# DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, AND OFFICE OF REFUGEE RESETTLEMENT

<b>Proposed Information Collection Activity</b> ;	)	
Placement and Transfer of Unaccompanied	)	Notice of Proposed Rulemaking
Alien Children Into ORR Care Provider	)	86 Fed. Reg. 5196-5199
Facilities (OMB #0970-0554)	)	(Jan. 19, 2021)
	)	

Joint Comments of —

University of California Davis School of Law, Immigration Law Clinic The Center for Human Rights and Constitutional Law The Florence Immigrant & Refugee Rights Project The National Immigrant Justice Center

March 18, 2021

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#### I. INTRODUCTION

The Office of Refugee Resettlement ("ORR"), Administration for Children and Families ("ACF"), U.S. Department of Health and Human Services ("HHS") (collectively, "the Agencies"), propose several forms that the Agencies intend to use to place or transfer Unaccompanied Alien Children ("UC") into ORR care provider facilities (collectively, "Proposed Forms"). The Proposed Forms include 13 revised forms and 4 new forms that will be incorporated into ORR's case management system, UAC Path. We have numerous objections and concerns related to the Proposed Forms.

We object to the promulgation of Proposed Forms P-1 through P-17 as currently drafted. Without significant changes, implementation of these Proposed Forms would violate the rights of unaccompanied immigrant children under the *Flores* Settlement Agreement ("FSA"), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Freedom of Information Act ("FOIA"), the Fifth Amendment Due Process Clause and protection against self-incrimination, and the *Flores* July 30, 2018 Order, and would be contrary to UC's best interests.

First, the Proposed Forms would allow ORR and care provider personnel to elicit information regarding a child's medical history, gang affiliations, criminal history and other information without requisite protections against self-incrimination, including a Miranda warning, and without the privacy and confidentiality protections under state and federal law. Children must be properly advised of the potential consequences of disclosing personal information, and any disclosures must be kept confidential in accordance with state laws and policies protecting children. Confidential medical information must also be protected under HIPAA. ORR's sharing of the information contained within these Proposed Forms and other documents drafted in response to the contents of these forms, such as Significant Incident Reports ("SIRs"), to third parties, including but not limited to the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), and United States Citizenship and Immigration Services ("USCIS"), impermissibly turns ORR into a law enforcement agency, may result in the violation of state laws and policies, and can have severe consequences for a child's placement, reunification, and immigration case. Thus, the Proposed Forms must be revised in a manner that clearly obliges ORR to follow the FSA, state confidentiality laws, HIPAA, the U.S. Constitution, and other laws, regulations, and policies, including ORR's Policy Guide, regarding the release of information contained within a child's ORR file.

Second, with the information gathered in these forms, the Proposed Forms unjustifiably permit the criminalization of UC based on their trauma histories, which often provides the basis for a child to be placed in a more restrictive setting and unduly delays the family reunification process. We recommend that the Proposed Forms be revised to promote placement in the least restrictive setting and expedient release of children to their sponsors. Third, as FOIA and HIPAA

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<sup>&</sup>lt;sup>1</sup> Proposed Information Collection Activity; Placement and Transfer of Unaccompanied Alien Children into ORR Care Provider Facilities (OMB #0970-0554), 86 Fed. Reg. 5196-5199 (Jan. 19, 2021) [hereinafter Proposed Collection].

require, the Proposed Forms must make clear that UC have the right to free and prompt access to their case files.

Fourth, in clear violation of the FSA and the Fifth Amendment's Due Process Clause, the Notice of Placement forms fail to provide adequate notice regarding the basis for placement in all restrictive settings and a process for the child to challenge their placement. In addition, the proposed Spanish translations for the Notice of Placement forms do not capture the meaning of the English equivalent phrases, misrepresenting the reasoning behind a child's placement. Finally, we have numerous concerns identified by form, which include, among other things, the lack of clarity with respect to some of the health-related requirements for influx facilities, lack of standardization between influx and non-influx transfers on timing and override options, the failure to capture the entire decision-making process for a child's transfer, the failure to adequately track ORR facilities' state licensing and monitoring requirements, and the lack of clarity as to why certain fields are included in some of these forms. Our comments address these concerns and many others and provide recommendations that ORR should implement to protect the rights and interests of children in its custody, as well as promote child welfare.

We also object to the issuance of the Proposed Forms to the extent they include one or more fields with drop-down menu options for which we were unable to examine and analyze the predetermined menu options. We made numerous attempts to obtain copies of the drop-down menu options by emailing InfoCollection@acf.hhs.gov, OPREInfoCollection@ACF.hhs.gov, and UCPolicy@acf.hhs.gov. To-date, we have not received the information requested. As such, we note when this issue arises in each form below, and further note that as a result we are unable to fully comment on the affected sections and fields. The Agencies' failure to provide all relevant information necessary to comment is itself a violation of the APA, and as such, the Proposed Forms cannot be implemented.

Additionally, we object to the issuance of this proposed information collection activity and request for public comments at a time when a new Administration is just beginning its transition and the ORR system is near capacity. ORR has recently indicated that it is close to using all available bed capacity for children in its custody, and just three weeks ago, it began placing unaccompanied immigrant children in an unlicensed influx facility to address capacity constraints.<sup>3</sup> Given this pressing and deeply concerning situation, many organizations serving and advocating for the needs and interests of unaccompanied children have had to focus their advocacy efforts on ensuring unaccompanied children's safety, health, and well-being under these conditions, including ensuring that children are released to relatives and sponsors as expeditiously as possible. As a result, organizations serving unaccompanied children have had little time to devote to considering changes to ORR policies and protocols that may have a substantive impact on children's safety and well-being.

<sup>&</sup>lt;sup>2</sup> 5 U.S.C. § 553 (2018); *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 394 (D.C. Cir. 1973) ("In order that rule-making proceedings to determine standards be conducted in orderly fashion, information should generally be disclosed as to the basis of a proposed rule at the time of issuance."); *see also Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008).

<sup>&</sup>lt;sup>3</sup> Silvia Foster-Frau, *First Migrant Facility for Children Opens Under Biden*, Wash. Post (Feb. 22, 2021), https://www.washingtonpost.com/national/immigrant-children-camp-texasbiden/ 2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117\_story.html.

#### II. COMMENTING PARTIES

The *University of California Davis School of Law, Immigration Clinic* ("the Clinic") is a nonprofit, public interest clinic dedicated to serving detained immigrants and educating law students. The Clinic is counsel to the plaintiff class in *Lucas R. v. Azar*, No. 18-CV-05741-DMG, (C.D. Cal.) ("*Lucas R.*") and has national expertise in federal litigation, criminal defense, and immigration law. The Clinic is the second oldest immigration law clinic in the United States and has decades of experience defending asylum seekers, immigrant children, and vindicating the rights of immigrants in federal court.

The Center for Human Rights and Constitutional Law ("CHRCL") is a non-profit, public interest law foundation dedicated to furthering the legal, civil, human, and constitutional rights of immigrants, refugees, children, indigenous peoples, and the indigent. CHRCL is counsel to the plaintiff class in Flores v. Sessions, No. 85-CV-4544 (C.D. Cal) ("Flores") and Lucas R. CHRCL has nationally recognized expertise in law and policy affecting its target populations. CHRCL devotes a majority of its resources to major class action litigation. CHRCL also conducts administrative and legislative advocacy, and policy analysis on behalf of its target populations. CHRCL also serves as a resource for policy makers, advocacy coalitions, and community-based organizations in the areas of migration, refugees, and labor-related immigration law and policy.

The Florence Immigrant & Refugee Rights Project ("Florence Project") is a 501(c)(3) non-profit organization that provides free legal and social services to adults and unaccompanied children facing immigration removal proceedings in Arizona. In 2019, the Florence Project provided free legal and social services to over 10,000 detained adults and unaccompanied children who faced removal in Arizona. As the only 501(c)(3) non-profit organization in Arizona dedicated to providing free legal services to people in immigration detention, our vision is to ensure that every person facing removal proceedings has access to counsel, understands their rights under the law, and is treated fairly and humanely.

The *National Immigrant Justice Center* ("NIJC"), headquartered in Chicago, offers a wide range of legal services to low-income immigrants. Attorneys and trained staff provide consultations and legal representation on matters that include family-based immigration, applications for Lawful Permanent Residence, legal protections for immigrant victims of family violence, visas for immigrant victims of crimes, visas for immigrant victims of human trafficking, and more. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding more than three decades ago, NIJC blends individual client advocacy with broad-based systemic change.

#### III. COMMENTS ON PROPOSED FORMS BY INDIVIDUAL FORM

A. Proposed "Placement Authorization" Form P-1 and "Authorization for Medical, Dental, and Mental Health Care" Form P-2.

Although ORR only revised the formatting and made no substantive changes to the content of the Placement Authorization Form ("Form P-1") and the Authorization for Medical, Dental, and Mental Health Care Form ("Form P-2"), we take this opportunity to comment on the content of these forms, which as drafted, raise concerns regarding the lack of appropriate consent

for medical care, the failure to ensure care providers are aware of a child's right to unrestricted access to his or her ORR file, and the unrestricted sharing of ORR's files with third-parties, including DHS, USCIS and ICE.

# 1. Forms P-1 and P-2 Violate ORR's Legal Obligations Regarding Consent for the Administration of Medical Treatment to Children.

As of the filing of this comment, ORR is required to follow the terms of the *Flores* Settlement Agreement ("FSA"), which requires that "[l]icensed programs shall comply with all applicable state child welfare laws and regulations . . . ."<sup>4</sup> Each ORR-contracted care provider is therefore required to comply with all state child welfare laws and regulations governing the provision of and consent to medical care, including, but not limited to, the administration of psychotropic medication to children in their custody.<sup>5</sup>

Here, Form P-1 states "[t]he care provider may consent to the child's medical, dental, and mental health care as specified in the Authorization to Consent to Medical, Dental, and Mental health Care" and includes a signature field for an "Authorized Representative of Care Provider." Form P-2 states that "[t]he care provider shall secure authorization from ORR before consenting to any non-emergency medical, dental or medical health services," and "[t]he care provider shall consent to the provision of emergency treatment recommended by a licensed medical, dental, or mental health provider." Form P-2 includes signature fields for both an "Authorized Representative of Care Provider" and "Official Representative, Office of Refugee Resettlement." However, under applicable state laws and regulations, care provider staff and ORR representatives may not be the appropriate *authorized entities* to provide medical consent for children in ORR custody.

Each state has different laws and regulations regarding consent to medical treatment for children in the state child welfare system, and under the FSA, ORR and its care providers must abide by the applicable laws and regulations. For example, in California, parents and legal guardians generally retain the right to consent for their child's medical care even when their child enters the child welfare system. However, there are certain circumstances where a court or other caregiver may be the appropriate authorized consenter, and there are special consent rules for certain types of specialty care, such as emergency situations, child abuse, and mental health.

Form P-1 fails to address the specific laws and regulations applicable to ORR care providers in California or any other state where children are in ORR custody. The Commenting

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<sup>&</sup>lt;sup>4</sup> Flores v. Reno (Case No. 85-cv-4544) Stipulated Settlement Agreement ¶ 6, Ex. 1 (Jan. 17, 1997), https://www.aclu.org/sites/default/files/assets/flores\_settlement\_final\_plus\_extension\_of\_settlement011797.pdf [hereinafter Flores Settlement Agreement].

<sup>&</sup>lt;sup>5</sup> Office of Refugee Resettlement, *ORR Guide: Children Entering the United States Unaccompanied* § 3.4.4 (2015), https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied [hereinafter ORR Policy Guide] ("[C]are providers must have policies and procedures based on State or local laws and regulations to ensure the safe, discreet, and confidential provision of prescription and nonprescription medications to [UCs]."). <sup>6</sup> *See* Cal. Wel. & Inst. Code § 5585.53 (Deering 2021) (stating that if a child requires mental health treatment, both the child and a family member or guardian "shall be consulted or informed as to the basic recommendations for further treatment and placement" and "every effort shall be made to obtain the consent of the minor's parent or legal guardian prior to treatment and placement of the minor"); *see also* Rebecca Gudeman, Nat'l Ctr. for Youth Law, *Consent to Medical Treatment for Foster Children: California Law – A Guide for Health Care Providers* 2 (2014), https://youthlaw.org/wp-content/uploads/2015/11/Consent-to-Medical-Care-Foster-Care-2-5-14.pdf.

<sup>&</sup>lt;sup>7</sup> See Gudeman, supra note 6.

Parties are also unaware of any court order divesting unaccompanied children's parents or legal guardians of their rights to consent and assigning these rights wholesale to ORR or its care providers. As such, the Commenting Parties recommend that Form P-1 be amended to ensure that ORR and its care providers are aware of their obligation to follow state laws and regulations regarding rights to consent to medical treatment on behalf of a child in their care.

The Commenting Parties believe this clarification is essential in light of ORR's past violations of state child welfare laws regarding consent. For example, in 2018, the U.S. District Court of Central California found that ORR had breached the FSA in the course of administering psychotropic medications to unaccompanied immigrant children at the Shiloh Residential Treatment Center in Manvel, Texas.<sup>8</sup> As a result, the court ordered, among other things, that ORR's care providers in Texas follow Texas state law, as required in the FSA, by obtaining the consent of the person *legally authorized* to give medical consent before administering psychotropic medication to children at Shiloh RTC.<sup>9</sup> Despite this court order, the Commenting Parties are concerned that it is not clear that ORR has taken into account their current legal obligations to follow state laws and regulations in the drafting of Forms P-1 and P-2. Clarification on Forms P-1 and P-2 with respect to this issue could help resolve some misunderstandings and ongoing violations.

For the reasons stated above, the Commenting Parties recommend that ORR revise Forms P-1 and P-2 to make clear that ORR care providers, as well as ORR staff, are required to follow the state's child welfare laws and regulations governing the provision of and consent to medical care for children in their custody.

# 2. Form P-1 Should Clearly State that UCs Have a Right to Free and Prompt Access to Their Case Files.

Paragraph 7 of Form P-1 informs care providers that, "[a]ll records maintained by the care provider in reference to the minor are considered ORR property," and "[t]he care provider must give ORR and its designees, as directed by ORR, unrestricted free access to information about the minor at all times." To ensure UCs also have access to their own files, the Agencies should add an additional provision to Form P-1 that informs care providers that UCs also have the right to *free* and *prompt* access to their case files *and* any information collected about them by ORR. It is important that care providers know and understand a child's right to their case file and any information ORR collects about them, even if the care provider is not the entity ultimately providing the file to the child. In the Commenting Parties' experience, care provider

<sup>&</sup>lt;sup>8</sup> In 2019, an Office of Inspector General Report revealed that "facility staff reported that they were not always sure who within ORR needed to approve psychotropic medications." Office of Inspector General, HHS, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* 30 (2019) (referring to "Appendix D: Use of Psychotropic Medications by Children in the Care Provider Facilities Visited by OIG"), https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf. In the Shiloh Residential Treatment Center ("RTC"), ORR staff, not the children's family members, signed forms purportedly authorizing the administration of psychotropic medication to children. Furthermore, ORR has administered psychotropic drugs to children at Shiloh RTC without securing parental consent even though the facility had the children's parents and family contact information. *See* In Chambers - Order Re Pls.' Mot. to Enforce Class Action Settlement [409] at 21-22, *Flores v. Sessions*, No. 2:85-cv-04544-DMG-AGR (C.D. Cal. July 30, 2018), ECF No. 47 [hereinafter Order Re Pls.' Mot.].

<sup>&</sup>lt;sup>9</sup> See Order Re Pls.' Mot., supra note 8.

staff, such as a case manager or clinician, are best positioned to inform the child of this right and aid the child in requesting his or her file from ORR.

Accordingly, the Commenting Parties recommend that the Agencies add the following statement to paragraph 7 in Form P-1: The care provider must inform children in its care of the right to request their ORR case file and any other information collected about them by ORR, and provide them with the information on how to request their files from ORR and related documents and forms for doing so. The statement should also specify that the care provider is to inform the child of his or her right to request their file or information both under the "Request for UAC Case File Information" process available through ORR<sup>10</sup> and FOIA.

3. Form P-1 Should Clearly State that ORR Care Providers Are Obligated Under HIPAA to Provide a Child His or Her Medical Records and Other Health Information Upon Request and Within the Timeline Required Under HIPAA.

Form P-1 should also inform ORR care providers of their obligation to provide a minor a copy of his or her medical records and other health information as required under HIPAA, <sup>12</sup> irrespective of ORR's file request process and/or FOIA. Although ORR, as an organization, may not be a "covered entity" within the meaning of HIPAA, ORR care providers as an institution or, at a minimum, their medical professionals, such as physicians, nurses, social workers and other practitioners, as non-institutional providers, are covered entities subject to HIPAA because they are healthcare providers who submit HIPAA transactions. <sup>14</sup>

A health care provider includes "all providers of services (e.g., institutional providers such as hospitals) and providers of medical or health services (e.g., noninstitutional providers such as physicians, dentists and other practitioners as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care." ORR policy and procedures make clear that ORR care providers are health care providers under HIPAA. ORR Policy Guide

<sup>&</sup>lt;sup>10</sup> Requests for UAC Case File Information, Office of Refugee Resettlement (Apr. 14, 2014) https://www.acf.hhs.gov/orr/policy-guidance/requests-UAC-case-file-information.

<sup>&</sup>lt;sup>11</sup> FOIA requires federal agencies, including ORR, to disclose any information requested unless it falls under one of the nine exceptions. U.S. Dep't of Homeland Sec., *Privacy Impact Assessment for the FOIA Immigration Records System (First)* 1 (2019), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-firstmarch2019. pdf\_0.pdf. When individuals, like children in ORR custody, request records about themselves from the federal government, including the Agencies, FOIA grants the most access possible. *Id.* ORR cannot use a parallel authorization process to insulate itself from the requirements of FOIA and due process confrontation of evidence requirements. As such, ORR must comply with a request for a child's record in a free and timely manner, regardless of whether it is a Request for UAC Case File information under ORR's policy or a FOIA request. The care provider should therefore inform a child of both avenues for obtaining their case file or records.

<sup>&</sup>lt;sup>12</sup> Health Insurance Portability and Accountability Act of 1996, H.R. 3103, 104th Cong. (1996).

<sup>&</sup>lt;sup>13</sup> See 45 C.F.R. § 160.103 (2020) (defining "covered entity").

<sup>&</sup>lt;sup>14</sup> See Ctrs. for Medicare & Medicaid Servs., Are You a Covered Entity? (Aug. 2, 2020), https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/HIPAA-

ACA/AreYoUCoveredEntity [hereinafter *Are You a Covered Entity*]; U.S. Dep't of Health & Hum. Servs., *Summary of the HIPAA Privacy Rule* (July 26, 2013), https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html#:~:text=The%20U.S.%20Department%20of%20Health,1996%20(%E2%80%9CHIPAA%E2%80%9D).&text=Visit%20our%20Privacy%20Rule%20section,about%20how%20the%20Rule%20applies [hereinafter *Summary of the HIPAA Privacy*] (citing language under HIPAA).

<sup>&</sup>lt;sup>15</sup> See Are You a Covered Entity, supra note 14 (defining health care providers under HIPAA).

Section 3.4 provides that, "ORR facilitates and funds health care for all unaccompanied [] children in its custody." And per ORR UAC Manual of Procedures ("UC MAP"), "[e]ach care provider program that accepts placement of children in ORR custody must have an established network of healthcare providers, including specialists, emergency care services, mental health practitioners, and dental providers that will accept ORR's fee-for-service billing system."<sup>17</sup> The health services provided by ORR to children in its care are provided "[t]hrough its care providers and other health care professionals." In fact, under the FSA, ORR care providers must provide at least one individual counseling and one group counseling session per week.<sup>19</sup> Because ORR care providers provide onsite health services to children in their care, including but not limited to counseling services, they are institutional and/or non-institutional health care providers under HIPAA.<sup>20</sup>

A HIPAA "transaction" is an electronic exchange of information between two parties to carry out financial or administrative activities related to health care. <sup>21</sup> These transactions include, among other things, benefit eligibility inquiries, claims, and referral authorization requests.<sup>22</sup> Under ORR policies and procedures, "[c] are providers have a responsibility to initiate health care services when they observe children in need of medical attention"<sup>23</sup> and when treatment is necessary, for reimbursement purposes, ORR care providers "must obtain approval from [Point Comfort Underwriters ("PCU")] by submitting a Treatment Authorization Request ("TAR") before a mental, dental, and medical service occurs, unless it is an emergency or urgent."<sup>24</sup> In short, these TARs are referral authorization requests sent by ORR care providers to a healthcare plan provider, PCU, requesting coverage and reimbursement for specific medical services. And these forms are submitted to PCU for coverage authorization through PCU's electronic online portal.<sup>25</sup> As such, because ORR care providers are health care providers and engage in the electronic exchange of information with PCU to carry out financial and administrative activities related to health care, ORR care providers are "covered entities" under HIPAA and must abide by HIPAA.

<sup>16</sup> ORR Policy Guide, *supra* note 5, at § 3.4.

<sup>&</sup>lt;sup>17</sup> The UAC Manual of Procedures for ORR Staff, Contractors, and Grantees, Section 3: Services Docket 272-2 at 1-188 (Appendix 1), Section 3.4 Health Services at 43, Lucas R. v. Azar (Case No. 2:18-CV-05741-DMG-PLA) [hereinafter UC MAP Section 3].

<sup>&</sup>lt;sup>18</sup> *Id.* at 44.

<sup>&</sup>lt;sup>19</sup> *Id*.

<sup>&</sup>lt;sup>20</sup> Even if ORR care providers are a hybrid entity where HIPAA would exclusively apply to an organization's health unit, ORR's care provider staff who are medical professionals are still subject to HIPAA as part of the agency's health unit. See Dep't of Health & Human Servs., Can a Postsecondary Institution Be a "Hybrid Entity" Under the HIPAA Privacy Rule? (Nov. 25, 2008), https://www.hhs.gov/hipaa/for-professionals/faq/522/can-a-postsecondaryinstitution-be-a-hybrid-entity-under-hipaa/index.html (analogizing to a postsecondary institution as a "hybrid entity," where the health unit is subject to HIPAA, but other identifiable health information maintained by components outside of the health unit are not subject to HIPAA). In the Commenting Parties' experience, some ORR facilities have medical units with onsite or visiting nurses and other practitioners.

<sup>&</sup>lt;sup>21</sup> 45 C.F.R. § 160.103 (2020). See also Ctrs. for Medicare & Medicaid Servs., Transactions Overview (Aug. 10, 2020), https://www.cms.gov/Regulations-and-Guidance/Administrative-Simplification/Transactions/TransactionsOverview.

<sup>&</sup>lt;sup>22</sup> See Summary of the HIPAA Privacy, supra note 14.

<sup>&</sup>lt;sup>23</sup> ORR Policy Guide, *supra* note 5, at § 3.4.3.

<sup>&</sup>lt;sup>24</sup> UC MAP Section 3 (Appendix 1), *supra* note 17, at 50.

<sup>&</sup>lt;sup>25</sup> *Id*.

According to HIPAA, a patient may ask to receive a copy of his or her medical records and other health information.<sup>26</sup> This right exists as long as the protected health information is maintained in the covered entity's records, in this case the ORR care provider's records.<sup>27</sup> ORR care providers must act on a request for protected health information no later than 30 days after receipt of the request.<sup>28</sup> However, given the advancement in electronic health records, HHS encourages that healthcare providers disseminate information to the requesting individual sooner.<sup>29</sup>

Because ORR care providers are covered entities under HIPAA, Form P-1 should clearly and unambiguously inform ORR care providers of their obligations to provide children copies of their medical records or health information, if requested, and within the time frames provided under HIPAA.

## 4. Form P-1 Must Be Modified to Protect a Child's File or Information from Disclosure to Third-Parties.

The Commenting Parties are concerned that Form P-1 may authorize a care provider to release information about a child in certain unknown circumstances, especially where Form P-1 appears to include an incomplete sentence regarding the release of a child's information to a third-party. Paragraph 7 of Form P-1, states "[u]nder penalty of law, the provider must not release information about the minor to any individual, organization or entity without the prior". This sentence ends abruptly, and leaves unclear what "prior" is referring to, and therefore leaves unclear when a care provider is authorized to release a child's information to "any individual, organization or entity." This is concerning because Commenting Parties are aware of instances where information from a child's file has been shared with third-parties, including but not limited to DHS and the Department of Justice ("DOJ"). The comments below address some of these concerns, as well as provide recommendations to ensure a child's private, confidential and medical information is shielded from third-party access.

a. Form P-1 must include a clear and unambiguous statement informing care providers that they must follow state confidentiality laws and regulations regarding the release of a child's file or information.

A child's ORR file information should not be accessible by third-parties, especially DHS and DOJ. The FSA requires ORR facilities to "develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability

<sup>28</sup> 45 C.F.R. § 164.524(b)(2)(i) (2020); see also Your Health Information, supra note 26.

<sup>&</sup>lt;sup>26</sup> See 45 C.F.R. §§ 164.502(a)(1)(i), 164.525(a)(1) (2020). In support of the right of an individual to access his or her medical records, HHS cites a number of professional studies and state laws that have reached the same conclusion. Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82462, 82606 (2000); see also U.S. Dep't of Health & Hum. Servs., Office for Civil Rights, *Your Health Information Privacy Rights* 1

https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/consumers/consumer\_rights.pdf?language= en (last visited Feb. 19, 2021) [hereinafter *Your Health Information*].

<sup>&</sup>lt;sup>27</sup> See 45 C.F.R. § 164.524(a)(1).

<sup>&</sup>lt;sup>29</sup> Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act, 78 Fed. Reg. 5566, 5637 (2013).

which *preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.*" ORR's website states, "HHS does not release information about individual children or their sponsors that could compromise the child's location or identity." ORR's promises reflect the FSA's requirement that the child has "a reasonable right to privacy. Naturally, this right includes the right to privacy of the child's own records and, more broadly, all the information a child provides to ORR.

One of the dangerous consequences of including a child's ORR file with the child's "Alien File" ("A-File") or allowing DHS access to a child's ORR file or information, is that confidential records can be used to prejudice the child's immigration case to the detriment of the child without their consent or understanding. For example, when ORR informs DHS about a child's alleged gang-affiliation or involvement, ICE places a gang memoranda in the individual's A-file and explicitly directs all future immigration services and applications for benefit or relief be denied.<sup>33</sup>

Another danger of sharing a child's file and information with third parties is the potential of prolonging a child's stay in ORR custody. A child's file includes information about potential sponsors in forms like Form P-13,<sup>34</sup> as well as other documents like the Family Reunification Packet, which is completed by sponsors. Information sharing of this highly sensitive information between the Agencies and DHS has lengthened children's time in detention and delayed the family reunification process. For example, in April 2018, HHS and DHS entered into a new Memorandum of Agreement ("2018 MOA") that required ORR to send the information it collects on potential sponsors to ICE.<sup>35</sup> On March 12, 2021, almost three years later, HHS and DHS finally announced the termination of the 2018 MOA and in doing so acknowledged that it "undermined the interest of children and had a chilling effect on potential sponsors (usually a parent or close relative) from stepping up to sponsor an unaccompanied child placed in the care of HHS." Not only did the 2018 MOA have a chilling effect, but it also violated the FSA's

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<sup>&</sup>lt;sup>30</sup> Flores Settlement Agreement, supra note 4, at ¶ E, Ex. 1 (emphasis added).

<sup>&</sup>lt;sup>31</sup> *Health and Safety*, Office of Refugee Resettlement, https://www.acf.hhs.gov/orr/about/ucs/health-and-safety (last visited Feb. 19, 2021) (citing the text under "Privacy" heading).

 $<sup>^{32}</sup>$  Flores Settlement Agreement, supra note 4, at ¶ A.12, Ex. 1 ("A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house and regulations; and (e) receive and send uncensored mail unless there is reasonable belief that the mail contains contraband.").

<sup>&</sup>lt;sup>33</sup> N.Y. Civil Liberties Union & N.Y Immigration Coal., *Stuck with Suspicion* 14-16 (2019), https://www.nyclu.org/sites/default/files/field\_documents/020819-nyclu-nyic-report.pdf.

<sup>&</sup>lt;sup>34</sup> Form P-13 requires ORR personnel to enter information about a UC's family member into the fields.

<sup>&</sup>lt;sup>35</sup> See Mem. of Agreement Among the Office of Refugee Resettlement of the U.S. Dep't of Health & Hum. Servs. & U.S. Immigration & Customs Enf't, U.S. Customs & Border Prot. of the U.S. Dep't of Homeland Sec. Regarding Consultation & Information Sharing in Unaccompanied Alien Children Matters (2018), https://www.texasmonthly.com/wp-content/uploads/2018/06/Read-the-Memo-of-Agreement.pdf [hereinafter MOA].

<sup>&</sup>lt;sup>36</sup> Dept. of Homeland Sec., *HHS and DHS Joint Statement on Termination of 2018 Agreement* (Mar. 12, 2021), https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement.

<sup>&</sup>lt;sup>37</sup> See MOA, supra note 35; see also Women's Refugee Comm'n, Nat'l Immigration Justice Ctr. & Am. Univ. Wash. Coll. of Law, Children as Bait: Impacts of the ORR-DHS Information-Sharing Agreement 1 (2019) https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2019-03/Children-as-Bait.pdf.

provisions requiring the timely release of a child and went beyond the TVPRA's safety assessment for release purposes.<sup>38</sup>

Rescinding the 2018 MOA provided an opportunity to institute a robust firewall between ORR and DHS. Rather than seize this opportunity, ORR and DHS preserved channels of information-sharing that continue to violate children's privacy and confidentiality. Any deviation from a full firewall between the two agencies is a departure from ORR's child welfare mission and invites ORR to become DHS' eyes and ears. ORR must ensure that its practices protect, rather than impede, child welfare. Efforts that delay the family reunification process or prejudice a child's immigration case are antithetical to the child's best interests of family unity<sup>39</sup> and safety.

The juvenile justice system provides a useful analog for protecting children's records. In California, for example, juvenile records are confidential and protected from examination in all but the most limited circumstances, in which release must be authorized by court order. <sup>40</sup> Laws in Arizona, New York, Texas, and Florida similarly protect juvenile records. In these states, any party seeking information contained in a child's court records must petition the state court; and in Texas, the juvenile court or the Texas Department of Family and Protective Services. <sup>41</sup>

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<sup>&</sup>lt;sup>38</sup> Neither the TVPRA nor the FSA requires HHS to collect immigration status information on parents or other sponsors, to collect any information on other adult members of the household, or to use any information collected to deport families of UCs. *See Flores* Settlement Agreement, *supra* note 4, at ¶¶ 14-18 (noting a lack of reference to a sponsor's immigration status); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(c)(2)(A) (2008) (outlining the minimum evaluative methods necessary to determine that a potential sponsor will be "capable of providing for the child's physical and mental well-being," and making no mention of immigration status).

<sup>&</sup>lt;sup>39</sup> Family unity is particularly important for immigrant children, who are more likely to be disadvantaged in navigating a new country, language, and culture. *See* Nancy S. Landale et al., *The Living Arrangements of Children of Immigrants* 1 (2011) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3241619/pdf/nihms-341452.pdf ("Immigrant families face unique challenges as they adapt to their new country ... Mexican immigrant families [for example] face challenges with respect to assimilation because of low parental education, poverty, and language barriers, and because a relatively high share of parents are unauthorized."); *UNHCR Guidelines on Determining the Best Interest of the Child* 20 (2008), http://www.unhcr.org/4566b16b2.pdf ("[U]naccompanied and separated children require special attention in identifying their best interests, given the particular risks that they face."); *see also UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* 2 (1997), http://www.unhcr.org/enus/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompaniedchildren-seeking-asylum.html ("Considering their vulnerability and special needs, it is essential that children's refugee

status applications be given priority and that every effort be made to reach a decision promptly and fairly."). See generally Child Welfare Info. Gateway, Children's Bureau, State Statutes, Determining the Best Interests of the Child (2016)

https://www.childwelfare.gov/pubPDFs/best\_interest.pdf#page=2&view=Best%20interests%20definition (asserting that family unity, or keeping children with family members, is a key factor in determining the best interest of children in custody). Children are more likely to experience physical and emotional well-being, safety, and stability when they are living with and being cared for by family members. See The Annie E. Casey Found., Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families 2 (2012).

<sup>&</sup>lt;sup>40</sup> Rachel Prandini, Melissa Adamson & Neha Desai, *Strengthening Welfare Practice for Immigration Children & Families: A Toolkit for Child Welfare Professionals in California* 44 (2019) https://youthlaw.org/wp-content/uploads/2019/08/2019-Child-Welfare-and-Immigration-Toolkit.pdf.

<sup>&</sup>lt;sup>41</sup> A survey of the juvenile and child abuse and neglect records confidentiality laws of these five states—Arizona, New York, Florida, California and Texas—is included as an appendix to this comment. This appendix is meant to present a sampling of state juvenile records confidentiality laws, on the basis that the rest of the U.S. states and the District of Columbia oversee similar laws. *See infra* [Appendix 2].

Without a court order granting ORR authorization to share this information specifically with DHS or another third-party, ORR's collection, recording, and reporting of this information may violate applicable state laws.

For the reasons stated above, it is imperative that a child's ORR file and the information contained within be protected from outside agencies. ORR and its care providers, which maintain files including information similar to a juvenile record, should adopt a similar policy: absent a court order, children's files and information must be protected from other entities and third parties, including other government agencies. This policy should be reflected in Form P-1 through a clear and unambiguous statement that "The care provider must follow applicable state laws and regulations regarding the release of information relating to a child (i.e., juvenile and dependency records) prior to the release of information about the child to any individual, organization, or entity, including any government entity."

b. Form P-1 must include a clear and unambiguous statement that care providers must protect the privacy and confidentiality of children's medical information as required under HIPAA and ORR Policy Guide Section 3.4.7.

Generally, children's health information cannot be used for purposes not directly related to their care without permission. Although ORR, as an organization, may not be a "covered entity" within the meaning of HIPAA, ORR care providers as an institution or, at a minimum, their medical professionals, such as physicians, nurses, social workers and other practitioners, as non-institutional providers, are covered entities subject to HIPAA because they are health care providers who submit HIPAA transactions.

HIPAA provides generally applicable standards for individuals' privacy rights to understand and control how their health information is used. HIPAA ensures each patient has rights over their own health information by "limit[ing] the circumstance in which an individual's protected health information may be used or disclosed by covered entities." Under the HIPAA Privacy Rule, a covered entity may not use or disclose protected health information except as required or permitted under the Privacy Rule, or with written authorization by the subject of the information. In addition, the HIPAA Security Rule requires specific protections to safeguard a patients' electronic health information.

Because ORR care providers are subject to HIPAA, ORR must ensure its care providers know and understand their obligation to abide by HIPAA and most importantly not disclose a child's protected health information unless permitted under HIPAA. Also, given ORR's creation of the UAC Path, an online case management system, and the general movement toward the use of electronic health information, including individual and group counseling notes, ORR care providers, as well as ORR, must ensure that a child's protected health information is not accessible by third-parties, including but not limited to DHS.

<sup>&</sup>lt;sup>42</sup> Your Health Information, supra note 26.

<sup>&</sup>lt;sup>43</sup> See 45 C.F.R. § 160.103 (2020) (defining "covered entity").

<sup>&</sup>lt;sup>44</sup> See supra Section III.A.3.

<sup>&</sup>lt;sup>45</sup> See Summary of the HIPAA Privacy, supra note 14 (citing language under HIPAA).

<sup>&</sup>lt;sup>46</sup> Id.

<sup>&</sup>lt;sup>47</sup> *Id*.

In addition to HIPAA's protections, ORR Policy Guide 3.4.7 requires care providers to "maintain the children's individual health files separately from the children's case files, unless State licensing requirements dictate otherwise."<sup>48</sup> The guidelines require care providers to "have written policies, procedures, and practices that protect the confidentiality of medical information."<sup>49</sup> As an instructive source for ORR processes, the American Hospital Association created a Patient Bill of Rights that has been adopted by other organizations and hospitals.<sup>50</sup> Applied in the context of ORR, the Bill of Rights states, "the patient has the right to every consideration of privacy" and "has the right to expect all communications and records pertaining to [their] care will be treated as confidential by [ORR]."<sup>51</sup> Similarly, the California Patient Bill of Rights outlines that patients are entitled to "confidential treatment of all communications and records" pertaining to their care and stay at an ORR facility.<sup>52</sup> Patients must also receive a notice from ORR that explains the child's rights in detail and how ORR may use and disclose the child's protected health information.<sup>53</sup>

In order to comply with HIPAA and ORR's own policies, and align with the principles of exemplar Patient Bill of Rights, Form P-1 should be updated to include a clear and unambiguous statement that "The care provider must protect the confidentiality of children's medical information by complying with HIPAA and ORR Policy Guide section 3.4.7."

c. Form P-1 must include a clear and unambiguous statement that informs care provider's clinicians that they are bound by HIPAA and therefore cannot share information obtained through therapy sessions without valid authorization.

Social workers, who serve as clinicians for children at ORR care provider facilities, are subject to HIPAA.<sup>54</sup> The Commenting Parties are concerned that these clinicians, though subject to HIPAA, freely share their psychotherapy notes with ORR, who in turn use the psychotherapy notes to determine whether to place a child in a restrictive setting or release a child to a sponsor. This practice must end. Form P-1 should be updated to provide clear guidance to care provider clinicians that their psychotherapy notes cannot be shared without a valid HIPAA release.

<sup>&</sup>lt;sup>48</sup> ORR Policy Guide, *supra* note 5, at § 3.4.7.

<sup>49</sup> I.A

<sup>&</sup>lt;sup>50</sup> See Am. Patient's Rights Ass'n, American Hospital Association's Patient Bill of Rights, https://www.americanpatient.org/aha-patients-bill-of-rights/ (last visited Mar. 14, 2021). See, e.g., Am. Cancer Soc'y, The Patient Bill of Rights, https://www.cancer.org/treatment/finding-and-paying-for-treatment/understanding-financial-and-legal-matters/patients-bill-of-rights.html (last visited Mar. 14, 2021) ("In the early 1970's, the American Hospital Association drafted a Patient Bill of Rights so people would know what they could reasonably expect when they were hospitalized. Since then, a number of similar measures have been developed.").

<sup>&</sup>lt;sup>51</sup> See Am. Patient's Rights Ass'n, supra note 50.

<sup>&</sup>lt;sup>52</sup> Cal. Hosp. Ass'n, *Patient Rights*, https://www.calhospital.org/sites/main/files/file-attachments/patientrights\_english\_3.pdf (last visited Mar. 14, 2021).

<sup>53</sup> *Id.* 

<sup>&</sup>lt;sup>54</sup> Soc. Worker Res., *Basic HIPAA Overview* (July 18, 2012), https://www.socialworkerresource.com/articles/view.php?article\_id=6287#:~:text=Social%20workers%20are%20a mong%20the,to%20fully%20understand%20HIPAA%20regulations; *see* Nat'l Ass'n of Soc. Workers, *HIPAA Help for Social Workers*, https://www.socialworkers.org/About/Legal/HIPAA-Help (last visited Mar. 10, 2021); *see also* Section III.A.4.c.

Psychotherapy notes are any notes "recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individuals' medical record."<sup>55</sup> Under 45 C.F.R. § 164.508(a)(2), psychotherapy notes cannot be used or disclosed without a valid authorization except in limited circumstances, such as reporting of abuse, neglect or domestic violence or a threat of serious and imminent harm made by the patient during his or her session. Moreover, according to the American Psychological Association Practice Organization, "as a result of states protecting psychotherapist-patient communications, information acquired in the course of the psychotherapy relationship cannot be disclosed without a HIPAA-compliant authorization signed by the patient or a court order." Despite these protections, clinicians at ORR care provider facilities routinely share psychotherapy notes with ORR and other third-parties, like DHS and the DOJ, without a valid authorization.

For example, Kevin, an adolescent in ORR custody, shared personal information with an ORR-employed therapist relating to his trauma after being assured by the therapist that the sessions would be confidential. They were not. The information Kevin shared with this therapist was sent to ICE officials who used them against him in deportation proceedings. Disclosing information learned in mandatory, confidential therapy sessions violates a therapist's duty under HIPAA and the privacy and confidentiality of their child patients.

Due to past violations and a concern that lack of clarity may lead to further HIPAA violations by ORR care provider staff, the Commenting Parties recommend that Form P-1 clearly indicate that care provider staff, such as clinicians and therapists, must maintain the confidentiality of their clinical notes and must not share them with any individual or entity, including ORR, without valid authorization from the child, a court order, or a special circumstance enumerated in 45 C.F.R. § 164.508(a)(2).

## 5. Form P-2 Appears to be Missing Language in Section 4 ("Immunizations").

In Form P-2, section 3 ("Medical and Dental Exams/Screenings") and section 4 ("Immunizations") include the same two descriptive bullet points:

<sup>&</sup>lt;sup>55</sup> 45 C.F.R. § 164.501 (2020).

<sup>&</sup>lt;sup>56</sup> 45 C.F.R. § 164.508(a)(2) (2020); see also U.S. Dep't of Health & Human Servs., Does HIPAA Provide Extra Protections for Mental Health Information Compared with Other Health Information? (Sept. 12, 2017), https://www.hhs.gov/hipaa/for-professionals/faq/2088/does-hipaa-provide-extra-protections-mental-health-information-compared-other-health.html.

<sup>&</sup>lt;sup>57</sup> Am. Psychological Ass'n Practice Org., *HIPAA What You Need to Know The Privacy Rule: A Primer for Psychologists* 8 (2013), https://www.apaservices.org/practice/business/hipaa/hippa-privacy-primer.pdf. <sup>58</sup> Hannah Dreier, *Trust and Consequences*, Wash. Post (Feb. 15, 2020)

https://www.washingtonpost.com/graphics/2020/national/immigration-therapy-reports-ice/. The American Academy of Child & Adolescent Psychiatry condemned the information sharing between ORR and ICE in Mr. Kevin Euceda's instance. *See also* Gabrielle A. Carlson, Letter Condemning ORR and ICE's Betrayal of Confidential Medical Information (Feb. 18, 2020), https://www.aacap.org/App\_Themes/AACAP/docs/Advocacy/AACAP-Letter-ORR-ICE.pdf.

<sup>&</sup>lt;sup>59</sup> Dreier, *supra* note 58.

- "Minors in care shall receive a medical exam within 48 hours of placement in a care provider program, unless the minor obtained a medical exam within one calendar year and while under the care of another ORR-funded care provider.
- Minors in care shall also receive an initial dental examination within 90 days of placement, but no sooner than their 30th day in the custody of ORR."

This appears to be a drafting error, as these two bullet points provide information about medical and dental exams and screenings, relevant to section 3 ("Medical and Dental Exams/Screenings"), but do not include information regarding immunizations. Form P-2 should be revised to replace these two bullets from section 4 ("Immunizations") with information related to immunizations.

B. The Proposed "Notice of Placement in a Restrictive Setting" English Version (Form P-4) and Spanish Version (Form P-4s) Would Violate Children's Rights Under the FSA, the TVPRA, and the Fifth Amendment Due Process Clause.

Although ORR only revised the formatting and made no changes to the content of the Notice of Placement ("NOP") forms ("Form P-4" and "Form P-4s"), we take this opportunity to comment on the content of these forms, which as drafted, trigger violations of the FSA, the TVPRA, the APA, and the Fifth Amendment Due Process Clause. However, before doing so, the Clinic and CHRCL note that we are currently litigating some of these issues as they relate to ORR's current practices and policies in *Lucas R*., and that nothing in these comments is intended to waive any arguments in that litigation.

1. The Proposed Notice of Placement in a Restrictive Setting Forms Fail to Provide All Children in Restrictive Placements Adequate Notice of the Basis for Their Placement in Violation of the FSA and Fifth Amendment Due Process Clause.

Forms P-4 and P-4s violate the notice requirements under the FSA and the Fifth Amendment Due Process Clause, particularly where the forms may not be provided to children placed in all types of restrictive settings—specifically therapeutic staff-secure facilities and out-of-network residential treatment centers ("OON RTCs")—and where the forms fail to include clarification on the placement criteria for therapeutic staff-secure placements.

a. If the Agencies do not intend to provide these notice of placement forms to children placed in therapeutic staff-secure and out-of-network RTCs, the Agencies violate the notice requirements under Paragraph 24C of the FSA.

Under Paragraph 24C of the FSA, ORR must provide "minors not placed in licensed programs with notice of the reasons for housing the minor in a detention or medium security facility." The NOP, in this case Form P-4, or its Spanish counterpart Form P-4s, is the means by which ORR informs a child of the reasons for placement in a secure or medium-secure facility ("restrictive setting" or "restrictive placement"). Per ORR policy and procedures, ORR requires that children be given a form NOP following placement into a secure, staff-secure, or residential

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<sup>&</sup>lt;sup>60</sup> Flores Settlement Agreement, supra note 4, at ¶ 24C.

treatment center ("RTC").<sup>61</sup> Forms P-4 and P-4s similarly indicate that the NOP is intended for children placed in secure or staff-secure facilities or RTCs. But it is not clear from Forms P-4 and P-4s whether therapeutic staff-secure facilities and OON RTCs are subsumed by ORR's current staff-secure and RTC categories such that children placed in those types of facilities would also receive an NOP.

Therapeutic staff-secure and OON RTCs are restrictive placements that require an NOP under the FSA. OON RTCs are similarly restrictive to in-network RTCs.<sup>62</sup> In fact, they are the same but for the fact that in-network RTCs have cooperative agreements with ORR and OON RTCs do not. ORR has conceded that RTCs are as restrictive as secure facilities (i.e., juvenile jails).<sup>63</sup> Therapeutic staff-secure facilities, although not as restrictive as RTCs or secure jails, are more restrictive than shelters where they require children housed in their facilities to undergo sex offender treatment and on average result in longer lengths of stay in ORR custody than children placed in shelter care only.<sup>64</sup> Both types of facilities are therefore, at minimum, medium-secure facilities warranting notices under Paragraph 24C of the FSA. Accordingly, to the extent ORR does not intend to provide the proposed forms to children placed in therapeutic staff-secure or OON RTC, such failure would be a direct violation of Paragraph 24C of the FSA.

For the reasons stated above, the Commenting Parties recommend that ORR make explicit on Proposed Forms P-4 and P-4s that the NOP is provided to children who have been placed in a restrictive setting, which includes a secure, staff secure or therapeutic staff-secure facility, or an in- or out-of-network RTC. Specifically, the first sentence in the NOP should be changed to: You are in the custody of the Office of Refugee Resettlement (ORR), and have been placed in a restrictive setting—a secure, staff-secure or therapeutic staff-secure facility, or an in- or out-of-network RTC. In addition, because an RTC is an RTC regardless of whether it's innetwork or OON, ORR should make explicit on Forms P-4 and P-4s that the same placement criteria applies for in-network and OON RTCs. The Commenting Parties recommend that in order to avoid any confusion or ambiguity, ORR add the following language after "Residential Treatment Center": (in- or out-of-network).

b. The proposed notice of placements forms violate the notice requirements under the FSA and the Fifth Amendment Due Process Clause because they fail to provide adequate notice regarding the basis for placement in a therapeutic staff-secure facility.

Children in ORR custody have liberty interests to be free from detention, to familial association, and to be placed in the least restrictive setting—interests guaranteed by the

<sup>&</sup>lt;sup>61</sup> See ORR Policy Guide, supra note 5, at §§ 1.2.4, 1.4.2; ORR Manual of Procedures (UC MAP), Section 1: Placement in ORR Care Provider Facilities (Appendix 3), at §§ 1.2.4 (procedure requiring NOP be provided within 48 hours of initial placement of a child into a secure, staff secure or non-TAR RTC, which refers to an in-network, as opposed to OON RTC).

<sup>&</sup>lt;sup>62</sup> Pls.' Mot. for Partial Summ. J. at 10, *Lucas R. v. Azar* (Case No. 18-CV-05741-DMG-PLA) [hereinafter Pls.' Mot.].

<sup>&</sup>lt;sup>63</sup> *Id*.

<sup>&</sup>lt;sup>64</sup> *Id.* at 10, 38.

Constitution, the TVPRA, and the FSA.<sup>65</sup> They have a substantial private interest in freedom from detention and familial association, especially when placed in a restrictive setting like secure, staff-secure, therapeutic staff-secure, RTC and OON RTC placements.<sup>66</sup> ORR's policies and procedures, including its forms, have led to erroneous placements and, as such, additional safeguards, like adequate notice, are essential to protecting the liberty interests of children in ORR custody.<sup>67</sup> Finally, the government faces minimal burden in providing adequate notice.<sup>68</sup>

Here, Proposed Forms P-4 and P-4s are not adapted to children placed in therapeutic staff-secure facilities and therefore fail to provide adequate notice of the basis for placement in that type of facility. The forms fail to indicate (1) whether the same placement criteria for staff-secure applies to therapeutic staff-secure placements or whether therapeutic staff-secure placements have additional criteria in light of the special programs they offer, and (2) if there is additional criteria, what additional criteria is used for therapeutic staff-secure placements. By failing to provide clarity on the placement criteria for therapeutic staff-secure placements, ORR creates a tremendous and impermissible risk that a child may be placed in such a facility without proper basis and notice of the basis for their placement. Given the substantial liberty and private interests at stake, the risk of error, and the minimal burden to modify these forms and provide them to children placed in therapeutic staff-secure placements, ORR violates the Fifth Amendment Due Process Clause by not providing adequate notices of the basis for placement to children placed in therapeutic staff-secure facilities. The same deficiencies would also violate the FSA notice provision. 69

Given our understanding of how therapeutic staff-secure placements differ from non-therapeutic staff-secure placements, the Clinic and CHRCL believe additional criteria should be delineated to reflect these differences. For example, ORR currently contracts and places children in at least one therapeutic staff-secure facility that provides sex offender treatment to children housed within its facility. For purposes of this comment, we focus on this example, but note that to the extent children are required to undergo any type of treatment program at a therapeutic staff-secure facility, careful consideration must be made to ensure children—undisputedly part of a vulnerable population—are not inappropriately subject to unnecessary treatment programs, including but not limited to sex offender treatment programs.

With respect to therapeutic staff-secure facilities with sex offender treatment programs, displaying or engaging in "inappropriate sexual behavior" should not suffice for such restrictive placement. Such criterion is too vague to put children on fair notice of the conduct that would result in sex offender treatment, and fails to guard against arbitrary or discriminatory enforcement of this criterion by ORR and ORR grantee staff. This is especially true where

<sup>69</sup> Flores Settlement Agreement, supra note 4, at ¶ 24C.

<sup>&</sup>lt;sup>65</sup> Pls.' Mot., *supra* note 62, at 20-24; Pls.' Opp'n to Def.'s Mot. for Partial Summ. J., Docket 289 at 11-19, *Lucas R. v. Azar* (Case No. 18-CV-05741-DMG-PLA) [hereinafter Pls.' Opp'n]; Pls.' Reply in Supp. of Pls.' Mot. for Partial Summ. J., Docket 300 at 11-14, *Lucas R. v. Azar* (Case No. 18-CV-05741-DMG-PLA) [hereinafter Pls.' Reply].

<sup>&</sup>lt;sup>66</sup> Pls.' Mot., *supra* note 62, at 37-38; Pls.' Opp., *supra* note 65, at 11-20; Pls.' Reply, *supra* note 65, at 11-14.

<sup>&</sup>lt;sup>67</sup> Pls.' Mot., *supra* note 62, at 38-42; Pls' Opp., *supra* note 65, at 21; Pls.' Reply, *supra* note 65, at 14.

<sup>&</sup>lt;sup>68</sup> Pls.' Mot., *supra* note 62, at 42.

<sup>&</sup>lt;sup>70</sup> Friends of Youth, *OurPrograms – Griffin Home – Matsen House*, https://www.friendsofyouth.org/griffinHome.aspx (last visited Feb. 18, 2021).

<sup>&</sup>lt;sup>71</sup> This is currently a placement criterion for secure care. *See* HHS Proposed Form P-4. We raise similar concerns to this criterion's use for secure placement *infra* Section III.B.2.

ORR's definition of "inappropriate sexual behavior" is broad and ambiguous. ORR Policy Section 4.1.4 defines "inappropriate sexual behavior" as "behavior that does not meet the definition of sexual abuse or sexual harassment but is sexual in nature." ORR provides definitions for sexual abuse and sexual harassment, but fails to define or provide any guidance for what it considers "sexual in nature." Is physical contact required? What role does consent play in the inappropriateness of the sexual behavior between two children? Does the sexual behavior have to be directed at another person, like sexual abuse and sexual harassment, or is sexual behavior towards oneself sufficient? Without a clear definition or any guidance whatsoever, we have witnessed instances where children in ORR custody have been required to undergo sex offender treatment for otherwise innocent, or misunderstood, youth behavior (e.g., masturbation of oneself or exposure of genitalia). Subjecting a child to months and sometimes a year or more of sex offender treatment for innocent or misunderstood youth behavior is inappropriate and fails to ensure a child is placed in the least restrictive setting that is in the best interest of the child, as required by the FSA<sup>73</sup> and the TVPRA.

Accordingly, we recommend that ORR avoid criteria that uses terms like "inappropriate sexual behavior," as it has for other placement types, and instead limit sex offender treatment to address nonconsensual behavior and use a term federally defined, like sexual abuse, or nonconsensual sexual act, which is defined in 18 U.S.C. § 2246.<sup>75</sup> Doing so will ensure that placement criteria do not devolve into guesswork and speculation and that children are not inappropriately sent to sex offender treatment programs for innocent youth behavior.

We are also concerned with the current and potential placement of a child in a therapeutic staff-secure facility with a sex offender treatment program and no court oversight. In California, when a child is removed from the home, a court oversees the child's placement through initial and periodic reviews.<sup>76</sup> During the court's review, the court determines whether a child's current placement is appropriate and the least restrictive setting that can meet the child's needs.<sup>77</sup> This

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B)contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

<sup>&</sup>lt;sup>72</sup> ORR Policy Guide, *supra* note 5, at § 4.1.4.

<sup>&</sup>lt;sup>73</sup> Flores Settlement Agreement, supra note 4, at ¶ 6, 19, 21, 23.

<sup>&</sup>lt;sup>74</sup> 8 U.S.C. § 1232(c)(2)(A) (2018).

<sup>75 [</sup>T]he term 'sexual act' means--

<sup>(</sup>C) the penetration, however slight, of the anal or genital opening or another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

<sup>(</sup>D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

<sup>18</sup> U.S.C. § 2246(2) (2018).

<sup>&</sup>lt;sup>76</sup> California law provides court oversight and right to counsel to children in dependency court proceedings. Cal. Welf. & Inst. Code § 315 (Deering 2021) ("If a child has been taken into custody under this article and not released to a parent or guardian, the juvenile court shall hold a hearing (which shall be referred to as a 'detention hearing') to determine whether the child shall be further detained."); Cal. Welf. & Inst. Code § 366(a)(1) (Deering 2021) ("The status of every dependent child in foster care shall be reviewed periodically . . . .").

<sup>&</sup>lt;sup>77</sup> Cal. Welf. & Inst. Code § 366(a)(1)(A) (Deering 2021) ("The status of every dependent child in foster care shall be reviewed periodically. . . . The court shall consider the safety of the child and shall determine all of the following: (A) The continuing necessity for and appropriateness of the placement . . . ."); Cal. Welf. & Inst. Code § 16000(a) (Deering 2021) (stating that it is the Legislature's intent "to reaffirm its commitment to children who are in out-of-

includes review of a child's placement in a residential therapeutic program placement, <sup>78</sup> which can include a sex offender treatment program placement. <sup>79</sup> Children in dependency proceedings in California, as well as children in almost all states, are appointed an attorney and/or guardian ad litem to assist them in representing their interests in these types of proceedings. <sup>80</sup> In contrast, children in ORR have no court oversight as to their placement level and/or whether they require sex offender treatment as part of their case plan. Placement in a therapeutic staff-secure facility without court oversight and a right to representation, among other rights, is a violation of the Fifth Amendment Due Process Clause. <sup>81</sup> Accordingly, we recommend that any placement criteria for therapeutic staff-secure placement with a sex offender treatment program include a requirement of a court order or approval for a child's placement in a program where he or she will be subject to a sex offender treatment program.

### 2. The Proposed Notice of Placement Forms Include Placement Criteria for Secure Care that Would Violate the FSA and the TVPRA.

The sixth placement criterion under "Secure Care" on Form P-4, which reads "have a history of or displayed sexual predatory behavior, or have inappropriate sexual behavior," should be removed or replaced because such criterion is too vague to put children on fair notice of the conduct that would result in placement into a juvenile jail, and fails to guard against arbitrary or discriminatory enforcement of this criterion by ORR and ORR grantee staff. This is especially true where ORR fails to define "sexual predatory behavior" or "inappropriate sexual behavior" on the NOP, and where the definition of inappropriate sexual behavior is broad and ambiguous. Without clear definitions, we have witnessed instances where children in ORR custody have been sent to secure juvenile detention centers for otherwise innocent, or misunderstood, youth behavior (e.g., masturbation of oneself or exposure of genitalia). Subjecting a child to a jail-like environment for innocent or misunderstood youth behavior is inappropriate and fails to ensure a child is placed in the least restrictive setting that is in the best interest of the child, as required by the FSA<sup>83</sup> and the TVPRA. 84

home placement to live in the least restrictive family setting promoting normal childhood experiences that is suited to meet the child's or youth's individual needs, and to live as close to the child's family as possible pursuant to subdivision (c) of Section 16501.1").

<sup>&</sup>lt;sup>78</sup> Cal. Welf. & Inst. Code § 366(a)(1)(B) (Deering 2021) ("The status of every dependent child in foster care shall be reviewed periodically. . . . The court shall consider the safety of the child and shall determine all of the following: . . . (B) The extent of the agency's compliance with the case plan . . . consistent with the child's best interests . . . ."); Cal. Welf. & Inst. Code § 16501.1(d)(1) (Deering 2021) ("The case plan shall include a description of the type of home or institution in which the child is to be placed, and the reasons for that placement decision..."); Cal. Welf. & Inst. Code § 16501.1(d)(2) ("If a short-term residential therapeutic program placement is selected for a child, the case plan shall indicate the needs of the child that necessitate this placement, the plan for transitioning the child to a less restrictive environment, and the projected timeline by which the child will be transitioned to a less restrictive environment.").

<sup>&</sup>lt;sup>79</sup> L.A. Cty. Prob. Dep't Foster Care Plan, *Foster Youth Bill of Rights* 75 (2017), http://contracts.dcfs.lacounty.gov/Uploads/62\_20\_ISFC\_Exhibits\_A-1\_to\_A-X\_DRAFT.pdf (referencing a child's placement in a group home and completion of a Sex Offender Program in the concurrent planning section of the form).

<sup>&</sup>lt;sup>80</sup> See Expert Report of Professor Jessica Heldman at Appendix B. Child Welfare Proceedings chart (Appendix 4).

<sup>81</sup> See Pls.' Mot., supra note 62, at 20-28, 34, 37-44, 46-54.

<sup>82</sup> See Section III.B.2.

<sup>&</sup>lt;sup>83</sup> Flores Settlement Agreement, supra note 4, at ¶ 6, 19, 21, 23.

<sup>&</sup>lt;sup>84</sup> 8 U.S.C. § 1232(c)(2)(A) (2018).

Accordingly, we recommend that ORR either remove this criterion for secure care altogether, or define "sexual predatory behavior" on the NOP, as it does on the Intakes Placement Checklist, 85 and replace "inappropriate sexual behavior," with a term federally defined, like sexual abuse, or a nonconsensual sexual act, which is defined in 18 U.S.C. § 2246(2).86 Doing so will ensure that this placement criterion does not devolve into guesswork and speculation and provide an additional safeguard against erroneous placement in the most restrictive level of care.

Moreover, Paragraph 21 of the FSA makes clear that secure care is not appropriate for most children and is to be used sparingly. 87 The Ninth Circuit, in reviewing the proposed *Flores* regulations, upheld this reasoning and enjoined an additional catchall provision which attempted to broaden criteria for placement of a minor in a secure facility upon an agency determination that the minor is "otherwise a danger to self or others." As such, and similarly, any criteria developed by ORR for placement of a child in secure care based on a sexual act or behavior, must fit within the enumerated conditions for secure placement, which are, in pertinent part, that a child:

- A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, . . .
- B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in [ORR] legal custody or while in the presence of an [ORR] officer;
- C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program. . . ;
- D. is an escape risk; or
- E. must be held in a secure facility for his or her own safety, such as when [ORR] has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

The current and proposed language of the sixth placement criterion under "Secure Care" on Form P-4, which refers to "sexual predatory behavior" or "inappropriate sexual behavior," does not include any specific indicia that the child is a danger to others. For example, it does not fit within the conditions listed under Paragraph 21 subparagraph A because there is no requirement that the child be charged with, is chargeable, or has been convicted, or is the subject of delinquency proceedings, has been adjudicated delinquent or is chargeable with a delinquent act related to the "sexual predatory behavior" or "inappropriate sexual behavior." It also does not fit within the conditions of subparagraphs D (escape risk) and E (safety due to smuggling

<sup>85</sup> Form P-7's Intakes Placement Checklist defines sexual predatory behavior as follows: "[s]exual [p]redatory behavior refers to a UC with 1) history of sexual assault or sexual harassment, 2) that is a pattern of behavior with the goal of committing a sexually based crime, and 3) that is based on a mental disorder or impulse."

<sup>&</sup>lt;sup>86</sup> 18 U.S.C. § 2246(2) (2018) (defining the term "sexual act").

<sup>&</sup>lt;sup>87</sup> Flores Settlement Agreement, supra note 4, at ¶ 21.

<sup>88</sup> Flores v. Rosen, 984 F.3d 720, 732-733 (9th Cir. 2020) ("As the district court explained, the government in the Agreement committed to limit the circumstances under which secure detention would be permitted to those specifically enumerated in paragraph 21 of the Agreement.").

concerns). The sixth placement criteria could potentially fit within the conditions of subparagraphs B and/or C to Paragraph 21, *if and only if*, the "sexual predatory behavior" or "inappropriate sexual behavior" makes the child a danger to others. The current and proposed language of the sixth placement criterion under "Secure Care" in Form P-4, however, does not include any specifics as to whether the behavior must be of the type that makes the child a danger to others.

For all the reasons stated above, ORR should delete the sixth placement criterion under "Secure Care" altogether, or replace the current criterion with the following criterion: "have a history of or display sexual predatory behavior, or have engaged in a nonconsensual sexual act, as defined under 18 U.S.C. § 2246(2), that makes the child a present danger to others." In addition, the NOP would need to provide the definition for sexual predatory behavior, as well as the definition for sexual act under 18 U.S.C. § 2246(2).

3. The Proposed Notice of Placement Forms Fail to Make Clear that a Licensed Psychologist or Psychiatrist Must Make a Determination that the Child is a Danger to Self or Others for Residential Treatment Center Placement as Required by the Flores July 30, 2018 Order.

The placement criteria for RTC placement in the NOPs is vague and as such creates questions as to whether the criteria complies with the *Flores* July 30, 2018 Order.

Forms P-4 and P-4s indicate that a child in ORR custody may be placed in an RTC if "ORR has determined that [the child has] a serious psychiatric or psychological issue that cannot be addressed in an outpatient setting and [the child is] a danger to self or others" and, separately, that a licensed psychologist or psychiatrist has indicated certain criteria has been satisfied. The language in this section, as well as the structure, is ambiguous as to whether ORR is complying with the *Flores* July 30, 2018 Order, which requires a licensed psychologist or psychiatrist to make the determination that a child "poses a risk of harm to self or others" prior to placement. <sup>89</sup> Thus, modifications to this form are warranted to ensure compliance with the *Flores* July 30, 2018 Order and the FSA.

The only changes in the RTC placement section of the NOP that ORR made after the *Flores* July 30, 2018 Order were: (1) modified the introduction to this section by adding the following italicized phrases: "ORR has determined that you have *a serious* psychiatric or psychological issue that cannot be addressed in an outpatient setting *and you are a danger to self or others*. A licensed psychologist or psychiatrist has indicated that you"; and (2) removed the "and/or" language located at the end of RTC placement criteria 3.90 These changes are insufficient. The modification to the introduction does not clarify, as the *Flores* Court did, that a licensed psychologist or psychiatrist is required to make a requisite finding that a child "poses a danger to self or others" in order to be placed at an RTC. Similarly, the removal of the "and/or" does nothing more than to leave the same amount of confusion as to whether all or just some of the criteria must be determined by a licensed psychologist or psychiatrist, particularly whether the fourth criteria, that a child "[p]resent a continued and real risk of harm to self, others, or the

<sup>90</sup> *Compare* Order Re Pls.' Mot., *supra* note 8, at 8 (reflecting the prior NOP language for RTC placements), *with* Form P-4, p.2 (stating current and proposed NOP language for RTC placements).

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<sup>&</sup>lt;sup>89</sup> See Order Re Pls.' Mot., *supra* note 8, at 11; *see also Rosen*, 984 F.3d at 732 (citing approvingly to the July 30, 2018 Order on this determination).

community, despite the implementation of short-term clinical interventions," is required for RTC placement.

To ensure compliance with the *Flores* July 30, 2018 Order, Form P-4 should be modified in one of the following ways: (1) change the introduction to read as follows: "A licensed psychologist or psychiatrist has determined that you have a serious psychiatric or psychological issue that cannot be addressed in an outpatient setting and that you are a danger to self or others. ..."; or (2) add an "and" at the end of RTC criteria 3 to make clear on the form for staff and the child receiving the form that a psychologist or psychiatrist has made a determination with respect to all four criteria, and most importantly that a licensed psychologist or psychiatrist determined that the child poses a risk to self or others.

4. The Proposed Notice of Placement Forms Fail to Adequately Inform Children of and Provide Opportunities for Children to Challenge Their Restrictive Placements in Violation of the Fifth Amendment Due Process Clause.

For the most part, Forms P-4 and P-4s have been reformatted in a manner that is more user and reader friendly. We support these changes but believe there are areas of the NOPs that are of utmost importance, specifically the section informing a child of his placement review and right to challenge placement options, that have been inappropriately excluded from these updates. Given the importance of an advisal regarding placement review and placement challenge options, we propose a section with the following heading: Notice Regarding Right to Placement Review and Right to Challenge Placement Determination.

The Commenting Parties' proposed heading "Notice Regarding Right to Placement Review and Right to Challenge Placement Determination" should be followed by a text box explaining a child's right to challenge his or her placement. The current language in P-4 and P-4s regarding placement review and administrative and judicial review, however, fails to comply with the Fifth Amendment Due Process Clause, and as such must be modified.

As noted above and in Plaintiffs' Motion for Partial Summary Judgment in *Lucas R*., children in ORR custody have a liberty interest to be free from detention and to be placed in the least restrictive setting. <sup>91</sup> And where individuals have a protected liberty interest, procedural due process requires, at a minimum, notice *and a hearing*. <sup>92</sup> In cases like this, where there is a great private interest and a great risk of error that outweigh the government interest, due process requires that such hearing (1) occur pre-deprivation—prior to initial placement or step-up to a restrictive setting—not 30 days thereafter—and within a time certain; (2) be afforded to all children in any type of restrictive setting, including *any type* of secure, staff-secure or RTC placement, (3) be automatic, (4) be before a neutral decisionmaker, (5) include a right to inspect, rebut and present evidence, (6) include a right to counsel, (7) include a right to interpreters, (8) include a right to a written decision, and (9) occur periodically. <sup>93</sup>

<sup>&</sup>lt;sup>91</sup> See supra Section III.B.1.b.; Pls.' Mot., supra note 62, at 20-24; Pls.' Opp., supra note 65, at 11-19; Pls.' Reply, supra note 65, at 11-14.

<sup>&</sup>lt;sup>92</sup> See Pls.' Mot., supra note 62, at 15, 25, 29-30, 42, 46-51; Pls.' Opp., supra note 65, at 21-23, 27-29; Pls.' Reply, supra note 65, at 15.

<sup>93</sup> Pls.' Mot., *supra* note 62, at 37-51; Pls.' Opp., *supra* note 65, at 19-33; Pls.' Reply, *supra* note 65, at 14-17.

Forms P-4 and P-4s are constitutionally deficient to the extent they refer to periodic reviews and administrative review challenges that lack the features described above. For example, the placement reviews that occur every thirty days do not provide a child with an opportunity to inspect, rebut and present evidence, are not before a neutral decisionmaker, and do not allow a child to be present with counsel or include a right to interpreters. Similarly, any requests for reconsideration by the ORR Director are deficient where they occur at least 30-days post-deprivation, are not available to children in all types of restrictive settings, are not automatic, are not before a neutral decisionmaker, do not include a right to inspect, rebut and present evidence or right to counsel and interpreters, do not include a right to a written decision, and do not occur periodically. Thus, the current and proposed language in NOPs, copied below, should be replaced:

ORR will review your placement, at a minimum, every 30 days to determine whether your placement in a restrictive level of care is still necessary. If you remain in a secure facility or RTC after 30 days, you may request that the ORR director reconsider your placement. For more information on this process, please ask your case manager.

If you believe you have not been properly placed or that you have been treated improperly you may also ask a Federal District Court to review your case. You may call a lawyer to assist you.

The NOP forms should be revised to inform children of their rights to contest the restrictive placement decision through (1) an immediate and automatic administrative review hearing process, (2) a periodic and automatic administrative review hearing process, (3) a *Flores* bond hearing, and (4) federal district court review. This section of the form should also explain the procedures by which a child may challenge their placement through each of these processes. Additionally, any administrative review procedure(s) provided for challenging placement must include, at a minimum, the due process features described above.

### 5. Additional Changes to the Spanish Version of the Notice of Placement (Form P-4s) Based on Incorrect or Improper Translation.

The comments, concerns and recommendations expressed in Sections III.B.1-III.B.4, apply to the content of both the English and Spanish versions of the Notice of Placement in a Restrictive Setting, Forms P-4 and P-4s, respectively. In addition to those comments, concerns, and recommendations, we have additional recommendations specific to the Spanish Version of the form. Our recommendations under this section reflect an overall concern that Form P-4 has not been appropriately translated. In fact, in some instances, the Spanish Version is in no way a direct translation of the English version, and uses language that is uncommon or likely to be misunderstood. Failure to adequately translate the form will result in confusion and fail to provide Spanish-speaking children with adequate notice of the reasons for their restrictive placement, and thus limit their ability to exercise rights they may have.

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<sup>&</sup>lt;sup>94</sup> Pls.' Mot., *supra* note 62, at 48-49; Pls.' Opp., *supra* note 65, at 27-28, Pls.' Reply, *supra* note 65, at 15.

<sup>&</sup>lt;sup>95</sup> Pls.' Mot., *supra* note 62, at 43-44; Pls.' Opp., *supra* note 65, at 28-29.

#### a. Recommended changes to Form P-4s's introductory section.

#### We recommend the following changes:

- 1) In the first paragraph of the form, change the translation of a Secure and Staff Secure facility to "centro de detención de seguridad restrictivo /o máximo" and "centro de detención semi-restrictivo," respectively. Translating "secure facility" to "una entidad de protección" (protection entity) does not accurately describe a secure facility, nor is it an accurate translation. Likewise, a "staff secure facility" cannot be remotely understood to be an "albergue de puertas abiertas" (open door facility). This is an inaccurate translation and a very misleading description of a staff secure facility, which will cause confusion and anger upon a child's arrival at a staff secure facility.
- 2) Change "Nombre de al entidad proveedora de asistencia" to "Nombre de la entidad proveedora de asistencia" to correct what appears to be a typo ("al" instead of "la"); or change to a more accurate translation: "Nombre de la entidad a cargo del albergue."
- 3) Change "Tip de Entidad" to "Tipo de Entidad" to correct what appears to be a typo ("tip" instead of "tipo"); or a more accurate translation: "Tipo de Centro."

### b. Recommended changes to Form P-4s's "Asistencia de Protección" section.

#### We recommend the following changes:

- 1) Change the section heading from "Asistencia de protección" to something more on point with "Secure Care" and the reasons for placement in a restrictive setting. The current translation is inaccurate and confusing. The section heading is for a checklist of potential reasons for a "step up"; it has no relation to "assistance" or "protection."
- 2) Under the third criteria for "Asistencia de protección", change "incurrido en conductas graves de auto lastimares graves" to "participado en conductas de auto lastimarse graves" or "participado en comportamiento serio y autodestructivo." These modifications remove one unnecessary use of "graves" and use language more easily understood by children. It also fixes what appears to be a typo: "lastimares" to "lastimarse."
- 3) Under the fourth criteria for "Asistencia de protection", change "incurrido" to "participado," and "inadmisiblemente" to "inaceptablemente." These modifications use language more easily understood by children.
- 4) Under the fourth criteria for "Asistencia de protección", change "entidad de puertas abiertas," which is referring to "staff secure facility" to something else more on point. Staff secure does not translate to open door entity, which is the current translation. The current translation is inaccurate and confusing.
- 5) At the end of the fifth criteria for "Asistencia de protección", add in "y/o" to match the English version of the form, which includes "and/or" at the end of the fifth placement criteria for "Secure Care."

#### c. Recommended changes to Form P-4s's "Asistencia de Puertas Abiertas" section.

#### We recommend the following changes:

- 1) Change the section heading from "Asistencia de puertas abiertas" to something more on point with "Staff Secure Care." The current translation is inaccurate and confusing, as well as an inaccurate description of a staff secure facility. Recommended translation: "centro de detención semi-restrictivo."
- 2) Change all references to "asistencia de protección" ("secure care") to a more on point translation throughout this section. As noted with respect to the "Asistencia de protección" section, the current translation for "secure care" is inaccurate and confusing. Recommended Translation: "centro de detención de seguridad restrictivo /o máximo."
- 3) When referring to a "pandilla" or "pandillas" (gang or gangs) add "o mara" and "o maras." Many Spanish speaking children in ORR custody are from Central America where gangs are referred to, generally, as "maras" rather than pandillas. To make sure children from different Spanish speaking countries understand this placement criteria, references to both ways of saying "gang" should be included.
- 4) Change "Podría ser dado de baja de una entidad de protección" to more accurately translate to "Could be stepped down from a secure facility". The current translation is inaccurate and confusing. Recommended translation: "Podría ser bajado de nivel desde un centro de detención de seguridad restrictivo /o máximo"

### d. Recommended changes to Form P-4s's "Centro de Tratamiento Residencial" section.

#### We recommend the following changes:

- 1) Consistently refer to "outpatient setting" as "entorno ambulatorio" or "albergue ambulatorio." References to the same terms should be consistent throughout the document to avoid possible confusion.
- 2) Under the fourth criteria, change "persistente" which means "persistent" to "continuo" which means "continued." The English version of this criteria reads "[p]resent a continued and real..." not "[p]resent a persistent and real...".

#### e. Recommended changes to Form P-4s's section regarding Summary of Placement Decision or Case Review

We recommend that ORR add "o reviso de caso" after "Resume de la decisión con respecto a la colocación" to accurately translate the entire heading from the English version of the form, which reads "Summary of Placement Decision or Case Review." We also recommend that whatever change is made to "secure care" be implemented throughout the form, including the section informing the child of the placement review process and option to request reconsideration by the ORR Director.

#### C. The Proposed "Long Term Foster Care Placement Memo" Form P-5 Should Be Modified to Ensure the Form Does Not Include Placement Types That Are Not Long-Term Foster Care Placements.

According to the Proposed Collection, ORR revised the formatting and the order in which the fields appear in the "Long Term Foster Care Placement Memo" ("Form P-5"), and added two new questions. The Commenting Parties have no current concerns with respect to the two new questions and instead focus their comments on additional changes we noted but were not recorded by the Agencies in the Proposed Collection.

As an initial matter, the current "Long Term Foster Care Placement Memo" has a "Type of long term foster care (LTFC) placement requested" field, which appears to have been replaced with a "Type of Placement Requested" field in Form P-5. The current form and proposed form appear to have pre-selected items to choose from, however, we cannot see the list of options available for response to these fields. As such, we are unable to comment on these fields.

The current "Long Term Foster Care Placement Memo" has a "Placement Type" field, which appears to have been replaced with "Program Type" in Form P-5. The field "Program Type" in the proposed form is also a drop-down field, and again we are unable to properly comment on this field because we are unable to view the options that populate when clicking on the drop-down option. That said, assuming the options are the same as the current form's options for "Placement Type," Residential Treatment Center should be removed from this list. A Residential Treatment Center is a type of restrictive setting and not a type of long-term foster care placement. As such, use of this form for such a recommendation is inappropriate.

Lastly, Form P-5 has the following fields under the section labeled "LTFC Program Recommend": "Phone" and "Staff Responsible for Transfer." The section labeled "Foster Family or Group Home Recommended" does not have these same fields and it is not clear why. A contact number and the name of the staff responsible for the transfer is relevant and important to include for both types of recommendations because this information will aid the coordination of a transfer for the child. For these reasons, "Phone" and "Staff Responsible" fields should be added to the "Foster Family or Group Home Recommended" section.

# D. The Proposed "UAC Referral Form" (Form P-7) Requests Large Amounts of Information that Raises Concerns Relating to Privacy, Confidentiality, Self-Incrimination, Relevancy, As Well As Numerous Other Concerns.

The proposed UAC Referral Form ("Form P-7") combines two current instruments used by ORR, the "Add New UAC" instrument and the "Intakes Placement Checklist," into one instrument. Form P-7 modified current content, moved content around, and added entirely new sections and fields. Because this is a fairly long document with numerous modifications and additions, we first address general concerns regarding the solicitation of information regarding criminal and sexual behaviors and gang affiliation before addressing the following specific sections in chart format to facilitate review: (1) Details Tab – New Entry: UAC Referral, (2) UAC Referral Page – Details Tab, (3) Intakes Placement Checklist Form, (4) Intakes Placement Checklist Tab, and (5) UAC Referral – Initial Health Information Tab.

# 1. General Comments to Form P-7 Regarding Privacy, Confidentiality, Self-Incrimination, and Due Process.

As an initial matter, the Proposed Collection indicates that Form P-7 is intended to be used by Federal agencies to refer UCs to ORR custody and by ORR Intakes staff to place UCs in an ORR care provider facility. No further information or guidance is provided on how or who will complete each part of the 18-page instrument, which consists of numerous tabs, data entry windows, forms, and checklists. As a result, it is unclear to the Commenting Parties (1) which agency completes the different parts of Form P-7 and (2) what sources are relied upon by each agency to complete the information which they are tasked with inputting or providing. Given the vagueness regarding who is collecting and/or providing the information and how this information is being collected, the Commenting Parties seek more information to understand the implications of Form P-7. Additionally, the sections below address these concerns in detail.

Form P-7 contains fields related to children's health, criminal, and gang history. The sections of concern, which are addressed more fully in turn below, are the following:

- Under the "Details" tab, the "Criminal Information" section elicits information about the child's criminal history, including criminal and behavioral concerns and gang affiliation. Form P-7 also records a child's criminal charges.
- For the "Criminal Charges Data Entry Window," the following information must be provided: "arrested date," "arrested for," "charged," "charged date," "list of charges," "adjudicated," "outcome of the criminal case," and "summary of events."
- The "Intakes Placement Checklist Tab" includes information regarding the child's "gang affiliation" and "criminal history."
- Under the "Detention Facilities Data Entry Window," the form elicits information about the detention facilities where the child was institutionalized, and the known incident reports at a detention facility.
- The "Entry Team Data Entry Window" prompts the user to search for their name and select a role.

### a. The confidentiality of children's criminal history must be protected, as required by state law and the FSA.

As noted above, the Forms specifically contain information regarding children's alleged criminal or gang history. The Commenting Parties are concerned that this information may be shared with third-parties, especially in light of the "Entry Team Data Entry Window" in Form P-7, which allows unknown individuals to grant read and/or write access privileges to these records to other unknown individuals who do not typically "need such privileges for a referral record." It is reasonable to assume that ORR will potentially grant access to a child's electronic case file and/or share criminal or gang-related information in the file with DHS, as it has in the past. As such, Form P-7 must be amended to ensure any collection and recording of this type of information is protected from third-party access and complies with applicable state and federal laws and policies.

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<sup>&</sup>lt;sup>96</sup> Proposed Collection, *supra* note 1, at 5197.

<sup>&</sup>lt;sup>97</sup> See e.g., ORR Policy Guide, *supra* note 5, at § 5.8.5 (requiring ORR care providers and FFSs to report certain crime and gang-related information to DHS).

Children's information and privacy is protected broadly under numerous state and federal laws. Regislatures have chosen to restrict access to children's records to recognize the inherent vulnerability of children and related policy concerns. Protecting children's information and privacy promotes rehabilitation and removes barriers to seeking employment, housing, and other opportunities. Additionally, providing health services and trauma-informed care that children in ORR custody need requires a level of trust and confidentiality. Currently, children in ORR custody have legitimate fears that information they disclose regarding health and criminal history will be used against them to justify a transfer to a more restrictive facility or to undermine their immigration case. Additionally is provided by the services are restrictive facility or to undermine their immigration case.

In general, sharing information about children's criminal history outside of ORR may violate state law and is inconsistent with the policy rationale underlying protections for juvenile information. In California, for example, juvenile confidentiality laws have long protected juvenile information arising from certain proceedings, including juvenile delinquency. <sup>101</sup> Only certain individuals and agencies are permitted automatic access to information and files regarding juveniles who are or were in delinquency or dependency proceedings. 102 Any other agencies or individuals not statutorily authorized to review a child's file must obtain a court order to do so. <sup>103</sup> These procedures are purposely stringent and "explicitly reflect a legislative judgment that rehabilitation through the process of the juvenile court is best served by the preservation of a confidential atmosphere in all of its activities." <sup>104</sup> California statute sets forth the specific persons and entities entitled to inspect juvenile case files without a court order. 105 Parties allowed to inspect or receive copies of juvenile records are prohibited from disclosing the juvenile's information to unauthorized parties. 106 A violation of juvenile confidentiality provisions is a misdemeanor punishable by a fine. 107 California does not authorize the disclosure of juvenile information in any form to federal officials, including representatives of DHS, absent an order from the judge of the juvenile court. 108

In finding that juvenile court records "should remain confidential regardless of the juvenile's immigration status," the Legislature emphasized that "confidentiality is integral to the operation of the juvenile justice system in order to avoid stigma and promote rehabilitation for

<sup>&</sup>lt;sup>98</sup> See, e.g., 5 U.S.C. § 552(a) (2018); 20 U.S.C. § 1232g (2018); Ariz. Rev. Stat. § 8-807(K) (LexisNexis 2021); Cal. Welf. & Inst. Code § 825-836 (Deering 2021); Fla. Stat. § 985.045(2) (2020); N.Y. Crim. Proc. Law § 720.35.2 (Consol. 2021); Tex. Fam. Code Ann. § 58.005(a-1)(10) (West 2019).

<sup>&</sup>lt;sup>99</sup> Riya Saha et al., *Juvenile Records: A National Review of State Laws on Confidentiality, Sealing and Expungement* 6 (2014).

<sup>&</sup>lt;sup>100</sup> See, e.g., Ella Nilsen, *Kids Who Cross the Border Meet with Therapists and Social Workers. What They Say Can Be Used Against Them*, Vox (June 19, 2018, 8:51 AM), https://www.vox.com/policy-and-politics/2018/6/18/17449150/family-separation-policy-immigration-dhs-orr-health-records-undocumented-kids.

<sup>&</sup>lt;sup>101</sup> Cal. Welf. & Inst. Code § 827 (Deering 2021).

<sup>&</sup>lt;sup>102</sup> *Id*.

 $<sup>^{103}</sup>$  Id

<sup>&</sup>lt;sup>104</sup> T.N.G. v. Superior Court, 4 Cal. 3d 767, 776-77 (Cal. 1971).

<sup>&</sup>lt;sup>105</sup> Cal. Welf. & Inst. Code § 827.

<sup>&</sup>lt;sup>106</sup> Cal. Welf. & Inst. Code § 827(a)(4) (Deering 2021); see also In re Tiffany G., 29 Cal. App. 4th 443, 451 (Cal. App. Ct. 1994).

<sup>&</sup>lt;sup>107</sup> Cal. Welf. & Inst. Code § 827(b)(2) (Deering 2021).

<sup>&</sup>lt;sup>108</sup> The Juvenile Court has the exclusive authority to determine the extent to which juvenile case records can be disclosed. *In re Elijah S.*, 125 Cal. App. 4th 1532 (Cal. App. Ct. 2005).

*all youth*, regardless of immigration status." <sup>109</sup> Moreover, the information required to be protected is broadly defined to include the juvenile's case file and information relating to the juvenile. <sup>110</sup>

Laws in Arizona, New York, Texas, and Florida similarly protect juvenile records. In these states, any party seeking information contained in a juvenile's court records must petition the state court; and in Texas, the juvenile court or the Texas Department of Family and Protective Services. Without a court order granting ORR authorization to share this information specifically with DHS or another third-party, ORR's collection, recording and reporting of this information may violate applicable state laws.

Federal law as it relates to unaccompanied children is similarly protective. The FSA requires ORR facilities to "develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which *preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.*"<sup>112</sup> The ORR website states, "HHS does not release information about individual children or their sponsors that could compromise the child's location or identity."<sup>113</sup> The website also states, "HHS has strong policies in place to ensure the confidentiality of [UCs'] personal information."<sup>114</sup> ORR's promises reflect the FSA's provision that the child has "a reasonable right to privacy."<sup>115</sup> From this provision naturally flows a child's right to privacy concerning their own records.

For the reasons stated above, a child's ORR file and information should not be accessible by third-parties unless ORR and its care providers have complied with applicable state and federal laws and policies. As such, to protect children's confidential information, we recommend that ORR add the following language, or something similar, to Form P-7: "The Entry Team Data Entry Window is a new feature that allows case managers and ORR staff to give read and write access to other individuals. This feature is restricted to granting access to ORR staff or ORR grantee staff (e.g., care provider staff) who require access to make placement or release recommendations or decisions. This information, as well as access to this information, cannot be shared with any individual or agency outside of ORR, including but not limited to DHS, without a court order or compliance with applicable state and federal laws and policies."

<sup>&</sup>lt;sup>109</sup> Cal. Welf. & Inst. Code § 831(a) (Deering 2021).

<sup>&</sup>lt;sup>110</sup> Cal. Welf. & Inst. Code § 831(e) (Deering 2021).

<sup>&</sup>lt;sup>111</sup> A survey of the juvenile and child abuse and neglect records confidentiality laws of these five states—Arizona, New York, Florida, California and Texas—is included as an appendix to this comment. This appendix is meant to present a sampling of state juvenile records confidentiality laws, on the basis that the rest of the U.S. states and the District of Columbia oversee similar laws. *See infra* Appendix 2.

<sup>&</sup>lt;sup>112</sup> Flores Settlement Agreement, supra note 4, at ¶ E, Ex. 1 (emphasis added).

<sup>113</sup> Health and Safety, supra note 31 (citing the text under "Privacy" heading).

<sup>&</sup>lt;sup>115</sup> Flores Settlement Agreement, *supra* note 4, at ¶ A.12, Ex. 1 ("A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house and regulations; and (e) receive and send uncensored mail unless there is reasonable belief that the mail contains contraband.").

# b. Reporting to law enforcement (DOJ/FBI/Local Law Enforcement) and ICE impermissibly turns ORR into a law enforcement agency.

