

117TH CONGRESS
1ST SESSION

S. _____

To establish the Office of the Ombudsperson for Immigrant Children in Government Custody, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To establish the Office of the Ombudsperson for Immigrant Children in Government Custody, and for other purposes.

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 “Protection of Kids in
5 Immigrant Detention Act” or “PROKID Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) COMMITTEE.—The term “Committee”
9 means the expert advisory committee established
10 under section 5(a).

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the Office of Refugee Resettlement.

3 (3) FACILITY.—The term “facility”—

4 (A) means a location at which 1 or more
5 immigrant children are detained by the Govern-
6 ment or held in Government custody; and

7 (B) includes—

8 (i) an Office of Refugee Resettlement
9 facility; and

10 (ii) a Department of Homeland Secu-
11 rity facility, including—

12 (I) a U.S. Customs and Border
13 Protection temporary holding facility
14 and transportation contractor;

15 (II) a U.S. Immigration and Cus-
16 toms Enforcement family detention
17 facility;

18 (III) a U.S. Immigration and
19 Customs Enforcement juvenile facility;

20 (IV) a location operated by a pri-
21 vate entity, including a hotel room;
22 and

23 (V) any other location at which
24 the Department of Homeland Security

1 (iii) any other location operated by
2 the Office of Refugee Resettlement to hold
3 immigrant children; and

4 (B) includes an in-network facility and an
5 out-of-network facility.

6 (8) OMBUDSPERSON.—The term
7 “Ombudsperson” means the ombudsperson ap-
8 pointed under section 3(c).

9 (9) OUT-OF-NETWORK FACILITY.—The term
10 “out-of-network facility” means a facility at which
11 an immigrant child is placed as a result of an Office
12 of Refugee Resettlement determination that there is
13 no care provider available among in-network facili-
14 ties to provide specialized services required by the
15 immigrant child, such as medical or mental health
16 support.

17 (10) UNOBSTRUCTED ACCESS.—The term “un-
18 obstructed access” means—

19 (A) with respect to a facility, the ability to
20 enter the facility, including unannounced, to
21 tour and physically visit all areas of the facility;
22 and

23 (B) with respect to information, the ability
24 to obtain requested information in a timely
25 manner and with the full cooperation of the Di-

1 rector or the Secretary of Homeland Security,
2 as applicable.

3 (11) WORKING GROUP.—The term “Working
4 Group” means the interagency working group estab-
5 lished under section 6(b).

6 **SEC. 3. OFFICE OF THE OMBUDSPERSON FOR IMMIGRANT**
7 **CHILDREN IN GOVERNMENT CUSTODY.**

8 (a) ESTABLISHMENT.—There is established, within
9 the Department of Health and Human Services, an Office
10 of the Ombudsperson for Immigrant Children in Govern-
11 ment Custody (referred to in this section as the “Office
12 of the Ombudsperson”)—

13 (1) to endorse and support the principle that
14 family separation and detention are generally not in
15 a child’s best interest; and

16 (2) in cases in which detention or Government
17 custody is required—

18 (A) to ensure that immigrant children are
19 only detained or held in Government custody in
20 the least restrictive setting;

21 (B) to advocate for the quick, safe, and ef-
22 ficient release of immigrant children from de-
23 tention or Government custody whenever pos-
24 sible; and

1 (C) in any case in which an immigrant
2 child is held in Department of Homeland Secu-
3 rity custody together with his or her family
4 unit, to advocate for the release of the child and
5 concurrent release of the parent or legal guard-
6 ian of the child.

7 (b) INDEPENDENCE.—The Office of the
8 Ombudsperson shall be an impartial, confidential resource
9 fully independent of—

10 (1) the Office of Refugee Resettlement of the
11 Department of Health and Human Services; and

12 (2) the Department of Homeland Security.

13 (c) OMBUDSPERSON.—

14 (1) IN GENERAL.—The Office of the
15 Ombudsperson shall be headed by an
16 Ombudsperson, who shall be appointed by, and re-
17 port directly to, the Secretary of Health and Human
18 Services.

19 (2) QUALIFICATIONS.—The individual ap-
20 pointed as Ombudsperson shall have demonstrated
21 experience in—

22 (A) immigration law; and

23 (B) child advocacy or child welfare.

