

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

(as of June 29, 2018)

	“Keep Families Together Act” (S. 3036/H.R. 6135)	“Protect Kids and Parents Act” (S. 3091)	“Keep Families Together and Enforce the Law Act” (S. 3093)	“Equal Protection of Unaccompanied Minors Act” (H.R. 6134)	“Central America Family Protection and Reunification Act” (H.R. 6193)	“Protect Family Values at the Border Act” (H.R. 2572)	Knight Bill (No short title) (H.R. 6173)
Introduction	SENATE: Sen. Dianne Feinstein (D-CA) on June 7, 2018 HOUSE: Rep. Jerold Nadler (R-NY) on June 19, 2018	Sen. Ted Cruz (R-TX) on June 19, 2018	Sen. Thom Tillis (R-NC) on June 20, 2018	Rep. Mark Meadows (R-NC) on June 19, 2018	Rep. Eliot Engel (D-NY) on June 22, 2018	Rep. Lucille Roybal-Allard (D-CA) on May 19, 2017	Rep. Stephen Knight (R-CA) on June 21, 2018
Cosponsors (as of 6/22/18)	SENATE: 48 total (46 Democrats; 2 Independents) HOUSE: 194 Democrats	21 Republicans	39 Republicans	11 Republicans	69 Democrats	29 Democrats	3 Republicans
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.	Limits family separation at the border by expanding ability to detain accompanied children and overrides “Flores Settlement” protections. Revises current unaccompanied children system by rescinding non-contiguous country protections. Heightens evidentiary burden for asylum seekers.	Limits family separation at the border by creating a policy that families will not be separated for deterrence reasons and facilitates family reunification. Promotes research on gang and gender-based violence in the Northern Triangle.	Does not directly prohibit family separation at the border, but does establish standards for migration deterrence programs, including consideration of family unity and best interest of the child when making decisions relating to prosecution or repatriation. Creates humane practices for repatriation and standards of care for migrants in custody.	Limits family separation at the border by expanding ability to detain accompanied children and overrides “Flores Settlement” protections. Requires family detention for certain individuals entering with their children.

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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, with limited exceptions. <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 4-16.)</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 children are to be detained with their parents. Specifically, seeks to override the Flores Settlement Agreement by mandating that accompanied children be treated like adults for purposes of detention, expedited removal, etc. States that there is no presumption that accompanied children should not be detained and limits release of these children to anyone who is not a parent/legal guardian.	No. Not included in text.	No. However, establishes that migration deterrence programs must consider whether: (i) the individual is traveling with family; (ii) repatriation would create protection concerns; and (iii) repatriation or referral for prosecution would be in the best interest of that individual’s child, promotes family unity, or creates protection concerns.	Yes. States that individuals who entered with children and are only being charged with a misdemeanor illegal entry offense, should be held in family detention while charges are pending. Specifically, seeks to override the Flores Settlement Agreement by mandating that accompanied children be treated like adults for purposes of detention, expedited removal, etc. States that immigration detention facilities used to detain children or families do not have to be licensed by the state.* <i>*Note that this is not limited to facilities for accompanied children.</i>

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Detention Beds?	No. Not included in text. Is this known? “documented” It says knowing.	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 included in text.	No. Not included in text.	No. Not included in text.	Yes. Authorizes \$50 million to DHS for family detention facilities.
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. <i>*House version includes a penalty of up to \$10,000 for knowing violations of this policy.</i>	Yes. States a presumption of family unity and that sibling groups should be kept together.	Yes. See above in “Family Detention.”	No. Not included in text.	Yes. Sets a policy that immigrant families should not be separated as a deterrent to migration and that families previously separated due to zero-tolerance policy should be reunited. Requires Department of State (DOS) to develop a strategy to address the health and developmental needs of families who have been separated.	No. Not included in text.	Yes. See “Family Detention” above.

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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><i>*House version requires independent review of this abuse/neglect determination by child welfare expert licensed by the State or county.</i></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>	No. Not included in text.	No. Not included in text.	No. Not included in text.	No. Not included in the text.

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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.	No. Not included in text.	Yes. DHS, in conjunction with HHS and other agencies, is directed to develop child welfare-informed training for Customs and Border Protection.	No. Not included in text.
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. <i>*House version requires weekly reports and phone communication, unless deemed harmful to the child.</i>	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.	No. Not included in text.	Yes. Directs DOS to work with Northern Triangle governments and citizens to help facilitate reunification of those families who were separated.	No, not directly. However, includes a question to migrants in the mandated CBP exit interview regarding whether they have been provided information about where their separated family members are and when they will be reunited.	No. Not included in text.

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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.* <i>*House version requires more frequent reporting and does not include the GAO report requirement.</i>	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.	No. Not included in text.	Yes. Requires reporting by DOS within 30 days and by the GAO within 180 days on steps taken to address separation and facilitate reunification.	Yes. Requires annual reporting by DHS on the impact deterrence programs have on migrant families traveling together.	No. Not included in text.
Addresses 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.	No. Not included in text.	No. Not included in text.	No. Not included in text.



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Directs DHS and DOJ to Prioritize/ Expedite Cases and Prosecution of Families?	No. Not included in text.	Yes. Directs DOJ to prioritize cases of asylum-seeking parents/legal guardians detained with their families. 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.).* <i>Extensions provided in certain circumstances.</i> Requires deportation within 4 days when applicant receives final order denying asylum and bars prosecution for illegal entry.	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.	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.	No. Not included in text.	No. Not included in text.	No. Not included in text.
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.	No. Not included in text.	No. Not included in text.	No. Not included in text.

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Other Provisions of Note	House version includes prohibition on prosecuting those who have expressed a credible fear of persecution, while their claim is pending, or those who have been granted asylum or withholding of removal, for illegal entry or illegal reentry.	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	In part, includes provisions to rollback current protections in the Trafficking Victims Protection Reauthorization Act of 2008 for children from non-contiguous countries (e.g., Guatemala, Honduras, El Salvador), makes it more difficult for children to obtain Special Immigrant Juvenile Status, and heightens requirements for asylum seekers.	Requires strategy on combatting gender-based violence in the Northern Triangle. Requires DOS to submit annual reports (for 5 years) on gender-based violence in the Northern Triangle, as well as on gang and organized crime related-violence. Requires DOS to establish and office to study serious crimes committed against migrants during the first year after their removal from the U.S. (or against U.S. citizen who left due to a parent’s deportation).	Requires DHS to certify that they are only removing individuals through an exit/entry point on the border during daylight hours, with certain exceptions. Requires DHS to establish short-term custody standards for care of individuals in all CBP holding facilities. Requires reporting on deaths in CBP custody and use of force.	Prohibits DHS from releasing accompanied children to anyone other than the parent or legal guardian.