ORR is not a law enforcement agency. It does not have law enforcement responsibilities with respect to unaccompanied immigrant children. In fact, the responsibility of providing for unaccompanied immigrant children was transferred to ORR from DHS (formerly INS) precisely to separate the responsibility for safeguarding children's welfare from the law-enforcement focused DHS. Form P-7 places ORR squarely into a law enforcement role, violating its obligations to the children in its care and revealing a serious conflict of interest that it must immediately reconcile.

Information collected and recorded by Form P-7 is directly tied to Significant Incident Reports ("SIR"), 117 which may have additional consequences for a child's placement, reunification, and eligibility for immigration relief. 118 The mandatory law enforcement reporting attached to any criminal or gang-related SIRs through Section 5 of the ORR Policy Guide reveal that ORR is in danger of becoming—if it is not already—another arm of DHS. 119 Indeed, according to an ICE-ORR Memoranda, DHS trains ORR staff on how to identify MS-13 and other gang colors and signs, report suspected gang affiliation, and become integrated into local anti-gang task forces. 120 The mandatory rapid reporting to DHS, and in some cases DOJ and the FBI, of criminal histories and gang allegations leaves no room for a child-centric analysis of the event, nor does it leave any room for any holistic consideration of the welfare of all children involved.

ORR has failed to explain or justify its expanded focus on collecting and documenting gang-affiliation and criminal history and how this comports with its mandate to provide for the welfare of *all* the children in its care. The structure and use of Form P-7 and SIR instruments are all the more concerning when reviewed in conjunction with the parallel notices of proposed forms for administration and oversight and mental health screening, which elicit and record information from children that may be self-incriminating without any protections that would normally accompany such law enforcement activities. <sup>121</sup> For these reasons, the Agencies must ensure that if it implements Form P-7 and collects and records information regarding gang or

<sup>&</sup>lt;sup>116</sup> See generally Laila L. Hlass, *The School to Deportation Pipeline*, 34 Ga. St. U. L. Rev. 697 (2018) (examining how gang allegations against immigrant youth work to push young people into a school-to-deportation pipeline).

<sup>117</sup> Care Providers report and document all significant incidents in accordance with mandatory reporting laws, state ligancing requirements, federal laws and regulations, and OPP policies and procedures. Significant incidents

licensing requirements, federal laws and regulations, and ORR policies and procedures. Significant incidents include, but are not limited to abuse or neglect in ORR care, including sexual abuse, behavioral incidents that threaten safety, and incidents involving law enforcement. *See* ORR Policy Guide, *supra* note 5, at § 5.8.

<sup>&</sup>lt;sup>118</sup> See infra Section III.D.e. See generally ORR Policy Guide, supra note 5, at § 5 et seq (regarding SIRs and when information related to an SIR must be shared with DHS and other law enforcement agencies).

<sup>&</sup>lt;sup>119</sup> See ORR Policy Guide, supra note 5, at § 5.8.5 (requiring ORR care providers and FFSs to report certain crime and gang-related information to DHS).

<sup>&</sup>lt;sup>120</sup> See N.Y. Civil Liberties Union & N.Y Immigration Coal., supra note 33, at 23.

<sup>&</sup>lt;sup>121</sup> The Commenting Parties have submitted more detailed comments in response to those proposed forms, which include SIRs and other forms which are frequently the source of information that generate an SIR, like Form P-7 here. Those comments should be read together with these comments regarding the placement and transfer forms ORR proposes.

criminal activities (against the Commenting Parties recommendation), ORR does not share this information with law enforcement agencies.

c. Children must be provided a Miranda warning prior to any questioning that may elicit incriminating information.

The new "Criminal Information" and "Criminal Charges" sections, as well as the majority of the "Intakes Placement Checklist," also raise concerns that children are being asked questions that elicit criminally and civilly incriminating information with no prior advisal that the information they divulge can result in criminal and/or immigration consequences, as well as impact their placement at ORR, including but not limited to placing them in a secure juvenile jail.

Specifically, Form P-7 creates a new "Criminal Information" section with the following nine fields: (1) "Criminal Concerns?," (2) "Behavioral Concerns?," (3) "Behavioral Concerns Notes," (4) "Gang Affiliation?," (5) "Gang Name," (6) "Gang Affiliation Notes," (7) "Gang Affiliation Determined By," (8) "Footguide?," and (9) "Footguide Notes." Form P-7 also adds a "Criminal Charges" section that is intended to capture more detailed information regarding a child's criminal charges and/or arrests. The "Criminal Charges" section contains the following nine fields: (1) "Referral," (2) "Arrested Date," (3) "Arrested For," (4) "Charged," (5) "Charged Date," (6) "List of Charges," (7) "Adjudicated," (8) "Outcome of Criminal Case," and (9) "Summary of Events." Form P-7 also includes an updated "Intakes Placement Checklist," which elicits information regarding gang affiliation, criminal history and conduct in ORR custody that is violent, malicious, sexually predatory or inappropriate. As noted above, it is unclear from Form P-7 how this information is being collected, but presumably, as has often been the case, all of, or a majority of this information, would be collected directly from the child himself, whether the child provides the information directly to ORR or the child provides the information to the referring federal agency whom then provides the information to ORR. 122 This, of course, is concerning, especially since the Commenting Parties are not aware of any requirement that ORR or any referring federal agency eliciting this information provide the child with a Miranda warning.

The Fifth Amendment privilege against self-incrimination is not limited to the trial setting, but extends to "any other proceeding, civil or criminal, formal or informal, where the answers might incriminate [a person] in future criminal proceedings." Miranda warnings are required even in civil investigations that may result in criminal prosecutions. 124 In the broader immigration context, while Miranda warnings may not be required in "booking exception" settings involving routine questions generally unlikely to elicit incriminating responses, 125 they

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<sup>&</sup>lt;sup>122</sup> See ORR Policy Guide, supra note 5, at § 1.3.1 ("ORR requests background information from the referring Federal agency.").

<sup>&</sup>lt;sup>123</sup> Minnesota v. Murphy, 465 U.S. 420, 426 (1984) (quoting Lefkowitz v. Turley, 414 U.S. 70 (1973)).

<sup>&</sup>lt;sup>124</sup> See, e.g., Mathis v. United States, 391 U.S. 1, 4-5 (1968) (requiring Miranda warnings where petitioner was questioned by the IRS regarding a civil matter because tax investigations often lead to criminal prosecutions, just as it did in this case); United States v. Mata-Abundiz, 717 F.2d 1277, 1279 (9th Cir. 1983) (finding INS investigator's failure to give Miranda warnings rendered detainee's citizenship response inadmissible where the INS officer had reason to suspect that the question asked would likely elicit an incriminating response).

<sup>&</sup>lt;sup>125</sup> Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

can apply, even to booking questions, where the questions are designed to elicit incriminating responses. Because of this, courts have held that [c]ivil as well as criminal interrogation of in-custody defendants by INS investigators should generally be accompanied by the Miranda warnings. Immigration officer's statements that the interview is meant to obtain biographical information for a "routine, civil investigation" is irrelevant in light of the objective factors suggesting that the questions are likely to elicit an incriminating response.

Just as routine questioning in the immigration context triggers Miranda warnings where it elicits incriminating information, so too does routine questioning for ORR referral purposes. Form P-7 demonstrates how intakes staff and referring agency staff go beyond routine biographical questions during the referral intakes process, and ask questions that elicit incriminating information. For example, the "UAC Referral Details Tab" requests information regarding criminal concerns, gang affiliation, as well as whether the child was a footguide (i.e., a smuggler). The "Criminal Charges Data Entry Window" asks about specific details regarding arrests, charges, convictions and/or adjudications. And the "Intakes Placement Checklist Tab" and form include gang affiliation, criminal history and conduct in ORR custody that is violent, malicious, sexually predatory or inappropriate. All of these fields elicit incriminating information that can have criminal, immigration, and/or placement implications. In fact, the ORR intakes team collecting this information is explicitly permitted to make a special placement (also known as a restrictive placement) request based on any of the following: criminal charges or chargeability, commission of violent acts or credible threats thereof, self-reported gang involvement or violent criminal history or gang involvement or even inappropriate sexual behavior. The Federal Field Specialist ("FFS") is then able to make final placement decisions, which can include a decision to place a child in a juvenile jail. 129

Collection and recording of gang or criminal information can also impact a child's immigration case, especially where ORR policy requires a care provider to create an SIR based on this type of information and then requires either the care provider or an FFS to share this type

<sup>&</sup>lt;sup>126</sup> See Pennsylvania v. Muniz, 496 U.S. 582, 601-02 (1990) (finding that the routine booking questions were not subject to Miranda, while still recognizing that routine booking questions could be subject to Miranda if they are designed to elicit incriminating responses).

<sup>&</sup>lt;sup>127</sup> Mata-Abundiz, 717 F.2d at 1279; see, e.g., United States v. Chen, 439 F.3d 1037, 1040 (9th Cir. 2006) (affirming district court's decision to require Miranda warning during INS interview of an alien in INS custody where defendant was questioned in a district that has a practice of prosecuting the specific crime at issue and where the prosecutor had a desire to pursue charges against defendant to obtain his cooperation against another defendant); United States v. Carvajal-Garcia, 54 F. App'x 732, 734 (3d Cir. 2002) (holding that the Miranda booking exception did not apply to an INS inquiry into an individual's name and date and place of birth because INS's questions elicited information reasonably likely to inculpate the respondent); United States v. Gonzalez-Sandoval, 894 F.2d 1043, 1046-47 (9th Cir. 1990) (holding that inquiries by Border Patrol agents constituted interrogation in violation of detainee's Miranda rights when questioned about his place of birth, immigration status and use of aliases, which were then used to prove charges of illegal entry and being a deported alien found in the U.S); United States v. Doe, 878 F.2d 1546, 1551 (1st Cir. 1989) (holding that the Coast Guards questioning regarding citizenship was subject to a Miranda warning because the "Coast Guard officers ought to know that answers to such questions may incriminate"); Mata-Abundiz, 717 F.2d at 1280 (requiring a Miranda warning where INS investigator of 23 years knew that evidence of alienage plus evidence of firearms possession could lead to a federal prosecution and the investigator had reason to know that any admission of alienage would be highly incriminating). <sup>128</sup> Mata-Abundiz, 717 F.2d at 1278-79.

<sup>&</sup>lt;sup>129</sup> See HHS Form P-7 at 15-18.

of information with ICE.<sup>130</sup> Once gang activity is reported, for example, ICE Homeland Security Investigations ("HSI") places gang memoranda in individuals' A-file and explicitly directs all future immigration services and applications for benefits or relief be denied.<sup>131</sup> In the Clinic and CHRCL's experience, DHS nearly always submits these SIRs in immigration proceedings, whether to prevent an adult who was in ORR custody as a child from being released on bond, to prevent a favorable exercise of discretion in asylum and in other forms of relief, or in some cases to argue that the child is barred from relief altogether based on unverified SIRs from when the child was in ORR custody. ORR's insistence on documenting activities as gang-related or criminal does little to protect children while they are in ORR's care but actively harms the children ORR accuses and often mislabels, sometimes long after they have been released from custody.

Given that numerous sections and fields in Form P-7 ask about criminal history, violent or malicious acts, gang affiliation and/or sexual predatory or inappropriate behavior, responses to these questions can satisfy the basis for a restrictive placement recommendation and determination, as well as impact a child's immigration case, it is reasonable to assume that the referring agency and intakes team ask these questions intending to unearth such responses. Put simply, Form P-7 is *intended* to unearth incriminating information, which can adversely affect the child's detention and/or immigration relief. Accordingly, if a child is going to be asked questions about criminal charges or other criminal acts, violent or malicious acts, gang affiliation, and/or sexual predatory or inappropriate sexual behavior (against the Commenting Parties recommendation), the child must be advised of his or her Miranda rights and the potential consequences of his or her responses prior to such questioning. To the extent ORR is receiving information from a referring agency regarding self-reported criminal charges or other criminal acts, violent or malicious acts, gang affiliation, and/or sexual predatory or inappropriate sexual behavior, ORR must ensure that the information they receive was not in violation of the child's Miranda rights.

d. ORR should not use historically unreliable information and information obtained without a Miranda warning to collect and record alleged gang-affiliation and/or criminal history.

ORR has a history of incorrectly labeling children as dangerous based on inaccurate and unreliable allegations of gang involvement, past criminal activity; or criminalizing behavior that is typical for a traumatized child in federal custody. For the reasons discussed below, ORR should refrain from collecting, recording, and reporting any information that is unreliable or will result in the violation of children's rights.

In the Commenting Parties' experience, children may be designated as gang-affiliated and/or as criminals based on information from a number of sources. First, ORR relies on information from the referring agencies, often Customs and Border Protection ("CBP") or ICE,

<sup>&</sup>lt;sup>130</sup> ORR Policy Guide, *supra* note 5, at § 5.8.5 (referring to the policy requiring mandatory reporting to DHS of significant incident reports involving arrests, incidents of violence by a child, and gang-related activities).

<sup>131</sup> N.Y. Civil Liberties Union & N.Y Immigration Coal., *supra* note 33.

to make initial placement decisions. <sup>132</sup> Agents may identify an immigrant youth as gangaffiliated based on tattoos, "self-disclosures" and reports of the violence the child is fleeing, or if a "reliable source" identifies the child as gang-affiliated. <sup>133</sup> ICE frequently misidentifies immigrant youth as gang members for the purpose of deporting them. <sup>134</sup> Information collected by ICE is provided to ORR to use during the intake and placement process, which would include completing Form P-7. In the Clinic and CHRCL's experience, ORR has accepted gang-affiliation accusations as true from ICE without verification notwithstanding its questionable reliability and the motives and objectives ICE has when recording and sharing this information.

Second, during initial arrests and interviews by CBP, ICE, or other referring federal agencies, children are generally asked questions that elicit incriminating information, specifically information regarding gang involvement and/or criminal activities. As noted above, this self-disclosed information is then shared with ORR to complete referral forms, such as Form P-7, and make initial placement decisions for the child. Additionally, once a child is in ORR custody, the child continues to undergo an intake process that again elicits similar information. In other words, the intake process prior to and subsequent to arrival at ORR relies primarily on information children report themselves and information provided by the referring agency, which likewise relies primarily on children's own reports. Children's self-disclosures, particularly when made in a detained setting, are unreliable measures of gang-involvement and criminal history. <sup>135</sup>

Despite their unreliability, disclosures made during the intake process that relate to gang affiliation or criminal histories are recorded both in the intake instrument and SIRs labeling the child as gang-affiliated or as a child with a criminal history, regardless of whether charges were brought or the child has been adjudicated delinquent of any offense. ORR then uses this same information to determine a child's placement, which includes placement into a juvenile jail. This information can also be used to bring criminal or juvenile delinquency proceedings or impact a child's immigration case, especially where ORR policy requires care providers and ORR staff to share this type of information with ICE. <sup>136</sup> All of this is concerning not only because this information is often unreliable, but also because the Commenting Parties are not aware of any requirement or policy that ORR, CBP, ICE, or any other referring federal agency eliciting this type of information provide the child with a Miranda warning, despite the applicability of Miranda rights in this context.

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<sup>&</sup>lt;sup>132</sup> See ORR Policy Guide, *supra* note 5, at § 1.3.1; *see also* Nat'l Ctr. for Border Sec. & Immigration, Univ. of Tex. at El Paso, *Unaccompanied Alien Children (UC) Project* 9-10 (Mar. 20, 2014), https://www.ktsm.com/wp-content/uploads/sites/38/2020/10/UTEP-NCBSI-Final-Report-March-20-2014.pdf.

<sup>&</sup>lt;sup>133</sup> Press Release, U.S. Immigration & Customs Enf't, Operation Matador Nets 39 MS-13 Arrests in Last 30 Days (June 14, 2017), https://www.ice.gov/news/releases/operation-matador-nets-39-ms-13-arrests-last-30-days. <sup>134</sup> See, e.g., Dina Radtke, *ICE Is Wrongly Designating Immigrants as Gang Members to Deport Them*, Salon (May 7, 2018, 10:30 AM UTC), https://www.salon.com/2018/05/07/ice-is-wrongly-designating-immigrants-as-gang-members-to-deport-them\_partner/.

<sup>&</sup>lt;sup>135</sup> See Brief of Amici Curiae Juvenile Law Center and the Center on Wrongful Convictions of Youth in Support of Petitioner, Joseph H. v. California, 137 S. Ct. 34 (2016) (No. 15-1086), https://www.scotusblog.com/wp-content/uploads/2016/04/15-1086-JLC-Amicus-Brief.pdf.

<sup>&</sup>lt;sup>136</sup> See ORR Policy Guide, *supra* note 5, at § 5.8.5 (requiring mandatory reporting to DHS of SIRs involving arrests, incidents of violence by a child, and gang-related activities); *see also supra* Section III.D.1.

For all the reasons stated above, ORR should not collect and record information about gang or criminal activities that is unreliable, or has been obtained in violation of a child's Miranda rights.

e. Labeling children as gang-affiliated and recording activity as criminal absent delinquency adjudications has severe and harmful consequences for children that are or have been in ORR custody.

Form P-7's labels identifying children as gang-affiliated, or as raising criminal concerns present at least four major harms to children: (i) children are transferred to more secure facilities; (ii) it interferes with family reunification and unnecessarily and/or unjustifiably delays or prevents family reunification; (iii) children are subjected to prolonged detention; and (iv) gang and criminal allegations against children undermine their immigration cases.

# i. Children may be inappropriately placed in a more restrictive setting.

Form P-7 invites ORR to perpetuate unverified and unreliable gang allegations against the children in its care and to characterize children's past experiences as criminal history. This is likely to contribute to the transfer of those children to more restrictive or jail-like settings. <sup>137</sup> This is especially true given "ORR has admitted in legal proceedings that it places children in secure detention without any inquiry into the accuracy of information submitted by law enforcement and without any notice to the child, their attorneys, or their parents of the information upon which the determination is being made." <sup>138</sup> Likewise, in the Clinic and CHRCL's experience, ORR conducts little if any inquiry into the veracity of allegations made. Relying on unverified and unreliable information to place a child in a restrictive setting contravenes the protections in the FSA and the TVPRA. <sup>139</sup>

### ii. Family reunification may be unnecessarily or unjustifiably delayed.

ORR is required to ensure that children are released in a timely and safe manner without unnecessary delay from ORR custody to sponsors, which are often parents (labeled as Category 1 sponsors by ORR), but can also be close or more distant relatives (Categories 2A, 2B and 3). Potential sponsors undergo a difficult application process and subsequent vetting by ORR to determine their fitness to receive a child, even if they are parents that have raised the child since birth. Family unity has long been a key factor in determining the best interests of children in custody at the state level. Likewise, the U.S. Constitution has recognized and protected this

<sup>&</sup>lt;sup>137</sup> ORR Policy Guide section 1.2.4 allows ORR to place a child in a staff-secure facility if the child "[h]as reported gang involvement (including prior to placement into ORR custody) or displays gang affiliation while in care," and in a secure facility if the child has been charged with, is *chargeable* or has been convicted or adjudicated of a crime or delinquency act. ORR Policy Guide, *supra* note 5, at § 1.2.4.

<sup>138</sup> Letter from New York Civil Liberties Union Philip Desgranges et al., to Scott Lloyd, Director, Office of Refugee Resettlement et al. (July 27, 2017), https://www.nyclu.org/sites/default/files/field\_documents/nyclu-letter-to-orr.pdf.
139 8 U.S.C. § 1232(c)(2)(A) (2018) (requiring the federal government to ensure that children are "promptly placed in the least restrictive setting that is in the best interest of the child"); *Flores* Settlement Agreement, *supra* note 4.
140 See Flores Settlement Agreement, *supra* note 4, at ¶¶ 14-18; *see also* 8 U.S.C. § 1232(c)(2)(A).

<sup>&</sup>lt;sup>141</sup> See Child Welfare Info. Gateway, Children's Bureau, supra note 39, at 2.

same right to family unity,<sup>142</sup> even extending it beyond the rights of parents and their children.<sup>143</sup> Despite this strong legal right, however, ORR will not release a child from its custody if it—in its sole discretion—unilaterally determines that the child poses a threat to the safety of himself or others.<sup>144</sup> This is true regardless of whether the child has an appropriate and duly approved sponsor, even if that sponsor is a parent.<sup>145</sup>

One of the most determinative factors in ORR making a finding that a child poses a threat to the safety of themselves or others, is whether there are allegations that a child is involved in gang-related activities. This is true even if the sponsor is a parent. Given the unreliability of these types of allegations or designations, and the due process concerns discussed below in Section III.D.1.f, including this new information on Form P-7, which can then be used to generate a SIR, is highly problematic.

A consequence of labeling a child as gang-affiliated is that ORR then adds additional requirements and barriers to reunification of family members. In the Clinic and CHRCL's experience, ORR has required significantly more documentation, interviews, and information from sponsors of children who have been labeled gang-affiliated, including requiring a family to provide constant surveillance of the child regardless of age or enrolling the child in mental health services prior to release, without due consideration to the harmful effects of continued detention and family separation. In many cases, there seems to be no way for a sponsor to prove their ability to care for a child that ORR has alleged to be gang-affiliated through unappealable forms like Form P-7 and SIRs. Likewise, children have no way to contest or appeal gang-affiliated designations in these forms, which contribute to their prolonged detention and separation from sponsors.

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<sup>&</sup>lt;sup>142</sup> See Rosenbaum v. Washoe Cty., 663 F.3d 1071, 1079 (9th Cir. 2011) ("The substantive due process right to family integrity or to familial association is [also] well established."); see also Santosky v. Kramer, 455 U.S. 745, 753 (1982) (holding that parents and children have a well-elaborated constitutional right to live together without government interference); D.B. v. Cardall, 826 F.3d 721, 740 (4th Cir. 2016) (holding that children "enjoy a familial right to be raised and nurtured by their parents") (internal quotation marks omitted); Ching v. Mayorkas, 725 F.3d 1149, 1157 (9th Cir. 2013) ("The right to live with and not be separated from one's immediate family is 'a right that ranks high among the interests of the individual' and that cannot be taken away without procedural due process."); Beltran v. Cardall, 222 F. Supp. 3d 476, 482 (E.D. Va. 2016) ("It is beyond dispute that [a mother's] right to the care and custody of her son – and [a son's] reciprocal right to his mother's care . . . is deserving of the greatest solicitude.") (internal quotation marks and citation omitted).

<sup>&</sup>lt;sup>143</sup> Numerous courts have also held that a child's right to familial association is not limited to parents. *See Moore v. City of East Cleveland*, 431 U.S. 494, 504 (1977) ("The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition."); *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 585 (E.D. Va. 2018) (rejecting argument that child's interest in family unity is unique to parents, and finding "siblings, aunts or uncles, grandparents, or first cousins" are family "captured in ORR's second-level category of would-be sponsors" and also "constitutionally significant"); *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1006 (N.D. Ill. 1989) (holding that children have "constitutionally protected right to associate with their siblings").

<sup>&</sup>lt;sup>144</sup> See ORR Policy Guide, *supra* note 5, at § 2.7.4 ("ORR will deny release to a potential sponsor if . . . [r]elease of the unaccompanied alien child would present a risk to him or herself, the sponsor, household, or the community."). <sup>145</sup> See Santos v. Smith, 260 F. Supp. 3d 598, 614 (W.D. Va. 2017) ("[H]ad better or more process been given especially as to the delay and the burden being on Ms. Santos to initiate and justify reunification, rather than the default rule being otherwise, the outcome could have been different.").

<sup>&</sup>lt;sup>146</sup> See Laura C.N. Wood, BMJ Pediatrics Open, *Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children* (2018), https://bmjpaedsopen.bmj.com/content/bmjpo/2/1/e000338.full.pdf.

Instead of unnecessarily prolonging the separation between children and parents or other family members, ORR should release children to family members where they are more likely to experience physical and emotional well-being, safety, and stability. <sup>147</sup> To do this and fulfill its statutory mandates, ORR should not collect information regarding gang-related disclosures in Form P-7 or any other ORR form, as this practice is contrary to a child's best interests and fails to safeguard them as ORR is mandated to do.

iii. Being placed in a more restrictive setting delays family reunification, which in turn, leads to prolonged child detention and worse case outcomes.

There is no question that detaining and separating children from their family is detrimental to their welfare, <sup>148</sup> and that detaining children, especially those with a history of trauma, in restrictive settings, causes profound and negative impacts on child welfare and development. <sup>149</sup> The Commenting Parties address some of negative impacts of restrictive placement on a child's welfare, particularly a child's length of stay in detention and the likelihood of reunification with a sponsor.

Analysis of ORR's data supports the Commenting Parties' concern that adding gang and criminal information to Form P-7 will lead to prolonged child detention in ORR custody and worse case outcomes. Namely, children who are labeled as gang-affiliated or as having criminal histories are placed in restrictive facilities without adequate due process. This in turn causes children to remain in ORR custody for significantly longer than other children in ORR custody who have not been transferred to more restrictive facilities, regardless of the reliability of reporting or severity of the incidents.

One of the experts in *Lucas R*., Dr. Emily Ryo, analyzed over two years' worth of ORR data from 2017 to early 2020, and found that among custody periods that included time spent at a restrictive facility, such as a secure or staff-secure facility, the average times to reunification were significantly longer than the average times to reunification for children who were only ever placed at a shelter level. <sup>151</sup> Specifically, she found that children who were only ever in shelter level care spent an average of 52.9 days in ORR custody prior to reunification with a sponsor,

<sup>148</sup> Nat'l Ctr. for Youth Law, *Briefing: Child Welfare & Unaccompanied Children in Federal Immigration Custody* 6 (2019), https://youthlaw.org/wp-content/uploads/2019/12/Briefing-Child-Welfare-Unaccompanied-Children-in-Federal-Immigration-Custody-A-Data-Research-Based-Guide-for-Federal-Policy-Makers.pdf.

<sup>&</sup>lt;sup>147</sup> See The Annie E. Casey Found., supra note 39.

<sup>&</sup>lt;sup>149</sup> *Id.*; see Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Just. Pol'y Inst. (2006), http://www.justicepolicy.org/research/1978; see also Sarah MacLean, *Mental Health of Children Held at a United States Immigration Detention Center*, 230 Soc. Sci. & Med. 303 (2019); Martha von Werthern et al., *The Impact of Immigration Detention on Mental Health: A Systematic Review*, 18 BMC Psychiatry 382 (2018).

<sup>&</sup>lt;sup>150</sup> ORR Policy Guide Section 1.2.4 allows ORR to place a child in a staff-secure facility if the child "[h]as reported gang involvement (including prior to placement into ORR custody) or displays gang affiliation while in care," and in a secure facility if the child has been charged with, is *chargeable* or has been convicted or adjudicated of a crime or delinquency act. ORR Policy Guide, *supra* note 5, at §1.2.4. Children placed in these restrictive facilities have no meaningful opportunity to challenge their placement decisions as required under the Fifth Amendment Due Process Clause. *See supra* Section III.B.4.

<sup>&</sup>lt;sup>151</sup> Expert Report of Dr. Emily Ryo, Docket 272-3 at 145-158 (Appendix 5) at 154, *Lucas R. v. Azar* (Case No. 2:18-CV-05741-DMG-PLA).

whereas children who spent time at a staff-secure or secure level spent an average of 176.5 days and 185.9 days in ORR custody, respectively, prior to reunification.<sup>152</sup>

The same data analysis also revealed that not only do children who spend time in restrictive settings on average spend more time in ORR custody, but children who spend time in restrictive settings also have worse case outcomes in terms of the type of release from ORR custody. For example, 92.97% of children who were only ever placed in shelter level care were reunified with a sponsor, whereas only 47.76% and 41.74% of children who spent time at a staff- secure or secure level of care, respectively, were reunified with a sponsor. In contrast, the percentages of ORR discharges based on voluntary departure or removal orders were higher for children who spent time in staff-secure or secure level placements compared to children who were only ever in shelter level care. The data revealed the following: (1) 1.10% of shelter care only custody periods resulted in a discharge type based on voluntary departure, compared to 10.30% and 6.96% for custody periods where children spent time in staff-secure or secure level placements, respectively; and (2) 0.03% of shelter care only custody periods resulted in discharge type based on removal orders, compared to 5.67% and 6.52% for custody periods where children spent time in staff-secure or secure level placements, respectively.

Accordingly, the data clearly show how placement in a restrictive setting, which often occurs based on the information contained in documents recording alleged gang affiliation or criminal information, can have detrimental effects on a child's length of detention and release from ORR custody.

#### iv. Children's access to immigration relief will be undermined.

ORR's insistence on labeling and documenting activities as gang-related or criminal does little to protect children while they are in ORR's care but actively harms the children ORR accuses and often mislabels, sometimes long after they have been released from custody. For example, gang allegations increase the likelihood that immigrant youth will be denied immigration relief and subsequently be deported. These allegations of gang activity become a permanent part of a child's ORR file, and typically remain available to DHS, following them through the culmination of immigration proceedings. In fact, ORR requires care providers to document gang allegations in SIRs, which can originate from forms like Form P-7, and then in turn requires care providers and FFS to disclose all gang-tagged SIRs to DHS per the ORR Policy Guide. Once the gang activity is reported, ICE HSI places gang memoranda in individuals' A-files and explicitly directs all future immigration services and applications for benefits or relief be denied. Gang allegations may be used to deny, among other forms of immigration relief, DACA renewals, U-visas, or adjustment of status applications before USCIS.

<sup>&</sup>lt;sup>152</sup> *Id*.

<sup>&</sup>lt;sup>153</sup> *Id.* at 155.

<sup>&</sup>lt;sup>154</sup> *Id*.

<sup>155</sup> Id

<sup>&</sup>lt;sup>156</sup> ORR Policy Guide, *supra* note 5, at § 5.8.5.

<sup>&</sup>lt;sup>157</sup> N.Y. Civil Liberties Union & N.Y Immigration Coal., *supra* note 33.

<sup>&</sup>lt;sup>158</sup> *Id*.

Additionally, as noted above in Section III.D.1.c., DHS nearly always submits these SIRs in immigration proceedings. If ORR has included information in a file regarding a child's alleged self-reported gang affiliation while in ORR custody, immigration judges will not review this information for its veracity, nor inquire into how or where the information was obtained. Instead, more likely than not, immigration judges will opt to remove that child from the U.S. rather than grant them a discretionary form of relief, such as voluntary departure. <sup>159</sup> In other words, these allegations operate as a presumption in immigration court, as immigration judges will often accept the allegations as fact without recognizing issues of unreliability underlying gang identification protocols and due process shortcomings. <sup>160</sup>

The prolonged detention that often results from gang-affiliated designations also harms children's immigration cases. It is much more difficult for detained children to obtain full immigration representation, as government-funded legal service providers generally do not enter their appearance as representative for a detained child due to how often and how quickly children are transferred between facilities. Further, children that are released are likely to be reunified in a state different than one in which they are being held, meaning that their case will likely be transferred to a different court upon release from ORR custody. This impedes both the ability to secure representation, and the ability of the judge to effectively adjudicate any case. Finally, many detained children have to appear in immigration court via Video Teleconferencing instead of in person. Appearing via video is harmful to children's cases where they are less likely to succeed than if they appear in person. He Finally, detained cases move more quickly through immigration court than cases for non-detained immigrants, and even more so now during the COVID-19 pandemic. This can be harmful to a child's immigration case, forcing them to move forward while detained, rather than with the support of a caring family member and an attorney dedicated to full-scope representation, after their release.

The responsibility for the custody and care for unaccompanied immigrant children was specifically placed under the auspices of HHS, a government agency that has no responsibility for enforcing immigration laws or working to remove immigrant children from the United States. But the proposed form's collection of information about gang involvement and criminal history, does more to contribute to children's removal to dangerous places than to their protection and care. The direct impact of Form P-7's labeling of children as gang-affiliated or criminals and the related SIRs that may be generated as a result erodes the important divide between protection

<sup>&</sup>lt;sup>159</sup> Lauren R. Aronson, *The Tipping Point: The Failure of Form over Substance in Addressing the Needs of Unaccompanied Immigrant Children*, 18 Harv. Latino L. Rev. 1, 22 (2015); K. Babe Howell, *Fear Itself: The Impact of Allegations of Gang Affiliation on Pre-Trial Detention*, 23 St. Thomas L. Rev. 620 (2011).

<sup>&</sup>lt;sup>160</sup> Immigration Legal Res. Ctr., *Deportation by Any Means Necessary: How Immigration Officials Are Labeling Immigrant Youth as Gang Members* (2018),

https://www.ilrc.org/sites/default/files/resources/deport\_by\_any\_means\_nec-20180521.pdf.

<sup>&</sup>lt;sup>161</sup> Erica Bryant, Unaccompanied Children Suffer as Hearings Are Sped Up, Switched to Video During COVID-19 Crisis, Vera Inst. Just. (April 14, 2020), https://www.vera.org/blog/covid-19-1/unaccompanied-children-suffer-as-hearings-are-sped-up-switched-to-video-during-covid-19-crisis; Young Ctr. for Immigrant Children's Rights, Immigration Hearings by Video: A Threat to Children's Right to Fair Proceedings (2020),

 $https://static1.squarespace.com/static/597ab5f3bebafb0a625aaf45/t/5e4d5c0cc48abe2cc9bd102a/1582128140439/Young+Center+VTC+Report\_Updated+January+2020.pdf.$ 

<sup>&</sup>lt;sup>162</sup> Impact of COVID-19 on the Immigration System, Am. Bar

Ass'nhttps://www.americanbar.org/groups/public\_interest/immigration/immigration-updates/impact-of-covid-19-on-the-immigration-system/ (last visited Mar. 4, 2021).

<sup>&</sup>lt;sup>163</sup> See, e.g., Aronson, supra note 159, at 11.

and law enforcement, and raises serious questions about conflicts of interest with ORR in possible violation of its mandate to care for the wellbeing of unaccompanied children.

f. The proposed changes to Form P-7 focusing on criminal history and gang-involvement raise serious due process concerns.

For the reasons explained above, Form P-7 raises serious due process concerns. Adding fields that relate to gang affiliation and including extensive criminal history sections can result in the deprivation of fundamental rights to liberty and family unity for children and their sponsors. The proposed form fails to provide notice to a child in custody or their adult caregiver/sponsor or legal representative that they are being identified as gang-affiliated, fail to ensure that the veracity of the reasoning behind the designation is well documented and that there is equal access to the evidence used to make the determination, and fail to provide a child or their representative any opportunity to challenge the designation or rebut the alleged evidence.

Because the information from Form P-7 can be used to prolong a child's detention, often in restrictive facilities, as well as keep families apart, clear liberty interests to be free from detention, to familial association, and to be placed in the least restrictive setting—interests guaranteed by the Constitution, the TVPRA, and the FSA—are implicated. Without any procedural due process protections and with substantial risk of error, Form P-7 will result in harmful effects on multiple aspects of the child's life. At a minimum, due process requires notice and "a fair opportunity to rebut the Government's factual assertions before a neutral

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<sup>&</sup>lt;sup>164</sup> See, e.g., J.E.C.M. v. Lloyd, 352 F. Supp. 3d 559 (E.D. Va. 2018); see also G.A. Res. 45/113, at ¶ 2, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Dec. 14, 1990) ("Deprivation of liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases."); G.A. Res. 44/25, at Art. 9, ¶1, Convention on the Rights of the Child (Sept. 2, 1990) ("[A] child shall not be separated from his or her parents against their will except when competent authorities subject to judicial review determine ... that such separation is necessary for the best interests of the child.") (emphasis added). <sup>165</sup> While we note that the form contains a small "If yes, explain" box, this only furthers the unilateral nature of the form where no documentary evidence is required, nor does it provide any guidance on standards or veracity for documenting and making such a determination.

<sup>&</sup>lt;sup>166</sup> See Zadvydas v. Davis, 533 U.S. 678, 690 (2001) (recognizing a Fifth Amendment liberty interest for immigrant detainees in civil custody); see also 8 U.S.C. § 1232(c)(2)(A) (2018) ("[A]n unaccompanied alien child... shall be promptly placed in the least restrictive setting that is in the best interest of the child."); Hernandez v. Sessions, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."); Flores Settlement Agreement, supra note 4, at ¶¶6, 19, 21, 23.

<sup>&</sup>lt;sup>167</sup> The law has granted protections to even less vulnerable groups than detained unaccompanied immigrant children facing gang allegations. *See, e.g., Boumediene v. Bush,* 553 U.S. 723, 783-84 (2008) (requiring sufficient process for suspected terrorists held at Guantanamo, including the rights to assistance of counsel, notice of allegations, presentation of evidence and cross-examination of witnesses against the accused where a court "must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain"); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004) (finding that an enemy combatant has the right to "notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker"); *Kansas v. Hendricks*, 521 U.S. 346, 353 (1997) (upholding a sexually violent predator statute where the burden of proof was on the government and certain procedural safeguards were present, including counsel and the right to present evidence and witnesses); *United States v. Salerno*, 481 U.S. 739, 751-52 (1987) (upholding the Bail Reform Act as providing sufficient process where pretrial detainees were provided counsel, right to present evidence, cross-examine witnesses, and testify in front of a neutral judicial officer at a detention hearing).

decisionmaker."<sup>168</sup> Such protections have long been provided as standard in the juvenile context. <sup>169</sup> Indeed, recently the Ninth Circuit in *Saravia v. Sessions* upheld a preliminary injunction that provided procedural process in the form of detention hearings, among other protections, for children who were rearrested by ICE and placed in ORR custody based on alleged gang allegations. <sup>170</sup> The very behavior and lack of protections which the court in *Saravia* sought to protect against are again at issue in Form P-7.

Given the potential allegations contained in Form P-7 and any related SIRs, the Commenting Parties have serious concerns that these forms are not provided to children or their legal representatives. This has long been a concern of Commenting Parties even before the proposed additions and modifications to the instruments captured in Form P-7, particularly in light of the significant impact that gang allegations often have on a child's fundamental and constitutional rights. Accordingly, to comply with the law, if ORR insists on keeping questions about gang allegations, they must ensure ensure a child's Miranda rights are not violated 171 and develop a process for providing children and their sponsors and legal representatives meaningful notice of any and all gang allegations, and of attempts to elicit a child's criminal history. ORR must also develop internal oversight over issuing and reporting these allegations, and an opportunity for children and their sponsors and legal representatives to challenge them before they are shared outside of ORR or used to place a child in a restrictive placement. <sup>172</sup> If challenged, there must be a neutral adjudicator to evaluate the allegation based on the evidence presented by both the child (and any adult caregiver or legal representative) and the individual making the allegation, no different than what the Ninth Circuit has required under Saravia v. Sessions.

g. The trauma histories of the majority of the children in ORR custody account for many of the issues that Form P-7 would criminalize.

The majority of children entering ORR custody are from the Northern Triangle of Central America—which includes Guatemala, Honduras and El Salvador. Many have experienced severe trauma before coming to the United States. <sup>173</sup> Often, they have experienced or witnessed violence recently in their home countries, and commonly long-lasting or chronic violence or

<sup>&</sup>lt;sup>168</sup> Rumsfeld, 542 U.S. at 533; Doe v. Gallinot, 657 F.2d 1017, 1024 (9th Cir. 1981); see also Bowman Transp. v. Ark. Best Freight Sys., 419 U.S. 281, 288 n.4 (1974) ("[T]he Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation."); Goldberg v. Kelly, 397 U.S. 254, 269 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.").

<sup>&</sup>lt;sup>169</sup> In re Gault, 387 U.S. 1, 57 (1967) ("[A]bsent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements.").

<sup>&</sup>lt;sup>170</sup> Saravia v. Sessions, 905 F.3d 1137, 1144-45 (9th Cir. 2018) (finding no abuse of discretion where district court required prompt hearing before a neutral decisionmaker at which the minors could contest gang allegations and the government would need to justify detention based on allegations).

<sup>&</sup>lt;sup>171</sup> See supra Section III.D.1.c. for the requirements of *Miranda* in such circumstances.

<sup>&</sup>lt;sup>172</sup> See Zinermon v. Burch, 494 U.S. 113, 127-28 (1990) (noting that due process generally requires "some kind of a hearing" before a deprivation of protected liberty interests).

<sup>&</sup>lt;sup>173</sup> See Nat'l Ctr. for Youth Law, supra note 148, at 20 ("Childhood traumatic experiences can alter the brain's responses to stress and cause children to lose their sense of safety and control. Unaccompanied children often experience trauma before, during, and after migration.").

neglect throughout their lives.<sup>174</sup> Many of them also experience traumatic events on the journey to the United States.<sup>175</sup> This will be particularly true for children arriving in the United States after fleeing not only their home countries, but the horrific conditions in the migrant camps caused by the Migration Protection Protocols program.<sup>176</sup> Experts across psychiatric fields have found that trauma causes children to misbehave, and this is worsened by detention; in other words, untreated trauma in the context of prolonged detention causes behavior issues.<sup>177</sup> All of this creates an essential backdrop to understanding the psychological needs and behaviors of children in ORR custody, and the necessity of appropriately considering mental health issues and treatment in analyzing (and not criminalizing) behaviors.<sup>178</sup>

i. Form P-7 fails to protect the welfare of children in ORR custody by furthering the false narrative of immigrant children as criminals.

Form P-7 fails to take into account any kind of trauma-informed understanding of child behavior or communication. To the Commenting Parties, Form P-7 appears to focus on gang allegations to the detriment of youth-specific safeguards. Furthermore, although Form P-7 records "criminal history," most child behaviors that they criminalize have not, in fact, been adjudicated as such by a neutral factfinder. Furthermore, the distinction between juvenile delinquency and adult crimes is clear and consistent across Supreme Court jurisprudence, the juvenile justice systems in all 50 states and the District of Columbia. <sup>179</sup> In the immigration context, juvenile adjudications are not considered convictions under the statutory definition of the term used in the Immigration and Nationality Act. <sup>180</sup>

Form P-7 seeks to categorize child behavior, without considering past trauma or the cumulative effects of prolonged detention. Studies have illustrated how immigration agencies—including ICE and CBP—have wrongfully conflated gang and immigration enforcement, claiming Latino boys are gang members in immigration proceedings without

<sup>&</sup>lt;sup>174</sup> *Id*.

<sup>175</sup> Id

<sup>&</sup>lt;sup>176</sup> See Camilo Montoya-Galvez, 700 Children Crossed the U.S. Border Alone After Being Required to Wait in Mexico with Their Families, CBS News (Jan. 15, 2021), https://www.cbsnews.com/news/children-who-crossed-the-u-s-border-after-their-families-were-required-to-wait-in-mexico-are-being-denied-legal-safeguards-suit-says/. <sup>177</sup> Nat'l Ctr. for Youth Law, *supra* note 148.

<sup>&</sup>lt;sup>178</sup> *Id.* at 19 ("Because ORR shelters lack the resources to provide children with the care they need, children with mental health needs are often transferred, or 'stepped-up,' to residential treatment centers, staff-secure, or secure detention centers. These step-ups risk further damaging children's mental health, as restrictive institutional environments increase the trauma of detention.").

<sup>&</sup>lt;sup>179</sup> Philip Desgranges, *Trump Is Locking Up and Threatening to Deport Children Based on Mere Suspicion of Gang Affiliation*, ACLU (Aug. 2, 2017, 1:30 PM), https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/trump-locking-and-threatening-deport-children; Liz Robbins, *Teenagers' Arrests Are Unconstitutional*, *A.C.L.U. Lawsuit Says*, N.Y. Times (Aug. 11, 2017), https://www.nytimes.com/2017/08/11/nyregion/aclu-lawsuit-ms-13-teenager-arrests-.html.

<sup>&</sup>lt;sup>180</sup> Nina Rabin, Victims or Criminals? Discretion, Sorting, and Bureaucratic Culture in the U.S. Immigration System, 23 S. Cal. Rev. L. & Soc. Just. 195 (2014).

<sup>&</sup>lt;sup>181</sup> See Nat'l Ctr. for Youth Law, *supra* note 148, at 21 ("Children are sometimes held in ORR custody simply because they are not deemed sufficiently 'mentally stable' for release. This is profoundly counterproductive, as longer stays in detention are associated with deteriorating mental health."); *see also* Hlass, *supra* note 116, at 233.

evidentiary support.<sup>182</sup> The form's emphasis on recording and reporting gang-involvement and criminal history furthers the growing and ugly discourse equating immigrant children with criminals, <sup>183</sup> repeating behavior that the Ninth Circuit already enjoined in *Saravia v. Sessions*.

ORR should have no part in furthering the false narrative of immigrant children as criminals nor should it participate in any activity that does not further the welfare of *all* the children in its care, including those unable to constructively process their trauma.

ii. The Agencies' focus on alleging, recording, and reporting gang-affiliation and criminal history in Form P-7 has a disproportionate negative impact on children of color and promotes racial inequality.

Gang allegations in and of themselves are fraught with racial bias and have been utilized against immigrant children for the very purpose of securing their deportation. ORR should not engage in the criminalization of the children it has been entrusted to protect. Latinx youth are disproportionately accused of gang affiliation, to the extent that even culturally popular clothing and sports team logos for example, are ascribed as gang-related by law enforcement and immigration officials. Notoriously inaccurate gang databases "label, stigmatize, and punish many citizens and non-citizens as "gang members" and there is extraordinary racial disparity in gang databases." <sup>185</sup>

Practices such as ORR's alleging, recording, and reporting gang-affiliation or criminal history merely "transfer the discriminatory practices of the criminal legal system into the enforcement of immigration laws." Racial injustice persists in the juvenile justice context, where even though the overall number of youths have declined, "the rate of disparities in these systems has risen." Thus, sharing documented allegations of gang-affiliation serves only to stigmatize and criminalize already marginalized youth. Indeed, the purpose of "affixing gang labels is [] to criminalize [B]lack and Latino youth" and immigration officials have taken "the [Trump] administration's rhetoric as carte blanche to increase their own use of allegations of gang involvement as a tool to pursue immigration enforcement against Latinx youth." 188

<sup>&</sup>lt;sup>182</sup> N.Y. Immigration Coal. & CUNY Sch. of Law, *Swept Up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers* (2018), https://www.law.cuny.edu/wp-content/uploads/page-

assets/academics/clinics/immigration/SweptUp\_Report\_Final-1.pdf; Immigration Legal Res. Ctr., *supra* note 160. <sup>183</sup> *See generally* Hlass, *supra* note 116 (examining how gang allegations against immigrant youth work to push young people into a school-to-deportation pipeline); Karla M. McKanders, *America's Disposable Youth: Undocumented Delinquent Juveniles*, 59 How. L.J. 197 (2015) (examining the conceptualization of immigrant youth who are subject to delinquency adjudications).

<sup>&</sup>lt;sup>184</sup> Immigrant Legal Res. Ctr., *supra* note 160.

<sup>&</sup>lt;sup>185</sup> Philip Marcelo, *Gang Database Made Up Mostly of Young Black, Latino Men*, AP News (July 30, 2019), https://apnews.com/article/dd5643e358c3456dbe14c16ade03711d.

<sup>&</sup>lt;sup>186</sup> Nat'l Immigrant Justice Ctr., *Disentangling Local Law Enforcement from Federal Immigration Enforcement* (2021), https://immigrantjustice.org/research-items/policy-brief-disentangling-local-law-enforcement-federal-immigration-enforcement.

<sup>&</sup>lt;sup>187</sup> Maritza Perez, *Mistaken Identity: The Dangers of Sweeping Gang Labels for Black and Latino Youth*, Ctr. Am. Progress (2018), https://www.americanprogress.org/issues/criminal-justice/reports/2018/09/13/457854/mistaken-identity/.

<sup>&</sup>lt;sup>188</sup> Immigrant Legal Res. Ctr., *supra* note 160.

Gang-affiliation and criminal history are death knells for Latinx youth in immigration proceedings, and particularly Central American males. The emphasis on crime-based removals is "responsible for the mass removal of Latinos living in the United States, most significantly poor Latinos from Mexico, Guatemala, Honduras, and El Salvador." Indeed, "more than ninety-five percent of noncitizens removed annually are from Mexico and Central America—far out of proportion to those groups' representation in the U.S. immigrant population." Dangerousness findings in removal proceedings instrumentalize this exclusionary system, where the likelihood of being deemed "dangerous" by an immigration judge is "significantly higher for Central Americans than for non-Central Americans." As a male, the likelihood is even higher. As a Central American male with a criminal record, even more so.

The consequences of deportation are dire, particularly where the majority of youth in ORR detention are from Central America and many people deported to Central America have been killed by the very persecutors they fled in the first place. <sup>192</sup> Thus, given that the majority of youth in ORR custody are from Central America, ORR's alleging, recording, and reporting gang affiliation or criminal history contributes to structural racism with dire consequences and could, quite frankly, mean the difference between exclusion or deportation, family reunification or separation, and even life or death.

# 2. Additional Comments to Form P-7's Details Tab – New Entry: UAC Referral.

The first four pages of Form P-7 consist of a "Details Tab", which appears to be a tab in ORR's new case management system, UAC Path. The tab is labeled "New Entry: UAC Referral" and has 11 sections, each with numerous fields. Given the number of sections and fields, we provide comments and recommendations (as applicable) via the chart below.

Section/Field(s)	Modifications,	Comment
	Additions, Other	
Section:	Form P-7 adds this new	The Commenting Parties were unable to
"Parent/Legal	section, which contains	locate the single question from the "Add
Guardian Separation"	5 fields that are meant	New UAC" instrument to compare with
	to replace the single	these 5 fields.
Fields: "Separated	question on the current	
from Parents/Legal	version of the "Add	The following two fields, "Separated from
Guardian?," "Reason	New UAC instrument."	Parents/Legal Guardian?" and "Reason for
for Separation,"		Separation," have drop-down menus but we
"Parent/Legal		are unable to see what options are available
Guardian Name,"		under each. As such, we are unable to
"Parent/Legal		comment on these fields.

<sup>&</sup>lt;sup>189</sup> Kevin R. Johnson, *Doubling Down on Racial Discrimination: The Racially Disparate Impacts of Crime-Based Removals*, 66 Case W. Rsrv. L. Rev. 993, 998 (2016).

<sup>&</sup>lt;sup>190</sup> Ingrid V. Eagly, *Immigrant Protective Policies in Criminal Justice*, 95 Tex. L. Rev. 245, 247 (2016).

<sup>&</sup>lt;sup>191</sup> Emily Ryo, Predicting Danger in Immigration Courts, 44 Law & Social Inquiry 227, 245 (2019).

Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse* (2020), https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and.

	<b>Recommendation:</b> Unable to provide a
	recommendation at this time.
Form P-7 adds this new	As an initial matter, it is difficult for us to
section, which is meant	comment on the field "Current MPP"
to capture information	because it has a drop-down menu that we
about enrollment in the	are unable to view. That said, because this
Migrant Protection	new section on MPP raises concerns that
•	ORR intends to use this information to
, ,	deny children their protected rights under
	the TVPRA, we comment on this issue.
	UCs in ORR custody have protected rights
	under the TVPRA. 193 The TVPRA
	"categorically protects UC from
	reinstatement of prior removal orders." <sup>194</sup>
	"UC with previously effectuated removal
	orders can neither be removed on prior
	orders of removal nor placed in
	withholding-only proceedings."195 "The
	TVPRA contains no exceptions to its
	protections. It does not distinguish between
	UC who have or do not have prior
	immigration histories. More specifically, it
	does not exclude from its reach UC who
	have prior orders of removal and who are
	currently in or have been through MPP
	proceedings." 196 As such, any information
	regarding the child's participation in MPP
	should not be collected for the purpose of
	using this information to deny a child his or
	her rights under the TVPRA.
	To the extent the Agencies intend to collect
	this information for purposes other than to
	deny children their rights under the
	TVPRA, the Agencies should notify
	Legal Service Providers ("LSPs")
	immediately if a child was previously in
	MPP proceedings and if or when any action
	is being taken against the child based on
	section, which is meant to capture information

<sup>&</sup>lt;sup>193</sup> 8 U.S.C. § 1232(a)(5)(D) (2018) (stating that UCs have a right to be placed in removal proceedings under section 240 of the INA, eligible for relief under section 240B of the INA at no cost to the child, and access to counsel).

<sup>&</sup>lt;sup>194</sup> Am. Compl. for Declaratory and Injunctive Relief at 20, *Immigrant Defenders Law Center v. U.S. Dep't of Homeland Sec.* (Case No. 2:21-CV-00395) (C.D. Cal. Jan. 14, 2021) (citing 8 U.S.C. § 1232(a)(5)(D)).

<sup>&</sup>lt;sup>195</sup> *Id.* (citing 8 U.S.C. § 1232(a)(2)(B), (a)(3), (a)(5)(D)).

<sup>&</sup>lt;sup>196</sup> *Id.* at 21.

prior MPP proceedings. Prompt notification to the LSP is important to ensure the child is not inappropriately removed from the U.S. based on prior MPP proceedings.

#### **Recommendation:**

The Agencies should not collect information regarding a child's current or prior participation in MPP for the purpose of using this information to deny a child his or her rights under the TVPRA. If the Agencies decide to keep this new field in Form P-7, ORR should immediately share any MPP information with LSPs and communicate any contemplated action based on prior MPP proceedings to LSPs.

**Section**: "Placement Request"

Fields: "Requires Placement Request," "Program Type," "Program/Facility," "Placement Requested DateTime," "Placement Designation DateTime," "Not Accepted Reason," "Placement Decision DateTime." "Transportation Notes," "Placement Notes," "Override Stop Placement Reason."

Form P-7 renamed the "ORR Placement Information" section to "Placement Request" and added the following fields: "Required Placement Request," "Placement Requested Date/Time," "Program/Facility," "Not Accepted Reasons," "Placement Decision Date/Time," "Placement Notes," and "Override Stop Placement Reason."

We were unable to locate the prior section labeled "ORR Placement Information" on the "New UAC Record" instrument and the "Intakes Placement Checklist." As such, we were unable to compare the current section references with the new section proposed. Nevertheless, we make the comments that we can based solely on the new content in P-7.

It's unclear what the "Required Placement Request" field is intended to capture. Without more information on the purpose of this field, we are unable to comment.

The "Program Type" field has a drop-down menu but we are unable to see the dropdown options. As such, we are unable to comment on this field.

For the "Not Accepted Reason" field, we are unsure whether all available options are displayed on the form provided for our review. As such, we are unable to comment fully. We would, however, note that this field should be coupled with a required "Explain" text box field to include a detailed explanation regarding the placement denial. For example, when a facility denies placement based on a

licensing issue, the facility should be required to explain what specific licensing issue prevented the placement of the child in their facility. This would provide more accountability to ensure that children are not being denied placement inappropriately.

Recommendation: The Agencies should provide a copy of the form that includes the "ORR Placement Information" section purportedly modified by this form. The Agencies should also explain the purpose of the new added field "Required Placement Request" and provide a screenshot or a list of the drop-down menu options for the "Program Type" field to allow further public comment on these fields.

Additionally, for the reasons stated above, the Agencies should add a required "Explain Reason Why UC was Not Accepted" after the field "Not Accepted Reason."

**Section:** "Special Placement Request"

Fields: "Requires
Intakes Placement
Checklist," "FFS
Supervisor," "Special
Placement Requested
DateTime,"
"Recommended
Placement
Determination,"
"Special Placement
Decision DateTime,"
"Final Placement
Determination,"
"Notes/Reason for
Override."

Form P-7 replaces the current "Placement Determination" section in the Intakes Placement Checklist with a "Special Placement Request" section.

The new proposed section, "Special Placement Request," does not capture all of the same fields currently captured in the "Placement Determination" section of the "Intakes Placement Checklist." For example, the following fields are missing: "Intakes Staff," "Approving FFS," "FFS Decision," and "Designated Placement."

Including the names of the intake staff making the recommendation, as well as the FFS making a special placement (also known as a restrictive placement) decision is important to hold accountable the individuals involved in the decision-making process and to ensure an individual with appropriate decision-making authority has made the final placement determination. It is unclear from the proposed form whether the "FFS Supervisor" field is intended to replace the "Approving FFS" field. If so, this field should make clear that the FFS

		Supervisor is the one assigned a final decision-making role.
		Under the current formatting of the proposed form, it appears as though the intakes team member is making the final placement determination, while the FFS Supervisor is making the recommended placement determination. This section should be reformatted to ensure it is clear who is making the recommendation and who is making the final placement decision.
		Recommendation: The following fields from the current version should be added into Form P-7: "Intakes Staff," "Approving FFS," and "FFS Decision." If ORR meant to replace the "Approving FFS" field with the "FFS Supervisor" field, it should relabel the field to the following to clarify that the FFS Supervisor is the decision-maker: "FFS Supervisor Making Placement Determination."
		Form P-7 should also be reformatted to make clear that the intakes team member is tasked solely with recommending a special (restrictive) placement and the FFS Supervisor is the one making the final placement determination. If this is clarified, the "FFS Decision" field does not need to be added back in. The "FFS Supervisor Making Placement Determination" and the "Final Placement Determination" fields together would remove the need for an additional field documenting the FFS's decision.
Section: "Criminal Information"	Form P-7 creates a new "Criminal Information"	As an initial matter, as noted in Section III.D.1.a., the collection of this information
	section with nine fields	is contrary to juvenile justice and child
Fields: "Criminal Concerns?,"	that are intended to replace the two	welfare policies and for that reason alone should not be collected. To the extent this
"Behavioral	questions on criminal	information is collected, despite said
Concerns?,"	charges and acting as	policies and the Commenting Parties'
"Behavioral Concerns	foot guides on the	recommendation, the Agencies should
Notes," "Gang	current version of the	follow the strict state protocols for

Affiliation?," "Gang Name," "Gang Affiliation Notes," "Gang Affiliation Determined By," "Footguide?," "Footguide Notes."

"Add New UAC" instrument.

obtaining this information and must not share this information with unauthorized third parties like DHS. *See* Section III.D.1.a. for further information on this concern.

Also, because these fields elicit potentially incriminating information, Miranda rights against self-incrimination apply. *See* Section III.D.1.c. Accordingly, if a child is going to be asked questions about criminal charges or other criminal acts, gang affiliation, and/or being a footguide, the child must be advised of his or her Miranda rights and the potential consequences of his or her responses prior to such questioning. *See* Section III.D.1.c. for further information on this concern and recommendation.

#### **Recommendation for Criminal Information Section:**

The Agencies should not collect information regarding a child's criminal charges or other criminal acts, gang affiliation, and/or whether the child was a footguide. To the extent this information is collected (against our recommendations), the Agencies should follow the strict state protocols for obtaining this information and must not share this information with unauthorized third parties like DHS. *See* recommendation in Section III.D.1.a.

Also, prior to questioning a child about any information sought by this section and its related fields, the agency must first advise the child of his or her Miranda rights and the potential consequences of his or her responses. *See* recommendation in Section III.D.1.c.

If the Agencies keep this section and its corresponding fields (against our recommendation), we note the additional concerns below by field.

#### Field: Criminal Concerns?

The field "Criminal Concerns?" appears to replace the current "Criminal Charges?" field. The proposed field has a drop-down menu, but we are unable to see all the options. Based on what is visible, it appears as though the response options are likely "yes" or "no." The change from criminal charges to criminal concerns significantly broadens this closed-ended question, which raises concerns that a "yes" response may lead to placement in a restrictive setting that is not the least restrictive setting that is in the best interest of the child and/or compliant with the terms of the FSA.<sup>197</sup> Without a separate field to explain those concerns, the reader may assume that if there are criminal concerns, then the child warrants a restrictive placement. Some criminal concerns, however, may not rise to the level of a permissible basis for placing a child in a secure facility under the FSA. 198

We are also concerned that it is unclear from the form how the "UAC Referral Tab," which asks about criminal concerns, works together or separately from the "Intakes Placement Form." If they are intended to work together, this should be made clear on the "UAC Referral Tab" to ensure that when the "Criminal Concerns?" field is answered with a "yes," the "Intakes Placement Checklist" is referenced to review the *specific* criminal offenses for which the child is convicted or adjudicated of or chargeable with. If they do not work together, this section of the "UAC Referral Tab" should be broken down to reflect the criteria in Paragraph 21 of the FSA, which limits the criminal and juvenile offenses or charges which may be used to place a child in a secure facility. 199

<sup>&</sup>lt;sup>197</sup> Flores Settlement Agreement, supra note 4, at ¶¶ 6, 19, 21, 23.

 $<sup>^{198}</sup>$  *Id.* at ¶ 21.

<sup>&</sup>lt;sup>199</sup> See id.

## Recommendation for Criminal Concerns? field:

The Agencies should either: (1) Add a field next to the "Criminal Concerns?" field to direct the person reviewing or completing the form to reference the "Intakes Placement Checklist" to review the criminal history sections to identify the specific offenses at issue; or (2) Add two fields next to or below the "Criminal Concerns?" Field. One field should inquire which of the following (one or more) reflect the criminal concern(s) and provide an "available options" and "selected options" with the following options: Has been charged with a crime? Is chargeable with a specified crime? Has been convicted of a crime? Is the subject of delinquency proceedings? Has been adjudicated delinquent? Is chargeable with a specified delinquent act? The second proposed field should provide "available options" and "selected options" with specific offenses (e.g., sexual assault, kidnapping, sexual assault, etc).

#### Fields: Behavioral Concerns? and Behavioral Concerns Notes

The "Behavioral Concerns Notes" field appears to be optional rather than a required field. We are concerned that a "yes" response to the "Behavioral Concerns?" field without more explanation or detail could lead to an inappropriate and more restrictive placement than is warranted and/or in the best interest of the child, which would be a violation of the FSA and the TVPRA.<sup>200</sup> More information should be provided to ensure that the decision-maker has more than a "yes" response to reach an appropriate placement decision.

 $<sup>^{200}</sup>$  Id. at ¶¶ 6, 19, 21, 23; 8 U.S.C. § 1232(c)(2)(A) (2018).

Recommendation relating to the Behavioral Concerns fields: Change the optional "Behavioral Concerns Notes" field to a required "If Behavioral Concerns, Explain" field.

# Fields: Gang Affiliation?, Gang Name, Gang Affiliation Determined By, Gang Affiliation Notes

As an initial matter, the threshold for identifying an individual as gang-affiliated is unclear. For example, ORR does not define gang-affiliation or how to determine whether something is gang-related in its "Guide to Terms." There is also no definition of gang membership, association, or affiliation in the immigration statutes.<sup>202</sup> In fact, neither law enforcement nor scholars agree on a uniform definition of a "gang." Courts have also recognized the considerable risks of error of determining whether an individual is a gang member. 204 Despite this lack of definition, standard, or guidance, and the risk of error, ORR records and reports information accusing children of being involved with gangs.<sup>205</sup> This is unacceptable.

The proposed "Gang Affiliation?" field has a drop-down menu, but we are unable to see all the options. Based on what is visible, it appears as though the response options are likely "yes" or "no" (definitive responses). Given the lack of definition or guidance on when something qualifies as

<sup>&</sup>lt;sup>201</sup>Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Guide to Terms* (Mar. 21, 2016), https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-guide-terms. <sup>202</sup> *See* 8 U.S.C. § 1101 (2018) (providing definitions for the "Act," referring to the Immigration and Nationality Act).

<sup>&</sup>lt;sup>203</sup> See Nat'l Gang Ctr., *National Youth Gang Survey Analysis*, https://www.nationalgangcenter.gov/Survey-Analysis (last visited Mar. 4, 2021) ("There is no widely or universally accepted definition of a 'gang' among law enforcement agencies.").

<sup>&</sup>lt;sup>204</sup> Saravia v. Sessions, 905 F.3d 1137, 1143-44 (9th Cir. 2018) (citing Vasquez v. Rackauckas, 734 F. 3d 1025, 1046 (9th Cir. 2013) ("Determining whether an individual is an active gang member presents a considerable risk of error. The informal structure of gangs, the often fleeting nature of gang membership, and the lack of objective criteria in making the assessment all heighten the need for careful factfinding.").

<sup>&</sup>lt;sup>205</sup> See ORR Policy Guide, supra note 5, at §5.8.5.

gang-affiliated, non-definitive options should be available for questions regarding gang-affiliation. For example, options like "suspected" or "possible" rather than "yes/no."

If the Agencies keep the current definitive responses, we are also concerned that a "yes" response to the "UAC Referral Tab" question on gang affiliation could result in the erroneous placement of a child in the most restrictive level of care, secure care, which would be a violation of the FSA.<sup>206</sup> If the "UAC Referral Tab" and the "Intakes Placement Checklist" are intended to work together, this should be made clear on the "UAC Referral Tab" to ensure that when the "Gang Affiliation" field is answered with a "yes", the "Intakes Placement Checklist" is referenced to ensure that a child does not get placed in secure care based solely on gang involvement or gang affiliation. If the "UC Referral Tab" and "Intakes Placement Checklist" do not work together, this section of the "UAC Referral Tab" should make clear that gang affiliation alone cannot be used to place a child in a secure facility.

If the Agencies keep the gang related fields in this section, we believe the "Gang Affiliation Determined By" field is an important field to keep. This field will provide insight into how gang affiliation was determined and allow for better challenges to restrictive placements based on gang affiliation.

The "Gang Affiliation Notes" field appears to be optional. If the Agencies plan to document gang-affiliation and how it was determined through a predetermined list,

<sup>&</sup>lt;sup>206</sup> Order Re Pls.' Mot., *supra* note 8, at 13-14 (finding that ORR violated Paragraph 21 of the *Flores* Settlement Agreement by placing UCs in secure care based solely on self-reported gang involvement or gang affiliation because "gang membership does not necessarily establish that he or she is chargeable with a delinquent act or offense, or that any other criteria of Paragraph 21 have been satisfied").

we recommend that the "Gang Affiliation Notes" section be a required field when the "Gang Affiliation" field is answered with a "yes." This will provide better information for placement purposes, as well as restrictive placement challenges to ensure a child is placed in the least restrictive setting that is in the child's best interest, as required under the FSA and the TVPRA.<sup>207</sup>

#### Recommendation for the Gang-Affiliation related fields:

The Agencies should stop collecting and recording allegations of gang-affiliation or involvement, especially where there is no definition, standard, or guidance on how to identify gang-affiliation or -involvement, and a risk of erroneous designation.

If the Agencies keep the fields relating to gang-affiliation (against our recommendation), the Agencies should change the definitive "yes/no" response options to the "Gang Affiliation?" field to non-definitive responses like "suspected" or "possible."

If the Agencies keep the definitive responses to the "Gang Affiliation?" field (against our recommendation), the Agencies should either:
(1) Add a field next to the "Gang Affiliation?" field to direct the person reviewing or completing the form to reference the "Intakes Placement Checklist" to review which types of placement can consider gang affiliation; or
(2) Add a note to the "Gang Affiliation?" field that clearly states that gang affiliation alone cannot be used to place a child in a

The "Gang Affiliation Determined By" field should be kept as a field if the gang

secure facility.

 $<sup>^{207}</sup>$  Flores Settlement Agreement, supra note 4, at ¶¶ 6, 19, 21, 23; 8 U.S.C. § 1232(c)(2)(A) (2018).

fields in this section or form remain after further revisions. The "Gang Affiliation Notes" field should be made a required field when the "Gang Affiliation?" field is answered affirmatively.
Fields: Footguide? And Footguide Notes We strongly discourage the inclusion of these fields under the "Criminal Information" section of Form P-7 or any other ORR form. Migrant children are often forced to engage in smuggling, sometimes as part of their own trafficking or forced labor conditions, and as a result are victims rather than perpetrators of a crime.
<b>Recommendation:</b> The Agencies should remove all questions and fields regarding UCs as footguides.

#### 3. Additional Comments to Form P-7's UAC Referral Page – Details Tab.

The "UAC Referral Page – Details Tab" (pages 5-10 of Form P-7) is, for the most part, identical to the "Details Tab for New Entry: UAC Referral" (pages 1-4 of Form P-7). To the extent the fields are identical, we make the same comments and recommendations as noted in Section III.D.2. The comments below only address fields or data entry windows not captured in the "Details Tab for New Entry: UAC Referral."

Section/Field(s)	Modifications,	Comment
	Additions, Other	
Section: "Criminal	Form P-7 adds this	As an initial matter, as noted in Section
Charges"	"Criminal Charges"	III.D.1.a., this information should not be
	section to capture more	collected because it goes against juvenile
Fields: "Criminal	detailed information if	justice and child welfare policies. To the
Charges Number,"	the UC has any	extent this information is collected, despite
"Arrested For,	criminal charges. This	said policies, ORR should follow the strict
Charged," "List of	section contains nine	state protocols for obtaining this
Charges," "Charged	new fields.	information and must not share this
Date."		information with unauthorized third parties
		like DHS. See Section III.D.1.a. for further
Related to: "Criminal		information on this concern and
Charges Data Entry		recommendation.
Window – New		
Referral Related		Also, because these fields elicit potentially
Record: Criminal		incriminating information, Miranda rights
Charges"		against self-incrimination apply. See

Fields: "Referral,"
"Arrested Date,"
"Arrested For,"
"Charged," "Charged
Date," "List of
Charges,"
"Adjudicated,"
"Outcome of Criminal
Case," "Summary of
Events."

Section III.D.1.c. Accordingly, if a child is going to be asked questions about criminal charges or other criminal acts, gang affiliation, and/or being a footguide, the child must be advised of his or her Miranda rights and the potential consequences of his or her responses prior to such questioning. See Section III.D.1.c. for further information on this concern and recommendation.

If this information is to be collected (against our recommendations), this section should add a required field for "Source of Information" with a text box intended to detail where this information came from. For example, whether the information came from the child him or herself or whether it was obtained through documents. If obtained through the child, the "Source of Information" field should note whether the child was Mirandized prior to obtaining this information. If the information was obtained through documents, the "Source of Information" field should note whether ORR had a court order to obtain this information. This will provide accountability to ensure ORR is documenting not only the criminal information, but also the source of information and ensure it is obtaining the information legally. There should also be a function or field to add related documents. This will further ensure accountability and provide the child information he or she may need to challenge his or her restrictive placement determination based on charges or criminal adjudications. To the extent this information is collected and included in the child's file, there should be protections in place to ensure the child's file and/or information regarding criminal charges and/or arrests are not shared with third parties.

In addition, we have the following concerns.

It is unclear whether the "Criminal Charges" section and fields on the "UAC Referral Page – Details Tab" are meant to be identical to the "Criminal Charges Data Entry Window – New Referral Related Record: Criminal Charges" fields. Because the "UAC Referral Page – Details Tab" appears to be a screenshot, it is possible that all fields are not fully captured. This comment therefore focuses on concerns to the fields listed under the "Criminal Charges Data Entry Window – New Referral Related Record: Criminal Charges."

The "Charged and Adjudicated" fields have drop-down menus that are not visible. As such, we are unable to fully comment on the inclusion of these fields.

#### **Recommendation:**

The Agencies should not collect information regarding a child's criminal and/or juvenile charges or arrests. To the extent this information is collected (against our recommendations), the Agencies should follow the strict state laws and protocols for obtaining this information and must not share this information with unauthorized third parties like DHS.

Also, prior to questioning a child about any criminal charges and/or arrests, any agency engaging in this type of questioning must first advise the child of his or her Miranda rights and the potential consequences of his or her responses.

If the Agencies collect information regarding criminal charges and/or arrests, they should also add a *required* field for "Source of Information" and a function or field for related documents within the

		"Criminal Charges" section and data entry window.
Section: "Detention Facilities"  Fields: "Detention Facilities Number," "Type," "Facility Name"  Related to: "Detention Facilities Data Entry Window – New Referral Related Record: Detention	Form P-7 adds this "Detentions Facility" section to capture more detailed information if the UC was ever held in a detention facility. This section contains nine new fields.	The "Type" field has a drop-down menu that is not visible. As such, we are unable to fully comment on the inclusion of this field and whether the pre-selected list of types of facilities is inclusive of all types of ORR facilities for which a child could be placed. To the extent the "Type" field is intended to identify the level of placement and facility type, the Agencies must ensure this list includes all types of ORR placements, including but not limited to therapeutic staff-secure, therapeutic group homes, and out-of-network RTCs.
Fields: "Referral," "Facility Name," "Facility Type," "Facility POC," "POC Phone #," "POC Email," "Admission Date," "Discharge Date," "Known Incident Reports"		With respect to "Known Incident Reports" field, it's unclear whether this is meant to document every single incident report for the child at the facility or only specific types of reports, like SIRs, or even just a subset of SIRs, like behavioral SIRs. It is also unclear what level of detail is intended for this field. For example, dates of incidents with a phrase describing the incident, a summary of the incident, or a full recitation of what occurred? Is the child's version of events or response to the incident report documented as well? Without more information on what this field is intended to capture it is difficult to comment fully. That said, to the extent this field is intended to document any or all SIRs, this information should not be shared with any agency outside of ORR/HHS without the consent of the child and/or his or her parents or legal guardian. These reports often contain sensitive, personal and private information that are protected under privacy and confidentiality laws as noted above in Section III.D.1.a. of this document. To reiterate, many states restrict access to records concerning children's criminal history, whether in electronic or

		hard copy form. <sup>208</sup> Such records are generally not open for examination and may only be accessed by third parties with a court order. <sup>209</sup> Recommendation: If the Agencies intend
		to document incident reports in a child's case management file and/or the child's file generally, for the reasons stated above, the Agencies should not share this information with any other agency, including but not limited to DHS.
Section: "Documents"	Form P-7 adds a new "Documents" section	The "Record Type," "Document Type" and "Verified By Government
Fields: "Title," "Original," "Record Type," "Other Do," "Description," "Date Received," "Created By," "Created Date"	where documents related directly to the UC's referral can be uploaded.	Agency/Consulate" fields have drop-down menus that are not visible. As such, we are unable to fully comment on the inclusion of these fields and whether the pre-selected list of options or responses are adequate and/or appropriate.
Related to: "Documents Data Entry Window – Add File Details"		It is also unclear what the following three fields are meant to achieve or document: "Entry," "Individual," or "Adult Contact Relationship." These fields have search functions, but without access to the case management system or an example of what
Fields: "Record Type," "Title," "Document Type,"		a search would populate, we are unable to comment on the inclusion of these fields.
"Verified by Government Agency/Consulate," "Entry," "Individual," "Adult Contact		<b>Recommendation:</b> We recommend that the Agencies explain the purpose of these fields and what information they are meant to collect, as well as provide screenshots of the drop-down menus and what populates
Relationship; Date Document Issued (if applicable)," "Date Received,"		when different information is entered into the fields with search functions. Once the Agencies are able to provide this information, they must republish this form or this section of the form for comment.

<sup>208</sup> See Ariz. Rev. Stat. § 8-807(K) (LexisNexis 2021); Cal. Welf. & Inst. Code § 825-836 (Deering 2021); Fla. Stat. § 985.045(2) (2020); N.Y. Crim. Proc. Law § 720.35.2 (Consol. 2021); Tex. Fam. Code Ann. § 58.005(a-1)(10) (West 2019).

<sup>&</sup>lt;sup>209</sup> Rachel Prandini, Melissa Adamson, Neha Desai, *Strengthening Welfare Practice for Immigration Children & Families: A Toolkit for Child Welfare Professionals in California* (Aug. 2019), at 44 https://youthlaw.org/wp-content/uploads/2019/08/2019-Child-Welfare-and-Immigration-Toolkit.pdf.

"Expiration Date,"		
"Description"		
Section: "Entry	Form P-7 adds a new	The following fields have drop-down menu
Team"	"Entry Team" section	that are not visible: "Team Member,"
1 Cam	in which read and/or	"Member Role," "Entry Access," "Role."
Fields: "Team	write access can be	As such, we are unable to fully comment
Member," "Member	granted to individuals	on the inclusion of these fields and whether
Role," "Entry Access"	who need access	the pre-selected list of options or responses
Role, Elliny Access	privileges to the record,	are adequate and/or appropriate.
Related to Section:	but do not typically	are adequate and/or appropriate.
"Entry History"	need such privileges for	The "User" field is a search function. We
Lift y Thistory	the referral record.	are unable to see what populates based on
Fields: "Date,"	the referral record.	different searches or what the searches do
"Field," "User,"		or do not encompass. As such, we are
"Original Value,"		unable to fully comment on the inclusion of
"New Value"		this field.
110W Value		uns neid.
Related to: "Entry		Because we know little to nothing about
Team Data Entry		who can and cannot be granted access to a
Window – Search for		child's case management file, it is
and add member"		impossible for us to adequately comment.
		This is especially concerning because it is
Fields: "User,"		unclear whether the user must be an ORR
"Role"		employee or grantee, or whether ORR can
		grant read and/or write access to
		individuals outside of ORR. Please refer to
		Section III.D.1.a. for a more in-depth
		explanation of our concern.
		Decomposed of one We are commonded to
		Recommendation: We recommend that
		the Agencies republish Form P-7 and
		explain which individuals can be granted
		access to a child's case management file,
		including access to the information
		collected by Form P-7.
		If the Agencies proceed to implement Form
		If the Agencies proceed to implement Form P-7 without further publishing clarification
		on who can be granted read/write access to
		a child's file using the "Entry Team Data
		Entry Window" (against our request and in
		violation of the APA), the Agencies must,
		at a minimum, not allow access to a child's
		case file, case management file, and/or
		information collected and recorded by
		Form P-7 unless the individual needs
		1 orm 1 / umoss the marviatal nects

access to this information to make a
placement decision and the individual is
someone employed by ORR or a grantee of
ORR. The Commenting Parties recommend
the insertion of specific language, which
can be found in Section III.D.1.a., to
protect a child's file or information from
being shared to a third-party.

#### 4. Additional Comments to Form P-7's Intakes Placement Checklist Form and Intakes Placement Checklist Tab.

The "Intakes Placement Checklist Tab" is located at pages 11-13 of Form P-7, and the "Intakes Placement Checklist" Form is located at pages 15-18 of Form P-7. The "Intakes Placement Checklist Tab" is, for the most part, identical to the "Intakes Placement Checklist" Form. The only difference the Commenting Parties were able to identify between the two is that the "Intakes Placement Checklist" Form includes "Section A: UAC Information" and "Section D: Placement Determination." Because the "Intakes Placement Checklist" Form is inclusive of all the sections and fields of the "Intakes Placement Checklist Tab," our comments focus on the changes to the "Intakes Placement Checklist" form, but apply equally to both to the extent the same issues are present.

According to the Proposed Collections, Form P-7 made the following changes to the "Intakes Placement Checklist:" (a) reorganized the checklist into distinct sections for staff secure and secure placement criteria; (b) removed "UC will be turning 18 year of age in the next month" as an escape risk criterion; (c) removed the "Danger to Self" section; and (d) revised the lists of criminal offenses in both the staff secure and secure sections. We comment on each revision below, and to the inclusion of Sexual Predation as a criterion for secure placement.

a. Form P-7's failure to include placement criteria for all placement types on the Intakes Placement Checklist presents the potential for violations of the FSA and the TVPRA.

The Commenting Parties are concerned that the checklist only provides placement criteria for secure and staff-secure types of placements, despite the fact that the Intakes Placement Checklist can also be used to recommend placement of a child into other types of facilities, including but not limited to Residential Treatment Centers or other therapeutic facilities. For example, while Section B provides a checklist for staff-secure criteria and Section C provides a checklist for secure criteria, Section D allows the intakes staff member to recommend placement and the FFS to make a final placement determination for any of the following types of facilities: shelter, therapeutic, transitional foster care, secure, staff-secure or Residential Treatment Center. Form P-7, however, does not provide checklists for these additional types of facilities. Providing a checklist for some but not all types of placements is confusing and will likely lead to children being placed in settings that are more restrictive than is

in the child's best interest thereby violating the FSA and the TVPRA.<sup>210</sup> Accordingly, to ensure a child is placed in the least restrictive setting that is in the child's best interest and in compliance with the terms of the FSA, the Intakes Placement Checklist should include a checklist for all placement types for which an Intakes team member can recommend placement and/or for which an FFS can ultimately decide to place a child, and ensure that the criteria is compliant with the FSA and any related court orders, like the *Flores* July 30, 2018 Order.

#### b. The removal of age as a criteria for escape risk is appropriate.

The Commenting Parties agree with ORR's decision to remove "UC will be turning 18 years of age in the next month" from the escape risk criteria. A child's age is not an indication of a child's escape risk and therefore its inclusion as an escape risk criterion in the first place was inappropriate.

c. The "Danger-to-Self" section should be reincorporated into the Intakes Placement Checklist in light of the recommendation to provide placement criteria for all placement types.

The removal of the "Danger to Self" section makes sense in light of the fact that the Intakes Placement Checklist only captures placement criteria for secure and staff-secure facilities. We agree that danger to self should not be a placement criterion for either secure or staff-secure placement. That said, as we noted above, since the Intakes Placement Checklist can be used to refer a child to a Residential Treatment Center, we recommend that the Intakes Placement Checklist include placement criteria for all placement settings, including Residential Treatment Centers. If ORR adds a section for RTC Criteria, as recommended, it should add back in a "Danger to Self" section within the RTC criteria section.

To ensure a child is placed in the least restrictive setting that is in their best interest, the "Danger to Self" section for RTC placement should focus on the need for treatment through an assessment for present danger to self only, and not past danger to self. For example, the "Danger to Self" section, which was removed, included the following criterion: "UC was previously in ORR care and has SIR(s) for committing, attempting or threatening to harm him/herself." This criterion gets at past danger to self rather than present danger to self and therefore would not provide insight into whether the child currently needs residential treatment. As such, it should not be reincorporated into a "Danger to Self" section under RTC criteria. Additionally, in order to comply with the *Flores* July 30, 2018 Order, the criteria checklist for RTC placement should include a criterion that a licensed psychologist or psychiatrist has determined that the child is a danger to self or others.<sup>211</sup>

<sup>&</sup>lt;sup>210</sup> Flores Settlement Agreement, supra note 4, at ¶¶ 6, 19, 21, 23; 8 U.S.C. § 1232(c)(2)(A) (2018).

<sup>&</sup>lt;sup>211</sup> See Order Re Pls.' Mot., supra note 8, at 11.

d. The modifications to the list of violent crimes raises concerns regarding fair notice and arbitrary implementation.

The Commenting Parties have concerns regarding the addition of an "other" category. With respect to the "other" category, we are concerned that, like the residual clauses in 18 U.S.C. § 16(b) and 18 U.S.C. § 924(e)(1), the "other" category fails to provide fair notice of what conduct is prohibited, and fails to guard against arbitrary or discriminatory use of this "other" category by ORR and ORR grantee staff. Although the "other" category is not written similarly to the residual clauses in §§ 16(b) and 924(e)(1), the "other" category presents the same defects and concerns: there is "no reliable way to discern what the ordinary version of any offense look[s] like," "no way to tell how much risk the offense[s] generally pose," and it is unclear what threshold level of risk makes a crime a violent crime. As such, we recommend that ORR remove the "other" category from the list of specific offenses that qualify as violent crimes.

e. Including sexual predation as a secure placement criteria is inconsistent with the placement conditions for secure care in Paragraph 21 of the FSA and is too vague to prevent arbitrary implementation.

The Sexual Predation criteria for secure placement violates Paragraph 21 of the FSA, are too vague to put children on fair notice of the conduct that would result in placement into a secure facility and fail to guard against arbitrary or discriminatory implementation of this criterion by ORR and/or ORR grantee staff. This is especially true where ORR is able to use self-disclosed behavior to determine that the child satisfies this criterion, and where ORR's definition for inappropriate sexual behavior is broad and ambiguous.<sup>214</sup>

The "Sexual Predation" section under "Section C: Secure Criteria" indicates that "ORR may consider case history" including "self-disclosures related to the UC's history to determine whether their conduct is predatory in nature." However, none of the conditions enumerated in Paragraph 21 of the FSA for secure placement capture self-disclosure of sexual predation. In fact, in order to capture sexual predation or sexual behavior of any sort under Paragraph 21, the criteria would need to indicate that the minor is a danger to self or others based on his or her sexual behavior. But, unlike the sections on "Criminal History" and "Conduct in ORR Custody" under "Section C: Secure Criteria" on the Intakes Placement Checklist, the section on "Sexual Predation" makes no reference to a dangerousness requirement. Without such a reference to dangerousness, the placement criteria for "Sexual Predation" fails to satisfy the conditions for secure care under the FSA. Accordingly, ORR should either (1) remove sexual predation as criteria for secure placement or (2) require a dangerousness component, such as listing specific

<sup>&</sup>lt;sup>212</sup> See Sessions v. Dimaya, 138 S. Ct. 1204, 1215-16, 1223 (2018) (holding that 18 U.S.C. § 16(b) is unconstitutionally vague where it "produces more unpredictability and arbitrariness than the Due Process Clause tolerates") (quoting Johnson v. United States, 135 S. Ct. 2251, 2558 (2015)); Johnson, 135 S. Ct. at 2559-63 (holding that 18 U.S.C. § 924(e)(1) is unconstitutionally vague where it "devolve[d] into guesswork and intuition, invited arbitrary enforcement, and failed to provide fair notice") (internal quotations omitted).

<sup>213</sup> Johnson, 135 S. Ct. at 2558.

<sup>&</sup>lt;sup>214</sup> See Section III.B.1.b.

circumstances that make the individual a present danger to others, thus warranting secure placement based on sexual predation.

Also, as previously noted in Section III.B.1.b., ORR's definition for "inappropriate sexual behavior" is too broad and ambiguous. Without clear definitions, we have witnessed instances where children in ORR custody have been sent to secure juvenile detention centers for otherwise innocent, or misunderstood, youth behavior (e.g., masturbation of oneself or exposure of genitalia). Subjecting a child to a jail-like environment for innocent or misunderstood youth behavior is inappropriate and fails to ensure a child is placed in the least restrictive setting that is in the best interest of the child, as required by the FSA<sup>215</sup> and the TVPRA.<sup>216</sup> Accordingly, we recommend that ORR avoid criteria that uses a term like "inappropriate sexual behaviors," and instead use a federally defined term, like nonconsensual sexual act, which is defined in 18 U.S.C. § 2246(2).<sup>217</sup> Doing so will ensure that this placement criteria does not devolve into guesswork and speculation and result in erroneous placement of a child in a setting that is more restrictive than is in the child's best interest.

#### 5. Additional Comments to Form P-7's UC Referral – Initial Health Information Tab

The "UC Referral - Initial Health Information Tab" is located at pages 13-14 of Form P-7. This is an entirely new section, which the Proposed Collection indicates is intended to capture more detailed information about the UC's health. This section contains 31 fields that inquire about a child's medical health, physical and/or cognitive impairments, mental health, dental health, and medical clearance for air and/or ground travel. The comments below address our concerns regarding the fields in this tab as they relate to a child's medication details.

With respect to medication details, the Commenting Parties believe it is important to ensure that the "Medication Details" field requires details that capture the medication dosage, the name of the prescriber, the contact information for the prescriber, and the date for which the medication was prescribed. Without further guidance to those completing the form, it is possible, and in fact likely, as we have seen on other ORR forms, that ORR staff and/or grantees will only note the name of the prescription. Details regarding the dosage, the prescriber's name and contact information, and the date the medication dose was prescribed will allow ORR to develop an individualized care plan that takes into consideration the child's current medication, dosage, and length of time on the specified medication and dosage. It also provides ORR with the prescriber's name and contact information to contact the prescribing doctor to request a history of past medication to, again, better develop an individualized care plan for the child to treat the child, which may or may not include the continuation of medication and/or modification of the dosage. As such, the Commenting Parties recommend that ORR provide clear instructions on what information must be captured under the "Medications Details" and that the required information, at a minimum, include medication dosage, the name of the prescriber, the contact information for the prescriber, and the date for which the medication was prescribed.