24 (3) DUTIES AND AUTHORITIES.—

1 (A) MONITORING.—The Ombudsperson
2 shall monitor facilities for compliance with ap-
3 plicable law and standards, including—

4 (i) the Flores settlement agreement;

5 (ii) section 235 of the William Wilber-
6 force Trafficking Victims Protection Reau-
7 thorization Act of 2008 (8 U.S.C. 1232);

8 (iii) the applicable provisions of the
9 Prison Rape Elimination Act of 2003 (34
10 U.S.C. 30301 et seq.);

11 (iv) the standards of U.S. Customs
12 and Border Protection entitled “National
13 Standards on Transport, Escort, Deten-
14 tion, and Search” issued in October 2015;
15 and

16 (v) internal Office of Refugee Reset-
17 tlement policy guidance, including the
18 guidance entitled “ORR Policy Guide:
19 Children Entering the United States Unac-
20 companied” issued on January 30, 2015.

21 (B) INVESTIGATIONS.—

22 (i) IN GENERAL.—The Ombudsperson
23 shall investigate—

24 (I) claims of abuse, neglect, or
25 mistreatment of immigrant children,

1 by the Government or any other enti-
2 ty, while in Government custody; and

3 (II) complaints against foster
4 care providers, including foster care
5 providers under State oversight.

6 (ii) REPORTING OF STATE LICENSING
7 VIOLATIONS.—If in the course of an inves-
8 tigation under clause (i)(II) the
9 Ombudsperson discovers a State licensing
10 violation, the Ombudsperson shall report
11 the violation to the child welfare licensing
12 agency of the applicable State.

13 (C) OVERSIGHT OF OFFICE OF REFUGEE
14 RESETTLEMENT.—

15 (i) IN GENERAL.—The Ombudsperson
16 shall provide oversight of the Director by
17 reviewing placement decisions, including
18 sponsor denials, that are contested by an
19 immigrant child or the attorney, child ad-
20 vocate, parent, or prospective sponsor of
21 the immigrant child.

22 (ii) EXPEDITED REVIEW OF CON-
23 TESTED PLACEMENT DECISIONS.—

24 (I) IN GENERAL.—Not later than
25 15 days after the date on which re-

1 view of a placement decision described
2 in clause (i) is requested, the
3 Ombudsperson shall complete the re-
4 view.

5 (II) RECOMMENDATION TO DI-
6 RECTOR.—If, in carrying out such a
7 review, the Ombudsperson determines
8 that such placement decision was er-
9 roneous, the Ombudsperson shall—

10 (aa) submit to the Director
11 a recommendation for further ac-
12 tion; and

13 (bb) make a copy of the rec-
14 ommendation available to—

15 (AA) the immigrant
16 child; and

17 (BB) if applicable, the
18 immigrant child's attorney
19 and child advocate.

20 (III) WRITTEN STATEMENT.—

21 (aa) IN GENERAL.—In any
22 case in which the Director de-
23 clines to follow a recommendation
24 under subclause (II), not later
25 than 15 days after the date on

1 which the Director receives the
2 recommendation, the Director
3 shall issue a written response, in-
4 cluding a detailed justification.

5 (bb) NONDELEGATION.—
6 The Director may not delegate
7 the requirement to issue a writ-
8 ten statement under this sub-
9 clause.

10 (iii) CIVIL ACTION NOT PRE-
11 CLUDED.—Review by the Ombudsperson
12 under this subparagraph shall not preclude
13 an immigrant child, or the attorney, child
14 advocate, parent, or prospective sponsor of
15 the immigrant child, from simultaneously
16 commencing a civil action in any appro-
17 priate district court of the United States.

18 (D) STAKEHOLDER MEETINGS.—Not less
19 frequently than quarterly, the Ombudsperson
20 shall invite community stakeholders, Flores set-
21 tlement agreement class counsel, and the Flores
22 settlement agreement court-appointed monitor
23 to participate in a meeting—

1 (i) to ensure that the Ombudsperson
2 is aware of stakeholder concerns and prior-
3 ities; and

4 (ii) to provide feedback on stakeholder
5 requests.

6 (E) REGIONAL OFFICES.—The
7 Ombudsperson shall establish regional offices of
8 the Office of the Ombudsperson—

9 (i) to ensure the inclusion of pertinent
10 local and regional issues, trends, and chal-
11 lenges for consideration by the
12 Ombudsperson;

13 (ii) to strengthen State oversight;

14 (iii) to coordinate with State licensing
15 entities; and

16 (iv) to identify and address differences
17 among State child protection laws.

18 (F) INDIVIDUAL CASE ASSISTANCE.—

19 (i) IN GENERAL.—The Ombudsperson
20 may offer individual case assistance to an
21 immigrant child who is in Government cus-
22 tody if the case of the immigrant child is
23 long-pending or otherwise requires expe-
24 dited processing or elevated attention, as
25 determined by the Ombudsperson.

