

August 19, 2024

Submitted via email to infocollection@acf.hhs.gov.

Ms. Mary C. Jones
ACF/OPRE Certifying Officer
Office of Planning, Research, and Evaluation
U.S. Department of Health & Human Services
330 C Street SW 4th Floor
Washington, DC 20201

Re: Proposed Information Collection Activity; Legal and Advocacy Services for Unaccompanied Children (Office of Management and Budget #0970-0565)

Dear Ms. Jones,

The Young Center for Immigrant Children's Rights (Young Center) writes in response to the above-referenced proposed information collection activity entitled "Legal and Advocacy Services for Unaccompanied Children (OMB #0970-0565)," published on June 18, 2024, by the Office of Refugee Resettlement (ORR), U.S. Department of Health and Human Services (HHS).¹ This comment focuses on recommendations regarding the proposed Child Advocate Referral Form (L-12A) (hereafter "Proposed Child Advocate Referral Form").

The Young Center serves as the federally-appointed independent Child Advocate, akin to a best interests guardian *ad litem*, for trafficking victims and other vulnerable unaccompanied children in government custody, as authorized by the Trafficking Victims Protection Reauthorization Act (TVPRA).² The Young Center is the only organization authorized by ORR to serve in that capacity. Since 2004, ORR has appointed Young Center Child Advocates for thousands of unaccompanied children in ORR custody.

We recommend a number of changes to the proposed form to further improve its utility and function. Child Advocates are continually reviewing and prioritizing referrals so as to request appointment to those children with the greatest need for the support and best interests advocacy of a Child Advocate. The recommended changes, which are informed by the experience of our Child Advocate Program staff, would allow referrers to provide critical context and information that will support the appointment process.

I. The Role of the Child Advocate and the Child Advocate Referral Form

As authorized by the TVPRA, Child Advocates are independent third parties who are appointed by ORR to children in ORR custody to advocate for each child's best interests.³ The Child

¹ Proposed Information Collection Activity; Legal and Advocacy Services for Unaccompanied Children, 89 Fed. Reg. 51528 (June 18, 2024).

² 8 U.S.C. § 1232(c)(6)(A).

³ See 8 U.S.C. § 1232(c)(6); 45 C.F.R. § 410.1308(b).

Advocate's responsibilities include providing independent recommendations, known as best interests determinations (BIDs), regarding a child's "care, placement, services, release, and within [legal] proceedings to which the child is a party."⁴ A Child Advocate determines a child's best interests by considering the child's wishes, safety and well-being, family integrity, liberty (the child's right to be free from detention), development, health, and identity (for example, gender, sexuality, religion, and language).⁵

ORR appoints Child Advocates for "child trafficking victims and other vulnerable unaccompanied [immigrant] children."⁶ The process for ORR appointment of a Child Advocate for a child begins with a referral made to the Young Center. Individuals or organizations involved in the care, services, or immigration proceedings of unaccompanied children—such as ORR staff, care provider staff, legal service providers, immigration judges, and other service providers—may refer an unaccompanied child for a Child Advocate through submission of a referral form.⁷ Generally, ORR is required to make an appointment decision within 5 business days of a referral.⁸

The Child Advocate Referral Form serves a critical function in the referral and appointment process. The Young Center receives a high volume of referrals for Child Advocates each year. While the Young Center strives to be appointed to as many children as possible, there continues to be an unmet need for child advocate services. To ensure we identify and seek appointment to the most vulnerable children, the Young Center must obtain as much information as possible regarding the child's vulnerabilities and the urgency of the need for a Child Advocate. As a result, the information provided in referrals—biographic information for the child and the reason(s) why the child is being referred—is carefully reviewed to determine which children to whom we will request appointment. The more information provided in the referral, the more helpful it is in making these difficult decisions.

Furthermore, once ORR has appointed a Child Advocate for a child, Young Center staff then use the information provided in the referral to develop the best approach to meeting with the child and determining the child's best interests according to the child's needs and circumstances. Information about the child and their specific vulnerabilities, e.g., whether the child is pregnant, has a disability, or speaks a language other than Spanish or English, assists our Child Advocate Program staff in beginning to assess a child's potential needs and how those needs can be met.

While we appreciate ORR's changes to the Child Advocate Referral Form, we recommend additional improvements to further increase the utility and accuracy of the information collected by the form. These additional improvements will ensure that Child Advocates have critical

⁴ See 45 C.F.R. § 410.1308(c)(3)-(4). See also Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Children, *Framework for Considering the Best Interests of Unaccompanied Children*, GEORGETOWN LAW, 5 (May 2016), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/Best-Interests-Framework.pdf>.