<sup>&</sup>lt;sup>215</sup> Flores Settlement Agreement, supra note 4, at ¶¶ 6, 19, 21, 23.

<sup>&</sup>lt;sup>216</sup> 8 U.S.C. § 1232(c)(2)(A) (2018).

<sup>&</sup>lt;sup>217</sup> 18 U.S.C. § 2246(2) (2018).

E. The Proposed "Care Provider Checklist for Transfers to Influx Care Facilities" Form P-8 Should Include the "Care Provider Family Reunification Checklist" to Promote Expedient Sponsorship Processes for Children.

The Proposed "Care Provider Checklist for Transfers to Influx Care Facilities" Form P-8 should include the "Care Provider Family Reunification Checklist" to promote expedient sponsorship processes for children. Form P-8 is used by care providers to ensure that all criteria for transfer of a UC to an influx care facility have been met. ORR revised the formatting, reworded some field labels, and made changes to the content.

The current version of the Care Provider Checklist for Transfers to Influx Care Facilities includes a section for the "Care Provider Family Reunification Checklist." This section has been removed under the "Transfer Documentation and Items" in Form P-8. This section must be reincluded in the form to ensure that any sponsorship efforts are transferred with the child to avoid delays in the sponsorship process.

In the "Case Manager Affirmation" section, there is a typographical error for the "save in" field. The field should read as "saved in." The Commenting Parties appreciate the added field for "Case Manager Name," which will help properly identify the case manager who signed the form, as opposed to only requiring signatures, which may be illegible. The Commenting Parties recommend adding further transparency where possible, especially with regard to Influx Facilities.

F. The Proposed "Medical Checklist for Non-Influx Transfers" Form P-9A Should Include Fields and Questions that Are Tailored to Ensure the Medical and Mental Health Needs of Each Child Will Be Adequately Addressed upon Transfer.

Form P-9A is used by care providers to ensure that UC are medically cleared for transfer within the ORR care provider network (excluding transfer to an influx care facility). ORR revised the formatting and reworded the questions. In addition, ORR removed the question asking if the child is free of all medical conditions requiring specialist care.

Section/Field(s)	Modifications,	Comment
	Additions, Other	
Section: "Instructions"	The current form's instructions read as, "If 'No' is checked for any of the below questions, do not transfer the child without consulting the ORR medical Team. The FFS must also be consulted in accordance with ORR policies and procedures."	To further clarify these instructions, the language "do not transfer the child without consulting the ORR medical team" should be reinserted into the proposed form from the previous version. This will help ensure children are not transferred without the appropriate approval.  Recommendation: The instructions
		should read as, "If 'No' is checked for any of the below questions and you

	Form 9A's instructions read as, "If 'No' is checked for any of the below questions and you believe the minor should be transferred, please justify the exemption in a written request to DCSMedical@acf.hhs.gov for approval. The FFS must also be consulted in accordance with ORR	believe the child should be transferred, you must consult with the FFS in accordance with ORR policies and procedures and justify the exemption you believe should apply in a written request to the ORR's Medical Team at <a href="mailto:DCSMedical@acf.hhs.gov">DCSMedical@acf.hhs.gov</a> . Do not transfer the child without first receiving approval from the ORR Medical Team."
Section: "Checklist"  Field(s): No longer includes a question regarding whether the child is free of all medical conditions that require specialty care.	The current form's item 5 read as, "Is the child free of all medical conditions that require specialist care (such as pregnancy, or epilepsy, or heart disease)?"	The proposed change improperly deletes the question about the transferee facility's capacity to ensure continuity of specialty care for the child. The Agencies must ensure that when a child is transferred the transferring facility has documented any specialty care the child may need and if not clear from these conditions, that the transfer has been approved by the ORR medical team.  Additionally, all "Licensed programs shall provide or arrange for the following services for each minor in its care: [a]ppropriate routine medical and dental care, appropriate mental health interventions when necessary." To ensure the child will have the necessary and appropriate services at the licensed program, we recommend that the Agencies add three questions to the checklist that ensure the receiving facility is aware of any medical, dental or mental health needs.  Recommendation: The following question should be added back into Form P-9A: "Is the

 $<sup>^{218}</sup>$  Flores Settlement Agreement, supra note 4, at  $\P$  2, Ex. 1.

	(1) If the child has a medical condition/medical conditions requiring specialist care, is the new care provider program aware of the necessary treatment/care and able to ensure continuing care for this medical condition/these medical conditions?  (2) If the child has a dental condition requiring specialist care, is the new care provider program aware of the necessary treatment/care and able to ensure continuing care for this dental condition?  (3) If the child has any mental health concerns/issues, is the new care provider program aware of the necessary treatment/care and able to ensure continuing care for this mental health concern/issue?
arrent item 6 read as, e child currently of the following oms/conditions? a. b. Rash, c. Cough, ek ess/Confusion, e. ea/Vomiting, f. es/Lice."	The examples "(e.g. influenza, diarrhea)" are too limited to ensure contagious conditions are accounted for during transfers. Due to the arduous journey from the child's home country to the U.S. border, a child commonly suffers from "diarrhea, scabies, lice, rashes, and respiratory infections." Thus, this field should list commonly seen conditions and symptoms to prevent spread upon transfer.  Similarly, the "(e.g. isolation)"
	child currently of the following oms/conditions? a. b. Rash, c. Cough, k ss/Confusion, e. ea/Vomiting, f.

<sup>219</sup> Mayra Joachin, *Re-Examining the Medical Needs of Unaccompanied* Children, Nat'l Immigration L. Ctr. (Oct. 20, 2016)\_https://www.nilc.org/news/the-torch/10-20-16/.

isolation is not the only form of action to ensure the well-being of both the ill child and all other children. Understandably, physical and social isolation may sometimes be necessary to medically treat children.<sup>220</sup> However, solitary confinement and isolation harms children in serious psychological, physical, and developmental ways.<sup>221</sup> In comparison to adults, children experience isolation and time differently, so that even a single day of isolation can have a dramatic effect on a child.<sup>222</sup> The American Academy of Child and Adolescent Psychiatry concluded that due to children's "developmental vulnerability," they are particularly at risk of adverse reactions from prolonged isolation.<sup>223</sup> According to the American Academy of Pediatrics, "often, it is best for the child not to be moved to another space to prevent their illness from spreading throughout the facility."224 Rather, a child can be kept comfortable and allowed to rest as needed in a room where they have already exposed the other children.<sup>225</sup> If the child requires minimal care for a condition that does not require exclusion, a child can lie down in a place within the sight of a staff member when the child needs rest.<sup>226</sup> Expanding the examples provided

<sup>&</sup>lt;sup>220</sup> Sandra Simkins, Marty Beyer & Lisa M. Geis, *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U. J.L. & Pol'y 241, 242 (2012).

<sup>&</sup>lt;sup>221</sup> ACLU, Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities 3 (2013).

<sup>&</sup>lt;sup>222</sup> *Id.* at 4.

<sup>&</sup>lt;sup>223</sup> Am. Acad. of Child & Adolescent Psychiatry, *Policy Statements: Solitary Confinement of Juvenile Offenders* (2012).

<sup>&</sup>lt;sup>224</sup> Reducing the Spread of Illness in Child Care, Am. Acad. of Pediatrics (Nov. 21, 2018), https://www.healthychildren.org/English/health-issues/conditions/prevention/Pages/Prevention-In-Child-Care-or-School.aspx.

<sup>&</sup>lt;sup>225</sup> *Id*.

<sup>&</sup>lt;sup>226</sup> *Id*.

		will ensure the new care provider is aware of the appropriate treatment related to the contagious condition, and that isolation is only one of the many possible interventions for these contagious diseases.
		Recommendations: The examples for contagious conditions should be expanded to include at least the following: fever, rash, cough, diarrhea, vomiting, scabies, lice. The examples for precaution or intervention should include additional precautions and interventions other than isolation to ensure isolation is not understood to be the only type of reasonable precaution or intervention for these contagious conditions.
Section: "Checklist"  Field(s): "Are all lab and	The current form's item 7 question regarding medical report	No other forms note UC Path with "path" in all capital letters.
diagnoses fields complete (i.e., not "Pending") in UAC PATH?"	completions read as, "Are all medical reports as complete as possible (e.g., lab results and final diagnoses entered) in the UC Portal?"	Recommendations: Generally, all references to UAC Path should have consistent capitalization (i.e., "UAC Path," not "UAC PATH") in order to minimize confusion.
Section: "Identifying Information"	The form does not have a signature area for the person completing the form.	The form currently only captures the name and title of the person completing the form (see Section A of Form P-9A), but does not include a signature for that individual anywhere on the form. For accountability purposes, the form should include both a printed name and signature field for the person completing the form.
		<b>Recommendation</b> : A "Signature" field should be added to Form P-9A.

# G. The Proposed "Medical Checklist for Transfers to Influx Care Facilities" Form P-9B Leaves Unclear the Immunization and Other Health-Related Requirements for Influx Facilities.

Form P-9B is intended to be used by care providers to ensure that UC are medically cleared for transfer to an influx care facility. ORR revised the formatting and instructions, reworded most questions, and clarified which questions are only applicable to influx care facilities located on Department of Defense (DOD) sites. ORR also added four new questions that asked about sexually transmitted diseases, injection drug use, allergies, and completion of the lab and diagnosis field in UAC Path.

Section/Field(s)	Modifications,	Comment
	Additions, Other	
Field(s): "Have results been received for all lab tests (e.g., STD tests) and imaging studies?"	The current form asks, "Have results from all lab tests (e.g., STD tests) and medical consultations been received?"	The current version's question is broader than the question in Form P-9B. "Medical consultations" has been removed and replaced with "imaging studies." To ensure the child has received their "medical consultations" regarding all lab results and imaging studies, "medical consultations" should be reincluded in the form. This can either be in the form of another question or included in the present question.
		Recommendation: Add another question following Item 2 that reads as, "Has the child received their medical consultations, including all those relevant for lab results and imaging studies?" Or replace the question in Form P-9B with "Have results been received for all lab tests (e.g., STD tests) and have the child received their medical consultations, including all of those relevant for lab results and imaging studies?"
Section: "Checklist"	The current form asks: "Did the child receive	As an initial matter, the word "of" is missing before the phrase "the following
Field(s): Item 8 regarding immunizations: "Did the minor receive at	the following immunization? A. Tdap (tetanus, diphtheria, pertussis),	immunization" in Item 8 on Form P-9B. Also, "flue" is spelled incorrectly.  The language for Item 8(i) is unclear
least one dose the	b. Hepatitis A, c.	because the explanatory parentheticals do
following	Hepatitis B, d.	not clearly associate with the flu vaccine,
immunization[s]?"	Varicella (chickenpox),	the varicella vaccine, or all vaccinations.
Same list as before	e. IPV (inactivated	The "(when available, generally [from]
but for "flue" added	poliovirus vaccine), f.	September through June)" suggests concern
"Check 'N/A' if	MMR (measles,	is limited to the seasonal flu vaccine.

vaccine is unavailable or minor has other proof of varicella immunity (e.g., diagnosed with active disease while in ORR custody; IgG+)"

mumps, rubella), g. MCV4 (meningococcal disease), h. HPV (human papillomavirus), i. Flue when seasonably available (generally, September through June)."

However, the language "Check 'NA' if vaccine is unavailable or child has other proof of varicella immunity (e.g., diagnosed with active disease while in ORR custody, IgG+)" appears to apply to the varicella vaccine, which is different from the seasonal flu vaccine.

According to the FSA, the child must have the "appropriate immunizations in accordance with U.S. Public Health Service (PHF), Center for Disease Control."227 The Center for Disease Control requires children by the age of 18 to have the following vaccines: varicella (chickenpox), Tdap and Td (diptheria, tetanus, and pertussis), HepA (hepatitis A), HepB (Hepatitis B), HPV (Human Papillomavirus), flu vaccine (influenza), MMR (measles, mumps, and rubella), MenACWY and MenB (meningococcal disease), Polio vaccine (polio), and pneumococcal (pneumococcal disease).<sup>228</sup> The varicella vaccine for chickenpox does not prevent the seasonal influenza.<sup>229</sup> The seasonal flu vaccine protects against the influenza viruses that research indicates will be most common during the upcoming season.<sup>230</sup> None of the viruses concerned include chickenpox or the varicella vaccine.<sup>231</sup> Therefore, the instructions referring to the varicella immunity following the inquiry about the flu vaccination should be removed or clarified.

**Recommendation**: Remove or clarify why varicella immunity impacts the seasonal flu vaccination requirement.

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<sup>&</sup>lt;sup>227</sup> Flores Settlement Agreement, supra note 4, at ¶ A.2, Ex. 1.

<sup>&</sup>lt;sup>228</sup> Vaccines for Your Children: Vaccine Schedule, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/vaccines/parents/schedules/index.html (last visited Mar. 14, 2021).

<sup>&</sup>lt;sup>229</sup> See About Chickenpox (Varicella). Ctrs. for Disease Control & Safety.

https://www.cdc.gov/vaccinesafety/vaccines/varicella-vaccine.html (last visited Mar. 14, 2021) (explaining that chickenpox, or varicella," is a highly contagious disease caused by the varicella-zoster virus (VZV)).

<sup>&</sup>lt;sup>230</sup> Flu Vaccination, Ctrs. for Disease Control & Prevention (Dec. 16, 2020),

https://www.cdc.gov/flu/prevent/keyfacts.htm (referring to the section "How do flu vaccines work?").  $^{231}$  *Id.* 

Section: "Checklist"

Field(s): Item 9 "For DOD Sites Only: Did the minor receive the first does of all the above immunizations more than 72 hours before the scheduled physical transfer?"

Form 9B's item 9 is the current form's item 7, which reads: "Did the child receive all the above immunizations more than 72 hours before the scheduled physical transfer?"

As an initial matter, there is a spelling error. "Does" should be "dose."

It is unclear why this question only applies to DOD sites and not all influx facilities. ORR Policy Guide section 7.2.1 requires each UC to "be medically cleared and vaccinated as required by the influx care facility (for instance, if the influx care facility is on a U.S. Department of Defense site)."232 Section 7.5.1 requires each UC in their care to have the "appropriate immunizations as recommended by the Advisory Committee on Immunization Practices' Child and Adolescent Immunization Schedule and approved by HHS' Center for Disease Control and Prevent."233 If the immunizations listed in Item 8 are required for all influx facilities, including DOD sites, then there should be no difference in the immunization requirements for DOD sites and other influx facilities. This field requires that a child receive their first dose of the vaccine 72 hours prior to transfer, specifically for DOD sites. This time frame presumably concerns the child experiencing symptoms upon receiving a vaccination. However, it is unclear why this time period is not universal to all influx facilities. Also, it is unclear why there was a change from requiring full vaccination (if a vaccine requires more than one dose) in the previous form to now only requiring partial vaccination (i.e., "first dose"). If there is no justification to limit the 72-hour requirement and partial vaccination to DOD sites only, the 72-hour requirement and full vaccination should be universal to all influx sites.

**Recommendation**: Provide justification for limiting the 72-hour requirement for DOD

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<sup>&</sup>lt;sup>232</sup> ORR Policy Guide, *supra* note 5, at § 7.2.1.

<sup>&</sup>lt;sup>233</sup> *Id.* at § 7.5.1.

	including DOD sites.
	There is a spelling error in #13. "Know" should be "known."
	Recommendation: Change spelling of "know" to "known."
The form does not have a signature area for the person completing the form.	The form currently only captures the name and title of the person completing the form (see Section A of Form P-9B), but does not include a signature for that individual anywhere on the form. For accountability purposes, the form should include both a printed name and signature field for the person completing the form.  Recommendation: A "Signature" field should be added to Form P-9B.
]	a signature area for the person completing the

# H. A Comparison Between Proposed Form P-9A (Non-Influx Transfers) and P-9B (Influx Transfers) Demonstrates the Need to Standardize the Timing and Override Options.

The following chart addresses inconsistencies between Form P-9A and Form P-9B.

Section/Field(s)	Comparison between	Comment
Section/Field(s)	Forms P-9A and P-9B	Comment
Section: "Instructions" for both Form P-9A and Form P-9B.	Form P-9A (Non-Influx Transfers) indicates that the form must be completed "within three (3) business days of identifying the need for a transfer" whereas Form P-9B (for transfers to influx care facilities) indicates that the form must be completed "no later than 24 hours prior to the proposed transfer date."	It is unclear why there is a need for a difference in timing for when each form must be completed. The timing must be standardized across forms as much as possible to avoid confusion, especially if there is no justification for the difference in timing.  Recommendation: Standardize the timing for both Non-Influx and Influx transfers or provide a justification for treating the two types of transfers differently, such that the forms would need to be completed within different
Section: "Instructions" for both Form P-9A and Form P-9B.	Form P-9A (Non-Influx Transfers) indicates that if a child doesn't meet transfer criteria there is an override process by which a specific form must be submitted to DCSMedical@acf.hhs.gov and the FFS must be consulted. In contrast, Form P-9B (Influx Transfers) indicates that if a child doesn't meet one of the transfer criteria, then a child cannot be transferred to an influx care facility.	It is unclear why there is an override option for non-influx transfers, but not for influx transfers.  Recommendation: Standardize the override process for the Non-Influx and Influx transfers or provide a justification for treating the two types of transfers differently.

I. The Proposed "Transfer Request" (Non-Influx Facilities) Form P-10A Does Not Capture the FFS Decision-Making Process, the Pertinent Information Regarding a UC's Transfer and the Justifications for Certain Fields.

Form P-10A is used by care provider facilities, ORR contractor staff, and ORR federal field staff to process recommendations and decisions for non-influx transfer of a UC within the ORR care provider network. ORR revised the formatting and reworded many of the section titles and fields. In addition, ORR made revisions to this instrument.

Section/Field(s)	Modifications,	Comment
	Additions, Other	
Section: "Transfer Request"  Field(s): Added "Status," "Transfer Type," "High Priority," "Transfer Cancellation Reason," "Case Coordinator," and "Legal Eligibility"	ORR removed the field "Requested Date" and added the following fields: "Status," "Transfer Type," "High Priority," "Transfer Cancellation Reason," "Case Coordinator," and "Legal Eligibility."	The Commenting Parties disagree with ORR removing the "Requested Date" field from the proposed form. The "Requested Date" field is necessary as it provides the date for when the request was made, which begins the moment the case manager makes their recommendation and is relevant to track the time frame for the decisionmaking process.  It is unclear why the proposed form includes a "High Priority" field.
fields.		
		Recommendation: Provide a justification to have a "High Priority" field, and if still included in the final Form P-10A, include instructions to inform the person filling out the form how to assess whether a UC is a high priority. Additionally, reinsert the "Requested Date" field.
Section: "Reason	The "Standard Program	It is unclear what the "Standard Program
for Transfer Request"	Type" field was added to Form P-10A	Type" field aims to address. The options provided include both reasons to transfer a UC
Field(s): "Standard Program Type"	to Politi F-TOA.	to a non-restrictive setting and criteria for restrictive placements (e.g., "to provide a more re[strictive]" versus "to provide a less restr[ictive]"). The bases for transfers to non-restrictive settings and the bases for transfers to more restrictive settings should be separated into two fields to avoid confusion.
		<b>Recommendation</b> : The criteria should not
		overlap between Shelter/Foster Care/Group Home-like placements and restrictive placements. Thus, the "Standard Program Type" options should not include any of the following: "to provide a more restrictive placement," "violent/threatening," "disruptive behavior," "flight risk," and other bases for restrictive placements.
		Relatedly, the "Case Manager Recommendation Comment," the "Case Coordinator Recommendation Comment," and the "ORR Comment" fields should be

		required, rather than optional, fields explaining
		the reason for the transfer.
Section: "Case Coordinator Recommendation"	Added the following fields to the "Case Coordinator Recommendation"	The Commenting Parties are unable to view the drop-down options that populate the "Pending Information" field. Thus, we cannot fully opine on this section and request further
Field(s): "Pending Information," "FFS	section: "Pending Information," "FFS	information on this section.
Authorized to Proceed," and "Add to Waitlist?"	Authorized to Proceed," and "Add to Waitlist?".	As the third part of the transfer approval process, the "FFS Authorization to Proceed" field is insufficient. Because the FFS makes the final decision to approve or disprove a placement following the decisions of the case manager and case coordinator, the decision-making process must be documented to the fullest extent possible to inform all parties when the FFS authorization took place, the identity and contact information for the FFS, and the authorized program type. This would reflect the same fields under the "Case Manager Recommendation" and "Case Coordinator Recommendation" sections.
		Recommendation: Add a "yes/no" to the "FFS Authorization to Proceed" field. Add separate fields to indicate (1) when the FFS authorized the transfer request to proceed, (2) the name of the FFS, and (3) the transfer request's authorized program type. The FFS Authorization should be its own section in Form P-10A that is distinct from the "ORR Decision" which documents the final approval of the transfer once a receiving facility has accepted the request, rather than the initial approval to send a transfer request.

Section: "Transfer Designation"  Field(s): "Program/Facility," "Program Type," and "Transfer Designation Date"	This is an entirely new section with three new fields.	This is a valuable new section because it documents information regarding a UC's proposed transfer. However, it is insufficient to capture all essential information about the UC's transfer, including the proposed facilities the UC will potentially be sent to. It should also include the response of each facility (i.e., accepted or denied, with a detailed explanation in either situation) and the date of each facility's response.
		Recommendation: Add fields to capture (1) which facilities the transfer request packet was sent to, (2) the date the transfer request was sent to each facility, (3) the response of each facility (i.e., accepted or denied with a detailed explanation), and (4) the date facilities made their decision to accept or deny the transfer request.
Section: "Entry Team Data Entry Window"  Field(s): "User" and "Role"	Added a new "Entry Team" section in which read and/or write access can be granted to individuals who need access privileges to the record, but do not typically need such privileges for a referral record.	Access to this form should be confined to case managers, case coordinators, and FFSs. Similar to the analysis for Form P-7, the "Entry Team Data Entry Window" is concerning because the form does not indicate who can access this private and confidential information and whether it is restricted from unauthorized personnel. Such protections are common across state and federal laws. 234 According to Cal. Wel. & Inst. Code section 827, for example, client records and information, whether in electronic or hard copy form, are confidential, and in general, are not open for examination for any purpose unrelated to the administration of agency programs and/or provision of services to the client. 235 Select access to client records by third parties may be authorized by court order. 236 Please refer to Section III.D.1.a. for a more in-depth analysis of the privacy and confidentiality of a child's ORR records. 237

<sup>234</sup> See supra text accompanying note 98.
235 Prandini et al., supra note 280.
236 Id.
237 See supra Section III.D.1.a.

**Recommendation**: Without a court order granting ORR authorization to share this information specifically with DHS or another third-party, ORR may violate applicable state laws. Therefore, we recommend that ORR add the following language, or something similar, to Form P-10A: "The Entry Team Data Entry Window is a new feature that allows case managers and ORR staff to give read and write access to other individuals. This feature is restricted to granting access to ORR staff or ORR grantee staff (e.g., care provider staff) who require access to make placement or release recommendations or decisions. This information, as well as access to this information, cannot be shared with any individual or agency outside of ORR, including but not limited to DHS, without a court order or compliance with applicable state and federal laws and policies."

J. The New Proposed "Transfer Request" (Influx Facilities) Form P-10B Includes Irrelevant Factors for Influx Transfer Requests and Fails to Incorporate Accountability Measures for the Case Manager's Decision to Transfer a UC.

Form P-10B is proposed for use by care provider facilities and ORR federal field staff to process recommendations and decisions for transfers to influx care facilities. This is a new instrument.

Section/Field(s)	Comment
Section: "UAC Profile"	For consistency with Form P-11 and other forms, "identification marks" should read as "identifying marks."
Field(s): "Identification Marks"	<b>Recommendation</b> : Change "identification marks" to "identifying marks."
Section: "Influx	It is unclear why there is a "High Priority" field.
Transfer Request"	
	It is unclear why "Standard Program Type" includes fields irrelevant
<b>Field(s)</b> : "High	to influx facilities, including "to provide a more re[strictive] ,"
Priority?," and	"violent/threatening ," "disruptive behavior," and "flight risk."
"Standard Program	
Type" with choices	<b>Recommendation:</b> Provide a justification for the "High Priority"
(e.g., minor's safety,	field, and if still included in the final form, include instructions to

flight risk, emergency influx, etc.).	inform the person filling out the form how to assess whether a UC is a high priority. Remove the irrelevant fields under "Standard Program Type."
Section: "Case	The Commenting Parties are unable to view the drop-down options
Manager	that populate the "Case Manager Recommendation" field. Thus, we
Recommendation"	cannot fully opine on this section and request further information on
	this section.
Field(s): "Case	
Manager	This section fails to include a field identifying the case manager. For
Recommendation"	accountability purposes, the case manager's name should be a field.
with a drop-down	This is similar to the "ORR Decision Maker" field under the "ORR
menu, "Case Manager	Decision" section.
Recommendation	D 116C M N N 7 C 11
Comment," and "Case	<b>Recommendation</b> : Add "Case Manager Name" field.
Manager Recommendation	
Date" with a calendar	
function to choose the	
date and time.	
uaic allu tillic.	

# K. Forms P-10A and P-10B Should Be Harmonized to Obtain Information Necessary For Both Non-Influx and Influx Transfers.

Although Form P-10A concerns non-influx facilities and Form P-10B concerns influx facilities, certain fields should be included in both forms to cover the pertinent information required for both non-influx and influx transfers.

Section/Field(s)	Comparison between	Comment
	P-10A & P-10B	
Section:	Unlike Form 10-A, for	No third-party review is required for influx
"Case Coordinator	influx transfer requests,	transfers because they are usually neither
Recommendation" in	there is no Case	step-ups nor step-downs. However, if the
Form P-10A and lack	Coordinator section.	transfer to an influx facility is a step down,
thereof in Form P-		it requires a case coordinator or third-party
10B.		review.
		<b>Recommendation:</b> Add "Case Coordinator
		Recommendation" section from P-10A to P-
		10B and indicate that the section only needs
		to be completed if a UC is transferred from
		a more restrictive setting to an influx
		facility.

Section: "Casefile	For Form P-10A, ORR	The "Minor Attorney Contacted" field
Summaries" for both forms.  Field(s): "Minor	moved fields related to the UC's attorney of record from the "Reason for Transfer	elicits information on whether the child's attorney was contacted regarding the transfer request, meaning the attorney was informed of the recommendation for
Attorney Contacted" for both forms.	Request" section to the "Casefile Summaries" section.	transfer. To ensure the child's attorney was contacted and provided with sufficient information about the transfer request, additional fields are needed.
		Recommendation: Add "Date of Contact", "Name and Title of Person who Contacted Child's Attorney" and "Information Conveyed to Child's Attorney" fields following "Minor Attorney Contacted" under the "Casefile Summaries" sections in both forms.
Section: "ORR Decision" for both forms.  Field(s): "Remand for Further Information" for both forms.	In both Forms P-10A and P-10B, ORR added a "Remand for Further Information" to the "ORR Decision" section.	This is a valuable new section because it documents when ORR made a decision to remand the transfer request for further information. However, in order to fully document these instances, a "Remand Date" field should be added to both Forms. This will provide a timeline for when the remand was made and when subsequent actions were taken.
		<b>Recommendation</b> : Add a "Remand Date" field to both Forms P-10A and P-10B under the "ORR Decision" section.

#### L. The Proposed "Transfer Summary and Tracking" Form P-11 Should Reinsert Certain Fields from the Previous Version of the Form, Maintain New Sections, and Remove References to DHS and EOIR.

Form P-11 is used by care providers to track the physical transfer of the UC and their belongings. ORR revised the formatting and reworded some of the fields. ORR also removed the field "FINS Number" and added the fields "Gender" and "Gender Other." The following changes must be made to ensure children are appropriately accommodated during transfers and prevent unnecessary information sharing between ORR, DHS and EOIR.

Section/Field(s)	Modifications,	Comment
	Additions, Other	
Section: "UAC Profile"	Added "Date of Placement in Current Facility."	When a child is transferred, language capacity and preferences are important to assess to ensure information is adequately conveyed to the child throughout the transfer process.
		Recommendation: The Agencies should add "Language(s) Child Understands" and "Child's Preferred Language" under the "UAC Profile" section.
Section: "Care Provider Transfer Recommendation"	Deleted "Requester Title" and "Requester Phone" from P-11, which is in the current version of the form.	The current version of this form included "Requester's Title" and "Requester Phone." This information no longer appears under Form P-11's "Care Provider Transfer Recommendation" section. These fields should be reinserted. Both of these fields are important for accountability as well as to aid in the transfer communication between those involved in the transfer of the child.
		<b>Recommendation</b> : Reinsert "Requester Title" and "Requester Phone" to the form.
Section: Lack of "Case Coordination"	Deleted "Case Coordination" section from P-11, which is in the current version of the form.	The current version of this form has a "Case Coordination" section, which has now been removed. In other words, no section in Form P-11 allows the case coordinator to indicate whether they agree with the transfer request. In the current version, if a case coordinator indicated that they did not agree with the transfer request, the form would prompt the case coordinator to specify the "type of program recommended," list their name under "case coordinator name," indicate the "recommended date," and "case coordinator proposed program." This is all missing from Form P-11.
		The "Cases Coordination" section or a "Case Coordinator" section should be reinserted into Form P-11 to properly reflect (1) the Care Provider's Recommendation, (2) whether or not the

		Case Coordinator (i.e., third party reviewer) concurred and if not, why and what placement was recommended, and (3) ORR/FFS's final decision on the transfer. This information is necessary to fully summarize the relevant recommendations and final decisions.
		Recommendation: Reinsert "Case Coordination" or "Case Coordinator" section from the current version of the form. This section should include the following fields: "Case Coordinator Name"; "Concurrence with Care Provider Recommendation?"; "If no, Proposed Facility Type Recommended"; and "Case Coordinator Recommendation Date."
Section: "ORR Transfer decision"	Removed "Date of Decision."	The "Date of Decision" should be reinserted from the previous form because it will clearly indicate when the transfer decision was made, which is key for developing a timeline for the child's time in ORR custody and placement decisions.  Recommendation: Reinsert "Date of Decision"
Section: "Departure Information"	Form P-11 excludes the current form's section on "Transporting Staff Comments."	Decision."  The "Transporting Staff Comments" field should be reinserted to allow for documentation of anything noteworthy during transportation.
		Recommendation: Reinsert the "Transporting Staff Comments" field. This should follow after the affirmation and signature, which should occur prior to departure, and require an initial or signature in the textbox for comments.
Section: "Arrival Information"	Form P-11 excludes the current form's section for receiving "Transporting Staff Comments."	The receiving "Transporting Staff Comments" field should be reinserted to allow for documentation of anything noteworthy during and after arrival.
		<b>Recommendation</b> : Reinsert the receiving "Transporting Staff Comments" field.

**Section**: Text at the bottom of the Form

At the bottom of Form P-11, it indicates that "Distribution of this form is restricted to ORR staff, grantees, and contractors (including voluntary agencies, Child Advocates, and legal service providers); UC attorneys of record; the U.S. Department of Homeland Security; and the Executive Office for Immigration Review. This form may not be distributed to any other party without the written authorization of ORR."

This form should not be shared with DHS or EOIR, and this form and a child's ORR file should not be part of a child's A-file. As explained in our comments to Form P-1, the FSA requires ORR facilities to "develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure."238 Additionally, the FSA provides that a child has "a reasonable right to privacy."<sup>239</sup> From the rights listed in the provision, naturally, the child must also have the right to privacy of their own records and ultimately, all the information they provide to ORR. A child's ORR file information should not be accessible by third parties, especially DHS. As explained in our comments to Form P-1, one of the dangerous consequences of allowing USCIS access to a child's ORR file is the impediment to sponsorship and family reunification efforts. Here, no justification has been provided for DHS and EOIR to access the information concerning a UC's placement recommendation or what medication accompanies the child during transfer.

This would also implicate concerns over a child's medical records. ORR Policy Guide 3.4.7 requires care providers to "maintain the children's individual health files separately from the children's case files, unless State licensing requirements dictate otherwise." According to HHS's

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<sup>&</sup>lt;sup>238</sup> Flores Settlement Agreement, supra note 4, at ¶ E, Ex. 1 (emphasis added).

<sup>&</sup>lt;sup>239</sup> *Id.* at ¶ A.12, Ex. 1 ("A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house and regulations; and (e) receive and send uncensored mail unless there is reasonable belief that the mail contains contraband.").

<sup>&</sup>lt;sup>240</sup> ORR Policy Guide, *supra* note 5, at § 3.4.7.

Office of Civil Rights, children's health information cannot be used for purposes not directly related to their care without permission. <sup>241</sup> Therefore, similar to Form P-1, DHS and EOIR should not have access to Form P-11.
Recommendation: Remove reference to "the U.S. Department of Homeland Security" and "the Executive Office for Immigration Review" from Form P-11.

# M. The Proposed "Program Entity" Form P-12 Fails to Adequately Track Care Provider Program Information, Including State Licensure and Monitoring.

The Proposed "Program Entity" Form ("Form P-12") is a modified instrument intended to be "used by care providers and ORR to track certain information related to care provider programs, such as location, contact information, bed capacity, state licensure, grant information, monitoring, and program census."<sup>242</sup> The Commenting Parties are concerned that certain sections of Form P-12, such as the licensing, monitoring and events and SIRs sections, fail to track important information to ensure proper licensing, timely monitoring and subsequent actions in response to monitoring, as well as risks wasting resources documenting all incidents related to all children in the program, instead of targeting specific incidents relevant to whether a program can continue to care for a child's safety and well-being. The comments below address these specific concerns.

#### 1. License Section in Form P-12.

All UCs must be "placed temporarily in a licensed program until such time as a release can be effected in accordance with Paragraph 14 [of the FSA] . . . or until the minor's immigration proceedings are concluded, whichever occurs earlier." As noted by a federal court, "[t]he purpose of the licensing provision is to provide [children in federal immigration custody] the essential protection of regular and comprehensive oversight by an independent child welfare agency." Although Form P-12 appears to respond to this licensing requirement that the programs within ORR's network be state licensed through the form's "License" section, which includes the following fields: "Licensed?" with a drop-down menu, "License Issue Date" with calendar function, "License Type" with a drop-down menu, "Copy of Lease Uploaded?," and numerous fields for licensing Point-of-Contact information, additional fields are required to ensure the purpose of the licensing provision is achieved.

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<sup>&</sup>lt;sup>241</sup> Your Health Information, supra note 26.

<sup>&</sup>lt;sup>242</sup> Proposed Collection, *supra* note 1, at 5198.

<sup>&</sup>lt;sup>243</sup> Flores Settlement Agreement, supra note 4, at  $\P$  ¶ 6, 19.

<sup>&</sup>lt;sup>244</sup> See Order Re Pls.' Mot., supra note 8, at 14.

According to the Government Accountability Office's ("GAO") 2020 report, a majority of approved ORR grant applications do not include copies of state licenses for the facilities proposed in the applications.<sup>245</sup> Of the 58 applications reviewed that did include a copy of a state license, 22 of them did not cover all facilities proposed in the applications.<sup>246</sup> For example, some licenses listed a different city from where the facilities are located in the application.<sup>247</sup> Having obtained a state license in the past or for a different facility does not guarantee an organization is eligible for, or will obtain, a state license for a new facility.<sup>248</sup>

As such, the Agencies should add a field to the "License" section in Form P-12 that requires uploading a copy of the state license. The Agencies should also include a field inquiring whether the specific facility for which the form is being completed is captured by the program's license, which was uploaded. The form should include a field to verify that the license is current and a file history of previously granted state licenses to track gaps in licensure. The inclusion of these fields will safeguard children from being accepted into a facility that fails to meet proper state licensing requirements in violation of the FSA.

#### 2. Monitoring Details Section in Form P-12.

Form P-12 includes information related to the program's ORR monitoring schedule, but should also require ORR to document monitoring outcomes, like the need for a program to take corrective actions to address compliance issues.<sup>249</sup> In September 2020, the GAO noted that "ORR requires grantees to take corrective action to address noncompliance it identifies through monitoring, but ORR has not met some of its monitoring goals or notified grantees of the need for corrective actions in a timely manner."<sup>250</sup> For example, "[i]n fiscal years 2018 and 2019, ORR [] did not meet its policy goals to visit each facility at least every 2 years, or to submit a report to facilities on any corrective actions identified within 30 days of a visit."<sup>251</sup> In March 2018, according to a monitoring visit report, ORR found, among other deficiencies, that the grantee had placed a child in a foster home in which one of the foster parents was under investigation for sexual abuse of another unaccompanied child.<sup>252</sup> Despite its findings, ORR did not notify the grantee of its monitoring findings or ask them to take corrective action until eight months later, and in the meantime issued a new grant to the grantee.<sup>253</sup> This is especially concerning given ORR's policy statement that "corrective actions are the cornerstone of ORR's monitoring policy for facilities providing care for unaccompanied children."<sup>254</sup>

<sup>&</sup>lt;sup>245</sup> U.S. Gov't Accountability Office, Report to the Chairwoman of the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Committee on Appropriations, House of Representatives, Unaccompanied Children: Actions Needed to Improve Grant Application Reviews and Oversight of Care Facilities 12 (Sept. 2020), https://www.gao.gov/assets/gao-20-609.pdf [hereinafter GAO Report on UCs].

<sup>&</sup>lt;sup>246</sup> *Id*.

<sup>&</sup>lt;sup>247</sup> *Id*.

<sup>&</sup>lt;sup>248</sup> Id.

<sup>&</sup>lt;sup>249</sup> See id. at 8 ("When ORR identifies a facility that is not complying with ORR policies, the term of its grant, or other applicable requirements, it may require the facility to take corrective action.").

<sup>&</sup>lt;sup>250</sup> U.S. Gov't Accountability Office, *Highlights of GAO-20-609*, *A Report to the Chairwoman of the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Committee on Appropriations, House of Representatives* (Sept. 2020), https://www.gao.gov/assets/gao-20-609.pdf. <sup>251</sup> *Id.* 

<sup>&</sup>lt;sup>252</sup> GAO Report on UCs, *supra* note 245, at 19.

<sup>&</sup>lt;sup>253</sup> *Id*.

<sup>&</sup>lt;sup>254</sup> *Id.* at 31.

The GAO report also indicates that "it has been difficult for ORR staff to access comprehensive information on past corrective actions" because only one of the four monitoring teams that can issue corrective actions maintains centralized data on the corrective actions issued to facilities. <sup>255</sup> In October 2019, "ORR [was] awarded a contract to improve its corrective action data tracking and reporting by developing a database to track corrective actions by all four teams that issue them." <sup>256</sup> At that time, ORR indicated that the tentative plan was for this database to become part of ORR's new case management system that would be operational by November 2020 and fully operational by late 2021. <sup>257</sup>

Given that Form P-12 is intended to be "used by care providers and ORR to track certain information related to care provider programs" including monitoring, and that this form or instrument "will be incorporated into ORR's new case management system," it stands to reason that the monitoring section of Form P-12 is in response to the need for better tracking of monitoring and monitoring outcomes (i.e., corrective actions). As such, the "Monitoring Details" section in Form P-12 should be more extensive and document all monitoring dates for each facility/program (to track past monitoring schedule and compliance with timely monitoring), date of issuance of all past and current corrective actions with a copy of the corrective action uploaded, date by which the facility/program addressed all issues in the corrective action, and if the facility/program failed to take corrective actions, what action, if any, ORR took against the facility and date of such action. These recommended changes will establish a form of accountability and record of notes to ensure ORR facilities are compliant with ORR policies and procedures, grant terms and conditions, licensing standards, as well as the requirements under any other applicable source, including but not limited to the FSA, and that facilities/programs only receive future grants where appropriate.<sup>258</sup>

#### 3. Events and SIRs Sections in Form P-12.

According to the Proposed Collection, Form P-12 has a section that "list[s] all events and incident reports created for the program (cleared as separate instruments in OMB#0970-0547)."<sup>259</sup> It is not clear from this description which specific forms the Agencies are referring to with respect to the Proposed Information Collection Activity relating to the Administrative and Oversight of the Unaccompanied Alien Children Program (OMB #0970-0547).<sup>260</sup> That said, it appears likely that the Agencies are referring to the Proposed Administrative and Oversight Forms A-9 (Event), A-10A (Emergency SIR and Addendum), A-10B (SIR and Addendum), A-

<sup>&</sup>lt;sup>255</sup> *Id*.

<sup>&</sup>lt;sup>256</sup> *Id.* at 32.

<sup>257</sup> Id

<sup>&</sup>lt;sup>258</sup> This recommendation aligns with the recommendations of U.S. Homeland Security & Government Affairs Permanent Subcommittee on Investigations "Majority and Minority Staff Report – Oversight of HHS Shelter Grants for Unaccompanied Alien Children," which recommends that "HHS should permanently require ORR grant applicants to disclose any prior or current adverse governmental action taken against them regarding the care of children in their grant applications." U.S. Homeland Sec. & Gov't Affairs Permanent Subcomm. on Investigations, *Majority and Minority Staff Report - Oversight of HHS Shelter Grants for Unaccompanied Alien Children* (2020), https://www.hsgac.senate.gov/imo/media/doc/2020-12-08%20PSI%20Staff%20Report%20-

<sup>%20</sup>Oversight%20of%20HHS%20Shelter%20Grants%20for%20UCs.pdf.

<sup>&</sup>lt;sup>259</sup> Proposed Collection, *supra* note 1, at 5198.

<sup>&</sup>lt;sup>260</sup> See Proposed Information Collection Activity; Administration and Oversight of the Unaccompanied Alien Children Program (OMB #0970-0547), 86 Fed. Reg. 545-547 (Jan. 6, 2021).

10C (Sexual Abuse SIR and Addendum), and A-10D (Program Level Event Report and Addendum). <sup>261</sup> If this is the case, it still remains unclear whether all events and SIRs documented through the use of Proposed Forms A-9 and A-10A-10D would be captured in the "Program Entity Page - Census Page." For example, would every SIR for every child at that facility be listed here? Or would this only capture SIRs related to the care provider staff, such as a sexual abuse allegation against a case manager or other staff member? The former seems unnecessary, whereas the latter seems important and relevant to future monitoring and potential grant awards. Similarly, would every event captured in Proposed Form A-9 be captured in the "Program Entity Page - Census Page," or would the "Event" section of Form P-12 only capture Program Level Events documented in Proposed Form A-10D, such as active shooters, natural disasters, or other events that impact the entire facility? Again, the former seems less necessary to achieve the purpose behind Form P-12, whereas the latter seems important and relevant.

Without clarification on what the "Events" and "SIRs" sections of Form P-12 are meant to capture, time and resources might be wasted including events and SIRs that are irrelevant to the purpose behind Form P-12. These resources should be spent ensuring that important and relevant information related to the facility itself are documented, such as SIRs regarding care provider staff behavior, program level events impacting the entire facility, and more importantly, as noted in the preceding section, adequate and timely monitoring, timely issuance of corrective actions and timely resolution of corrective actions by the program. Clarifications on these sections can go a long way to ensure the proper documentation of relevant information that will aid future decision-making, such as whether ORR should award a subsequent grant.

N. The Proposed "UAC Profile" Form P-13 Fails to Clarify When ORR Personnel Are Prompted to Fill Out Information Regarding Other UCs, Adults, and/or Family Friends of the UC at Issue, Provide the Drop-Down Menu Options for Several Fields, and Justify the Inclusion of Certain Fields.

Form P-13 is "used by referring federal agencies and care providers to create a profile for a UC from which all information related to their case can be accessed. Previously, the purpose of this instrument was to (1) create an initial profile and (2) receive/process referrals. The receiving/processing referrals function and the related fields from the Add New UAC instrument were moved to the UAC Referral instrument, as noted above in the description of changes to the UAC Referral. The creation of an initial profile function in the system and related fields containing basic UAC information remain with this instrument. However, the purpose of this instrument has been expanded. It now acts as a hub where users can access all records related to a UAC's case. Most of the records accessible from the UAC Profile are being cleared as separate instruments, either in this or another one of ORR's information collections. The sections being cleared under this instrument are as follows: Profile Information, Program Designation, Legal-Immigration, Legal-Administrative, System Information, Apprehended Relationships, Other Relationships, Adult Contact Relationships, Entity Team, and Documents." 262

As an initial matter, the UAC Profile Data Entry Window does not have as many fields or entry options as the UAC Profile Page itself. The UAC Profile Page does have a section for

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<sup>&</sup>lt;sup>261</sup> See id.

<sup>&</sup>lt;sup>262</sup> Proposed Collection, *supra* note 1, at 5198.

"Apprehended Relationships," which could include parents and guardians and "Other Relationships," which could include parents, guardians, or potential sponsors. However, it is unclear when this information would be inputted if not part of the Data Entry Window and merely part of the UAC Profile page. Therefore, the Commenting Parties recommend an explanation for when ORR personnel is prompted to fill out "Apprehended Relationships" and "Other Relationships" to ensure a seamless process in completing Form P-13.

Section/Field(s)	Modifications,	Comment
Section: "Profile Information"  Field(s): "Related to Other UAC(s)?"  Section: "Legal-Immigration"  Field(s): All fields.	Additions, Other In the current version of the form, "Related to Other UAC(s)?" provided a "yes" or "no" option.  This is an entirely new section.	We are unable to view the drop-down options that populate the "Related to Other UAC(s)" field in Form P-13. Thus, we cannot fully opine on this section.  Recommendation: Provide the drop-down options for "Related to Other UAC(s)" to allow us to fully comment.  This section should include a "Attorney of Record" field because information regarding representation is important for legal immigration purposes.
C-42 "I1		Recommendation: Add an "Attorney of Record" field.
Section: "Legal-Administrative"  Fields: "Specific Consent Status" with drop-down menu, "Specific Consent Decision Date" with calendar function, "State/Family Court," "Good Faith Letter Received?," "Is UC a Material Witness?"	This is an entirely new section.	It is unclear what these fields aim to address and we are unable to view the drop-down options that populate the "Specific Consent Status" field. Thus, we cannot fully opine on this section.  Recommendation: Provide the drop-down options for "Specific Consent Status."
Section: "System Information"  Fields: "Legacy ID," "UIP Family Group Number," "Profile Owner."	This is an entirely new section.	It is unclear what any of the fields in this section are intended to capture. Thus, we cannot fully opine on this section.  Recommendation: Provide explanation for the purpose of each field and justification for their inclusion on this form.

Form P-13's Other Data Entry Windows		
<b>Data Entry Window</b>	Comment	
Window: "New Relationship: Apprehended UAC Window," "New Relationship: Apprehended Adult Window"	It is unclear when ORR is prompted to fill out this information in Form P-13. It is unclear whether ORR is prompted to fill out the form as they fill out the main "Data Entry Window" or whether ORR, after filling out the main "Data Entry Window" is then required to access the applicability of these windows separately from the "Data Entry Window." In the current version of the form, as opposed to the proposed form, Form P-13, information regarding an apprehended UAC, apprehended adult, and apprehended family friend appeared in the main "Data Entry Window." Similar to the current version of the form, ORR should be prompted to fill out these windows when ORR affirmative answers the "Related to Other UAC(s)" field in the main "Data Entry Window." In other words, ORR should fill out all the pertinent information related to parents, guardians, and potential sponsors on the front end, rather than requiring ORR staff to guess when they have to fill out the additional windows regarding relationship to other UACs, apprehended adults, etc.	
	<b>Recommendation</b> : "New Relationship: Apprehended UAC Window," "New Relationship: Apprehended Adult Window," and "New Relationship: Family Friend Window" should appear when ORR personnel fill out "Related to Other UAC(s)" field in the main "Data Entry Window" located on page 1 of Form P-13.	
Window: "New Relationship: Family Friend Window"	It is unclear what the "Common Child Information (not in ORR)" section is designed to document.	
Section: "Common Child Information	It is also unclear what the "Admission Assessment" field under "System Information" section is meant to capture.	
(not in ORR)" section and its respective fields.	<b>Recommendation</b> : Provide a justification or instructions for these sections and fields to clarify what they aim to address.	
Section: "System Information"		
Field: "Admission Assessment"		

<sup>263</sup> Add New UC (Form P-13), 81 FR 46682, Office of Info. & Regulatory Affairs, https://www.reginfo.gov/public/do/PRAViewIC?ref\_nbr=202012-0970-010&icID=242798 (last visited Mar. 14, 2021).

Window: "New Adult Contact Relationship: Adult Contact Relationship"

Field(s): "Adult Contact Relationship ID," "Type" with drop-down menu, "UC," "Adult Contact" with a search function, "Relationship to UC" with a drop-down menu, "Explain Relationship to UC," "Relationship Verified," "Declined Reason" with dropdown menu, "Date Assigned as Primary Sponsor" with calendar and time functions, "Declined Date" with calendar and time functions, "Declined Reason Notes."

"DNA Testing Details" section: "FFS Requires DNA Test," "Date Case Manager Scheduled DNA Test" with time and calendar functions," The "DNA Testing Details" section, as well as any reference to DNA testing of unaccompanied children in ORR custody, should be removed. HHS's proposed regulation including provisions regarding DNA testing (OMB #0970- 0278) was withdrawn on February 23, 2021 and thus no substantive mechanism to necessitate any reference to DNA testing in ORR forms exists. Multidisciplinary professionals, including human rights scholars, lawyers, bioethicists, and anthropologists expound the copious legal, ethical, and moral implications of compulsory DNA testing of immigrant children. Plainly stated, "[n]o person should ever be coerced into taking a DNA test, especially not separated minors." 264

DNA testing of separated children ignores the reality of the refugee experience and familial relationships, disregards the ethical mandate of voluntary consent, risks delayed release and prolonged detention, and severely intrudes on the privacy and security of highly vulnerable populations, with far-reaching consequences.

First, purporting to require DNA testing to determine biological maternity or paternity is an ineffective, inhumane, and even dangerous mechanism for assessing refugees' familial relationships, for whom "family is a group of individuals whom war and emergencies have separated, scattered, and shattered, and who then reconstitute, absorb survivors, and press on."<sup>265</sup> Refugee families are "orphans raised by nonparental kin, foster children, unaccompanied child laborers, former fighters who escaped rebel armies, and all manner of nonnuclear relatives, friends, and strangers banding together to beat the odds." These are "families of choice or circumstance" created by "necessity and humanity . . . not biology."<sup>266</sup> DNA testing to prove familial connections is often antithetical to the realities refugees face. <sup>267</sup>

There are also several potential ancillary consequences of DNA testing for refugee children, including discovering that "individuals they call parents are not in fact biologically related to them" <sup>268</sup> or feeling responsible for the misuse of DNA testing that leads to deportation or criminalization of adults in their lives. DNA tests can reveal cases of rape, disrupt families who otherwise were unaware of

Family Reunification Program, 99 Calif. L. Rev. 1635, 1651 (2011).

<sup>&</sup>lt;sup>264</sup> Matt Artz, *DNA Testing of Immigrants Is Unethical*, Anthropology News (Jan. 26, 2021), https://www.anthropology-news.org/index.php/2021/01/26/dna-testing-of-immigrants-is-unethical/. <sup>265</sup> Emily Holland, *Moving the Virtual Border to the Cellular Level: Mandatory DNA Testing and the U.S. Refugee* 

<sup>&</sup>lt;sup>267</sup> Katie Worth, *For Some Refugees Safe Haven Now Depends on a DNA Test*, Frontline (Oct. 19, 2015), https://www.pbs.org/wgbh/frontline/article/for-some-refugees-safe-haven-now-depends-on-a-dnatest/#:~:text=But%20the%20United%20States%20now,obtain%20in%20war%2Dtorn%20countries.

<sup>268</sup> Holland, *supra* note 265, at 1654.

"DNA Test Date"
with calendar
function, "DNA Test
Type" with dropdown menu, "Date
DNA Test Results
Received" with
calendar function,"
DNA Test Type other
Explanation," "Lab
Name," "Probability
of Relationship
(Percentage)."

the existence – or absence – of a biological connection, or make children feel responsible "for making their family subject to genetic surveillance or for any subsequent criminalization or deportation of family members."<sup>269</sup>

*Second*, DNA testing of immigrant children in ORR custody would disproportionately impact children from Honduras, Guatemala, and El Salvador,<sup>270</sup> a majority of whom are from cultures with extreme aversions to DNA testing, even at the cost of family reunification.<sup>271</sup>

Third, given its extraordinary implications, DNA testing requires informed consent, which cannot be meaningfully obtained from detained children. Even adults who are not in a crisis "appear ill-equipped to understand the complexity of genetic testing."<sup>272</sup> Members of the 2018 American Anthropological Association Annual Meeting concluded "that separated minors who likely have little genetic literacy would not be able to provide appropriate informed consent, potentially even with adult supervision" and "no person should be forced into a genetic test for reunification purposes under such a state of duress."<sup>273</sup> Indeed, courts have acknowledged the inherently coercive relationship between unaccompanied immigrant youth and government officials and that in such circumstances, children "cannot make a knowing and voluntary choice."<sup>274</sup>

Fourth, there are severe privacy and security concerns for DNA collection, storage, and sharing, particularly in the immigration context. As biometrics experts from the Electronic Frontier Foundation explain: "DNA contains our most private and personal information." Unlike fingerprints, which can only be used for identification, DNA provides "a massive amount of unique, private information about a person that goes beyond identification of that person." A DNA sample "contains [a person's] entire genetic code—information that has the capacity to reveal the individual's race,

<sup>274</sup> Perez-Funez v. District Director, INS, 619 F. Supp. 656 (C.D. Cal. 1985).

<sup>&</sup>lt;sup>269</sup> Kelly Lowenberg, *Applying the Fourth Amendment When DNA Collected for One Purpose Is Tested for Another*, 79 Univ. of Cin. L. Rev. 1289, 1317 (2011).

<sup>&</sup>lt;sup>270</sup> Facts and Data, Office of Refugee Resettlement, https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#countryoforigin (last visited Mar. 14, 2021).

<sup>&</sup>lt;sup>271</sup> Nita Farahany, Saheel Chodavadia & Sara H. Katsanis, *Ethical Guidelines for DNA Testing in Migrant Family Reunification*, 19 Am. J. Bioethics 1, 4-7 (2019).

<sup>&</sup>lt;sup>272</sup> Artz, *supra* note 264.

<sup>&</sup>lt;sup>273</sup> *Id*.

<sup>&</sup>lt;sup>275</sup> Collection & Use of Biometrics by U.S. Citizenship & Immigration Servs., 85 FR 56338 (2020); Comments by Elec. Frontier Found. Regarding Notice of Proposed Rulemaking on the Collection & Use of Biometrics by U.S. Citizenship & Immigration Servs. 16 (October 13, 2020), https://www.eff.org/files/2020/10/22/2020-10-13\_dhs\_nprm\_on\_biometric\_collection\_-\_eff\_website.pdf.

<sup>&</sup>lt;sup>276</sup> Comments by Elec. Frontier Found., supra note 275, at 16.

	biological sex, ethnic background, familial relationships, behavioral characteristics, health status, genetic diseases, predisposition to certain traits, and even, allegedly, the propensity to engage in violent or criminal behavior." <sup>277</sup>	
	The improper sharing or storage of highly sensitive biometric data has wide ranging and lifelong consequences not only for individuals, but entire immigrant communities, including the risk of data sharing with the very foreign governments or persecutors that refugees are seeking safety from. <sup>278</sup>	
	ORR has not espoused a sufficient purpose that would justify such severe potential consequences for vulnerable children and their families. Given the numerous legal, ethical, moral, and humanitarian concerns at stake, we strongly oppose the inclusion of any reference to DNA testing of unaccompanied children in ORR custody. <sup>279</sup> Recommendation: Remove this section from Form P-13.	
Window: "Entity	It is unclear what "UAC Access Level" means. Thus, we may not	
Team Data Entry	fully opine on this field.	
Window"	Tony opine on this note.	
	<b>Recommendation</b> : Provide an explanation for the "UAC Access	
Field(s): "UAC	Level" field.	
Access Level"		

O. The Proposed "ORR Transfer Notice—Notice of Transfer to ICE Chief Counsel—Change of Address/Change of Venue" P-14 Requires Children to Divulge Confidential Information that Is Not Needed to Assess a Change of Address/Change of Venue.

The "Change of Venue (fill out only if also requesting a Change of Venue)" section requires ORR to indicate that "Good cause exists to change venue in this matter pursuant to 8 C.F.R. 1003.20(b)" for a set number of reasons. Those reasons include limited bed space at a certain facility, a UC's special needs, and specific information regarding the levels of restrictive care. However, divulging this information seriously compromises the child's right to privacy in ORR.<sup>280</sup>

The second option for "good cause" reads, "The UAC has special needs (e.g., pregnancy of juvenile, medical needs, etc.)." Then, it provides a space for ORR staff to "please specify."

<sup>&</sup>lt;sup>277</sup> *Id*.

<sup>&</sup>lt;sup>278</sup> Collection & Use of Biometrics by U.S. Citizenship & Immigration Servs., 85 FR 56338 (2020); Comment by Nat'l Immigrant Justice Ctr. in Opposition to Proposed Rulemaking: Collection & Use of Biometrics by U.S. Citizenship & Immigration Servs. (October 13, 2020), https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2020-10/NIJC-Comment-on-the-Collection-and-Use-of-Biometrics-by-USCIS\_Oct-2020.pdf. <sup>279</sup> See supra Section III.A.4.

<sup>&</sup>lt;sup>280</sup> See id.

For all the reasons that have been emphasized throughout this Comment, children have a right to privacy of their personal and medical information.<sup>281</sup> Therefore, the prompt "please specify" and corresponding space, should be removed from this form.

The third and fourth options for "good cause" are "Juvenile respondent is suitable for a less restrictive level of care," and "Juvenile respondent requires a more restricted level of care." The court does not need to know about a child's placement level unless the court is holding a *Flores* bond hearing and placement is relevant. Bond hearings for UCs are most necessary when children have a suitable sponsor identified to whom they can be released, but ORR is failing to release because of a determination that the child is a danger to the community. For children in secure detention, the bond hearing may provide them the opportunity to contest the basis for their level of confinement—their alleged risk to themselves or others or commission of a criminal offense. To replace the third and fourth options, more relevant, nondiscriminatory options should be provided, such as: "ORR has transferred the child to a placement in [city, state]" and/or "the child has been released to a sponsor in [city, state]."

The "Next Court Appearance" section should include which court the child has a scheduled court appearance for and the court's location information. This information is relevant to indicate where the UC will need to be transported and ensure the UC's new location is appropriate for the child's pending court proceedings. Therefore, the Form P-14 must include "Court Name" and "Court Address" fields.

P. The Proposed "Family Group Entity" Form P-15 Lacks Explanations for Certain Fields, so Commenting Parties Are Unable to Fully Opine on the Form.

Form P-15 is used by the ORR Intakes Team to associate UCs who are members of the same family with each other. This is a new instrument that ORR plans to add to this collection.

It is unclear what the "Parent Entity" and "Entity Owner" fields in Form P-15 are intended to convey. Therefore, we cannot fully opine on this form and request further information on these sections. The Agencies should provide the definitions and purposes for "Parent Entity" and "Entity Owner" so that the public can better understand what the Agencies aim to achieve with this form and its fields.

Q. The Proposed "Influx Transfer Manifest" Form P-16 Fails to Capture the "Transfer Requests" Section as Seen on the Portal, Lacks Explanations for Certain Fields and Neglects to Show the Drop-Down Menu Options.

Form P-16 is used by designated care provider staff and ORR staff to plan, track, and notify stakeholders of group transfers to an influx care facility. This is a new instrument that ORR plans to add to this collection. After showing the standard "Data Entry Window" for Form P-16, the document depicts how the information will appear on the actual case management page. The same components in the "Data Entry Window" show up on the case management page

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<sup>&</sup>lt;sup>281</sup> See *id*.

<sup>&</sup>lt;sup>282</sup> Rachel Prandini & Alison Kamhi, Immigration Legal Res. Ctr., *Practice Alert on Flores v. Sessions: Ninth Circuit Holds that All Detained Children Have the Right to a Bond Hearing* 2 (2017), https://www.ilrc.org/sites/default/files/resources/flores\_v.\_sessions\_practice\_alert\_final.pdf. <sup>283</sup> *Id.* 

under the "Details" tab. However, one additional section is found on the case management page, but not the "Data Entry Window": "Transfer Requests." It is unclear why the "Transfer Requests" section does not appear in the "Data Entry Window" for Form P-16. As such, unless the Agencies are able to provide a reason for this discrepancy, the "Data Entry Window" should also include the information intended to be documented under the "Transfer Request" section of the case management page under the "Details" tab.

Here are additional concerns and recommendations:

Section/Field(s)	Comment	
Section: No section	Unable to view the drop-down options that populate the "Status"	
name.	field. Thus, we cannot fully opine on this section and request more	
	information on this section.	
<b>Field(s)</b> : First,		
prompts include	<b>Recommendation</b> : Provide the drop-down options for the "Status"	
"Status" with a drop-	field and examples of what would populate in the "Program-Facility"	
down menu and	search field.	
"Program-Facility"		
with a search		
function.		
Section: "System	It is unclear what the fields under the "System Information" section	
Information"	are intended to convey, and the drop-down menu options for "Entry	
	Origin" are not provided. Thus, we cannot opine on this section and	
Field(s): "Legacy Id,"	request more information on this section.	
"Profile Name" with a		
search function,	<b>Recommendation</b> : Provide explanation as to the relevance of the	
"Description,"	"System Information" section. Provide the drop-down options for	
"Priority," "Web	"Entry Origins."	
Email," "Subject,"		
and "Entry Origin"		
with a drop-down		
menu.		

Form P-16's Tabs		
<b>Tab</b> : There is an	It is unclear what this file section would include.	
"Influx Transfer		
Manifest Page –	<b>Recommendation</b> : Provide explanation of why a file section is	
Related Tab," where	included and provide examples of the files that would be included in	
it shows "Entry	this section.	
History," "Entry		
Team," and "Files."		

#### Form P-16's Windows

Window: "Files Data Entry Window."

Field(s): "Record Type" with a dropdown menu, "Title," "Document Title" with a drop-down menu, "Date Document Issued (If applicable)" with a calendar function, "Date Received" with a calendar function, "Expiration Date" with a calendar function, "Description," "Verified by Government Agency/Consulate" with a drop-down menu, "Entry" with a search function,

"Individual" with the search function, "Adult Contact Relationship" with a search function.

It is unclear whether "Individual" refers to the child. If so, the field should be re-labeled to read as, "Individual UC Profile."

**Recommendation**: "Individual" should be re-labeled as "Individual UC Profile."

"Files Data Entry Window" appears to be a standard entry window that pops up when a document is being added. The fields are identical to the fields in the "Document Data Entry Window" for the UAC Profile Form P-13. Across the Placement and Transfer Forms, there must be a uniform and consistent process when a file is being uploaded to UAC Path. This will ensure the same important information about the document is being recorded.

**Recommendation**: Maintain the uniform process of uploading and recording files across all forms in UAC Path.

R. The Proposed "Influx Transfer Manual and Prescreen Review" Form P-17 Should Not Equate Criminal Charges or Convictions with Present Dangerousness and Should Clarify the Effect of Meeting Pre-screen Criteria.

Form P-17 is used by designated care provider staff to evaluate each UC's eligibility to be transferred to an influx care facility. Care provider staff review and update information daily during times of influx. This is a new instrument that ORR plans to add to this collection. The "Manual Review" section has three columns: "Criteria," 'Status," and "Comment." The "Status" and "Comment" columns' rows are uniform. The "Status" column's rows prompt the individual to select status from a drop-down menu.<sup>284</sup>

 $<sup>^{284}</sup>$  We are unable to comment on the adequacy or appropriateness of the drop-down menu options because we are unable to view the drop-down menu options.

The following criterion is concerning: "Is not a danger to self or others (including not having been charged with or convicted of a criminal offense)." A charge of a crime, or even conviction, is not dispositive of a child's dangerousness. The relevance of a conviction should be strictly limited to the present dangerousness inquiry, only violent offenses should be considered, and ORR must abide by state confidentiality laws in any inquiry into juvenile charges, convictions or dispositions. Inquiry into prior charges, convictions or dispositions implicates serious privacy and confidentiality concerns. For an in-depth analysis of the privacy and confidentiality protections that must be afforded to a child's ORR records, please refer to Section III.D.1.a.<sup>285</sup> As such, the Commenting Parties recommend the Agencies, at a minimum, reframe the question to read as "Is not a present danger to self or others (including not having *a current charge* or *recent conviction* of a *violent* criminal offense)."

The "Prescreen Criteria" section of Form P-17 has three columns: "Criteria," "Status," and "Override Reason." The "Status" column's rows prompt the individual to select a status from a drop-down menu: either choosing "Pass" or "Fail." It is unclear whether a positive or negative response to each criterion would mean that the child "passes" or "fails." Therefore, clarification must be provided. Instead of "pass/fail," the responses could be "yes/no," with preceding instructions that read: "A 'No' response to any of the below questions indicates that the child does not meet prescreen criteria placement. If influx transfer is still being sought, [appropriate ORR personnel] must complete the grant of an override reason." For accountability purposes, the form should include fields to identify the person authorizing or denying the override and their signature. To that end, we recommend the Agencies add the following fields: "Individual Granting/Denying Override Reason," "Signature of Individual Granting/Denying Override Reason," and "Reason for Granting/Denying Override Reason".

S. The Change from "Child" to "Minor" Across Various Forms is Dehumanizing Language that Fails to Center the Humanity and Vulnerability of Children in ORR Custody, Which May Lead to Serious and Tangible Harm to a Child.

Across multiple forms, the term change from "child" to "minor" should be reversed because language impacts the subsequent treatment of the targeted population. The intentional switch from "child" to "minor" fails to center the humanity and vulnerability of children in ORR custody. The World Health Organization recommends that language must not discriminate against, stereotype, or demean people on the basis of age. For example, the words "juvenile offender" and "juvenile delinquent" do not reflect children's full identities and fail to acknowledge their capacity to change and grow. Accordingly, it is suggested to refer to an individual in the juvenile justice system as "young person with justice system involvement" or "young adult impacted by the justice system." Due to the harmful descriptors of previously

<sup>286</sup> World Health Org., WHO Style Guide (2013).

<sup>&</sup>lt;sup>285</sup> See supra Section III.D.1.a.

<sup>&</sup>lt;sup>287</sup> Words Matter: Using Humanizing Language, Fortune Soc'y, https://fortunesociety.org/wordsmatter/ (last visited Mar. 12, 2021).

incarcerated individuals, these children experience greater stigma and discrimination that impact their access to resources for survival.<sup>288</sup>

More recently, the Biden Administration proposed a directive to replace the word "alien" in the U.S. Code to "noncitizen." The use of anti-immigrant rhetoric, including the proliferation of the word "alien" by the Trump Administration, led to an exponential growth in the number of hate crimes reported against the Latinx population. Package is designed to encourage more inclusive language in the agency's outreach efforts. The actions of the Biden Administration acknowledge the harm inflicted against immigrants and communities of color due to the word "alien" and similar rhetoric. Therefore, the same treatment must be afforded to children in ORR custody. ORR must center the humanity of these children and should refer to them as "children" and not as "minors."

#### IV. CONCLUSION

The Commenting Parties urge the Agencies not to promulgate the Proposed Forms as published for comment because they will cause serious, long-lasting harm to immigrant children, and many of the forms are inconsistent with the FSA, the TVPRA and the Fifth Amendment Due Process Clause, and raise serious privacy, confidentiality, and self-incrimination concerns. Additionally, the Proposed Forms should not be implemented because deficient notice was provided under the APA.

<sup>&</sup>lt;sup>288</sup> Nguyen Toan Tran et al., *Words Matter: A Call for Dehumanizing and Respectful Language to Describe People Who Experience Incarceration*, 18 BMC Int'l Health & Hum. Rts. 1, 1 (2018) https://bmcinthealthhumrights.biomedcentral.com/track/pdf/10.1186/s12914-018-0180-4.pdf.

Molly O'Toole & Andrea Castillo, *Democrats Unveil Broad Immigration Reform Bill with Citizenship Path for 11 Million*, L.A. Times (Feb. 18, 2021, 3:27 PM PT), https://www.latimes.com/politics/story/2021-02-18/bidentakes-swing-at-immigration-reform-with-bill-on-citizenship-path-for-11-million.

<sup>&</sup>lt;sup>290</sup> Brian Levin, James J. Nolan & John David Reitzel, *New Data Shows U.S. Hate Crimes Continued to Rise in* 2017, CBS (June 26, 2018, 11:52 AM), https://www.cbsnews.com/news/new-data-shows-us-hate-crimes-continued-to-rise-in-2017/ (reporting that hate crime against Latino people increased by 176%).

<sup>&</sup>lt;sup>291</sup> Daniel Hernandez, *From 'Alien' to 'Noncitizen': Why the Biden Word Change Matters in the Immigration Debate*, L.A. Times (Feb. 18, 2021) https://www.latimes.com/entertainment-arts/story/2021-02-18/immigration-alien-noncitizen-language-politics-undocumented.



# The UAC Manual of Procedures

(UAC MAP)

For ORR Staff, Contractors, and Grantees

**Section 3: Services** 

Office of Refugee Resettlement
Office of the Director
The Division of Policy and Procedures
January 2019 – Version 1.0

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Look for these **icons** for quick cues on what is required for a specific procedure or a reference to a particular policy in the UAC Policy Guide.

- **UAC Policy Guide (ORR Guide to Children Entering the United Stated Unaccompanied)**
- **⊠** Email
- Tasks associated with a deadline
- Form or other template
- \* UAC Portal
- Phone call

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### 3.1 Summary of Services

See Section 3.1 of <u>UAC Policy Guide</u> (ORR <u>Guide to Children Entering the United Stated Unaccompanied</u>) (UAC Policy <u>Guide</u>).

#### **OVERVIEW**

This section includes procedures for care providers who are administering required services for UAC in ORR care, including admissions and orientation; UAC screenings, assessments and required notices; education; nutritional services; services related to culture, language, and religious observation; recreation and leisure time; telephone calls and visitation rights; and other mandated services.

Care providers are required to provide services in a child-friendly, structured, safe, and productive environment that meets respective state guidelines, relevant federal law and settlement agreements, their Cooperative Agreements, the ORR Policy Guide and the UAC Manual of Operations (UAC MAP) and local building, fire, and health and safety codes. (For general guidance see **Appendix 3.1 Checklist for Child Friendly Environment.)** 

These services must be sensitive to the age, culture, religion, dietary needs, native language, sexual orientation, gender identity, and other important individual needs of each UAC. All UAC in ORR care are entitled to human rights protections and freedom from discrimination and abuse.

Care providers must administer all services and assessments for all UAC even if a UAC is in ORR custody for a short time. Care providers are required to have the capacity to provide services in the language spoken by the majority of UAC in their facility and/or provide translation services.

ORR expects care providers to tailor the dissemination of information, such as the orientation regarding sexual abuse and sexual harassment, in a manner that is appropriate for tender aged UAC and other younger UAC in their care. ORR also expects clinicians and other qualified staff to find effective ways to tailor delivery of services, such as substituting standard group counseling sessions for direct observation and therapeutic play and games in an informal setting, to address post trauma needs of younger UAC.

Care providers must provide UAC who are placed into staff secure, secure, and RTC with notice of the reasons for the placement or continued placement. Care providers must regularly review a restrictive placement for a possible "step downs" to a less restrictive environment.

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### 3.2 Care Provider Admissions and Orientation for UAC

See Section 3.2 of the UAC Policy Guide.

#### **OVERVIEW**

Care provider services begin when the care provider takes physical custody of the UAC. At that point, the care provider admits the UAC into the care provider program via the UAC Portal, provides food and beverages and other services, and notifies and informs UAC of his or her rights and responsibilities. The care provider gives the UAC an orientation within 48 hours of admission.

Key Players	Responsibilities
Designated care	Admits UAC into program, provides placement authorization form and
provider staff	required notifications to UAC, conducts an initial medical exam, and
	provides a standard orientation to all UAC.

Related Forms/Instruments	Used By
Placement Authorization Form	Designated care provider staff
Authorization for Medical, Dental, and Mental Health Care	Designated care provider staff
Initial Intakes Assessment and Interviewing Guidance for Clinicians and Caseworkers	Designated care provider staff
Notice of Placement in a Restrictive Setting	Designated care provider staff
Notice to Juvenile Aliens in Federal Facilities Funded by DHS or HHS by Reason of Their Immigration Status	Designated care provider staff
Legal Resource Guide for UAC	Designated care provider staff
Initiol Medical Exam	Designated care provider staff

### 3.2.1 Admissions for UAC

See Section 3.2.1 of the UAC Policy Guide.

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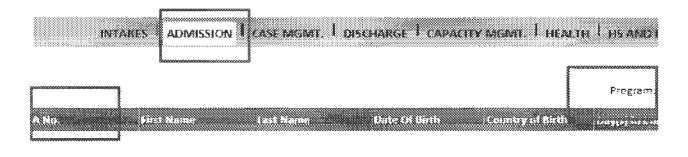
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#### **PROCEDURES**

- 1. **Upon arrival at the care provider facility**, the designated staff admits the UAC to the care provider program in the UAC Portal by completing the following steps:
  - Go to the Admission tab of their specific program. NOTE: ORR care providers
    with more than one facility must designate the correct program from the list.
    (See Fig. 3.1 UAC Portal Admission Navigation Tab).

Fig. 3.1 UAC Portal Admission Navigation Tab



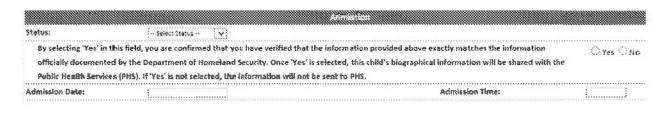
- Enter the UAC case file by clicking on the Alien number on the left-hand side which brings the user to the Admission screen (See Fig. 3.2 Admission Screen.)
- Select "admit" under status.
- If the UAC did not arrive at the program, contact ORR Intakes to confirm the status of the UAC and ask ORR Intakes if "cancel" should be selected for the status of the UAC (do not select the status "pending").
- Answer "yes" to the question "By selecting "Yes" in this field....." and fill in the date and time, and click "save."
- Upload all DHS documents and forms given to the facility at placement. ���

**NOTE:** UAC MAP Section 1: Placement in ORR Care Provider Facilities **Section 1.3.4 UAC Transferred to ORR Custody** includes a "Quick Glance: How to Admit UAC to Program" as well as additional guidance on reviewing and uploading DHS records in the UAC Portal.

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#### Fig. 3.2 Admission Screen



NOTE: Foster parents are not responsible for admitting UAC.

- 2. Within 2 hours of admission and within 4 hours of admission into an HPC or Influx Care Facility, the designated staff:
  - Provides food and beverage to the UAC (asking about any food allergies and/or dietary restrictions);
  - Allows the UAC to shower or bathe, with assistance if required due to disability or young age;
  - Provides the UAC with clean clothing, clean bedding, and personal hygiene items and documents this in the UAC case file;
  - Ensures, to the extent practical under the circumstances, that the UAC does not come into contact with other UAC currently placed at the program until he or she has showered/bathed and eaten;
  - Creates an inventory list for all cash and other property obtained at admission. The UAC must sign the inventory sheet and the care provider must provide the UAC with a copy of the inventory, retaining the original document in the UAC case file. See the Quick Glance: UAC Personal Property.

## **Quick Glance: UAC Personal Property**

Care providers must conduct an inventory of all UAC cash and property upon admission into the care provider's care. UAC belongings that are stored must be kept in a secure location to be returned to the UAC at release or transfer. Care providers must prevent mishandling, loss, or theft of the UAC's personal cash and property. UAC

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UAC's personal property should be thoroughly cleaned and sanitized before storage or use by the UAC. UAC should have access to their personal property upon request, if safety allows, during normal business hours or other reasonable time during the weekends or holidays.

Care providers must develop a waiver for UAC who wish to keep certain pre-approved items, such as religious bracelets or prayer books or materials, in their possession while in care. The inventory must be updated to include any additional property the UAC received during the UAC's stay with the care provider.

In the event that a UAC runs away, the care provider must keep any property the UAC leaves behind for 90 days. If the UAC does not contact the care provider to claim their property within 90 days, gently used clothing or other similar items may be donated to a local charity or shelter. If the UAC leaves items of value (\$25 or more in cash, jewelry), the care provider must try to contact the parent or family either in home country or in the United States for their preference (mail the property or donate). If the care provider is unable to reach the parent or family, items of value may be donated to a local charity or shelter. The care provide may recycle or dispose of any items that are unable to be donated

3. Within 24 hours of admission, the designated care provider staff:

- Verifies that all DHS documents that accompanied the UAC are complete and accurate. If the UAC's reported name or date of birth is incorrect, the designated staff attempts to verify the information on the UAC birth certificate through school records and/or the UAC's parents, if possible (see also step 4 below).
- Takes the UAC's photograph and uploads it to the UAC portal. (Note: Care
  providers may take photographs and record videotapes of UAC in care for
  purposes of identification or for the child's personal use. ORR prohibits
  release of any photographs or videotapes of any UAC for public use, including
  for training purposes or for promotional materials without written
  authorization from ORR.)
- Determines if it is safe to allow the UAC to contact family members or other relatives, following ORR policy and procedures and the care provider's internal safety procedures. Provides UAC an opportunity with assistance, as necessary, to contact family members, or other relatives, or the UAC's consulate.
- Uploads the following into the UAC Portal and saves a copy in the UAC case file case file with appropriate signatures:
  - o Placement Authorization form
  - o Authorizatian far Medical Dental and Mental Health Care form
  - Page 2 of Legal Resource Guide Legal Service Provider List for UAC

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○ Supporting documents from referring federal agency (e.g. DHS) ② 句

**NOTE**: If there are concerns that the UAC may be 18 years of age or older, the designated staff follows the procedures outlined in Section 1: Placement in ORR Care Provider Facilities **Section 1.6.2**.

- 4. Within 24 hours of obtaining the UAC birth certificate and the name and age of the UAC doesn't match the DHS records, the designated care provider staff notifies the local DHS FOJC about the discrepancy in information and includes information about how the discrepancy was identified and the attempts made to verify the information, such as verification from Consulate. The notification includes a request to DHS FOJC for an updated Notice to Appear (NTA) to reflect the correct name and A number. If the UAC has an attorney, cc the attorney in the correspondence. (See also UAC MAP Section 1.3.4.) The designated staff makes changes to the name and/or DOB in the UAC Portal.
- 5. **Within 24 hours of admission**, care provider staff trained in the use of the *Initial Intakes Assessment* form
  - Interviews the UAC in a private setting using all questions in the assessment to identify any immediate needs and/or issues.
  - Completes all sections of the Initial Intakes Assessment in the UAC Portal.
  - Saves a copy in the UAC case file.
  - If the UAC responses raise suspicions that the UAC's health or life is at imminent risk or his/her condition places the safety of others at imminent risk, calls 9-1-1 for crisis response and transportation to the nearest emergency room; follows significant incident reporting procedures (See Section 5.7.3 Significant Incidents).
  - Determines if the UAC's responses indicate that he/she falls under any of the criteria for trafficking under TVPRA. @

See Quick Glance: Tips for Completing the Initial Intakes Assessment.

Appendix 3.2 is the Initial Intakes Assessment.

**NOTE:** Care providers must complete a new *Initial Intakes Assessment* after each transfer within the ORR network.

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#### Quick Glance: Tips for Completing the Initial Intakes Assessment

The Initial Intakes Assessment allows the care provider to identity any immediate needs or issues, identity the severity of any medical or mental health needs and ensure that the needs are met; facilitate gathering of basic identifying information, and inform the UAC's initial housing/bed assignment.

Phrase questions in a child-friendly and culturally appropriate manner to engage the UAC. Inform the UAC that self-disclosures of previously unreported criminal history or violent behavior to any other children, care provider staff, ORR, or others may result in the child's transfer to another care provider facility and may affect their release.

#### UAC Basic Information—Auto-populates in the UAC Portal

**Family Information**—Document any relative or non-relative contracts in the United States as well as the name and contact information of anyone that the UAC wishes to inform of their placement.

**Medical**—Document any observable or reported medical needs and immediately report them to the clinician, lead case manager, program director, or other supervisor designated for follow-up care, and/or any on-call medical staff member for further guidance on the need to seek immediate medical care.

Mental Health--Document any observable or reported mental health questions in this section and/or if any concerning behaviors or emotions were observed or reported and immediately report them to the clinician, lead case manager, program director, or other supervisor designated for follow-up care for further guidance on the need to seek mental health care.

Safety Assessment--Document any observations and/or concerns that the UAC has regarding his/her safety. If the UAC answers "yes" to any of the safety assessment concerns, immediately report them to the clinician, lead case manager, program director, or other supervisor designated for follow-up care for further guidance.

Interviewer Summary of Critical Issues that Need Immediate Attention and Action Taken— Summarize critical issues and note the steps taken to address identified critical issues as well as any actions for the immediate future.

**Certification**—Enter name, title, and date and time the assessment was completed. If a translator was used, enter the translator's, name, language translated, and the date and time.

See also ORR Policy Guide Section 5.8 Significant Incident Reports and Notification Requirements for information gathered at intakes that may require an SIR.

- 6. Within 48 hours of admission, for secure, staff-secure or non-TAR (Treatment Authorization Request) residential treatment center programs only, the care provider staff:
  - Provides the UAC with the Notice of Plocement in a Restrictive Setting and ensures that the UAC signs or marks the notice. The original signed form is

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- placed in the UAC case file and a copy uploaded to the UAC Portal. (If the UAC refuses or declines to sign the form, the staff member should note that on the form and complete the staff section).
- 7. Within 2 business days, the designed staff ensures that UAC receives an initial medical exam and uploads the *Initial Medical Exam* form and any prior medical evaluations (for UAC transfers) into the UAC Portal and saves a copy into the Health tab. (See below Subsection 3.4.2) the UAC case file. ② 1000

# 3.2.2 Orientation

#### **PROCEDURES**

#### **Quick Glance: Orientation Accessibility**

The care provider must present the orientation in a way that is appropriate for the age, culture, and language of the child or youth. The orientation must be provided in formats that are accessible to UAC with limited English proficiency, visual or audio impairments, or other type of disability, as well as those with limited literacy skills.

- --If the UAC is not literate, the care provider must verbally explain all the documents in the UAC's native or preferred language.
- --If forms are not translated into a language that the UAC can read, the care provider staff must verbally translate the document for the child or youth and document in the UAC's case file that the form was verbally translated.
- --Care providers lacking staff who speak a UAC's native or preferred language must make every attempt to utilize a professional translation service for the UAC's orientation. In cases where no such service exists or is unavailable, care providers must consult with the FFS, PO and other relevant stakeholders to create and implement a strategy for communicating with the UAC as effectively as possible. One possible strategy may be to create a written translation of the orientation information and documents.
  - 1. Within 48 hours of admission, the care provider provides a standardized orientation for all UAC that, at a minimum(See Quick Glance: Orientation Accessibility above), includes the following topics:

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- Explanation of the nature of the UAC's custody in ORR including the fact that
  they will either be released to a qualified sponsor in the United States; or they
  will attend a court hearing to request to go home to their family; or will request
  to work with an attorney to file for legal relief to stay in the United States.
- Emphasis that the UAC must attend an immigration court hearing whichever occurs first either:
  - After the UAC is released to a sponsor at a court located nearest the sponsor; or
  - After the UAC has been in ORR custody for 60 days at a court located near the care provider, or
  - While in ORR custody, the UAC may request at any time to go to immigration court earlier and not wait the full 60 days.
- · Care provider rules, responsibilities, and procedures;
- Care provider behavior management policies;
- Care provider grievance policies and procedures (See the Quick Glance to Grievance Policies and Procedures);
- Care provider daily schedule;
- The UAC's rights and responsibilities;
- The fact that they will get a legal rights presentation by a legal rights attorney ("The Know Your Rights" presentation) and will receive a pamphlet about the immigration process;
- Emergency and evacuation procedures;
- Explanation regarding the possibility of transfer to another care provider facility or an influx care facility.

#### Quick Glance: Care Provider Grievance Policies and Procedures

Care providers must have written internal grievance policies and procedures that meet the following standards.

If needed or requested by the UAC, a staff member, another youth, a family member, UAC's legal representative or a legal service provider may help a UAC write up the grievance. All staff must be trained on the grievance policy and procedures. Extra copies of the UAC grievance forms need to be readily available to UAC.

Examples of grievance may include, but are not limited to:

- --Complaints of services denied/not being provided to the UAC
- --Forceful religious observation
- -- Unresolved complaints regarding shelter environment/living conditions
- --Sexual abuse, sexual harassment, or inappropriate sexual behavior
- --Breach of confidentiality by staff

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- --Staff putting UAC at risk of harm
- -- Unnecessary monitoring of mail/phone calls

Written grievance policies and procedures must be easily understood by children and provided in the languages of the majority of UAC in care. The grievance procedure must clearly explain the following: the process for initiating a grievance, how and by whom the grievance will be addressed and the procedure to follow if the grievance is not addressed in a satisfactory manner.

The care provider must take into consideration the age and maturity of the child when processing any grievance. Copies of written grievances and their final resolutions must be maintained in the UAC's case file.

The care provider must implement policies and procedures to identity and handle timesensitive incidents reported through a grievance that involve an immediate threat to the health, safety, or welfare or a child or youth. In the case of medical emergencies, staff must ensure the minor receives proper medical attention.

The care provider must address the grievance policy and procedures during program orientation and post grievance procedures in a common area. Each UAC in attendance must receive a copy.

Care providers must report all UAC grievances according to ORR reporting policies and procedures. (For example, if the grievance is about a fight between UAC, they report via a regular SIR. If the grievance is about sexual harassment, they report it as a SA/SIR) The program must provide a written decision or response to the grievance within 5 days of receipt. Care providers must immediately respond to allegations of sexual abuse or sexual harassment reported via a grievance. If the grievance involves an immediate threat to the health, safety, or welfare of a UAC, the care provider must immediately respond as needed.

- 2. Within 48 hours of admission, the care provider must provide all UAC with a separate orientation from any immigration-related topics, on sexual abuse and sexual harassment policies and procedures, including but not limited to:
  - Zero tolerance policy for all forms of sexual abuse, sexual harassment, and inappropriate sexual behavior;
  - The right of UAC to be free from sexual abuse and sexual harassment as well as the UAC's right to be free from retaliation for reporting such incidents;
  - Definitions and examples of UAC-on-UAC sexual abuse, staff-on-UAC sexual abuse, coercive sexual activity, appropriate and inappropriate relationships, and sexual harassment;
  - How to report sexual abuse and sexual harassment, including:

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- Reporting to any care provider staff member, volunteer or contractor either verbally, in writing, or via a grievance;
- Reporting to ORR by telling an FFS or calling the ORR Hotline;
- Informing an outside community service provider via telephone or in writing;
- Reporting to consular officials via telephone or in writing.
- An explanation of a UAC's right to receive treatment and counseling if the UAC is abused.
- Boundaries and respecting one another.