1 (ii) COMMUNICATION.—To ensure a
2 complete understanding of the status of a
3 case described in clause (i), the
4 Ombudsperson may communicate with the
5 potential sponsor, family members, child
6 advocate, legal counsel, Office of Refugee
7 Resettlement case manager and Federal
8 field specialist, the General Dynamics In-
9 formation Technology case coordinator,
10 and any other relevant individual charged
11 with case management of the immigrant
12 child concerned.

13 (G) SUBPOENA AUTHORITY.—

14 (i) IN GENERAL.—Subject to the ap-
15 proval of the Secretary of Health and
16 Human Services, the Ombudsperson
17 may—

18 (I) issue a subpoena to require
19 the production of all information, re-
20 ports, and other documentary evidence
21 necessary to carry out the duties of
22 the Ombudsperson; and

23 (II) invoke the aid of any appro-
24 priate court of the United States.

1 (IV) A detailed description of any
2 investigation into a claim of abuse,
3 neglect, or mistreatment of an immi-
4 grant child in Government custody,
5 including a summary of the results of
6 any such investigation.

7 (V) A description of the objec-
8 tives of the Office of the
9 Ombudsperson for the next fiscal
10 year.

11 (J) ADDITIONAL DUTIES.—The
12 Ombudsperson shall—

13 (i) conduct a review of data collection,
14 as described in section 4(a);

15 (ii) establish the Committee, as de-
16 scribed in section 5; and

17 (iii) enter into a memorandum of un-
18 derstanding, as described in section 6(a).

19 (d) ACCESS TO FACILITIES.—The Secretary of
20 Health and Human Services and the Secretary of Home-
21 land Security shall ensure—

22 (1) unobstructed access by the Ombudsperson
23 to any facility; and

24 (2) the ability of the Ombudsperson—

25 (A) to monitor any facility; and

- 1 (B) to meet confidentially with—
- 2 (i) staff of any facility;
- 3 (ii) employees and contractors of the
- 4 Office of Refugee Resettlement and the
- 5 Department of Homeland Security; and
- 6 (iii) any immigrant child in Govern-
- 7 ment custody, after notification of the im-
- 8 migrant child's counsel, as applicable.

9 (e) ACCESS TO INFORMATION.—The Secretary of

10 Health and Human Services shall ensure unobstructed ac-

11 cess by the Ombudsperson to—

12 (1) the case files, records, reports, audits, docu-

13 ments, papers, recommendations, or any other perti-

14 nent information relating to the care and custody of

15 an immigrant child; and

16 (2) the written policies and procedures of all

17 Office of Refugee Resettlement facilities.

18 **SEC. 4. DATA COLLECTION.**

19 (a) INDEPENDENT REVIEW BY OMBUDSPERSON.—

20 (1) IN GENERAL.—The Ombudsperson shall

21 regularly review data collected by the Secretary of

22 Health and Human Services and the Secretary of

23 Homeland Security relating to immigrant children in

24 facilities.

1 (2) COLLABORATION REQUIRED.—The Sec-
2 retary of Health and Human Services and the Sec-
3 retary of Homeland Security shall provide the
4 Ombudsperson unobstructed access to—

5 (A) real-time custody and detention data
6 for each immigrant child detained by the Gov-
7 ernment or held in Government custody, includ-
8 ing—

9 (i) the location and level of placement;

10 (ii) biographical information, includ-
11 ing full name, date of birth, country of citi-
12 zenship, and alien number;

13 (iii) all locations at which the immi-
14 grant child has been detained or held in
15 custody;

16 (iv) the dates and times the immi-
17 grant child is booked in and booked out of
18 any facility; and

19 (v) transfer and discharge informa-
20 tion; and

21 (B) Department of Homeland Security and
22 Department of Health and Human Services
23 data personnel for the purpose of reviewing
24 data collection and integrity issues.

1 (b) OFFICE OF REFUGEE RESETTLEMENT DATA
2 COLLECTION SYSTEM.—

3 (1) IN GENERAL.—To support the data collec-
4 tion and monitoring duties of the Ombudsperson and
5 to facilitate public monitoring, the Director shall de-
6 velop a data collection system that collects and
7 maintains the following information:

8 (A) The total number of immigrant chil-
9 dren held in custody by the Director,
10 disaggregated by placement level, specific Office
11 of Refugee Resettlement facility, and age.

