determines that separation is in the best interest of the child; or</p> <p>3) The Chief Patrol Agent or Area Port Director authorizes separation due to findings that: (i) the child is a victim of or is at risk of trafficking; (ii) there is a strong likelihood that the adult is not the child’s parent/legal guardian; (iii) the child is in danger of abuse or neglect by the parent/legal guardian; or (iv) the child is a danger to himself or others.</p>	<p>Yes. Separation may occur if DHS is:</p> <p>(1) unable to verify that the adult is the child’s parent;</p> <p>(2) determines that the parent: (i) has a violent criminal history; (ii) has committed or been convicted of an aggravated felony, crime involving attempted use of physical force or threatened use of deadly force, assault resulting in injury, or a crime which is a ground of inadmissibility or deportability;</p> <p>(3) determines the child has been the victim of domestic or sexual abuse;</p> <p>(4) finds that the child is a victim of or is at risk of trafficking;</p> <p>(5) finds that the child is in danger of abuse or neglect by the parent; or</p> <p>(6) finds that the child is a danger to himself or others.</p>	<p>Yes. Reunification cannot occur if:</p> <p>(1) The Chief Patrol Agent or Area Port Director determines that the child is a victim of or is at risk of trafficking;</p> <p>(2) The child appears to be in danger of abuse or neglect by the parent/legal guardian;</p> <p>(3) A state court or child welfare agency determines that the child is a danger to himself or others; or</p> <p>(4) There is a strong likelihood that the adult is not the child’s parent/legal guardian.</p>	<p>Yes. Separation may occur if:</p> <p>(1) A state court terminates parental rights or determines separation is in the best interest of the child;</p> <p>(2) A state child welfare agency determines that separation is in the best interest of the child; or</p> <p>(3) The Chief Patrol Agent or Area Port Director authorizes separation due to findings that:</p> <p>(i) the child is a victim of or is at risk of trafficking; (ii) there is a strong likelihood that the adult is not the child’s parent/legal guardian; (iii) the child is in danger of abuse or neglect by the parent/legal guardian; or (iv) the child is a danger to himself or others.</p>

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Training of DHS Employees on Separation Policies?	Yes. DHS, in conjunction with Health and Human Services (HHS), is directed to develop child welfare- informed training and guidance within 180 days for use by DHS agents and officers. This guidance will be reviewed at least annually.	Yes. DHS, in conjunction with HHS, is directed to develop child welfare informed training and guidance within 180 days for use by DHS agents and officers. This guidance will be reviewed at least annually.	No. Not included in text.	No. Not included in text.	Yes. DHS, in conjunction with Health and Human Services (HHS), is directed to develop child welfare- informed training and guidance within 180 days for use by DHS agents and officers. This guidance will be reviewed at least annually.
Procedures for Parents Attempting to Locate Their Separated Children?	Yes. Requires DHS, in consultation with HHS, state child welfare agencies, and relevant NGOs, to issue public guidance within 180 days of enactment on how parents/legal guardians can locate their children. Requires such guidance to be given to impacted parents/legal guardians. Also requires DHS to provide the impacted parent/legal guardian with monthly reports* on: the activities of the child, the education and health of the child, any changes to the child’s immigration status, and any other relevant information.	Yes. Requires DHS, in consultation with HHS, to issue public guidance within 180 days of enactment on the manner in which asylum-seeking parents/legal guardians can locate their children. Requires such guidance to be given to impacted parents/legal guardians.	No. Not included in text.	Yes. Requires agencies to ensure immediate reunification of children that remain separated (with exceptions noted in “Allows for Separation in Certain Limited Circumstances?” above) and require establishment of an inter-agency office to facilitate reunification. Further, requires DHS and HHS, in consultation with state and NGO agencies, to publish a final rule that describes the coordinated effort to aid separated parents/legal guardians in locating their children. Requires agencies to outline, in part, efforts to develop family tracing, ensure no cost communication, facilitate children’s access to child advocates and legal counsel, allow for outside inspection of facilities, locate repatriated parents, notify parent/legal guardians of their rights, etc. Requires such guidance to be given to impacted parents/legal guardians. Requires agencies to use other methods to determine family relationships prior to utilizing DNA testing, and adds consent and privacy requirements for DNA testing.	Yes. Requires DHS, in consultation with HHS, state child welfare agencies, and relevant NGOs, to issue public guidance within 180 days of enactment on how parents/legal guardians can locate their children. Requires such guidance to be given to impacted parents/legal guardians. Also requires DHS to provide the impacted parent/legal guardian with monthly reports on: the activities of the child, the education and health of the child, any changes to the child’s immigration status, and any other relevant information.