As part of the orientation, the care provider must

- Provide every UAC with the <u>ORR Pamphlet (What You Need to Know About Sexual Abuse and Harassment);</u>
- Provide every UAC with a care provider pamphlet that contains, at a minimum, the following:
  - The care provider's policies and procedures related to sexual abuse and sexual harassment;
  - The child or youth's rights and responsibilities related to sexual abuse and sexual harassment;
  - How to contact diplomatic or consular personnel.
- Provide every UAC information regarding the local and/or national service
  providers and organizations (local child advocacy centers, rape crisis centers,
  immigrant victim service providers, and or other community service provider to
  provide services to victims of sexual abuse and sexual harassment that occurred
  at the care provider facility) available to assist UAC.

Care providers must document in case files that every UAC received the orientation and the ORR and care provider pamphlets as well as the list of local and/or national service organizations available to assist UAC, as noted in the **Quick Glance** below.

3. As part of the orientation described in step 2 above, the care provider provides verbal and written notice to ALL UAC regardless of gender the notice in English and Spanish related to the *Garza v. Arza* court ruling as well as the <u>ORR Pamphlet (What You Need to Know About Sexual Abuse and Harassment)</u>

#### Appendix 3.3 is the Garza v. Arza notice in English and Spanish.

**NOTE**: The *Garza v. Azar* ruling includes a requirement to post the English and Spanish versions of the notice on housing bulletin boards adjacent to the notice required by ORR's Interim Final

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Rule. Care providers must display ORR Posters and notices in prominent locations throughout the facility, including on housing bulletin boards, next to telephones, and throughout the care provider facility. See **UAC Policy Guide 4.7.2 Bulletin Board Postings**.

4. ORR also requires care providers to post an additional notice, "The Notice for Shelters" adjacent to the Garza v. Azar notice. In addition, providers must make available the "A Woman's Right to Know" booklet in places where reading materials, pamphlets, and other information are made available to UAC, in color where possible. The booklet is available at https://dshs.texas.gov/wrtk/

Care providers must also provide all UAC with a written copy in Spanish and English of "The Notice for Shelters" as well as verbally explaining the content in the notice at time of orientation.

#### Appendix 3.4 is The Notice for Shelters.

- 5. The care provider's designated staff provides the UAC a tour of the care provider's facility and shows what various areas are used for, noting emergency evacuation routes and exits. If safety does not allow for a tour, the facility layout and emergency routes and exits must be verbally explained to the UAC.
- 6. The care provider documents that the UAC receives all orientation information in the UAC case file.

# 3.3 Care Provider Required Services

See Section 3.3 of the UAC Policy Guide.

#### **OVERVIEW**

This section includes procedures for all *Flores* mandated services for care providers in all settings, including standard shelter, restrictive settings, and long term foster care.

Key Players	Responsibilities			
Case manager or clinician	Conducts Assessment for Risk and UAC Assessment; develops Individual Service Plan and UAC Case Review (case manager).			
Other care provider staff	Provide services, including education, transportation, activities related to <i>Flores</i> mandated services.			

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Foster care	Provides services in a community setting
parent(s)	

Related Forms/Instruments	Used By			
Assessment for Risk	Qualified case manager or clinician (UAC Policy Guide 4.8.1 notes who may conduct the assessment.)			
UAC Assessment	Qualified case manager or clinician			
Individual Service Plan	Qualified case manager or clinician			
UAC Case Review	Qualified case manager or clinician			
Ohio Youth Assessment System (OYAS) Reentry (RET) Tool  OYAS-RET Interview Guide OYAS-RET Score Sheet OYAS-RET Self Report Questionnaire	Qualified case manager or clinician in secure and staff secure facilities			

# 3.3.1 UAC Assessment and Case Review

See Section 3.3.1 of the UAC Policy Guide.

#### **PROCEDURES**

#### Assessment for Risk

- Within 72 hours of admission, a qualified case manager or clinician conducts an
   Assessment for Risk to assess the UAC for risk of being a victim or a perpetrator of
   sexual abuse while in ORR care. The case manager or clinician:
  - Interviews the UAC in a private setting in a child-friendly and culturally appropriate manner using all questions in the instrument (see ORR Policy Guide Section 4.8.1 Assessment for Risk).
  - Uses the specific questions in the assessment, but also draws upon their professional training and experience to obtain additional information to complete a thorough assessment.
  - Completes all sections of the Assessment for Risk in the UAC Portal using information gathered from a variety of sources, including, but not limited

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to, the Assessment for Risk interview, any other conversations with the UAC, court records, case files, behavioral records, and other relevant documentation.

Saves a copy of the Assessment for Risk in the UAC case file.  $\mathfrak{O}^{+}$ 

#### 2. The clinician reviews the results:

- Makes an individualized determination to ensure the safety and health of the child, using the Assessment for Risk, along with any other completed assessments to inform the child's assignment for housing, education, recreation, and other services.
- Considers the youth's gender self-identification and the health and safety of UAC when making a housing assignment for a transgender or intersex UAC (See Policy Guide Section 4.8.2).
- Does not use the result of the Assessment for Risk to place a child on one-on-one supervision unless there are exigent circumstances. (See Policy Guide Section 4.8.2)
- Reports any UAC disclosures made during the assessment in accordance with ORR policies and Procedures.
- If the assessment indicates that the child experienced prior sexual victimization or perpetrated sexual abuse, ensures follow-up, as appropriate, with any necessary medical or mental health services.
- If medical or mental health referral is necessary, the UAC must receive a medical and/or mental health evaluation no later than 72 hours after the referral.
- If the UAC's responses indicate that they fall under any of the criteria for a mandatory or discretionary home study and/or post release services, immediately refers the case following the referral process (see UAC MAP Section 2.4.2 Home Study Requirement).

#### The case manager or clinician:

- Continuously updates the Assessment for Risk when the case manager or clinician learns any new information that would change the housing, education, recreation, and other service assignments of the UAC.
- Updates the Assessment for Risk every 30 calendar days while the UAC is in care (every 90 days for UAC in long term foster care).
- Completes a new Assessment for Risk after each transfer within the ORR network of care. This includes transfers to an Influx Care Facility.

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 Immediately reports any significant changes in behaviors indicative of emotional stress, significant shifts in behavior and/or symptoms requiring intervention of a mental health professional to the Shift Supervisor and Lead Clinician.

**NOTE**: Do not delete previously entered information when updating the *Assessment for Risk*.

See Quick Glance: Guide to the Assessment for Risk.

Appendix 3.5 is the Assessment for Risk.

#### Quick Glance: Guide to the Assessment for Risk

**UAC Basic Information**—Auto-populates in the UAC Portal.

**Information Clinicians or Qualified Case Managers Obtain from Child or Youth**—Document the UAC's responses.

Questions for Clinicians or Qualified Case Managers to Answer—Document your professional assessment of the individual case based on observations and information reported by the UAC during the interview and review of case files and other records.

Housing, Other Service Assignments, and Follow-Up—Document any housing or other service assignments needed to ensure the safety and well-being of the UAC. Indicate specific actions and follow-up. If housing and other service assignments changed at any time, including after the initial placement, describe the change, the reason for the change, and date in this section. Certification—Enter the signature of the official completing the assessment including name, title, and the date and time the assessment was completed. If using a translator, have the translator enter his/her signature, name, the language translated, and the date and time the assessment was completed.

#### **UAC Assessment**

- Within 5 calendar days of admission, a qualified case manager or clinician conducts a UAC Assessment by
  - Interviewing the UAC in a private setting using the Interviewing Guidance for Clinicians and Case Workers to evaluate the UAC for services and as a basis for the UAC's release plan.
  - Completing all sections of the UAC Assessment in the UAC Portal (See Quick Glance: Guide to Completing the UAC Assessment).

Appendix 3.6 is the Interviewing Guidance for Clinicians and Case Workers.

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- 2. If the qualified case manager or clinician needs to update the *UAC Assessment* past the five calendar day time frame, he or she enters the additional required or relevant information into the *UAC Case Review*.
- If the UAC's responses indicate that he/she falls under any of the criteria for a
  mandatory or discretionary home study and/or post release services, immediately refers
  the case following the referral process (see UAC MAP Section 2.4.2 Home Study
  Requirement).
- 4. The UAC Assessment must be fully completed before:
  - Submitting a home study referral
  - Submitting a release recommendation
  - · Submitting a transfer request except in the case of an emergency transfer
  - The case coordinator issues a third-party recommendation. 🚱 🗐

NOTE: Complete a new UAC Assessment after each transfer within the ORR network of care.

#### Quick Glance: Guide to the UAC Assessment

The UAC Assessment interview must be in a private setting. The interviewer must phrase questions in a child-friendly and culturally appropriate manner to engage the UAC. The interviewer must ask follow-up questions based on the UAC responses to obtain as much detail needed to inform the following: individual service plan, safety plan, and the UAC's release plan, regardless if the questions are explicitly stated in the UAC Assessment instrument and the Interviewing Guidance for Clinicians and Case Workers.

Inform the UAC that self-disclosures of previously unreported criminal history or violent behavior to any other children, care provider staff, ORR, or others may result in the child's transfer to another care provider facility and may affect their release.

The questions may be asked out of order so that the interview may flow naturally.

Assessment of the UAC does not end with the interview. The interviewer must continue to build a rapport with the UAC and continuously assess him/her while the UAC remains in ORR care.

**UAC Basic Information**—Auto-populates in the UAC Portal.

Additional Basic UAC Information—Document the city and neighborhood of origin, previous placement, religious affiliation, case manager's name, and clinician's name.

**Journey and Apprehension**—Document the circumstances leading up to and including the UAC's journey to the United States and his/her apprehension.

**Family and Significant Relationships**—Document familial and other significant relationships in the UAC's country of origin and in the United States.

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Medical—Document any health concerns raised by the UAC, the UAC's medical and medication history, and any reported allergies. Review the UAC Portal Health Tab to ensure that the initial medical exam was completed and fully documented. If a medical exam is not completed, notify medical staff immediately. If the information required is in the UAC Portal Health Tab, write "see Health Tab" in lieu of entering the information.

**Education**—Document the UAC's academic history in order to determine the appropriate educational services for the UAC.

**Legal**—Document the provision of legal services while in ORR custody and whether the legal service provider identified possible legal relief.

**Criminal History**—Document any criminal history disclosed by the UAC to help determine if the UAC is in the appropriate level of care or if the UAC needs further assessment.

**Mental Health and Behavior**—Document the UAC's mental status during the interview to evaluate the UAC's level of post-traumatic stress, depression, and exposure to violence and the UAC's substance use history.

**Trafficking**—Document any trafficking concerns in the UAC's country of origin, during the UAC's journey, and in the United States. This includes concerns related to coercion, debt bondage/labor trafficking, and commercial sex trafficking.

Mandatory TVPRA 2008—Document whether the case requires a TVPRA-mandated home study based on information gathered in the assessment and from any other relevant sources. Additional information—Report any additional information that may be pertinent to the UAC's identified needs that has not been covered in the sections above or that requires further elaboration. Identity assessment areas that require immediate follow-up or intervention. Note any significant issues that are not urgent but may require additional assessment, observation, or services.

Certification—Enter the signature of the official completing the assessment including name, title, and the date and time the assessment was completed. If a translator was used, have the translator enter his/her signature, name, the language translated, and the date and time the assessment was completed.

#### Appendix 3.7 is the UAC Assessment

#### Individual Service Plan

- 1. Within 5 calendar days of admission and concurrent with completion of the UAC Assessment, the case manager uses information gathered from preceding interviews and assessments (i.e., Initial Intakes Assessment, UAC Assessment, Assessment for Risk) to complete in the UAC Portal an Individual Service Plan (ISP) for the UAC (see Quick Glance: Guide to the ISP).
- 2. Creates a new ISP every 30 calendar days after admission— (90 calendar days for LTFC) and any time there is a substantive changes in the UAC's case information. **NOTE**: the

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**NOTE**: Complete a new ISP after each transfer within the ORR network of care.

#### Quick Glance: Guide to the ISP

Case managers complete the following sections of the ISP in the UAC Portal:

**UAC Basic Information**—Auto-populates in the UAC Portal.

Mandatory Services—Document the start and end date and the person responsible for mandatory services. If the service only occurs once and does not span over multiple days, the start and end dates will be the same. If the service is ongoing, an end date does not need to be entered until the UAC is released from care.

Other Services (optional)—Document any additional services; enter the type of service, task, frequency, start and end date, and person responsible.

**Certificate**—Enter the signature, name, title, and date and time the *ISP* was completed. Include a copy of the certified ISP in the UAC case file.

#### Appendix 3.8 is the Individual Service Plan.

#### **UAC Case Review**

After 30 calendar days in care or when substantive changes or receipt of additional information after the UAC Assessment is complete, the case manager completes all sections of the UAC Case Review in the UAC Portal. See Quick Glance: UAC Case Review.

#### **Quick Glance: UAC Case Review**

Case managers complete the following sections of the *UAC Case Review* in the UAC Portal: **UAC Basic Information**—Auto-populates in the UAC Portal.

**Medical**—Document any observable or reported medical needs. If any observed or reported medical concerns are checked in this section, they must be immediately reported to the clinician, lead case manager, program director, shift supervisor, and/or any on-call medical staff member for further guidance on the need to seek immediate medical care.

**NOTE:** If the information required in this section is in the UAC Portal Health Tab, the case manager may write "see Health Tab" in lieu of entering the information.

**Legal**—Document provision of legal services while in ORR care and whether the legal service provider identified possible legal relief.

**Trafficking**—Document any trafficking concerns in the UAC's country of origin, during the UAC's journey, and in the United States. This includes concerns related to coercion, debt

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bondage/labor trafficking, and commercial sex trafficking. **NOTE:** Click "yes" to the question that the child is a victim of a severe form of trafficking in persons if ORR has issued a trafficking eligibility letter for the UAC even if the case is still waiting for the final Trafficking Eligibility Letter from OTIP.

Mandatory TVPRA 2008—Document whether the case requires a TVPRA-mandated home study based on information gathered in the assessment and from any other relevant sources. Recommendations—Document the current release recommendation for the UAC. Care Plan—Document actions taken and outline care plans that have or will be implemented to address reunification, legal, and mental health needs, and/or issues. Certificate—Enter the signature, name, title, and date and time the assessment was completed.

2. If the UAC's responses indicate that he/she falls under any of the criteria for a mandatory or discretionary home study and/or post-release services, the case manager

immediately refers the case following the referral process in UAC MAP Section 2.4.2.

- 3. The case manager maintains direct contact with each UAC in care and meets at least once a week with each UAC to discuss reunification options. The case manager documents the weekly meetings with the UAC and communication with potential sponsors in the UAC case file.
- 4. The case manager continuously updates the *UAC Case Review* within 30 calendar days after admission (90 days for LTFC) or in the following circumstances:
  - The care provider receives required or relevant information that was unknown during the time of the assessment
  - The care provider receives additional information from the UAC or other sources.

**NOTE:** Do not delete previously entered information when updating the *UAC Case Review*.

- 5. The case manager creates a new UAC Case Review:
  - Every 30 calendar days after admission into a shelter, staff secure, secure, transitional foster care or residential treatment center care provider facility
  - Every 90 calendar days after admission into an ORR long term foster care program
  - Any time there is a substantial change in the UAC's case information (e.g., upon reunification, age out, or voluntary departure)

Appendix 3.9 is the UAC Case Review.

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#### UAC with Known, Disclosed, or Alleged Violent Criminal History

 In addition to the Initial Intake Assessment, UAC Assessment, ISP, and UAC Case Review, the case manager gathers criminal history information as described in the Quick Glance: Guide to UAC with Known, Disclosed, or Alleged Violent Criminal History.

The case manager **immediately** elevates the criminal histor**y** information to the clinician, case coordinator and the assigned FFS to review placement based on the alleged crime and completes an *SIR* and notifies the UAC's parents/legal guardian, potential sponsor, attorney of record or the local legal service provider, and child advocate, if applicable. The FFS reviews the case, placement, and sponsorship and notifies DHS ICE to request that they verify the criminal activity, which may include an Interpol check or record request from the UAC's Consulate.

For UAC with known, disclosed, or alleged violent criminal history, clinicians must request a psychologist perform a psychological risk assessment as described below. Where appropriate, collect criminal history information and the completed psychological assessment. The psychological assessment must be completed within 7 business days of the child's admission (or when care provider is made aware of the criminal history. The psychological evaluation focuses on:

- Current level of functioning
- · Treatment recommendations
- · Placement recommendations
- Risk assessment
- Psychosexual (if applicable) <sup>(3)</sup>
- The clinician reviews the psychological assessment in collaboration with the case manager to determine if the UAC is in the appropriate placement level of care and if the UAC needs any additional services.
- 3. The case manager notifies the assigned FFS and case coordinator of any case updates and follows ORR home study policy and procedures for cases that meet the TVPRA or other home study criteria.

# Quick Glance: Guide to UAC with Known, Disclosed, or Alleged Violent Criminal History

If a UAC has a known, disclosed, or alleged violent criminal history that includes violence toward others (e.g., murder, attempted murder, rape, sexual assault, assault with a deadly weapon, arson, an act that resulted in the serious injury or death of another), the case manager and FFS work together to gather information about the activity.

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#### **UAC Adjudicated in the United States**

#### The case manager:

- -- Obtains UAC criminal records, court records, court disposition, correctional detention records, child welfare records, mental health records, dental records, medical records, police reports, proof of rehabilitation, and letters of explanation of the incident(s).
- --Identifies and contacts the parole or probation officer and/or child welfare worker assigned to the UAC, if any.

If the case manager is unable to successfully obtain criminal records or contact the courts or law enforcement entities, he/she documents attempts to obtain additional information and elevates the issue to the FFS for assistance.

If criminal records are no longer available because they have been expunged, the case manager verifies as much information as possible with the relevant court or law enforcement entity; documents efforts to obtain information in the UAC Case Review, and proceeds with making a recommendation regarding the suitability of the potential sponsor and current ORR placement level.

#### UAC Reportedly Involved in Criminal Activity in His/Her Country of Origin

#### The case manager

-Reaches out to the Country of Origin Consulate for assistance in corroborating any allegations. **NOTE:** Do not reach out to the Consulate if the UAC has filed a credible fear claim.

#### The FFS

-- Asks DHS and/or other law enforcement entities for assistance in verifying criminal activity in country of origin.

#### All UAC in Secure and Staff Secure

1. All UACs placed in secure and staff secure must undergo a risk assessment within 30 days of referral to the program by a clinician trained in the use of the Ohio Department of Yauth Services (OYAS) Reentry Tool, which is comprised of the OYAS-RET Interview Guide, OYAS-RET Score Sheet, and OYAS-RET Self Report Questionnoire. Clinicians use OYAS Reentry Tool in conjunction with other appropriate clinical assessment tools and their professional judgement to establish a comprehensive assessment of risk level. The clinician uploads completed OYAS-RET Interview Guide, OYAS-RET Score Sheet, and OYAS-RET Self Report Questionnaire into the UAC Portal and saves copies in the UAC Portal and in the UAC case file.

NOTE: Prior to the interview, the clinician must inform the UAC that self-disclosures of previously unreported criminal history or violent behavior to any other children, care

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provider staff, ORR, or others may result in the child's transfer to another care provider facility and may affect their release. 🗘 🗐 🗥

2. UAC in staff secure and secure undergo a re-assessment every 30 days following the initial OYAS assessment and the file updated in the UAC Portal and case file. ①

See also UAC MAP Section 1.4.2 30 Day Restrictive Placement Case Review.

Appendix 3.10 Includes screen shots of the OYAS RET Interviewing Guidance, OYAS RET Score Sheet and the OYAT Reentry Self-Report Questionnaire.

#### CASE MANAGEMENT

- Case managers are responsible for gathering and maintaining the UAC case records.
   This includes keeping the UAC Portal up-to-date as well as the hard copy file. See Quick Glance: Summary of UAC Case Records. Case managers manage the case file by:
  - Timely entry and organization of documents, records, and any other information in the UAC case file.
  - Including records generated and gathered for the UAC and his/her sponsor.
  - Storing hard copy UAC case files in a secure location accessible only to case managers, clinicians and other designated staff and archiving records in a secure location.

# **Quick Glance: Summary of UAC Case Records**

The master case file is the complete UAC file. For service delivery, programs typically maintain documents separately while the child is in care (i.e. the phone logs might be housed in areas where UAC make the actual calls, medical usually keeps their documents separate while the child is in care, some required document are on the UAC Portal etc.)

When a child is discharged, programs must consolidate all the separate files into a master case file, so that all the information is in one place. Depending on the facility, the master case file is either electronic or hard copy or a combination of both.

The UAC Case File includes (and may include other relevant information) (See also **Section 5.6.2**):

- Criminal or delinquency records, including but not limited to, police reports, arrest records, court information, and probation records
- --Psychological, psychiatric, and/or psychosocial records
- --Individual Service Planning

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- --Educational assessments and records, including individualized education plans, report cards, and other education status updates
- -- Clinical screening tools
- --Medical records, including but not limited to, immunization records, TB tests, physicals, prescription information, specialist visits, ER visits, drug and alcohol treatment, Treatment Authorization Requests, other medical treatment and follow-up
- --Dental records, including but not limited to, documenting the UAC's scheduled dentist visit, reporting on the dental visit, any dental exams and any dental work
- --Significant Incident Reports and internal incident reports
- --Official ORR forms (such as Placement Authorization, Notice of Placement in a Restrictive Setting
- -- Any documentation required under State licensing
  - 2. Case managers must meet with each UAC at a minimum of once a week to assess and discuss case outcome goals and services. UAC placed temporarily in hospitals and mental health facilities should continue to receive visits from case managers at a minimum of once a week to assess and communicate the needs and progress of UAC to the care provider staff and the FFS. Case managers must document these meetings with the UAC in the case manager notes section of the UAC case file.
  - Case manager must participate in weekly staffing meeting with care provider staff and the Case Coordinator to provide recommendations for best course of action on behalf of UAC. (See additional case management consultations for UAC in restrictive environments).

# 3.3.2 Long Term and Concurrent Planning See Section 3.3.2 of the UAC Policy Guide.

# 3.3.3 Screening for Child Trafficking and Services for Victims

See Section 3.3.3 of the UAC Policy Guide.

## **PROCEDURES**

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#### **UAC Assessment tool**

See Section 3.1.1 of the UAC Policy Guide.

#### Referrals

- 1. If the care provider suspects the child may be a victim of trafficking, refer the case to the Office on Trafficking in Persons (OTIP) within 24 hours.  $\bigcirc$
- 2. Care provider make referrals by emailing the child's Significant Incident Report (SIR) with trafficking concerns and the child's UAC Assessment to Childtrafficking@acf.hhs.gov.
- 3. In cases where the care provider is uncertain whether a child may be a victim of trafficking, or if the care provider is uncertain whether to make a referral, the care provider can email OTIP at <a href="mailto:Childtrafficking@acf.hhs.gov">Childtrafficking@acf.hhs.gov</a> or call OTIP at 202-205-4582 to schedule a case staffing.

#### Eligibility and Interim Assistance Letters

☐ See Sections 3.3.3 and 5.6.2 of the UAC Policy Guide

- 1. OTIP issues and mails the Eligibility and Interim Assistance Letters to the care provider facility in which the child is currently housed. The care provider must retain the letter until the child leaves the care provider's custody. The original letter must go with the child upon release or transfer per 5ection 5.6.2 of the UAC Policy Guide.
- 2. If the care provider submitted a referral to OTIP and the child leaves the care provider's custody before the Eligibility or Interim Assistance Letter arrives, the care provider must immediately notify OTIP and provide an updated address and point of contact for the child by emailing <a href="mailto:Childtrafficking@acf.hhs.gov">Childtrafficking@acf.hhs.gov</a>. The timely notification of a change of address is imperative to ensure that the child can access time-limited benefits and services.

When a care provider receives Eligibility and Interim Assistance Letters while the child is in their care:

- The care provider must explain next steps and help the child and child's sponsor to understand the benefits and the services available to the child, including comprehensive case management services through the Trafficking Victim Assistance Program (TVAP).
  - Information about services is available here: <a href="https://www.acf.hhs.gov/sites/default/files/otip/traffickingservices.pdf">https://www.acf.hhs.gov/sites/default/files/otip/traffickingservices.pdf</a>
  - Information about TVAP case management services is available here: https://www.acf.hhs.gov/otip/trafficking-victim-assistance-program-grantees

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- 2. When OTIP issues an Interim Assistance Letter, OTIP will include a TVAP provider on the email to help facilitate the process of connecting the child to TVAP case management services. After receipt of this email, the care provider must give the TVAP provider the child's most recent contact information to ensure the child receive services.
- 3. The care provide must explain to the child and child's sponsor the importance of keeping the original copy of the Interim Assistance and/or Eligibility Letter in order to access benefits and services.
- 4. If there are any questions regarding victim assistance, benefits, or local service referrals, the care provider, child, or child's sponsor can call the National Human Trafficking Hotline (NHTH) at 888-373-7888, which is available 24 hours a day, 7 days a week.
- 5. If there are any questions about state-specific protocols for benefits and services, the state refugee coordinators can provide further guidance.
- 6. Document the details of these discussions and explanations in the UAC case file.

When a child has a case that is being reviewed by OTIP and is discharged from the care of a care provider *prior* to receiving the Eligibility or Interim Assistance Letter determination, the care provider must:

- Explain the Child Eligibility process to the child and child's sponsor to help them to
  understand that the child's case is still under review by OTIP and to expect an upcoming
  decision on their case from the care provider, post-release services worker, or the
  identified point of contact.
- 2. Explain to the child and child's sponsor what to do should the child receive an Interim Assistance and/or Eligibility Letter, as well as the benefits and the services that are available to the child should the child be issued a letter.
- 3. Explain to the child and child's sponsor the importance of keeping the original copy of the Interim Assistance and/or Eligibility Letter in order to access benefits and services.
- 4. When OTIP issues an Interim Assistance Letter, OTIP will include a TVAP provider on the email to help facilitate the process of connecting the child to TVAP case management services. While the child may be in the care of their sponsor, after receipt of this email, the care provider must give the TVAP provider the child's most recent contact information so that the child receives services.
- 5. If there are any questions regarding victim assistance, benefits, or local service referrals, the care provider, child, or child's sponsor can call the National Human Trafficking Hotline (NHTH) at 888-373-7888, which is available 24 hours a day, 7 days a week.

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- 6. If there are any questions about state-specific protocols for benefits and services, the state refugee coordinators can provide further guidance.
- 7. Document the details of these discussions and explanations in the UAC case file.



# 3.3.4 Safety Planning

See Section 3.3.4 of the UAC Policy Guide.

Care providers must develop a written safety and security plan contained in the care provider's policies and procedures to maintain safety. The safety plan must address the following emergencies: runaways, evacuations, medical and mental health emergencies, and disease outbreaks.

Care providers and foster care programs and homes must meet the safety requirements maintained by their local/state licensing entity, fire code regulations, and local zoning and building code regulations.

Care providers must submit all state and local licensing reports including citations, monitoring assessments and corrective actions, to the ORR PO within three business days of receipt of such reports, citations, or assessments.

Safety Planning for Field Trips or Other Off-Site Outings

The program must consider staffing ratios for field trips and outings for the safety of UAC as well as the type of outing. The ratio should be higher than expected under normal conditions.

UAC not eligible for field trips or outings include:

- Those currently on 1:1 supervision
- Those determined to be a run risk
- UAC who have not completed all initial assessments
- UAC whose identity is in question.
- UAC with behavior in last 48 hours that if done in public would draw unnecessary attention to all UAC at the outing or be deemed unsafe or aggressive.

Procedures far UAC Who Run Away

In cases involving an unauthorized absence by a UAC (runaway), care providers should NOT discharge the UAC for 24-48 hours (depending on the circumstances). They should follow

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emergency SIR reporting and notifications procedures that are outlined in the ORR Ops Guide Section 5.7.2. Emergency Incidents.  $\odot$ 

#### **Evacuations**

Care providers must establish written evacuation plans for implementation in the event of earthquakes, fires, hurricanes, tornadoes, other natural disasters or other potentially dangerous situations that threaten the safety of the program or the UAC's placement.

Foster care provider agencies shall have an evacuation plan for all foster homes. Emergency or respite care homes may be designated for this purpose. Foster care programs that provide other ORR residential care may use the shelter care facility, where appropriate.

Procedures shall also include a list of agencies and individuals to notify in the event of an evacuation. The list must include all relevant ORR contacts, the DHS, and local law enforcement. The emergency contact list shall be posted in the care provider's office area in a visible location.

Care providers shall identify information of importance to transport during the evacuation, including information on each UAC (identifying any health information, including allergies and prescription medications), a photo of each UAC, information on each UAC's potential sponsor, and important telephone numbers.

Additionally, care providers shall identify items of importance to transport during the evacuation, including medications taken by any UAC, and any other items that are essential to the well-being of any individual or group of UAC. In the event of an emergency, care provider staff will not be expected to physically remove case files. However, care providers shall have in place procedures to protect service and organizational records, whether in electronic or paper form, from destruction by fire, water, loss, other damage and from unauthorized access. Care providers are expected to comply with their state licensing requirements regarding the protection of records.

Care providers must conduct evacuation drills **every 60 days** to ensure maximum preparedness in the event of a disaster or potentially dangerous situation. Additional evacuation drills may occur depending on state licensing requirements. Each drill must use alarms and the complete and orderly evacuation of the building. Care providers must follow state licensing requirements pertaining to the specific content of the drill. Foster care programs must follow state licensing requirements for evacuation drills with all foster homes providing care to the ORR. ①

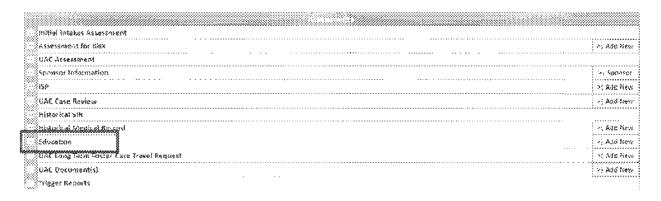
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### 3.3.5 Academic Educational Services

- See Section 3.3.5 of the UAC Policy Guide.
  - 1. Within 72 hours of admission, a teacher or trained staff must assess a UAC to determine an individual educational competency level and document the assessment in the UAC case file and in the Education Tab under Assessments in the UAC Portal. (See Fig. 3.3)

Fig. 3.3 Education Assessment Tab



2. Care providers must design a minimum of six hours of educational coursework to meet the unique competency levels of the UAC in care (as well as the *Flores* requirements), including linguistically appropriate educational materials and English language training, Monday through Friday, throughout the year. The care provider must submit the curriculum to the PO for approval. (See below for exceptions for LTFC and Parenting UAC. Breaks for federal holidays do not need ORR approval.) Educational field trips may count toward the six hours of coursework if approved by the PO.

Daily class attendance must be documented in the UAC's case file. Care providers must provide academic reporting and progress notes on the UAC including transcripts, grades, or other assessments. These documents must be updated in the case file and in the UAC Portal.

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3. **Upon release to a sponsor**, the care provider must include educational assessments and records. (See **UAC MAP Section 2.8 Release from ORR Custody.**)  $\mathfrak{D}^{-}$ .

#### Parenting UAC

Parenting UACs who recently had a baby should follow the doctor's orders regarding when they may return to a full school day. The care provider should email the PO and FFS when a UAC will be out of school for an extended period of time and when the UAC returns to the classroom setting. For UAC who have toddlers, the care provider must care for the toddler so that the UAC may attend school.

#### Long Term Foster Care

UAC who are in LTFC receive academic instructions in a community setting. Because most school districts do not offer year round academic instruction, LTFC providers must work with their POs to develop a summer learning schedule for UAC in care.

# 3.3.6 Vocational Educational Services

- See Section 3.3.6 of the UAC Policy Guide.
- 1. Vocational programs may not replace academic education or substitute for basic subject areas, nor the required six hours of academic instruction.
- 2. The care provider must obtain prior authorization from their assigned PO before implementing a vocational program. The following information must be submitted in the authorization request:
  - Name of vocation or trade
  - Rationale
  - Staff qualifications
  - Location of vocational training
  - Safety precautions (staff)
  - Safety education (students)
  - Student capacity
  - Frequency and duration of course
  - Community partnerships
  - Course curriculum
  - Policy and procedures for standardizing the process of selling UAC created items and dispensing funds to the UAC from a sale of any item made by a UAC.

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# 3.3.7 Services Related to Culture, Language, and Religious Observation

- See Section 3.3.7 of the UAC Policy Guide.
- 1. The care provider must support the cultural identity of UAC through various programs and services, which may include:
  - Contact with family or other support system through telephone calls, letters, or visits
  - Addressing the UAC by his or her given names
  - Inclusion of cultural awareness in daily activities, such as menus, clothing, and hygiene routines
  - Celebration of culture-specific events and holidays
  - Academic education covering various cultures within a classroom setting
- 2. Care providers must ensure that UAC obtain skills necessary for acculturation in the United States. In addition to English language classes, services may include:
  - Access to community services
  - Academic learning, including geography
  - Celebration of U.S. holidays
  - Discussion of U.S. laws
  - Food and entertainment (e.g., music, books, magazines, and dancing)
  - Field trips to local historical, scientific, or cultural points of interest
- 3. Care providers must make every effort to provide on-site staff or interpreters who speak the native language of each UAC. If staff or on-site interpreters are unavailable in the geographic region of the care providers, they may utilize a paid translation services, such as a telephone-accessible language line.
- Care providers must make every reasonable effort to provide services in the UAC's
  preferred language. The UAC may choose to communicate in his or her preferred or native
  language (safety of UAC and staff permitting).
- 5. Care providers must grant UAC every opportunity to observe and practice their spiritual or religious beliefs. Care providers must provide the following:
  - Assurances that religious and spiritual beliefs, including food preparation and dietary restrictions are permitted and accommodated;
  - Internal procedures reflective of ORR religious services policy

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 Religious items, books, or clothing at the UAC's request, provided that these requests are reasonable.

## 3.3.8 Recreation and Leisure Time Services

- See Section 3.3.8 of the UAC Policy Guide.
- 1. Care providers must have a recreation and leisure plan that includes daily outdoor activity, weather permitting. The plan:
  - Must include at least one hour per day of large muscle activity and one hour per day of structured leisure time activity that does not include time spent watching television.
  - Be increased to three hours on days when school is not in session.
  - Not be included in the 6 hours per day of required educational services.
  - Account for insufficient onsite recreation areas by taking UAC to off-site parks, community recreation centers or other locations (off-site recreation involves a higher staff-to-child ratio—see staff ratios for field trips and outings).

**NOTE:** Care provider may not restrict outdoor recreational time because a UAC has previously run away or is a flight risk. Care providers are required to mitigate any flight risk concerns and allow UAC access to outdoor activities.

- 2. Care provider must provide, at a minimum, one monthly opportunity for escorted visits to the surrounding community for all UAC.
- Foster parents must provide opportunities for recreation as part of the regular activities of the family. UAC in individual foster homes must participate in normal family and community activities with consideration to the demands of school, homework, and extracurricular activities.
- 4. Care providers must document UAC's participation in physical activity, leisure time and off site visits in the UAC case file.

# 3.3.9 Nutritional Services

See Section 3.3.9 of the UAC Policy Guide.

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# 3.3.10 Telephone Calls, Visitation, and Mail

- See Section 3.3.10 of the UAC Policy Guide.
- 1. Care providers must develop internal procedures to accommodate potential visitors and include safety and privacy measures to ensure that the UAC and facility are safe and that the UAC may communicate with the visitor in private. The care provider should ensure the UAC's case file includes the approved list of visitors and a log documenting any visits.
- 2. Care providers must provide UAC the opportunity to make a minimum of two telephone calls per week (minimum 10 minutes each) to family members and/or sponsors in a private setting—this includes those living in the United States and abroad. UAC telephone calls must be private. A clinician or case manager or other professional staff may only listen in on a UAC conversation with the approval of the FFS, based on safety concerns. Care providers must document the weekly phone calls in the UAC case files as well as a list of approved contacts.
- 3. Care providers may use social media under supervision of the case manager to find and contact family members or potential sponsors for a particular UAC. A case manager or other staff must supervisor the use of social media for these purposes. While in care, UAC may not post to a social media site. Pictures or any identifying information of UAC in care (present or in the past) should not be posted to the care provider's Facebook or in any other care provider social media content.
- 4. UAC in LTFC may have access to cell phones and social media. The LTFC provider must ensure that every foster parent has ground rules in place on the safe use of social media and electronic devices, including cell phones and computers. Ground rules should reflect the following best practices:
  - No UAC under the age of 13 may join Facebook or other social media sites.
  - Privacy settings for the Internet and Facebook must be set to the strictest levels.
  - Keeping the computer in a central location and high traffic zone for all
    users.
  - A requirement that all UAC understand the ground rules for social media and cell phone use in the household.
  - Telling UAC to avoid responding to questionnaires, free giveaways and contests (these links make children susceptible to identity theft).
  - Foster parent monitoring of pictures posted by UAC online and vetting of friends to make sure he/she is not a target. (A UAC's online friends should match his/her friends. Foster parents must have access to UAC Facebook page at any time.)

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- Limiting use of computer, cell phone, and TV or gaming systems (i.e., only allowing cell phone usage at certain hours in the evening or after homework is completed).
- Educating UAC on importance of protecting their online reputation and being aware of online dangers.
- Foster parents must demonstrate and insist on proper technology etiquette, such as no bullying or teasing. Adults in the household must also teach youth to avoid disclosures and sharing of personal information, such as where they will be at a certain time or other information that may put them or others at risk of harm.

# 3.3.11 Clothing and Personal Grooming

- See Section 3.3.11 of the UAC Policy Guide.
  - Care providers must confiscate or cover any gang-related UAC tattoos, accessory or other item by:
    - Covering gang symbol tattoos at all times
    - Replacing or repairing immediately defaced care provider property, including schools books and notebooks with gang-related symbols
    - Confiscating clothing with any religious symbol that may denote gang affiliation
    - Confiscating clothing worn by UAC in a certain manner that denotes gang affiliation
    - Room checks to ensure that UAC are not defacing property with gang symbols.

Further procedures may be developed by the care provider as deemed necessary and safe for containing gang-related symbols, tattoos, and accessories.

- Upon UAC arrival, the care provider must wash and store the UAC clothing and must supply the UAC with clothing for court dates, classrooms, outdoor recreation, and sleeping, as well as undergarments and footwear and personal grooming items.
- 3. At a minimum of once a week, staff will collect soiled clothes to wash and return to the UAC in a timely manner.

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4. Care providers may require UAC to wear school uniforms during school hours and school-related outings as long as UAC are allowed to wear their personal clothing at all other times.

# 3.3.12 Assignment of Chores

- See Section 3.3.12 of the UAC Policy Guide.
  - 1. Care providers must have written policies and procedures for chores that reflect the following:
    - UAC may not be assigned chores that generate income for care providers or replace duties of paid staff
    - UAC must be medically screened before being assigned chores
    - Assignments must be developmentally and age appropriate
    - Chores must not interfere with participation in educational services,
       leisure or recreation, or meal times, as well as time set aside for showers
       or other personal hygiene activities
    - UAC has the right to request an accommodation to a chore type or schedule based on religious or cultural beliefs
    - Chores may include the maintenance of a child's sleeping area and personal space as well as help cleaning classrooms
    - Staff and not UAC should apply any cleaning agents
    - UAC should not be responsible for cleaning bathrooms in common areas
    - UAC must have equal cleaning responsibilities
    - Chores/cleaning may not be used as a means of punishment
    - Cleaning supplies must be maintained in a locked area
    - UAC may not be forced to maintain uncomfortable positions while cleaning and must wear appropriate clothing and footwear

# 3.3.13 Behavior Management

See Section 3.3.13 of the UAC Policy Guide.

All care providers (including LTFC) must have a behavioral management plan that meet child welfare best practice standards. All interventions must be positive and strength-based. Care providers may never subject UAC to corporal punishment, humiliation, mental abuse, or

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punitive interference with the daily functions of living, such as eating or sleeping. Behavior management plans must not affect the requirements of the Flores Settlement Agreement, including daily outdoor activity or leisure time.

The strength-based behavioral management policy must include the following:

- Credentials of the personnel involved in developing, approving, implementing, monitoring, and overseeing the implementation of the behavior management policy and procedures.
- System for training and assuring the competency (both written and practical) of individuals involved in all facets of behavior management.
- Procedures on how to handle, report, and follow-up behavioral incidents and emergencies.
- Documentation that all staff who come into contact with children subscribe to a Code of Ethics.
- Policy of providers that indicate that they must comply with discipline and restraint requirement as stated within the state licensure requirements.
- Crisis prevention/intervention procedures (i.e., approved de-escalation techniques, system for elevating instances of behavior that are dangerous to self or others to trained staff for review)
- Clearly articulated rules for the facility/home, list of minor and major behavioral
  infractions, earned privileges, and system for discipline that allow UAC to
  develop self-control, positive coping skills and the ability to assume responsibility
  for his or her actions.
- Any time of solitary time as a result of behavior must meet state licensing standards.

#### **PROCEDURES**

- 1. Care providers must submit their behavior management plan to their PO for approval.
- 2. Care providers and foster/group homes must post the program rules and grievance procedures in English and language of majority of UAC in care.
- 3. Care providers may conduct drug testing of UAC in accordance with state licensing requirements. Care providers must have reason for testing the minor and document the information in the minor's medical records in the UAC Portal and in the UAC case file.

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Behavior management plans must not include drug testing as a consequence or as a form of intervention.

# 3.3.14 Transportation Services

- See Section 3.3.14 of the UAC Policy Guide.
- 1. Care providers must comply with all local licensing requirements and state and federal regulations, including but not limited to the following:
  - Train all staff responsible for transporting UAC.
  - Transport UAC in a safe and humane manner and under the supervision of trained and experienced personnel.
  - Transport UAC in a manner that is appropriate to the UAC's age and physical and mental needs, including proper use of car seats for young children.
  - Transport UAC with special needs in vehicles that can best accommodate their needs.
  - The number of staff escorts must meet (or exceed) the minimum staff/child ratio required by the transporting care provider's licensing agency.
  - To the greatest extent possible under the circumstances when transporting UAC, assign transport staff of the same gender as the child or youth.
  - Maintain constant "line of sight and sound" supervision of each UAC during transport.
  - All occupants must wear a seat belt when the vehicle is moving.
  - The driver must have a valid state driver's license and have a cleared driving record.
  - The driver must drive defensively and take care to protect the occupants and vehicle, obey traffic laws, and report damage or accidents immediately to the care provider.
  - Complete a vehicle inspection report, including an odometer reading, following each trip.
  - Create and maintain a manifest of UAC transported and account for each UAC at exit or entrance of the vehicle.
  - Regularly maintain and inspect all vehicles used for transportation.
  - Take immediate action for any defect that could render the vehicle unsafe and/or inoperable.
- 2. For any secure transportation:

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- It must involve a trained care provider staff or an agency experienced in secure transportation. Training must include the following: conflict resolution without the use of physical or mechanical restraints, the safe and effective use of approved soft restraints, and the emergency use of safe and approved physical restraints during an emergency response.
- Trained shelter or foster care staff may transport UAC in their care to a staff-secure or secure placement as long as the staff's or UAC's safety is not compromised.
- Make all transportation decisions on a case-by-case basis in consultation with the FFS.
- For UAC in ORR funded staff secure facilities, shelter facilities, group homes, and foster care homes, ORR prohibits the use of mechanical restraints at any time.
- For transport of UAC's in ORR-funded secure detention facilities, ORR
  authorizes (but does not require) the use of soft restraints. If the
  transport can be safe and secure without mechanical restraints, then do
  not use restraints. ORR does not authorize hard restraints except in an
  emergency response during a secure transport.

Care providers must submit to their PO operational details concerning secure transportation services, use of mechanical restraints during secure transport and use of mechanical restraints in response to an emergency.

- UAC with serious physical or mental health issues or exposed to a communicable disease should not be moved until medically cleared by a health care professional or ORR is consulted.
  - The health care professional must email the medical clearance to the care provider and the FFS.
  - If a care provider must move a UAC with a communicable respiratory disease (e.g., infectious TB), the UAC must wear a mask at all times and the care provider must implement Universal Precautions. If exposure is undetermined, the care provider should employ an emergency vehicle and consult with the Division of Health for Unaccompanied Children (DHUC).

# 3.3.15 Use of Restraints or Seclusion in Emergency Safety Situations in RTCs

Ш	See Section	3.3.15	of the	UAC	Policy	Guide.
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3.3.16 Notification and Reporting of the Death of a UAC				
See Section 3.3.16 of the UAC Policy Guide.				
Care providers must follow <i>SIR</i> reporting and notification procedures (see ORR Ops Guide Section 5.8.1 Emergency Incidents).				
3.3.17 Use of Restraints During Transport and in Immigration				
Court				
See Section 3.3.17 of the UAC Policy Guide.				
3.3.18 Restraints in Immigration Court and Asylum Interviews				
See Section 3.3.18 of the UAC Policy Guide.				
3.4 Health Services				
See Section 3.4 of the UAC Policy Guide.				
ORR's Division of Health for Unaccompanied Children (DHUC) oversees public health screening				

ORR's Division of Health for Unaccompanied Children (DHUC) oversees public health screening and the provision of health services to UAC in ORR care. DHUC monitors for serious medical conditions and infectious diseases of public health importance through an automated notification system. DHUC responds to care provider programs 24 hours a day, 7 days a week and provides management guidance on infectious diseases, serious mental health conditions, and complex medical cases. DHUC also ensures reporting of public health information to the appropriate public health authorities.

Each care provider program that accepts placement of children in ORR custody must have an established network of healthcare providers, including specialists, emergency care services,

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mental health practitioners, and dental providers that will accept ORR's fee-for-service billing system.

ORR has developed its health care policies with the goals of ensuring the children's physical and mental well-being and the safety of care providers, medical personnel and communities. Through its care providers and other health care professionals and based on the requirements of the Flores Settlement Agreement, ORR provides the following services:

- Routine medical and dental care
- Family planning services, including pregnancy tests and comprehensive information about and access to medical reproductive health services and emergency contraception
- Emergency health services
- A complete medical examination (including screening for infectious diseases) within two business days
- Immunizations in accordance with recommendations of the Centers for Disease Control and Prevention (CDC)
- Administration of prescribed medications and special diets
- · Appropriate mental health interventions

Under the terms of the Flores Settlement Agreement, ORR care providers must also provide:

- At least one individual counseling session per week conducted by a trained social work staff with the specific objective of reviewing the child's progress, establishing new short term objectives, and addressing both the developmental and crisis related needs of each child and
- Group counseling sessions at least once a week that may be adjusted according to the needs of the population.

Care providers must deliver services in a standardized manner that is sensitive to the age, culture, native language, and needs of each unaccompanied alien child. Care providers also must meet state and local licensing and public health requirements.

Care providers must have policies and procedures based on state or local laws and regulations to ensure the safe, discreet, and confidential provision of prescription and nonprescription medications to unaccompanied alien children, secure storage of medications, and controlled administration and disposal of all drugs.

From intake to release, care providers must observe all children for signs or symptoms of communicable diseases and act accordingly to protect others against possible infection.

Care providers must have an identified space within the shelter facility that may be used for quarantine or isolation in the event that an unaccompanied alien child must be separated from

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the general population for a medical reason. The space must be suitable to house a child for days or weeks.

The care provider must have written policies, procedures, and practices that protect the confidentiality of medical information.

3.4.1 Health Care Eligibility and General Standards		
See Section 3.4.1 of the UAC Policy Guide.		
3.4.2 Initial Medical and Dental Examinations		
See Section 3.4.2 of the HAC Policy Guide		

Each child must receive an initial medical examination (IME) within **2 business** days of admission to ORR. The purposes of the IME are to assess general health, administer vaccinations in keeping with U.S. standards, find out about health conditions that require further attention, and detect contagious diseases, such as influenza or tuberculosis. The IME is based on a well-child examination, adapted for the UAC population with consideration of screening recommendations from the American Academy of Pediatrics, the Centers for Disease Control and Prevention (CDC), and the U.S. Preventive Services Task Force (USPSTF).

Components of the IME are outlined in the *Initial Medical Exam Form*, the Supplemental TB Screening Form, and *Program Guidance – Revised Initial Medical Exam Requirements*. The IME covers the following elements:

- History and physical: Vital signs, documentation of allergies, vision screen (≥5 years), a medical history, a review of systems (signs and symptoms), and a physical exam.
- Review of psychosocial risk: Mental health screening, physical abuse history, sexual activity/abuse history, and substance use history.
- Risk- and age-based laboratory testing: Influenza (if symptomatic with fever and cough or sore throat); pregnancy (girls ≥10 years and girls <10 years who have reached menarche or reported sexual activity); lead level (6 months up to 6 years); HIV (adolescents ≥13 years and children <13 years who have reported sexual activity); hepatitis C (history of IV drug use); hepatitis B (history of IV drug use or sexual activity); and chlamydia, gonorrhea, and syphilis (history of sexual activity).</li>

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- TB screening: All children (except for babies of UAC who are born in the United States) are screened with a tuberculin skin test (TST) or blood test (interferon-gamma release assay [IGRA]); IGRA is the preferred test for children ≥2 years. All adolescents ≥15 years also receive a chest x-ray (posterior-anterior [PA] view). Children <15 years only receive a chest x-ray if their TST or IGRA result is positive. Radiologists are to review and issue a report of their findings on all imaging studies including, chest x-rays.</li>
- Assessment and plan: Clinical findings noted and diagnoses made, medications prescribed, vaccinations given (in accordance with the Advisory Committee on Immunization Practices [ACIP] catch-up schedule: <a href="https://www.cdc.gov/vaccines/schedules/hcp/child-adolescent.html">https://www.cdc.gov/vaccines/schedules/hcp/child-adolescent.html</a>), labs ordered/refused, and referrals or follow-up recommended.

All elements of the IME should be started within 2 business days of the child's admission to the care provider program. The IME is performed or supervised by licensed physicians (MD/DO) or non-physician practitioners (NP or PA). The *Initial Medical Exam Form* should be completed by the healthcare provider during the IME. The *Supplemental TB Screening Form* should be filled out by the healthcare provider performing the IME or by the health department if the provider does not perform these services. Data from these forms must be entered into the IME form in the UAC Portal; all health documents (screening forms, lab results, chest x-ray reports, vaccination records) must also be uploaded to the UAC Portal.

For babies born in the United States to girls in ORR care, a Medicaid application should be prepared and submitted. The initial check-up should be documented in the UAC Portal and the office notes uploaded.

#### **Vaccinations**

UAC are eligible for the Vaccine for Children (VFC) Program and should be vaccinated by a VFC provider. Simultaneous administration of all indicated vaccines per the <u>ACIP catch up schedule</u> should be given during the IME. Minor illnesses (diarrhea, urinary tract infection, mild upper respiratory infection, and other low-grade febrile illness) are not contraindications to vaccination; in general, antibiotic treatment is not a contraindication to vaccination. Live virus vaccines (MMR and varicella), human papillomavirus (HPV), and polio (IPV) vaccines should be deferred for pregnant girls, but pregnant girls should receive all other indicated vaccinations: https://www.cdc.gov/vaccines/pregnancy/hcp/guidelines.html.

TB testing (TST or IGRA) can be done before or on the same day that live virus vaccines are administered; live vaccines may interfere with the response to TB testing and cause false negative results if TB testing is done 1 day to 4 weeks after administration of live vaccines.

If a child will need hepatitis B testing (hepatitis B surface antigen), it is preferable to draw blood samples before administering vaccines since hepatitis B vaccine given before blood samples are collected can cause false positive hepatitis B results. If it is not logistically feasible to collect

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blood before vaccines are administered, other hepatitis B tests (hepatitis B core antibody and hepatitis B surface antibody) will need to be ordered to confirm active infection if the hepatitis B surface antigen result is positive.  $\Theta$ 

#### **Repeat Examinations**

Children who are transferred to another care provider program do not need to undergo another IME, unless specifically required by state law. If a new IME is required by state law, the care provider program should inform the FFS as well as the Division of Health for Unaccompanied Children (DHUC), and cite the relevant law for ORR review. If a new IME is performed, the new healthcare provider should be given a copy of the previous IME, including all lab and chest x-ray reports and vaccination records. Depending on the timing and previous diagnoses, not all components of the IME should be repeated; the care provider should consult with DHUC on these cases. For example, if the child was previously diagnosed with latent tuberculosis infection (LTBI), a repeat TB test (e.g., TST/IGRA, CXR) should not be performed. The vaccination record should be reviewed and the next round of vaccines given at the appropriate interval.

Children who are released from ORR custody, but are referred back into care will need another IME; however, they may not need all the components, depending on the results of their previous IME, length of time they were out of ORR custody, and exposure risk. In general, TB screening should be repeated if more than 6 months have elapsed since the last screening or if a new exposure to active TB is reported since the last screening and the child was not previously diagnosed with LTBI; if previously performed, HIV testing should be repeated if new exposure risk since last IME is revealed (IV drug use, sexual activity since last IME) and the child was not previously diagnosed with HIV infection; if previously performed, sexually transmitted disease testing should be repeated if new sexual activity since last IME is disclosed. The care provider should consult with DHUC on these cases. ©

#### Follow-up Care

Children should receive follow-up care for conditions identified during health exams, as directed by the healthcare provider. Examples:

- Children who fail a vision test (20/40 or worse in either or both eyes) during the IME should be referred to an optometrist.
- Pregnant girls should be referred for prenatal care.
- Children with a positive HIV test should be referred to an infectious disease specialist.

Children who remain in care for longer than 30 days should receive their next set of vaccinations per the <u>ACIP catch up schedule</u>. Children who remain in ORR care long-term should

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have routine well-child examinations scheduled at recommended intervals; in children over the age of 3 years, annual health exams are advised.

All follow-up care evaluations should be documented in the UAC Portal and documentation uploaded. 🏵 🖰

#### Initial Dental Exam and Follow-Up Care

Care providers must provide appropriate dental care to UAC by providing initial dental evaluations, urgent dental care services, and follow-up dental services, as necessary. Prior ORR authorization is required for all dental services.

#### Initial Dental Evaluation and Six (6)-Month Dental Evaluation

Care providers must provide UAC an initial dental evaluation within 90 days but not before 60 days after the UAC's date of admission into ORR care. If state guidelines require an initial dental evaluation with a dentist before the UAC's 60<sup>th</sup> day in care, the care provider must email evidence of the relevant state guidelines to the Division of Health for Unaccompanied Children (DHUC) for prior authorization in advance of any dental provider visit occurring before the UAC's 60th day in ORR care. ①

The initial dental examination must be completed in a single visit to a dental provider. UAC may only receive one initial dental examination while in ORR care. If a UAC is in ORR care for six (6) months or longer, the care provider may schedule another dental evaluation. Dental evaluations may occur every six (6) months to ensure UAC dental health. ORR may, in its discretion, approve preventive dental services only for children in ORR care for six (6) months or longer. ©

If a UAC is transferred to another ORR care provider, the referring care provider must include all dental documentation with the UAC's transfer documentation, including initial dental examination information, if one was provided.

#### **Urgent Dental Care**

ORR will authorize urgent dental care, only if the UAC:

- Is experiencing acute tooth pain;
- Needs one or more procedures to maintain basic function; OR
- Has a severe and/or acute infection or a severe and/or acute infection is imminent (e.g. an abscess in a tooth or gums).

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#### **Follow-Up Dental Services**

If a UAC received an initial dental evaluation and was given a treatment plan, care providers may request follow-up dental services via a TAR for UAC:

- Who have been in ORR care for longer than 90 days; OR
- · Who are in long-term foster care.

If the UAC's treatment plan requires several procedures, care providers must ensure that the dental provider's treatment plan prioritizes procedures and treatments based on urgency and severity. DHUC will only approve up to four (4) procedures at one time but has discretion to approve more than four (4) procedures in one TAR in exceptional cases.

For each UAC requiring follow-up dental services, care providers may only submit up to four (4) procedures in one TAR and submit one TAR at a time. To request additional follow-up procedures, care providers must wait two weeks after the UAC's initial follow-up dental visit in order to submit another TAR to request up to four (4) more procedures. Care providers may repeat this two-week process until all follow-up dental procedures are complete. ©

3.4.3 Requests for Health Care Services	
See Section 3.4.3 of the UAC Policy Guide.	
3.4.4 Medication Administration and Management	
See Section 3.4.4 of the UAC Policy Guide.	
3.4.5 Responding to Medical Emergencies	
See Section 3.4.5 of the UAC Policy Guide.	
3.4.6 Management of Communicable Diseases	
See Section 3.4.6 of the LIAC Policy Guide	

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3.4.7 Maintaining Health Care Records and Confidentiality		
See Section 3.4.7 of the UAC Policy Guide.		
3.4.8 Medical Clearance Prior to Release or Transfer		
See Section 3.4.8 of the UAC Policy Guide.		
3.4.9 Provider Reimbursement		
See Section 3.4.9 of the UAC Policy Guide.		

Payment for health services while in ORR care is managed by a third party entity, Point Comfort Underwriters (PCU). Healthcare providers are encouraged to enter into an agreement with PCU before providing care for UACs. Contracting with PCU in advance will facilitate the appointment scheduling and billing process. Programs should submit the names of selected healthcare providers directly to PCU who will then contact the healthcare providers and work out an agreement. Facilities providing emergency or urgent services do not need to have an agreement with PCU prior to administering care.

Care provider programs must obtain approval from PCU by submitting a Treatment Authorization Request (TAR) before a mental, dental, and medical service occurs, unless it is an emergency or urgent. Guidance on submitting TARs can be found on the PCU Portal, <a href="https://maps.pointcomfort.com/login">https://maps.pointcomfort.com/login</a>.

Payment for the IME is pre-approved with the Initial Examination Authorization number, which is automatically generated on each child's ID document in the PCU Portal. All labs and chest x-rays that are part of the IME are included under the Initial Examination Authorization number, and do not require separate TARs as long as tests are performed within 72 hours of the IME date.

ORR will not approve or reimburse retroactive TARs submitted for dental procedures but may, in its discretion, allow exceptions for dental emergencies that occur over a weekend or federal holiday.

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3.5 Guiding Principles for the Care of UAC Who are LGBTQI
See Section 3.5 of the UAC Policy Guide.
3.5.1 Zero Tolerance for Discrimination and Harassment
See Section 3.5 of the UAC Policy Guide.
3.5.2 Prohibition on Segregation and Isolation
See Section 3.S.2 of the UAC Policy Guide.
3.5.3 Confidentiality with Regards to Sexual Orientation and Gender Identity
See Section 3.5.3 of the UAC Policy Guide.
3.5.4 Housing
See Section 3.5.4 of the UAC Policy Guide.
3.5.5 Restroom and Dressing Area Accommodations
See Section 3.5.5 of the UAC Policy Guide.
3.6 Long-Term Foster Care
See Section 3.6 of the UAC Policy Guide.

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#### **OVERVIEW**

Foster care is the least restrictive placement option in the ORR continuum of care. As a community-based form of care, not all services will be provided within the residential structure of the foster/group home. UAC will typically access different elements of their care in several locations, including but not limited to, public school, foster care agency offices, foster homes, and counseling centers. ORR generally uses foster care, therefore, for more long-term placement and care of children, and implementation of procedures for their care may differ from shelter care settings.

Each foster family home must be licensed in accordance with state licensing regulations. However, ORR does not permit more than six children to a two-parent foster home, even if state licensing requirements allow for higher ratios. The number of children includes both foster and biological children. State-licensed group homes may have higher ratios, which are permissible by ORR. Placements must be based in individual needs and characteristics of each child and the overall makeup of the identified foster home.

Categories of long-term foster care providers include:

- Basic foster care: UAC resides with an unrelated licensed foster parent(s) and requires only the minimal services required in a licensed foster care setting.
- Therapeutic foster care: UAC resides with an unrelated licensed foster parent(s) but receives additional treatment services and/or supervision specific to the identified treatment needs. UAC with significant emotional, behavioral, medical, and/or developmental needs receive structured treatment within a therapeutic foster care setting.
- Basic group home: UAC resides in a living arrangement with a
  designated house parent(s) and/or staff. This setting is for those UAC
  who do not wish to be in a family setting.
- Therapeutic group home: UAC resides in a living arrangement with a
  designated house parent(s) and/or staff. The setting is for those UAC
  that have difficulties within a family setting and require therapeutic
  services/interventions due to significant emotional, behavioral,
  medical, and/or development needs.

### 3.6.1 ORR Long-Term Foster Care Service Provision

See Section 3.6.1 of the UAC Policy Guide.

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#### **PROCEDURES**

In long-term foster care, an ORR care provider places the UAC with a state-certified caregiver, referred to as a "foster parent" or "house parent." The care provider is responsible for recruiting, assessing, selecting, credentialing, training, monitoring, and retaining foster/house parents and foster care sites.

The long-term foster care provider must establish community contacts for children, especially with regards to educational, health, spiritual, extra-curricular and recreational resources.

Educational Services in a Cammunity Bosed School

UAC in a foster home attend state-regulated public school or other state-licensed educational programs in the local school district of the foster and/or group home during the academic year.

The foster care provider and foster parent take part in the selection of and arrangements for educational programs appropriate to UAC's age and abilities. Foster care providers and foster parents collaborate with school personnel and advocate as needed when there are any problems with UAC in the school setting.

In conjunction with the foster parents, the care provider's case manager takes an active role in attending school conferences, individual education plan (IEP) meetings, and similar activities, whenever possible.

For public school breaks longer than two weeks, care providers are required to develop a plan of study for UAC who are placed in foster care and submit it to their PO for approval.

**NOTE:** ORR is reviewing the year-round academic requirements for LTFC in light of the difficulty of individual foster homes to provide 6 hours of structured educational activities in the summer months.

Telephone Calls, Visitation, and Mail

(See also Section 3.3.10 above)

UAC placed in LTFC can have access to a personal cell phone, computers, and other communication methods that help prepare them for making a successful transition to independent living. However, the care provider must develop and disseminate ground rules for foster homes to enforce with all UAC in care. Care providers or foster parents must communicate these ground rules verbally and in writing to the UAC.

Family visitation follows state licensing regulations. ORR does not permit family visits to take place in foster homes or group homes, but they may occur at the administrative offices of the foster care provider.

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Long-term foster care providers are not required to maintain telephone logs, except in cases with identified safety concern. In such cases, providers must maintain telephone logs as indicated in the child's safety plan.

Travel and Overnight Trips

Requests for travel and overnight trips must follow state licensing regulations.

Any travel or overnight trip request requiring custodian consent by state regulations and any travel request involving a child with flight risk or safety concerns requires prior approval by ORR. The care provider submits a request to the FFS **10 days prior to the trip departure date** and keeps a copy in the UAC's file.

Travel requests include information regarding travel destination, dates, mode and purpose, contact information and relationship of individual accompanying the UAC and exploration of any safety or security concerns.

Counseling Services

In accordance with the *Flores* Settlement Agreement, UAC in LTFC receive weekly individual counseling.

LTFC providers are encouraged to adapt group-counseling activities suitable to a community-based setting, such as youth advisory boards and foster youth support groups.

**NOTE:** At the request of a UAC, care providers are not required to complete the weekly individual counseling session or the group counseling session requirement of two group sessions per week. (See the addendum to the Cooperative Agreement.) Care providers must document this change in the UAC case file.

Case Management Services

- LTFC care providers must implement and administer a case management system that tracks and monitors a UAC's progress on a regular basis to ensure that each UAC receives the full range of program services.
- Care providers' case managers meet with UAC, at a minimum, once a month, either in
  person (preferred) or by telephone. The foster care provider uses an interdisciplinary team
  approach that includes active participation by the child (as appropriate) and a
  complementary partnership between the case manager and foster parents, and other
  agency staff members and stakeholders as needed.
- 4. Case managers maintain the Individual Service Plan and update every 90 days. Planning for independent living should be included as part of the ISP for UAC in LTFC (meal planning, cooking, nutritional requirements, medical checkups, available health care, and financial literacy). ©

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5. The case manager maintains the UAC's records in the UAC Portal. 🖰

# 3.6.2 Change in Placements While in ORR Long-Term Foster Care

#### **PROCEDURES**

Foster care providers (LTFC and TFC) must notify the FFS, CFS and the CC **24 hours prior to a placement change** and follow state licensing requirements. The foster care provider must document the change of placement in the UAC's case file.

### 3.6.3 Additional Questions and Answers About This Topic

See Section 3.6.3 of the UAC Policy Guide.

Q: Can a minor in LTFC work during the summer?

A: Yes, barring any concerns by the PO, if he/she has the proper credentials, including any necessary permits required under state law and is still in the UAC program.

If h/she is transferred to URM, then the decision would be made by the legal guardian, or whoever has legal authority for him (which may be the alien himself if he's above the age of majority) following state law where the minor resides.

Q: One of our foster parents has offered paying for driving lessons for one of our UAC in care. If this permitted?

A: Yes, if state licensing approves.

Q: What employment forms does a foster parent need to provide to the LTFC or TFC provider?

A: All foster parents must provide an I-9 form to ensure that he/she may work in the United States.

Q: May foster families have pets in the home?

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A: As long as state licensing requirements are met (including proper pet vaccines and licensing), the PO has the discretion to approve. Foster families must be vigilant for signs of allergies in the UAC.

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## **Appendix 3.1 Checklist for Child Friendly Environment**

The ORR policy is to ensure that, while adhering to state licensing requirements, UAC receive care a within a child-friendly residential environment that does not pose a safety risk to the child, staff, or neighborhood or a risk to the child of sexual abuse, sexual harassment, and inappropriate sexual behavior. The residential structure should emphasize a non-institutional, home-like atmosphere of care in the least restrictive environment.

General Residential Structure	Yes/No
Controlled entry and exit from premises	
Clean	
Child-friendly (e.g. no fire, safety, or trip hazards; murals, colorful wall paint,	
pictures/posters on wall, etc.; youth permitted to personalize assigned room	
area with pictures, personal art work, etc.)	
Furniture and building are properly maintained	
Well-ventilated	
Adequately heated/cooled	
Cleaning chemicals inaccessible to youth	
Medical supplies/prescriptions inaccessible to youth	
Alarm systems in designated areas of the residential structure	
Video monitoring in common and living areas	
"Mirrored Windows"/windows in offices where staff and visitors meet with	
youth 1:1	
Evacuation procedures posted prominently on each floor and at eye level for	
children and youth	
Fire extinguishers and smoke detectors in good working order and inspected as	
required	
Unsafe areas and equipment inaccessible to youth	
Infants/Toddlers – age appropriate furniture (e.g. cribs/bedding, high chairs,	
toys, outlet covers)	
Preprogrammed phones that provide some level of privacy and are accessible to	
youth	
Documents that should be posted/accessible to youth (In English and	Yes/No
Spanish/language most commonly spoken by youth)	
Grievance policies and procedures (grievance forms readily available to youth)	
ORR posters with phone numbers for UC to report sexual abuse/harassment	
ORR <u>and</u> care provider pamphlets on sexual abuse/harassment (additional copies	
readily available)	
Garza and other ORR Required Notices and Booklets	
Bedrooms	Yes/No

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All and the second state of the second secon	
Adequately accommodate all youth (e.g. individual bed with mattress for each youth)	
Natural Light/Dark at night	
Private place for youth to store personal belongings	
Provision of appropriate bed linens	
Desk and chair in room	
Bathrooms	Yes/No
Soap	
Toilet paper	
Towels	
Hygiene items	
Bathroom in good working order (e.g. toilets, sinks, drains, etc.)	
Hot/cold water available in sink and shower/bath tub	
Appropriate privacy	
Kitchen	Yes/No
UAC dietary restrictions posted/accessible to staff	
Food stored in a sanitary manner	
Knives/sharp objects inaccessible to youth	
Outdoor Areas	Yes/No
Video monitoring for exterior of building and surrounding premises	
Play equipment safe and in good repair	
Vehicles	Yes/No
Vehicle in good repair including, car seats and seatbelts, fire extinguisher; first aid kit.	
Insurance/Inspection current	
Other	Yes/No
Secure locations to store UAC personal property/valuables	

# Guidance Checklist for Child-Friendly Environment – Individual Foster Home Checklist

The ORR policy is to ensure that, while adhering to state licensing requirements, UAC are provided care and placement within a child-friendly residential environment that does not pose a safety risk to the child, staff, or neighborhood. The residential structure should emphasize a non-institutional, home-like atmosphere of care in the least restrictive environment.

General Residential Structure	Yes/No
Clean	
Child-friendly (e.g. no fire, safety, or trip hazards)	
Furniture and foster home are properly maintained	
Well-ventilated	
Adequately heated/cooled	

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Cleaning chemicals inaccessible to youth	
Medical supplies/prescriptions inaccessible to youth	
Evacuation procedures posted prominently on each floor	
Fire extinguishers and smoke detectors in good working order	
Unsafe areas inaccessible to youth	
Infants/Toddlers – age appropriate furniture (e.g. cribs/bedding, high chairs,	
toys, outlet covers)	
Documents that should be posted/accessible to youth	Yes/No
Foster home rules	
Bedrooms	Yes/No
Adequately accommodate all youth (e.g. individual bed with mattress for each youth)	
Natural Light/Dark at night	
Private place for youth to store personal belongings	
Provision of appropriate bed linens	
Bathrooms	Yes/No
Soap	
Toilet paper	
Towels	
Hygiene items	
Toilets in good repair	
Hot/cold water available in sink and shower/bath tub	
Appropriate privacy	
Kitchen	Yes/No
UAC dietary restrictions posted/accessible	
Food stored in a sanitary manner	
Knives/sharp objects inaccessible to youth	
Outdoor Areas	Yes/No
Play equipment safe and in good repair	
Vehicles	Yes/No
Vehicle in good repair including, car seats and seatbelts	
Insurance/Inspection current	

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#### **Appendix 3.2 Initial Intakes Assessment** First Name Last Name: AKA: Status: Date of Birth: Gender: LOS: A No.: Current Program: Age: Admitted Date: A staff mambles travined on use of this form completes is within 24 hours of the shift's admission as the one provider feeting. The staff member completing this form most be grand to ask and gather sensitive Subcompetent in a collectified day and outcomerly approximate manner. The gornous of that interment is no least about the child and decrementate or interfer that contriging the brilliag eatery and websiteing to the care provided betaknest god. In particular, these invisional should help themse, the severity of any market in creatal health needs the coolsing, entered her early are appreciately use, finishing garliering or bosts sdeptifying information, any informative smild's initial noterng/bed assignment. Inteke Interview Dets/Time Child's Primary Language: Intake conducted in what Date of departure from home Date of Arrival in the US (opprox.): country: Family information Do you know anybody in the U.S.? Include relative and non-relative contacts in this section. Is there someone we can contact to let them know you are here? Have you experienced any physical/medical problems today or (1945) No If yes, please explain: Have you experienced any physical/medical problems? C'Yes No If yes, please explain: Do you have any affergies? If yes, please explain: C'Yest No Do you have any special distany needs? Are you currently taking any prescribed or other medication? If yes, list below. Other medication may include fietbal remedies, over the counter " Vest" No Medication Observable or reported medical concerns (Chack all that apply). Caughing TYEST NO Defficulty Breathing YES! No Dizzines T'Yes No C'Yes! No Confusion FEVER Pregnant Lice Burns C Yes No Variating CYREC 100 Additional Pair Coughing Bland C'Yes' No

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Skin lesions/rash		Street No.
Sever/persistent headache		CYEST NO
raundice (Yellowing of the Statist	itses of eves;	}^ Yes € No
Meurological symptoms (Spason, d	its, tracontrollable movements, paralysis or numbness of any part of the loady)	(Trest No.
Others(ibst)		}€*Yes€ No
if injuries, wounds, breises pres	ant, describe them and how they occurred:	
List of other medical concerns:		
Have you ever been to a doctor	or stayed in a hospital? C'hesf no	
If yes, please list any visit or stay	y for any reason. Also include visits to other healers or alternative treatment	providers:
Do you have a history of tubero	ulosis? "Yes!" No	
If yes expisin:		
Do you have a history of seiture	es of convulsions? "Yes!" No	
if yes expisin:		
Do you have any scars, birthmar	rks, or taltoos? "Yes!" No	
if yes explain:		
	dical concerns are checked in the sections above, please report these to Prog	gram Director, shift supervisor, and/or any on call medical staff immediately for further
guidence on the need to seak im		
Montal Health (Check all that ap	ply)	
		er sout
Tried to burt yourself?		Chesic No
Had longes to beat, lojure or hadma	someone?	√Yej No
Harmed soyone?	······································	FresC Na
Throught of attempting solicide or l	eating yourself?	"YES" NO "YES" NO
Attemated suidde?		***************************************
Finn on anathr sent assign bases		("Yes!" file
Seen triings or people that others o	kanot see?	FYEST NO
		Trast to
Are you having thoughts of harmi-	g voutself or someone else?	
Cooperative	Ches No	
Unchaperative		
Alert	€ Yes€ No	
Distracted	f Yes No	
Calm	("Yes" too	
Eeciled	^Yes⁻ No	
Netvava	/"Yes" No	
Agitated	If Yest? No	
Confused	(CYes CNo	
Sad	CYESC No	
4):grv	CYBEF NO	***************************************
Other	R <sup>®</sup> Yes® No	
	tely for further guidance on the need to seek mental health care.	emotions were observed or reported, report to Program Director, shift supervisor, and/or
Safety Assessment Do you feel sefe now?	,	
Esplain if No:	f' Yesi <sup>*</sup> to	
Do you fear that someone will b Explain if yea:	arm you? "Yes!" No	
	oy of the safety health questions, reporte Program Director or shift supervis	
	hild's roam will be located in the facility, the number of potential roommates	
	and shower area associated with the potential room assignment. After havin	ig explained this, does he or if you have
	bout this potential housing assignment?	
Do you need anything right nov		
	Issues that naed immediate attention: id correspond to the concern described above):	
Assessment For Risk		
	e completed by a Clinicianor qualified Case Manager within 72 hours of a child	d or vauth's admission to the care or sulder facility
an a februara	room assignment or the assignment that will be given to you?	("Yest" No
Explains:		
	riate comments to you about your body, ciothes, or appearance that made i	you uncomfortable so far at ("Yes" No
this facility?		

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Do you identify as:		28			
If the shild ar youth identified as transgendered or intersex, the	n ask whether the child	or youth would cather	have a female or male staff	fill not able foliated	E temple stats
member conduct a pat down search if one was necessary?				4 - 90 404 51907	1 Temple Spain
Do you feel sale telling people about your sexual preference du	ing your time in ORR car	e?		These ge	
Explain					
Is there comething that you shink we can do to help you feel sef	e and comfortable while	you are here?		C'Yes FT Not 40	14 ; 1\$rma
Explain.					
Do you find that people make a lot of caxual comments to you o	r sboot you?"			CHARLES	
Explain					
Have you ever been sexually motive?	: <u>x</u> }				
Have you ever felt like you needed to perform sexual favors or a	lions comeons to touch y	your body as a seased v	blove at rabro m yaw	Charles No.	
additional harm, to obtain theograps uneeded or wanted, or to b	oo accepted by a percan	or group of people?			
Explain:					
Have you ever been in trouble for having sex with another perso	м;			L, AST L, MO.	
Explain					
Have you ever ned to talk to a counselor, social worker, psychol had?	ogiet, teacher, or any at	har adult because of a	nak esueisakka traxes	Chest No	
Explain:					
QUESTIONS FOR CLINICIAN TO AMSWER: [Every Question Must B	a Acommond				
Does the child or youth exhibit any gender noncenforming appe	earance or monner?			Page Page	
Explain:					
Does the child or youth have any current or criminal charges?				Property No.	
Ekplain					
Englain:					
Does the child or youth have any mental, physical, or developm		or suspected of havin	g any of the spove?		
	<u> </u>				
What is the shile's physical size and stature?	Caserbor Compile	ether Average	<ul> <li>Comprehence Assembles</li> </ul>		
Other specific information that may indicate heightened needs a	and/or additional safety	precautions:		Cited No.	
Explain:					
HOUSING, OTHER SERVICE ASSIGNMENTS, AND FOLLOW-UP					
Housing and Other Service Plan					
Children shared appropriate information with relevant care pro-	rida- fasility team			1	
Explain:					
Child or youth provided with psycholeducation on identified its	o€			٣	
taplain				_	
Child or youth provided with information on how to report thre	ats, untenidation, er han	assement by other child	fren, youth, or facility staff	r-	
Explain				_	
Child or youth moved to a private room				Г	
4 × plath				_	
Child or youth moved to a room/dorm:tory eres that matches t	he child or youth's gand	er identity (if different	from sex)	Γ	

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Child or youth provided with alternative bathroom facilities or schedule		1		
Emp2.Zaist.				
Child or youth placed in educational or estivities group(s) to reflect shild or youth's gander identity (if different from sec)				
Leplan:				
Developed and implemented a safety plan between child or youth, eliokian, and care provides staff to add	tress a specific issue	r		
Ligitain				
Implemented increased officeal cassions		-		
Espkin-				
Child or youth referred for professional mestel treath services		44.4		
Legistri:				
Child or youth placed on doom staff supervision				
Explain				
Staffed with FFS and CC for possible transfer				
Exploin:				
Other				
Fagdalit				
Stoff Signature:	Cate:			
Staff (Varie:	Staff Tritia			
Translatoria Signatusa:	Date:			
Translator's Kame	language			

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## Appendix 3.3 Garza v. Azar Notice (English and Spanish)

Please read this notice.

If you are pregnant, you have the right to decide whether to have the baby or to have an abortion.

No one who works for the government or the shelter can force your decision either way.

No one who works for the government or the shelter can tell anyone about your pregnancy or decision to have an abortion if you don't want them to do so.

A United States court has approved a legal case on behalf of all pregnant women in this shelter. The legal case was filed to prevent the government or the shelter from interfering with your ability to get information about abortion, and to get an abortion if you want one. If you are pregnant, you are protected by the lawsuit.

If you are pregnant and are having problems getting information about abortion, or getting an abortion, or if feel that you are being pressured not to get an abortion, please contact attorney Lindsey Kaley by telephone at 212-549-2633 or email at Ikaley@aclu.org. She speaks English and Spanish. Please tell her:

- Your name
- Your A-number
- Your location (shelter name, city, state)

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#### Por favor lea este aviso

Si está embarazada, tiene el derecho a decidir si desea tener un bebe o un aborto.

Ningmi agente del gobierno ni personal del albergue puede forzar su decisión de una manera u otra.

Ningun agente del gobierno in personal del albergue puede decirle a naclie sobre su embarazo o la decisión de hacerse un aborto si no quiere que lo haga.

Un tribunal de los Estados Unidos ha aprobado un caso legal en nombre de todas las mujeres embarazadas en este albergue. El caso legal fue presentado para impedir que el gobierno o el albergue interfieran con su capacidad de obtener información sobre el aborto y hacerse un aborto si lo desea.

Si está embarazada, está protegida por la demanda judicial.

Si está embarazada y tiene problemas para obtener información sobre el aborto o para hacerse un aborto, o si siente que la están presionando para que no consiga un aborto, por favor contacte la abogada Lindsey Kaley por teléfono al 212-549-2633 o por correo electrónico a lkaley@aclu.org. Ella habla inglés y español. Por favor dile:

- Su nombre
- Su número A
- Su ubicación (nombre del albergue, cuidad, estado)

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### Appendix 3.4 Notice for Shelters (English and Spanish)

If you are pregnant and want information about support for your pregnancy, you may speak to your clinician. As an alternative, you may call any of the following organizations, which are experienced in counseling women who have an unexpected pregnancy:

Option Line: 1-800-712-HELP

Pregnancy Decision Line: 1-877-791-5475

Sisters of Life: 1-877-777-1277

If you are pregnant, the Office of Refugee Resettlement will provide prenatal and medical care for you. If you give birth while in ORR custody, ORR will care for both you and your child.

ORR also offers assistance to help you care for your child, or – if you wish—to plan for an adoption.

Regardless of any decisions you make or have made regarding your pregnancy, you can count on ORR to provide you with the same high standard of care.

If you have any questions about this information, please ask your clinician or case manager.

## **Appendix 3.5 Assessment for Risk**

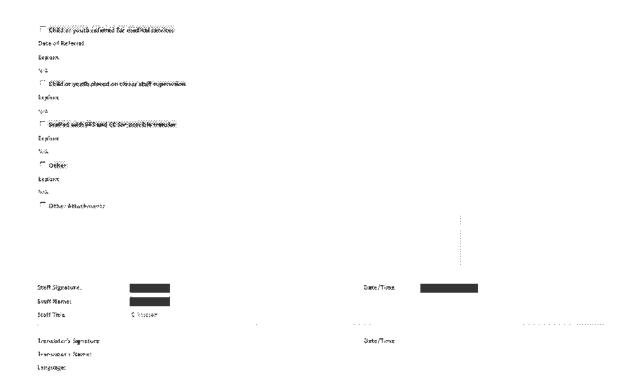


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P New you see felt Sec you consist to certain second leaves or allow someone to record your body to additional horse to obtain constituing you consist or worked, or to be accorded by a personal property.		6658 - C. Spig 74 866		
of Yes, explane				
And		0		
10 Marie vou ever spoken so a causacier, wodał worker, prychologich, tepshar, or evy other addit because	or a server ardendance to	6 F 366 4 566		
Keets				
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# Appendix 3.6 Interviewing Guidance for Clinicians and Caseworkers

#### INTERVIEWING GUIDANCE FOR CLINICIANS AND CASEWORKERS

Case Workers and Clinicians must use the suggested questions below when initially interviewing UAC for the Case Summary and ISP. During interviews with UAC, Clinicians and Case Workers must follow-up on UAC's comments and responses appropriately. They must avoid reading the following questions verbatim and instead use them as a guide to engaging UAC and to track if all areas have been assessed. Both professionals must also continue to build rapport with the UAC and continuously assess the UAC during his/her placement.

#### Suggested Interview Questions

#### **BACKGROUND HISTORY**

- Where did you reside prior to arriving here at this program?
- · How long did you live there?
- With whom did you live?
- · What was your experience like there?
- What did a typical day look like for you?
- Have you lived anywhere else? With whom? When and for how long?
- · What brought you to the United States?
- · When did you leave home country?
- · With whom did you travel to the U.S.?

- · What happened along the journey here?
- · How and where were you apprehended?
- What was your plan for when you arrived in the U.S.? With whom did you plan to live, if anyone?
- Where were you planning on living and what were you planning on doing in the U.S.?
- Had you been to the U.S. before this journey? If yes- When did you come to the U.S.? For how long were you in the U.S.? What brought you here then?

#### FAMILY/SIGNIFICANT RELATIONSHIPS

If the Case Warker has already gathered contact information regarding the UAC's family, it may not necessary for you to gather this information.

- · Where are your mother and father?
- Do you have siblings?
- Do you have family in the U.S.? Do you know anyone else in the U.S.?
- If yes to any of the above, for each person: What is his/her name
  and age? Where does he/she live? What has your relationship
  been like with him/her? When is the last time you contact with
  him/her, and what kind of contact did you have (e-mail, phone,
  mail)? How often have you been in contact with his/her and for
  how long? What kind of contact have you had in the past with
  him/her? Do you have his/her current contact information?
- Are you a parent to a child? If yes- Where is the child? Who is the mother/father? How would you like to be involved as a parent to your child?
- Are you married or single? If the UAC is married- Who is your spouse? Where is your spouse? How long have you been married? What is your relationship like with your spouse?

#### **CULTURAL BACKGROUND**

- · What languages and dialects do you speak?
- · Are you spiritual or religious? If yes- What are your beliefs?
- What faith do you practice, if any? How do you practice your faith?
- Are there traditions you have practiced, through your family or in your home country, which are important to you? If yes-What are they?
- While in DCS care, what religious practices or traditions do you want to continue?
- Is there anything else you would like to share about your culture or background?

#### MEDICAL

- Do you have any medical conditions that you know of? If yes-Please explain.
- · Do you feel any pain/discomfort? If yes- Please explain.
- Have you ever been hospitalized? If yes-When? What happened? How long were you hospitalized for and where? What was the outcome of the hospitalization?
- Have you ever taken medication? If yes- What was the medication(s)? When is the last time you took this medication? Do you know the dosage? If yes- what is the dosage and times taken per day? To your knowledge, should you still be on any medication?
- Do you have any allergies? If yes- What are you allergic to?
- Have you been sexually active? If yes- when is the last sexual encounter you had and with whom? Did you practice safe sex?

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- Have you ever received medical treatment? If yes- What for and when? What happened? What was the outcome of this treatment? Where was the treatment provided?
- Have you ever caught an illness from sexual contact? If yes-What illness, from whom and when?
- Is it possible that you are pregnant? What was the date of your last menstrual cycle?

#### CRIMINAL HISTORY

- Have you ever been arrested or charged with a crime? If yes, for each charge ask: What happened? When did this happen?
   Where did this happen? What was the outcome in court?
- Are you on probation? If yes- When did probation start? How long will it last and in what state? What are the conditions of your probation? Do you know the name and number of your probation officer?
- Are you on parole? If yes- When did parole start? How long will it last and in what state? What are the conditions of your parole?
   Do you know the name and number of your parole officer?
- Have you ever been held in juvenile detention or adult jail? If yes-How many times? For each time- Where were you held? How long were you incarcerated? What were the dates of incarceration, as you can best remember?
- Have you experienced any violence or threats while in government custody (local, state and DCS custody)? If yes- What happened? Where did this happen? When did this happen?
- Have you ever been involved in a gang? If yes- What gang(s) and for how long? How did you become involved? When did you become involved? What was your involvement in the gang? Did you have specific roles or responsibilities? If yes- What were these roles and responsibilities?

#### EDBISATION

- What other schools have you attended? When did you attend these schools?
- · How many years of schooling have you had?
- · Where did you last attend school? What level/grade was this?
- · What classes/subjects do you feel strongest in?
- · What classes/subjects would you like to work on or improve?
- What are your educational goals (e.g.: high school diploma, GED)?

#### LEGAL

 Do you have and have you ever had an attorney? If yes and if applicable- What is the attorney's name and contact information?
 On what matter/case did this attorney represent you and in what court? When (what dates) did the attorney represent you? Who provided or arranged for your attorney?

#### **UAC's PRIMARY AND CONCURRENT CASE OUTCOME GOALS**

- What is your first choice for where and with whom you want to live after being in DCS care?
- · What makes this your first choice?
- Right now, what is your second choice for where you want to live/be after being in DCS care?

If there is a potential sponsor(s), for each potential sponsor:

- · Have you lived with this person before? If yes-
  - When did you live with this person?
  - o Where did you live with this person?
  - For how long did you live with this person?
  - What was it like living with this person before?
  - o What did your day look like?
  - o Did you attend school?
  - o Did you work? If yes- What kind of work were you doing?
  - o Where did you sleep?
  - o How did this person discipline you?
  - Who else lived in the home?
  - O When is the last time you had contact with this person?
  - What kind (phone/e-mail etc) of contact have you had?
  - o How frequent was your contact?

#### **SHORT-TERM GOALS**

 What goals would you like to accomplish while in DCS care? These goals can be anything from educational, vocational, athletic, artistic, and/or related to how you want to feel or behave.

#### OTHER SIGNIFICANT ISSUES

· Is there anything else you think we should know?

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#### STRENGTHS/RESILIENCY/COPING SKILLS

- · What do you think are your biggest strengths?
- What do you think are your best skills?

- · What kinds of activities do you enjoy doing?
- What/who has helped you get through difficulties?