12 (B) The average and median number of
13 days immigrant children remain in such cus-
14 tody, disaggregated by placement level, specific
15 Office of Refugee Resettlement facility, and
16 age.

17 (C) The average and median number of
18 days immigrant children stay in an Office of
19 Refugee Resettlement facility, disaggregated by
20 placement level, specific Office of Refugee Re-
21 settlement facility, and age.

22 (D) The number of immigrant children dis-
23 charged to sponsors, disaggregated by sponsor
24 category, placement level, specific Office of Ref-
25 ugee Resettlement facility, and age.

1 (E) The sponsor categories of immigrant
2 children held at each Office of Refugee Reset-
3 tlement facility, disaggregated by placement
4 level and age.

5 (F) The number and percentage of immi-
6 grant children held in an Office of Refugee Re-
7 settlement facility with more than 25 immi-
8 grant children, disaggregated by placement level
9 and age.

10 (G) The percentage of filled capacity
11 across all Office of Refugee Resettlement facili-
12 ties.

13 (H) The total number of children held at
14 out-of-network facilities, disaggregated by
15 placement level and age.

16 (I) For each Office of Refugee Resettle-
17 ment facility—

18 (i) the percentage of filled capacity;

19 (ii) the maximum number of available
20 beds;

21 (iii) the number and percentage of im-
22 migrant children with disabilities,
23 disaggregated by placement level and age;
24 and

1 (iv) the number and percentage of im-
2 migrant children receiving mandatory
3 home studies, discretionary home studies,
4 and post-release services, disaggregated by
5 placement level and age.

6 (2) PUBLICATION.—Not later than the 15th of
7 each month, the Director shall make the data col-
8 lected under paragraph (1) for the preceding month
9 available to the public on the internet website of the
10 Office of Refugee Resettlement.

11 (c) PROHIBITION ON CERTAIN USES OF INFORMA-
12 TION.—Information collected under this section may not
13 be used for immigration enforcement or law enforcement
14 purposes.

15 **SEC. 5. EXPERT ADVISORY COMMITTEE.**

16 (a) ESTABLISHMENT.—Not later than 90 days after
17 the date of the enactment of this Act, the Ombudsperson
18 shall establish an expert advisory committee to assist the
19 Ombudsperson in—

20 (1) identifying relevant trends relating to immi-
21 grant children in Government custody;

22 (2) conducting fact-finding missions and inves-
23 tigations of facilities; and

1 (3) ensuring Government and private contractor
2 compliance with applicable law and standards for fa-
3 cilities.

4 (b) MEMBERSHIP.—The members of the Committee
5 shall—

6 (1) be appointed by the Ombudsperson;

7 (2) represent various geographical regions; and

8 (3) be comprised of subject matter experts, in-
9 cluding—

10 (A) legal advocates or specialists in the
11 fields of child and family welfare, immigration,
12 and human rights;

13 (B) pediatricians or other appropriate pe-
14 diatric health care experts;

15 (C) child or adolescent psychiatrists or
16 psychologists;

17 (D) social workers;

18 (E) data analysis experts; and

19 (F) any other relevant subject matter ex-
20 pert.

21 (c) MEETINGS.—The Committee shall meet not less
22 frequently than quarterly.

23 (d) DUTIES.—The Committee shall regularly—

24 (1) review facility compliance with applicable
25 law and standards relating to Government detention

1 and custody of immigrant children, including the
2 Flores settlement agreement and section 235 of the
3 William Wilberforce Trafficking Victims Protection
4 Reauthorization Act of 2008 (8 U.S.C. 1232); and
5 (2) submit to the Ombudsperson recommenda-
6 tions for improvement.

7 (e) **SITE VISITS.**—The Committee may designate 1
8 or more individuals who shall have the authority—

9 (1) to carry out facility site visits; and

10 (2) interview immigrant children held in Gov-
11 ernment custody, after notification of counsel, as ap-
12 plicable.

13 **SEC. 6. COORDINATION WITH DEPARTMENT OF HOMELAND**
14 **SECURITY.**

15 (a) **MEMORANDUM OF UNDERSTANDING.**—

16 (1) **IN GENERAL.**—On the date of the enact-
17 ment of this Act, the Secretary of Homeland Secu-
18 rity and the Ombudsperson shall enter into a memo-
19 randum of understanding to coordinate oversight be-
20 tween the Department of Homeland Security and
21 the Department of Health and Human Services.

