

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4371
OFFERED BY M

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Kayla Hamilton Act”.

3 SEC. 2. PLACEMENT DETERMINATIONS FOR UNACCOM-
4 PANIED ALIEN CHILDREN.

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

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

14 SEC. 3. ENHANCING EFFORTS TO COMBAT THE TRAF-
15 FICKING OF CHILDREN.

16 Section 235(c) of the William Wilberforce Trafficking
17 Victims Protection Reauthorization Act of 2008 (8 U.S.C.
18 1232(c)) is amended—

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

2 “(2) SAFE AND SECURE PLACEMENTS.—

3 “(A) INITIAL ACTIONS.—The Secretary of
4 Health and Human Services may not make a
5 placement determination under this paragraph
6 for an unaccompanied alien child who is in Fed-
7 eral custody by reason of the immigration sta-
8 tus of that child until the Secretary does the
9 following:

10 “(i) CONSULTATIONS.—The Secretary
11 of Health and Human Services shall con-
12 sult with the Secretary of Homeland Secu-
13 rity and the Attorney General (including
14 appropriate juvenile justice officials)—

15 “(I) to ensure that the unaccom-
16 panied alien child will appear for all
17 immigration, administrative, and judi-
18 cial hearings or proceedings in which
19 the child is involved;

20 “(II) to ensure that the unaccom-
21 panied alien child will be protected
22 from smugglers, traffickers, gangs,
23 and others who might seek to vic-
24 timize or otherwise engage the child in

1 criminal, harmful, or exploitative ac-
2 tivity; and

3 “(III) to determine if the unac-
4 companied alien child—

5 “(aa) is a flight risk;

6 “(bb) is a danger to self, an-
7 other individual, or the commu-
8 nity; or

9 “(cc) has been arrested for,
10 charged with, or convicted of any
11 criminal offense in the United
12 States or in his or her country of
13 citizenship, nationality, or last
14 habitual residence.

15 “(ii) SCREENING FOR GANG RELATED
16 ACTIVITY; REQUIREMENT TO OBTAIN
17 CRIMINAL RECORDS.—In the case of an
18 unaccompanied alien child 12 years of age
19 or older, the Secretary of Health and
20 Human Services shall—

21 “(I) contact the consulate or em-
22 bassy of the country of citizenship,
23 nationality, or last habitual residence
24 for the unaccompanied alien child to
25 obtain any relevant arrest records,

1 pending criminal charges, or convic-
2 tion documents involving such child;
3 and

4 “(II) conduct an examination of
5 the unaccompanied alien child to de-
6 termine if such child has any gang-re-
7 lated tattoos and other gang-related
8 markings.

9 “(B) PLACEMENT GENERALLY.—

10 “(i) IN GENERAL.—Except as other-
11 wise provided in this paragraph, an unac-
12 companied alien child who is in the custody
13 of the Department of Health and Human
14 Services shall be promptly placed in the
15 least restrictive setting that is in the best
16 interest of the child.

17 “(ii) PROHIBITION ON RELEASE ON
18 OWN RECOGNIZANCE.—An unaccompanied
19 alien child may not be released on his or
20 her own recognizance.

21 “(C) PLACEMENT OF CERTAIN UNACCOM-
22 PANIED ALIEN CHILDREN IN SECURE FACILI-
23 TIES.—In the case of an unaccompanied alien
24 child 12 years of age or older, the unaccom-
25 panied alien child shall be placed in a secure fa-

1 cility for the duration of any immigration pro-
2 ceedings (and, if ordered removed, until such
3 unaccompanied alien child is removed) if the
4 unaccompanied alien child—

5 “(i) is a flight risk; or

6 “(ii) is a danger to self, other individ-
7 uals, or the community, including if the
8 unaccompanied alien child—

9 “(I) has a gang-related tattoo or
10 any other gang-related marking;

11 “(II) has been convicted of a se-
12 rious criminal offense (as defined in
13 section 101(h) of the Immigration and
14 Nationality Act (8 U.S.C. 1101(h)) in
15 any State or territory of the United
16 States or in the unaccompanied alien
17 child’s country of citizenship, nation-
18 ality, or last habitual residence;

19 “(III) has been convicted of any
20 aggravated felony (as defined in sec-
21 tion 101(a)(43) of the Immigration
22 and Nationality Act (8 U.S.C.
23 1101(a)(43)); or

24 “(IV) has, for conduct in connec-
25 tion with gang affiliation or gang ac-

1 tivity in any State or territory of the
2 United States or in the unaccom-
3 panied alien child's country of citizen-
4 ship, nationality, or last habitual resi-
5 dence—

6 “(aa) any arrest record;

7 “(bb) any pending criminal
8 charge;

9 “(cc) any other pending pro-
10 ceeding; or

11 “(dd) any conviction.

12 “(D) PROHIBITIONS ON PLACEMENT OF
13 UNACCOMPANIED ALIEN CHILDREN WITH CER-
14 TAIN INDIVIDUALS.—The Secretary of Health
15 and Human Services shall not place an unac-
16 companied alien child in the custody of any in-
17 dividual who is one or more of the following:

18 “(i) SECURE AND STABLE SPON-
19 SORS.—An individual who is not a United
20 States citizen or a lawful permanent resi-
21 dent of the United States.