#### **BEHAVIORALISSUES**

- · What was your behavior like in the past, before coming to DCS?
- Was your behavior any different before you were in DCS care? If yes- How was your behavior different? What do you think makes your behavior different here?

#### MENTAL HEALTH

Assess UAC's orientation to person, time and place:

- · What's your name?
- Do you know today's date? What is today's date?
- Do you know where you are? Where?

In the past 60 days, have you had any of the following happen? (If UAC answers yes to any of the following, ask follow-up questions for more details).

- · Sleeping too little or too much
- · Had nightmares
- · Had difficulty paying attention
- · Felt hopeless about the future
- · Felt very sad
- Experienced serious anxiety
- · Had trouble controlling anger or violent behavior

Have you ever had any of the following happen: If UAC onswers yes to any of the following, ask follow-up questions for more details).

- · Ever tried to hurt yourself
- · Had urges to beat, injure or harm someone
- · Ever thought about attempting suicide
- Ever attempted suicide
- · Heard voices that others do not hear

Use your clinical skills to conduct additional clinical assessment of the UAC as appropriate to evaluate the UAC's level of post-traumatic stress, depression and exposure to violence. Below are some example questions. Conduct additional assessment and ask different questions when needed and appropriate:

- Do you have any mental health conditions that you know of? If yes- What conditions?
- Have you ever been psychiatrically hospitalized? If yes- When?
   What happened? How long were you hospitalized for and where?
   What was the outcome of the hospitalization?
- Have you ever received mental health treatment? If yes-What for and when? What happened? What was the outcome of this treatment? Where was the treatment provided?
- Have you ever taken psychotropic medication? If yes-Which
  medications have you taken? When is the last time you took this
  medication? What is the dosage and times taken per day, if you
  recall? To your knowledge, should you still be on any medication?
  If yes-What medication?
- Have you ever used drugs or alcohol? What are the names of substances? For each substance: What was your age when you first used? How often did you use and how much? What was the last date you used?
- Did anyone in your family use drugs or consume alcohol? If yes-Who? What substances did he/she use? How much and how often?

#### **TRAUMA AND CHILD PROTECTION**

- Have you ever lived on the street? If yes- Can you describe how this happened? Where and for how long did you live on the street?
- Have you witnessed acts of violence? If yes- What happened?
- Have you lost any friends or family to violence? If yes- What happened?
- Have you ever been hit or hurt in any way that left bruises or other marks on or caused pain? If yes- What happened? When did this happen? How many times did this happen? Who hurt you? Where is this person/people now?
- Has anyone ever touched you or did something in a way that
  made you feel uncomfortable or confused? If yes- What
  happened? When did this happen? How many times did this
  happen? Who did this? Where is this person now?
- Has anyone ever forced you to touch someone or to do anything uncomfortable? If yes- What happened? When did this happen?
   How many times did this happen? Who did this? Where is this person now?

#### TRAFFICKING AND EXPLOITATION

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#### Recruitment /Transportation:

- Who planned/organized your journey?
- · What were you told about the arrangements before the journey?
- Did the arrangements change during the journey? If yes- How did they change?
- . Does your family owe money to anyone for the journey?
- How much money was charged or promised?
- · Who is expecting to be paid?
- · Are you expected to pay for the journey? If yes- How?
- · What do you expect will happen if the person owed is not paid?

#### Coercion/Control Indicators:

- Did anyone threaten you or your family? If yes- Who and what happened?
- · Were you ever physically harmed?
- Was anyone around you ever physically harmed? If yes- Who was harmed and what happened?
- Were you ever held against your will? If yes- Who held you and what happened?
- Did anything bad happen to anyone else in this situation or anyone else who tried to leave? If yes- What happened exactly?
- · How many other people were in this situation?
- Did anyone ever keep/destroy your documents? If yes- Who did this and what documents?
- Did anyone ever threaten to report you to the police/immigration? If yes- Who did this and what did they say exactly?
- · Are you worried anyone might be trying to find you?

#### Debt Bondage/Labor Trafficking Indicators:

- Were you involved in any labor or services?
- Did you perform any work or provide any services?
- Who arranged the work?
- . What type of work did you perform?
- What was the work schedule? (Hours per day, days per week, what times of day/night?)
- · Did you have to work for anyone in a home?
- · What were you told when he/she began working?
- Did work conditions change over time?
- Is there a debt? If yes- Has any debt amount increased? By how much? When did it increase? Why did it increase?
- Have you or your family ever been threatened over payment or work for the journey? If yes- Who threatened you and how exactly?
- What did you expect would happen if you left the job or stopped working?
- Were you ever made to work or do anything you did not want to do?
- · Were you paid to work?
- . Did you receive pay or did someone else keep the pay?
- · Were you paid what was promised when you started working?
- Were expenses taken out of the pay? What did the pay go towards?
- How did you get to the work site?
- · Where did you live while working?

#### Commercial Sex Indicators

- Did anyone ever ask you to see you naked or in your underwear in exchange for money/anything of value?
- Did anyone ever pay/accept money/anything of value from other people in order to see you naked or in your underwear?
- Did anyone ever ask to take pictures or recording of you naked or engaged in sex acts? If so, did they offer you money/anything of value to do this or did they accept money/anything of value from others in order to see these pictures or recordings?
- Did anyone ever ask or expect you to perform sexual acts in exchange for money/anything of value? If yes- Who asked you and what happened?
- Did anyone ever promise or give money/anything of value to you in exchange for sexual acts? If yes- Who asked you? What did he/she promise?

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## **Appendix 3.7 UAC Assessment**

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Where were you apprehended?			
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	Chia Haduetrations or Descriptors Durin	g Interweezi** Other:			
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Have you ever tollred: When:	to a proychlatrist, psychologist, the	rapist, social worker or counsel	or about an emotional problem?		rf Ves F ‰
M I-0					CYEST NO
When:	з весана неф мля долг сталаг	at problems, or have you had pe	eople tell you that you should get help for you	эг етоховаг рговеть?	***************************************
Have you ever been a	dvised to take medication for any	siety, clemession, hearing voices	or for any other emotional problems?		C'Yesi No
When:					
Have you ever been s	een in a psychiatric emergency re	om or been hospitalized for psy	chiatric reasons?		Cyest Mo
When:					
Have you ever heard : When:	vokes no one else could hear or s	een objects or things that other	s could not see?		CYesC No
<b>```</b>	epressed for weeks at a time, los	it interest or pleasure in most a	ctwittes, had trouble concentrating and maker	g decisions or thought about	CYes C No
ki8kng yourself?					
When:					
Did you ever attempt to kil When:	t your sell?			€ Yes € Na	
		at a discount to the second second	236	Cyne Ye	
Have you ever had nightina violence, sape, murder, acci		owea in some traumatic/terrible even	d? For exactable, warfare, going lights, fare, domestic	Cyest Xo	
wisience, rape, muraer, acc Whan:	Kiere, Zeing Kined.				
KAUMU!					
	n aggressive urge or impolse on more (l	an one occasion that resulted in serio	us bean to others or fed to the destruction of proper	west No	
When:				4	
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Other Stimulants (Meth. R	~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~			**************************	
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Marghine, etc.	1 1827 NO				
Nicotine	CYesC Ne	<del></del>			
annew Wildfield Co.					

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Who planned/organized your journey?	
Dist a family member or family friend pay for your travel to the U.S.?	TIME AT
What were you told about the arrangements before the journey?	
Did the avangements change during the journey?	test Act
ef yes, how?	
Does your lamily or family friend own money to anyone for the journey's	a see a
If yes, how much?	
Whom is the money awed?	
Who is apported to pay?	
What do you expect to heppen if payment is not made?	
Caeccion Indicators	
Dtd anyone threaten your or your family?	files No
If yes, who made the threats?	
Were you ever physically harmed?	Transition
Hyes how?	
Was anyone around you over physically hormed?	Complete St.
If yes, how?	
Were you ever held against your will?	"Note No.
frues, where?	
Did anything bad happen to anyone else in this situation or anyone else who tried to leave?	Tree to
What happened and to whom?	
Did anyone ever keen/destroy your documents?	CV-L1tm
Hyes, who and what?	
Did anyone over threaten to report you to the police/immigration?	Clarific No.
tf yes, who?	
Are you warried anyone might be trying to find you?	CARL NO
if yes, who?	
Debt Bondage/ Labor Trafficking	
Did you perform any work or provide any services? If you, what and where?	(identina)
Who at anged the world?	
•• • • • • • • • • • • • • • • • • • •	
What type of work old you perform?	
What was the work schedule?	
Did work conditions change over three?	
Is there a debt <sup>2</sup>	Charles as
Miyes, has any delri amount imcressed? :  Ru hose much?	*Yes* V-
BA pass arrich;	
When did it increase?	
Why did it increase?	

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Have you ar your family over been threate journay? If yos, who threatened you and how?	ened over payment or work for the	fred out				
What did you expect would happen if you	left the job or stopped working?					
Were you ever made to work or do snychi Did you receive pay or did xomeone else k	sep the pay?	s month tig				
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Were expanses taken out of the pay? If yea whet? How did you get to the work site?		Cora Toba				
Where did you live while working?]						
Commercial Sex Indicators						
Did anyone ever ask you to see you nake				A SEEF RO		
Did anyone ever pey/accept money/anyl			ir in Your underwest?	MANU SU MANU SU		
Did anyone ever sek to take protures or re  If so, did they offer you money/enything			ilue from others in order to see these p			
recordings?	,	,,				
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Distanyone ever promise or give money o				Plant on Thesh so		
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if yes, expisin						
Domestic violence concerns? If yes, explain:		A NASA NA				
Child abuse or neglect concerns?		Chest No				
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Specify:						
Does the sponsor have any identified spec	मंत्रों रूपवर्शन?	1 44 C 45				
if yes, explain						
Does the spensor have forancial needs? If yes, explain.		Geart No.				
Does the sponsor have adequate housing	?	Page 18 Act				
ιξ yes, explain						
Are there any concerns with the disciplina	ary practices/philosophy of sponsor?					
Does the spansor have any oriminal histor	ry2	man in	144			
List any Folosy convictions.						
Ust any Misdemeanor convictions:						
Ust any Probation/Parole:						
ilst and describe any disclosed criminal ac	ztivity					

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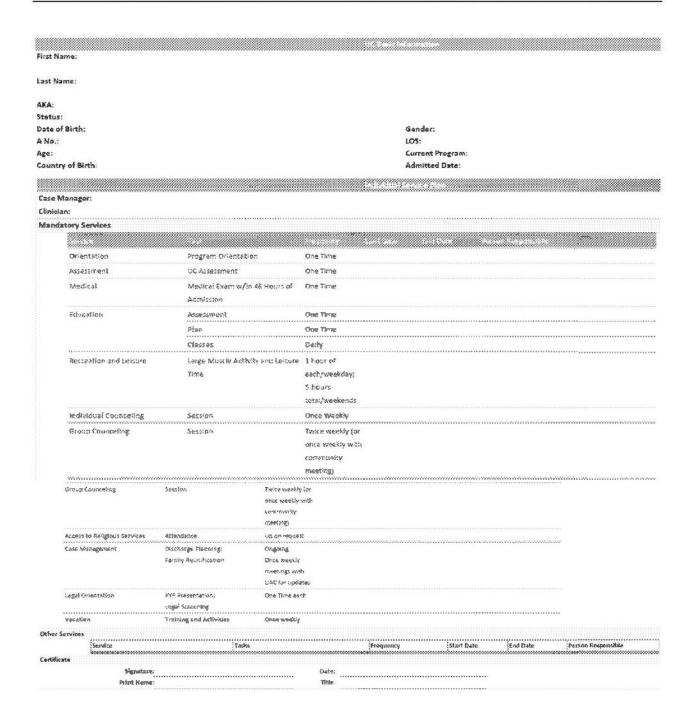
List and describe any disclosed criminal activity					
History of Bruancesotion:	<: free	Date	Length of Scotence		Lickelijou
Assethers any parent/child relational issues? If yes, espiran:		Y NEW NO			
Does the sponsor have an Order of Removal?		June 1/2			
If yes, date issued.					
Has the appensor appeared any other LIC in DCS conditional appearer information:	gr¢?	Crace No.			
Sporozet Specialized (47s)	Absorbe od (A)	A 60-Mark	PI	Relativosship	Eavility appresent from
Based on the most recent trafficking screening, is trafficking eligibility letter for UC.)  Date eligibility letter issued:	tha chhi a victim of a sav	ara form of trafficking In pars	one? (indicate 'yes' only if i	ORR has issued a	No.
Based on the most recent screening for threblittle	s, does the child have a di	reblity as defined in section :	of the Americans vath Os	abilities Act of 1993,	500
42 U.S.C. 5 12102(1)? If yes, tipecify disability:					
Bosed on the most recent screening, has the child	been a victim of physical	or sexual abose upder ofreum	stances that indicate that	the child's health or $c^{\alpha}_{(e)}(e)$ .	4.5
welfare has been agnificantly harmed or threaten. If yes, provide a short summary.	ed?				
Based on the sponsor risk assessment, does the all yes, provide a short-summary	pontor clearly present a	rick of aimse, mailtreatment, o	explottetion, or trafficking t	to the UC? They C	No
Please input any additional information if needed:					
Please input any additional information if needed:					
Signature:		Dad Prie	e: nt Name:		
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Title:

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## **Appendix 3.8 Individual Service Plan**



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## **Appendix 3.9 UAC Case Review**

First Name:				
Last Name:				
AKA: Status: Dota of Soth: A Mo.: Age: Country of Birth:			Gender: LOS: Current Program: Admitted Date	
	₹ 30 53	ly Case Review "Officiarge" Transfer	Are there any changes?	CYEE C No
Previous Flacoment:  but  Religious Affiliation:  test  Case Manager:  tut		8		
Clinician: test  Document any new information reg  List any allergies: Do you feel unwelt? "rest"to If yee, what are your symptoms? Additional medical information: Medical History		idicated to the UC Assessment and/or th	e previous case tuninismy below:	
Condition	Yer/NO	Date of Discovoris/Christication		***************************************
Pregnant	Civero to			
Tubercutosis	St. Yest No.		******************************	
Vsricelia Measies	Yest No			
Mearles	CiverCise			
Action ps	C'sest ha			
Rubelia	Yest No	i		
Astorna	CyesC No			
Diabetes	C'vest' No			
Cardiac	Cites Ci No.			
Stors	Tyest No			
Sexusity Trenstruiteti Clisease	(Ser !! No			
Respiratory/Lung Disorder	: Yes: ↑ %o			
Physical Disability	^Yes←Na			
Medication History				
Medication	Dosage	(timeframe	tredical Connition	
Know Your Rights Presentation provided?  Date:	€ Yesf* tea			
Electronic de la company de la	Buch .			
Lagal screening completed?  Date:	Civeri' no			
Any possible legal relief identified?	Yesf" Me			

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Provide a district community on the CIAC a surrent invisional	
Paychologica: Evaluation	
Date of Evaluation:	
Eveluator: Opig!:	
Apple:	
Ava III:	
Agin IV	
Axe V:	
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(fyas, how?	
Datas your family time money to anyone for the journey?	و بيا د يو
If yes, how much?	,
Whom is the money owed?	
 Who is expected to pay?	
What do you expect to happen if payment it not made?	
Consider interview	
Did anyone threaten your ar your family?	. * . Yps N
X yes, who made the threate?	lb. u
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	19, 1, 5
if yes, how?	ye we
Was anyone around you ever physically harmed?	Mes No.
Hyes, wha?	
Were you ever held against your w說?	t / Ves No
(If yes, where?	
Did anything bad happen to anyone also in this atvotion or anyone else who tried to leave?	r e
What happened and to whom?	sp-ten
	,- ,-
Did on your ever keep/destroy your documents?	Ves No
if yes, who and whati	
Ordingone ever threaten to deport you to the police/immagration?	FI III Nel Sa
Hyps, who?	
Are you warned enjoine might be trying to first you?	ri c
If yez, who?	No. 17 -
Orbit Brinninger Usiko Tratfiking	
Did you perform any work or growide any services?	r (r sector
ifyes, what and where?	sec no
Who arranged the work?	
What type of work did you perform?	
What was the wors schedule?	
Did work consistent change over time?	
ta there a diabit	r
(8 1) THE F VOICES	Med Pad

If yes, has any debt amount indic	azed?					67 67 86 86
By how much?						341.10
When did it Increase?						
Why did it increase?						
Maye you or your family over beer	n threatened over payment or work for the	ajaumey?				7.7
# b b b.						607 (24)
If yes, who threatened you and he						
•	fig. it was bequete to do; entitled working?					e =
Were you ever made to work or t	io anything you did not want to do?					22.57(n
Did you receive pay or did someo						
Were you paid what was promise	id when you started working?					
Were expenses taken out of the p	28Y?					va ka
If yes what?						
How did you get to the work site?	1					
Where did you live while working	?					
Communicial Sev brille, early						41.41
Did anyone ever ask you to see y	an uskeg or in Aons nuderwear in excession	e for money/enything	of salue ?			YEARS
Did anyone ever pay/accept mon	ey/anything of value from other people in	erder to see you nak	ed or in your underwear?			21 - 21 KAN FASI
	area or recording of you naked or engaged					11. 12.
If an alle the collection manager	nything of value to do this or did inevaces		funtua komun abbasa ya malas ba an	s ébasa alaturas ar res	a mila au 7	tector in in
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Did anyone over promise or give	money or anything of value to you in each:	міда баг земна: всіз 🤊				F 47
Based on the information provide	ed above in the "Trafficking" section, is the	te a trafficking concer	n?			C <
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Sport Rek Academiest Sport Rek Academies Rek Academies Concerns? If yes, explain:  Domestic violence concerns? If yes, explain  Child abuse or neglect concerns? If yes, explain  Mental health issues? If yes, explain  Does the sponsor have any familia	ick Associations)	BOB  Constitution of the c	Agdress	Shore	1 सुर्वा क्षेत्रगार -	Relationship
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Substance abuse concerns? If yes, explain: Domestic violence concerns? If yes, explain Child abuse or neglect concerns? If yes, explain Mental health issues? If yes, explain Deet the sponsor have any familia Specify: Cost the sponsor have any identifyes, explain:	y aupport? Histospecial needs?	BOB  Constitute to the constitute of the constit	Agdress	Shore	Segal Water	Relationship
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Spanoat Rek Audiomott Swince Ri Spanoat Rek Audiomott Swince Ri Hyes, explain:  Domestic violence concerns? If yes, explain  Child abuse or neglect concerns? If yes, explain  Does the spansar have any familia Specify:  Does the spansar have any identifyes, explain:  Does the spansar have financial of If yes, explain:  Does the spansar have financial of If yes, explain:  Does the spansar have financial of If yes, explain  Coas the spansar have deputs If yes, explain  Does the spansar have adequate If yes, explain  Does the spansar have adequate If yes, explain	y aupport?  fied special needs?  needs?  s housing?  disciplinary practices/philosophy of score	Proposition of the Control of the Co	Attarect	Shore	1 egal Water.	Relationship
Sponger Rek Audismost Swinson Rivers abuse concerns? If yes, explain:  Domestic violence concerns? If yes, explain  Child abuse or neglect concerns? If yes, explain  Does the sponsor have any familiary expension.  Does the sponsor have any identifyes, explain.  Does the sponsor have financial of yes, explain.  Does the sponsor have adequate if yes, explain.  Coas the sponsor have adequate if yes, explain.  Does the sponsor have adequate if yes, explain.  Does the sponsor have adequate if yes, explain.  Does the sponsor have any or foil is the sponsor convictions.	y aupport?  fied special needs?  needs?  housing?  disciptinary practices/philosophy of sconsonal history?	Proposition of the Control of the Co	Attarect	Shane  Congth of Secretories	Segal Water.	Relationship

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Are there any parent/child of figes, explain Does the sparsor have an O figes the sparsor have an O figes, date respect.  Has the spansor sponsored Additional sponsor informations.	rder of Responsit? Bray other UC in DCS saze?	in the fit too. If the fit too.			
oponion Spansared UCs:		Name of UC	# People i	Relationship	Facility sponsored from
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# Appendix 3.10 OYAS-RET Interviewing Guidance, OYAS-RET Score Sheet, and the OYAS Reentry Self-Report Questionnaire

Prior to using these tools: Inform the UAC that self-disclosures of previously unreported criminal history or violent behavior to any other children, care provider staff, ORR, or others may result in the child's transfer to another care provider facility and may affect their release.

# OHIO YOUTH ASSESSMENT SYSTEM REENTRY TOOL (OYAS-RET) INTERVIEW GUIDE



The interview guide is designed to assist the assessor in gathering the information necessary to accurately assess the youth on the OYAS-RET. It is important to establish rapport with the youth, and while it is recommended that the interview guide be closely followed, the wording of the questions may vary. Here are some tips for conducting the interview:

- Conduct the interview in a relaxed and private environment.
- Explain the purpose of the interview and stress the need for honesty and complete answers to questions.
- . Do not hesitate to use follow-up questions and probe. Examples of follow-up questions:
  - Tell me more; I want to be certain that I understand you.
  - What happened next?
  - Could you explain that further?
  - o What do you mean?
  - Can you describe some examples?
  - How did that make you feet?
- Remember what information you are trying to obtain. Develop clear examples and remember there are sometimes differences in perception.
- · Remember that the interviewer sets the tone. Be patient, and try not to contect or teach

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- Whenever possible, use open-ended questions where the respondent provides his or her opinion and is able to elaborate. For example, "Tell me more about your relationship with..."
- Avoid double-barreled questions where the respondent is asked a combination of questions:
  - o "How is your relationship with your mother and father?"
- Avoid biased questions where the respondent is led in a certain direction.
  - "Your relationship with your mother isn't bad, is it?"

Also, remember that the interview is only one source of information. Official records and collateral sources, such as family members or other professionals, should also be consulted. It is important to corroborate the youth's responses whenever possible.

Note: Throughout the interview guide there will be questions marked with an \*. These questions are available on the self-report questionnaire also. If the interviewer is using the self-report questionnaire with the youth, they do not necessarily have to ask these questions.

### The following domains are scored:

- 1. Juvenile Justice History
- 2. Family and Living Arrangements
- Peers and Sodal Support Network
- 4. Education and Employment
- 5. Pro-Social Skills
- 6. Substance Abuse, Mental Health, and Personality
- 7. Values, Beliefs, and Attitudes

Name:	
Gender:	Male Female
Race:	Caucasian Black/Africa-American Native American Asian Pacific islander
Ethnicity:	Hispanic/Latino Non-Hispanic
Date of Birth:	
County:	
Education (highest completed):	8th or less 9th 10th 11th HS Diploma/GED

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### 1.0 Juvenile Justice History

#### Items:

- 1.1) Documented Contact with Juvenile Justice System
  - 0 = 14 or older
  - 1 = 13 or younger
- 1.2) Attempted and/or Escaped from Residential Facility
  - 0 = No history of attempt/escape
  - 1 = History of attempt/escape
- 1.3) History of Seiling Drugs
  - 0 = Has never sold drugs
  - 1 = Has sold drugs
- 1.4) Physical Altercation with an Authority Figure
  - 0 = No history of physical altercation with authority figure
  - 1 = Has a history of physical altercation with authority figure
- 1.5) Weapon Used During a Crime
  - $\theta$  = Never used a weapon during a crime
  - 1 = Has used a weapon during a crime
- 1.6) Victim Physically Harmed During Offense
  - 0 = Has never physically harmed a person during a crime
  - 1 = Has physically harmed a person during a crime
- 1.7) Received a Major Sanction while in Residential Care
  - 0 = Has never received a major sanction while in residential care
  - 1 = Has received at least 1 major sanction while in residential care

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Exhibit 4
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a. What did you do?		
***************************************	***************************************	
h Milhat hamman and		•
b. What happened?		
about the most recent offense	, tell me about it.	
many times alternather basic vi	ои gotten in trouble with the	law?
many nines amoderner nave to		
many times anogether have yo		
many times anogether nave yo		
many times anogether nave yo		
Of those, how many resulted	in adjudication?	
	in adjudication?	

I am going to ask you a few questions about your past.

Exhibit 4
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4. Have you ever sold drugs?  a. *If so, how often?  C Never C Once in a While C Sometimes C Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? Is so, tell me about that.
a. Pif so, how often?  — Never — Once in a While — Sometimes — Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
a. Pif so, how often?  — Never — Once in a While — Sometimes — Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
a. Pif so, how often?  — Never — Once in a While — Sometimes — Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
a. Pif so, how often?  — Never — Once in a While — Sometimes — Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
a. Pif so, how often?  — Never — Once in a While — Sometimes — Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
○ Never ○ Once in a While ○ Sometimes ○ Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
○ Never ○ Once in a While ○ Sometimes ○ Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
○ Never ○ Once in a While ○ Sometimes ○ Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
○ Never ○ Once in a While ○ Sometimes ○ Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
○ Never ○ Once in a While ○ Sometimes ○ Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
○ Never ○ Once in a While ○ Sometimes ○ Often  5. Did you ever use a weapon during any of the offenses you got into trouble for? is so, tell me about that.
5. Did you ever use a weapon during any of the offenses you got into trouble for? Is so, tell me about that.
5. Did you ever use a weapon during any of the offenses you got into trouble for? Is so, tell me about that.
. Has anyone gotten hurt during an offense that you have committed?
i. Has anyone gotten hurt during an offense that you have committed?
i. Has anyone gotten hurt during an offense that you have committed?
i. Has anyone gotten hurt during an offense that you have committed?
5. Has anyone gotten hurt during an offense that you have committed?
5. Has anyone gotten hurt during an offense that you have committed?
Tell me about any physical fights you have been in with staff.
;
a. What about any other authority figures (e.g., police, teachers/school personnel, detention workers, bosses,
etc)?
***************************************

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1?		
r besides this one?		
trouble for trying to leav	e a residential facility	without permission?
·		
******************************		***************************************
areceived any conseque	ences?	
······	<del></del>	
	besides this one?	besides this one? trouble for trying to leave a residential facility

UAC MAP Section 3: Services (Version 1.0)

b. What happened to you as the result of the the consequence?
2.0 Family and Living Arrangement
Items:
2.1) Family is important
0 = Family is very important to the youth
1 = Family is not very important to the youth
2.2) Family Member(s) Arrested
0 = No
1 = Yes
2.3) Parents/Caregivers Use Appropriate Consequences
0 = Parents/caregivers use appropriate consequences most of the time
1 = Parents/caregivers use inappropriate consequences
2.4) Positive Relationship with Person at Planned Residence
0 = Positive/supportive relationship with adult at planned residence
1 = Does not have a positive relationship with adult at planned residence
Lam going to ask you a few questions about your family.
4. Teltura alcunda combinata di contra di
Tell me about your biological parents and/or adoptive parents.
a. How often do you have contact with them?
b. If the youth was raised by non-biological parents, ask them about their relationship with these parents also.

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a. How well did yo	ou get along with the people yo	ou were living with?	
w would you rate	the following statement: "My fa	amily is important to me?"	
Strongly Agree		ree (* Strongly Disagree	
a. How often do y	DE TAIK TO THEM?		***************************************
b. Over the phone	e? Visitation?		
		***************************************	***************************************
XX			
·			
w many close fam	ily members (e.g., parents, sibli	ngs) have been arrested before?	
0 (1	○2 ○3+		
	em ever been in Jali/prison?		
a. Have any of the			
a. Have any of the			
a. Have any of the			
		jivers gave you when you got in trouble.	

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a. Have you ever gotten	grounded? If so, how long?		
b. Have you ever been hi	it as a punishment?		
I me about where you are	e going to live when you leave	here.	
a. How well do you get a	slong with them?	,,,,,	
b. Do you think the pe	ople you are going to live with	are supportive?	
b. Do you think the pe	ople you are going to live with	are supportive?	
b. Do you think the pe	ople you are going to live with	are supportive?	
b. Do you think the pe	ople you are going to live with	are supportive?	
b. Do you think the pe	eople you are going to live with	are supportive?	
		are supportive?	
	eople you are going to live with	are supportive?	
) Peers and Socia		are supportive?	
D Peers and Socia	nl Support Network	are supportive?	
Differs and Social  This:  Acquaintances Use Drug  0 = 5 or fewer acquain	I Support Network	are supportive?	
D Peers and Socians:  Acquaintances Use Drug	I Support Network	are supportive?	
D Peers and Social  ms:  Acquaintances Use Drug  0 = 5 or fewer acquain 1 = 6 or more acquain	I Support Network  Is Intances use drugs Intances use drugs	are supportive?	
D Peers and Social  ms:  Acquaintances Use Drug  0 = 5 or fewer acquain	I Support Network  Is Intances use drugs Intances use drugs Intances use drugs	are supportive?	

0 = Less than 50% of friends use drugs 1 = 50% or more of friends use drugs

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3.4) Friends Arrested  0 = Less than 50% of friends have been arrested  1 = 50% or more of friends have been arrested
3.5) Relationship with Youth on Unit  0 = Gets along with youth on the unit  1 = Does not get along with youth on the unit
3.6) Relationship with Staff  0 = Gets along with staff at the facility  1 = Does not get along with staff at the facility
3.7) Friends/Family Associated with Gang Activity
0 = Friends are not part of a gang 1 = Friends are part of a gang
3.8) Arrested with Friends  G = Not arrested with friends  1 = Arrested with friends
3.9) Adults in the Community are Supportive  0 = Adults in the community are supportive  1 = Adults in the community are not supportive
I am going to ask you a set of questions about the people that you know. Some of the questions will be about acquaintances and some will be about your close friends.
Talking about your acquaintances (people who you know but are not your dose friends), how many have been in trouble with the law?
a. For what?
2. *How about the number of acquaintances that use drugs? Do you know about how many (outside the facility) use substances?
○ 0 to 5

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Now focusing on your friends:	
3. Tell me about your close friends (consider those in the community as well as in the facility).	
How many friends would you say you have?	
a. Of those friends, how many use alcohol?	
b. Of those friends, how many use drugs?	
a. Of those friends, how many have been suspended/expelled from school?	
a. Of those friends, how many have been in detention?	
a. Of those friends, how many have been arrested?	
<ol> <li>*How would you rate the following statement: "My friends get into physical fights?"</li> <li>Never</li></ol>	ends?
6. *How many of your friends are involved in a gang?	
7. *As for the youth on your unit, how well do you get along with them?	
∩ Not at All ∩ Ok ← Somewhat ← Good ← C Very Good	
a. Do you consider any of them to be your friends?	

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○ Not at All	⊘Ok			○ Very Good
9. As for the comm	unity you will l	be living in, tell me ab	out any non-fan	nily members that you feel are supportive.
a. Have visu t	aiked to any o	fthem since you have	heen here?	
4.0 Education	n and Em	ployment		
Items:				
***************************************				
4.1) Truant from Sci		S. 1. 20 (1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1		
	een charged w	ith truancy		
i = Charged	s with truancy			
4.2) Expelled - Ever				
	een expelled fi	rom school		
1 = Expelled	t from school			
4.3) Effort in School	L			
0 = Effort in	school			
1 = Little eff	fort in school			
4.4) Relationship w	ith Current Sch	nool Personnel/Emplo	ver	
		ith school personnel/		
		ip with school person	7/	
This section focuses o	on education a	nd employment, if the	vouth is employe	ed full-time or her/his primary focus is employment
item 4.3 should be so			,	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
1 Tall man about a	haal bafara u	us enume to the Eastlike		
1. Tell me about sc	пооговетску	ou came to the facility.		
a. When was th	ne first time yo	u skipped class?		

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b. How o	ften did you skip class?				
c. *How	many times were you charg	ed with truancy in	the last two years?		
Were you ex	ver expelled from school?				
***************************************		***************************************			
*How did yo	ou get along with teachers?				
***************************************		***************************************			***************************************
a. Did yo	ou consider any of them po	sitive influences?			
Section of the sectio					
h 15-m	h	***************************************			••••••
D. 11 yes,	how many?	********************************		*****************************	
nayana anana					
c. Were	they available to help you	outside the classroc	om?		
		- b b 2			
d. How	about school since you hav	e been here?		***************************************	

4. Have you been in trouble at school since you have been here?	
Now I am going to ask you questions about any jobs you have had.	
5. Describe any jobs you have ever had.	
<u></u>	
a. Did you get along with your co-workers?	
\(\text{\tint{\text{\tint{\text{\text{\tint{\text{\tint{\text{\text{\text{\tint{\text{\tint{\text{\tint{\text{\tint{\text{\text{\tint{\text{\tint{\text{\tint{\text{\tint{\tint{\tint{\tint{\text{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\text{\tint{\text{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tint{\tin\tint{\text{\tint{\text{\tinit{\tint{\tint{\tint{\tint{\text{\tinit{\tinit{\tinit{\tinit{\tinit{\text{\tinit{\tiinit{\tiinit{\tinit{\tinit{\tinit{\tinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tiinit{\tii	
b. How about your bass?	
	:
c. Did you ever have a problem with staff or co-workers?	;
Describe any problems that you had.	
7. How did it end up?	
8. What is the longest you worked at a job?	

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9. How about the shortest time?	·
TAR A LEIVE	
5.0 Pro-Social Skills	
Items:	
5.3) Can Identify Triggers/High Risk Situations  0 = Identifies high risk situations	
1 = Does not Identify high risk situations	
5.2) Weighs Pro/Cons of a Situation	
0 = Weighs the pros and cons of a situation 1 = Does not weigh the pros and cons of a situation	
1 - Does hat greage the presided certs of distribution	
5.3) Pro-Social decision Making	
0 = Demonstrates pro-social decision making 1 = Does not demonstrate pro-social decision making	
5.4) Frustration Tolerance	
0 = Adequate skills to manage frustration	
1 = Some/minimal skills to manage frustration	
What kinds of things lead you to get Into trouble?	
	1
	:
2. Tell me about a time where you did not realize you were headed for trouble, but looking back on it, you should I seen trouble coming your way.	nave
	:

I am going to ask you a set of scenarios. I want you to think of the answer that best fits with what you would normally do.
[NOTE TO INTERVIEWER: probe to determine whether the youth can identify high-risk situations and then whether they are able to weigh pros/cons of that situation before they engage in any behavior for each scenario.]

3. Scenario #1: I	one of our friends asked you	u to go to a party, w	ould you go?	
***************************************		***************		
a. Why or wh	y not?			
***************************************				
b. What If you	ı knew there would be alco	hol and drugs there	?	
<b></b>		************	******************************	***************************************
Scenario #2: If yo	ou found a wallet with \$100	in it, what would yo	ou do?	
********************************				***************************************
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,				
Scenario #3: If vo	эц knew your friend was dri	ving a car that was i	not his/hers, would you	u get in the car?
		***************************************	•••••••••••••••••••••••••••••••••••••••	
***********************	***************************************	************		
a. Why or v	vhy not?	***************************************		
£	***************************************	*******************************		***************************************
6. Switching gea	rs for a second. Tell me abou	rt stuff that makes yo	u frustrated.	

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2000000000000000	was the last time you f	*******************************	**********	000000000000000000000000000000000000000	************************	90000000000000
<b></b>						
b. How I	ard is it to deal with thi	ings when you are frus	rated?		*******************************	*******
l		***************************************		*****************		
c. You ev	ver just give up?			************		
and dependent						
Ĺ			**********************		***********************	
f Rating: C	an the youth Identify	triggers/high risk situ	ations effective	ely?		
○No	Companyhair	200 Marin				
	Somewhat	( Yes				
f Rating: C	oes the youth weigh p	pros/cons?				
		pros/cons?				
f Rating: D	oes the youth weigh p	pros/cons?				
f Rating: D	oes the youth welgh p	pros/cons?				
f Rating: D	oes the youth welgh p	pros/cons?				
f Rating: D	oes the youth welgh p	pros/cons?				
f Rating: C No erviewer's	oes the youth weigh p	oros/cons?				
if Rating: D No erviewer's in the yout	oes the youth weigh p Somewhat Impressions: th tie behavior to the	oros/cons? ( Yes consequence?				
f Rating: C No erviewer's en the yout	oes the youth weigh p Somewhat impressions: th the behavior to the th on his/her ability t	oros/cons?  (Yes  consequence?  o understand the co	247/11/2019 post (1/2019)	nis/h <i>e</i> r actions	5.	
if Rating: D No erviewer's in the yout	oes the youth weigh p Somewhat Impressions: th tie behavior to the	oros/cons?  (Yes  consequence?  o understand the co	nsequences of h	nls/h <i>e</i> r actions	5.	
Y Rating: D No erviewer's In the yout	oes the youth weigh p Somewhat impressions: th the behavior to the th on his/her ability t	oros/cons?  (Yes  consequence?  o understand the col	Good		5.	
Y Rating: D No erviewer's In the yout	Somewhat Impressions: th tie behavior to the th on his/her ability t	oros/cons?  (Yes  consequence?  o understand the col	Good		5.	
f Rating: C  No erviewer's  In the yout  None  aff Rating:	oes the youth weigh p Somewhat Impressions:  th the behavior to the th on his/her ability t Very Little Does the youth mak	consequence? o understand the col  Some	Good		5.	
f Rating: C  No erviewer's  In the yout  None  Aff Rating:	oes the youth weigh p Somewhat Impressions:  th the behavior to the th on his/her ability t Very Little Does the youth mak	consequence?  o understand the col  Some e pro-social decision  Yes	Good s given these sc	enarios?	5.	

## 6.0 Substance Abuse, Mental Health, and Personality

Items:

6.1) Age of Drug Onset

0 = 13 or older

1 = 12 or younger

6.2) Others Complained about Drug/Alcohol Use.

0 = No one has complained about substance use

1 = Others have complained about substance use

6.3) Failed Drug Test within Past 6 Month

0 = Has not failed drug test within past 6 months

1 = Has falled drug test within past 6 months

6.4) Alcohol/Drugs have Caused a Problem in Major Life Area

0 = Alcohol/Drugs have not caused a problem

1 = Alcohol/Drugs have caused a problem

6.5) Used Substances While in Residential Facility

0 = Has not used alcohol or drugs while in the facility

1 = Has used alcohol and/or drugs while in the facility

6.6) Inflated Self-Esteem

0 = Appropriate level of self-esteem

1 = Inflated self-esteem

6.7) Risk Taking Behavior

0 = Does not generally take risks

1 = Takes risks

Now we are going to talk about any alcohol or drugs you have used.

1. Tell me about any drugs that you have used.

	Type of Drug	How often were you using at time of arrest (e.g., dally, weekly, etc.)?	How much?	Most ever7	Last use (date or about how long ago)?
-][+]					
-] +					
- ] +					
- +					

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2. How old were you the first time you used marijuana?	
a. How about any other drugs?	
Tell me about what your [insert appropriate adult: parent, counselor, uncle/aunt] thinks about your [drug/aiose.	ohol]
a. *Has anyone complained [showed concern] about your alcohol/drug use?	
3 MARINE S. Abr. 1 mg Min	
4. When is the last time you took a drug test?	
a. What were the results?	
5. Have you ever tested positive for drugs?	
	***************************************
	***************************************
a. If so, how long ago?	

a. How has your use affected school?  b. How about with your family?  c. Legal problems?  d. Friends?  d. Friends?  a. What about while you were still living in the facility?  b. Have you ever seen arryone use drugs while in the facility? What about alcohoi?		nave told me so far, do you think that drugs and/or alcohol have caused you any problems?	
a. How about with your family?  Legal problems?  I. Friends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
a. How about with your family?  Legal problems?  I. Friends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
h. How about with your family?  Legal problems?  I. Friends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
Legal problems?  I. Filends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	a. How has yo	our use affected school?	
Legal problems?  I. Filends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	-		
i. Friends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
i. Friends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	:		
Legal problems?  I. Filends?  It kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			•••
it kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	. How about y	vith your family?	_
it kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
it kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
it kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			_
it kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	Lenal proble	ms?	
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	c redai bione	134	
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			***
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?	l. Frlends?		
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
at kind of drugs have you seen while in the facility?  a. What about while you were still living in the facility but out on pass?			
a. What about while you were still living in the facility but out on pass?			
	it kind of drug:	have you seen while in the facility?	
b. Have you ever seen anyone use drugs while in the facility? What about alcohol?	a. What about	while you were still living in the facility but out on pass?	-,
b. Have you ever seen anyone use drugs while in the facility? What about alcohol?			
b. Have you ever seen anyone use drugs while in the facility? What about alcohol?			
b. Have you ever seen anyone use drugs while in the facility? What about alcohol?			
b. Have you ever seen anyone use drugs while in the facility? What about alcohol?			
	b. Have you e	ver seen anyone use drugs while in the facility? What about alcohol?	

oing to ask you some questions about yourself.  a scale of 1 to 10 how cool do you consider yourself?  our friends had to rate you, how cool would they rate you on a scale of 1 to 10?		
a scale of 1 to 10 how cool do you consider yourself?  Four friends had to rate you, how cool would they rate you on a scale of 1 to 10?  Tell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?	d. Have you use	I drugs while in the facility? What about alcohol?
a scale of 1 to 10 how cool do you consider yourself?  our friends had to rate you, how cool would they rate you on a scale of 1 to 10?  [ell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?		
a scale of 1 to 10 how cool do you consider yourself?  Our friends had to rate you, how cool would they rate you on a scale of 1 to 10?  Cell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?	. How about o	a community pass?
a scale of 1 to 10 how cool do you consider yourself?  Our friends had to rate you, how cool would they rate you on a scale of 1 to 10?  Tell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?		
Tell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?		
	ning to ask you s	me questions about yourself.
Tell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?	a scale of 1 to 1	) how cool do you consider yourself?
Tell me about any situations that you have participated in that you would consider risky (dangerous).  a. Would you consider yourself a risk taker?		<u></u>
	our friends had	o rate you, how cool would they rate you on a scale of 1 to 10?
		Tamana and the same and the sam
		Tamana and the same and the sam
b. Have you ever driven a car without a driver's license?		Tamana and the same and the sam
b. Have you ever driven a car without a driver's license?	Fell me about ar	y situations that you have participated in that you would consider risky (dangerous).
b. Have you ever driven a car without a driver's license?	Fell me about ar	y situations that you have participated in that you would consider risky (dangerous).
b. Have you ever driven a car without a driver's license?	Fell me about ar	y situations that you have participated in that you would consider risky (dangerous).
	Fell me about ar	y situations that you have participated in that you would consider risky (dangerous).
	Tell me about ar	y situations that you have participated in that you would consider risky (dangerous).  onsider yourself a risk taker?

			***************************************
Have you ever stolen something	when you had enough mo	oney to pay for it?	
	***************************************		************************
Ever carry a loaded gun? How abo	out into a place where you	weren't supposed to have it (e.g., s	chool)?
			***************************************
			,,,,,, <b>,,,,,</b> ,,,,,,,,,,,,,,,,,,,,,,,,,
Have you ever taken any drugs th	at you did not know what t	they were?	

### 7.0 Values, Beliefs, and Attitudes

Items:

- 7.1) Pro-Criminal Statements
  - 0 = No/Few pro-criminal beliefs
  - 1 = Some/A lot of pro-criminal beliefs
- 7.2) Negative Attitudes Towards Supervision
  - 0 = Will complete supervision without problems
  - 1 = Will have a difficult time with supervision
  - 7.3) Attitude Supports Substance Use
    - 0 = Not supportive of substance use
    - 1 = Supportive of substance use
  - 7.4) Demonstrates Remorse for Offense
    - 0 = Full remorse
    - 1 = Some remorse
    - 2 = No remorse

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1 = Does not show empathy towards others
7.6) Attitude Towards Gangs  O = negative attitude towards gangs  1 = Supportive of gangs
I am now going to ask you some questions about your beliefs and values. (NOTETO INTERVIEWER: This section should be rated based on the entire interview. There are some questions that are provided as suggestions if you do not feel that you have captured the necessary information to score these items.)
Based on what you have told me, what do you think about being on parole?
a. Tell me about your plan to make it on parole.
2. What do you see as your parole (probation) officer's job?
3. *How would you rate the following statement: "I will get off supervision without any problems."
Strongly Agree
4. What do you think about marijuana? Should it be legal?
a. How about other drugs?

7.5) Demonstrates Empathy Towards Others

0 = Demonstrates empathy towards others

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about other drugs?	
••••••	***************************************
are the chances that your use drugs in the next	t couple of years?
are the chances that you use drugs in the next	Couple of years
about your offense earlier. Tell me how it affect	ted the people involved.
s your ramsiy affected?	
ould change anything about your offense what	t would it be?
out how people's behavior affects others?	
now your behavior affects others?	

8. Would you say that you generally care about others?	
9. What do you think about gangs?	
10. Do you think that gangs are helpful?	
	:
11. Should youth be allowed to join a gang?	
, o o o o o o o o o o o o o o o o o o o	
	:
	,
Staff Rating: Does the youth use pro-criminal statements?  ONONE OF THE STATE OF TH	
* If the youth is rated some/a lot this item should be scored a 1.	
Staff Rating: Youth has negative attitude towards supervision.	
○ Strongly Agree ○ Agree ○ Disagree ○ Strongly Disagree	
Circle Dy them. Variable whithing a territorial substance in a	
Stan Kaung: Tourns atutude towards substance use.	
Staff Rating: Youth's attitude towards substance use.  © Supportive of Drug/Aicohol Use © Somewhat Supportive © Not Supportive	
© Supportive of Drug/Aicohol Use © Somewhat Supportive © Not Supportive	
© Supportive of Drug/Alcohol Use © Somewhat Supportive © Not Supportive  Staff Rating: Does the youth demonstrate remorse for offense?  © Full Remorse © Some Remorse © No Remorse	
© Supportive of Drug/Alcohol Use © Somewhat Supportive © Not Supportive  Staff Rating: Does the youth demonstrate remorse for offense?	

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Staπ Hating: Supportive of C	sangs		
C Highly Supportive	(* Supportive	Somewhat Supportive	(" Not Supportive
* If the youth is rated highly su	pportive, supportive,	or somewhat supportive this Item	should be scored a 1.

# OHIO YOUTH ASSESSMENT SYSTEM REENTRY TOOL (OYAS-RET) SCORE SHEET



Name		Date		
ع ا	uvenile Justice History		5000000	
1.1) De	ocumented contact with juvenile justice system			-
	0 = 14 or older			ii
	1 = 13 or younger			
1.2) At	tempted and/or escaped from residential facility			
	0 = No history of attempt/escape			i
	1 # History of attempt/escape			
1.3) Hi	story of selling drugs			
	0 ≈ Has never sold drugs			i ui
	1 = Has sold drugs			
1.4) Ph	ysical Altercation with an authority figure			*
	0 = No history of physical attercation with authority figure			
	1 = Has a history of physical altercation with authority figure			,
1.5) W	eapon used during a crime			-
	0 = Never used a weapon during a crime			` <del>/mi</del>
	1 = Has used a weapon during a crime			
1.6) Vi	ctim physically harmed during offense			-
	0 = Has never physically harmed a person during a crime			· · · · · · · · · · · · · · · · · · ·
	1 = Has physically harmed a person during a crime			
1.7) Re	ceived a major sanction while in residential care			•
	0 = Has never received a major sanction while in residential care			5 <del>444</del>
	1 = Has received at least 1 major sanction while in residential care			
				TOTAL
2.0	emily and Living Arrangements		gaille	
4000000000				
2.1) Fa	mily is important			*
	0 = Family is very important to the youth			i
	1 = Family is not very important to the youth			

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2.2) Family member(s) arrested  0 = No 1 = Yes			
2.3) Parents use appropriate consequences  0 = Parents use appropriate consequences mo 1 = Parents use inappropriate consequences	st of the time		
2.4) Positive relationship with person at planned resid 0 = Positive/supportive relationship with adult 1 = Does not have a positive relationship with	at planned residence		
			TOTAL
	Strength	Barrier	
Family supportive of change	:	v.	
Family is engaged	:	2	
Family willing to participate in treatment		.*	
Family is stable	.*	."	
History of abuse/neglect		₹*	
TOTAL	0	0	
3.0 Peers and Social Support Network			
3.1) Acquaintances Use Drugs			-
0 = 5 or fewer acquaintances use drugs 3 = 6 or more acquaintances use drugs			:
3.2) Friends Fight			-
0 = Friends do not get in fights often 1 = Friends fight a lot			الس
3.3) Friends Use Drugs			<b>1</b>
0 = Less than 50% of friends use drugs 1 = 50% or more of friends use drugs			
3.4) Friends Arrested			-
0 = Less than 50% of friends have been arrested 1 ~ 50% or more of friends have been arrested	1		<u></u>
3.5) Relationship with Youth on Unit			<b>-</b>
0 = Gets along with youth on the unit 1 = Does not get along with youth on the unit			: w.4
3.6) Relationship with Staff			•
0 = Gets along with staff at the facility 1 = Does not get along with staff at the facility			
3.7) Friends/Family Associated with Gang Activity			-
0 = No friends/family in a gang			

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3.8) Arrested/Charged with Friends 0 = Not arrested/charged with friends 1 = Arrested/charged with friends				
3.9) Adults in the community are supportive  0 = Adults in the community are suppo 1 = Adults in the community are not su				J
		Strength	Barrier	TOTAL
Pro-social peers		<i>C</i> .	; <sup>**</sup>	
Manage antisocial peers effectively		; *** 	*** ***	
Pro-social leisure activities		<i>i</i>	: "	
Motivation to make new friends				
	TOTAL:	0	0	
4.0 Education and Employment				
4.1) Truant from school				
0 = Never been charged with truancy 1 = Charged with truancy				il
4.2) Expelled eyer				400
0 = Never been expelled from school 1 = Expelled from School				5bo3
4.3) Effort in School				
0 ≈ Effort in school 1 ≈ Eittle effort in school				[l <sub>ss</sub> ,l
4.4) Relationship with Current School Personnel 0 = Positive relationship with school per 1 = No positive relationship with school	sonnel/e	mployer		•
	•			TOTAL
		Strength	Barrier	<u></u>
Motivation for education			1 *	
Motivation for employment		.*	<i>?*</i>	
Has HS Diploma/GED		£	÷	
Previous employment experience		14	P	
Individualized education plan		: *	<i>:</i> *	
Parents supportive of education		e e	(	
Parents supportive of employment		<u>(*)</u>	; <sup>**</sup>	
Т	OTAL:	0	O	
5.0 Pro-Social Skills				0.000
5.1) Can identify triggers/high risk situations  0 = Identifies high risk situations				
1 = Does not identify high risk situations	•			
5.2) Weighs pro/cons of a situation				7
0 = Weighs the pros and cons of a situati 1 = Does not weigh the pros and consid		on		

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5.3) Pro-social decision making			
<ul> <li>0 = Demonstrates pro-social decision m</li> <li>i = Does not demonstrate pro-social de</li> </ul>	_		
5.4) Frustration Tolerance			I
0 = Adequate skills to manage frustration 1 = Some/minimal skills to manage frus			1
			TOTAL
AS-Mary to manage of the ball of the	Strength ?	Barrier	
Ability to manage own behavior	,		
Motivated to learn new skills			
Age appropriate social skills	***	· · · · · · · · · · · · · · · · · · ·	
Availability of pro-social models	;	<i>;</i>	
	TOTAL: 0	0	
6.0 Substance Abuse, Mantal Health	and Personality		
6.1) Age of Drug Onset			<b>₩</b>
0 = 13 or older			l
1 = 12 or younger			
6.2) Others Complained about Youth's Drug/Al	cohol Use		7
0 = No one has complained about subs			·
1 = Others have complained about sub:	stance use		
6.3) Positive Drug Test within Past 6 Months			-
0 = Has not failed drug test within past	6 months		·
1 = Has failed drug test within past 6 m	onths		
6.4) Alcohol/Drugs have Caused Problem in Ma	ior Life Area		*
0 = Alcohol/Orugs have not caused a pr			·
1 = Alcohol/Drugs have caused a proble	em		
6.5) Used Substances While in Residential Facili	ty		*
0 ~ Has not used alcohol or drugs while			
1 = Has used alcohol or drugs white in t	he facility		
6.6) Inflated Self-Esteem			
0 = Appropriate level of self-esteem			:6
1 = Inflated self-esteem			
6.7) Risk Taking Behavior			
0 = Ooes not generally take risks			<del></del>
1 = Takes risks			

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			TOTAL
	Strength	Barrier	!=======
Motivation to stop using	1. <sup>76</sup>		
History of substance abuse	; ' ;''	<i>C</i>	
Sober support network  Motivated for treatment		20	
Attitude towards psychotropic med Stable mental health issues	20	· •	
Anger Management	· · · · · · · · · · · · · · · · · · ·	i i	
TOTAL:	0	0	
	L	<u>`</u>	
7.0 Values, Beliefs, and Attitudes			
7.1) Pro-Criminal Sentiments			4
0 = No/few pro-criminal sentiments 1 = Some/a lot of pro-criminal sentiments			
7.2) Negative Attitudes Towards Supervision			<b>1</b>
0 = Will complete supervision without problems 1 = Will have a difficult time with supervision			
7.3) Attitude Supports Substance Use			* Parties and the second secon
0 = Not supportive of substance use 1 = Supportive of substance use			
7.4) Demonstrates Remorse for Offense			*
0 = Full remorse 1 = Some remorse 2 = No remorse			
7.5) Demonstrates Empathy Towards Others			₩.
0 = Demonstrates empathy towards others 1 = Does not show empathy towards others			t
7.6) Attitude Towards Gangs			I
<ul><li>0 = Negative attitude towards gangs</li><li>1 = Supportive of gangs</li></ul>			: 3002
			TOTAL
		Strength	Barrier
Motivation to change		£**	$\sim$
Take responsibility for offense		A MA	\$ 200
Supportive of pro-social lifestyle		C	$e^{i \cdot i}$
,	тот	TAL: 0	0

Overall Impressions			
\$			Total Risk Score
	Total Number of Stre	engths 0	<b></b>
	Total Number of Bar	F	
SCORING			
	Cutoffs	Recidivism Rates	Youth Score
LOW	0 - 15	15%	
MODERATE	16 - 24	35%	
HIGH	25 - 42	67%	
Instrument Risk Level	LOW MODERATE	High	
Override			
Final Risk Level	C LOW C MODERATE	CHIGH	

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# OHIO YOUTH ASSESSMENT SYSTEM REENTRY SELF-REPORT QUESTIONNAIRE



Please fill this our to the best of your ability. Your responses will be used to help make the best decisions regarding your situation.

	l. Howeld w	от уса мёся узы бе	st pot ra trochik	while the law	:	
	a. Who	म दोर्च ५०३ वंच १० हुए। स	trouble.'			
N.	How other bave y	কম ভাগৰ বিধানুত্ত <sup>ত</sup>				
	Pro cos	Once in a while	g Soe	ranifica	Ofton	
Ž.	My family is impo	official to big.				
	Strongly agove	Agree	į le	Segret	Strongly Disagree	
-3	How many close I	family apprendent (peop	ons, siblings, b	iase been un	rsted before?	
(	. 3		2		À+	
".	Who are you plain	मान्यु का संश्केषु असार प्र	den perigetavl	weed"		
	a. Of dwise y	or are going to live v	cith, who do yo	n his ingesid a	Ath size tweet	
	b. Esic sour:	relationship with this	paran.			
	Nony Cond	Ensett	OK	Personal Property (Control of the Control of the Co	Very poor	

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<ul> <li>Aly faculty light</li> </ul>	¥.	:			
All of the table	<233a54	Sometimos	Randly	Never	
7. When you see o	on of the facility ra	ow mony people so:	ši vebray yeo "ši	ang out with term	do nos
romade prore	lose tribuds?	ma in			
8. Of Bosse Baty.	ni hang ind walh iso	orside the facility), 8	at are not close trib	ends, love many o	t them use
driggs *					
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9. How well don't	on het alend seith i	outstress the outst?			
Not us all	Some solida	<b>9</b> %	t 353-15\$	म्बर्ग हासब	
10. How well do p	ougy) ukwy with th	se staff in the progres	п, басты у		
Not at all	Nomerodas	θK	Cornell	Yeny genet	
If How many of y	on friends of tame	ly are insuffeed in a p	twig '		
12 Have some exerct	byco aredyl vid) i	क्षर स्थितिक संस्थाते हैं।		0 %	() Y <sub>60</sub>
D. Her many fan	us hamo van bevolid	harged each traines	in the past I wears?	:	
()	ŀ	:	3		
14. How islay took	es han e yen been e	polici fran whool.			
8)	į	,	3		

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15. They many	wheel staff	de yes bacca	podáve reladombip a	hh currently?	
8	ŧ		2	3	.a -
In Have your	ver been eni	oky od?		[] No	□ Nes
17. How did y	ou ges along	wan year be	KH <sup>a</sup>		
Уруст еац	ologad No	Kata <b>li</b> Seme	ovlis Ok Good	Very gend	
18 Huxtayon	ត (មានដ្ឋាននេះ -	erabesit your c	use of depuis?	(1 w)	C Yo
19. Партоусы	e enniplaine	g apom Som n	use of alcohold	0 %	Yes
States to see the	ng l to lu n	do y o arsolf cas	beed sood you take?	the most cool)	
21. On a scale	ot i to tita	માત્ર કારણ કર્યો અપ્યકૃતિ	your forms nak you?		
22. Followic	R off raper	sislen widsont	getting in technical		
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ha. People should be	allankad en bad kirego Will	nosa ariji k	olitime na programane	was.	
Strongly apres	Аунах	Desgr	***	Strongty disopres	
28. Hwar are some gr	sod drings about yangs				
Savagly agree	Agree	Disagi	roc i	strongly discipres	
Co. Fam: friends with	perplo és a gang			□ No	[], Yes
27. Have you ever en	personned any of the follo	wing/	Neglea	□ No	E Yes
			Sexual above	, 🔲 Na	[] Yes
			Physical abus	· (	□ Nes

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# 4.403 ASSESSMENT: Recommendations and Decision-Making

Effective Date: Rev. 11/25/2013 (Original 04/30/2012, Rev. 12/21/2012)

# POLICY

Upon completion of the family reunification assessment process, Case Managers shall make a timely recommendation to the Case Coordinator for release. Release recommendation options include:

- Approve release
- Approve release with post-release services
- Conduct a home study before a release decision can be made
- Deny release

Case Coordinators shall conduct a third-party review of the proposed release, and submit one of the following release recommendations (either in the form of a *Third Party Recommendation* or case concurrence) to the ORR/FFS in a timely manner:

- Approve release
  - o For Category 1 cases, where the sponsor does not present a safety risk, the UAC is not especially vulnerable, and there is no TVPRA of 2008 concern requiring a mandatory home study- A case concurrence, after a Case Coordination interview, on the Case Manager's recommendation will suffice for the Case Manager to send the case forward for a release decision by the ORR/FFS.
  - o For all other cases, a *Third Party Recommendation* (TPR) will need to be completed prior to the release recommendation being forward to the ORR/FFS.
- Approve release with post-release services
  - o For cases where the Case Coordinator agrees with the Case Manager that post-release only services should be approved, the case may be referred by the Case Manager to a post-release service provider after the TPR is completed by the Case Coordinator.
  - For cases where the Case Coordinator and Case Manager disagree on the recommendation for post-release only services, the case will be elevated to the ORR/FFS for a decision on whether post-release only services will be approved.
- Conduct a home study before a release decision can be made
  - o For cases where the Case Coordinator agrees with the Case Manager that a home study should be completed prior to a TPR being completed, a concurrence on the home study recommendation (noted in the TPR form) will be necessary for the case to be referred to a Home Study provider.

SECTION 4: FAMILY REUNIFICATION 4.403 ASSESSMENT: Recommendations and Decision-Making

<sup>&</sup>lt;sup>1</sup> The concurrence on the straight release can occur either as an email by the Case Coordinator to the Case Manager. However, Case Coordinators and Case Managers should have reached a decision on the straight release decision for eases meeting this exemption from fingerprint background checks and from a TPR requirement, prior to Case Manager's formal recommendation



- For cases where the Case Coordinator and Case Manager disagree on the recommendation for a home study, the case will be elevated to the ORR/FFS for a decision on whether a home study will be required prior to release.
- Recommendation pending additional information needed
- Deny release

DHS shall be provided with 24 hours to comment on the proposed release from the time the Case Manager sends the notice, by email, of the pending release request.

Only the ORR/FFS has the authority to make a release decision. The ORR/FFS considers the Case Manager's and Case Coordinator's recommendations or concurrences, and those of other stakeholders, as applicable, and makes the final release decision ORR release determinations include:

- Approve release
- Approve release with post-release services
- Conduct a home study before a final release decision can be made
- Remand release request-decision pending
- Deny release<sup>2</sup>

# Waiver of Release Requirements

If comprehensive child welfare assessment of both safety AND mitigating factors shows that the sponsor can provide for the child's physical and mental well-being, and fulfilling a particular requirement would cause a delay in timely family reunification, the care provider should request a waiver from non-statutory requirements from ORR. Any waivers must be approved by an ORR Supervisor (Field or Headquarters). The following requirements can NOT be waived under any circumstances:

- Verification of the sponsor's ID
- Verification of the sponsor's relationship with the UAC
- An independent finding in the form of a background check and Case Coordinator third party recommendation or concurrence that the sponsor has not engaged in any activity that would pose a risk to the UAC
- Child assessments including screenings for mandatory home study eligibility

# Safety Planning

In consultation with the Case Coordinator, the Case Managers shall prepare safety plans as needed. Safety plans should be prepared to address any outstanding needs that the UAC will have following release, and to enhance the UAC's opportunity for safe and successful integration into the sponsor family unit and community.

SECTION 4: FAMILY REUNIFICATION 4.403 ASSESSMENT: Recommendations and Decision-Making

<sup>&</sup>lt;sup>2</sup> The approval of the ORR Director or designee is required for the denial of release to a parent or legal guardian.

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ORR UAC PROGRAM OPERATIONS MANUAL (Care Provider Version)



# **Incomplete Sponsorship Applications**

Case Managers shall document efforts and outcomes for any potential sponsor to whom a FRP was sent, even if the potential sponsor does not complete the reunification process or withdraws sponsorship. Case Managers shall document information on unsafe potential sponsors in the ORR database<sup>3</sup> in order to prevent the sponsor from sponsoring other UACs.

# **Home Studies**

Please refer to ORR Operations Guide, Section 2.2.6 Mandatory Home Studies

<sup>&</sup>lt;sup>3</sup> Document in the notes section of the sponsor entity.



# Remand

ORR may remand a release request if additional information is needed or additional actions need to be taken before a release decision can be made. The release decision is held pending when ORR enters a remand in the ORR database. The Case Coordinator or ORR/FFS documents the date of the remand, an explanation of why the case is remanded, and which party is responsible for addressing the outstanding issues in the *Release Request*. When the additional information is received or the actions are completed, the ORR/FFS documents the date and provides an explanation in the *Release Request* as to why the remand was lifted and what the ORR decision on the release request is.

# Release Options

#### Release

A recommendation for a release without a home study or post-release services shall be made after a thorough assessment of the sponsor, the sponsor's family unit, and the needs of the UAC demonstrates that the sponsor can provide for the UAC's physical and mental well-being without additional assessment or services. Release is recommended after it is determined that the release will not endanger the UAC or others in the household or community, and that the UAC is likely to appear before the U.S. Department of Homeland Security (DHS) and/or the U.S. immigration court.

# Release with Post-Release Services<sup>4</sup>

A recommendation for a release with post-release services shall be made when the release is determined safe and appropriate as outlined above, but the UAC and sponsor need additional assistance to connect them to appropriate resources in the community. These services can only be provided with the consent of the sponsor. The Case Manager shall document the sponsor's consent during the sponsor assessment process.

Post-release services shall be provided for six months after the UAC is released to the sponsor, unless determined to be necessary for a shorter or longer period of time by the post-release services provider, and

<sup>&</sup>lt;sup>4</sup> This term is used synonymously with follow-up services as described in TVPRA of 2008, §235(c)(3)(B).

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#### ORR UAC PROGRAM OPERATIONS MANUAL (Care Provider Version)



approved by ORR. If the service needs identified in the referral are fully met prior to completion of the six month period, the post-release services provider shall make a request to ORR to conclude the services. If the UAC has significant outstanding service needs that could impact the safety of the UAC or others at the completion of the six month period, the post-release services provider may request prior approval from ORR to extend the services. Post-release services do not continue under any circumstance beyond a UAC's 18<sup>th</sup> birthday.

# **Deny Release**

Only ORR has the authority to deny release of a UAC to a potential sponsor. Even if the Case Manager or Case Coordinator does not find a potential sponsor to be suitable, he or she must submit a recommendation indicating such to ORR for ORR's review and final decision.

Release to a potential sponsor may be denied if any one of the following conditions exists:

- The potential sponsor is not willing or able to provide for the UAC's physical or mental well-being.
- The potential sponsor would present a moderate to high level of risk to the UAC because the potential sponsor:
  - Has been convicted of (including a plea of no contest) a felony involving child abuse or neglect; spousal abuse; a crime against a child or children (including child pornography); or a crime involving violence, including rape, sexual assault, or homicide
  - Has been convicted within the last five years of a felony involving physical assault, battery, or drug related offenses
  - Has been convicted of a misdemeanor for a sex crime, an offense involving a child victim, or a
    drug offense that compromises the sponsor's ability to ensure the safety and well-being of the
    UAC
  - Has other criminal history or pending criminal charges that compromises the sponsor's ability to ensure the safety and well-being of the UAC
- Placement in the potential sponsor's household would present a moderate to high level of risk to the UAC because:
  - A household member has been convicted of a crime that compromises the suitability of the home environment for the UAC
  - A household member presents child welfare concerns
  - The physical environment of the home presents risks to the UAC's safety and well being
- Release of the UAC would present a moderate to high risk to him or herself, the sponsor, family unit, or the community.

SECTION 4: FAMILY REUNIFICATION 4,403 ASSESSMENT: Recommendations and Decision-Making



# **PROCEDURES**

## **Incomplete Family Reunification Process**

1) If any potential sponsor initiates, but does not complete the family reunification and release process, the Case Manager documents in the ORR database that the reunification process is cancelled and enters the corresponding justification in the *Release Request* in the ORR database.

# Release Recommendations

Case Manager: Within 2 business days of the completion of the family reunification assessment, the Case Manager submits a release recommendation. The Case Manager:

- 1) In collaboration with the Clinician, updates or creates the *UAC Assessment, UAC Case Review* (as applicable), *Sponsor Addendum* (as applicable), and *Individual Service Plan (ISP)* with a release recommendation. Will document in the *UAC Assessment* or *UAC Case* Review, as applicable, a summary of the assessment of the potential sponsor's ability to provide for the UAC's physical and mental well-being and the Case Manager's recommendations.
- 2) Completes the *Release Request*, and notes whether the case is a Category 1 exempt case in the comments with the date the Case Coordinator concurred.
- 3) Completes the *Discharge Notification* with the sponsor and UAC demographic information; the actual discharge date is left blank at this point.
- 4) Updates the Care Provider Family Reunification Checklist indicating the date each item was completed and the specific document(s) used as supporting documentation for each category of documentation on the checklist.
- 5) Emails notification of the pending release decision to the DHS/JC to provide DHS 24 hours to comment on the release, with copy to the Case Coordinator, legal service provider or attorney of record, and Child Advocate, if applicable. Specifies in the subject line "Pending Release Decision," the UAC's full name and alien number (e.g., Pending Release Decision: Garcia Santos, Jose, 098-765-432).
- 6) Emails notification of the release request to the Case Coordinator. For Category I cases meeting the exemption requirement, the Case Manager will skip the email notification to the Case Coordinator and send the case (following the procedure below) straight to the ORR/FFS and CC the Case Coordinator.

Case Coordinator: Within a maximum of 3 business days (excluding weekends and holidays) of receipt of the Case Manager's recommendation, the Case Coordinator submits a release recommendation. The Case Coordinator:

- 1) Reviews the Release Request, the UAC Assessment, UAC Case Review (as applicable), Sponsor Addendum (as applicable) and ISP in the ORR database.
- 2) If additional information is needed to make a recommendation<sup>5</sup>, the Case Coordinator requests the information from the Case Manager. The Case Manager responds to requests for additional information within 1 business day.

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SECTION 4: FAMILY REUNIFICATION

4.403 ASSESSMENT: Recommendations and Decision-Making

<sup>&</sup>lt;sup>5</sup> Additional information shall only be requested if needed to assess the sponsor's overall ability to provide for the UAC's physical and mental welf-being.



- 3) Completes a TPR under one of the following scenarios:
  - a. **Home Studies:** Makes a home study concurrence to send the case to home study. In this case the notice will be sent back to the Case Manager who will begin the home study referral process.
  - b. **Post-Release only Services:** Makes a post-release only services concurrence to recommend post-release only services, the concurrence will ALSO require a completed *Third-Party Recommendation*.
  - c. All other releases (excluding exempt Category 1 cases), and cases with completed home studies: Completes the *Third-Party Recommendation*, if applicable addressing the following:
    - i) Narrative of release recommendation and justification for the recommendation
    - ii) Summary of Case Coordinator interviews with UAC
    - iii) Summary of interviews or information gathered from sponsor or other stakeholders, as applicable
    - iv) Any additional recommendations to promote the UAC's physical and mental well-being and the safety of the release
    - v) Explanation of any identified discrepancies in information
- 4) Completes the Case Coordinator's release recommendation in the *Release Request* and documents whether a TPR or concurrence has been made.
- 5) Sends the *Third-Party Reunification*, if necessary, with a formal notice of the recommendation to the Case Manager.

Case Manager: Within 1 business days of receipt of the Case Coordinator's *Third-Party Recommendation* and/or case concurrence, the Case Manager:

- 1) Sends the Care Provider Family Reunification Checklist, and either the Third-Party Recommendation and/or a notice in the email of the Case Coordinator's case concurrence, and release recommendation to the ORR/FFS, with a copy to the Field Support Specialist and the Case Coordinator, requesting a final release decision.
- 2) If the ORR/FFS requests additional information, the Case Manager or Case Coordinator responds within 1 business day.

**ORR/FFS**: Within 2 business days of receipt of the Case Coordinator's and/or Case Manager's completed recommendations the ORR/FFS makes the release decision. The ORR/FFS:

- 1) Reviews the release request, including the: Release Request (in the ORR database), UAC Assessment, UAC Case Review (as applicable), Sponsor Addendum (as applicable) and ISP (in the ORR database), Care Provider Family Reunification Checklist, and if applicable the Third-Party Recommendation.
- 2) Updates the ORR release decision in the Release Request and the Discharge Notification.
- 3) Emails notification of the ORR release decision (e.g., release, release with post-release services, etc.) to the Field Support Specialist, Case Manager, Case Coordinator, legal service provider or attorney of record, and Child Advocate, if applicable. The subject line of the email shall specify "ORR Release Decision" and shall contain the UAC's full name and alien number.

SECTION 4: FAMILY REUNIFICATION 4.403 ASSESSMENT: Recommendations and Decision-Making



# **Conduct Home Study**

Please refer to ORR Operations Guide, Section 2.2.6 Mandatory Home Studies

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# Release with Post-Release Only Services

Case Manager: Within 1 business day of the ORR/FFS approval to release with post-release only services, the Case Manager:

- 1) Selects a post-release services provider based on provider capacity and the geographic location of the sponsor, utilizing the *Post-release Referral Contacts*. The Case Manager only refers the case to one post-release services provider at a time, unless otherwise directed by ORR for exceptional circumstances (e.g., capacity issues).). In the event that the case is referred to more than one post-release services provider at a time, the Case Manager must clearly advise each post-release services provider of this in the referral email.
- 2) Sends the post-release services provider the referral for post-release services, and all attachments as ordered below:
  - a) Release Request (reflecting Case Manager's and Case Coordinator's recommendations and ORR's decision for release following completion of home study).
  - b) Care Provider Family Reunification Checklist
  - c) UAC Assessment, UAC Case Review (as applicable), Sponsor Addendum (as applicable)
  - d) Updated Individual Service Plan.
  - e) Results of background checks (including fingerprint results and CA/N results if applicable).

SECTION 4: FAMILY REUNIFICATION 4.403 ASSESSMENT: Recommendations and Decision-Making



- f) Family reunification packet, supporting documentation and background check results (including on household members), and any additional information, as applicable, obtained by the home study provider, Case Manager or Case Coordinator during the home study process (one PDF file).
- g) Child assessments including any additional documentation, as applicable, obtained by the home study provider, care provider or Case Coordinator on the UAC during the home study process that relates to release assessment (one PDF file).
- h) Third-Party Recommendation.
- i) Safety plan, as applicable.

Post-Release Provider: Confirms services are in place within 2 business days of ORR/FFS release approval. The post-release services provider.

- 1) Reviews the UAC's assessments and family reunification information.
- Confirms services are in place within 2 business days, and emails notification to the Case Manager, copying the Case Coordinator, ORR/FFS, and Field Support Specialist.
- 3) In the event that the post-release services provider is unable to secure services, the post-release services provider immediately informs the Case Manager, copying the Case Coordinator, and the Case Manager refers the case to another post-release services provider.

### Care Provider:

1) The UAC is not released until after the post-release services provider confirms that a post-release services provider is available to begin services immediately upon the UAC's release. However, the UAC's release should not be delayed if a post-release service provider is not available to immediately begin services. The Case Manager informs the post-release services provider of the planned date of discharge prior to release.

# Denial of Release: Parent/legal guardian

### ORR/FFS:

- 1) Consults with the ORR/FFS Supervisor on any denial of release to a parent/ legal guardian to ensure that all alternatives to a denial were explored and that even with additional services the UAC could not be safely reunified with the parent or legal guardian.
- 2) Emails recommendation of denial of release and clearly outlines justification for denial to the ORR/FFS Supervisor with the following attachments:
  - a) All supporting documentation related to the reason(s) for denial.
  - b) Release Request.
  - c) UAC Assessment, UAC Case Review (as applicable), Sponsor Addendum (as applicable)
  - d) Individual Service Plan,
  - e) Sponsor's background check.
  - f) Third-party Recommendation,

SECTION 4: FAMILY REUNIFICATION 4.403 ASSESSMENT: Recommendations and Decision-Making



- g) Home Study, if applicable.
- 3) In consultation with the ORR/FFS Supervisor, prepares a denial notification letter addressing the basis for denial and information on the process for requesting a reconsideration of the decision, and submits to the ORR/HQ Supervisor.

### ORR/HQ:

- 1) The ORR/HQ Supervisor, in consultation with the ORR/DCS Division Director, submits to the ORR/Director or his/her designee for final denial determination.
- 2) The signed denial notification letter is mailed to the parent/legal guardian by ORR.

#### **ORR/FFS:**

- 1) Notes the ORR/Director's denial of release to a parent/legal guardian in the *Release Request* in the ORR database and documents the justification for the denial.
- 2) Emails notice of the denial to the Case Manager with a copy of the signed denial letter attached.
- 3) Emails notification of the denial to the following stakeholders. The subject line of the email shall contain the UAC's full name and alien number and specify "ORR Release Decision: Denial."
  - a) Case Coordinator
  - b) Legal service provider or attorney of record
  - c) Child Advocate, if applicable
  - d) Home study provider, if applicable

### Care Provider:

- 1) Within 1 business day of receipt of the signed denial letter, the Case Manager, in collaboration with the Clinician, as needed, explains to the sponsor in a language the sponsor understands the reason for the denial and the process to submit a request for reconsideration of ORR's decision as outlined in the letter.
- 2) The Case Manager, in collaboration with the Clinician, notifies the UAC of the denial.

# Denial of Release: Non-parent/non-legal guardian

#### ORR/FFS:

- 1) Consults with the ORR/FFS Supervisor on any denial of release to a non-parent/non-legal guardian.
- 2) Notes the denial decision in the Release Request and documents the justification for the denial.
  - a) Emails notification of the denial to the stakeholders indicated below. The subject line of the email shall contain the UAC's full name and alien number and specify "ORR Release Decision: Denial."
  - b) Case Manager.
  - c) Case Coordinator.
  - d) Legal service provider or attorney of record.

SECTION 4: FAMILY REUNIFICATION 4.403 ASSESSMENT: Recommendations and Decision-Making

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- e) Child Advocate.
- f) Home study provider, if applicable.

# Care Provider:

1) Within 1 business day of receipt of the ORR/FFS's denial decision notice, the Case Manager, in collaboration with the Clinician, notifies the UAC and proposed sponsor of the denial, in a language they understand. The Case Manager informs the proposed sponsor and UAC that a reconsideration of ORR's decision may be requested by writing to:

**ACF Assistant Secretary** 



# SUBSECTION 4.500 RELEASE FROM ORR

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# 4.501 RELEASE FROM ORR: After Care Planning

Effective Date: Rev. 11/25/2013 (Original 04/30/2012, Rev. 12/21/2012)

# POLICY

Care providers shall conduct planning for the UAC's needs following release. Throughout the family reunification process, care providers shall work with sponsors and UACs to prepare them for reunification, to assess the sponsor's ability to access community resources, and to provide guidance regarding safety planning and accessing services for the UAC following release. For all UAC, Case Managers shall provide sponsors and UAC with information on basic safety and resources.

Once a UAC is approved for release, the care provider shall collaborate with the sponsor to ensure the UAC is released as quickly as possible. The care provider shall coordinate the physical discharge of the UAC to occur within three (3) calendar days after ORR approves the release. In order to provide DHS sufficient time to comment on the release request, the care provider shall not release the UAC until 24 hours have elapsed from the time the care provider emails notification of the pending release decision to the DHS/JC.

The Case Manager shall ensure that all of the UAC's belongings (money, clothes, etc.) are given to the UAC and sponsor at time of release, including belongings the UAC had at the time they entered ORR custody, and any belongings they acquired during their stay. The care provider shall ensure that the UAC is dressed appropriately for their destination. The Case Manager shall ensure that the UAC and sponsor receive copies of case file documentation needed for the UAC to obtain medical, educational, legal or other services following release.

The Case Manager shall ensure that all stakeholders are informed of the UAC's discharge date and change of address and venue, as applicable.

### **PROCEDURES**

# Care Planning

- 1) The Case Manager explains to the UAC and sponsor the following:
  - a) U.S. child abuse and neglect standards and child protective services 1
  - b) Human trafficking indicators and resources
  - c) Basic safety and 911

#### Stakeholder Notification

- 1) The Case Manager completes the following:
  - a) Verification of Release (completed on date of release)

SECTION 4: FAMILY REUNIFICATION 4.501 RELEASE FROM ORR: After Care Planning

http://www.childwelfare.gov/pubs/can\_info\_packet.pdf



- b) ORR Notification to ICE Chief Counsel Release of Unaccompanied Alien Child to Sponsor and Request to Change Address. Completes and sends to the:
  - i) ICE Office of Chief Counsel (OCC)
  - ii) EOIR Immigration Court Administrator
- 2) The Case Manager coordinates with the legal service provider or attorney of record to ensure completion of the EOIR Change of Venue Motion and EOIR Alien's Change of Address Form/Immigration Court EOIR 33/IC, and to provide the sponsor and UAC with instructions for filing Change of Venue Motions and Change of Address forms if the sponsor subsequently moves.
- 3) Within 24 hours of the UAC's physical release from the care provider, the care provider updates the *Discharge Notification* in the ORR database with the UAC's discharge date.
- 4) The Case Manager emails the completed *Discharge Notification* to the ORR/FFS, Case Coordinator, DHS/JC, UAC's attorney of record or legal service provider, Child Advocate, post-release services provider, and probation officer, as applicable. The subject line of the email must specify "Discharge Notification" and contain the UAC's full name and alien number.

# **UAC's Belongings and Records**

- 1) At the time of discharge, the care provider gives the sponsor and UAC all of the UAC's belongings, and copies of the following documentation and UAC case records below. The care provider retains a copy in the UAC's case file of any documents provided to the sponsor and UAC:
  - a) Personal belongings brought with UAC at time of admission or acquired during stay with ORR
  - b) Money from the UAC's daily allowance, if applicable
  - c) Verification of Release The original is given to the UAC and sponsor
  - d) Sponsor Care Agreement
  - e) UAC's documents, including but not limited to:
    - i) Immigration case related documents
      - 1. U.S. Department of Homeland Security, Form 1-862, Notice to Appear
      - 2. U.S. Customs and Border Protection, I-94 (if applicable)
      - 3. Immigration court orders
      - 4. DHS notifications and determinations
    - ii) Original, notarized Letter of Designation for Care of a Minor, if applicable
    - iii) Immunization record and initial medical screening
    - iv) Initial dental exam and any significant dental records
    - v) List of all medications the UAC is taking, including reason and dosage, and original of all prescriptions
    - vi) Name and contact information of medical, mental health, and dental care providers so sponsor and UAC may request additional records if needed
    - vii) Educational assessments and records

SECTION 4: FAMILY REUNIFICATION 4.501 RELEASE FROM ORR: After Care Planning

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- viii) Original or certified official documents in the UAC's case file (e.g., birth, marriage, or death, certificates, etc.)
- ix) Any change of venue and change of address documents (in collaboration with legal service provider or attorney of record), if applicable
- x) Blank copies of Alien's Change of Address Form/Immigration Court EOIR 33/IC (in collaboration with legal service provider or attorney of record). Each immigration court's Change of Address Form may be accessed here: <a href="http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm">http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm</a>
- xi) Post-release safety plan, as needed for cases with potential safety risks to UAC or community.



# 4.502 RELEASE FROM ORR: Transfer of Physical Custody of UAC

Effective Date: Rev. Rev. 11/25/2013 (Original 04/30/2012, Rev. 12/21/2012)

# POLICY

The care provider shall notify the Field Support Specialist of the date the UAC will be picked up by the sponsor, or travel to the sponsor, upon confirmation of the date.

Whenever possible, sponsors shall obtain physical custody of the UAC by picking him or her up at the care provider's site or at an off-site location designated by the care provider. Off-site locations (e.g., the care provider's administrative offices) may be designated for care provider sites that maintain a confidential address for the building in which UAC are housed.

The ORR/FFS may approve a UAC to be escorted to the sponsor in extenuating circumstances (e.g., sponsor cannot travel due to medical condition), or if sponsor pick-up of the UAC would cause delay in timely release of the UAC. UAC ages 14 and over may be escorted by an airline escort to a location where a sponsor is waiting. For airline escorts, the care provider must verify the airline's requirements for airline escorts, and ensure in advance that the sponsor can comply with all of the requirements (e.g., ID requirements), that the UAC's needs do not require escort by the sponsor or the care provider, and that there are no safety concerns. UAC under the age of 14 may only be escorted by care provider staff.

The sponsor is responsible for the cost of the UAC's transportation and if an escort is used, for the escort's transportation/airfare. However, in exigent circumstances where a sponsor is unable to afford the cost of airfare for the escort, and the sponsor needs assistance with the costs for the escort's airfare to ensure timely release, ORR may reimburse the care provider for these costs. In no circumstances will ORR pay for the sponsor's airfare. The care provider shall follow ORR instructions and procedures on transportation of UAC.

The care provider escort staff shall verify the identity of the sponsor prior to the sponsor taking physical custody of the UAC. The care provider shall not release the UAC to any individual other than the sponsor approved by ORR.

# **PROCEDURES**

### Sponsor Pick-Up

- 1) The Case Manager collaborates with the sponsor in selecting a date and time for the sponsor to pick-up the UAC, and advises the sponsor to bring valid government issued photo identification (from a U.S. or foreign government).
- 2) The care provider notifies the Case Coordinator and Field Support Specialist of the date the UAC will be picked up by the sponsor, upon confirmation of the date.
- 3) Upon arrival of the sponsor, the care provider checks the sponsor's valid government issued identification.
- 4) The care provider gives the sponsor the UAC's release documents and personal possessions as outlined in the sub-section on follow-up care planning.

SECTION 4: FAMILY REUNIFICATION 4.502 RELEASE FROM ORR: Transfer of Physical Custody of UAC



- 5) The care provider advises the sponsor, if traveling by airplane, to check in the UAC at the ticket counter with a copy of the UAC's U.S. Department of Homeland Security, Form I-862, Notice to Appear.
- 6) If the sponsor does not arrive or does not produce valid identification, the care provider contacts his/her supervisor and the ORR/FFS to discuss alternate release plans.

# Care Provider Escort

- 1) The Case Manager collaborates with the sponsor in selecting flights for the UAC and escort.
- 2) The care provider notifies the Case Coordinator of the date the UAC will travel, upon confirmation of the date.
- 3) The Case Manager arranges for the sponsor to pay for the airline tickets for the UAC and escort.
- 4) The sponsor purchases the airfare and sends the itinerary to the care provider, along with a copy of valid government issued photo identification. The Case Manager ensures the identification document will be acceptable, and instructs the sponsor to meet the UAC and escort at the airport with valid government issued identification.
- 5) At the airport, the care provider escort checks in the UAC at the ticket counter with a copy of the UAC's U.S. Department of Homeland Security, Form I-862, Notice to Appear.
- 6) At the final destination, the care provider escort releases the UAC to the sponsor after the sponsor has presented to the escort valid government issued identification. The care provider escort provides the sponsor with the UAC's release documents and personal possessions.
- 7) If the sponsor does not arrive at the airport or does not produce valid identification, the care provider escort shall contact his/her supervisor and the ORR/FFS to work out the safe return of the UAC to the care provider program.
- 8) If the care provider escort has concerns regarding the identity of the sponsor or the safety of the reunification upon meeting the sponsor, the care provider escort shall contact his/her supervisor and the ORR/FFS prior to releasing the UAC.

### Airline Escort

- 1) The Case Manager contacts the airline to obtain information on airline escort requirements.
- 2) The Case Manager collaborates with the sponsor to confirm that the sponsor can comply with airline escort requirements.
- 3) The Case Manager staffs the case with the Case Coordinator to determine if the UAC is an appropriate candidate for an airline escort.
- 4) The Case Manager collaborates with the sponsor in selecting flights for the UAC.
- 5) The Case Manager arranges for the sponsor to pay for the airline tickets for the UAC and escort.
- 6) The sponsor<sup>2</sup> purchases the airfare and sends the itinerary to the care provider, along with a copy of valid government issued photo identification. The Case Manager ensures the identification document

<sup>&</sup>lt;sup>1</sup> The Case Manager should assist the sponsor with making travel reservations if the sponsor requests such assistance.

<sup>&</sup>lt;sup>2</sup> The Case Manager should assist the sponsor with making travel reservations if the sponsor requests such assistance.

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- will be acceptable, and instructs the sponsor to meet the UAC and escort at the airport with valid government issued identification.
- 7) At the airport, the care provider escort checks in the UAC at the ticket counter with a copy of the UAC's U.S. Department of Homeland Security, Form I-862, Notice to Appear.
- 8) The care provider gives the UAC their personal possessions and documents and mails an additional copy of the release documents to the sponsor.



# 4.503 RELEASE FROM ORR: Closing the UAC's Case File

Effective Date: Rev. Rev. 11/25/2013 (Original 04/30/2012, Rev. 12/21/2012)

# **PROCEDURES**

After completing the *Discharge Notification*, and within 24 hours of the discharge of the UAC, the care provider:

- 1) Closes the UAC's case file record in the ORR database by dismissing the UAC from the program, and entering the end date as the date that the UAC was physically discharged.
- 2) Completes the remaining portions of the Care Provider Family Reunification Checklist and submits to the ORR/FFS and Field Support Specialist.