22 (2) **ELEMENTS.**—The memorandum of under-
23 standing required by paragraph (1) shall do the fol-
24 lowing:

1 (A) Require the Secretary of Homeland
2 Security to provide information to the
3 Ombudsperson with respect to each immigrant
4 child detained by U.S. Customs and Border
5 Protection or U.S. Immigration and Customs
6 Enforcement, or who is otherwise in the custody
7 of the Secretary of Homeland Security, includ-
8 ing—

9 (i) the location of the immigrant child;

10 (ii) biographical information, includ-
11 ing full name, date of birth, country of citi-
12 zenship, and alien number;

13 (iii) all locations at which the immi-
14 grant child has been so detained or held in
15 Department of Homeland Security cus-
16 tody;

17 (iv) exact times at which the immi-
18 grant child was booked in and booked out
19 of such custody;

20 (v) the date on which the immigrant
21 child is released from such custody or
22 transferred to the custody of the Secretary
23 of Health and Human Services;

24 (vi) in the case of an immigrant child
25 who remains in Department of Homeland

1 Security custody for more than 72 hours,
2 the reason for such continued custody; and
3 (vii) any other information the
4 Ombudsperson considers relevant to the
5 oversight and monitoring duties described
6 in section 3(c)(3).

7 (B) Establish the right of the
8 Ombudsperson and the Committee to monitor
9 Department of Homeland Security facilities for
10 compliance with applicable standards of cus-
11 tody.

12 (C) Provide the Ombudsperson and the
13 Committee full and unobstructed access to—

14 (i) Department of Homeland Security
15 facilities for regular site visits; and

16 (ii) the written policies and procedures
17 of Department of Homeland Security fa-
18 cilities.

19 (3) LIMITATION.—The memorandum of under-
20 standing may only allow the Ombudsperson to share
21 information with the Secretary of Homeland Secu-
22 rity on a case-by-case basis, and with the informed
23 consent of the immigrant child concerned, if the
24 Ombudsperson determines that such information

1 sharing may facilitate the release of the immigrant
2 child from custody.

3 (4) EVALUATION.—Not later than 2 years after
4 the Ombudsperson and the Secretary of Homeland
5 Security enter into the memorandum of under-
6 standing required by this subsection, the Comp-
7 troller General of the United States shall evaluate
8 the coordination between the Ombudsperson and the
9 Secretary to determine whether such memorandum
10 of understanding is sufficient to ensure the oversight
11 and monitoring required by this Act.

12 (5) RECOMMENDATIONS.—If the Comptroller
13 General makes a determination under paragraph (4)
14 that the memorandum of understanding is insuffi-
15 cient, the Comptroller General shall recommend ac-
16 tionable steps to be implemented—

17 (A) to improve coordination between the
18 Ombudsperson and the Secretary of Homeland
19 Security; and

20 (B) to ensure effectiveness of the mandate
21 of the Ombudsperson.

22 (b) INTERAGENCY WORKING GROUP.—

23 (1) ESTABLISHMENT.—There is established an
24 interagency working group to identify and discuss
25 concerns relating to immigrant children in facilities.

1 (2) MEMBERSHIP.—The Working Group shall
2 be composed of representatives of—

3 (A) the Department of Justice;

4 (B) the Department of Health and Human
5 Services, including the Director or a senior rep-
6 resentative of the Office of Refugee Resettle-
7 ment;

8 (C) U.S. Customs and Border Protection;

9 (D) U.S. Immigration and Customs En-
10 forcement;

11 (E) relevant oversight offices, including—

12 (i) the Immigration Detention Om-
13 budsman of the Department of Homeland
14 Security; and

15 (ii) the Inspectors General of the De-
16 partment of Justice, the Department of
17 Health and Human Services, U.S. Cus-
18 toms and Border Protection, and U.S. Im-
19 migration and Customs Enforcement; and

20 (F) any other relevant Federal agency or
21 office.

22 (3) MEETINGS.—The Working Group shall—

23 (A) hold meetings not less frequently than
24 quarterly;

1 (B) invite representatives of nongovern-
2 mental organizations that provide services to
3 immigrant children to participate in such meet-
4 ings as the Ombudsperson considers appro-
5 priate; and

6 (C) provide to the Ombudsperson a sum-
7 mary of each such meeting.

8 **SEC. 7. RULE OF CONSTRUCTION.**

9 Nothing in the Act shall be construed to preclude or
10 limit Flores settlement agreement class counsel from con-
11 ducting independent investigations or seeking enforcement
12 actions relating to violations of the Flores settlement
13 agreement in any appropriate district court of the United
14 States.