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Reporting to Congress on Family Separation?	Yes. Requires annual reporting* by DHS to Congress on instances of family separation. Also, GAO report required on prosecution of asylum seekers from 2008- 2018.	Yes. Requires annual reporting by DHS to Congress on instances of family separation. Also, GAO report required on prosecution of asylum seekers from 2008- 2018.	No. Not included in text.	Yes. Requires new inter-agency office on reunification to submit weekly reports to Congress on reunification efforts and number of children that remain separated.	Yes. Requires annual reporting by DHS to Congress on instances of family separation. Also, GAO report required on prosecution of asylum seekers from 2008- 2018.
Addresses Presumption of Parental Rights?	Yes. Provides presumption that parental rights remain despite of separation (barring court action) and that separation by DHS does not constitute abuse or neglect.	Yes. Provides presumption that parental rights remain despite of separation (barring court action) and that separation by DHS does not constitute abuse or neglect.	No. Not included in text.	No. Not included in text.	Yes. Provides presumption that parental rights remain despite of separation (barring court action) and that separation by DHS does not constitute abuse or neglect.

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Directs DHS and DOJ to Prioritize/ Expedite Cases and Prosecution of Families?	No. Not included in text.	<p>Yes. Directs DOJ to prioritize cases of asylum-seeking parents/legal guardians detained with their families.</p> <p>Also requires guidelines on expedited processing of asylum applications filed by these families (e.g., asylum interview within 24 hours, credible fear determination within 24 hours, 24 hours for review hearing by immigration judge (IJ), etc.).</p> <p><i>Extensions provided in certain circumstances.</i></p> <p>Requires deportation within 4 days when applicant receives final order denying asylum and bars prosecution for illegal entry.</p>	Yes. Directs DHS and DOJ to prioritize cases of accompanied children and their families, to the extent practicable.	No. Not included in text.	No. Not included in text.

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Increase in Number of Immigration Judges?	No. Not included in text.	Yes. Requires the DOJ to increase the number of IJs by 375 (plus sufficient support staff and resources). Directs DOJ to increase Board of Immigration Appeals Attorneys by 60 (plus sufficient support staff and resources). Authorizes “necessary” appropriations for 2019-2021 to carry this out.	Yes. Requires DOJ to increase the number of IJ teams by at least 225.	No. Not included in text.	Yes. Requires DOJ to increase the number of IJ teams by at least 225 (plus support staff and resources). But limits judicial performance standards that impact access to justice. Authorizes necessary appropriations.
Increase in Hiring of DHS Personnel?	No. Not included in text.	Yes. Directs DHS to hire an additional 200 asylum officers (plus sufficient support staff and resources). Authorizes “necessary” appropriations for 2019-2021 to carry this out.	No. Not included in text.	No. Not included in text.	Yes. Directs DHS to hire at least as many new refugee officers as were reprogrammed to the Asylum Division during FY 2018.

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Other Provisions of Note:	N/A	Even after grant of asylum or withholding of removal, families must remain in detention until a background check has occurred to determine if there are any ground on which they are inadmissible or deportable.	N/A	For separated children, their unaccompanied child designation will remain through the duration of their immigration proceedings. Additionally, removal of their parents/legal guardians is stayed during the pendency of the child’s immigration proceedings or until the child turns 18 (whichever is earlier or unless the parent consents to removal).	<p>Includes “Fair Day in Court for Kids Act,” which, in part, requires the Attorney General to provide counsel at government expense in immigration proceedings for unaccompanied children. Ensures counsel will continue to represent the child even if the child ages out or reunites with a parent/legal guardian. Appropriates funding to DOJ to carry out this section of the Act.</p> <p>Includes a presumption that immigrants will not be detained if they are: i) suffering from a serious physical or mental illness; ii) disabled; iii) elderly, pregnant, or nursing; iv) minors; v) primary caretakers; vi) otherwise an individual who it would not be in the public interest to detain.</p> <p>Requires all ICE facilities to meet the Performance-Based National Detention Standards of 2011 within 1 year.</p> <p>Requires funding for Alternatives to Detention for all individuals not subject to detention.</p>