SECTION 4: FAMILY REUNIFICATION 4.APX: APPENDIX

# **ORR OPERATIONS GUIDE:**

# CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED

# Section 5: Program Management

# Click HERE to link to Section 5 of the ORR Policy Guide.

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→ ORR Policy Guide, Section 5.2 ORR Policies on Requests to Visit ORR Care Provider Facilities

# 5.1.1 Related Forms, Checklists, and Other Tools

Re)মধ্য Care Provider Facility Tour Request	Requesting Party, FFS, Project Officer, DCS
	Headquarters
Care Provider Facility Tour Addendum	FFS, Project Officer, DCS Headquarters

TOUR TOUR	UNEDES
Best Practices for Care Providers in Preparing	DCS Headquarters, Care Providers
for Facility Tours	
What to Expect — Care Provider Facility	DCS Headquarters, Requesting Party
Shelter Tours	
Care Provider Facility Tour Requests Email	DCS Headquarters
Templates	
Care Provider Facility Tour Request Tracker	DCS Headquarters

# 5.1.2 Requests for Care Provider Facility Tours

Interested parties, including advocacy groups, faith-based organizations, researchers, government officials, international delegations and other relevant stakeholders who wish to tour a care provider facility must request a visit through ORR. ORR considers various factors when responding to these requests with the best interests of the children of paramount importance.

A standard shelter tour consists of guided tour of the care provider facility and does not include standard consular visits. See \* ORR Policy Guide, Section 5.4 ORR Policies on Communication and Interaction with Consulates for policy on standard consular visits.

### Requesting a Standard Shelter Tour

ORR Policy Guide, Section 5.2.2 Special Arrangements

#### **CARE PROVIDER**

1) Refers any requests to tour their facility to the assigned FFS and Project Officer.

#### FFS or PROJECT OFFICER

2) Provides the Care Provider Facility Tour Request to the requesting party and instructs them to complete Section 1 of the form and return it to the FFS or Project Officer no later than two weeks before the requested visit date.

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- 3) Upon receipt of the Care Provider Facility Tour Request from the requesting party, ensures that:
  - a) Section 1 has been fully completed;
  - b) Any special arrangements, such as additional security and accessibility issues, are indicated in Section 1C. Such arrangements must be included in the *Care Provider Facility Tour Request* and will be coordinated prior to the approved visit; and
  - c) Any specific individuals to whom the requesting party wishes to speak (i.e., care provider staff, children) are indicated in Section 1C. Requests which include access to specific individuals during the visit will be coordinated with the FFS. ORR will only approve such requests if it is consistent with the best interest of the child.
- 4) Completes Section 2A of the Care Provider Facility Tour Request.
- 5) If the request only requires **FFS Supervisor or Project Officer Supervisor approval** (See *Table 5.1.2-A* below), uses the following criteria to evaluate the tour request:
  - ORR Policy Guide, Section 5.2.1 Evaluation Criteria
    - a) Requestor has a legitimate mission or business purpose for participating touring the shelter (e.g. State/local government matter, child welfare advocacy, legal issue, etc.).
    - b) The privacy and well-being of children at the care provider facility will not be adversely affected by the visit.
    - c) There are sufficient staffing and ground resources to conduct the visit and protect the privacy and well-being of children. ORR will also consider the number of visitors requested.
    - d) There is sufficient notice. Requests should be submitted two weeks prior to the requested tour date. Requests not received within this time frame may be considered if there are exigent circumstances.
- 6) Emails the Care Provider Facility Tour Request to the FFS SUPERVISOR or PROJECT OFFICER SUPERVISOR for final approval.
- 7) After supervisor approval is received, completes the remainder of Section 2 and emails the Care Pravider Facility Tour Request back to the requester to confirm approval or denial of the request, copying the assigned FFS or Project Officer, the FFS Supervisor or Project Officer Supervisor and UCTourRequests@acf.hhs.gov for tracking purposes.

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- Outside Group Events (religious services, holiday parties, etc. held by outside groups)
- Students

Table 5.1.2-A

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### **REQUESTS FROM ATTORNEYS**

Shelter tours are generally not allowed for attorneys. If the attorney is interested in providing legal services for UC, contact information should be requested from the attorney and provided to the ORR Division of Policy via **UCPolicy@acf.hhs.gov**. A Division of Policy team member will contact the attorney with further information.

8) If the request requires **ACF or ORR DCS Headquarters approval** (See *Table 5.1.2-B* below), forwards the *Care Provider Facility Tour Request* to **UCTourRequests@acf.hhs.gov**, copying the assigned FFS or Project Officer and the FFS Supervisor and Project Officer Supervisor.

# 

- Advocates (includes religious groups)
- Congressional
- Consular Visits (non-standard)
- Federal Agencies
- International (non-consular)
- State/Local Officials
- Media

Table 5.1.2-B

See \*\* ORR Policy Guide, Section 5.4 ORR Policies on Communication and Interaction with Consulates for policy on standard consular visits.

#### DCS HEADQUARTERS

- 9) Reviews requests requiring ACF or ORR DCS Headquarters approval for completeness and accuracy.
- 10) Uses following criteria to evaluate the tour request:
  - ORR Policy Guide, Section 5.2.1 Evaluation Criteria
    - a) Requestor has a legitimate mission or business purpose for participating touring the shelter (e.g. State/local government matter, child welfare advocacy, legal issue, etc.).
    - b) The privacy and well-being of children at the care provider facility will not be adversely affected by the visit.
    - c) There are sufficients taffing and ground resources to conduct the visit and protect the privacy and well-being of children. ORR will also consider the number of visitors requested.
    - d) There is sufficient notice. Requests should be submitted two weeks prior to the requested tour date. Requests not received within this time frame may be considered if there are exigent circumstances.
- 11) If the criteria above is not met:
  - a) Confirms decision to deny request with DCS Director and/or Senior FFS Supervisor.
  - b) Completes Section 2B and emails denial of the request as follows:

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To: FFS or Project Officer (whoever submitted the request)

Cc: FFS, Project Officer, FFS Supervisor, Project Officer Supervisor, Senior FFS Supervisor, ORR DCS Director, ORR Chief of Staff, ORR Associate Deputy Director, UCTourRequests@acf.hhs.gov

**Body:** Uselanguage from the Care Provider Facility Tour Request Email Templates.

Attachments: Care Provider Facility Taur Request

### 12) If the criteria above is met:

- a) Coordinates with the FFS assigned to the care provider location requested to verify the availability of care provider staff on the date and time requested and the availability of an FFS or FFS Supervisor to staff the tour.
- b) Concurrently forwards the request to the approving official(s) per the table below, copying the DCS Director, Senior FFS Supervisor, Project Officer Supervisor, ORR Chief of Staff, and ORR Associate Deputy Director.

	APPRIORITE EFFECT
Advocates (includes religious	HHS Office of Intergovernmental and
groups)	External Affairs
Congressional	HHS Assistant Secretary for Legislation
Consular Visits	HHS Office of Global Affairs –
	International Advisory Group
International	HHS Office of Global Affairs –
	International Advisory Group
Federal Agencies	Senior FFS Supervisor and/or DCS
	Director
State/Local Officials	HHS Office of Intergovernmental and
	External Affairs
Media	ACF Office of Public Affairs





## **REQUESTS FROM THE MEDIA**

For any requests from the media or that involve a media component, the ORR Public Affairs Specialist and ORR Communications Specialist must be copied on the request for approval.

The press may want to visit a facility but not speak with the children. To maintain the privacy, security and well-being of the children, ORR generally does not approve media tours of facilities. However, in certain circumstances, ORR will consider a request and evaluate the request using the following factors in consultation with ACF Office of Public Affairs prior to making a decision about allowing the press to visit a particular facility.

- To what extent will the visit be disruptive to the facility or children in the facility?
- Will special arrangements be needed? (e.g., security)
- How will the visit be conducted? (e.g., interviews with facility staff, number of reporters) How long will the visit be?

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GOV-00016957 Not Confidential

- Are there preferable alternatives?
- ORR Policy Guide, Section 5.1.4 Requests to Visit a Facility
- 13) If the request is denied, completes Section 2B and emails denial of the request as follows:



To: FFS or Project Officer (whoever submitted the request)

Cc: FFS, Project Officer, FFS Supervisor, Project Officer Supervisor, Senior FFS Supervisor, ORR DCS Director, ORR Chief of Staff, ORR Associate Deputy Director, UCTourRequests@acf.hhs.gov

**Body:** Use language from the Care Pravider Focility Tour Request Email Templotes.

**Attachments:** Care Provider Facility Tour Request

14) If the request is approved, completes the remainder of Section 2 and emails approval of the request as follows:



To: FFS or Project Officer (whoever submitted the request)

Cc: FFS, Project Officer, FFS Supervisor, Project Officer Supervisor, Senior FFS Supervisor, ORR DCS Director, ORR Chief of Staff, ORR Associate Deputy Director, UCTourRequests@acf.hhs.gov

**Body:** Use language from the Care Provider Facility Tour Request Email Templotes.

- **Attachments:** Care Provider Focility Tour Request
  - Best Proctices for Care Providers in Preparing for Facility Tours
  - What to Expect Care Provider Facility Tours
- Updates the Care Provider Facility Tour Request Tracker and UC Tour Requests Outlook calendar.



#### TOUR REQUEST TRACKING

The following information must be tracked via spreadsheet for each tour request, at a minimum:

- Date Received
- Type of Visitor (e.g., international, congressional, etc.)
- Number of Visitors
- Care Provider Location
- Tour Date
- Approval Status (i.e., approved or denied)

Each approved tour must be saved in the UC Tour Requests Outlook calendar. Be sure to account for differences in time zones when saving the appointment.

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#### FFS or PROJECT OFFICER

- 16) If the tour was denied, informs the requesting party that their request cannot be accommodated and includes a copy of the *Care Provider Facility Tour Request* in the email.
- 17) If the tour was approved:
  - a) Emails the approved Care Provider Facility Tour Request and Whot to Expect Care Provider Facility Tours to the requesting party.
  - b) Emails the approved Care Provider Facility Tour Request and Best Practices for Care Providers in Preparing for Facility Tours to the care provider hosting the tour.
  - c) Responds to any follow-up questions from the requesting party or care provider, elevating any questions they cannot answer to **UCTourRequests@acf.hhs.gov**.
  - d) Emails any changes to the approved tour request (i.e., additional visitors, change in date, time, or location) to UCTourRequests@acf.hhs.gov.

# Conducting a Standard Shelter Tour

→ ORR Policy Guide, Section 5.2.3 Visitation Protocol

#### FFS or FFS SUPERVISOR

- 18) Staffs the tour, answering any ORR-related questions posed by the visitors or referring the questions to ORR HQ and ensuring that the visitors follow ORR visitation protocol as outlined in What to Expect Care Provider Facility Tours.
- 19) Ensures that the care provider follows ORR policy and procedures as outlined in *Best Practices* for Core Providers in Preporing for Facility Tours.
- Ensures that the tour does not exceed three (3) hours.

### Post-Tour Responsibilities

#### FFS or FFS SUPERVISOR

21) **NO LATER THAN TWO (2) BUSINESS DAYS** after the tour date, completes the *Care Provider Facility Taur Addendum* and emails it to **UCTourRequests@acf.hhs.gov**, flagging any major issues or concerns that arose during the tour in the body of the email.

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### DCS HEADQUARTERS

22) Emails the final Care Provider Facility Tour Request and Care Pravider Facility Taur Addendum to the ORR Chief of Staff as follows:



To: ORR Chief of Staff

Cc: FFS, Project Officer, FFS Supervisor, Project Officer Supervisor, Senior FFS Supervisor, ORR DCS Director, ORR Chief of Staff, ORR Associate Deputy Director, ORR Deputy Director for Children's Programs, UCTourRequests@acf.hhs.gov

**Body:** Use language from the Care Provider Facility Tour Request Email Templates.

Attachments:

- Care Provider Facility Tour Request
- Care Provider Facility Tour Addendum

23) Updates the Care Provider Facility Tour Request Tracker and saves the final Care Provider Facility Tour Request and Care Provider Facility Taur Addendum on the ORR shared drive.

# 5.1.3 Government Accountability Office Visits

The U.S. Government Accountability Office (GAO), an independent, nonpartisan agency that works for Congress, may request to visit a care provider facility in order to:

- Audit agency operations to determine whether federal funds are being spent efficiently and effectively;
- Investigate allegations of illegal and improper activities;
- Report on how well government programs and policies are meeting their objectives;
- Perform policy analyses and outlining options for congressional consideration; and/or
- Issue legal decisions and opinions, such as bid protest rulings and reports on agency rules.

#### FFS, PROJECT OFFICER, or ORR OFFICIAL

- 1) Received request from GAO to visit a care provider facility. If the request is received by the care provider, they must email the request to their assigned FFS and Project Officer.
- 2) Completes Section 1 of the Care Provider Facility Tour Request and emails the form to UCTourRequests@acf.hhs.gov, copying the assigned FFS, Project Officer, FFS Supervisor, and Project Officer Supervisor.
  - GAO is categorized as a Federal agency, which requires ACF or ORR DCS Headquarters approval, and is required to formally request a visit that is then elevated to ORR Headquarters for situational awareness.
  - If GAO requests to interview care provider staff or UC, this should be indicated ahead of time on the Care Provider Facility Tour Request.
  - If GAO requests to review UC case files or other documentation, this should be indicated ahead of time on the *Care Provider Focility Tour Request* so that the care provider may have these items ready and available on the day of the visit.

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## DCS HEADQUARTERS

3) Follows the procedures outlined above in \*\* Section 5.1.2 Requests for Care Provider Facility Tours, beginning with Step 9.

#### FFS

- 4) Follows the procedures outlined above in \*\* Section 5.1.2 Requests for Care Provider Facility Tours, beginning with Step 18 under Conducting a Standard Shelter Tour.
- 5) The FFS staffing the tour should make themselves available to answer ORR-related questions. At times, GAO may ask the FFS to leave the room so that they may speak with UC or staff privately. The FFS must comply with this request.

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## 

ORR Policy Guide, Section 5.8 Significant Incident Reports and Notification Requirements

## 5.7.1 Related Forms, Checklists, and Other Tools

	- Karasa
Significant Incident Report (SIR)	Care Provider
Sexual Abuse Significant Incident Report (SA/SIR)	Care Provider
Significant Incident Report (SIR) Addendum	Care Provider
Sexual Abuse Significant Incident Repart	Care Provider
(SA/SIR) Addendum	

383(8) X 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	UKSEST UKSEST
CHART 1: Definition of Sexual Abuse and	Care Provider
Sexual Harassment	
CHART 2: Reporting and Notification	Care Provider
Requirements for Significant Incidents	1
FLOWCHART: How to Report Sexual-Related	Care Provider
Incidents	
UC Portal SIR User Guide	Care Provider

## 5.7.2 Emergency Incidents

- ORR Policy Guide, Section 5.8.1 Emergency Incidents
- ORR Policy Guide, Section 5.8.8 Elevation of Emergencies and Serious Incidents
- ORR Policy Guide, Section 3.3.16 Notification and Reporting of the Death of an Unaccompanied Child
- ORR Policy Guide, Section 3.4.5 Responding to Medical Emergencies

#### Emergency incidents include:

- Death of a child, staff, or other person in a care provider facility
- Situations in which the lives of children or staff are in immediate danger (e.g., active shooter, earthquake or other natural disaster, medical emergency that is life threatening in nature requiring immediate hospitalization) NOTE: A medical emergency is an acute injury, illness, or toxic exposure that necessitates a 911 call or urgent medical attention that, if not received, may result in death or damage to vital bodily functions.
- Unauthorized absence from a care provider (i.e., a runaway)

Emergency Incidents and allegations may be reported to care providers multiple ways (e.g., ORR staff; stakeholders such as legal service providers, DHS, or the sponsor; the UC; self-observation). No matter

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the method by which the care provider became aware of the incident or allegation, the care provider must follow all reporting, notification, and follow-up requirements in this subsection.

#### Reporting

#### CARE PROVIDER

- 1) IMMEDIATELY:
  - a) Calls 911, if appropriate (For unauthorized absences always call 911).
  - b) For unauthorized absences:
    - Calls the National Center for Missing and Exploited Children Hotline at 1-800-THE-LOST (1-800-843-5678).
    - Calls the DHS FOJC.
  - c) Reports the emergency incident to CPS and/or State licensing according to State licensing requirements and reporting procedures.
  - d) Reports emergency incident to the ORR Intakes Hotline at (202) 401-5709.

#### INTAKES

- 2) **IMMEDIATELY**, notifies the FFS Supervisor (or on-call FFS Supervisor) of the emergency incident **via phone**.
- 3) If unable to reach the FFS Supervisor (or on-call FFS Supervisor) within 15 minutes, calls the Senior FFS Supervisor.

#### FFS SUPERVISOR

4) WITHIN 30 MINUTES, elevates the emergency incident to Senior FFS Supervisor, DCS Director, ORR Deputy Director for Children's Services, and ORR Director.

#### **CARE PROVIDER**

- 5) WITHIN 4 HOURS OF THE EMERGENCY INCIDENT (or within 4 hours of the care provider becoming aware of the incident):
  - a) Completes an SIR in the UC Portal (see UC Portal SIR User Guide located on the UC Portal homepage)



#### ENTERING SIR DATES IN THE UC PORTAL

#### **Event Section**

Date of Event – Date the actual incident occurred(or estimate if occurred prior to ORR care)

#### SIR Incident Information Section

- Date Reported to Care Provider Date the incident was reported to the Care Provider
- Date Reported to ORR Date the Care Provider reported the incident to ORR

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b) Notifies ORR as show below, and saves a copy of the SIR in the UC's case file.



To: Required for All Emergency Incidents

SIRHotline@acf.hhs.gov

Project Officer FFS Supervisor

FFS CFS

Case Coordinator

Required for Certain Types of Emergency Incidents

ORR Medical Coordinator (medical incidents)

ICE FOJC (unauthorized absences)

Subject Line: Must read "Report of Emergency Incident" and include the event number (e.g., "Event

12345")

**Body:** Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: SIR

#### **Notifications**

#### **CARE PROVIDER**

WITHIN 48 HOURS OF THE EMERGENCY INCIDENT (or within 48 hours of the care provider becoming aware of the incident):

 Notifies the UC's attorney of record and/or legal service provider of any <u>unauthorized absences</u> following the table below (except when otherwise required by state licensing) and documents the UC's decision in the UC Case Review.

Note: DO NOT send a copy of the SIR to the attorney of record of legal service provider.

#### NOTIFICATION TO ATTORNEYS AND LEGAL SERVICE PROVIDERS

Escricia Escricia		
14 <b>Y</b> ears or Older	<b>Y</b> es	Follow minor's decision
14 Years or Older	No	<ol> <li>Inform minor that the allegation may affect the his/her eligibility for immigration relief</li> <li>Ask whether the minor would like to speak with an attorney</li> <li>Follow minor's decision</li> </ol>

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14 Years or Older	Yes or No	Notify the FFS prior to speaking with the
with a Diagnosed		minor
Developmental		
Disability		
Under 14 Years Old	Yes or No	Notify the minor's attorney of record or the
		local legal service provider

Table 5.7.4-A · ORR Policy Guide, Figure 4.10.1

2) Notifies the UC's parent or legal guardian and the UC's sponsor or the receiving entity that will be caring for the UC (when the UC is released from ORR custody) of any <u>unauthorized absences</u>, <u>hospitalizations</u>, <u>or serious medical services</u> following the table below (except when otherwise required by state licensing) and documents the UC's decision in the UC Case Review.

Note: DO NOT send a copy of the SIR to the UC's parent, legal guardian, sponsor, or entity caring for the UC.

#### NOTIFICATION TO PARENTS/LEGAL GUARDIANS AND SPONSORS

14 Years or Older	1. Follow minor's decision whether to notify the parent or legal guardian unless there is evidence showing they should not be notified  2. Follow the minor's decision whether to notify the sponsor or receiving facility, if different from the parent or legal guardian
14 Years or Older with a Diagnosed Developmental Disability	<b>N</b> otifγ the FFS prior to speaking with the minor
Under 14 Years Old	1) Notify the minor's parent or legal guardian unless there is evidence showing they should not be notified 2) Notify the minor's sponsor or receiving facility, if different from the parent or legal guardian

Table 5.7.4-8 🤲 ORR Policy Guide, Figure 4.10.2

3) If applicable, notifies the UC's child advocate of any <u>unauthorized absences</u>, <u>hospitalizations</u>, <u>or serious medical services</u> following the table below (except when otherwise required by state licensing) and documents the UC's decision in the UC Case Review.

Note: Include a copy of the SIR.

#### NOTIFICATION TO CHILD ADVOCATES

Tok 4 of Sales and Sales a	CARE PROVIDER REQUIRENTENTS
14 Years or Older	Follow minor's decision
14 Years or Older	Notify the FFS prior to speaking with the minor
with a Diagnosed	
Developmental	
Disability	
Under 14 Years Old	Notify the minor's child advocate

Table 5.7.4-C \* ORR Policy Guide, Figure 4.10.3

#### DCS HEADQUARTERS

In the event of the death of a UC:

- 1) IMMEDIATELY (within 24 hours of DCS HQ becoming aware of the incident) notifies:
  - UC's parent, legal guardian, or next-of-kin
  - UC's consulate
  - UC's attorney of record and/or legal service provider, if applicable
  - Child advocate, if applicable
  - ICE FOJC
  - DHS ERO Juvenile and Family Residential Management Unit (JFRMU) at JFRMU@ice.dhs.gov.

#### Follow-Up and Additional Reporting

ORR Policy Guide, Section 5.8.7 SIR Addendums

#### CARE PROVIDER

- 1) Uploads any documents received related to investigations and law enforcement involvement (e.g., CPS, State licensing) to the UC Portal upon receipt, if applicable.
- 2) Updates the UC on the results of the law enforcement investigation, if applicable. (Note: If the victim is no longer in ORR custody, the care provider must attempt to notify the victim of the results of the investigation at his or her last known address.)
- 3) Creates an SIR Addendum (see UC Portal SIR User Guide located on the UC Portal homepage) to an existing SIR when:
  - 1) Information in the original SIR was incorrect or incomplete
  - 2) New or more detailed information has become available since the original *SIR* was submitted. Examples of new information include, but are not limited to:
    - Discussion with the sponsor about the incident
    - o Media inquiries about the incident
    - Receipt of official reports from State or local government agency

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- o Updates on investigations and law enforcement involvement
- 4) WITHIN 24 HOURS of determining the need to create an *SIR Addendum*, notifies ORR as shown below, and saves a copy of the *SIR Addendum* in the UC's case file.

To: Required for All Emergency Incident SIR Addendums

SIRHotline@acf.hhs.gov

Project Officer FFS Supervisor

FFS CFS

CaseCoordinator

Required for Certain Types of Emergency Incident SIR Addendums

ORR Medical Coordinator (medical incidents)

Subject Line: Must read "Report of Emergency Incident Addendum" and include the event number (e.g.,

"Event 12345")

**Body:** Use Synopsis of the Event from UC Portal and do not include UC's full name or aften number

Attachments: SIR Addendum

#### FFS AND PO

- 1) FFS and PO during their monthly meeting review the emergency SIRs to ensure that the SIR is clearly written with all required information. Also, ensures that the emergency SIR was reported appropriately.
- 2) If the emergency SIR was not reported to the appropriate agency or with the appropriate information:
  - a) Coordinate providing the care provider technical assistance.
  - b) If the issue persists, then coordinates issuing a corrective action and requires the care provider to take appropriate action. \*\* ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions

#### **FFS**

For unauthorized absences, hospitalizations, and serious medical services only:

- 1) If any investigative entity (e.g., CPS, law enforcement, State licensing, USICE HSI, HHS OIG, DHS OIG, CRCL, CBP) that received a report has not verified if they will conduct an investigation within the entity's standard response time, then WITHIN 1 BUSINESS DAY, follows up with that investigative entity to determine if the incident will be investigated.
- 2) If an investigative entity opens an investigation for the reported *SIR* then the care provider, FFS Supervisor, and FFS cooperate fully during the investigative process.

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#### FFS or FFS SUPERVISOR

In the event of the death of a UC:

- Obtains police reports and uploads them into the UC Portal.
- Works with the Medical Examiner or other appropriate office to obtain a death certificate and upload to the UC Portal.
- Works with DCS Headquarters, Project Officer, and other appropriate stakeholders to arrange for transportation of the UC's remains to country of origin and/or a funeral.
- Follows up with State licensing to determine if the care provider is required to perform any additional actions.

## 5.7.3 Significant Incidents

- ORR Policy Guide, Section 5.8.2 Significant Incidents
- ORR Policy Guide, Section 5.8.5 Allegations of Past Abuse that Occurred Outside the United States
- ORR Policy Guide, Section 5.8.6 Allegations of Past Abuse that Occurred Inside the United States
- ORR Policy Guide, Section 5.8.8 Elevation of Emergencies and Serious Incidents

#### Significant incidents include, but are not limited to:

- Abuse or neglectin ORR care (not including sexual abuse)
- Past abuse and neglectin the U.S. not in ORR care (includes sexual abuse)
- Past abuse and neglect outside the U.S. (includes sexual abuse)
- Abuse or neglect in DHS custody (includes sexual abuse)
- Behavioral incidents that threaten safety, such as physical aggression, assaults, or suicide attempts
- Escape risk or escape attempt
- Incidents involving law enforcement
- Pregnancy and pregnancy-related issues
- Safety measures, such as the use of restraints
- Criminal history (all types of criminal history)
- Contact or threats to a UC while in ORR care from smuggling syndicates, organized crime or other criminal actors
- Potential fraud schemes
- Any type of non-emergency incident that endangers the safety and well-being of the minor

For incidents of sexual abuse that occurred while the UC was in ORR care, refer to **ORROps Guide**, Section 5.7.4 Sexual Abuse Significant Incidents in ORR Care.

Incidents and allegations may be reported to care providers multiple ways (e.g., ORR staff; stakeholders such as legal service providers, DHS, or the sponsor; the UC; self-observation). No matter the method by which the care provider became aware of the incident or allegation, the care provider must follow all reporting, notification, and follow-up requirements in this subsection.

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#### Reporting

#### **CARE PROVIDER**

WITHIN 4 HOURS OF THE SIGNIFICANT INCIDENT (or within 4 hours of the care provider becoming aware of the incident):

- 1) Reports the incident to CPS, local law enforcement, and/or State licensing according to State licensing requirements and reporting procedures.
  - NOTE: Incidents must be reported to CPS in both the state of the reporting care provider and the state in which the incident took place according to state licensing requirements.
- 2) Reports incidents to other federal agencies. Refer to:
  - Towns on the control of the control
  - ORR Ops Guide, Section 5.8 Reporting to Federal Agencies
- 3) Completes an SIR in the UC Portal (see UC Portal SIR User Guide located on the UC Portal homepage).



#### ENTERING SIR DATES IN THE UC PORTAL

#### Event Section

Date of Event – Date the actual incident occurred or estimate if occurred prior to ORR care)

#### SIR Incident Information Section

- Date Reported to Care Provider Date the incident was reported to the Care Provider
- Date Reported to ORR Date the Care Provider reported the incident to ORR
- 4) Notifies ORR as shown below, and saves a copy of the SIR in the UC's case file.



To: Required for AllSIRs

SIRHotline@acf.hhs.gov

Project Officer

FFS CFS

Case Coordinator

Required for Certain Types of SIRs

ORR Medical Coordinator (medical incidents)

Subject Line: Must read "Report of Significant Incident" and include the event number (e.g., "Event

12345")

**Body:** Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: SIR

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## Notifications Required for Abuse/Neglect or Human Trafficking SIRs

#### CARE PROVIDER

- 1) WITHIN 48 HOURS OF THE SIGNIFICANT INCIDENT (or within 48 hours of the care provider becoming aware of the incident), makes additional notifications following the tables below, except when otherwise required by state licensing.
- 2) Documents any decisions the UC makes regarding notifications in the UC Case Review.

Note: DO NOT send a copy of the SIR to these individuals/entities unless otherwise specified.

### NOTIFICATION REQUIREMENTS

rayse of Englishing	Manification regularization
Any Allegation of Abuse or Neglect, Regardless of Where It Occurred	<ul> <li>Parent or Legal Guardian (see table 5.7.3-Cbelow)</li> <li>Attorney of Record and/or Legal Service Provider (see table 5.7.3-B below)</li> <li>Sponsor or Receiving Facility (see table 5.7.3-Cbelow)</li> <li>Child Advocate, if applicable (include copy of SIR, see table 5.7.3-D below)</li> </ul>
Human Trafficking Prior to ORR Care	<ul> <li>OTIP at ChildTrafficking@acf.hhs.gov (include a copy of relevant SIRs, the most recent UC Assessment, and note if reported to investigative entities)</li> <li>Attorney of Record and/or Legal Service Provider (see table 5.7.3-B below)</li> <li>Child Advocate, if applicable (include copy of SIR, see table 5.7.3-D below)</li> </ul>
Human Trafficking Post- Release	<ul> <li>OTIP at ChildTrafficking@acf.hhs.gov (include a copy of the SIR, the most recent UC Assessment, and note if reported to investigative entities)</li> <li>Attorney of Record and/or Legal Service Provider (see table 5.7.3-B below)</li> <li>Child Advocate, if applicable (include copy of SIR, see table 5.7.3-D below)</li> </ul>

Table 5.7.3-A

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All required notification must be made in accordance with the tables below, except when otherwise required by state licensing:

#### **NOTIFICATION TO ATTORNEYS AND LEGAL SERVICE PROVIDERS**

Elling State of the Control of the C		
14 Years or Older	Yes	Follow minor's decision
14 Years or Older	No	<ol> <li>Inform minor that the allegation may affect the his/her eligibility for immigration relief</li> <li>Ask whether the minor would like to speak with an attorney</li> <li>Follow minor's decision</li> </ol>
14 Years or Older with a Diagnosed Developmental Disability	Yes or No	Notify the FFS prior to speaking with the minor
Under 14 Years Old	Yes or No	Notify the minor's attorney of record or the local legal service provider

Table 5.7.3-B \*\* ORR Policy Guide, Figure 4.10.1

### **NOTIFICATION TO PARENTS/LEGAL GUARDIANS AND SPONSORS**

14 Years or Older	<ol> <li>Follow UC's decision whether to notify the parent or legal guardian unless there is evidence showing they should not be notified.</li> <li>Follow the UC's decision whether to notify the sponsor or receiving facility, if different from the parent or legal guardian.</li> </ol>
14 Years or Older with a Diagnosed Developmental Disability	Notify the FFS prior to speaking <b>w</b> ith the minor.
Under 14 Years Old	<ol> <li>Notify the minor's parent or legal guardian unless there is evidence showing they should not be notified.</li> <li>Notify the minor's sponsor or receiving facility, if different from the parent or legal guardian.</li> </ol>

Table 5.7.3-C → ORR Policy Guide, Figure 4.10.2

#### NOTIFICATION TO CHILD ADVOCATES

U 65 Y C 2 Section 1995	EXECUTE OF A PROPERTY OF A PRO
14 Years or Older	Follow minor's decision
14 Years or Older	Notify the FFS prior to speaking with the minor
with a Diagnosed	
Developmental	
Disability	
Under 14 Years Old	Notify the minor's child advocate

Table 5.7.3-D \* ORR Policy Guide, Figure 4.10.3

#### Follow-Up and Additional Reporting

ORR Policy Guide, Section 5.8.7 5IR Addendums

#### CARE PROVIDER

- 1) Uploads any documents received related to investigations (e.g., CPS, State licensing, HHS OIG, DHS OIG, USICE HSI, CRCL, CBP) to the UC Portal upon receipt, if applicable.
- 2) Creates an SIR Addendum (see UC Portal SIR User Guide located on the UC Portal homepage) to an existing SIR when:
  - Information in the original SIR was incorrect or incomplete
  - New or more detailed information has become available since the original SIR was submitted. Examples of new information include, but are not limited to:
    - o Discussion with the sponsor about the incident
    - Media inquiries about the incident
    - Receipt of official reports from State or local governments
    - Updates on investigations
- 2) WITHIN 24 HOURS of determining the need to create an *SIR Addendum*, notifies ORR as shown below, and saves a copy of the *SIR Addendum* in the UC's case file.

	( ^ \ \		
3		Required for AllSIR Addendums	
	/100m2*	SIRHotline@acf.hhs.gov	
		Project Officer	
		FFS	
		CFS	
		CaseCoordinator	
		Required for Certain Types of SIR Addendums	
		ORR Medical Coordinator (medical incidents)	
		ChildTrafficking@acf.hhs.gov{human trafficking in ORR care and human trafficking post	
		release)	
	Subject Li	Must read "Report of Significant Incident Addendum" and include the event number (e.g.,	

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	"Event 12345")	:
Body:	Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number	
Attachments:	SIR Addendum	:

#### **FFS**

- Reviews the UC's allegation in the SIR and ensures that the SIR is clearly written with all required information. Also, ensures that the SIR was reported to the appropriate investigative agency.
- 2) If the allegation was not reported to the appropriate agency or with the appropriate information:
  - Provide the care provider technical assistance.
  - If the issue persists, then issues corrective action findings and requires the care provider to take appropriate action. \*\* ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
- 3) If any CPS, local law enforcement, or State Licensing investigative entity that received a report has not verified if they will conduct an investigation within the entity's operational response time, then **WITHIN 1 BUSINESS DAYS**, follows up with that investigative entity to determine if the incident will be investigated.
  - ORR Ops Guide, Section 2.2.5 Protecting Sponsors from Fraud
  - ORR Ops Guide, Section 5.8 Reporting to Federal Agencies
- 4) If an investigative entity opens an investigation for the reported SIR then the care provider, FFS Supervisor, FFS and CFS cooperate fully during the investigative process.

## 5.7.4 Sexual Abuse Significant Incidents in ORR Care

- ORR Policy Guide, Section 4.10 Reporting and Follow-up
- ORR Policy Guide, Section 4.10.1 Methods for Children and Youth to Report
- ORR Policy Guide, Section 4.10.5 Confidentiality
- ORR Policy Guide, Section 4.10.6 UC Sexual Abuse Hotline
- ORR Policy Guide, Section 5.8.3 Allegations of Sexual Abuse and Harassment in ORR Care

#### Care providers must use the Sexual Abuse Significant Incident Form to report the following:

- Sexual abuse in ORR care
- Sexual harassment in ORR care
- Inappropriate sexual behavior in ORR care

Incidents and allegations may be reported to care providers multiple ways (e.g., ORR staff; outside stakeholders such as legal service providers, DHS, or the sponsor; the UC; self-observation). No matter the method by which the care provider became aware of the incident or allegation, the care provider must follow all reporting, notification, and follow-up requirements according to Section 4.10 of the ORR Policy Guide and as described in this subsection.

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Care providers may use CHART 1: Definition of Sexual Abuse and Sexual Harassment as a reference guide in determining whether an incident is considered sexual abuse or sexual harassment.

Care providers may refer to FLOWCHART: *How to Report Sexual-Related Incidents* for a quick reference guide on reporting and notification requirements for sexual abuse significant incidents.

#### Reporting

ORR Policy Guide, Section 4.10.2 Care Provider Reporting Requirements

#### CARE PROVIDER

WITHIN 4 HOURS OF THE SEXUAL-RELATED SIGNIFICANT INCIDENT (or within 4 hours of the care provider becoming aware of the incident):

- 1) Reports the incident to CPS, local law enforcement, and/or State licensing according to State licensing requirements, and ORR reporting policies.
  - NOTE: Incidents of sexual abuse or harassment that occurred at another care provider must be reported to CPS in both the state of the reporting care provider and the state in which the incident took place. Incidents of sexual abuse involving an adult must be reported to local law enforcement.
- 2) Completes a Sexual Abuse SIR (SA/SIR) in the UC Portal (see UC Portal SIR User Guide located on the UC Portal homepage) and saves a copy of the SA/SIR in the UC's case file.
- 3) Reports incidents that fall under the definition of sexual abuse to the FBI as follows:



To: VCACU\_ORR\_Reporting@ic.fbi.gov

Cc: FF\$ CFS

Project Officer UAC@oig.hhs.gov psac@acf.hhs.gov

Subject Line: Must only include the event number (e.g., "Event 12345")

Attachments: SA/SIR

- Do not send all SA/SIRs for each UC involved in the incident; only send one SA/SIR per event.
- Attachment must be labeled with event number
- Attachment must be password protected
- o Password must be sent in a separate email that references the event number

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4) Reports all allegations of sexual abuse, sexual harassment, and inappropriate sexual behavior to ORR as follows:



To: Required for AllSA/SIRs

SIRHotline@acf.hhs.gov

Project Officer

**FFS** 

FFS Supervisor Case Coordinator

CFS

**ORR Medical Coordinator** 

Required for Sexual Abuse SA/SIRs Only (DO NOT send sexual harassment or inappropriate sexual

behavior SA/SIRs) UAC@oig.hhs.gov psac@acf.hhs.gov

Attachments: SA/SIR

#### **Notifications**

ORR Policy Guide, Section 4.10.4 Notification and Access to Attorneys/Legal Representatives, Families, Child Advocates, and Sponsors

#### CARE PROVIDER

WITHIN 48 HOURS OF A SEXUAL ABUSE OR SEXUAL HARASSMENT INCIDENT (or within 48 hours of the care provider becoming aware of the incident):

1) Notifies the UC's attorney of record and/or legal service provider of the incident following *Table 5.7.4-A* below and documents how the notification was made in the Notifications section of the *SA/SIR* or *SA/SIR* Addendum.

Note: DO NOT send a copy of the SA/SIR to the attorney of record or legal service provider.

#### NOTIFICATION TO ATTORNEYS AND LEGAL SERVICE PROVIDERS

\$ 66 F. C.		110 <b>4</b> 4
14 Years or Older	Yes	Follow minor's decision
14 Years or Older	No	<ol> <li>Inform minor that the allegation may affect the his/her eligibility for immigration relief</li> </ol>
		<ol> <li>Ask whether the minor would like to speak with an attorney</li> <li>Follow minor's decision</li> </ol>

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14 Years or Older	Yes or No	Notify the FFS prior to speaking with the
with a Diagnosed		minor
Developmental		
Disability		
Under 14 Years Old	Yes or No	Notify the minor's attorney of record or the
		local legal service provider

Table 5.7.4-A · ORR Policy Guide, Figure 4.10.1

2) Notifies the UC's parent or legal guardian and the UC's sponsor or the receiving entity that will be caring for the UC (when the UC is released from ORR custody) of the incident following *Table 5.7.4-B* below and documents how the notification was made in the Notifications section of the *SA/SIR* or *SA/SIRAddendum*.

Note: DO NOT send a copy of the SA/SIR to the UC's parent, legal guardian, sponsor, or entity caring for the UC.

#### NOTIFICATION TO PARENTS/LEGAL GUARDIANS AND SPONSORS

11644/11 11644/11	SARE PROVIDER RECUIREMENTS
14 Years or Older	<ol> <li>Follow minor's decision whether to notify the parent or legal guardian unless there is evidence showing they should not be notified</li> </ol>
	2. Follow the minor's decision whether to notify the sponsor or
	receiving facility, if different from the parent or legal guardian
14 Years or Older with a Diagnosed Developmental Disability	Notifγ the FFS prior to speaking with the minor
Under 14 Years Old	<ol> <li>Notify the minor's parent or legal guardian unless there is evidence showing they should not be notified</li> <li>Notify the minor's sponsor or receiving facility, if different from the parent or legal guardian</li> </ol>

Table 5.7.4-8 🤲 ORR Policy Guide, Figure 4.10.2

3) If applicable, notifies the UC's child advocate of the incident following *Table 5.7.4-C* below and documents how the notification was made in the Notifications section of the *SA/SIR* or *SA/SIR* Addendum.

Note: If notifying the child advocate, include a copy of the SA/SIR.

#### NOTIFICATION TO CHILD ADVOCATES

33 N 2 000 V B 2 ( V 3 A0000000000000000000000000000000000	entra provincia ( <b>199</b> ) Antra provincia (1 <b>99</b> ) (199) (199)	
14 Years or Older	Follow minor's decision	

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14 Years or Older	Notify the FFS prior to speaking with the minor
with a Diagnosed	
Developmental	
Disability	
Under 14 Years Old	Notify the minor's child advocate

Table 5.7.4-C - ORR Policy Guide, Figure 4.10.3

### Follow-Up and Additional Reporting

- ORR Policy Guide, Section 4.10.3 Sexual Abuse and Harassment Follow-up
- ORR Policy Guide, Section 5.8.7 SIR Addendums

#### **CARE PROVIDER**

- 1) Uploads any documents received related to investigations (e.g., CPS, State licensing) to the UC Portal upon receipt, if applicable.
- 2) Creates an SA/SIR Addendum (see UC Portal SIR User Guide located on the UC Portal homepage) to an existing SA/SIR when:
  - Information in the original SA/SIR was incorrect or incomplete
  - New or more detailed information has become available since the original SA/SIR was submitted. Examples of new information include, but are not limited to:
    - Discussion with the sponsor about the incident
    - Media inquiries about the incident
    - Receipt of official reports from State or local governments
    - Updates on investigations
- 3) WITHIN 24 HOURS of determining the need to create an SA/SIR Addendum, notifies ORR as shown below, and saves a copy of the SA/SIR Addendum in the UC's case file.



To: Required for AllSA/SIR Addendums

SIRHotline@acf.hhs.gov

Project Officer

**FFS** 

FFS Supervisor Case Coordinator

CFS

**ORR Medical Coordinator** 

Required for Sexual Abuse SA/SIR Addendums Only (DO NOT send sexual harassment or

inappropriate sexual behavior SA/SIRs, DO NOT send SA/SIR Addendums to the FBI)

UAC@oig.hhs.gov psac@acf.hhs.gov

Attachments: SA/SIR Addendum

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#### **FFS**

#### For Local Investigative Entities Only

- 1) If any investigative entity (e.g., CPS, law enforcement, State licensing) that received a report has not verified if they will conduct an investigation within the entity's mandated response time, then WITHIN 1 BUSINESS DAY, follows up with that investigative entity to determine if the incident will be investigated.
- 2) Regularly follows up with any investigative entity that opened an investigation to determine that status of the investigation.
- 3) Ensures that all notifications and follow-up actions required by \* ORR Policy Guide, Section 4
  Preventing, Detecting, and Responding to Sexual Abuse and Harassment and the Interim Final Rule
  (located on the UC Portal) are completed.

#### For All Investigative Entities

- 4) WITHIN 48 BUSINESS HOURS of receiving notification that an investigation is complete, notifies the victim involved in the incident of the result of the investigation.
  - If the victim involved in the incident is no longer in ORR care, attempts to notify the UC at his/her last known address.

Notifies the investigating agency of any individuals involved in the incident, such as other complainants or other additional parties, and encourages the investigating agency to notify the other individuals involved

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ORR Policy Guide, Section 5.8 Significant Incident Reports and Notification Requirements

## 5.8.1 Related Forms, Checklists, and Other Tools

# 1/9 ) ( § M	ATTACHES .
Significant Incident Report (SIR)	Care Provider
Sexual Abuse Significant Incident Report (SA/SIR)	Care Provider
Significant Incident Report (SIR) Addendum	Care Provider
Sexual Abuse Significant Incident Repart	Care Provider
(SA/SIR) Addendum	

Takin Maria	DARKEY TO THE
CHART 1: Definition of Sexual Abuse and	Care Provider
Sexual Harassment	
CHART 2: Reporting and Notification	Care Provider
Requirements for Significant Incidents	; ;
FLOWCHART: How to Report Sexual-Related	Care Provider
Incidents	
UC Portal SIR User Guide	Care Provider

## 5.8.2 Reporting to HHS OIG

ORR Policy Guide, Section 5.7 ORR Policies to Protect Sponsors from Fraud

#### Types of Incidents to Report to HHS OIG

#### Reportable incidents to HHS OIG include, but are not limited to:

- Potential fraud schemes involving one or more individuals claiming to represent a charitable/nonprofit organization that will assist in processing and reuniting unaccompanied children with their families \*\* ORR Ops Guide, Section 2.2.5 Protecting Sponsors from Fraud
- Potential fraud schemes involving providing false documentation and/or information to deceive ORR for the purpose of obtaining the release of a child from ORR custody (Including but not limited to address fraud, identity fraud, identity theft, and manufacturing or altering identity documents)

**Note:** These schemes can be perpetuated by a sponsor, ORR Care Provider, ORR federal or contracted staff, or an outside individual or organization.

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#### Reporting To HHS OIG

- ORR Policy Guide, Section 5.7.2 Responding to Fraud Attempts
- ORR Ops Guide, Section 5.7.3 Significant Incidents

WITHIN four (4) HOURS OF THE SIGNIFICANT INCIDENT (or within four (4) hours of the care provider becoming aware of the incident):

#### CARE PROVIDER

- Gathers the following information:
  - UC full name, alien number, and date of birth
  - Time and date of the report
  - Name of the ORR care provider facility and care provider address (include city/state)
  - Name, telephone number and location of the sponsor;
  - Name, phone number, and other contact information given by the person/program who filed the report;
  - Description of the event
    - Date and time of alleged incident
    - If money was asked for from the sponsor
    - Whether money was actually paid by the sponsor
    - Amount and method of any payment made (e.g., wire transfer, money order)
    - If sponsor retained receipt/proof of payment application such as PayPal, Apple Pay, Google Wallet, etc., a copy should be provided.
    - Identifying information for receiving account of any payment made to include account name, account number, routing number, or other account identifiers.
    - Name and description of any individuals or organizations involved in the incident
      - If the sponsor was contacted by someone, name, phone number, and other contact information of the person/program who contacted the sponsor
      - Location where the alleged incident occurred (include location name, address, city, state)
      - Provide any additional identifying details such as places of birth, countries of citizenship, and social security/alien numbers
      - Detail how the individual or organization is involved in the incident
    - Name and alien number/social security number (if applicable) of any potential witnesses
  - Any other details for which the UC or caller has information
  - Actions taken (including reports made to other individuals or entities and any associated case numbers)

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- 2) Completes a Significant Incident Report (SIR) in the UC Portal with all of the information gathered.
- 3) Reviews the SIR and ensures that the SIR is clearly written with all required information.
- 4) Notifies ORR as shown below and includes a copy of the *SIR* and notification email in the UC's case file.

To: Required for AllSIRs

SIRHotline@acf.hhs.gov

Project Officer

FFS

CFS

Case Coordinator

Subject Line: Must read "Report of Fraud" and include the event number (e.g., "Event 12345")

Body: Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: • SIR

Relevant Supporting Documents

- 5) Reports the fraud allegation to local law enforcement. Obtains and saves an incident report number or copy of the incident report from local law enforcement.
- 6) Reports to State licensing, if Care Provider staff are involved. Obtains and saves an incident report number or copy of the incident report.

#### **FFS**

- 7) Reviews the allegation in the SIR and ensures that the SIR is clearly written with all required information. If SIR is missing information, the missing information must be submitted in an SIR Addendum.
- 8) WITHIN 1 BUSINESS DAY OF RECEIVING THE SIR, for document and information fraud allegations only Reports to USICE HSI (Follow -> ORR Ops Guide, Section 5.8.3 Reporting to USICE HSI) and instructs the Case Manager to save the reporting email in the UC's case file.

**Note: DO NOT** send the same information more than once to HSI Tip Line and **DO NOT** file a duplicate report by calling the HSI Tip Line. If unsure about if USICE HSI is already aware of an allegation, then work with the local USICE HSI agent to determine if they are aware of the allegation.

To: HSI Tip Line (HSITipLine.Collaboration@ice.dhs.gov)

Subject Line: Must read "Report Fraud" and include the event number (e.g., "Event 12345")

**Body:** Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: • SIR

Relevant Supporting Documents

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9) WITHIN 1 BUSINESS DAY OF RECEIVING THE SIGNIFICANT INCIDENT REPORT, reports all types of fraud schemes, whether attempted or successfully perpetrated, to HHS Office of the Inspector General (OIG) at UAC@oig.hhs.gov. Instructs the Case Manager to save the reporting email in the UC's case file.

To: HHS OIG

Subject Line: Must read "Report of Fraud" and include the event number (e.g., "Event 12345")

Body: Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: • SIR
• Relevant Supporting Documents

- 10) If an investigation is opened for the reported allegation, FFS will notify the FFS Supervisor, Project Officer, and CFS.
- 11) If an investigation is opened for the reported allegation, then the FFS Supervisor, FFS and CFS cooperate fully during the investigative process (e.g., providing any information or documentation requested by investigative agency).
- 12) If the fraud scheme involves ORR care provider staff:
  - Follows up with HHS OIG within ten (10) business days to determine if the reported fraud allegation will be investigated further.
  - Instructs the care provider to follow their local licensing guidelines regarding reports of inappropriate employee behavior and to inform their local licensing agency that the case was referred to other investigative agencies.
  - Provide the care provider with technical assistance.
  - If applicable, issues corrective action findings and requires the care provider to take appropriate action.
     ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
  - Program should submit/have internal disciplinary protocols to address Fraud Scheme involving care provider staff.

## 5.8.3 Reporting to USICE HSI

## Types of Incidents to Report to USICE HSI

## Reportable incidents to USICE HSI include, but are not limited to:

- Human Trafficking that occurred in the United States
- Human Trafficking that occurred outside of the United States
- Drug and Weapon trafficking
- Gang or Cartel-Related Crimes/Activity

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- Contact or threats to a UC while in ORR care from smuggling syndicates, organized crime or other criminal actors
- Potential document/information fraud schemes (Includes, identity fraud, immigration benefit
  fraud, identity theft, and manufacturing or altering identity documents) that could be
  perpetrated by any individual or entity (e.g., sponsor, household members, UC, care provider)

Incidents and allegations may be reported to care providers multiple ways (e.g., ORR staff; stakeholders such as legal service providers, the sponsor; the UC; self-observation). No matter the method by which the care provider became aware of the incident or allegation, the care provider must follow all reporting, notification, and follow-up requirements in this subsection.

#### Reporting to USICE HSI

→ ORR Ops Guide, Section 5.7.3 Significant Incidents

#### **CARE PROVIDER**

WITHIN 4 HOURS OF THE SIGNIFICANT INCIDENT (or within 4 hours of the care provider becoming aware of the incident):

- 1) If informed of an allegation that USICE HSI has authority to investigate (use list above to guide that determination), gathers that following information:
  - · UC Full Name, Alien Number, and Date of Birth
  - · Time and date of the UC disclosure
  - Name of the ORR facility, as well as city/state;
  - Description of the situation
    - Date and time of alleged incident
    - Location where the alleged incident occurred (include, Location Name, Address, City, State)
    - Name and description of any individuals or organizations involved in the incident
      - Provide any additional identifying details such as places of birth, countries of citizenship, and social security/alien numbers
      - Detail how the individual or organization is involved in the incident
    - Name and Alien number (if applicable) of any potential witnesses
    - The name and phone numbergiven by the person on the phone who filed the report (if applicable).
  - Any other details for which the UC has information related to the incident
  - Actions taken (including information on who else the incident was reported to and any associated case numbers)
- 2) Completes a Significant Incident Report (SIR) in the UC Portal with all of the information gathered.

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- 3) Reviews the SIR and ensures that the SIR is clearly written with all required information.
- 4) Notifies ORR as shown below, and saves a copy of the SIR in the UC's case file.

To: Required for All SIRs
SIRHotline@acf.hhs.gov
Project Officer
FFS
CFS
Case Coordinator

Subject Line: Must read "Report of Significant Incident/USICE HSI" and include the event number (e.g., "Event 12345")

Body: Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: • SIR
• Relevant Supporting Documents

5) Reports to State licensing, if Care Provider staff are involved. Obtains and saves an incident report number or copy of the incident report.

#### **FFS**

- 6) Reviews the SIR and ensures that the SIR is clearly written with all required information. Also, ensures that the allegation is a type of allegation that USICE HSI has authority to investigate (use list above to guide that determination). If SIR is missing information, the missing information must be submitted in an SIR Addendum.
- 7) Prior to reporting the allegation to the USICE HSI Tip Line, ensures that the allegation has not already been reported to USICE HSI Tip Line by phone, email or online.
- 8) WITHIN 1 BUSINESS DAY OF RECEIVING THE SIGNIFICANT INCIDENT REPORT, reports allegations to USICE HSI, as follows. Instructs the Case Manager to save the reporting email in the UC's case file.

**Note:** <u>DO NOT</u> send the same information more than once, and <u>DO NOT</u> file a duplicate report by calling the USICE HSI Tip Line. If unsure about if USICE HSI is already aware of an allegation, then work with the local USICE HSI agent to determine if they are aware of the allegation.



To: USICE HSI Tip Line (HSITipLine.Collaboration@ice.dhs.gov)

Required for Certain Types of USICE SIRs

ICEHumantrafficking.helpdesk@ice.dhs.gov\_(All Human Trafficking allegations)

Subject Line: Must read "Report of UC Allegation" and include the event number (e.g., "Event 12345")

Attachments: • SIR

Relevant Supporting Documents

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- 9) If an investigation is opened for the reported allegation, FFS will notify the FFS Supervisor, Project Officer and CFS.
- 10) If an investigation is opened for the reported allegation, then the FFS Supervisor, FFS and CFS cooperate fully during the investigative process (e.g., providing any information or documentation requested by investigative agency).
- 11) For Human Trafficking Allegations—follows up with ICEHumantrafficking.helpdesk@ice.dhs.gov withinten (10) business days to determine if the reported allegation will be investigated further.
- 12) If the allegation involves care provider staff:
  - Follows up with local USICE HSI agent within ten (10) business days to determine if the reported allegation will be investigated further.
  - Instructs the care provider to follow their local licensing guidelines regarding reports of inappropriate employee behavior and to inform their local licensing agency that the case was referred to USICE HSI.
  - Provide the care provider technical assistance.
  - If applicable, issues corrective action findings and requires the care provider to take appropriate action.
     ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
  - Program should submit/have internal disciplinary protocols to address Fraud Scheme involving care provider staff.

## 5.8.4 Reporting Allegations that Occurred in DHS Custody

ORR Policy Guide, Section 5.8.4 Allegations of Abuse that Occurred in DHS Custody

# Checking for Potential Allegations of Abuse that Occurred in the Department of Homeland Security (DHS) Custody

The Department of Homeland Security **Office of Inspector General (DHS OIG) Hotline** is a resource for Federal employees and the public to report allegations of employee corruption, civil rights and civil liberties abuses, program fraud and financial crimes, and miscellaneous criminal and non-criminal activity associated with waste, abuse or fraud affecting the programs and operations of DHS.

The DHS Office for Civil Rights and Civil Liberties (CRCL)'s Compliance Branch investigates and resolves civil right and civil liberties complaints regarding DHS policies and activities. CRCL works in coordination with the entirety of DHS to address civil rights and civil liberties concerns, including the DHS OIG.

Types of allegations that should be reported to DHS OIG for investigation:

 Conditions of Detention: Includes, but not limited to, not receiving food, drink, access to sanitary items (e.g. diapers, feminine hygiene products) or access to bathroom or medication; discarding personal items (e.g. birth certificate, money, medication); overcrowded hold room cells; or unsanitary hold room cell.

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- Disability Accommodation (Section 504 of the Rehabilitation Act): Includes, but not limited to, not providing appropriate assistance for a UC with a hearing impairment or not providing assistance for a UC with a mobility impairment during transportation.
- Excessive Force or Inappropriate Use of Force: Includes, but not limited to, inappropriate use of taser or baton; use of weapon; inappropriate shackling/handcuffs; inappropriate physical abuse. Particularly after the subject has been apprehended or subdued or when medical attention was needed after the use of force incident.
- **Fourth Amendment** (Search and Seizure): Includes, but not limited to, confiscation of identity documents and property that is then not returned.
- Intimidation/Threat/Improper Coercion: Includes, but not limited to, threatening to deport the UC, if he/she does not admit to being an adult.
- Legal Access/Due Process: Includes, but not limited to, when the UC states that while in DHS custody they claimed credible fear of returning to home country, or that they are a human trafficking victim, but the information was not documented or communicated in the initial placement request. Also, includes denial of phone call, the UC was in DHS custody over 72 hours, or improper age determination.
- **Separation from a sibling or parent/legal guardian**, but the information was not documented or communicated in the initial placement request.
- **Medical/Mental Health care:** Includes, but not limited to, incidents of not receiving medical attention for an injury or upon request.
- **Violation of Privacy:** Includes, but not limited to, UC's medical privacy was violated or the UC was strip searched by or in front of an officer of the opposite gender.
- Religious Accommodation: Includes, but not limited to, not providing reasonable accommodation for religious dietary restrictions.
- Retaliation: Includes, but not limited to, punishment by being forced to clean toilets or retaliation as a results of reporting an allegation against a DHS employee.
- Reporting Sexual Assault/Abuse allegations that occurred in DHS custody
   NOTE: Allegations of sexual abuse/assault that occurred in DHS custody must be reported to DHS OIG, DHS CRCL, CBP and ICE ERO.

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#### Reporting Potential Allegations that Occurred in DHS Custody

ORR Ops Guide, Section 5.7.3 Significant Incidents

# WITHIN 4 HOURS OF THE SIGNIFICANT INCIDENT (or within 4 hours of the care provider becoming aware of the incident):

#### CARE PROVIDER

- If the UC alleges that he/she was or witnessed the abuse of another UC while in DHS Custody or that his/her civil rights or civil liberties may have been violated by a DHS employee, gathers the following information:
  - UC Full Name (including aliases), Alien Number, and Date of Birth (ensure that the name is spelled correctly and that the Alien Number and date of birth are correct);
  - Time and date UC reported allegation;
  - Name, city, and state of the ORR care provider;
  - Description of the situation;
    - Date and time of alleged incident
       If the specific time is unknown, then provide a description of the sky or environment that may indicate time of day
    - Location where the alleged incident occurred (include, city, state, and Border Patrol Station/Port of Entry/Checkpoint, if applicable)
       If the specific location is unknown, then provide a description of landmarks or the nearest Border Patrol Station where the child was temporarily placed prior to ORR custody
    - Descriptions of any injuries incurred as a result of the incident and any medical care provided
    - Indication if the UC felt that the incident or action was intentional or an accident
    - Name and description of any DHS employees involved in the incident If the DHS employees name is unknown, then provide a detailed description of the employee, including, but not limited to, gender, approximate height, hair style, hair color, body type, color of uniform, and distinctive traits or characteristics of the DHS employee
    - Name and Alien number (if applicable) of any potential witnesses
    - The name and phone number given by the person on the phone who filed the report
  - Any other details for which the UC has information related to the incident; and
  - Actions taken (including information on who else the incident was reported to and any associated case numbers).
- 2) Completes a Significant Incident Report (SIR) in the UC Portal with all of the information gathered.

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- 3) Reviews the SIR and ensures that the SIR is clearly written with all required information.
- 4) Notifies ORR as shown below, and saves a copy of the SIR in the UC's case file.

To: SIRHotline@acf.hhs.gov
Project Officer
FFS
CFS
Case Coordinator

Subject Line: Must read "Report of Incident in DHS Custody" and include the event number (e.g., "Event 12345")

Body: Use Synopsis of the Event from UC Portal and do not include UC's full name or alien number

Attachments: • SIR
• Relevant Supporting Documents

5) Reports the allegation to CPS in the State of the reporting Care Provider as well as the State where the incident occurred, according to State mandatory reporting laws. Obtains and saves an incident report number or copy of the incident report from local law enforcement.

#### **FFS**

- 6) Reviews the allegation in the SIR and ensures that the SIR is clearly written with all required information. Also, ensures that the allegation is a type of allegation that DHS has authority to investigate (use list above to guide that determination).
- 7) If SIR is missing information, the missing information will be submitted in an SIR Addendum.
- 8) WITHIN 1 BUSINESS DAY OF RECEIVING THE SIGNIFICANT INCIDENT REPORT, reports potential allegations of abuse that occurred in DHS custody as follows and instructs the Case Manager to save the reporting email in the UC's case file.

To: DHS OIG (Hotline@oig.dhs.gov) CC: DHS CRCL (CRCLCompliance@hq.dhs.gov) Required for Certain Types of DHS SIRs ORR Medical Coordinator (medical incidents) ERO.SexualAssault@ice.dhs.gov (sexual abuse in DHS custody) PREA.CBP@cbp.dhs.gov (sexual abuse in DHS custody) Subject Line: Must read "Report of UC Allegation" and include the event number (e.g., "Event 12345") Attachments: · SIR Initial Intakes Assessment Intakes Form (The case manager will need to select the "Go to Intakes" option in the case record in the portal, and print that page to PDF.) Release Contact Information (if UC is no longer in ORR custody) Any other supporting documentation (if allegation relates to physical abuse, injury or medical issue include initial medical exam records and photo of injury)

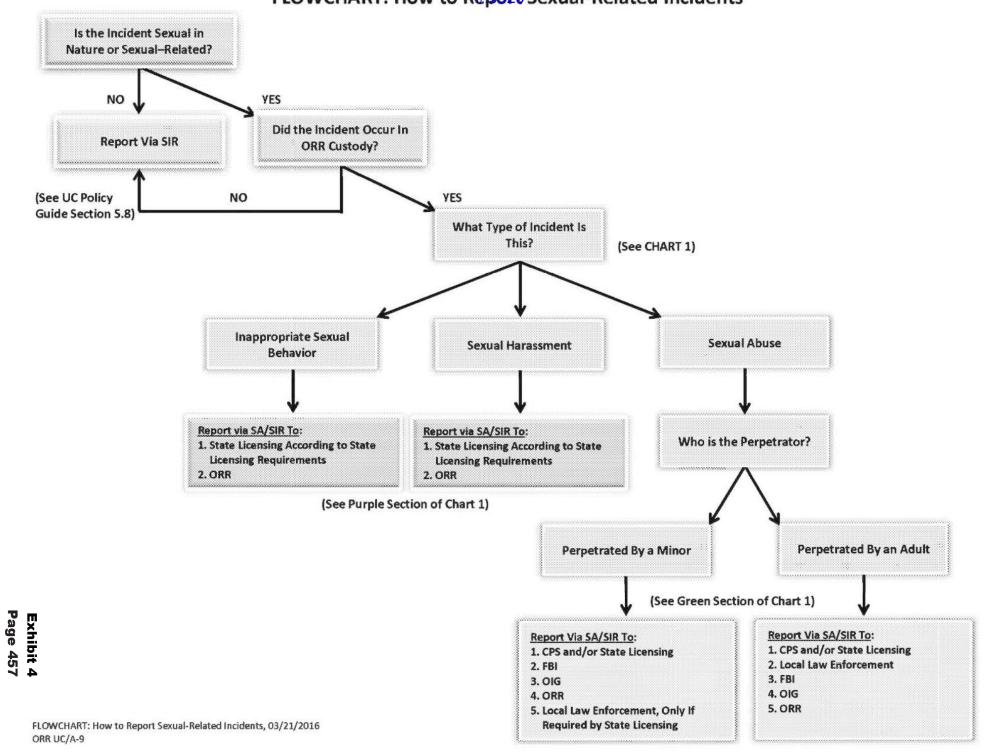
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- 9) If an investigation is opened for the reported allegation, then the FFS Supervisor, FFS and CFS cooperate fully during the investigative process (e.g., providing any information or documentation requested by investigative agency).
- 10) If the allegation was not reported with the appropriate information:
  - Provide the care provider technical assistance.
  - If the issue persists, then issues corrective action findings and requires the care provider to take appropriate action. \*\* ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions

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# Case 2:18-cv-05741-DMG-PLA Document 272-2 Filed 10/02/20 Page 180 of 946 Page ID FLOWCHART: How to Report Sexual-Related Incidents



## **CHART 1: Definition of Sexual Abuse and Sexual Harassment**

## **SEXUAL ABUSE**

Sexual abuse includes the acts described in the chart below:

	Sexual Abuse of a Minor by Another MINOR		Sexual Abuse of a Minor by an ADULT
(1)	The employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, (2) or (3) below or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children	(1)	The employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, (2) or (3) below or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children
(2)	Actual or simulated sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or opposite sex	(2)	Actual or simulated sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or opposite sex
(3)	Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation	(3)	Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to
(4)	Penetration of the anal or genital opening of another person, however	(4)	abuse, arouse, or gratify sexual desire
(5)	slight, by a hand, finger, object, or other instrument  Bestiality	(4)	Contact between the mouth and any body part where the staff member, grantee contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
(6)	Masturbation	(5)	Penetration of the anal or genital opening, however slight, by a hand, finger,
(7)	Lascivious exhibition of the genitals or pubic area of a person or animal		object, or other instrument that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or
(8)	Sadistic or masochistic abuse		gratify sexual desire
(9)	Child pornography or child prostitution	(6)	Any attempt, threat, or request by a staff member, grantee, contractor, or volunteer to engage in activities (1) through (5) above
		(7)	Any display by a staff member, grantee, contractor, or volunteer of his or her uncovered buttocks or breast in the presence of a child
		(8)	Bestiality
		(9)	Masturbation
		(10)	Lascivious exhibition of the genitals or pubic area of a person or animal
		(11)	Sadistic or masochistic abuse
		(12)	Child pornography or child prostitution
		(13)	Voyeurism by a staff member, grantee, contractor, or volunteer (See definition below)

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### Voyeurism

Voyeurism is an invasion of privacy of a child by a staff member, grantee, contractor, or volunteer for reasons unrelated to official duties. Examples include inappropriately viewing a child perform bodily functions or bathing; or requiring a child to expose his or her buttocks, genitals, or breasts; or recording images of all or part of a child's naked body or part of a child performing bodily functions.

### SEXUAL HARASSMENT

Sexual harassment includes the acts described in the chart below:

Sexual Harassment of a Minor by Another MINOR	Sexual Harassment of a Minor by an ADULT
Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, other electronic communication, or actions of a derogatory or offensive sexual nature	Repeated verbal comments, gestures, phone calls, emails, texts social media messages, pictures sent or shown, or other electronic communication of a sexual nature to a child by a staff member, grantee, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures

# **ORR OPERATIONS GUIDE:**

## CHILDREN ENTERING THE UNITED STATES UNACCOMPANIED

# 

Section 6 Table of Contents 5.2 SAFETY AND WELL-BEING FOLLOW-UP CALL		Click HERE to link to Section 6 of the ORR Policy Guide.	
5.2 SAFETY AND WELL-BEING FOLLOW-UP CALL	Section	6 Table of Contents	
	6.2 SAFETY	AND WELL-BEING FOLLOW-UP CALL	2

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ORR Policy Guide, Section 2.8.4 Safety and Well Being Follow Up Call

#### CARE PROVIDER

- 1) Thirty days after release of the UC, Care Provider staff calls the sponsor and UC to conduct a safety and well-being follow-up call.
  - All call attempts must be made within seven (7) days after the 30-day mark of the UC's release.
  - A minimum of three (3) attempts must be made, unless the phone is disconnected.
- 2) Confirms that the sponsor still resides at the address on the Verification of Release Form.
  - Documents if an updated address is provided in the UC case file.
  - Reminds the sponsor to file a change of address with DHS and EOIR if they moved or have recently moved
- 3) Makes every effort to speak to the sponsor and UC separately, on the following topics:
  - Sponsor Topics
    - o Is the child still residing with the sponsor?
    - Is the child demonstrating any behavioral issues?
    - o Is the child enrolled in and/or attending school?
    - o Is the sponsor aware of upcoming court dates?
    - Did the sponsor attend an LOPC presentation?
    - Has the sponsor been contacted and asked to pay fees or wire money related to the release of the child?
    - o (If the case was release with PRS) Did PRS provider contact the sponsor?
  - UC Topics
    - o Is the child still residing with the sponsor?
    - o Does the child feel safe?
    - o Is the child enrolled in and/or attending school?
    - Is the child aware of upcoming court dates?
    - Has the child been contacted and asked to pay fees or wire money related to their release?
    - o (If the case was release with PRS) Did PRS provider contact the child?
    - o Is the child being forced to work without pay or being forced to work to pay his/her share for rent and utilities or repay a debt?
- 4) If the follow-up call indicates that the child may be in immediate danger, completes all the following actions:
  - Calls 911 immediately.
  - Stays on the phone with the child until authorities arrive.
  - Reports any emergency for which 911 is contacted to the ORR Intakes Hotline at 202-401-5709.

Section 6: Resources and Services Available After Release from ORR Care Version 1.0 (Effective 09/12/2016)

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- Complies with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.
- If the sponsor is the perpetrator of the allegation, then flag the sponsor and provide explanation as to why the sponsor is being flagged in the UC Portal.
- Emails notification to the FFS, including:
  - UC name and alien number
  - UC date of release
  - Sponsor/child contact phone number
  - Sponsor address
  - Previous ORR p.acement
  - Summary of call
  - Actions taken (including information on who else the incident was reported to and any associated case numbers)
- 5) If the follow-up call indicates that the child may be unsafe, completes all the following actions:
  - Complies with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.
  - If the sponsor is the perpetrator of the allegation, then flag the sponsor and provide explanation as to why the sponsor is being flagged in the UC Portal.
  - Emails notification to the FFS, including:
    - UC name and alien number
    - UC date of release
    - Sponsor/child contact phone number
    - Sponsor address
    - Previous ORR placement
    - Summary of call
    - Actions taken (including information on who else the incident was reported to and any associated case numbers)
- 6) If the follow-up call indicates fraud or extortion of money/fees attempts against the sponsor and/or child related to the release of the child, follows the following policy and procedures regarding what information to gather and how to report the incident to the FFS:
  - ORR Ops Guide, Section 5.8.1 Reporting to HHS OIG
  - ORR Ops Guide, Section 2.2.5 Protecting Sponsors from Fraud
  - ORR Policy Guide, Section 5.7 ORR Policies to Protect Sponsors from Fraud
- 7) If the follow-up call indicates that the child may have been sexually abused or harassed while in ORR care, completes all the following actions:
  - Complies with mandatory reporting laws, State licensing requirements, and Federal laws and regulations for reporting to local child protective agencies and/or law enforcement.
  - Gather details about the allegation.
  - If the sponsor is the perpetrator of the allegation, then flag the sponsor and provide explanation as to why the sponsor is being flagged in the UC Portal.
  - Refers the child or sponsor to the ORR UC Sexual Abuse Hotline (855-232-5393).

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- Emails notification to the FFS, including:
  - UC name and alien number
  - UC date of release
  - Sponsor/child contact phone number
  - Sponsor Address
  - Previous ORR placement
  - o Summary of call
  - Actions taken (including information on who else the incident was reported to and any associated case numbers)
- 8) If the follow-up call indicates that the sponsor and/or child would be nefit from additional support or services or the sponsor has not attended an LOPC presentation, completes all the following actions:
  - Refers the sponsor or child to the ORR National Call Center (800-203-7001)
  - Emails the ORR National Call Center (information@orrncc.com) the following information for each referral:
    - UC name and alien number
    - o Sponsor's name
    - Sponsor/child contact phone number
    - Sponsor address
    - o Date of referral
    - Reason for referral
- 9) Documents results of the call in the case management notes of the UC's case file and in the Follow-Up Call Tracking Report.



#### FOLLOW-UP CALL TRACKING REPORT

- 1) The CARE PROVIDER completes the Follow-Up Call Tracking Repart no later than the 8<sup>th</sup> of every month for UC release two months earlier. If the 8th falls on a weekend or holiday, the report will be due the next business day. This report is emailed to the FFS and CFS.
- 2) The FFS elevates any concerns raised by the Follow-Up Call Tracking Report to the FFS SUPERVISOR.
- The CFS compiles individual Follow-Up Call Tracking Report into a Master Follow-Up Call Tracking Report and submits to the SPECIAL ASSISTANT and SENIOR FFS SUPERVISOR.

#### FFS

- 10) If the care provider notifies the FFS that the follow-up call indicates that the child may be in immediate danger:
  - a) Immediately elevates the incident to the FFS SUPERVISOR.
  - Elevates any identified safety trends or issues to the FFS SUPERVISOR.
  - Reviews the allegation and ensures that the incident was reported to the appropriate authority to investigate.

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- If the allegation was not reported to the appropriate agency or with the appropriate information:
  - Provide the care provider technical assistance.
  - If the issue persists, then issues corrective action findings and requires the care provider to take appropriate action.
     ⇒ ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
- 11) If the care provider notifies the FFS that the follow-up call indicates that the child may be unsafe:
  - b) Reviews the allegation and ensures that the incident was reported to the appropriate authority to investigate.
    - If the allegation was not reported to the appropriate agency or with the appropriate information:
      - Provide the care provider technical assistance.
      - If the issue persists, then issues corrective action findings and requires the care provider to take appropriate action. ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
  - c) Elevates any identified safety trends or issues to the FFS SUPERVISOR.
- 12) If the care provider notifies the FFS that the follow-up call indicates fraud or extortion of money/fees attempts against the sponsor and/or child related to the release of the child:
  - ORR Ops Guide, Section 5.8.1 Reporting to HHS OIG
  - ORR Ops Guide, Section 2.2.5 Protecting Sponsors from Fraud
  - ORR Policy Guide, Section 5.7 ORR Policies to Protect Sponsors from Fraud
    - Reviews the fraud all egation and ensures that the incident report is clearly written with all required information. Notifies the Project Officer, CFS and FFS Supervisor of the fraud allegation.
    - b) WITHIN 1 BUSINESS DAY OF RECEIVING THE INCIDENT REPORT, reports all fraud schemes, whether attempted or successfully perpetrated, to HHS Office of the Inspector General (OIG) at UAC@oig.hhs.gov.

To: HHS OIG

Subject Line: Must read "Report of Fraud" and include the UC's last name

Body: Use a Synopsis of the Incident and do not include UC's full name or alien number

Attachments: • Incident Report Email

• Any other supporting documentation

- c) If the fraud scheme involves care provider staff:
  - Follow up with HHS OIG within 10 business days to determine if the reported fraud allegation will be investigated further.
  - Instructs the care provider to follow their local licensing guidelines regarding reports
    of inappropriate employee behavior and to inform their local licensing agency that
    the case was referred to HHS OIG.

Section 6: Resources and Services Available After Release from ORR Care Version 1.0 (Effective 09/12/2016)

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- Along with the care provider, FFS Supervisor, and Project Officer, cooperates fully with HHS OIG during the investigative process.
- Issues corrective action findings and requires the care provider to take appropriate action. \* ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
- 13) If the care provider notifies the FFS that the follow-up call indicates that the child may have been sexually abused or harassed while in ORR care:
  - a) Reviews the allegation and ensures that the incident was reported to the appropriate authority to investigate.
    - Follows up with the care provider where the alleged incident occurred to determine
      if the incident was previously reported and/or investigated while the UC was in ORR
      care.
    - If the allegation was not reported to the appropriate agency or with the appropriate information:
      - Provide the care provider technical assistance.
      - If the issue persists, then issues corrective action findings and requires the care provider to take appropriate action. → ORR Policy Guide, Section 5.5.2 Follow Up and Corrective Actions
  - d) Forwards the email notification to the ORR SA/SIR MAILBOX (psac@acf.hhs.gov).
  - e) Ensures that the allegation is appropriately investigated and addressed.

#### INTAKES HOTLINE

- 14) If the care provider notifies the Intakes hotline that the follow-up call indicates that the child may be in immediate danger and was reported to 911:
  - Intakes immediately notifies the FFS Supervisor (or On-call FFS Supervisor if after hours).
  - The FFS SUPERVISOR immediately informs the SENIOR FFS SUPERVISOR, the DCS DIRECTOR, and the DEPUTY DIRECTOR FOR CHILDREN'S SERVICES of the incident.

Section 6: Resources and Services Available After Release from ORR Care Version 1.0 (Effective 09/12/2016)

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#### **State Juvenile Records Confidentiality Laws**

#### i. Arizona

In Arizona, while juvenile records are generally open to the public, records relating to child welfare and the Department of Child Services (DCS) are not. Arizona DCS may provide the following parties with DCS information on a child: federal or state auditors; persons conducting accreditation deemed necessary by DCS; a standing committee of the legislature or a legislator; a citizen review panel, child fatality review team, or office of ombudsman-citizens aide; an independent oversight committee created by state law; or the governor. Ariz. Rev. Stat. § 8-807(I). An unauthorized party may obtain confidential DCS information only by providing notice to the county attorney and attorney and guardian for the child, and petitioning a judge of the superior court, who must balance the child's right to confidentiality against the petitioner's potential right to information. Ariz. Rev. Stat. § 8-807(K).

#### ii. California

In California, juvenile records are confidential. Under 2020 California Rules of Court 5.552(b), the petitioner must request from the juvenile court specific juvenile case files "based on knowledge, information, and belief that such files exist and are relevant to the purpose for which they are being sought." The petitioner must describe "in detail the reasons the files are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the files;" furthermore, the petitioner must show a "preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner." Cal. R. Court, 5.552(b), 5.552(d)(6). The petitioner must further serve the request to a number of parties before submitting the request, including the child in question, the child's parents or guardians, and in some cases the child's attorney of record, the district attorney, and the state child welfare agency or probation department. Cal. R. Court, 5.552(c). Under California law, probation officers or law enforcement officers actively participating in proceedings involving the child; court personnel; child protective agencies and the California Department of Social Services; and the child or their parent or guardian may review or copy a child's law enforcement or court records.<sup>29</sup> Any other parties, including other federal/state government agencies, educational institutes, medical providers, and attorneys, must go through the aforementioned rigorous petition process to view any such records.

Records about a child relating to public social services are not open to examination by the public. Cal. Welfare and Institutions Code § 10850(a). Records concerning children receiving public social services may only be viewed by the State Department of Social Services and county welfare departments for purposes "directly connected with the administration of public social services," as well as governmental entities for the specific purpose of conducting an "audit or similar activity in connection with the administration of public social services." Cal. Welf. & Inst. Code § 10850(c). Such entities given access to case files "shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in

<sup>&</sup>lt;sup>29</sup> "State Fact Sheet: California," Juvenile Law Center (2014), <a href="http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-CA.pdf">http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-CA.pdf</a>

connection with the administration of public social services." Cal. Welf. & Inst. Code § 10850(c).

Under a different part of California's Welfare and Institutions Code, a ward or dependent child's records may be inspected by court personnel; the district attorney, city attorney, or city prosecutor; the child or their parent or guardian; attorneys, judges, and officers actively participating in proceedings involving the child; county counsel, city attorney, or other attorney representing the petitioning agency in a dependency action; the superintendent or designee of the school the child is enrolled in; members of child protective agencies; the State Department of Social Services or authorized staff; members of the team/agency providing treatment or supervision of the minor; a judge, commissioner, or other hearing officer assigned to a family law case concerning custody or visitation; a court-appointed investigator; a local child support agency to establish paternity and child support orders; juvenile justice commissions; the Department of Justice, to update its sex offender list in California; or a probation officer preparing a report for a child seeking discharge from the Department of Corrections and Rehabilitation. Cal. Welf. & Inst. Code § 827(a)(1). Any other party who wishes to gain access to a child's case file must obtain a court order from the judge of the juvenile court. Cal. Welf. & Inst. Code § 827(a)(1)(Q).

#### iii. Florida

In Florida, juvenile records are not open to the public.<sup>30</sup> Records are viewable by the child in question; their parents, guardians, or legal custodians; their attorneys; law enforcement agencies; and the Department of Juvenile Justice, Department of Corrections, and Parole Commission. Fla. Stat. § 985.045(2). Such confidential records may also be available to school superintendents and licensed professional or community agency representative "participating in the assessment or treatment of a juvenile." Fla. Stat. § 985.04(1)(b). Any other party wishing to view such records must have a "proper interest" as judged by the court and must obtain an order of the court. Fla. Stat. § 985.045(2).

Similar to juvenile records, records related to child proceedings are not open to inspection to the public, but may be inspected and copied by a child; their parents or guardian; their attorney; law agencies; and the Department of Children and Families. Fla Stat. § 39.0132. Confidential information includes medical and mental health, child care, education, law enforcement, court, and social service records. Reports and records in cases of child abuse or neglect are similarly protected and only available to persons, officials, and agencies responsible for protective investigations, protective and preventive services, licensure, and employment screening. Fla. Stat. § 39.202(2). A person or organization may petition the court for an order making public records from the Department of Children and Families; the court must balance the rights and interests of the petitioner against those of the child and any others identified in the reports. Fla. Stat. § 39.2021.

#### iv. New York

<sup>&</sup>lt;sup>30</sup> "State Fact Sheet: Florida," Juvenile Law Center (2014), http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-FL.pdf

In New York, juvenile records are withheld from public inspection. N.Y. Fam. Ct. Act § 381.3.1. These records may be available to a child or their parent/guardian; an institution to which a minor has been committed; the Division of Parole and Probation; court personnel if a child is later convicted of a crime; the Commissioner of Mental Health; the Commissioner of Mental Retardation and Developmental Disabilities; a case review panel; or the Attorney General. Records may be available to a designated educational official at the child's school, but only a notice of adjudication is available in this case, only for purposes related to the student's educational plan, and the notification must be kept separate from the child's school records. N.Y. Crim. Proc. § 720.35.3. Any other release of such juvenile records can only be made "upon specific authorization of the [state] court," and by no other agency. N.Y. Crim. Proc. § 720.35.2.

State child records, including records in relation to abandoned, delinquent, destitute, neglected, or dependent children; reports of child abuse or mistreatment; and social services investigations, are confidential. These records and motions may be made available to the child, their parent/guardian, their attorney, or an authorized agency upon application to the New York Supreme Court. N.Y. Soc. Serv. Law § 372.3. Such confidential records generally, including notices and motions for discovery in legal actions, are not available upon application to the other parties. Reports of child abuse, specifically, may be viewed by the following: a physician suspecting abuse of their minor patient; a person authorized to place a child in protective custody who needs relevant information to make their decision; an authorized agency caring for a child; a person who is the subject of the report; a court or grand jury, if the record is necessary to determine an issue or charges; a state legislative committee responsible for child protective legislation; a researcher, provided that no identifying information is shared; a provider or licensing agency; the justice center for the protection of people with special needs or an investigatory entity in connection with an investigation; a probation service, to make an informed recommendation to the court; a district attorney or other criminal justice agency to conduct a criminal or missing child investigation; the New York City Department of Investigation, if no identifying information is included; agency officers or day care directors in connection with an employee disciplinary investigation; a provider or coordinator of services a child has been referred to; another state's child protective service in order to conduct a child abuse investigation; a child's attorney; a child care resource and referral program; officers of the state or city comptroller to conduct an authorized performance audit; a fatality review team or multidisciplinary investigative team approved by the Office of Children and Family Services; a citizen review panel; an entity with legal authority in another state to license or approve prospective foster/adoptive parents; or a social services official investigating whether an adult needs protective services. N.Y. Soc. Serv. Law § 422.4.

#### v. Texas

In Texas, juvenile records are generally confidential.<sup>32</sup> They may be seen and copied by the child's parent, guardian, or custodian; the child's attorney; the Texas Department of Criminal

http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-TX.pdf

<sup>31 &</sup>quot;State Fact Sheet: New York," Juvenile Law Center (2014), <a href="https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-NY.pdf">https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/factsheet-NY.pdf</a>
32 "State Fact Sheet: Texas," Juvenile Law Center (2014),

Justice, Juvenile Probation Commission, and probation officers; juvenile court personnel; a district school superintendent; agencies or persons treating the child, if and only if they sign a written confidentiality agreement; and other government agencies, only if disclosure is required by law. Tex. Fam. Code § 58.005. Other individuals, agencies, or institutions may view a juvenile record only with permission specifically from the juvenile court, and only if the court determines them to have a "legitimate interest in the proceeding or in the work of the court." Tex. Fam. Code § 58.005(a-1)(10).

The Texas Department of Family and Protective Services (DFPS) may release confidential child case record information to the following: DFPS staff to perform assigned duties; a multidisciplinary team authorized to investigate, prosecute, or resolve cases of suspected child abuse or provide services to the child; law enforcement officials for the purpose of investigation; a physician suspecting abuse of their minor patient; a government official when deemed necessary for the protection and care of a child; a grand jury; an attorney, guardian, or courtappointed special advocate; a court with a case arising from a child abuse investigation; a DFPS attorney, state attorney general, or county or district attorney representing the state in a child abuse proceeding; a member of the state legislature to carry out official duties; the person authorized to give medical or educational consent for the child; or another person or entity responsible for the protection, diagnosis, care, treatment, supervision, or education of a child as authorized by DFPS. Tex. Admin. Code § 700.203(a). Child case records are also available, upon submitted request to DFPS, to the child, their parent or guardian, a prospective adoptive parent, or an individual who contributed to an investigation of child abuse, though in all these cases the records must be redacted accordingly. Tex. Admin. Code § 700.203(b-e). Child case records are not available upon submitted request to other parties.



## The UAC Manual of Procedures

(UAC MAP)

For ORR Staff, Contractors, and Grantees

# Section 1: Placement in ORR Care Provider Facilities

Office of Refugee Resettlement
Office of the Director
The Division of Policy and Procedures
2018 (Version 2)

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## **Section 1: Placement in ORR Care Provider Facilities**

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Look for these icons for quick cues on what is required for a specific procedure or a reference	ce
to a particular policy in the UAC Policy Guide.	
UAC Policy Guide (ORR Guide to Children Entering the United States Unaccompanied)	
⊠ Email	
₫D Mail	
Tasks associated with a deadlire	
Form or other template	
* UAC Portal	
Phone call	

UAC MAP: Section 1: Placement in ORR Care Provider Facilities

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## 1.1 Summary of Procedures for Placement and Transfer of UAC

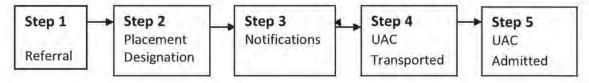
#### OVERVIEW

See Section 1.3 for detailed procedures regarding initial placement within the ORR care provider network. ORR has additional procedures to place or transfer UAC in the event of an emergency or influx to make safe and suitable placements expeditiously. ORR makes all initial placement decisions.

The U.S Department of Homeland Security (DHS) or other federal agencies, such as the U.S. Marshals Service or the FBI, refers apprehended minors who are UAC to ORR 7 days a week, 24 hours a day.

The ORR Intakes team receives referrals of UAC and designates initial placements for UAC within the ORR care provider network based on bed capacity and other considerations. After ORR Intakes notifies the designated care provider and the referring agency of a UAC's placement, the referring agency physically transports the UAC to the designated care provider, and the care provider admits the UAC into the program. See Fig. 1.1.

Fig. 1.1 Federal Agency Referral and ORR Placement of UAC



After placement, UAC may be transferred to another facility within the care provider network. See Section 1.4 for detailed procedures on transfers within the ORR care provider network.

Care providers identify UAC in need of transfer and elevate to case coordinators and other staff who will elevate the case as needed in order to identify placement options. The receiving care

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provider accepts placement. Sending and receiving care providers arrange logistics and transportation and provide notifications. The receiving care provider admits the UAC into their program. ORR approves all transfers within the care provider network. See Fig. 1.2.

Step 3 Step 2 Step 1 Case coordinators Transfer Request File UAC identified in need identify placement created. of transfer. options. Step 4 Care provider accepts placement. Step 5 FFS approves transfer request. Step 6 Sending and receiving care provider programs arrange logistics, update records, and notify stakeholders. Step 7 UAC arrives at receiving care provider. Care provider admits UAC to program, updates records, and notifies stakeholders.