22 “(ii) INDIVIDUALS WITH CRIMINAL
23 HISTORY.—An individual who has been
24 convicted of, or who resides in a household

1 with an individual who has been convicted
2 of—

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

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

12 “(III) a crime of domestic vio-
13 lence (as defined in section
14 40002(a)(12) of the Violence Against
15 Women Act of 1994 (34 U.S.C.
16 12291(a)(12)));

17 “(IV) a crime of child abuse and
18 neglect (as defined in section 3 of the
19 Child Abuse Prevention and Treat-
20 ment Act (Public Law 93–247; 42
21 U.S.C. 5101 note));

22 “(V) murder, manslaughter, or
23 an attempt to commit murder or man-
24 slaughter (as defined in sections 1111,

1 1112, and 1113 of title 18, United
2 States Code);

3 “(VI) a crime involving the re-
4 ceipt, distribution, or possession of a
5 visual depiction of a minor engaging
6 in sexually explicit conduct (as de-
7 scribed in section 2252 of title 18,
8 United States Code);

9 “(VII) any crime for which an
10 alien is required to be taken into cus-
11 tody pursuant to section 236(c)(1) of
12 the Immigration and Nationality Act
13 (8 U.S.C. 1226(c)(1));

14 “(VIII) any aggravated felony (as
15 defined in section 101 of the Immi-
16 gration and Nationality Act);

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

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

22 “(XI) any other criminal offense
23 as designated by the Attorney Gen-
24 eral, in the Attorney General’s sole
25 and unreviewable discretion.”; and

1 (2) in paragraph (3)—

2 (A) in subparagraph (A), by striking “Sub-
3 ject to the requirements of subparagraph (B)”
4 and inserting “Subject to the requirements of
5 subparagraphs (B) and (D)”; and

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

7 “(D) INFORMATION ABOUT INDIVIDUALS
8 WITH WHOM CHILDREN ARE PLACED.—Before
9 placing a child with any individual, the Sec-
10 retary of Health and Human Services shall pro-
11 vide to the Secretary of Homeland Security,
12 with regard to the individual with whom the
13 child will be placed and each adult resident of
14 the individual’s household, information on—

15 “(i) the name of the individual and
16 each adult resident of the individual’s
17 household;

18 “(ii) the social security number or in-
19 dividual taxpayer identification number of
20 the individual and each adult resident of
21 the individual’s household;

22 “(iii) the date of birth of the indi-
23 vidual and of each adult resident of the in-
24 dividual’s household;

1 “(iv) the physical location and address
2 of the individual’s residence where the
3 child will be placed;

4 “(v) the immigration status of the in-
5 dividual and each adult resident of the in-
6 dividual’s household;

7 “(vi) contact information for the indi-
8 vidual and for each adult resident of the
9 individual’s household, including telephone
10 numbers, email addresses, and work tele-
11 phone numbers (if available); and

12 “(vii) the results of all background
13 and criminal records checks conducted on
14 the individual and each adult resident of
15 the individual’s household, which shall in-
16 clude at a minimum an investigation of the
17 Dru Sjodin National Sex Offender Public
18 Website, a public records background
19 check, and a national criminal history
20 background check based on fingerprints.”.

21 **SEC. 4. CONSTRUCTION; SEVERABILITY.**

22 Any provision of the this Act or an amendment made
23 by this Act held to be invalid or unenforceable by its
24 terms, or as applied to any person or circumstance, shall
25 be construed so as to give it the maximum effect permitted

1 by law, unless such holding shall be utterly invalid or un-
2 enforceable, in which event such provision shall be deemed
3 severable from this Act and shall not affect the remainder
4 of this Act, or the application of such provision to other
5 persons not similarly situated or to other, dissimilar cir-
6 cumstances.

7 **SEC. 5. EXEMPTION FROM PAPERWORK REDUCTION ACT**
8 **AND THE ADMINISTRATIVE PROCEDURE ACT.**

9 (a) PAPERWORK REDUCTION ACT.—Nothing in this
10 Act may be construed to require the Secretary of Home-
11 land Security, the Secretary of Health and Human Serv-
12 ices, the Secretary of State, or the Attorney General to
13 comply with the requirements of chapter 35 of title 44,
14 United States Code (commonly referred to as the “Paper-
15 work Reduction Act”) if such individuals determine that
16 compliance would impede the immediate implementation
17 of this Act or the amendments made by this Act.

18 (b) ADMINISTRATIVE PROCEDURE ACT.—Nothing in
19 this Act may be construed to require the Secretary of
20 Homeland Security, the Secretary of Health and Human
21 Services, the Secretary of State, or the Attorney General
22 to promulgate regulations under subchapter II of chapter
23 5 of title 5, United States Code (commonly referred to
24 as the “Administrative Procedure Act”), if such individ-
25 uals determine that compliance would impede the imme-

1 diate implementation of this Act or the amendments made
2 by this Act.

3 **SEC. 6. EFFECTIVE DATE; APPLICABILITY.**

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

7 (b) APPLICABILITY.—This Act and the amendments
8 made by this Act shall apply to any release and custody
9 determinations for an unaccompanied alien child (as de-
10 fined in section 642(g)(2) of the Homeland Security Act
11 of 2002), that are pending or occur on or after the date
12 of the enactment of this Act, and all release redetermina-
13 tions.