Fig. 1.2 Transfers within the Care Provider Network

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Key Players	Responsibilities
Care Provider Program	Depending on the procedures, the care provider staff include staff who accept UAC placements; case managers, who coordinate services, clinicians, and medical coordinators who oversee medical services and assessments of UAC.
ORR Staff	The major players for initial placement and transfer include the ORR Intakes staff, the first ORR point of contact for the federal agency referring UAC, and Federal Field Specialists (FFS) and FFS supervisors who oversee placement and transfer.
Case Coordinators	Government contractors who provide independent third party recommendations and child welfare technical assistance to programs.

Related Forms/Instruments	Used By
UAC Initial Placement Referral Form	Intakes; DHS
Intakes Placement Checklist	Intakes, FFS
Notice of Placement in a Restrictive Setting	Case Manager; Clinician; Case Coordinator; FFS
Transfer Request	Case Manager, Case Coordinator, FFS
Transfer Request and Tracking Form	Case Manager
Medical Checklist for Transfers	Medical Coordinator, Medical Staff
Long Term Foster Care Placement Memo	Case Coordinator, Care Provider
Care Provider Checklist for Transfers to Influx Care Facilities	Case Manager
Medical Checklist for Influx Transfers	Medical Coordinator, Medical Staff
See Section 3 for Details About the Following Forms	Mentioned in this Section:
Notice to ICE Chief Counsel Change Address/Change of Venue	Case Manager
UAC Assessment	Care Provider Program
UAC Case Review	Case Manager
Individual Service Plan	Case Manager
Alien's Change of Address Form/Immigration Court (EOIR—33/IC)	Case Manager
Care Provider Family Reunification Checklist	Case Manager

ORR expects care providers and ORR staff and contractors to protect Personally Identifiable Information (PII) when communicating information about sponsors and UAC. This includes password protecting documents and limiting PII in emails, including the body of the email. Best practices for protecting PII are provided throughout the section and include sample email templates. Documents that are uploaded in the UAC Portal do **not** need password protection.

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See Section 1.2 of UAC Policy Guide (ORR Guide to Children Entering the United States Unaccompanied) (UAC Policy Guide).

#### 1.2.1 Placement Considerations

See Section 1.2.1 of the UAC Policy Guide.

## 1.2.2 Children with Special Needs

See Section 1.2.2 of the UAC Policy Guide.

## 1.2.3 Safety Issues

See Section 1.2.3 of the UAC Policy Guide.

### 1.2.4 Secure and Staff Secure Care Provider Facilities

#### **PROCEDURES**

Notice of Placement in a Restrictive Setting (Secure, Staff Secure and non-Treatment Authorization Request (TAR) Residential Treatment Center (RTC) facilities)

Within the 48 hours of initial placement of a UAC into a secure, staff secure, or non-TAR RTC setting (as discussed in Section 1.4.6), the case manager notifies the UAC in a language he or she understands during the explanation of their placement in a restrictive setting:

That the UAC has an opportunity to request a Flores bond hearing (see 2.9).

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- Provides the Notice of Placement in a Restrictive Setting. The care provider marks the
  appropriate box(es) noting the reason for the placement, provides a summary of the
  placement decision based on the evidence provided to the care provider by ORR.
- The UAC signs and dates the form. (If the UAC refuses to sign the form the care provider notes "UAC refused to sign" on the signature page of the document). The care provider scans and uploads the Notice of Placement in a Restrictive Setting into the UAC Portal. A copy of the Notice of Placement in a Restrictive Setting is maintained in the UAC's case file, and another copy is provided to the UAC to keep with their personal belongings.
- Reviews the UAC's placement within 30 days and at least every 30 days thereafter.
- If the UAC is in a secure facility or RTC, informs the UAC that they can request the ORR Director to reconsider their placement if after the 30 day case review they are not stepped-down. (See section 1.4.7.)

1.2.5 UAC Who Pose a Risk of Escape	
See Section 1.2.5 of the UAC Policy Guide.	
1.2.6 Long Term Foster Care	
See Section 1.2.6 of the UAC Policy Guide.	
1.2.7 Placing Family Members	onenana di kalenda
See Section 1.2.7 of the UAC Policy Guide.	
1.3 Referrals to ORR and Initial Placements	

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#### **OVERVIEW**

The tables below identify key participants in the Initial Referral/Placement process and list key forms and instruments completed during these steps. Appendices referred to in this section include forms or other templates referred to in the procedures, and are found at the end of this **UAC MAP** section.

Key Players	Responsibilities	
DHS (or other federal agency)	Operating at key points of entry responsible for referring UAC to	y near borders and across the country; o ORR.
ORR Intakes Team (ORR Intakes)	requests, locate and designate	who receive and process all referral appropriate placement, and document all ations. ORR Intakes operates 24 hours per
Federal Field Specialists (FFS)	referral and initial placements.	concerns or issues that arise during FFS supervisors are responsible for cases (such as secure placements).
ORR Division of Health of Unaccompanied Children (DHUC)	ORR Intakes may consult with E involved in UAC placement con	OHUC if medical or mental health issues are siderations.
Care Provider Programs	provider programs must have a 24 hours a day, 7 days a week w	care for UAC referred to ORR. Care primary and secondary contact available who will respond to ORR Intakes team request for UAC initial placement.
Related Forms/Inst	ruments	Used By
The UAC Portal is the referrals and initial	ne system of record for all UAC placements.	All parties
DHS referrals subm a direct data link wl	itted via DHS's database provide hich automatically generates a with completed fields into the	DHS
matches the "Add N UAC Portal and is o submit UAC informathose cases, ORR In	Il Placement Referral Form New UAC" Intakes Section of the nly used when DHS does not ation via the UAC Portal. In takes types information from into the Portal in the "Add New	DHS; ORR Intakes

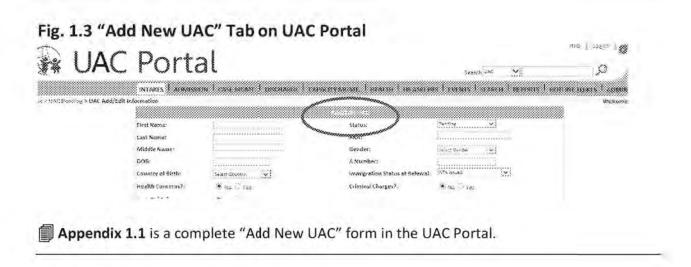
#### **PROCEDURES**

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- DHS (or other federal agency) refers UAC through UAC Portal or Intakes Hotline (orrducs\_intakes@acf.hhs.gov or 202-401-5709). Referrals can take place 24/7.
   ☑/☎/⁴
- ORR Intakes creates record for a "Pending" UAC in the "Add New UAC" Intakes section of the UAC Portal (alternatively, auto-populated via DHS database referral).
   See Fig. 1.3. 4



## 1.3.1 Requests for Information from Referring Federal Agency

#### **PROCEDURES**

ORR Intakes documents and reviews UAC's biographical and apprehension information in the UAC Portal that has been submitted by DHS (or other federal agency). (If information is missing, ORR Intakes contacts DHS.)

#### UAC's biographical and apprehension information includes:

Health related information including, but not limited to, if the UAC is
pregnant or parenting and whether there are any known physical or mental
health concerns. If there are significant health concerns (i.e., the UAC is not
fit for travel), ORR requests that the referring federal agency medically clear

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- the child before ORR will designate placement. In its discretion, ORR may designate placement for UAC who are pending medical clearance.
- Whether the child has any medication or prescription information, including how many days' supply of the medication will be provided with the child or youth when transferred into ORR custody.
- Biographical and biometric information, such as name, gender, alien number, date of birth, country of birth and nationality, date(s) of entry and apprehension, place of entry and apprehension, manner of entry, and the child's current location.
- Any information concerning whether the child or youth is a victim of trafficking or other crimes.
- Whether the UAC was apprehended with a sibling or other relative.
- Identifying information and contact information for a parent, legal guardian, or other related adult providing care for the child or youth prior to apprehension, if known.
- If the UAC was apprehended in transit to a final destination, what the final destination was and who the child or youth planned to meet or live with at that destination, if known.
- Whether the UAC is an escape risk, and if so, the escape risk indicators.
- If the UAC was previously in ORR custody and subsequently released to a sponsor and re-apprehended by DHS on suspicion of gang affiliation (but only on gang affiliation), a copy of the Immigration Judge's Saravia order finding DHS had sufficient evidence to justify the arrest.
- Any information on a history of violence, juvenile or criminal background, or gang involvement known or suspected, risk of danger to self or others, state court proceedings, and probation.

## 1.3.2 ORR Designates Placement

#### **PROCEDURES**

Within 3 hours if possible but no more than 24 hours, ORR Intakes uses placement
considerations to identify a care provider. ORR Intakes attempts to place the UAC in
a care provider facility as close as possible to the point of apprehension while
considering the individual needs of the UAC. ORR Intakes consults with FFS

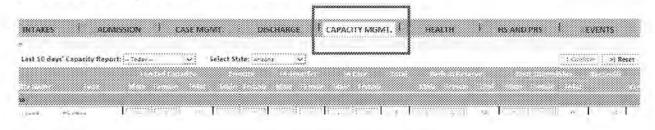
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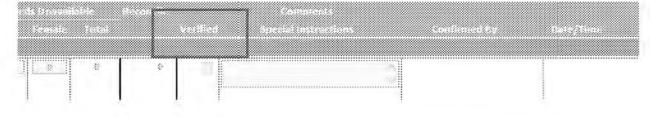
- supervisor and/or DHUC in special cases (such as a UAC with mental health or medical issues, UAC with criminal or violent background).  $\square$
- 2. ORR Intakes identifies available and appropriate bed space at a care provider by reviewing the "Capacity Management" tab in the UAC Portal which automatically updates available beds by state, facility, and types of facilities. See Fig. 1.4.

Fig. 1.4 Capacity Management Tab



**NOTE:** Care provider MUST verify information in their facility on a **daily basis by 9 a.m.** so that the UAC Portal will generate an accurate report of the number of UAC in care, and number of open beds. **See Fig. 1.5.**  $^{\circ}$ 

Fig. 1.5 Verification Tab for Care Providers



- 3. ORR Intakes uses the Intakes Placement Checklist If the UAC has:
  - A juvenile or adult criminal history, including involvement in human trafficking or smuggling.
  - Prior acts of violence or threats in government custody
  - Gang/cartelinvolvement

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- Prior escape(s) or attempted escape(s) from government custody
- · Mental health concerns
- Sexual predatory behavior



Appendix 1.2 is a copy of the LAC's Intakes Placement Checklist.

- 4. ORR Intakes inputs all available information on the UAC's criminal history or behavioral concerns into the Intakes Placement Checklist.
- 5. The on-call FFS supervisor must approve all placements when Intakes uses the Intakes Placement Checklist to designate placement. The FFS supervisor decides if the recommended care provider type associated with the Intakes Placement Checklist is a suitable placement for the UAC. Each placement is assessed on a case-by-case basis.
- 6. Intakes emails the completed Intakes Placement Checklist to the Care Provider. 

  ☐

  ☐

  ☐
- After receiving the Intakes Placement Checklist the care provider scans and uploads the form into the UAC Portal after electronically admitting the UAC into the program.
- The care provider generates the Notice of Placement in a Restrictive Setting and populates the UAC biographical information and the care provider facility information.

The care provider:

- Marks the appropriate box noting the reason for the placement
- Provides a summary of the placement decision based on the evidence provided to the care provider by ORR and DHS (this will be a summary of the Intakes Placement Checklist and any information DHS provides with the initial referral)
- Prints out a copy of the form, which is provided to the UAC at admission into the facility. (For more information, see section 3.)

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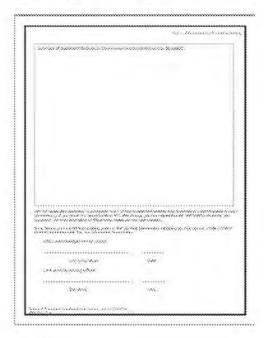
Fig. 1.6 is a snapshot of the Notice of Placement in a Restrictive Setting. See, section 1.2.4.

#### Translations of the Notice of Placement in a Restrictive Setting

- The Notice of Placement in a Restrictive Setting is available in English and Spanish. At the UAC's option, the minor is provided a Spanish version of the form. However, any summary of their placement must be provided in English and Spanish if using the Spanish version of the form.
- If the child speaks a language other than English or Spanish, the care provider facility utilizes a language line or other translator that translates the relevant English portions of the form into the UAC's preferred language. This includes translation of the form's summary of placement section.

Appendix 1.3 is the Notice of Placement in a Restrictive Setting.

Fig. 1.6 Notice of Placement in a Restrictive Setting



9. ORR Intakes provides prior notification to care provider staff in these cases:

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- Shelter Designation: If UAC has special health concerns in order to determine if the care provider is able to accept the designation
- Transitional Foster Care: In all cases

RTC: In all cases

Staff Secure: In all cases

Secure Care: In all cases 2/ 🖂 🕝

## 1.3.3 Care Provider Accepts Placement

#### **PROCEDURES**

- 1. ORR Intakes contacts care provider on placement.
- 2. The care provider must accept placement unless UAC does not meet established facility specific criteria.
- 3. ORR Intakes contacts CHS or other referring agency and provides the name and contact information of the designated care provider using the Placement Notification Summary email template below.

## 

#### **Placement Notification Summary Email Template**

To: DHS (or other referring federal agency contact)

CC: [insert Care Provider intakes contact]

Subject line: "Placement Notification for UAC [include the UAC's last four digits of the "A" number]"

Please see the attached password protected document for the UAC identified above.

The password will be sent separately.

#### Separate password protected document includes the following applicable fields:

[Insert UAC name, A number; date of birth and country of origin] who was referred to ORR by [insert DHS sector or other referring federal agency] has been assigned to [insert designated care provider].

This individual has the following medical, mental health or other special concerns [insert].

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[Insert information if known about criminal background]
[Insert name of referring official] has flagged the following safety concerns: [insert].

NOTE: If Intakes Placement Checklist is used, include the following but DO NOT send this information to the DHS contact:

CC: FFS Supervisor; FFS; CFS; PO; ORR Intakes Team Lead

The following information based on the Intakes Placement Checklist may be relevant to this placement: [insert]. If a 30 Day Restrictive Placement Case Review is required for this placement, indicate "30 Day Restrictive Placement Case Review Required" in the subject line and in the body of the email.

## 1.3.4 UAC Transferred to ORR Custody

#### **PROCEDURES**

- 1. ORR Intakes:
  - Requests that DHS or other referring federal agency contact the care provider to provide notice of travel arrangements, including expected arrival date and time of the UAC at the care provider's location and the contact information for the transporting officials.
  - Assists care provider and referring agency with logistics.
  - Ensures the referring federal agency has correct contact information for care provider and is aware of any limitations or restrictions to the day/time UAC can be accepted by care provider.
- DHS transports UAC and personal belongings to receiving care provider facility at the day/time previously communicated to receiving care provider facility.
- 3. The care provider contacts the ORR Intakes Hotline 202-401-5709 immediately upon receiving a UAC with special concerns not reported in the referral and also sends ORR Intakes an email specifying the issue. ②
- 4. The care provider **immediately** admits the UAC to the program in the UAC Portal and offers the UAC the opportunity to contact their consulate.

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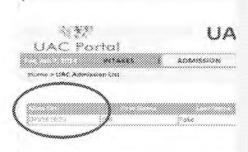
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#### Quick Glance: How to Admit UAC to Program

When a UAC arrives at a program, the user needs to log in to the UAC Portal and click on the **Admission tab** of their specific program (program name will appear in a drop-down menu). If a user has access to only one program, then the user will default to that program in the Admission tab. Users with access to multiple programs must select the correct program in the Admissions section.



To admit a UAC, the user must click on the Alien Number on the left-hand side of the screen.



Clicking on the "Alien No." opens up the Admission screen. Under Status, select "Admit." If the UAC didn't arrive at the program, the user should contact ORR Intakes to confirm the UAC's placement status. If appropriate, the user should select "Cancel." Users should not select the status "Pending" as that will put the UAC back into ORR Intakes and the care provider will not be able to access the file.

The user should check the "UAC Basic Information" to confirm that it matches the DHS documentation. If the name, date of birth (DOB), country of birth, also known as ("AKA"), or gender do not match DHS documentation, the user must update the information to accurately reflect DHS records. The Alien Number should match the Alien Number in the DHS documentation. If it does not, the user must contact orrducs\_intakes@acf.hhs.gov to request a change. (Include both the incorrect Alien Number and the correct Alien Number in the notice to appear (NTA).)

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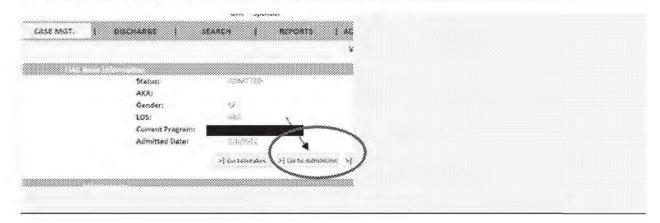
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The user should answer "Yes" to the question "By selecting Yes in this field...", and fill in the Admission Date and Time, and then click Save. After saving the information, the UAC is admitted to the program.

#### How to update information after admissions

Care provider staff may correct biographical information or the admission date/time after admitting a UAC by going to the UAC's file in the case management section. 1) Click on "Go to Admissions" link. 2) Change the information and 3) Click Save.



Receiving care provider accepts UAC, his or her belongings, and supporting documentation that is provided by DHS.

UAC supporting documentation includes:

- DHS records (See Quick Glance to DHS Records).
- Documents related to medical, mental health, and safety concerns available at time of apprehension (medical clearance and medications, criminal juvenile records, as applicable).
  - **NOTE:** DHS does not release law enforcement documents but will provide ORR information about charges or convictions if known at time of referral or placement.
- UAC birth certificate. (DHS has not been releasing UAC birth certificates confiscated at time of apprehension. As a result, care providers must request the birth certificate from the UAC's family or consulate.)
   NOTE: Care providers must not contact consulates of a non-mandatory notification country<sup>1</sup> for birth certificates if 1) the UAC makes an asylum

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At this time the Central American countries of El Salvador, Guatemala and Honduras are not mandatory notification countries. Mexico is not a mandatory notification country, but the United States does have a bilateral agreement that confers similar protocols for minors, therefore Mexican consulate officials will be given access to UAC under similar arrangements as a mandatory notification country. See also ORR Guide: 5.4.1 Notifications to Consulates.

claim and is from a non-mandatory notification country or 2) where the UAC has a fear of persecution by their home country's government.

6. The care provider requests missing information/documents from DHS or other sources as needed. If DHS cannot provide medical/mental health/safety concerns documents, or criminal juvenile records, the care provider requests the documents from Customs and Border Patrol (DHS/CBP) and copies the assigned FFS within 1 business day of admitting the UAC.

#### Quick Glance: DHS Records

ORR is working with DHS to streamline the transfer of DHS and other records obtained or generated at point of apprehension of a UAC to make sure these records are included in the UAC hard copy and electronic files.

#### The DHS records may include:

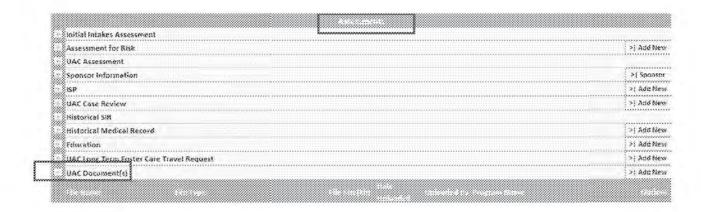
- DHS Form I-862 Notice to Appear or other charging document
- DHS Form I-216 Record of Person or Property Transferred
- DHS Form I-213 Record of Deportable/Inadmissible Alien
- CBP Form 93 Unaccompanied Alien Child Screening Addendum (trafficking information)
- DHS Form I-770 Notice of Rights and Request for Disposition
- DHS Form I-779 Juvenile Medical Screening and other medical paperwork
- DHS Form I-217 Information for Travel Document or Passport
- Other forms, if applicable, such as DHS Form I-200 Warrant of Arrest or DHS Form I-286
   Notice of Custody Determination
- Copies of any publicly available federal, state, or local criminal records in the possession
  of the apprehending DHS component at the time of transfer and appropriate available
  documentation describing any gang, immigration, criminal, or other activity that may
  affect placement.
  - 7. Within 48 hours, the care provider uploads all available documents to the UAC Portal under the case management tab, upload document section with a title that clearly identifies the type of document. A hard copy goes into the UAC case file. See Fig. 1.7. 🗇 🖰

#### Fig. 1.7 Case Management Upload Document Section

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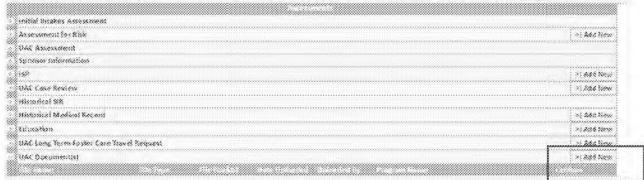


#### Quick Glance: Using UAC Portal Blank Templates and Uploading Documents

Each UAC's record in the UAC Portal includes assessments that care providers complete and update based on fillable templates in the UAC Portal, as well as other documents, notes, or other records that aren't in the database. Care providers must create, scan or upload these documents as electronic attachments to ensure UAC records are complete. (The same is true for records related to sponsor assessments.)

Blank templates may be found under "Assessments" in the UAC Portal (Figure 1.7 and below). These include Initial Intakes Assessment, Assessment for Risk, UAC Assessment, Sponsor Information, ISP, UAC Case Review, and other categories highlighted below.

As indicated in Step 7 above, most documents that are uploaded are added using the "add new" button on the UAC Documents tab located at the bottom of the Assessment list.



Care providers should **not** print out UAC Portal Assessments, scan them, and then upload the assessments into the UAC Document tab.

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#### Naming Convention for Uploaded Documents

Care providers should use only letters or numbers when assigning a document name and should use \_ instead of spaces between words. Do not use any other punctuation marks in the title of a document. The title of the document should follow this naming convention: [insert UAC A number] \_[Document type: birth certificate, DHS Form (include number).etc.].

Do **NOT** password protect any documents that are uploaded to the UAC Portal. These documents are housed in a secure environment and do not need encryption.

## 1.3.5 Initial Placements in the Event of an Emergency or Influx

See Section 1.3.5 of the UAC Policy Guide.

See also UAC MAP Section below 1.7 Placement and Operations during an Influx.

## 1.4 Transfers within the ORR Care Provider Network

#### OVERVIEW

Transfer of UAC between ORR care providers is a complicated process requiring close coordination among case managers at both the sending and receiving care facilities, sending and receiving case coordinators, the sending medical coordinator (or other medical staff), FFS staff, and other stakeholders such as attorneys and child advocates as appropriate.

Key Players	Responsibilities
Sending Case Manager	Makes the iritial recommendation for transfer based on regular assessments of UAC and prepares the Initial Transfer Request File.
Sending Case Coordinator	Reviews the Transfer Request File and consults with case manager and decides if a transfer to an alternate placement will better meet the UAC's individual needs. Identifies an appropriate alternative placement.
Sending Medical Coordinator or Medical Team	Responsible for completing the <i>Medical Checklist for Transfers</i> within 3 days of identifying a UAC in need of transfer.
FFS Staff	Reviews the Transfer Request File and approves or denies the request.

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ORR Division of Health for Unaccompanied Children (DHUC)	Responsible for reviewing transfer requests if a child does not meet all the criteria for transfer as specified in the <i>Medical Checklist for Transfer</i> .
Receiving Case Coordinator	Reviews the Transfer Request File and notifies the receiving care provider.
Receiving Case Manager	Notifies sending care provider of acceptance and contact information and accesses UAC records in UAC Portal.
ORR Project Officers (PO)	Notified when group transfers are due to program closings.
Contract Field Specialist (CFS)	ORR contract staff who act as liaisons to provide technical assistance for transfers when needed.

#### Related Forms/Instruments

The sending care provider uses the *Transfer Request* form in the UAC Portal to initiate the transfer for review by case coordinators and FFS.

UAC transferred to secure or staff secure receive the *Notice of Placement in Secure or Staff Secure Care Provider Facility*.

The medical coordinator completes the *Medical Checklist for Transfers* and saves a hard copy and an electronic copy in the Health tab of the UAC Portal.

The Transfer Request File, which is emailed among and used by all parties, at various stages, involved in UAC transfers (i.e., case coordinators, FFS, other stakeholders). The file contains all supporting documentation related to the transfer (See the email template below). Case management records are described in ORR Policy Guide and **UAC MAP** Section 3: Services.

**NOTE:** Not all supporting documents for the Transfer Request File are stored on the UAC Portal. This means that all parties are required to submit emails (along with updating the *Transfer Request* in the UAC Portal) to relevant parties at key stages.

Transfer Request and Tracking Form, Discharge Notification Form, and Change of Address/Change of Venue (COA/COV) are three different forms used to inform immigration court and ICE chief counselor of a transfer and need for a change of venue.

The LTFC care provider sends ORR the Long Term Foster Care Placement Memo to ensure continuity of services and tracking of records for a UAC following transfer.

- Appendix 1.4 is the Medical Checklist for Transfers.
- Appendix 1.5 is a screen shot of the Transfer Request and Tracking form.

#### **PROCEDURES**

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- Sending case managers continuously assess UAC in their facilities' care to review
  whether their placements are appropriate. If a case manager recommends transferring
  a UAC, their assessments and any related documents (in addition to any new
  documentation created in Step 2 below) become part of the Transfer Request File.
- If the sending case manager identifies a UAC whose placement is inappropriate under ORR Policy, he/she must perform the following steps within 3 business days:
  - Ensures that UAC will be medically cleared for transfer by requesting that sending medical coordinator or other medical staff completes the Medical Checklist for Transfers.

If the child does not meet all the criteria for transfer (based on the medical checklist), the medical coordinator contacts the DHUC at <a href="mailto:DCSMedical@acf.hhs.gov">DCSMedical@acf.hhs.gov</a>. DHUC responds to the case manager within 1 business day. If DHUC determines that the child is fit to travel despite not meeting all the criteria, DHUC will send an email to the case manager indicating that the child can travel.

**NOTE:** The UAC's transfer file of hard copy documents does not include the *Medical Checklist for Transfer* because it is confidential information.

If DHUC determines that the child is not fit to travel, DHUC will contact the case manager explaining why the transfer has been denied and will specify a timeframe in which the care provider staff should reevaluate the UAC.

Generates the Transfer Request in the UAC Portal, located in the UAC Portal under the "Discharge" tab. See Fig. 1.8. The case manager clicks on "Add New" on the right-hand side of the screen to fill out the request.

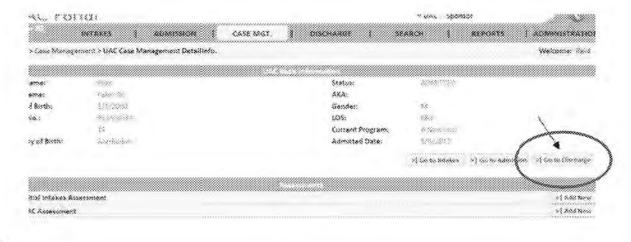
#### Fig. 1.8 Transfer Request in UAC Portal

(A)

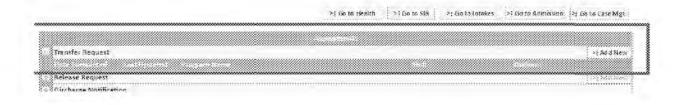
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(B)



- Compiles the Transfer Request File, which contains attachments sent via email and is used by all parties involved (case coordinators, FFS, other programs) at various stages of transfer. The file contains all supporting documentation related to the transfer. (See the Quick Glance: Transfer Request File below.)
- Emails the Transfer Request File to the sending case coordinator (See Email Template below).

#### Quick Glance: The Transfer Request File

The Transfer Request File includes the following:

- UAC Assessment
- Updated UAC Case Review
- Medical Checklist for Transfers

#### **Supporting Documentation**

- Case manager notes
- · Intakes and admissions assessments
- · Child trafficking screening results
- Clinical notes
- Psychological evaluation with diagnosis (required for therapeutic care)

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- · Health records to include medical, dental, and mental health
- · List of current medications and dosages
- Educational records (assessments and report cards)
- UAC's birth certificate
- · DHS and immigration cour: documents
- Criminal/juvenile record documentation
- Significant Incident Reports and internal incident reports
- Any other significant documentation

## For Transfers to Residential Treatment Centers include the following additional documentation:

- Psychiatric evaluation or psychological evaluation recommending RTC placement
- Psychiatric hospitalization records and discharge summary, if applicable
- Clinical, psychological and psychiatric progress notes

#### **⊠**Email Template of Transfer Request File

TO:

Subject: Transfer Request File for UAC [list last four digits of the UAC's A number]

Body: Name and contact information of care provider staff coordinating transfer

Please see the password protected documents for the UAC identified above. The password is sent separately.

[Transfer Request File includes all attachments included from the Transfer Request file above.]

Based on their check of the Capacity Management tab in the UAC Portal, the sending
case coordinator proposes an alternative placement and completes "Type of Program"
and "Case Coordinator Proposed Program" on the Transfer Request in the UAC Portal.
 See Fig. 1.9. \*\*

Fig. 1.9 Transfer Request: Case Coordinator Proposed Program

Sase Coordination:
Concur with Requesting
Party?
f not, specify:
Cupe of Program
Recommended:

Lass Coordinator Name

CYES ( NO

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**NOTE**: If the sending case coordinator's recommended transfer placement differs from the sending case manager's recommended level of care, the case coordinator staffs the case with the supervisory case coordinator, who makes a recommendation to the FFS. The case coordinator also staffs the case with the supervisory case coordinator if the UAC has special needs or concerns. Ultimately, the FFS resolves any disagreement in recommendations between the sending case manager and the sending case coordinator, and decides on placements for UAC with special needs or concerns.

- 4. The receiving case coordinator contacts the proposed receiving care provider point of contact. The receiving care provider must accept the transfer request within one business day and notifies all case coordinators and FFS with their decision.
  - If a program is unable to accept the transfer because of state licensing requirements, the receiving care program emails the sending case coordinator with the reason and the sending case coordinator re-refers the transfer to an alternative care provider.
- 5. After the receiving care provider accepts the transfer request, the sending case coordinator:
  - Notifies both care providers of the accepted transfer and provides the
    point of contact for programs to complete the logistics of the transfer
    based on the email template below of the case coordinator notification
    of transfer acceptance. The email includes a request for the sending FFS
    to approve the transfer in the UAC Portal.
  - Notifies any other potential receiving care provider facilities that a placement was found.
  - IMMEDIATELY upon notification of acceptance (but no later than the next business day) documents his/her recommendation on the Transfer Request in the UAC Portal.

## 

TO: Sending FFS; Sending Care Provider Point of Contact; Receiving Care Provider Point of Contact

Subject: Notification of Transfer Acceptance for UAC [include last four digits of A number] Please see the attached password protected file which includes the full name and A number of the UAC above. The password will be sent separately.

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Please note that [insert name of receiving care provider] has accepted this UAC. This is to notify everyone involved of the actions to be taken to complete the transfer of this UAC from [sending care provider]. The *Transfer Request* has been completed by the program, and the case coordinator has entered the recommendation in the UAC Portal. The *Transfer Request* is waiting for FFS approval in the UAC Portal. Below are the action needed to complete the transfer.

#### Sending FFS: [insert name]

Approve Transfer Request in the LAC Portal

#### Sending Care Provider

Coordinate logistics with receiving program to transfer UAC.

Provide transfer notifications to the following entities: DHS, Legal Service Provider, Child Advocate and sending and receiving FFS.

#### Receiving Care Provider

Coordinate logistics with sending program to transfer UAC.

#### Sending Care Provider Contact Information

Insert name of contact, address, email, phone number.

#### Receiving Care Provider Contact Information

Insert name of contact, address, email, phone number.

**NOTE:** The FFS may require further assessments such as psychological/psychiatric evaluation, or may further elevate the case to the FFS supervisor. In these cases, the FFS will notify the sending case manager and sending case coordinator **within 24 hours.** ©

 The FFS completes the ORR Decision section of the *Transfer Request* in the UAC Portal within 24 hours, making sure to fill out the three fields "Decision," "Date of Decision," and "Name of ORR Decision Maker." See Fig. 1.10.

FFS also replies with a follow up email to the case coordinator notification of transfer acceptance email that the final release decision was completed in the *Transfer Request* in the UAC Portal. On the UAC Portal.

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**NOTE:** When the FFS approves the *Transfer Request* in the UAC Portal, the status of the UAC should change from Admitted to **In-Transfer**. Unless this status changes, the *Transfer Request* was not correctly completed.

Fig. 1.10 Transfer Request: FFS Decision



- 7. The sending case manager:
  - Updates the case manager portion of the Transfer Request in the UAC Portal.
  - Completes the change of venue section of the request form for transfers to a different immigration court jurisdiction when a UAC does not have an attorney of record.
  - For UAC represented by an attorney and NTA has been filed, completes
    only the notice of transfer section and informs the attorney that a change
    of venue motion needs to be prepared and filed by the attorney.
  - Sends to the receiving case manager and FFS any significant information received or significant incident reports that occurred after the transfer request was sent.
  - Ensures that documents are completed and uploaded to the UAC Portal.
  - Ensures that documents and items that will accompany UAC at time of transfer are secure.
  - WITHIN 24 hours prior to the physical transfer: emails stakeholders using the sample email template below (Email Template to Stakeholders Prior to Physical Transfer).
  - Completes the Notice of Transfer to ICE Chief Counsel Change of Address/Change of Venue in the UAC Portal.
  - Saves a hard copy of the completed Transfer Request and Tracking Form in the UAC's case file. ②☑ ⑥

**⊠**Email Template to Stakeholders PRIOR TO PHYSICAL TRANSFER

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**NOTE**: Must be completed in 24 hours or less, depending on the circumstances (i.e., transfers that involve "step ups" to secure or UAC in need of immediate psychiatric attention may be expedited).

From: Sending Case Manager

To: Receiving Case Manager

Sending and Receiving ICE FOJC

ICE Office of Chief Counsel (OCC)

**EOIR Immigration Court Administrator** 

UAC's Legal Service Provider or Attorney of Record

Sending and Receiving Case Coordinator

Sending and Receiving FFS

VOLAG, if applicable

Child Advocate, if applicable

Subject line: UAC [include last four digits of A number] transfer

Please see the password protected file with information about the physical transfer of the UAC mentioned above from [include sending care facility] to [include receiving care facility.]

The password is sent by separate email.

Password Protected Attachments: Transfer Request and Tracking Form

**NOTE:** Do not send the *Transfer Request and Tracking Form* to ICE FOJC, ICE OCC, EOIR, or Legal Service Provider. Only send the *Notice of Transfer to ICE Chief Counsel Change of Address/Change of Venue* and *Discharge Notification Form*.

- 8. When the UAC is in "In-Transfer" status, the UAC is still active in the program. The sending program needs to complete the **Program Exit** to discharge the UAC from care.
- 9. When the FFS approves the transfer in the UAC Portal and the sending care provider discharges the UAC, the UAC Portal will automatically place the UAC in the "admission tab" of the receiving program listed under "Case Coordinator Proposed Program." (The receiving program will not be able to admit the UAC if the incorrect program is listed in this field. If the field is left blank, the FFS will not be able to complete the ORR decision piece.)
- 10. The sending care provider is responsible for physically transferring the UAC to the receiving care provider. If safety is a concern, particularly when transferring the UAC to RTC or secure care, the sending care provider may use trained staff or contract with a

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security transportation service to assist. The sending and receiving programs coordinate to address any safety or medical concerns.

The sending case manager:

- · Notifies the UAC of the transfer.
- Ensures the Transfer Request and Tracking Form and the Discharge
   Notification Form are completed in the UAC Portal immediately after the
   UAC's physical transfer. See Fig. 1.11.
- Signs the Transfer Request to validate that all items listed are included in UAC's packet.
- Updates the UAC Case Review and Individual Service Plan, documenting the need for Transfer and Recommendations for placement.
- Ensures a copy of the UAC's required documents and all the UAC's belongings (i.e., clothing, medication, legal documents,) are transferred.
- Verbally notifies UAC's approved contacts of transfer.
- Offers the UAC chance to contact their consulate to notify them of the transfer. ② ☑ ◆

### Fig. 1.11 Screen Shot of Discharge Notification Form in UAC Portal



# Quick Glance: Documents that Sending Case Manager Must Complete/Upload to UAC Portal Prior to Transfer

- Initial Intakes Assessment
- UAC Assessment
- Assessment for Risk
- Individual Service Plan
- Family Reunification Forms and Supporting Documentation
- Significant Incident Reports, if applicable
- DHS Form I-862 Notice to Appear
- Legal Representation list acknowledgment
- Know Your Rights acknowledgment
- Care Provider Family Reunification Checklist

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- Medical Checklist for Transfer
- Transfer Request and Tracking Form
- Health records, to include medical, dental, and mental health

### Quick Glance: Items That Accompany UAC

- UAC personal belongings, including clothing, money, valuables, and items obtained during the UAC's stay at the referring care provider
- Transfer Request and Tracking Form
- 30-day medication supply (any exceptions must be fully discussed with sending and receiving care providers prior to transfer)
- Care Provider Family Reunification Checklist
- Transfer Request
- Health records, to include medical, dental, and mental health
- Original documents (birth certificates)

**TRANSFER LOGISTICS:** Receiving and sending case managers discuss the *UAC's Assessment*, *UAC Case Review, Transfer Request* and status of family reunification to ensure continuity in case planning and relationships with primary care givers and prepare the UAC for the transfer. UAC in care are not allowed to travel without a care provider staff member.



### Special Situations Regarding Transfer Logistics and Physical Transfer:

- If there is an emergency, the sending case manager IMMEDIATELY emails FFS
  (or the FFS on-call supervisor at 202-401-5709 if it is after business hours)
  and indicates the name and contact information of the care provider staff
  responsible for coordinating the transfer, the FFS reviews the circumstances
  to determine if the UAC requires an emergency transfer to a more secure
  facility.
- If the decision following the 30-day review of secure, staff secure or RTC placements is that the UAC will be transferred to an alternative program, all parties follow the procedures described for transfer placement acceptance.
- If there are any safety concerns regarding the physical transport of the UAC, the case managers consult with the FFS.

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 If the sending and receiving care providers cannot agree on transfer logistics, the sending case manager elevates the issue to the FFS and Project Officer, documenting the disagreement and the eventual solution in the Transfer Request.

1 In UAC Portal, click on Case Management tab and list of UAC in program will display (NOTE: Health information, such as immunizations, diagnoses, etc., are located under the Health tab in the UAC Portal.)	<b>2</b> Select the transferred UAC by clicking on the A#.
<b>3</b> Under UAC Basic Information section, see drop down menu which displays all programs in which the UAC has been admitted.	<b>4</b> Use the drop down box to change the program selection to one of the previous programs to view the documents.
<b>5</b> Check for documents in all previous programs.	

## 1.4.1 Least Restrictive Setting

See **Section 1.4.1** of the UAC Policy Guide.

## 1.4.2 30 Day Restrictive Placement Case Review

### **OVERVIEW**

ORR requires secure, RTC, and staff secure care providers, together with the case coordinator and FFS, to staff and review placement of UAC in their facilities at least every 30 days after initial placement.

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Care providers may conduct a review sooner than 30 days if new information makes clear an alternate placement is more appropriate so that the UAC may be transferred to a more appropriate care setting without celay.

The Notice of Placement in a Restrictive Setting is available in English and Spanish. At the UAC's option, the minor is provided a Spanish version of the form. However, any summary of their placement must be provided in English and Spanish if using the Spanish version of the form. If the child speaks a language other than English or Spanish, the care provider facility utilizes a language line or other translator that translates the relevant English portions of the form into the UAC's preferred language. This includes translation of the form's summary of placement section.

### **PROCEDURES**

### Review of Restrictive Placements

The Following 30 day Case Review is conducted for UAC in Secure, Staff Secure and RTCs. If the UAC is in an RTC as a result of a TAR placement the child's case manager at the "base" facility work with clinical staff at the RTC facility to extend the child's placement beyond 30 days.

- Over the 30 day period following placement or during the 30 day period following the previous 30 Day Restrictive Placement Case Review, ORR grantees, contractors and ORR staff perform the following:
  - Clinicians continue weekly or biweekly counseling sessions that focus, in part, on the UAC's dangerousness, threats to self, others or the community and risk of escape. The information collected or reported by the clinician, includes:
    - Clinical and psychological reports and documents, including those by medical anc/or mental health providers. The Ohio Youth Assessment System is included, as applicable. See, Section 3 for more information.
    - Clinical notes maintained by the clinician, documented in accordance with ORR policy and procedure.
  - Case managers working in coordination with the FFS, obtain the following information, as applicable:
    - Attestations from law enforcement.

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- Criminal history, including but not limited to police records, arrest records, court records (including Saravia and Flores hearings), probation records, etc. This may include documents retrieved from foreign governments.
- Records pertaining to a UAC's dangerousness obtained from non-law enforcement entities, including schools, child welfare agencies or other government institutions.
- Interviews with the UAC's family or other caregivers.
- Track behavioral SIRs indicative of dangerousness or flight risk, this
  includes destruction of property and SA SIRs in which the UAC is a
  perpetrator.
- Information that indicates a UAC may not be a danger, including reports from schools, counselors (including from the UAC's current placement).
- 2. Prior to UAC's 30<sup>th</sup> day of placement in a secure, staff secure, or RTC facility or prior to their 30<sup>th</sup> day Case Review, the clinician, case manager, FFS and case coordinator staff the UAC's 30 day Case Review using the information provided at the UAC's referral/transfer request and the information gathered by the case manager/FFS as described in the proceeding step, and determine whether the UAC requires continued placement in a restrictive setting.
  - The case manager, clinician and case coordinator make recommendations regarding the UAC's placement to the FFS during the 30 day Case Review staffing.
  - After considering recommendations from the UAC's clinician, case manager and case coordinator, the FFS makes a final restrictive placement case review decision regarding the UAC's placement.
  - If the UAC has resided in a secure or RTC facility for over 90 straight calendar
    days the FFS consults with Supervisory ORR staff on the case regarding the
    reasons for the UAC's continued placement, and thereafter after every 30 day
    restrictive placement case review (unless the UAC is stepped down or
    discharged).

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Not Confidential

- If a restrictive placement case review is not completed prior to the 30 day mark, the case manager records the reasons for the delay in summary notes regarding the placement.
- The summary notes maintained by the case manager include the following information:
  - UAC's basic biographical information.
  - Background information on the case.
  - Summary of case review discussion.
  - Summary of evidence.
  - The care provider's recommendation, including names and titles of those making recommendations, and basis for it.
  - The case coordinator's name, recommendation and basis for it.
  - o The FFS's name, decision and basis for it.
  - Signature of Note Taker (typically the case manager).

**NOTE:** ORR has provided a Summary Notes Template that care providers may use. If care providers develop their own template it must include, at a minimum, the information described above and must be signed.

## Appendix 1.6 is the Summary Case Notes Template.

#### 3. FFS Decision:

• Continued placements: If the FFS decision is to continue the UAC's placement the information justifying the UAC's placement in a restrictive setting is summarized by the case manager and provided in a new Notice of Placement in a Restrictive Setting, with a date stamp within the "summary of placement decision or case review" section of the form. Fig. 1.12 is the snapshot of the Summary of Placement Decision or Case Review Section of the Notice of Placement in a Restrictive Setting. The case manager marks the appropriate box noting the reason for the placement. If the case manager is unclear what the rationale for the FFS decision is, the case manager contacts the FFS for clarification and assistance in drafting language into the summary portion of the form.

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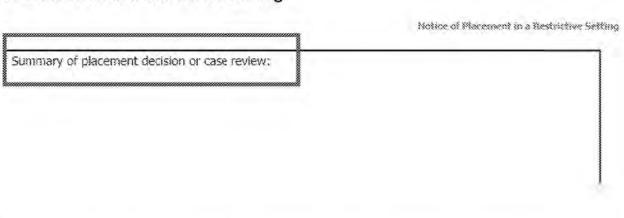
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- Step ups: If the FFS decision is to step up the child to a more restrictive
  environment, the case manager working with the FFS justify the decision in the
  UAC Case Review and include this information in the Transfer Request. Transfers
  follow standard transfer policies and procedures.
- Step downs: If the FFS decisions is to step down the child to a less restrictive
  environment, the case manager works with the FFS to justify the decision in the
  UAC Case Review and include this information in the Transfer Request. Transfers
  follow standard transfer policies and procedures.

**NOTE:** If a step down to a less restrictive environment is not completed **within 7** days due to problems finding a suitable care provider to transfer the UAC to, the case manager explains what efforts have been undertaken to transfer the UAC in writing in updates to the *UAC Case Review* notes. The case manager provides these updates to the UAC, attorney of record, LSP and/or Child Advocate, on demand.

# Fig. 1.12 Summary of Placement Decision or Case Review Section of the Notice of Placement in a Restrictive Setting



- 4. The case manager uploads all information used in assessing the restrictive placement case review (including the signed Summary Notes) in the UAC Portal. All information used in assessing a 30-day Case Review decision is considered evidence. This information must be shared with the UAC's attorney of record, LSP or Child Advocate, on demand and does not require a prior Authorization for Release of Records only proof of representation.
- Notice to the UAC of the 30 day Case Review:

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- Continued placements: The UAC signs and dates the new Notice of Placement in a Restrictive Setting form if placement continues in the current restrictive placement. (If the UAC refuses to sign the form the care provider notes "UAC refused to sign" on the signature page of the document. The care provider scans and uploads the Notice of Placement in a Restrictive Setting into the UAC Portal.) After the UAC signs the form, a copy is uploaded into the UAC Portal, and copies are maintained in the UAC's case file and provided to the UAC to keep with their personal belongings.
- Step ups: The UAC is notified at the time of transfer that they are being stepped
  up pursuant to ORR policy. The UAC is provided specific information regarding
  the placement decision in a language he or she understands upon arrival at the
  receiving care provider facility, which is included in the summary portion of the
  Notice of Placement in Restrictive Setting.
- Step downs: The UAC is provided notice that they are prepared for step down
  and given updates by their case manager on efforts made to transfer the UAC to
  a less restrictive environment. A summary of the information contained in the
  UAC Case Review justifying the step down is provided to the UAC on demand
  and signed and dated by the case manager.

**NOTE:** If a step down to a less restrictive environment is not completed **within 7** days due to problems finding a suitable care provider to transfer the UAC to, the case manager explains what efforts have been undertaken to transfer the UAC in writing in updates to the *UAC Case Review* notes. The case manager provides these updates to the UAC, attorney of record, LSP and/or Child Advocate, on demand.

6. Restrictive placement case review is not required to be expedited prior to 30 days based on a UAC's anticipated age out. However, FFS and care providers may initiate a restrictive placement case review prior to the 30-day mark at their discretion.

## 1.4.3 Long Term Foster Care

See Section 1.4.3 of the UAC Policy Guide.

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## 1.4.4 Transfer to Long Term Foster Care

**NOTE:** Transfers to Long Term Foster Care follow standard operating procedures with the exception of these steps.

 The sending case manager requests from the legal service provider or attorney of record confirmation of the UAC's eligibility for immigration relief, type of immigration relief, and status of court hearings or relief petitions (unless ORR authorizes the care provider to proceed without meeting this requirement).

**NOTE:** To request permission to proceed with transfer without coordinating with the legal service provider or attorney of record, the case manager consults with the case coordinator. If the case coordinator agrees, they submit the request to the FFS, who will make the final decision. Note, there must be other circumstances which would result in a longer stay (e.g., the child's country of origin is in a state of emergency, indicating that the child will likely not be repatriated for an extended period of time).

- 2. Sending case coordinator:
  - Notifies the appropriate LTFC point of contact that a UAC has been identified for a transfer and provides the sending care provider's Transfer Request File;
  - Informs the LTFC point of contact if the referral is being reviewed by another care provider.
- 3. The receiving LTFC point of contact attempts to identity a placement within 10 business days of receiving the transfer request. 3
- 4. Prior to accepting the transfer, the receiving LTFC point of contact confirms from the receiving legal service provider or attorney of record that they will arrange for legal services for the UAC and that the UAC will be eligible for legal relief in the transfer jurisdiction. (ORR may waive this requirement. However, there must be other circumstances which would result in a longer stay, such as the child's country of origin is in a state of emergency, indicating that the child will likely not be repatriated for an extended period of time. To request a waiver, the case manager submits the request to the FFS, who will make the final decision.)

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- 5. If the LTFC provider or national VOLAG cannot identify a placement within 10 business days, they must notify the sending case coordinator with a copy to the receiving case coordinator why a placement has not been found (e.g., programs are at capacity and UAC is on waitlist, no capacity for females, and no suitable placement for a UAC's special needs). In the notification the provider indicates whether they will continue attempts to identify a placement.
- 6. If placement is identified, the LTFC provider or national VOLAG completes the Long Term Foster Care Placement Memo and submits it to the sending case coordinator with a copy to the receiving case coordinator (includes the name and contact information for the staff responsible for the coordination of the transfer).

**NOTE:** The receiving case manager must submit emergency placement changes to the case coordinator **within 24 hours** of the placement change.

- Appendix 1.7 is the Long Term Foster Care Placement Memo.
  - 7. The transfer process follows the procedures for UAC Portal updates, notifications, etc. as for other transfers within the ORR network. For example, the sending care coordinator notifies all parties of the transfer placement memo and requests the FFS to approve the transfer request in the portal. Once that is completed, the FFS notifies all parties.
  - 8. The UAC's sending care provider and receiving LTFC provider coordinate pre-placement orientation services to prepare the UAC and foster family for placement, helping the UAC understand what to expect from the foster care provider and foster parents by:
    - Utilizing agency and foster parent welcome letters, program brochures, and foster family books that may include pictures and descriptions of home, family, and community life.
    - Coordinating the pre-placement contact between the UAC and the receiving LTFC staff and foster parents.
  - 9. The sending care provider physically transfers the UAC to the new placement.

## 1.4.5 Group Transfers

### OVERVIEW

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Group transfers can occur for various reasons, including but not limited to:

- Emergency Event
- Natural Disaster
- Program Closure

A group transfer must be approved by an FFS supervisor, unless conducted according to an emergency evacuation plan that was pre-approved by an ORR Project Officer. (See also ORR group transfers due to influx in Section 1.7 below.)

### **PROCEDURES**

**NOTE:** Group transfers follow standard operating procedures, except group transfers do not involve case coordinators. A care provider must submit a "Program Level Event" under the "events" tab of the UAC Portal if a group transfer is the result of a natural disaster.

Group transfers also differ from standard individualized transfers in the following ways:

- 1. The sending care provider point of contact:
  - Identifies UAC who meet group transfer criteria (stated above).
  - Provides a Transfer Manifest of UAC meeting the group transfer criteria and emails it to the assigned CFS and FFS. See Fig. 1.13.

Fig. 1.13 Transfer Manifest

	Da	y of Transportation Infor	mation		Sending Facil	ty Information
	Date:			T,	Facility Name:	
	Transport	POC:			Facility POC:	
	POC Phone	Number:		1.	POC Phone Number:	
	Estimated date of arrival at DARC: Estimated time of arrival at DARC:				Alternate Facility POC:	
				7	Alternate POC Phone Number:	
Ne.	A#	First Name	Last Name	Meds (Y/N List If Yes)	Allergies (Y/N <u>List if Yes)</u>	
	2					
	3					

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**NOTE**: If the group transfer is due to a program closing, the sending case manager sends it to his or her ORR project officer (PO).

- 2. FFS:
- Reviews the proposed Transfer Manifest to ensure that it complies with ORR policies and procedures.
- Notifies the sending case coordinator and case manager of the final approved Transfer Manifest.
- 3. The sending case manager:
  - Updates the UAC Case Review and ISP for each child, and completes the Transfer Request and Discharge Notification Form in the UAC Portal, documenting the need for transfer and recommendations for placement.
  - Sends notification to the FFS that all of the approved UAC on the Transfer Manifest have been entered into the UAC Portal.
- 4. The FFS enters the transfer approval into the UAC Portal. See Fig. 1.10.
- 5. If FFS approves the transfer the sending case manager notifies the following of the transfer approval for each child in the group:
  - ICE FOJC
  - UAC's Legal Service Provider or Attorney of Record, if applicable
  - · Child Advocate, if applicable
  - Potential Sponsor of Record.

## 1.4.6 Transfer to a Residential Treatment Center (RTC)

See Section 1.4.6 of the UAC Policy Guide.

### **PROCEDURES**

1. If a UAC exhibits significant mental health issues, the sending case manager arranges for an evaluation by a licensed psychologist or psychiatrist.

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- 2. If a licensed clinical psychologist or psychiatrist determines that the UAC requires residential treatment level of care, the care provider sends the written report and Transfer Request File to the sending case coordinator and copies the FFS.
  - The case coordinator reviews the Transfer Request File (which includes case management, clinical, health, and educational information) and elevates the request for RTC placement to the FFS. <a href="#">Image: RTC placement to the FFS.</a>

**NOTE:** If the FFS has any concerns about the recommendation, he/she elevates it to the FFS supervisor who may consult with the DHUC to arrange a second opinion, if necessary.

- 4. The sending case coordinator finds a suitable RTC placement, and sends the Transfer Request File to the receiving case coordinator. The receiving case coordinator sends the Transfer Request File to the RTC point of contact. ☑
- 5. Within 5 business days of receipt of the RTC transfer request, the RTC point of contact notifies the receiving case coordinator of acceptance or denial of RTC placement. The receiving case coordinator notifies the sending case coordinator, who then notifies all parties of the decision. For accepted placements, follow standard transfer procedures.

When accepting transfer, the RTC point of contact's email indicates the method of funding for the placement: 1) Treatment Authorization Request (TAR), or 2) ORR funded bed.

If the RTC denies placement, the care provider must provide written justification to the receiving and sending case coordinators, and to the receiving and sending FFS. If an RTC refuses to accept the child or if there are no available beds, the case coordinator elevates the issue to the FFS and FFS supervisor and the FFS contacts DHUC.

**NOTE:** Any disagreements between an RTC, a sending or receiving case coordinator are elevated to the FFS. The receiving and sending FFS would consult and resolve any issues through a staffing phone call for all involved parties.

6. Notification of Placement in a Restrictive Setting

**Non-TAR placements:** Non-TAR placements will follow the procedures set forth in the previous sub-section 1.4.2 for secure and staff secure placements, however the RTC provider marks the appropriate box in the "RTC" section of the first page of the form justifying placement into the RTC.

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TAR Placements: UAC placed in an RTC not affiliated with ORR through a Cooperative Agreement or contract, do not fill out the *Notice of Placement in a Restrictive Setting* form. The Clinician at the UAC's "base" care provider facility working with the FFS, mental health professionals (including those at the TAR approved RTC facility) marks the appropriate box in the "RTC" section of the first page of the form. The clinician or case manager signs the form and indicates in a parenthetical which "base" care provider they represent. The clinician provides a summary of the justification for placement in the summary section on the form and provides the form to the UAC.

- The Notice of Placement in a Restrictive Setting is provided to the UAC by the clinician at the "base" care provider facility prior to the UAC's transfer or by staff at the TAR approved RTC facility after the UAC's transfer.
- Clinical staff at the RTC explain the reasons for the UAC's placement at the time of admission in a language the UAC understands.
- 7. The sending care provider arranges transfer logistics. If a psychologist or psychiatrist recommends that a UAC travel with emergency medications for treating a mental health crisis (commonly known as PRN medications) that the UAC may experience during the transfer, the case manager at the sending care provider makes arrangements for a mental health professional to accompany UAC during transport and the receiving RTC may be asked to assist with transport.
- 8. The RTC reviews the UAC placement every 30 days, at a minimum. The case manager and the clinician provide the clinical updates and placement recommendations to the case coordinator and FFS to evaluate the need for continued stay or transfer. The case manager follows the procedures set forth in 1.4.2.

### The case manager:

- Updates the UAC Case Review and Individual Service Plan and the treatment/discharge recommendations in the UAC Portal.
- Notifies the case coordinator that the records are ready for review. 🗗 🗹 🖰
- 9. If the RTC recommends a transfer, the FFS reviews the transfer recommendation and notifies the case coordinator of the transfer decision and all parties follow the steps for transfer. If there are any disagreements as to the time in care or transfer recommendations, the FFS must elevate to the FFS supervisor for resolution.

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## 1.4.7 Requesting Reconsideration of a Secure or RTC Placement Designation



### Procedures in clearance

Fig. 1.14 Screen Shot of the Request for Reconsideration of Placement [to come]

Appendix 1.8 is the Request for Reconsideration of Placement form [to come] .

## 1.5 Placement Inquiries

An individual looking for a UAC who may be in ORR custody may contact the **ORR National Call Center**, at **1 (800) 203-7001.** 

### 1.5.1 ORR National Call Center

### **PROCEDURES**

If the UAC is in ORR custody, the call center staff does not share the child's location or placement information until communication is deemed safe and appropriate.

- The call center staff notifies the corresponding care provider with the caller's name, contact information and relationship to the unaccompanied child.
- 2. The care provider determines whether the individual is a safe and approved contact. As deemed appropriate and following ORR's procedures, the care provider may facilitate communication between the caller and the UAC.
- The care provider contacts the individual and informs him/her that the UAC is safe and in ORR custody.

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## 1.6 Determining the Age of an Individual without Lawful Immigration Status

See Section 1.6 of the UAC Policy Guide.

### **OVERVIEW**

HHS custody is restricted to UAC, i.e., minors who are under the age of 18.

HHS and DHS jointly developed policies and procedures to assist in the process of determining the correct age of individuals in custody, given the frequent lack of documents and other factors that present challenges to placement.

Key Players	Responsibilities
DHS	Agents who apprehend individuals make the initial determination based on available documents and other evidence. If ORR determines that individual is not a minor, DHS ICE agents will be enlisted to pick up individual at care provider facility.
Case Manager	Responsible for obtaining documents and additional evidence, if needed and available. Provides all required documentation to the FFS, who makes final age determinations based on multiple forms of evidence. Depending on the state, responsible for writing a memo, attaching all supporting documents, and notifying ICE to request pick up of the adult at the program when the additional evidence warrants it.
FFS:	Responsible for reviewing all documentation for age redetermination gathered by the case manager. Provides technical assistance to the case manager, elevates requests for dental exam to the FFS supervisor, and reviews and submits all documentation to ICE to request they pick up the individual if determined to be an adult. (Depending on the state, the FFS may also send a memo to ICE). Obtains FFS supervisor's approval of the memo to ICE if a dental exam was used as the basis for the age redetermination.
FFS Supervisor	Responsible for approving medical age assessments for UAC and approving request (and memo where necessary) to ICE to re-apprehend an individual deemed to be an adult.
CFS	ORR contract staff who act as liaisons for birth certificate verifications and requests between care providers and consulates. If a care provider or FFS requests the consulate interviews the UAC to help verify identity, the CFS acts as the main POC.
Medical	Reviews imaging technology and physical exams and the dental and

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Professional	skeletal maturity assessments that calculate the estimated probability
Experienced in Age	that an individual is 18 years or older. An agreement between DHS and
Assessment	ORR specifies that medical age assessments use only dental assessments.
Methods	

## 1.6.1 UAC in HHS Custody

See Section 1.6.1 of the UAC Policy Guide.

### 1.6.2 Instructions

### **PROCEDURES**

- The case manager requests the family send birth certificate of UAC if he/she arrives
  without one. If the family or the UAC refuses, the case manager contacts the consulate
  or CFS for assistance in obtaining the birth certificate (unless the UAC is claiming
  asylum).
  - 2. When requested by the case manager and with the approval of the UAC, CFS arranges for the UAC's consulate to interview him/her for help in obtaining a birth certificate or in determining the identity of the UAC.
  - 3. The case manager continues making assessment if the following occur:
    - There are concerns about the UAC's age based upon appearance and mannerisms.
    - Discrepancies in the assessment of the UAC and sponsor assessment that raises concerns about the UAC's age.
    - The information provided seems suspicious or the documents appear to be altered based on the overall appearance of the documents or photos

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on those documents (birth certificates, school records, or other ID provided).<sup>2</sup>

The case manager requests through the CFS to have the birth certificate verified by the consulate unless the UAC is seeking asylum due to persecution by their government. (The consulate will provide corrected birth date, name, or parents' names to the ORR CFS if the birth certificate has been altered in any way.)

- The CFS forwards the consulate's response and attached documents to the case manager, copying the FFS. ⋈
- 5. The case manager gathers information to support the age re-determination and additional information requested by ICE in cases involving taking custody of an adult and sends to FFS. These may include:
  - Fake birth certificate
  - Consulate's email
  - Document from the consulate, such as the actual (unaltered) birth certificate or RENAP or DPI or government issued ID
  - Immunization and TB test results (if received)
  - Any statement by an individual in ORR custody confessing their actual age or birth date
  - Statement by family member or sponsor of the UAC that provides a different date of birth, age, or identity
  - The dental forensic written report indicating the probability this individual has reached the age of 18
  - Memo by case manager documenting results of UAC Portal search for the name, date of birth, and/or documents provided by a UAC
- 6. The FFS writes a memo on ORR Letterhead to ICE requesting they pick up the individual and outlines the basis for the age redetermination that his individual is really an adult. If the basis uses the dental forensic, the FFS supervisor must approve of the age redetermination and approve the memo to ICE. The FFS sends the memo using password protected procedures and all supporting documentation to the FOJC providing the shelter POC to arrange for pick up.

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<sup>&</sup>lt;sup>2</sup> If there are discrepancies or concerns that the UAC may using someone else's birth certificate, the case manager may ask the consulate to interview this LAC who can also inquire about family history and provide validity to the birth certificate of the UAC. The consulate may also be able to provide a family tree that can be used by the case manager and the consulate during the assessment and interview for any discrepancies. The consulate may provide a statement as to any concerns he/she has in the interview and suspicion of this person using someone else's birth certificate.

Memo Format:

Date:

To: DHS, ICE, FOJC

From: Name, ORR DUCO FFS

Re: ADULT - Age Redetermination - Name - A# -- ORR shelter/placement name

Narrative summary of the age redetermination process completed.

- 7. If the UAC is using a verified birth certificate but there is reasonable suspicion of this person being an adult, the case manager emails a request to the FFS for a dental forensic exam.
- 8. The FFS approves the dental forensic exam and copies his/her FFS supervisor.
- 9. The medical department at the care provider arranges for a dental exam and requests the examining dentist to provide an age determination report. The report must indicate the likelihood of this individual's age in percentage format. If the examiner cannot write this report, they may take digital images and the medical department can request a TAR for the images to be sent to a DHUC approved providers who can review those images and provide the program this type of report as agreed upon between ORR and DHS ICE.
- 10. If the dental report indicates this individual is likely to be an adult at the 75% probability threshold, the FFS provides this report to the FFS supervisor for review along with all other efforts, concerns, and other proof.
- 11. If there is the report plus another type of proof such as a confession of using another's birth certificate, or confession from the family or sponsor, or the consulate's shared concerns, then FFS writes a memo to ICE requesting they pick up the adult.
- 12. If a UAC or a sponsor has provided fraudulent documentation to ORR for the purposes of sponsorship (altered birth certificates or impersonating another person), the care provider submits a Significant Incident Report.

## 1.7 Placement and Operations during an Influx

OVERVIEW

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As stated in **UAC MAP** section 1.3.2, ORR Intakes identifies available and appropriate bed space at a care provider by reviewing the "Capacity Management" tab in the UAC Portal which automatically updates and identifies available beds by state, facility, and types of facilities on a daily basis. **See Fig. 1.4.** 

The Capacity Report serves as a beliwether when the number of UAC coming into the United States exceeds the standard capabilities of ORR to process them using standard operating procedures.

The ORR Division of UAC Planning and Logistics (DPL) oversees comprehensive planning to ensure that the UAC Programs are able to accommodate the number of referrals of children to ORR care. DPL prepares plans for anticipated shelter capacity and staffing needs. DPL leads coordination with other federal agencies and management of grants and contracts. If ORR requires temporary shelters to care for UAC, DPL is the operational and logistical lead player for those efforts.

ORR arranges for influx care facilities (ICF), provides additional transportation services, and puts other operations into place to meet the need during an influx. Because certain ICF may require a 72-hour medical waiting period prior to receiving UAC, ORR activates Health Processing Centers (HPC) to initially screen and vaccinate children prior to their placement into ICF.

Key Players	Responsibilities
ORR Intakes	Monitors bed space based on daily capacity reports and updates ORR leadership when data indicates an influx is underway. Also designates initial placement of qualified UAC into an HPC following DHS apprehension.
DHUC	ORR Division of medical officers, epidemiologists, and other public health experts who ensure UAC are screened and processed consistent with public health standards during an influx.
Division of UAC Planning and Logistics (DPL)	ORR Division that manages the influx/emergency component of business operations. Responsible for UAC program planning and operations during times of influx.
Designated FFS or FFS Supervisor	Approves UAC identified for an initial placement or transfer to free up bed space during an influx; approves travel plans.
Sending Case Manager	Identifies eligible UAC for transfers, coordinates travel plans, and manages logistics, such as notifications to stakeholders.
Influx Transportation Staff	Verifies that transfer checklists and documents are complete, checks UAC prior to boarding and transports UAC to Influx Care Centers.

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Related Forms/Instruments	
Transfer Manifest	Case Manager, CFS, FFS, DPL
Care Provider Influx Transfer Checklist	Case Manager
Medical Checklist for Influx Transfers	Medical Coordinator, Medical Staff, DPL

## 1.7.1 Activation of HPCs

See Section 1.7.1 of the UAC Policy Guide.

### 1.7.2 Placement into HPCs

See Section 1.7.2 of the UAC Policy Guide.

### **PROCEDURES**

- 1. ORR Intakes continuously updates ORR management of the following:
  - Care provider facilities, HPCs, and ICF that have reached capacity
  - Total number of UAC pending
  - Total number of tender age UAC pending
  - Number of UAC exceeding pending placement for 24 hours or less, 48 hours, and 72 hours
  - Any special placement (e.g., medically fragile UAC)
  - List of all UAC pending placement, including initial referral information

    ⊕ ⊕ ⋈
- 2. ORR Intakes designates placement at an HPC and contacts DHS (or other referring agency) with the contact information of the HPC using the placement notification summary below.

## **⊠**Email Template Initial Placement into HPC

From: ORR Intakes
To: Care Provider/HPC

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Referring DHS Sector

CC: FFS

**ORR Intakes Team Lead** 

DPL

Subject: UAC [include last four digits of A number] placement into HPC

Please see the password protected document with details about the UAC's placement into an HPC. The password will be sent separately.

File includes, but is not limited to:

- Designated care provider/HPC
- UAC's name, A#, date of birth, and country of origin
- Referring DHS Sector
- Summary of any medical, mental health, or other special concerns
- Summary of any reported safety concerns and contact information for the referring official who flagged the concern.
- Upon request, ORR Intakes may request that DHS contact the point of contact for the HPC to provide notice of travel arrangements, including expected arrival date and time of the UAC at the designated location and the contact information for the transporting officials.
- 4. ORR Intakes ensures that DHS has correct contact information for the HPC point of contact and is aware of any limitations or restrictions to the day/time that the UAC can be accepted by the HPC.

## 1.7.3 Placement into Influx Care Facilities

See Section 1.7.1 of the UAC Policy Guide.

### **PROCEDURES**

 DPL, in conjunction with the other UAC Program Divisions, identifies HPC or care provider facility with targeted number of UAC who meet ICF transfer criteria.

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- 2. Once DPL determines date of transfer and targeted number of UAC for transfer from either care provider facilities or HPCs, the referring case manager or HPC point of contact identifies individual UAC who meet ICF transfer criteria.
- 3. The sending case manager or HPC point of contact develops a proposed Transfer Manifest with list of eligible UAC and sends it to the assigned CFS, designated FFS, FFS supervisor, and DPL Operations and Logistics Lead no later than 72 hours prior to the proposed transfer date. See Fig. 1.13.
- 4. Within 4 hours of receipt of the Transfer Manifest, the designated FFS or FFS supervisor approves the proposed Transfer Manifest and notifies the sending case manager, copying the case coordinator for situational awareness, of the final approved Transfer Manifest. The FFS notifies the Data and Analysis team of group transfers for 20 or more UAC to allow for a mass transfer ORR approval via the UAC Portal.

**NOTE**: No additional UAC may be added to the Transfer Manifest once it is approved by ORR.

5. Within 4 hours of receipt of the approval of the Transfer Manifest, the sending case manager completes the case manager section of the *Transfer Request* in the UAC Portal and as soon as possible notifies the FFS and CFS when it is complete. See Fig. 1.7. The case manager leaves the case coordinator section of the *Transfer Request* blank. If more than 20 UAC are on the Transfer Manifest, the case manager ONLY fills in the Requested Date field. See Fig. 1.15.

Fig. 1.15 Case Manager Transfer Request for Transfers of 20+ UAC

Transfer Request:		
Type of Program Requested:		Requested Date:
Requesting Party:		
Requester Name:		
Requester Title:		
Requester Phone:		
Case Coordination:		
Concur with Requesting	C'Yest" No	

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- 6. The sending case manager at the HPC or standard shelter coordinates with the Transportation Contractor, if applicable, and the DPL Operations and Logistics Lead to develop a travel plan that meets the following requirements:
  - UAC must depart the HPC or standard shelter within 48 hours of transfer approval and arrive at the ICF no later than 5:00 p.m. If the estimated time of arrival is after 5:00 p.m. or the plan involves 8 hours or more of travel time for the UAC, the sending case manager immediately elevates the issue to the sending and receiving FFS who will staff the issue with the senior FFS supervisor for approval.
  - Detailed transportation arrangements, including route, Border Patrol check points, transportation staff and driver names.
  - Steps to ensure UAC travel with a supply of current medications (if applicable), his/her belongings, and transfer documentation.
  - Provides for preparations for the UAC.
  - Meal arrangements.
  - Addresses any additional security measures in place at the ICF.
     \(\mathbb{\infty}\)\(\mathbb{\infty}\)
- 7. The sending case manager provides the approved Transfer Manifest to the Transportation Point of contact and the Transportation Contractors provide the case manager with the transportation plan (routes, staff, drivers' names, etc.).
- 8. The designed sending and receiving FFS or FFS supervisor and DPL Operations Lead approve the travel plan no later than 48 hours prior to the proposed transfer date.
- The sending case manager completes the following for each UAC on the approved Transfer Manifest:
  - Care Provider Checklist for Transfers to Influx Care Facilities
  - Care Provider Family Reunification Checklist
  - Transfer Request and Tracking Form
  - Medical Checklist for Influx Transfers
- Appendix 1.9 is the Care Provider Checklist for Transfers to Influx Care Facilities.
- Appendix 1.10 is the Medical Checklist for Influx Transfers.

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- 10. Sending case manager updates the Transfer Manifest to include the following:
  - Final names of UAC; A#s; date of birth; checkbox confirming that UAC has completed medical and vaccination records
  - Transportation date and time
  - · Name of transport staff
  - Transfer location
  - Transportation route to transfer location
  - Estimated time of arrival to transfer location
- 11. ORR designated staff approve the Transfer Requests in the UAC Portal at least 24 hours prior to the physical transfer of the UAC and notify the case manager of completion based on the sample email template below. NOTE: Groups of 20 or more require notification to Data and Analysis Team.

### **⊠**Email Template Transfer Manifest

To: Designated CBP Contact

Referring and Receiving ICE FOJC
Referring and Receiving Case Managers

Referring and Receiving Case Coordinators

Referring FFS

CC: DPL team, Data and Analysis Team

Subject: Transfer Manifest

Please see the password protected Transfer Manifest for UAC. The password will be sent by separate email.

Attachments: Transfer Manifest

If the Transfer Manifest is for 20 or more children, the designated FFS or CFS emails the Data and Analysis Team to input the approvals in the UAC Portal based on thee email template below. 400

## ⊠Email Template: Transfer Manifest for Groups of 20 or More

From: DPL

To: Designated Data and Analysis Team Contact

CC: DPL team, Data and Analysis Team

Subject: Transfer Manifest for [insert number of UAC]

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Please see the Transfer Manifest with detailed information about the UAC who will be transferred from [include source program name] to [insert receiving program name.] [Insert name of ORR Official approving the Transfer Request] approved this transfer request on [insert date of approval.]

The password will be sent by separate email.

Password protected attachment: Transfer Manifest

12. The sending case manager notifies legal service providers for UAC on Transfer Manifest and uploads UAC documents to the UAC Portal (see Quick Glance below).

## Quick Glance: Documents that Sending Case Manager Must Complete/Upload to UAC Portal Prior to Transfer to ICF

- Initial Intakes Assessment
- UAC Assessment
- · Assessment for Risk
- Individual Service Plan
- Background Checks Table
- Family Reunification Forms and Supporting Documentation
- Significant Incident Reports, if applicable
- DHS Form I-862 Notice to Appear
- Legal Representation List acknowledgment
- Know Your Rights acknowledgment
- Care Provider Checklist for Transfers to Influx Care Facilities
- Medical Checklist for Influx Transfers
- Transfer Request and Tracking Form
- Copies of health records, to include medical, dental, and mental health (UAC must be clear of all contagious conditions, including scabies and lice)
- 13. The sending care provider prepares the UAC for transfer:
  - Within 24 hours before physical transport, conducts lice and rash checks on all UAC on Transfer Manifest. If UAC is found to have lice or rash, removes the UAC from Manifest and immediately notifies the designated sending and receiving FFS of the change.
  - Notifies the UAC of the transfer, considering the UAC and others' safety and well-being, in determining when and what information is shared and allows UAC closure with staff and peers.
  - Arranges for discussion between sending and receiving case managers if there are special circumstances.

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 Gathers the documents and items which will accompany the child on the transfer.

### Quick Glance: Items That Accompany UAC on Transfer to ICF

- UAC personal belongings, including clothing, money, valuables, and items obtained during the UAC's stay at the sending care provider
- Transfer Request and Tracking Form
- 30-day medication supply (any exceptions must be fully discussed with sending and receiving care providers prior to transfer)
- Care Provider Family Reunification Checklist
- Transfer Manifest
- Care Provider Checklist for Transfers to Influx Care Facilities
- Copy of health records, to include medical, dental, and mental health
- Original documents (birth certificates, DHS form I-862 Notice to Appear)
- 14. The sending case manager ensures that transfer documentation and items are provided to the influx transportation staff for each UAC at time of transfer.
- 15. Influx transportation staff:
  - Verifies that Care Provider Checklist for Transfers to Influx Care Facilities is complete no later than 2 hours prior to physical transport.
  - Verifies that all transfer documentation and items listed on the Transfer Request and Tracking Form and Care Provider Checklist for Transfers to Influx Care Facilities for each UAC are in the transportation staff's possession in a secure manner (especially health documents and immunization records).
  - Verifies that the lice and rash check was completed.
  - Immediately before the UAC physically boards the vehicle, checks each UAC's temperature to ensure that it is not elevated. If a UAC has an elevated temperature, then removes the UAC from the Transfer Manifest and IMMEDIATELY notifies the sending care provider and receiving FFS of the change. If the UAC complains of an illness or other medical concern or the transportation staff observes an illness or other medical concern, IMMEDIATELY elevates the issue to the designated FFS and sending care provider and does not allow the UAC to board the vehicle.

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- 16. The sending care provider point of contact:
  - As the UAC physically boards the transport vehicle, immediately exits each UAC in the UAC Portal (discharge type: "transfer").
  - After departure of the transport vehicle, immediately sends notice of final number of UAC who departed and a final Transfer Manifest based on the Final Manifest Email template above.

### Special Situations Regarding Transfer Logistics and Physical Transfer:

HPCs, ICF, and Transportation Contractors must communicate and coordinate the physical transfer of UAC and be aware of the following:

- Any special security procedures at the ICF
- Timely reporting of changes in flight, such as cancellations
- Missed flights
- Changes of JAC boarding flights or traveling by bus due to illness
- Requests for the ICF to meet the HPC transport staff at the airport to accept new placements
- When ICF requires UAC to arrive with a hard copy of his/her health records
- Any trouble encountered en route (i.e. extra paperwork necessary to bring UAC on flight, extra Border Patrol checks en route, ...)

# 1.7.4 Admission and Orientation for HPCs and Influx Care Facilities

### **PROCEDURES**

- The ICF staff escorts the UAC immediately upon arrival into a medical intakes area.
- 2. The medical coordinator completes a medical intakes screening by:
  - Checking each UAC temperature to ensure that his/her temperature is not elevated.
  - Checks each UAC for lice and rash and refers for treatment and/or isolation, if necessary.
  - Reviews transfer documentation that accompanied the UAC to confirm that the UAC is medically cleared.
  - Ensures receipt of health documents, to include immunization and lab/chest x-ray documents.

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- Ensures receipt of sufficient medication supply and ensures a refill is obtained, if required.
- If a UAC has an elevated temperature or rash, immediately notifies the ICF ORR staff and sending and receiving FFS to determine whether the UAC requires further medical evaluation or whether the UAC should be safely transported back to the sending care provider or to an alternative program.
- If the UAC complains of an illness or other medical concern or if the influx transportation staff or receiving care provider observes an illness or other medical concern, immediately elevates the issue to the designed FFS and medical coordinator via phone and email and does not allow the UAC to mix with other UAC already in place in the facility.
- 3. ICF staff admits the UAC to care provider program in the UAC Portal. (See Quick Glance: How to Access UAC Records after Transfers in Section 1.4 above.)

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-						VILL

See Section 1.7.5 of the UAC Policy Guide.

## 1.7.6 HPC and Influx Care Facility Services

See Section 1.7.6 of the UAC Policy Guide.

### **PROCEDURES**

- 1. Within 4 hours of the UAC arrival, the ICF:
  - Offers the UAC a meal and/or snack and the opportunity to shower and receive clean clothing.
  - Reviews the Care Provider Checklist for Transfers to Influx Care Facilities to ensure that all required documentation is in the UAC Portal.
  - Completes an inventory of the UAC's belongings, including medication, and signs the Transfer Request and Tracking Form and uploads it to the UAC Portal.
  - Signs the Transfer Manifest and sends a copy to the designated DPL.
  - Reviews the Care Provider Family Reunification Checklist to ensure that all required documentation is in the UAC Portal.

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**NOTE:** If any items or documents are missing, the receiving care provider contacts the sending care provider within 3 business days. If the receiving care provider does not receive the missing items within 3 days of request or receive uploaded missing documentation in the UAC Portal, the receiving care provider contacts the sending FFS to resolve.

### Within 24 hours of the UAC arrival, the ICF:

- Completes the Initial Intakes Assessment.
- Facilitates contact between the UAC's family and/or potential sponsors.
- Follows up with the UAC potential sponsor to assist in completing the family reunification packet; complete the sponsor assessment interview, if not previously completed; assess the potential sponsor's ability to provide for UAC needs; check status of completion of criminal background checks, if applicable.
   Image: Completion of criminal background checks if applicable.
- 3. Within 5 days of the UAC arrival, completes the UAC Assessment and ISP. @ 1 1
- 4. The ICF holds weekly case staffing in consultation with the case coordinator regarding potential transfers in case a significant or concerning change occurs for the UAC.
- 5. In the event that a UAC needs to be transferred all parties follow the standard transfer procedures (Section 1.4).

## 1.7.7 Transportation during Influx

See Section 1.7.7 of the UAC Policy Guide.

### 1.7.8 Federal Staffing Plan

See Section 1.7.8 of the UAC Policy Guide.

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## Appendix 1.1 "Add New UAC" Screen Shot

				,
st Name:	*		Status:	Pending +
st Name:	<b>v</b> .		AKA:	
ddle Name:			Gender:	Select Gender ▼
ов:	w v		A Number:	***
T. IF	Select Country			NTA based
untry of i	Select Country		immigration Status et Referral:	177.728
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	of the Chas proper medic	altmental health	conditions, check here to indicate	o that the ULF has been seen
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Email(s):			Phone:	
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Apprehension City a Apprehension City a	nd/or Locatio	on Code	Apprehension State	*
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cility Name:			Phone Number:	******************
OC:			Fax Number:	<u></u>
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## **Appendix 1.2 Intakes Placement Checklist**

Intakes Placement Checklist: Office of Refugee Resettlement

ORR staff use this Intakes Placement Checklist to determine the initial placement of UAC who may require placement

	MATION						
Alien Number:		DOB:	Previously in ORR Custody				
Name (Last, Fir	st):						
Date of Referra	l;	Age:					
Sender:	Male Female	Country of Origin:					
PLACEMENT	DETERMINATION	***************************************					
Intakes Staff:		Approving FFS:					
Recommended Staff Secure	Secure Therapeutic	FFS Decision:					
Shelter/TFC	I RTC [						
Staff Secure  Shelter/TFC	t Determination: Secure Therapeutic	C Designated Plac	ement:				
Reason for FFS	override of Intakes' recommend	dation, if applicable:					
	tion of escape this weeks minimum re		***************************************				
	detention or government cu	istody.	expressed intent to escape from				
Yes No	UAC was previously in ORR care and has SIR(s) for attempting to escape or expressing intent to escape from ORR custody.						
	to escape from ORR custod	у.	UAC will be turning 18 years of age in the next month.				
O @							
Yes No O O	UAC will be turning 18 years  UAC has immigration history	s of age in the next month.  y that includes: 1) a final order	경기에 맞아가 되어 보면서 하는 경우가 하면 그 사람이 있다며 맛이 되는 것이 하는데 되어 살아 다니다.				
Yes No O O O O O O O O O O O O O O O O O O O	UAC will be turning 18 years  UAC has immigration history  3) failure to appear before country.	s of age in the next month.  y that includes: 1) a final order  DHS or the immigration cour	of removal 2) prior breach of bond t 4) previous repatriation to home				
Yes No O O O O Yes No O O O O O O O O O O O O O O O O O O O	UAC will be turning 18 years  UAC has immigration history 3) failure to appear before country.  SELS  Referral indicates that UAC	s of age in the next month.  y that includes: 1) a final order  DHS or the immigration cour  imam requirements for designation	t 4) previous repatriation to home to a therapeutic or secure facility act of self-harm, or threatened to				

Intakes Placement Checklist, 11/02/2018 ORR BAC/P-7

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#### 5. DANGER TO OTHERS

UAC are not placed in a secure facility absent a determination that the child poses a danger to self, others, or has been clarged with having committed a criminal offense. In assessing danger, CRR considers criminal history, gang affiliation that requires further assessment, and/or sexual predatory behavior/inappropriate sexual behavior. ORR considers certain criminal history as evidence of danger as provided heliow.

#### A. CRIMINAL HISTORY

Criminal history or buhavior meets the inhihum requirements for placement into a secure care provider if it: 1) involved in element of violence from the action, threat or homesment; 2) lovalved multiple incidents of the same offense (showing a pattern or practice of criminal activity), or, 3) involved different incidents of separate offenses. Criminal history can falling into one of diseast three categories does not meet the "dangerousness" requirement for placement in a secure facility, but may justify placement in a staff secure facility.

Yes	No <b>⊙</b>	The UAC has been charged with or convicted of a crime or been adjudicated delinquent; or, is subject to delinquency proceedings or other criminal proceedings.
Yes	No	The referral indicates that the UAC has committed a crime or delinquent act that he/she is "chargeable" for NOTE: "Chargeable" means that there is probable cause (based on a law enforcement officer's judgment) that the UAC committed the specified offense.

Violent Offenses	UAC has criminal offenses, is chargable with, of a victim including the following (indicate speci	
Yes No O O O O O O O O O O O O O O O O O O	Assault/Battery  Kidnapping Sexual Assault/Rape Robbery  Serious Moving Violation (reckless driving)  Threats or behavior intended to physically harm, harass or intimidate another individual (bullying; threats while in government custody)	Possession of a deadly weapon (including use of a vehicle as a weapon)  Alien smuggling/trafficking in persons Homicide  Crimes involving a minor victim (child molestation; child abuse; possession or distribution of child pornography; statutory rape)
Other Offenses Yes No O O  Multiple Counts/Offenses Yes No O O  If YES did the multiple counts stem from different incidents in time? Yes No O O	UAC has other criminal offenses or is chargeab  □Burglary/ Breaking and Entering □Arson □Destruction of Property/Vandalism □Drug Smuggling □Fraud (identity theft, possession or use of fraudulent documents, grifting, forgery) □Drug Possession (including with intent to distribute) □Status Offerse (A crime only a minor could commit, examples include possession of alcohol by a minor, curfew violations, truancy).	le with the following (indicate specific offenses  ☐ Soliciting a Prostitute ☐ Pandering ☐ Theft (including petty theft) ☐ Shoplifting ☐ Moving violation (DUI/DWI; speeding; running a stop sign) ☐ Other (describe):

Intakes Placement Checkist, 11/02/2018 ORR HAC/P-7

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#### B. GANG AFFILIATION

Attuch referring agency's basis (if not it the UAC Particip for determining gaing affiliation.

Yes O	No ③	Referral indicates that referring agency has identified the UAC as affiliated with a gang based on admissions by the UAC or UAC displays gang affiliation.
Yes O	No ①	Referring agency suspects the UAC is affiliated with a gang. Basis for suspicion must be included in referral notes. If the UAC was previously in ORR custody and released to a sponsor; and re-referred to ORR custody only because of the UAC's alleged gang ties, DHS must submit a copy of the Saravia order with the new referral.
Yes	No.	UAC was previously in ORR care and ORR records indicate UAC is affiliated with a gang.

#### C. SEXUAL PREDATION

Any positive indication or history of sexual predatory behavior or engaging in inappropriate sexual behavior meets minimum requirement for placement to a therapeutic or secure facility. "Sexual predatory behavior" refers to a UAC with (1) a history of sexual resoult or sexual harcestront. (2) that is part of a partiera of behavior with the goal of committing a sexually based crime, and (3) dust is based on a mental disorder or impulse. ORR may consider use history (e.g., law enforcement or court records, ORR custodist documents such as SIRs) and/or soft-disciplines related to the UAC's history to determine whether their conduct is predatory in nature.

Yes	No	Referral indicates the referring agency has evidence that the UAC has a history of or displays sexual predatory behavior or engaged in inappropriate sexual behavior.	
Yes	No ©	UAC was previously in ORR care and ORR records indicate the UAC has sexual predatory behavior or engaged in inappropriate sexual behavior.	

#### D. CONDUCT IN ORR CUSTODY

A UAC's conduct in CRR custody that indicates dangerousness may justify placement into a securic facility. Previous SRs or other seminal ORE designment indicating dangerousness are submitted in support of this finding.

Yes No	UAC was previously in ORR care and ORR records indicate the UAC committed or made credible threats, to commit a violent or malicious act while in ORR custody
--------	---

Intakes Placement Checklist, 11/02/2018 ORR UAC/P-7

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### **Appendix 1.3 Notice of Placement in Restrictive Setting**



Notice of Placement in a Restrictive Setting Office of Refuges Resettlement

You are in the custody of the Office of Refugee Resettlement (ORR), and have been placed in a restrictive setting - a secure or staff secure facility, or a Residential Treatment Center (RTC). The reason you have been placed in a restrictive setting is listed below.

If you have any questions about this placement, please discuss them with your case manager, your attorney, or an ORR-funded legal service provider.

UAC Name	Alien Number	Country of Birth	Date of Birth	Gender
Name of Car	e Provider Facility		Type of Faci	lity
iscure Care: ORR has determined that yo o self or others; or have been charge ommitted a criminal offense. ORR consider the charged with a crime, are chargeal or have been convicted of a crime; or a delinquency proceedings, have be delinquent, or are chargeable with a delinquent of a committed, or have made the committed or have made the committed or malicious act while in	ed with having editiet your the with a crime, se the subject of en adjudicated inquent act; dible threats to	necessary to ensure the Dare an escape risk,	ot require placement in considered that you; while disruptive to the care facility such that is welfare of others;	normal ansfer is
commit a violent or malicious act while in ORR custody;    Have committed, threatened to commit, or engaged in serious, self-harming behavior that poses a danger to self while in ORR custody;   Have engaged in conduct that has proven to be unacceptably disruptive of the normal functioning of a staff secure facility in which you were placed such that transfer may be necessary to ensure your welfare or the welfare of others;    Have self-disclosed violent criminal history prior to placement in ORR custody that requires further assessment; and/or,		<ul> <li>Have reported gang involvement (including prior to placement in ORR custody) or displayed gang affiliation while in care;²</li> <li>□ Have non-violent criminal or delinquent history not warrantin placement in a secure care provider facility, such as isolated or petty offenses; or,</li> <li>□ Could be stepped down from a secure facility.</li> <li>Residential Treatment Center: ORR has determined that you</li> </ul>		
		have a serious psychiatric or psychological issue that cannot be addressed in an outpatient setting and you are a danger to self or others. A licensed psychologist or psychiatrist has indicated that you:		
Have a history of or display sexual predatory behavior, or have inappropriate sexual behavior.		Have not shown reasonable progress in the alleviation of yo mental health symptoms after a significant period of time in outpatient treatment;		
		Demonstrate behavior that is a result of your underlying mental health symptoms and/or diagnosis and cannot be managed in an outpatient setting;		
		Require therapsutic-based intensive supervision as a resumental health symptoms and/or diagnosis that prevent ye from independent participation in the daily schedule of activities; and/or,		event you
		Present a continued and the community, despite clinical interventions.	I real risk of harm to self, the implementation of sh	The second secon
Excluding: solated offenses that (1) were not within a seezoon (e.g., breaking and antoney, wandaken, Di elaphing, joy riding, disturbing the pace, status of "Displays gang affiliation" refers to any objective indicatoring characteristics such as gang teltoos, confission indicators from the UAC's behavior while in gove static of Placement in a Restrictive Section.	J. etc.); or petty offenses to lease) anion that a UAC is involved med acts such as vendelicin priment custody.	hich are not considered grounds for a with or is a member of a gang. For ex	stricter means of detention in a sample, it may refer to the prese	ny case (e.g.,

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Summary of placement decision or case review	w (additional pages may be added):
Senimary or procession or case review	a tagain and bages may be added).
DD will conjugate the enjagement at a migricular order.	27 dans ta feitarmína údicthar weir planismant in a santvirtiúa bual af r
ill necessary. If you remain in a secure facility or RTC	30 days to determine whether your placement in a restrictive level of c after 30 days, you may request that the ORR Director reconsider your
If necessary. If you remain in a secure facility or RTC accordant. For more information on this process, pleas	after 30 days, you may request that the ORR Director reconsider your se ask your case manager.
If necessary. If you remain in a secure facility or RTC accordant. For more information on this process, pleas	after 30 days, you may request that the ORR Director reconsider your se ask your case manager. It you have been treated improperly you may also ask a Federal Distric
If necessary. If you remain in a secure facility or RTC accessent. For more information on this process, pleas you believe you have not been properly placed or tha ourt to review your case. You may call a lawyer to ass	after 30 days, you may request that the ORR Director reconsider your se ask your case manager. It you have been treated improperly you may also ask a Federal Distric
If necessary. If you remain in a secure facility or RTC accordant. For more information on this process, please you believe you have not been properly placed or that	after 30 days, you may request that the ORR Director reconsider your se ask your case manager. It you have been treated improperly you may also ask a Federal Distric
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Ill necessary. If you remain in a secure facility or RTC acement. For more information on this process, pleas you believe you have not been properly placed or that burn to review your case. You may call a lawyer to ass UAC's acknowledgement of receipt:  UAC's Signature	after 30 days, you may request that the ORR Director reconsider your se ask your case manager.  If you have been treated improperly you may also ask a Federal Distriction.
Ill necessary. If you remain in a secure facility or RTC acement. For more information on this process, pleas you believe you have not been properly placed or that burn to review your case. You may call a lawyer to ass UAC's acknowledgement of receipt:  UAC's Signature	after 30 days, you may request that the ORR Director reconsider your se ask your case manager.  If you have been treated improperly you may also ask a Federal Distriction.

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## **Appendix 1.4 Medical Checklist for Transfers**

IDENTIFYING INFORMATION

#### MEDICAL CHECKLIST FOR TRANSFERS

UC'	s Name:	ompleted By name and titl	e):	
À#:		ate Completed:		
INS	TRUCTIONS			
	This checklist must be completed by a medical coordinator or other for a transfer.  If "No" is checked for any of the below questions, do not transfer the must also be consulted in accordance with ORR policies and procedure completed checklist should be uploaded to the UC. Portal under	he child without consulting dures.	the ORR Medical T	eam. The FFS
	location			
	Do not include a copy of this checklist with the child's transfer do	cuments as it contains conf	idential medical info	mation.
CH	ECKLIST			
			Meets Transfer Criteria	Does Not Meet Transfer Criteria
1.	Has the initial medical exam been completed?		Yes	□ No
2.	Have results from all lab tests been received?		Yes	□ No
3.	Is the child up-to-date on unnumizations?		Yes	□ No
4.	Does the child have enough medications to last through the transfe additional 3 days?	rprocess, plus an	Yes NA	□Ne
5.	Is the child free of all medical conditions that require specialist car epilepsy, or heart disease)?	e (such as pregnancy, or	Yes	□ No
6.	Is the child currently clear of the following symptoms conditions?			
	a. Fever b. Rash c. Cough d. Neck stiffness/Confusion e. Dianhea/Vomiting		Yes Yes Yes Yes Yes Yes Yes	□ No □ No □ No □ No □ No □ No
	f. Scabies/Lice		Yes	□ No
7.	Are all medical reports as complete as possible (e.g., lab results an in the UC Portal?	d final diagnoses entered)	Yes	□ No
8.	Have all medical documents (e.g., Initial Medical Exam form, imm results) been uploaded to the UC Portal?	nunization records, lab	Yes	□ No

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## Appendix 1.5 Screen Shot of the Transfer Request and Tracking Form

Minor's Profile:				
Height(ft & inches):			Weight(lbs)	::::::::::::::::::::::::::::::::::::::
Eye Color:			No. of the last of	
Identification Marks:				
Transfer Request:				
Type of Program Requeste	d:		Requested 1	Date:
Requesting Party:				
Requester Name:				
RequesterTitle:				
Requester Phone:				
Case Coordination:				**************************************
Concur with Requesting	rî Yes rî No			
Party?				
If not, specify:				
Type of Program			Case Coord	inator Proposed
Recommended:			Program:	
Case Coordinator Name:				
Recommended Date:				
Reason for Transfer Request:				
Shefter & Foster Care Only:	Standard Placement		Secure & Staff Secure Only	Figure control of the Control of Control of Charges of Charges of Charges of Charges of Charges of Chargesone
Any Program Type:	To provide a less restrictive setting (transfer only)	Foisruptive Behavior		· Maria Salaton
	To provide a more restrictive setting (transf et only)			
	Minor's Medical Health	f Flight Risk		
	Emmor's Mental Health	Femergeory influx		
	"Violent/Threstening Sehavior			
Has the Minor's Attorney Been Contacted?	(Yes ) to		Attorney Phone:	
Attorney of Record:				
Casefile Summaries				
Information Relating to	☐ Pregnancy		Diagnosed Behavior/illness with n	o Medications
Minor's casefile	f"injury		Diagnosed Behavior/Illness with A	Medications
	Tillness		Non-violent Conviction	
	Non-diagnosed Behavior/illness	with no Medications	Non-violent Charge	
	Non-diagnosed Behavior/@ness		Charge(s) Dropped	
	A CONTRACTOR OF THE PARTY OF TH			

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urrent Status of Family eunification:		
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ase Manager Comments		
ase Manager Name:		
ase Manager Comments:		
ase Manager Suggests	CYess No	TMS Historical Transfer
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ate of Case Manager		
omments:		
RR/DCS Decision		
omments:		
ecision:	© Pending	Date of Decision:
	C Approve	
	C Disapprove	
	<ul> <li>Remanded, please provide info as detailed in comments</li> </ul>	
ame of ORR Decision Mak		
***************************************	venue in this matter pursuant to 8 C.+.R. & 1003.20 (b) for the following rea	able/ appropriate services can be provided, since Juvenile detention space is limited
	venue in this matter pursuant to 8 C.*.R. & 1003.20 (b) for the following rea	able/ appropriate services can be provided, since Juvenile detention space is limited
ood cause exists to change t	venue in this matter pursuant to 8 C.F.R. & 1003,20 (b) for the following real FORR has decided to relocate the respondent to an area where space is areal FThe minor has a special need (e.g., pregnatory of juvenile, medical needs, etc.) FOther, please specify	able/ appropriate services can be provided, since Juvenile detention space is limited
ransfer Packet (for each m ood cause exists to change t eparture/Arrivel Informatio eparture Date:	venue in this matter pursuant to 8 C.F.R. & 1003,20 (b) for the following real FORR has decided to relocate the respondent to an area where space is areal FThe minor has a special need (e.g., pregnatory of juvenile, medical needs, etc.) FOther, please specify	able/ appropriate services can be provided, since Juvenile detention space is limited
ood cause exists to change	venue in this matter pursuant to 8 C.F.R. & 1003,20 (b) for the following real FORR has decided to relocate the respondent to an area where space is areal FThe minor has a special need (e.g., pregnatory of juvenile, medical needs, etc.) FOther, please specify	able/ appropriate services can be provided, since Juvenile detection space is limited ), please specify
ood cause exists to change of the change of	venue in this matter pursuant to 8 C.F.R. & 1003,20 (b) for the following real FORR has decided to relocate the respondent to an area where space is areal FThe minor has a special need (e.g., pregnatory of juvenile, medical needs, etc.) FOther, please specify	able/ appropriate services can be provided, since Juvenile detection space is limited ), please specify
eparture/Arrivel/Information eparture Date: enaporting Staff Name: enaporting Staff Title:	venue in this matter pursuant to 8 CR. & 1003.20 (b) for the following real CORR has decided to relocate the respondent to an area where space is available the minor has a special need (e.g., pregnancy of juvenite, medical needs, etc.). Tother, please specify in	able/ appropriate services can be provided, since luvenile detention space is braited ), please specify
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eparture/Arrivel Information eparture Date:  ansporting Staff Name: cansporting Staff Title: cansporting Staff Comments crival Date:	venue in this matter pursuant to 8 CR. & 1003.20 (b) for the following real CORR has decided to relocate the respondent to an area where space is available the minor has a special need (e.g., pregnancy of juvenite, medical needs, etc.). Tother, please specify in	able/ appropriate services can be provided, since Juvenile detection space is limited ), please specify
eparture/Arrival/Information eparture Date:  ansporting Staff Name: ansporting Staff Title: ansporting Staff Comments	venue in this matter pursuant to 8 CR. & 1003.20 (b) for the following real CORR has decided to relocate the respondent to an area where space is available the minor has a special need (e.g., pregnancy of juvenite, medical needs, etc.). Tother, please specify in	able/ appropriate services can be provided, since Juvenile detention space is limited ), please specify  DepartureTime:

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## Appendix 1.6 Template for Summary Notes: 30 Day Restrictive Placement Case Review

SUMMERS ROTES THERE DAY I	Descri Maio Maiorintensi Costi Dicettina
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### **Appendix 1.7 Long Term Foster Care Placement Memo**

#### LONG TERM FOSTER CARE PLACEMENT MEMO

	ent requested; Choose an Rem.
Minor's Name: Chek becate asker text	A#: Clack here to enter a date
Forter care agency has found a placement for th number for all contacts with the youth, including	e above minor. Please use the foster care program address and phone change of venue forms
Foster care program: Class have to enter test	Program Address: Class have to enter sent
Foster care program staff responsible for tra Clack have to enter text.	nsfer: Phone #: Chash have to enter text
Placement Type:  Traditional Foster Care Therapeutic    Other (Please specify). Click here to suffer the	
Name of Foster Family:	Address:
Describe how this placement meets the mir Click have as cases text	nor's needs identified in the Case Summary and Individual Service Plan:
Thick have to enter that	
Click have to care text.  2. Describe family, household, and communit  3. For an initial transfer into LTFC only (if a	
2. Describe family, household, and community.  3. For an initial transfer into LTFC only (if a a. Has a legal service provider or attorney jurisdiction? Ciscosc. 80 iscos.  b. What is the name and contact informat	ty setting: Cladic here to catest test.  change of placement for a minor already in LTFC skip and move to 4):
2. Describe family, household, and community 3. For an initial transfer into LTFC only (if a case). Has a legal service provider or attorney jurisdiction? (increase an increase by What is the name and contact informat services for the minor at the time of plants.	ty setting: Chair hore to eater text change of placement for a minor already in LTFC skip and move to 4): y found that the minor would be eligible for legal relief in the receiving tion for the legal service provider or attorney of record who will arrange legal acement with your organization? Chick here to enter text.  ady in LTFC only (skip if this is an initial transfer into LTFC). What are the
2. Describe family, household, and community 3. For an initial transfer into LTFC only (if a a. Has a legal service provider or attorney jurisdiction? (is assessed in the initial transfer into LTFC only (if a set a. Has a legal service provider or attorney jurisdiction? (is assessed in the initial services for the minor at the time of placement for a change of placement for a minor are reasons for the request? (ask is assessed in the request).	ty setting: Chair hore to eater text change of placement for a minor already in LTFC skip and move to 4): y found that the minor would be eligible for legal relief in the receiving tion for the legal service provider or attorney of record who will arrange legal acement with your organization? Chick here to enter text.  ady in LTFC only (skip if this is an initial transfer into LTFC). What are the

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## **Appendix 1.8 Request for Reconsideration of Placement**

[In clearance]

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## Appendix 1.9 Care Provider Checklist for Transfers to Influx Care Facilities

IDENTIFYING INFORMATION	·····		
UC's Name:	Receiving Influx Care Facilit	·	
A#	Referring Care Frevider:		
UC's Date of Buth	JC Case Manager's Name (		
	OC Clinician's Name:	i de la constantina della cons	
UC's Date of Transfer. (6) ASSESSAIF NTS multiple completion within 3 days of admission.	ORR Reviewer's Name.	<del></del>	
ASSESSMENTS UNITED COMPONENTIAL OF SACISTY CARRISDON.			**********
		Fully Completed	Completion
		in UAC Portal	Date
Instal Intakes Assessment (within 74 hours of admission) UC Assessment (within 5 days of admission)		<u> </u>	<u></u>
Assessment for Rick Acres in 72 hours of admissions			
Indevidual Service Plan (within 5 to 6 days of admission)	***************************************	ш	<u> </u>
LEGAL SERVICES		r	<b>,</b>
		Completed and	
		Upleaded to	Completion
		UAC Portal	Date
Legal Representation List is igned acknowledgement within 48 hours of			
Know Your Rights (presentation and signed acknowledgement with 14	coys of acoustion of video	w w	
and cynad acknowledgemen within 1 days of admission)			
Legal Screening /within " to 10 days of admission)			<u></u>
MEDICAL SERVICES		Completed and	
		Upleaded to	Completion
		UAC Fortal	Date
Sai Nedica: Exam Form	······	CAC COPIS	17256
Screen		102	
<ul> <li>Ages 15-14: PPD og 1GRA</li> </ul>			
• Ass 15.15 272 at 100 A and Chen X and Chen			
v Petrop (Decrete) F. (4) (SD) (SD (SD)(SD))	······		
grancy anding the cogone bemales (that provide administration of vo	community for the	W.	
Costs Burton programmey)		****	
numications for E)-17 Year Olds (according to the ACP cost to by school	fule, administered at	W I	
t 72 hours prior to physical transfer)			
<ul> <li>"Ydap cutamus, dephenoria, parasses)</li> </ul>	200		
Hepatitis A	and the same of th		
Hepatitis B	999		
<ul> <li>Vancella (rhickespox)</li> </ul>	2000		
TPV (mactivated policy/marcastme)	900		
MMR or MMRV (measiles, mamps, rudolits)			
MCV4 (maning occoreal dispusse)	****		
HPV Graman papillomovirus	****		
<ul> <li>Fig. 6-han commandly available—generally, September through J.</li> </ul>	Course of		
	X100.5		·····
AND A TOTAL CONTRACTOR OF THE STATE OF THE S	V02		
w-up laboratory tests and consultations completed (or indicates)			
cal Checklist for influx Transfers completed/Medical Coordinator Inc	tiels:}		
		-	Date
		Confirmed	Confirmed
clear of all contagious conditions (includes tead issumd like)			***************************************
nown medical, dental, or mental health issue; requiring addinonal evalu	sation, meateners, or		
2006 - 111 111 111 111 111 111 111 111 111			

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TRANSFER REQUEST		
	Completed in UAC Portal	Completion Date
Transfer Request		
Program Exit		
TRANSFER DOCUMENTATION AND ITEMS (ensure the following documentation and it	tems accompany each	UC at the time of
transfer in a secure manner)		
		nfirmed at Time of
	F	hysical Transfer
UC's personal belongings including clothing, money, valuables, and items obtained		
during the UC's stay at the referring care provide		
Thirty (30) day medication supply	11.11	
Care Provider Family Reunification Checklist		
Care Provider Checklist for Transfers to Influx Care Facilities	1011	
Transfer Request and Tracking Form		
Transfer Manufest		
DHS Form I-862 Notice to Appear (NTA), if available		
Copy of sponsor's birth certificate	-11	<b>S</b>
Copy of medical and vaccination documents		
All original documents (e.g., birth certificates)		
List any food allergies:		
FINAL MEDICAL CHECKS (dans at time of physical transfer)		
	1.50	mfirmed at Time of Physical Transfer
UC checked and determined to be clear of lice and rash furthin 24 hours of physical transports		
UC's temperature checked and found not to be elevated firmediately before the UC boards the vehicles	transport .	
CASE MANAGER AFFIRMATION (done attime of physical transfer)	,	
I declare and affam that the information contained in this checklist is true and accurate to the be assessments, legal services, medical services, and transfer request documentation have been full have been save in or uploaded to the UAC Portal. I attest that all transfer documentation and ites UC in a secure manner. I attest that the UC was checked for lice, and determined to be clear of he and that the UC did not present with an elevated temperature at the time they boarded the transp an acceptable explanation for any instances in which documentation has not been fully complete physically provided to the UC.  List required documentation and or items not available and explanation:	ly and accurately com ms have been physica ce within 24 hours of out wehicle. I have not	pleted and that they lly provided to the physical transport ed below and given
mile and mile managements are many as it means that are a second as become as become management and		
SIGNATURE OF CASE MANAGER.	DATE:	

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### **Appendix 1.10 Medical Checklist for Influx Transfers**

#### MEDICAL CHECKLIST FOR INFLUX TRANSFERS

PC's Name Completed By (name and to		ite)	
A#;	Date Completed		
INSTRUCTIONS	4		
This checklist should be completed by a medical transfer date.  If "Na" is checked for any of the below quest.  The completed checklist should be uploaded to of this checklist with the child's transfer docum.  The person completing this form should initial the child is medically cleased and vaccinated.	ions, do not transfer the child to an influx the UC Portal and the paper copy stored in a eras as it contains confidential medical info	care facility. s secure location Do n	of include a copy
CHECKLIST			
Immilijija.		Meets Influx Transfer Criteria	Dues Not Mee Influx Transfe Criteria
I Has the minal medical exam been completed?		Yes	□ No
J. Have results from all lab tests (e.g., STD tests):	nd medical consultations been received?	Yes	TÜN 0
<ol> <li>TB screening         <ul> <li>Does the shild have a negative PPD (&lt;1)</li> <li>For 13-17 year olds, does the childhave</li> </ul> </li> <li>HIV screening</li> </ol>	0 mm) or IGRA^ a moranal chest X-ray?	☐ Yes ☐ Yes ☐ NA	∏ No □ No
<ul> <li>Was the child tested for HIV? Chark "A lif the child was tested, was the HIV test</li> </ul>	o "If skild opted out of HIV testing negative?	Yes Yes	□ No □ No
<ol> <li>For females, was the pregnancy test negative?</li> </ol>		Yes NA	□ No
S Did the child receive the following impuningation a Tdap (retainus, diphthenia, pertursis) b. Hepatitis A c. Hepatitis B d. Varicella (chickenpox) e. BV (inactivated poliovirus vaccine) f. MMR (measles, manaps, rubella) g. MCV4 (meningucoccal disense) h. HPV (human papillomavirus) i. Flu, when sensionably available (generall b) Did the child receive all of the above immunizations scheduled physical transfer? S. Is the child currently clear of all contagous cond  8. Is the child currently clear of all contagous cond  1. The property clear of all contagous cond  2. To the child currently clear of all contagous cond  3. To the child currently clear of all contagous cond  4. The child currently clear of all contagous cond  4. The child currently clear of all contagous cond  5. The child currently clear of all contagous cond  5. The child currently clear of all contagous cond  6. The child currently clear of all contagous cond  6. The child currently clear of all contagous cond  6. The child currently clear of all contagous cond  7. The child currently clear of all contagous cond  8. The child currently clear of all contagous cond  8. The child currently clear of all contagous cond  9. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child currently clear of all contagous cond  1. The child c	v. September through June) ons more than 32 hours before the	Yes	No N
<ol> <li>Is the crisic currency clear or an comagnous com</li> <li>Have you confirmed the child has no knows med</li> </ol>	sions, meroding scarnes and noe :-	Yes Yes	H No
evaluation, treatment, or monitoring by a health:		1.3 1.63	m ee
O Has a clinician confirmed the child has no known evaluation, treatment, or monitoring?  Clinician, please initial here:		III Yes	□ No
Has the following documentation been uploaded     Tab: Initial Medical Exam form, Supplemental I     immunization record, and chest x-ray reading (for	B Screening form, lab results.	Yes	□ No

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<sup>1</sup> M4: Question is not applicable (i.e., child is <15 years; pregnancy testing for moles; fluvaceine is not seasonably available).

<sup>&</sup>lt;sup>2</sup> A lice, fever, and rath check will also be done within 24 hours of physical transfer, per the ORR Operations Guids, Section I.2.16. Medical Clarkins for Indian Transfers, Dec. 1288/3016 ORR, COAL2.

# UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

LUCAS R., et al.,

Case No. 2:18-CV-05741 DMG PLA

Plaintiffs,

v.

ALEX AZAR, et al.,

Defendants.

EXPERT REPORT OF PROFESSOR JESSICA HELDMAN

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		RR Procedures Do Not Align with Key Federal Juvenile Justice and Child Wellicy	
	<b>B.</b> O	RR procedures for placement in a secure or staff secure setting do not align wi	th
	pr	rocedures in the majority of states	25
	1.	Right to a hearing before a neutral arbiter	25
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VIII.	Conc	lusion	28

To answer the research questions, I reviewed federal law codified in the Social Security Act and key federal child welfare legislation, including the Child Abuse Prevention and Treatment Act (CAPTA) and the Adoption and Safe Families Act. I also reviewed the Juvenile Justice Delinquency Prevention Act (JJDPA), a key federal juvenile justice statute, and its corresponding regulations. These statutes and regulations mandate core requirements with which states must comply and some procedural protections states must provide for children and families in state systems supported by federal funds. Through a review of the text of the statutes and the use of keyword searches, I identified provisions detailing principles and policies related to secure or staff secure placements of children, as well as required procedures or limitations for placing children in such settings.

In addition, I reviewed state law and policy in all 50 states and the District of Columbia—including state statutes and court rules—related to detention and placement of children and youth in secure and staff secure settings within juvenile justice systems. I examined the table of contents for each state's code to identify code sections and court rules related to juvenile court and juvenile justice (delinquency). Using keyword searches, I examined provisions related to required processes for detaining or placing a child or youth in a secure or staff secure setting. I identified required procedural protections, specifically identifying required court hearings and whether the hearing procedures provided the child notice, an opportunity to be heard, and an opportunity for review or reconsideration by a court.

In addition to the examination of federal and state law and policy, I reviewed these materials in forming the opinions discussed herein:

• Publications from government agencies including the Government Accountability Office and the Administration for Children and Families;

key state provisions, attached to this report as Appendix B. From this compilation, I was able to identify procedures required by at least a majority of states (26 or more). This provided the basis for the "majority state policy" in Section VI.A.5 of this report.

I reviewed ORR policy and similarly identified procedural components related to secure or staff secure placement. I compared ORR policy to the majority state policy in order to determine whether ORR policy is in alignment with child welfare, juvenile justice and juvenile court law, policy and procedures. This comparison provided the basis for my final analysis and stated opinions.

#### V. SUMMARY OF OPINIONS

It is my opinion that the procedural protections afforded children in the juvenile justice and child welfare systems minimize the risk of erroneous and unnecessarily lengthy placements in secure and staff secure settings which can be harmful and traumatic. The most basic state law protections providing the right to a hearing, representation by an attorney, and an opportunity to be heard with testimony, witnesses and presentment of evidence in determinations regarding placement in a staff secure or secure facility exceed the procedural protections within ORR's written policies and procedures regarding the placement of children in restrictive settings.

It is my opinion that ORR's written policies are substandard when compared to state and federal law for child-serving systems. Based on my review of materials listed above as well as on my experience, knowledge, and training, and in particular, my understanding of the procedural protections afforded to children in the juvenile justice and child welfare systems, I conclude that ORR's policies and procedures for transferring and keeping children in restrictive settings are far more informal and prone to error when compared to the procedures provided in state and federal juvenile justice and child welfare statutes.

b. Additional rights under In re Gault within juvenile proceedings: right to a hearing, right to confront and cross-examine witnesses, and right to notice

The Court in *In re Gault* established that juveniles have a right to a full adjudicatory hearing on the merits of the case, including the right to confront and cross-examine witnesses. It also established the right to notice in these proceedings. Specifically, the court restated its view from an earlier case that "the hearing must measure up to the essentials of due process and fair treatment." As discussed below, states have applied the Court's due process analysis and provided procedural protections outside of the adjudicatory hearing such as in detention hearings and disposition hearings, both of which impact the placement of the youth.

3. Procedural requirements in state juvenile justice proceedings

Federal law and policy mandate certain procedures when placing a youth in a secure or staff secure setting while state laws and court rules guide the implementation of those federal mandates, often creating additional or expanded requirements. My review of state law and policy identified state provisions on key procedural processes related to secure or staff secure placement of children. My review provided me the ability to document the number of states providing these key protections, forming the basis of a majority state policy detailed below.

a. Right to a detention hearing within a time certain in front of a neutral arbiter

In all 50 states and the District of Columbia, children and youth are entitled to a hearing when they are placed in a secure detention facility in order to determine whether they can be released. In some jurisdictions this detention hearing is held coincident with an initial hearing in the juvenile justice system, at which arraignment or a probable cause determination occurs.

<sup>&</sup>lt;sup>9</sup> In re Gault, 387 U.S. 1, 30 (1967).

#### b. Right to Notice of Detention Hearing

My review revealed that the majority of states have written policies—through statute, court rules, or both—indicating that all juveniles have a right to notice prior to their detention hearing.<sup>18</sup> In addition, the state of Washington requires notice of the detention hearing for all youth above age 12.<sup>19</sup> Four states that do not explicitly indicate a child's right to notice do, however, have statutory provisions requiring that the juvenile's parent or guardian receive notice before the detention hearing.<sup>20</sup>

#### c. Right to Counsel at Detention Hearing

As noted above, the U.S. Supreme Court in *In re Gault* established a juvenile's right to counsel in adjudicatory hearings.<sup>21</sup> States have expanded this right to include representation at juvenile justice detention hearings as well. My review indicated that all 50 states and the District of Columbia have state law or court rules that provide juveniles with a right to counsel that extends beyond the *In re Gault* requirement. My review revealed that 41 states and the District of Columbia explicitly provide the right to an attorney in a detention hearing.<sup>22</sup> The remaining 9 states provide counsel either "at all proceedings" or "at all stages of proceedings" under the juvenile delinquency code.<sup>23</sup>

As noted above, federal law affords juveniles the right to counsel in probation violation hearings before a youth who has not committed a crime (i.e. a status offender) can be held in a secure detention center. Although it was not within the scope of my 50 state review to examine

<sup>&</sup>lt;sup>18</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming. <sup>19</sup> Wash. Rev. Code Ann. § 13.40.050(2)

wash. Rev. Code Ahn. § 15.40.050(2)<sup>20</sup> Florida, Hawaii, Illinois, and South Dakota.

<sup>&</sup>lt;sup>21</sup> In re Gault, 387 U.S. 1, 36-37 (1967).

<sup>&</sup>lt;sup>22</sup> See chart at Appendix B for citations.

<sup>&</sup>lt;sup>23</sup> Georgia, Hawaii, Maine, Maryland, Nevada, Oklahoma, South Dakota, Utah, Wyoming. *See* Chart at Appendix B for citations.

addition, 17 states have provisions specifically allowing juveniles to confront the evidence against them or cross-examine witnesses.<sup>32</sup>

#### f. Right to continued review

My review indicated that in a majority of states, statutes or court rules explicitly ensure that detention of a juvenile in a secure detention facility does not continue indefinitely without court review.<sup>33</sup> Although the provisions vary, in the states with such provisions, detention is either time-limited by a statutory expiration date absent rehearing or by failure to hold the next hearing in the juvenile justice process within statutorily prescribed timeframes, or the juvenile is entitled to a detention rehearing by the court upon request or motion. Eighteen of these states explicitly require reconsideration of detention at a hearing within 21 days or fewer.<sup>34</sup>

#### g. Procedural protections in adjudicatory and dispositional hearings

Following the detention and probable cause phase of juvenile proceedings, a youth will have an adjudicatory hearing at which all the requirements determined in *In re Gault* are applicable. A youth cannot continue to be held in a secure facility absent an adjudication, which is a finding that the youth committed the alleged offense. Final orders of adjudication are appealable.<sup>35</sup>

If the youth is adjudicated delinquent, the court will hold a dispositional hearing at which the court has a range of dispositional options, including the ability to order the placement or

<sup>&</sup>lt;sup>32</sup> Alabama, California, Georgia, Illinois, Iowa, Kentucky, Michigan, Massachusetts, North Carolina, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, W. Virginia, Wisconsin, Wyoming. *See* chart at Appendix B for citations.

<sup>&</sup>lt;sup>33</sup> Alabama, Alaska, Arizona, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin.

<sup>&</sup>lt;sup>34</sup> Arizona, California, Connecticut, Delaware, Florida, Hawaii, Iowa, Maryland, New Jersey, New York, North Carolina, Oregon, South Carolina, Texas, Rhode Island, Indiana, Illinois, Maine, Minnesota, Ohio, Oklahoma, Pennsylvania, and Utah. *See* chart at Appendix B for citations.

<sup>&</sup>lt;sup>35</sup> Although not part of the 50 state review conducted for this report, secondary sources confirm that adjudicatory judgments are appealable within all states either by statute, court rule or case law. *See* Megan Annitto, JUVENILE JUSTICE ON APPEAL, 66 U. MIAMI L. REV. 671, 682-83 (2012).

commitment of a youth to an agency for placement in a non-secure or secure residential facility. A case will not proceed to disposition unless an adjudicatory hearing has occurred, which provides the youth with all procedural protections required by *In Re Gault*, including right to notice of the charges, right to counsel, and the right to confront and cross-examine witnesses. Juveniles are entitled to representation by counsel in disposition hearings in the majority of states.<sup>36</sup> In some jurisdictions, disposition hearings themselves are full evidentiary hearings, while in other jurisdictions they are non-evidentiary, but still provide an opportunity for the juvenile to be heard through written submissions or oral arguments.<sup>37</sup>

#### 4. Procedural requirements in state child welfare proceedings

In the child welfare system, procedural protections center on the rights of parents and children to maintain the parent-child relationship. This results in the right to a hearing when a child is detained (i.e. removed from parental custody). Following this hearing, a court will hold another hearing to determine whether the child will be adjudicated dependent (i.e. whether the court takes jurisdiction over a child who has been removed from his or her parents and placed out of home). Following adjudication of the child as a dependent, the juvenile or family court in each state holds a disposition hearing at which the court determines custody and placement of the child as the family works toward reunification. The disposition hearing provides the opportunity for the court to approve recommended plans and order placements for the youth. The court also holds required post-disposition hearings in which the child's placement is regularly reviewed or can be reviewed upon motion for a change in placement hearing.

<sup>&</sup>lt;sup>36</sup> See chart at Appendix B for citations.

<sup>&</sup>lt;sup>37</sup> Randy Hertz, Martin Guggenheim & Anthony G. Amsterdam, Trial Manual for Defense Attorneys in Juvenile Delinquency Cases, p. 1135 (2019).

Under federal law, children in dependency proceedings are entitled to a *guardian ad litem* (GAL) who may or not be an attorney. In 34 states and the District of Columbia, state law or court rules require the GAL to be an attorney.<sup>38</sup> In addition, in all but 12 states, children are given party status in the dependency proceedings.<sup>39</sup> Party status ensures that children are afforded basic due process, including notice of all proceedings and decisions and the right to appear and fully participate in court.<sup>40</sup>

#### 5. Majority State Policy

The following Majority State Policy<sup>41</sup> presents a summary of the procedural protections under federal law and the majority of state laws and policies afforded juveniles facing secure or staff secure detention.

- If a youth is detained in a secure facility, a court shall hold a detention hearing within 48 hours of the youth's detention. If a child is placed in a staff secure facility, a shelter care hearing shall be held within 72 hours of placement.
- The youth must be given notice of the detention or shelter care hearing.
- The youth has the right to counsel at the detention or shelter care hearing and an interpreter will be appointed if the child is of Limited English Proficiency.
- The detention hearing will provide the youth with the opportunity to be heard in response to the evidence presented, including the opportunity to present evidence of his own.
- Detention in a secure or staff secure facility cannot be indeterminate. A court must review the detention decision either as part of a probable cause or adjudicatory hearing at a time certain, or during a mandated detention review hearing, or upon motion of the child or his parent.

20

<sup>&</sup>lt;sup>38</sup> Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wyoming. *See* chart at Appendix B for citations.

<sup>&</sup>lt;sup>39</sup> See Children's Advocacy Institute & First Star Institute, A Child's Right to Counsel, 4th ed. (2019). <sup>40</sup> Id. at 13.

<sup>&</sup>lt;sup>41</sup> As previously stated, in reviewing the statute and code sections related to placement in secure or staff secure facilities within the juvenile justice and child welfare systems, I identified which provisions were present in a majority of states reviewed.

## VII. ANALYSIS: COMPARISON OF ORR POLICY WITH JUVENILE JUSTICE AND CHILD WELFARE PROCEDURES

## A. ORR Procedures Do Not Align with Key Federal Juvenile Justice and Child Welfare Policy

ORR Policy is based on federal legal requirements to ensure placement of a child in the least restrictive setting appropriate for the child's needs<sup>48</sup> and in the best interests of the child.<sup>49</sup> However, ORR Policy is inconsistent with procedures afforded within the juvenile justice and child welfare system when facing placement in a secure or staff secure facility. In RFA No. 151 of Defendant's Second Set of RFA Responses, Defendants state that ORR's decisions to transfer a UAC to a more staff secure placement are not themselves "legal proceedings or matters...."

This is in conflict with the federal principle and policy that requires due process for youth facing detention or placement.

## B. ORR procedures for placement in a secure or staff secure setting do not align with procedures in the majority of states

In comparing the majority state rule with ORR written policies and procedures, it is my opinion that ORR procedures are inconsistent with the procedures provided in the majority of states with regard to placement in secure facilities. The basis for my opinion is detailed in the following sections.

#### 1. Right to a hearing before a neutral arbiter

State law review revealed that all 50 states and the District of Columbia require a hearing before a neutral arbiter to be held within 48 hours of a juvenile being detained in a secure

<sup>&</sup>lt;sup>48</sup> Office of Refugee Resettlement, Children Entering the United States Unaccompanied: Section 1, Policy 1.1 (January 30, 2015) at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.2

<sup>&</sup>lt;sup>49</sup> Office of Refugee Resettlement, Children Entering the United States Unaccompanied: Section 1, Policy 1.2.1 (January 30, 2015) at https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.2

facility. In addition, the majority of states require a hearing if a child is placed in a staff secure facility. In contrast with the procedures in jurisdictions across the nation, ORR does not provide youth with a hearing when placing or transferring UAC to a secure or staff secure facility. UAC are entitled to bond hearings, but these proceedings are not dispositive with respect to placement, nor do they include a review of the UAC's placement. The UAC may request a review by a federal court, but this is not an automatic right. A UAC child in ORR custody is not appointed counsel to assist in seeking federal court review and there is no further indication within the materials I reviewed whether this review comports with the procedural components in the majority state policy.

The placement of a youth in a secure or staff secure facility beyond temporary detention can only occur within the child welfare and juvenile justice systems following adjudicatory and dispositional hearings held in court before a neutral arbiter. ORR policy does not provide such hearings and thus does not comport with this procedural requirement.

Because ORR does not provide UAC's with the right to a hearing before a neutral arbiter upon detention in a secure facility, ORR policy is out of step with the majority state policy.

#### 2. Right to Counsel

Federal case law requires youth to have legal counsel at all critical stages of juvenile proceedings where liberty is at stake. The majority of states have interpreted this to mean that youth are entitled to counsel at detention hearings and state law and policy reflect this. In addition, the majority of states share a policy which indicates that within the juvenile justice and child welfare systems, placement beyond temporary detention occurs following required adjudicatory and dispositional hearings in which the counsel is provided to the child. ORR policy does not provide UAC with legal representation in the determination of a UAC's secure or staff

facility or RTC, the UAC can request the ORR Director to reconsider the placement if after the 30 day case review they are not stepped down. The ability to challenge placement through reconsideration by the ORR Director is deficient as compared to the majority state policy because it does not entitle a UAC to a hearing in front of a neutral and detached decision-maker. The lack of a hearing, the lack of an opportunity to present evidence, and the lack of counsel fails to ensure the UAC an opportunity to be heard on the matter of his release.

#### VIII. CONCLUSION

Based on my review of ORR's policies and procedures and my experience and training in federal and state juvenile justice and child welfare law, I conclude that ORR's procedural process for placing children in secure and staff secure settings are deficient compared to the procedures provided in the U.S. juvenile justice and child welfare system in situations where children are held in government custody and separated from their families.

Date: June 19, 2020

Jessica K. Heldman

Professor in Residence

<sup>&</sup>lt;sup>50</sup> Office of Refugee Resettlement, UAC Manual of Procedures, Version 2, Section 1.2.4 (2018).

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## APPENDIX B Court Procedures Provided by State Statutes, Rules, Agency Policy Juvenile Justice Procedures

	Right to detention hearing	Right to counsel	Right to notice of hearing	Right to present evidence	Right to present witnesses	Right to interpreter	Right to confront evidence	Right to continued review	Right to counsel at disposition
AL	Ala. Code § 12-15- 207	Ala. Code §§12-15-202(f)(1); 12-15-207(c)	Ala. Code. § 12- 15-207(b)	Ala. Code §12- 15-207(d) (ct. may admit relevant evidence)			Ala. Code §12-15- 202(f)	Code of Ala. §12-15- 221 (a)(1) (modification of order can be requested)	Ala. Code §§12-15-202; 12-15-221(b)
AK	Alaska Stat. §47.12.250 Alaska Delinq. Rule 12	Alaska Stat. §47.12.250(c)	Alaska Delinq. R. 3	Alaska Delinq. R. 10		Alaska R. of Admin. 6		Alaska Delinq. R. 12	Alaska Stat. §47.12.090(a) Alaska Delinq. R. 24(c); R. 25
AZ	Ariz, Juv. Ct. R. P 23(C)	Ariz. Rev. Stat. §8- 221(A)						Ariz. Juv. Ct. R. P 23(J) (court may review upon motion of juvenile, prosecutor or court)	Ariz. Juv. Ct. R. P.10(A)
AR	Ark. Code Ann. § 9- 27-313(d)(1)(C)	Ark. Code Ann. § 9-27-326(b)(2)	Ark. Code. Ann.§ 9-27-326(a)	Ark. Code. Ann.§ 9-27-326(d) (ct shall admit relevant evidence)	Ark. Code. Ann.§ 9-27- 326(d)				
CA	Cal. Welf. & Inst. Code §632(b)	Cal. Welf & Inst. Code §§ 633, 634	Cal. Welf & Inst. Code §630(a)	Cal. Welf & Inst. Code §§630(b); 635(a)	Cal. Welf & Inst. Code §630(b); 635(a)	CA Const. Art. 1 §14 (in de. Hearing) CA Evid. Code §756	Cal. Welf & Inst. Code §§630(b); 635	Cal. Welf & Inst. Code §636 (a)	Cal. Welf & Inst. Code §634
СО	Colo. Rev. Stat. Ann. § 19-2-508(3)(a)(I)	Colo. Rev. Stat. Ann. § 19-2-508(2)	Colo. R. Juv. P. 3.7 (c)	Colo. Rev. Stat. Ann. § 19-2- 508(3(a)(v) (court shall receive any probative info)		CO Judicial Branch website			Colo. Rev. Stat. Ann §§ 21-1-103; 19-2-706(1)
CT	Conn. Gen. Stat. Ann. § 46b-133(e) Conn. R. Super. Ct. Juv. 30-5	Conn. R. Super. Ct. Juv. 30-3	Conn. Practice Book §30-4	Conn. Practice Book §30-4 (court may consider any relevant information)				Conn. Gen. Stat. Ann. § 46b-133	Conn. Gen. Stat. Ann. § 46b-135(A)
DE	Del. Fam. Ct. R. Crim. P. 5.1(a)(1)	Del. Fam. Ct. R. Crim. P. 5.1(a)(2)	Del. Fam. Ct. R. Crim. P. 5.2	Del. Fam. Ct. R. Crim. P. 5.1(b) (ct. shall consider all available info)				10 Del. C. §1007(f)	Del. Fam. Ct. R. Crim. P. 44.1(a)

#### APPENDIX B

	Right to detention hearing	Right to counsel	Right to notice of hearing	Right to present evidence	Right to present witnesses	Right to interpreter	Right to confront evidence	Right to continued review	Right to counsel at disposition
DC	D.C. Code § 16- 2312(a)(2)	D.C. Code § 16-2304(a)  Super. Ct. Juv. R. 44(a)(1)	D.C. Code §16- 2312 (b)			D.C. Code §2- 1902 (in juvenile proceedings)			D.C. Code § 16- 2304(a)
FL	Fla. Stat. Ann. § 985.255(1)	Fla. Stat. Ann. § 985.033(1) Fla. R. Juv. P. 8.010	Fla. R. Juv. Proced. Rule 8.010 (d) (parents noticed)	Fla. R. Juv. Proced. Rule 8.010 (a) (opportunity to be heard)	Fla. R. Juv. Proced. Rule 8.010	Fla. R. Jud. Admin. R. 2.560 (a) (in juvenile delinquency)		Fla Stat. §985.26 (21 days unless adjudicated)	Fla. Stat. Ann. § 985.033(1)
GA	Ga. Code Ann. § 15- 11-506(b)	Ga. Code Ann. § 15-11-475(a) (at all proceedings)	Ga. Code Ann. §15-11-506(d)	Ga. Code Ann. § 15-11-506 (f)(5)	Ga. Code Ann. § 15-11-506 (f)(5)	GA Sup. Ct. Appx. A (V) (including juveniles)	Ga. Code Ann. § 15-11-506 (f)(5)		Ga. Code Ann. § 15-11-475(a)
HI	Haw. Rev. Stat. §571-32(d)	Haw. Fam. Ct. R., r. 155. (at all stages of proceedings)	Haw. Rev. Stat. §571-32(c) (parent given notice of right to prompt hearing)	Haw. Rev. Stat. §571-32 (ct. may admit testimony or other evidence)	Haw. Rev. Stat. §571-32 (ct. may admit testimony or other evidence)			Hawaii Family Court Rules R. 136 (Review of detention order at least every 8 days)	
ID	Idaho Code §20- 516(4) Idaho Juv. R., r. 7(c)	Idaho Juv. R., r. 9(d) Idaho Code Ann. § 20- 514(1)	Idaho Juv. R., r. 9(d)			Idaho Code §9- 205			Idaho Code § 20- 514(1)(a), (2)
IL	705 Ill. Comp. Stat. Ann. 405/5-415(1)	705 Ill Comp. Stat. Ann. 405/5-501	705 Ill. Comp. Stat. Ann. 405/5- 415(2) (parents are given notice of hearing)	705 ILCS 405/5-501 (ct. shall receive all relevant info)	705 ILCS 405/5- 501		705 ILCS 405/1- 5(1)	705 ILCS 405/5-501 (7) (any party can file motion to vacate detention or shelter care order; hearing w/i 14 days)	705 Ill. Comp. Sta Ann. 405/1-5(1)
IN	Ind. Code Ann. § 31-37-6-2	Ind. Code Ann. § 31-32-4-2	Ind. Code Ann. §31-37-6-3 (a)(1)	Ind. Code Ann. §31-37-6-3(b) (opportunity to be heard)		Ind. Code Ann. §34-45-1-3		Burns Ind. Code Ann §31-34-5-5 (May petition for additional detention hearings)  Burns Ind. Code Ann. § 31-37-11-7 (child released if petition not filed)	Ind. Code Ann. §§ 31-32-4-1, 31-32-2
IA	Iowa Code Ann. § 232.44(1)(a)	Iowa Code Ann. § 232.11(1)	Iowa Code Ann. §232.44(3)	Iowa R. Juv. Proc. 8.16		Iowa Ct. R. 47.3	Iowa R. Juv. Proc. 8.16	Iowa Code Ann §§232.44(6); 232.44(7)	Iowa Code Ann. § 232.11(1)
KS	Kan. Stat. Ann. § 38-2343(a)	Kan. Stat. Ann. §§ 38-2306(a)-(b), 38-2343(e)	Kan. Stat. Ann. §38-2343(d)	Kan. Stat. Ann. §38-2343(f) (ct. shall allow contrary evidence)		Kan. Stat. Ann §75-4351		Kan. Stat. Ann 38- 2343(i)	Kan. Stat. Ann. §§ 38-2306(a)-(b), 38 2343(e)

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#### APPENDIX B

	Right to detention hearing	Right to counsel	Right to notice of hearing	Right to present evidence	Right to present witnesses	Right to interpreter	Right to confront evidence	Right to continued review	Right to counsel at disposition
KY	Ky. Rev. Stat. Ann.§§ 610.265; 610.280(1)(a)	Ky. Rev. Stat. Ann. §§ 610.290(2), 31.110.		Ky. Rev. Stat. Ann.§610.265 (ct. shall consider information)		Ky. Rev. Stat. §30A.410	Ky. Rev. Stat. §610.280(1)(a) Ky. Rev. Stat. Ann. §§ 610.060 (1)(c)		Ky. Rev. Stat. Ann. §§ 610.060, 610.290(2), 31.110.
LA	La. Child. Code Ann. art. 819, 820	La. Child. Code Ann. art. 809			La Child. Code Ann. Art. 821(B)	La. Code Civ. Proc. Art 192.2			La. Child. Code Ann. art. 809, 848
ME	Me. Rev. Stat. Ann. tit. 15 § 3203-A(5)	Me. Rev. Stat. Ann. tit. 15 § 3306(1)(A) (at every stage of proceedings)		Me. Rev. Stat. Ann. tit. 15 § 3203-A(5)(A)	Me. Rev. Stat. Ann. tit. 15 § 3203-A(5)(A)	Maine Sup. Ct. Admin. Order JB- 06-03 (inc. juvenile actions)		Me. Rev. Stat. Ann. tit. 15 §3203-A(11) (attny for juvenile can petition for conditional release)	Me. Rev. Stat. Ann. tit. 15 § 3306(1)(A)
MD	Md. Code Ann., Cts. & Jud. Proc. § 3-8A-15(d)(1), (2)	Md. Code Ann., Cts. & Jud. Proc. § 3-8A-20(a), (d) (at every stage of any proceeding)  Md. R. Juv. Causes r. 11-106(a)	Md. Code Ann., Cts. & Jud. Proc. § 3-8A-15 (d)(3)			Md. Rules for Courts, Judges and Attorneys, Rule 1- 333		Md. Code Ann. Cts & Jud Proc §3-8A- 15(d)(6)(2)Detention. can be extended in inc. of 14 days with hearing	Md. Code Ann., Cts. & Jud. Proc. § 3-8A-20(a), (d) Md. R. Juv. Causes r. 11-106(a)
MA	Mass. Dist. Ct. Standing Order 2-88 Mass. R. Crim. P. 3.1(a)	Mass. R. Crim. P. 8				Mass. Gen. Laws ch. 221C §2			
MI	Mich. Ct. R. 3.935(A)(1)	Mich. Comp. Laws Ann. § 712A.17c (1); Mich. R. Spec. P. 3.935(B)(1)	Mich. Ct. R. 3.921	Mich. Ct. R. 3.935 (3)	Mich. Ct. R. 3.935 (3)		Mich. Ct. R. 3.935 (3)		Mich. Comp. Laws Ann. § 712A.17c (1);
MN	Minn. Stat. Ann. § 260B.178(1)	Minn. Stat. Ann. § 260B.163(4)  Minn. R. Juv. Delinq.  Proc. 3.02(6)	MN Rules of Juv. Delinq. Proc. Rule 5.07	MN Rules of Juv. Delinq. Proc. Rule 5.07 (ct. may hear any evidence)		Minn. Stat. Ann. §546.43		Minn. Stat. Ann. § 260B.178 (subdiv 4)	Minn. Stat. Ann. § 260B.163(4)  Minn. R. Juv. Delinq. Proc. 3.02(1), 3.02(2), 3.02(3))
MS	Miss. Code Ann. § 43-21-307	Miss. Code Ann.§ 43- 21-201(1)	Miss. Code Ann. §43-21-309(2)	Miss. Code Ann. §43-21-309(3)		Miss Code Ann §9-21-79	Miss. Code Ann. §43-21-309(3)		Miss. Code Ann.§ 43-21-201(1)
МО	Mo. Ann. Stat. § §211.063(1); 211.061(4)	Mo. Sup. Ct. R. 128.02 Mo. Sup. Ct. R. 127.08	Mo. Ann. Stat. § §211.061(4)	MO R JUV P Rule 127.08 (ct. shall receive evidence)		Mo. Ann. Stat §476.803	,	MO R JUV P Rule 127.08(g)	Mo. Ann. Stat. § 211.211(6)

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	Right to detention hearing	Right to counsel	Right to notice of hearing	Right to present evidence	Right to present witnesses	Right to interpreter	Right to confront evidence	Right to continued review	Right to counsel at disposition
MT	Mont. Code Ann. § 41-5-332 (1)	Mont. Code Ann. §41-5-333 (2)	5						Mont. Code Ann. § 41-5-1413
									Mont. Code Ann. § 41-5-332
NE	Neb. Rev. Stat. Ann. § 43-253(3)	Neb. Rev. Stat. Ann. § 43-253(3)				Neb. Rev. Stat. Ann. §25-2403			Neb. Ct. R. § 6- 1706(B)(1)(m)
NV	Nev. Rev. Stat. Ann. § 62C.040(1)(b)-(d)	Nev. Rev. Stat. Ann. § 62D.030(1) (at all stages of the proceedings)				Nev. Rev. Stat. Ann. §62D.405(1)(a) (in delinquency proceedings)			Nev. Rev. Stat. Ann. § 62D.030(1).
NH	N.H. Rev. Stat. Ann. § 169-B:12(IV)(b)	N.H. Rev. Stat. Ann. § 169-B:12(IV)				processings			N.H. Rev. Stat. Ann. § 169-B:12(I).
NJ	N.J. Ct. R. 5:21-3(a) N.J. Stat. Ann. §§ 2A:4A-38(e)	N.J. Stat. Ann.§ §2A:4A-38(h); 2A:4A-39 N.J. Ct. R. 5:3-4(a);	N.J. Ct. R. 5:21-3(a)					N.J. Stat. Ann. §§ 2A:4A-38(i)	N.J. Stat. Ann. § 2A:4A-39
NM	N.M. Stat. Ann. § 32A-2-13(2)-(3)	5:21-3(a)  N.M. Child. Ct. R. 10- 223	N.M. Stat. Ann. § 32A-2-13 (C)	N.M. Stat. Ann. § 32A-2-13 (H) (ct. may consider all relevant		N.M. Child. Ct. R 10-167 (in children's court)		N.M. Stat. Ann. § 32A-2-13 (J) (ct. may review)	
NY	N.Y. Fam. Ct. Act § 307.4(5)	N.Y. Fam. Ct. Act § 249(a)		evidence)		22 N.Y. Comp. Codes R. & Reg. Part 217.1 (in family court)		NY CLS Family Ct. Act §340.1 (1) (fact finding hearing must happen within a span of time det. By level of offense, all timeframes are within 14 days)	N.Y. Fam. Ct. Act § 249(a)
NC	N.C. Gen. Stat. Ann. § 7B-1906(a)	N.C. Gen. Stat. Ann. § 7B-2000(a)		N.C. Gen. Stat. Ann. § 7B- 1906(d)	N.C. Gen. Stat. Ann. § 7B- 1906(d)	Standards for Language Access Services, Sect. 5, N.C. Judicial Branch	N.C. Gen. Stat. Ann. § 7B-1906(d)	N.C. Gen. Stat. Ann. § 7B-1906(b)	N.C. Gen. Stat. Ann. § 7B-2000(a)

#### APPENDIX B

	Right to detention	Right to counsel	Right to notice of	Right to present	Right to present	Right to interpreter	Right to confront	Right to continued	Right to counsel at
	hearing	ND 0 0 1 005	hearing	evidence	witnesses	37 1 5 1	evidence	review	disposition
ND	N.D. Cent. Code §27- 20-17 (2) N.D.R. Juv. P. Rule 2 (1)(A)	N.D. Cent. Code §27-20-17 (2)	N.D. Cent. Code §27-20-17 (2)			North Dakota Court System Policy 522 (in juvenile hearings)			N.D. Cent. Code Ann. § 27-20-26(1)
ОН	Ohio Rev. Code Ann. § 2151.314(A) OH ST JUV P Rule 7	Ohio Rev. Code Ann. §§ 2151.314(A); 2151.352 OH ST JUV P Rule 7(F)(2)	Ohio Rev. Code Ann. § 2151.314 (A) OH ST JUV P Rule 7(F)(1)	OH ST JUV P Rule 7(F)(3) (ct. may consider any evidence)				OH ST JUV P Rule 7(F)(1) (child may file a motion requesting release, and hearing must be held within 72 hrs)	Ohio Rev. Code Ann. § 2151.352
OK	Okla. Stat. Ann. tit. 10A § 2-2-101(B)	Okla. Stat. Ann. tit. 10A § 2-2-301(D) (at all proceedings)						10A Okl. Stat. Ann. Tit. §2-3-101 (A)(1)(b)	Okla. Stat. Ann. tit. 10A § 2-2-301(D)
OR	Or. Rev. Stat. Ann. § 419C.139	Or. Rev. Stat. Ann. § 419C.109(3)(b)(A)	Or. Rev. Stat. Ann §419C.142			Or. Rev. Stat. Ann §45.275		Or. Rev. Stat. Ann. §419C.153 Or. Rev. Stat. Ann. §419C.150	Or. Rev. Stat. Ann § 419C.200(1)(a)
PA	42 Pa. Stat. and Cons. Stat. Ann. § 6332(a)	Pa. R. Juv. Ct. P. 242(A)(2)	42 Pa. Stat. and Cons. Stat. Ann. § 6332(a) PA ST JUV CT Rule 241	PA ST JUV CT Rule 242(B)(4)(b)	PA ST JUV CT Rule 242(B)(4)(b)	42 Pa. Cons. Stat. §4401	PA ST JUV CT Rule 242 (B)(4)(a)	PA ST JUV CT Rule 243	42 Pa. Stat. and Cons. Stat. Ann. §§ 6337
RI	R.I. R. Juv. Proc. 8(a)	R.I. R. Juv. Proc. 8(b)	R.I. R. Juv. Proc. 8(c)					R.I. R. Juv. Proc. 8(b)	R.I. Gen. Laws Ann. § 14-1-31
SC	S.C. Code Ann. §§ 63-19-830(A); 63-7- 710(A)	S.C. Fam. Ct. R.36. S.C. Code Ann. § 63-19-830(A)		S.C. Code Ann. §63-7-710 (D)		S.C. Code Ann §15-27-155	S.C. Code Ann. §63-7-710 (D)	S.C. Code Ann. § 63- 19-830 (A)	S.C. Fam. Ct. R.36.
SD	S.D. Codified Laws § 26-7A-14	S.D. Codified Laws §§ 26-7A-30 (in delinquency proceedings)	S.D. Codified Laws §26-7A-15 (notice to parent)						S.D. Codified Laws §§ 26-7A-30, 26- 7A-44(2)
TN	Tenn. Code Ann. §37- 1-177 (a)(2) Tenn. R. Juv. P. 203(b)(2)	Tenn. R. Juv. P. 203(c)(2)(c); 205(a)(1)		Tenn. R. Juv. P. 205(b); 203(d)(1)	Tenn. R. Juv. P. 205(b); 203(d)(1)		Tenn. R. Juv. P. 205(b); 203(d)(1)		Tenn. Code Ann. § 37-1-126(a)(1)
TX	Tex. Fam. Code §54.01	Tex. Fam. Code §§54.01; 51.10	Tex. Fam. Code §54.01(b)			Tex. Fam. Code § 51.17 (d) (in delinquency proceedings)		Tex. Fam. Code §54.01(h)	Tex. Fam. Code § 51.10

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#### APPENDIX B

Court Procedures Provided by State Statutes, Rules, Agency Policy

	Right to detention hearing	Right to counsel	Right to notice of hearing	Right to present evidence	Right to present witnesses	Right to interpreter	Right to confront evidence	Right to continued review	Right to counsel at disposition
UT	Utah R. Juv. P. 9(b)  Utah Code Ann.  §78A-6-113(4)(a)	Utah Code Ann. §§ 78A-6-1111 (in an action filedunder this title)  Utah R. Juv. P. 9(f) (may appoint at detention hearing)	Utah R. Juv. P. 9(b)	Utah R. Juv. P. 9(e) (ct. may receive any information relevant)	Utah R. Juv. P. 9(e)	Utah Judicial Council Code of Judicial Administration, R. 3-306.04		Utah R. Juv. P. 9 (j)	Utah Code Ann. §§ 78A-6-1111(1)(a) & (1)(e)
VT	Vt. Stat. Ann. tit. 33, §5255	Vt. Stat. Ann. tit. 33, §5225(a).	Vt. Stat. Ann. tit. 33, §5254	Vt. Stat. Ann. tit. 33, §5255(f)	Vt. Stat. Ann. tit. 33, §5255(f)		Vt. Stat. Ann. tit. 33, §5255 (f)		Vt. Stat. Ann. tit. 33, § 5112(a) Vt. R. Fam. Pro. 6.
VA	Va. Code Ann. § 16.1- 250(A)	Va. Code Ann. § 16.1-266(B)	Va. Code Ann. § 16.1-250(c)	Va. Code Ann. § 16.1-250(d), (g) (opportunity to be heard; all relevant evidence may be admitted)	Va. Code Ann. § 16.1-250(g)		Va. Code Ann. § 16.1-250(d)		Va. Code Ann. § 16.1-266 (C)
WA	Wash. Rev. Code Ann. § 13.40.050(1) (b)	Wash. Rev. Code. Ann. § 13.40.050(3) Wash. Juv. Ct. R. 7.4(b)	Wash. Rev. Code Ann. § 13.40.050(2) (above age 12)	Wash. Juv. Ct. R. 7.4 (c)		Wash. Rev. Code Ann. § 4.43.040			Wash. Rev. Code Ann. § 13.40.140(2)
WV	W. Va. Code Ann. § 49-4-705(c)(4)	W. Va. Code Ann. § 49-4-706(a)		W. VA. Code § 49-4-701(i)(1)	W. VA. Code § 49-4-701(i)(1)	W. VA Code §57- 5-7	W. VA. Code § 49- 4-701(i)(1)	W. VA Code §49- 4-707	W. Va. R. Juv. P. 5(a)
WI	Wis. Stat. Ann. § 938.21(1)(a)	Wis. Stat. Ann. § 938.23	Wis. Stat. Ann. § 938.21(2)(b)	Wis. Stat. Ann. § 938.21(2)(c)	Wis. Stat. Ann. § 938.21(2)(c)	Wis. Stat. Ann § 885.37	Wis. Stat. Ann. § 938.21(2)(c)	Wis Stat §938.21 Wis Stat §938.21(2(c)	Wis. Stat. Ann. §§ 938.23(1m)(a); 48.23(1m)(a)
WY	Wyo. Stat. Ann. § 14-6-209(a)	Wyo. Stat. Ann. § 14-6-222(a) (at every stage)	Wyo. Stat. Ann. § 14-6-209(a)	Wyo. Stat. Ann. § 14-6-209(b)(iv)	Wyo. Stat. Ann. § 14-6-209(b)(iv)		Wyo. Stat. Ann. § 14-6-209(b)(iv)		Wyo. Stat. Ann. § 14-6-222(a)

#### **Child Welfare Proceedings**

State	Right to hearing re. non-secure placement at a	Right to Counsel
	time certain	
AL	Ala Code §12-15-304	Ala Code §§12-15-304; 26-14-11
AK		Alaska Stat. §47.10.050(a)(discretionary)
AZ	Ariz. Rev. Stat. §8-824 (A)	Ariz. Rev. Stat. §8-221(I) (discretionary)
AR	Arkansas Code Ann. § 9-27.314	Ark. Code Ann. §9-27-316(f)(3)(A)
CA	Ca. Welf. & Inst. Code §315	Cal. Wel. & Ins. Code §317(c)(1)

#### APPENDIX B

Court Procedures Provided by State Statutes, Rules, Agency Policy Colo. Rev. Stat. 19-3-403(2) C.R.S. §19-3-203(1) CTConn, Gen. Stat § 46b-129a(2)(A) Del. Fam. Ct. Civ. R. 214 (a) 13 Del. C. §2504(f) DE D.C. Code Ann. §16-2304(b)(5) D.C. Code Ann. § 16-2312 (B) Fla. Stat. §39.402 Fla. Stat. §39.01305(3) (discretionary unless child is being considered for placement in an RTC. See Fla. R. Juv. P. 8.350 (a)(3)) Ga. Code. Ann. §15-11-145 (a) Ga. Code. Ann. §§15-11-103(a), 15-11-103(f) HI HRS §§587A-16(a); 587A-4 (discretionary) Idaho Code §16-1614(1), required for children over 12, but exceptions allowed Idaho Juv. R. 39 (48 hours) 705 ILCS 405/1-5(1) (discretionary) 705 ILCS 405/2-9 Burns Ind. Code Ann. §31-32-4-2(b) (discretionary) Burns Ind. Code Ann §31-34-5-1 (a) Iowa Code §232.89(2) IΑ K.S.A. §38-2205(a) Kansas Stat. Ann. §620.100(1)(a) Kansas Stat. Ann. §620.080(1) (a) (72 hrs) La. Ch. C. Ann. Art. 624 (a) La. Ch. C. Ann. Art. 551 22 M.R.S. §4005(1)(A); Me. R. Guardians Ad Litem Rule 2(a)(2) (discretionary) ME Md. Code Ann., Cts. and Jud. Proc. 3-813(d)(1) Md. Code Ann., Cts. and Jud. Proc. §3-8A-15(d)(2)Mass. Gen. Laws Ann. 119 § 29 MA Mich. Comp. Laws § 3.974 (C) Mich. Comp. Laws § 722.630 MI Minn. Stat. § 260C.163(3)(d) (a right for children 10 and above) Minn Stat. §260C.178 Miss. Code Ann. §43-21-309(3) Miss. Code Ann. §43-21-121(4) MS Mo. Rev. Stat. § 210.160(1); Mo. Sup. Ct., Standards with Comments for Guardians Ad MO Litem in Missouri, Standard 1.0 MT Mont. Code Anno., § 41-3-112(1) (discretionary) Neb. Rev. Stat. § 43- 272(3) NE NV Nev. Rev. Stat. Ann. § 432B.420(2) RSA 169-C:10(I) (discretionary) NH NJ N.J. Stat. Ann. §§9:6- 8.23(a); 9:6-8.21(d) N.M. Stat. Ann. § 32A-4-10(C) NM NY Family Ct Act § 249(a) NY N.C. Gen. Stat. § 7B-601(a) NC N.D. Cent. Code, § 27-20-26(1) (required at post-petition stages) Ohio Rev. Code Ann. §2151.314 Ohio Rev. Code Ann. 2151.352 OH Okla. St. 10A§ 1-4- 306(A)(5) OK Or. Rev. Stat § 419B.195) (only upon request) Or. Rev. Stat. §419B.183 42 Pa. Cons. Stat. § 6332 (a) 42 Pa. Cons. Stat. § 6311(a) R.I. Gen. Laws § 40-11-14(a); 2009 RI Regulation Text 3795; RI Dept. of Children, Youth and Families, Policy Manual (2018-2019), Reg. 1100.0000(A) S.C. Code Ann. §63-7-710 S.C. Code Ann. § 63-7-1620(1) (GAL is entitled to counsel) SC S.D. Codified Laws § 26-8A-18 SD Tenn. Code Ann. §37-1-117(b) Tenn. Code Ann. § 37-1-126(a)(1); Tenn. Sup. Ct. Rules, Rule 40(b)(1)

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TX	Tex. Fam Code §262.106(a)	Tex. Fam. Code § 107.012
UT	Utah Code Ann. 78A-6-306(a)	Utah Code Ann. § 78A-6-1111(1)(d)
VT		Vt. Stat. Ann. 33 § 5112(a)
VA	Va. Code Ann §16.1-250(a)	Va. Code Ann. § 16.1-266(A)
WA	Wash. Rev. Code §13.34.065	Rev. Code Wash. § 13.34.100(7)(c) (mandated for children age 12+)
WV		W. Va. Code Ann. § 49-4-601(f)
WI	Wis. Stat. §48.21(1)(a)	Wis. Stat. § 48.23(1m) (b) (req. for children age 12+)
WY	Wyo. Stat. Ann. § 14-3-409 (a)	Wyo. Stat. Ann. § 14-3-211(a)

# UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION

LUCAS R., et al.,

Case No. 2:18-CV-05741 DMG PLA

Plaintiffs,

v.

EXPERT REPORT BY DR. EMILY RYO

ALEX AZAR, et al.,

Defendants.

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given facility as a "stint," and the total time spent in ORR custody from initial placement to final discharge as a "custody period."

As explained in section III.A, I cannot assume a one-to-one relationship between UACs and A-Numbers. This means that I cannot guarantee that a UAC will be assigned the same A-Number for each custody period that he or she may experience. Due to this limitation, I have treated each custody period as independent of one another, and all of the analysis presented in this report is at the level of custody periods, rather than at the level of UACs. For example, average detention lengths refer to the average length of detention for individual custody periods, rather than the average total length of detention for individual UACs.

### D. Program types and restrictive placements

ORR facilities impose varying levels of restrictions on UACs. Definitions for the various program types are provided in Appendix C.<sup>8</sup> Figure 1 shows the ORR program types, with "less restrictive" program types on the left and "more restrictive" program types on the right.<sup>9</sup>

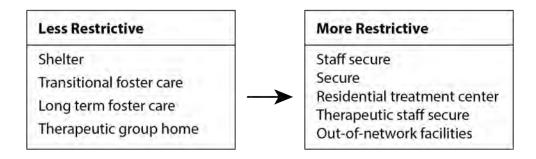


Figure 1. Program types by less restrictive to more restrictive.

For the purposes of this report, a "step-up" occurs when (1) a UAC is transferred from a less restrictive program and placed in any one of the more restrictive programs, or (2) when a UAC is

<sup>&</sup>lt;sup>7</sup> Analysis conducted at the level of custody periods may have the effect of understating the amount of time a UAC spends in custody. For example, consider a UAC with two 100-day custody periods. Our analysis at the level of custody periods treats each 100-day custody period as independent of one another. In contrast, a UAC-level analysis would consider the total length of detention for this UAC to be 200 days.

<sup>&</sup>lt;sup>8</sup> In considering whether a UAC was ever placed in any of these program types during a given custody period, I used the categorizations as they appear in the ORR Data. I do not provide any opinions as to whether the facilities in which the UACs were placed do in fact fit the definitions provided.

<sup>&</sup>lt;sup>9</sup> The classifications presented in Figure 1 were provided by Plaintiffs' counsel based on ORR's classification of more and less restrictive facilities. I understand that there is disagreement among the parties, and even amongst Defendants' own employees, as to how to categorize program types from least restrictive to most restrictive. Since my analyses consider only whether a child was ever placed in a "more restrictive" program, I need not delineate where each program falls in a spectrum of least to most restrictive. I also do not provide any opinions as to the level of restrictiveness of these facilities in practice.

initially placed in a program that is more restrictive. <sup>10</sup> Although some UACs may experience multiple step-ups during a custody period, or may be stepped-up and later stepped-down to a less restrictive program, this report considers only whether a UAC was ever stepped up during a custody period.

### III. Methodology

I describe in detail below the four key steps that I undertook to generate a cleaned, reliable dataset for analysis. These steps were necessary to address the data entry errors and other unexplained aberrations present in the ORR Data.

### A. Data cleaning relating to A-Numbers

There are a number of issues relating to A-Numbers in the ORR Data. There are 19 records in the ORR Data that are associated with "fake" A-Numbers. I identified these records by checking for A-Numbers that are outside the normal range of values and then manually inspecting the UACs' names associated with those A-Numbers. For example, UACs named "TEST TEST," "FAKE FAKE," and "FAKIMUS KIDIUMUS" were removed from the ORR Data.

I next sought to identify when an A-Number is associated with more than one UAC. An A-Number may be associated with more than one UAC due to either (1) data entry errors, or (2) an A-Number being "reused" for an entirely different child. If there were records associated with a given A-Number that varied across four of the five personal characteristics (first name, last name, date of birth, country of birth, and gender), I manually inspected these records to ensure that the same A-Number was not used to identify two different UACs. I ensured that each of the 6 UACs whom I determined had non-unique A-Numbers in the ORR Data were assigned unique A-Numbers.

I also sought to identify UACs who are associated with more than one A-Number. A UAC may be associated with more than one A-Number due to either (1) data entry errors, or (2) a UAC being assigned a different A-Number upon re-admission after a discharge. I manually inspected records relating to 104 combinations of first name, last name, date of birth, country of birth, and gender that were associated with more than one A-Number. Combining these records was sometimes necessary to create a complete account of a UAC's time in ORR custody. For example, a referral record may have a different A-Number than the discharge record for the same UAC. If these A-Numbers are not linked to each other, the UAC represented by the A-Number in the referral record would be considered to still be in custody. I ensured that each of the 64 UACs whom I determined had two different A-Numbers in the ORR Data and whose records would be incomplete without being linked were assigned a single unique A-Number.

I linked A-Numbers only when it was necessary to avoid a falsely open-ended custody period (i.e., when a UAC appears to still be in custody but has actually been discharged, as indicated in the monthly discharges spreadsheet). In other cases, it is likely that the government used two different A-Numbers to identify the same UAC in different custody periods. I did not link these A-Numbers in those cases, since my goal was to clean the ORR Data only as necessary to

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<sup>&</sup>lt;sup>10</sup> This definition of step-up was provided by Plaintiffs' counsel.

### D. Data cleaning relating to discharge types

In July 2018, several data columns were mis-labeled by ORR. The column labeled as discharge type in July 2018's discharges spreadsheet actually contained the program type, and the discharge type was not provided elsewhere. For this month only, I assumed that the presence of sponsor data (first name, last name, and state) indicates that the UAC was reunified with an individual sponsor. This is a reasonable assumption given that in the other monthly data that do not contain this data error (i.e., omission of discharge type), 95.9% of final discharges that contain sponsor information are designated as individual reunifications.

### E. Outcome of data cleaning measures

The ORR Data described in Section II.A. represents all UACs who were initially admitted to ORR, regardless of whether they were placed in-network or out-of-network, on or after November 1, 2017 and discharged on or before February 29, 2020. Incorporating the data cleaning measures described in Sections III.A-D, and excluding 2 UACs who were recorded as being transferred from one ORR facility to another but were missing all subsequent records, generates a clean dataset for my analysis ("Clean Dataset"). This Clean Dataset is composed of 123,743 custody periods relating to 123,573 unique A-Numbers.

# **IV.** Summary of Findings

Question 1. How long is a UAC typically detained by ORR before the first step-up occurs? I found that the average length of time to the first step-up was 67.3 days. <sup>12</sup> I also found that increasing lengths of custody are associated with higher percentage of custody periods with step-ups.

Question 2. How is step-up associated with detention length before reunification? The average time to reunification was higher for custody periods with step-ups (i.e., average of 183.8 days) than custody periods without step-ups (i.e., average of 52.6 days).

Question 3. How is placement type associated with detention length before reunification? I found that among the custody periods without step-ups, the average time to reunification was higher for custody periods that included a stint at a therapeutic group home (i.e. average of 184.6 days) compared to custody periods that took place only in shelters (i.e. average of 52.9 days). I also found that among custody periods that included step-ups, the average times to reunification increased in this order: staff secure (i.e., average of 176.5 days); secure (i.e. average of 185.9 days); residential treatment center (i.e., average of 236.3 days); therapeutic staff secure (i.e., average of 246.3 days); and out-of-network facilities (i.e., average of 327.2 days).

Question 4. How does the prevalence of reunification vary by length of detention among UACs who reunified, and how does the prevalence of voluntary departure vary by length of detention among UACs who elected voluntary departure? Among the custody periods resulting in reunification, I found that increasing detention length is generally associated with a lower

 $<sup>^{12}</sup>$  All references to "average" in this report refer to mean values. Wherever relevant, I also provided median values in the appendix section.

percentage of reunifications (i.e., only 28.53% of these custody periods resulted in reunification on or after 61 days, whereas 71.47% of these custody periods resulted in reunification on or before 60 days). In contrast, among custody periods resulting in voluntary departure, increasing detention length is generally associated with a higher percentage of voluntary-departure discharges (i.e., 94.68% of these custody periods resulted in voluntary departure on or after 61 days, whereas only 5.32% of these custody periods resulted in voluntary departure on or before 60 days).

Question 5. How is placement type associated with whether or not UACs will reunify or elect voluntary departure? I found that the reunification rate is higher for custody periods that took place only in shelters (92.97%) compared to custody periods that included a stint at a residential treatment center (71.58%), therapeutic group home (53.33%), staff secure (47.76%), therapeutic staff secure (43.48%), secure (41.74%), and out-of-network facility (25.00%). In contrast, the percentage of voluntary departures is higher for custody periods that included a stint at out-of-network facility (31.25%), therapeutic group home (26.67%), therapeutic staff secure (21.74%), staff secure (10.30%), secure (6.96%), and a residential treatment center (5.26%), compared to custody periods that took place only in shelters (1.10%).

# V. Analysis<sup>13</sup>

# A. Question 1. How long is a UAC typically detained by ORR before the first step-up occurs?

For Question 1, I was asked to restrict the Clean Dataset to include only those custody periods that have an initial placement at a shelter. <sup>14</sup> I did not restrict this analysis to any particular type of discharge. This restricted sample is composed of 109,803 custody periods relating to 109,708 unique A-Numbers.

Of the 578 custody periods (pertaining to 575 unique A-Numbers) that included step-ups, the average length of time to the first step-up was 67.3 days, and the maximum time to the first step-up was 318 days.

<sup>&</sup>lt;sup>13</sup> Because the questions presented ask that I restrict the Clean Dataset in various ways to provide the average lengths of time to reunification or discharge, I would like to note that for the Clean Dataset, the average time to discharge regardless of discharge type was 56.4 days, and the maximum time to discharge regardless of discharge type was 834 days.

<sup>&</sup>lt;sup>14</sup> This analysis, therefore, does not include instances where a UAC was initially placed in a more restrictive facility upon referral to ORR.

Figure 2 below shows the percentage of custody periods that included step-ups within each range of custody lengths. <sup>15</sup>

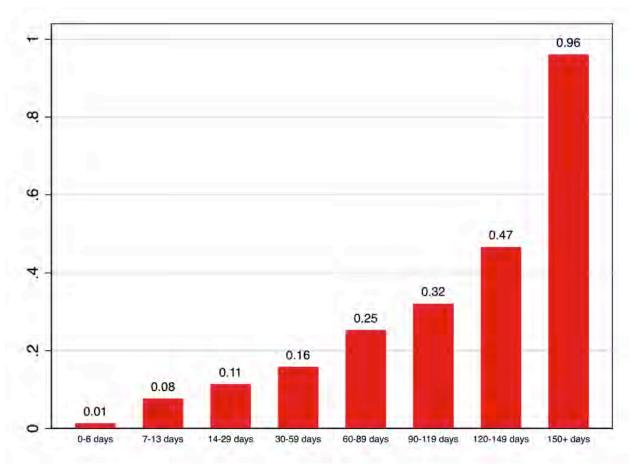


Figure 2. Percentages of custody periods that included a step-up, by length of custody.

 $<sup>^{15}</sup>$  The range of custody lengths used in Figure 2 (e.g., 0-6 days, 7-13 days, 14-29 days, 30-59 days, etc.) was provided by Plaintiffs' counsel.

Table 1 below provides more detailed information on the custody periods that included step-ups. The first row of Table 1 shows that 15 of the 109,803 custody periods that lasted at least 0-6 days included step-ups between day 0 and day 6 (inclusive). The last row of the table shows that 59 of the 6,140 custody periods that lasted at least 150+ days included step-ups on or after day 150. 16

Length of custody	# of custody periods	# of step-ups	% of custody periods including a step-up
0-6 days	109,803	15	0.01%
7-13 days	108,766	84	0.08%
14-29 days	101,500	116	0.11%
30-59 days	71,252	113	0.16%
60-89 days	34,338	87	0.25%
90-119 days	17,759	57	0.32%
120-149 days	10,076	47	0.47%
150+ days	6,140	59	0.96%

Table 1. Percentages of custody periods that included a step-up, by length of custody.

In summary, based on the data I have reviewed, increasing lengths of custody are associated with higher percentage of custody periods with step-ups.

# **B.** Question 2. How is step-up associated with detention length before reunification?

For Question 2, I was asked to restrict the Clean Dataset to include only those custody periods that have a final discharge type of individual-sponsor reunification (as opposed to voluntary departures, removal orders, age outs, runaways, reunifications with program/facility, or other discharge types included in the Clean Dataset), regardless of whether there was a step-up. This restricted sample is composed of 114,589 custody periods relating to 114,544 unique A-Numbers.

I was also asked to compare the average times to reunification for custody periods that ended in reunification and did not include step-ups with custody periods that ended in reunification and did include step-ups.

 $<sup>^{16}</sup>$  The last range of custody, 150+ days, includes the maximum custody length in this analytic sample, which is 813 days. This custody period ended in an individual-sponsor reunification.

Table 2 below shows the average length of detention before reunification by custody periods with and without step-ups. Further analysis of the time to reunification for custody periods with and without step-ups can be found in Appendix D.

Less Restrictive (No Step-Ups) versus More Restrictive (Step-Ups)	Average (days)
No Step-ups	52.6
Step-ups	183.8

Table 2. Average days to reunification, with and without step-ups.

In summary, the average time to reunification is higher for custody periods with step-ups (i.e., average of 183.8 days) than custody periods without step-ups (i.e., average of 52.6 days).

# C. Question 3. How is placement type associated with detention length before reunification?

For Question 3, I was asked to apply the same restrictions to the Clean Data set as Question 2, and therefore the restricted sample remained the same: 114,589 custody periods relating to 114,544 unique A-Numbers.

I was also asked to compare the average times to reunification for custody periods without stepups that included only shelter placements, custody periods without step-ups that included a stint at a therapeutic group home, and custody periods with step-ups that included stints at each of the more restrictive facility types.<sup>17</sup>

<sup>&</sup>lt;sup>17</sup> The placement types that include step-ups are not mutually exclusive. For example, a custody period with a stint at a secure facility can also have a stint at a residential treatment center.

Table 3 below shows the average days to reunification for each placement type. Further analysis of the time to reunification by placement type is provided in Appendix E.

Placement type	Average (days)
Only shelter placements, no step-ups	52.9
Stint at a staff secure facility	176.5
Stint at a therapeutic group home, no step-ups	184.6
Stint at a secure facility	185.9
Stint at a residential treatment center	236.3
Stint at a therapeutic staff secure facility	246.3
Stint at an out-of-network facility	327.2

Table 3. Days to reunification by placement type.

In summary, among the placement types without step-ups, the average times to reunification are higher for custody periods that include a stint at a therapeutic group home (i.e., average of 184.6 days) compared to custody periods that took place only in shelters (i.e., average of 52.9 days). Among custody periods that included step-ups, the average times to reunification increase in this order: staff secure (i.e., average of 176.5 days); secure (i.e., average of 185.9 days); residential treatment center (i.e., average of 236.3 days); therapeutic staff secure (i.e., average of 246.3 days); and out-of-network facilities (i.e., average of 327.2 days).

D. Question 4. How does the prevalence of reunification vary by length of detention among UACs who reunified, and how does the prevalence of voluntary departure vary by length of detention among UACs who elected voluntary departure?

For Question 4, since discharge type data was not provided by the government for July 2018, I excluded 4,334 custody periods that ended in a July 2018 discharge. Therefore, the restricted sample for this question is composed of 119,409 custody periods relating to 119,255 unique A-Numbers.

Table 5 below shows the percentage of custody periods for each placement type that ended in these varying discharge types.

Discharge Type	Only shelter placements, no step-ups	Stint at a therapeutic group home, no step-ups	Stint at a staff secure facility	Stint at a secure facility	Stint at a residential treatment center	Stint at a therapeutic staff secure facility	Stint at an out-of- network facility
Reunified	92.97%	53.33%	47.76%	41.74%	71.58%	43.48%	25.00%
Voluntary Departure	1.10%	26.67%	10.30%	6.96%	5.26%	21.74%	31.25%
Removal Order	0.03%	0.00%	5.67%	6.52%	0.00%	0.00%	0.00%
Age Out / Redetermination	4.57%	13.33%	22.54%	32.61%	8.42%	8.70%	12.50%
Reunified (Program / Facility)	0.82%	0.00%	3.43%	3.48%	10.53%	17.39%	12.50%
Other	0.52%	6.67%	10.30%	8.70%	4.21%	8.70%	18.75%
# of custody periods	104,846	15	670	230	95	23	16

Table 5. Discharge type by placement type.

In summary, among the placement types without step-ups, the percentage of reunifications are higher for custody periods that took place only in shelters (92.97%) compared to custody periods that include a stint at a therapeutic group home (53.33%). In addition, the percentage of reunification was higher for custody periods that took place only in shelters (92.97%) compared to custody periods that included a stint at a residential treatment center (71.58%), therapeutic group home (53.33%), staff secure (47.76%), therapeutic staff secure (43.48%), secure (41.74%), and out-of-network facility (25.00%).

In contrast, the percentage of voluntary departures by placement type not involving a step-up shows a higher percentage of voluntary departures for custody periods that included a stint at a therapeutic group home (26.67%) compared to custody periods that took place only in shelters (1.10%). In addition, the percentage of voluntary departures was higher for custody periods that included a stint at out-of-network facility (31.25%), therapeutic group home (26.67%), therapeutic staff secure (21.74%), staff secure (10.30%), secure (6.96%), and a residential treatment center (5.26%), compared to the small percentage of voluntary departures for custody periods that took place only in shelters (1.10%).

June 16, 2020

mily Ryo
Emily Ryo, JD., PhD.

# Appendix D. Time to reunification for custody periods with and without step ups

#### Custody periods that ended in reunification and did not include step-ups

Of the 114,133 custody periods that ended in reunification and did not include step-ups, the average time to reunification was 52.6 days, the median time to reunification was 39 days, and the maximum time to reunification was 813 days.<sup>24</sup>

#### Custody periods that ended in reunification and included step-ups

Of the 456 custody periods that ended in reunification and included step-ups, the average time to reunification was 183.8 days, the median time to reunification was 163.5 days, and the maximum time to reunification was 611 days.

Like Table 2, Figure 3 shows the average length of detention before reunification by custody periods with and without step-ups.

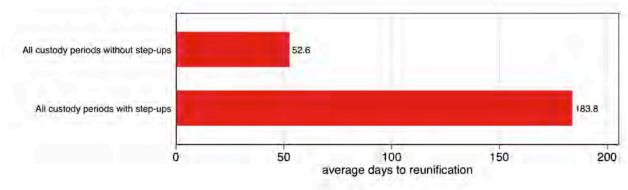


Figure 3. Average days to reunification, with and without step-ups.

<sup>&</sup>lt;sup>24</sup> The child with the maximum custody period prior to reunification spent time at a long-term foster care placement.

## **Appendix E. Time to reunification by placement type**

Custody periods that ended in reunification, did not include step-ups, and included only shelter placements

Of the 101,163 custody periods that ended in reunification, did not include step-ups, and included only shelter placements, the average time to reunification was 52.9 days, the median time to reunification was 40 days, and the maximum time to reunification was 738 days.

Custody periods that ended in reunification, did not include step-ups, and included a stint at a therapeutic group home

Of the 8 custody periods that ended in reunification, did not include step-ups, and included a stint at a therapeutic group home, the average time to reunification was 184.6 days, the median time to reunification was 168.5 days, and the maximum time to reunification was 353 days.

Custody periods that ended in reunification, included step-ups, and included a stint at a staff secure facility

Of the 354 custody periods that ended in reunification, included step-ups, and included a stint at a staff secure facility, the average time to reunification was 176.5 days, the median time to reunification was 157 days, and the maximum time to reunification was 611 days.

Custody periods that ended in reunification, included step-ups, and included a stint at a secure facility

Of the 106 custody periods that ended in reunification, included step-ups, and included a stint at a secure facility, the average time to reunification was 185.9 days, the median time to reunification was 173.5 days, and the maximum time to reunification was 498 days.

Custody periods that ended in reunification, included step-ups, and included a stint at a residential treatment center

Of the 73 custody periods that ended in reunification, included step-ups, and included a stint at a residential treatment center, the average time to reunification was 236.3 days, the median time to reunification was 211 days, and the maximum time to reunification was 551 days.

Custody periods that ended in reunification, included step-ups, and included a stint at a therapeutic staff secure facility

Of the 12 custody periods that ended in reunification, included step-ups, and included a stint at a therapeutic staff secure facility, the average time to reunification was 246.3 days, the median time to reunification was 256.5 days, and the maximum time to reunification was 451 days.

Custody periods that ended in reunification, included step-ups, and included a stint at an outof-network facility

Of the 4 custody periods that ended in reunification, included step-ups, and included a stint at an out-of-network facility, the average time to reunification was 327.2 days, the median time to reunification was 378 days, and the maximum time to reunification was 422 days.

Figure 4 below illustrates the average days to reunification for each placement type using the data described above and in Table 3.



Figure 4. Average days to reunification, by placement type.