⁵ *Id.* at 5.

⁶ 8 U.S.C. § 1232(c)(6). See also David L. Neal, *The Role of Child Advocates in Immigration Court*, DEP'T OF JUSTICE, 1 (Jul. 5, 2023), <https://www.justice.gov/eoir/book/file/1589691/dl>.

⁷ 45 C.F.R. § 410.1308(d)(1).

⁸ 45 C.F.R. § 410.1308(d)(2).

information about children during the referral and appointment process and thereby help to identify those children who most urgently need child advocate services.

II. Section B of the Proposed Form Should Collect Additional Biographical and Background Information regarding the Child

Children's biographical and background information in referrals can help identify additional needs and vulnerabilities of the child. While a referrer indicates the specific reason(s) for referring the child in a separate section (Section C) of the form, information about a child's background and identity can provide critical context about the reason for referral, as well as indicate other needs and vulnerabilities of the child that would benefit from child advocate services. Given the utility of background and biographical information in the referral, we urge ORR to consider expanding the information collected in Section B of the proposed form.

- **Recommendation #1: Add Fields to Section B to Elicit Sponsor-Related Information**

Children in custody may experience a number of sponsor-related issues in the reunification process that prolong their time in custody. There may be delays in identifying or communicating with a potential sponsor. A home study may be required that demands additional time and effort by the sponsor. Potential sponsors may drop out of the sponsorship process altogether, or their sponsorship application may be denied. All of these issues can prolong a child's time in custody.

Children wait in ORR custody in anticipation of release to a family member or other sponsor, with hopes that the process will be quick and that their time in custody will be short. When children learn that the sponsorship process has been delayed or that a sponsor has been denied, they can experience discouragement, frustration, anger, anxiety, and even despair and hopelessness. They must also watch their friends and other children be released and reunify with family and loved ones before them, compounding the negative mental health effects of waiting in custody to be released. For children with only one potential sponsor, denial of the sponsor's application can be devastating, as they face a prolonged, indefinite period in custody.

Children facing sponsor-related issues or complications in their reunification processes can benefit greatly from the accompaniment and advocacy of a Child Advocate. Child Advocates can work with children and their potential sponsors to advocate for the child's best interests during the sponsorship process. Child Advocates can advocate with ORR to ensure that children are receiving the support and services they need while the child navigates challenges with the sponsorship process. Children with prolonged stays and multiple unsuccessful sponsorships may have mental health needs that are misunderstood or unaddressed by care provider staff. Child Advocates meet with children regularly and learn information that can help care provider staff and mental health providers develop appropriate support plans for the child.

Additionally, Child Advocates conduct an independent information-gathering process that provides insight into the child's wishes, the child's relationship with the sponsor, the sponsor's willingness, and ability to care for the child, and the child's and sponsor's plans after release from ORR custody. To ensure decisions regarding children are child-centered, trauma-informed, and

culturally sensitive, Child Advocates provide additional or clarifying information to the decisionmaker before a decision is made. Child Advocates also collaborate with stakeholders to identify alternative placement options (e.g., long-term foster care or the Unaccompanied Refugee Minors program (URM)) if the child wants to pursue those options and reunification is unlikely.

Given the impact of sponsorship issues on children's health and wellbeing, we recommend that ORR add queries to Section B to elicit children's sponsor-related information to better identify children who are adversely impacted by sponsorship issues. Specifically, the form should ask whether the child has a sponsor and if the child has a sponsor, what category ORR has assigned to the sponsor. The form should also inquire how many potential sponsors the child has had. This information is critical to understanding where a child is in the sponsorship process and identifying children facing sponsorship issues that would benefit from child advocate services.

Children's sponsor category information is critical in identifying children likely to face longer periods in custody. Children with "Category 3" sponsors, which refers to potential sponsors who are distant relatives or unrelated individuals, and children with no identified sponsors—referred to as "Category 4" cases—have less likelihood of being released to a sponsor and therefore typically experience prolonged periods in ORR custody. These children are more vulnerable to detention fatigue, with symptoms of increased stress, anxiety, behavioral issues, and self-harm or suicidal ideation.⁹

Child Advocates can support and advocate for these children's best interests in many ways. Children facing prolonged custody are often eligible for various forms of immigration relief, and Child Advocates can support children in accessing that relief by helping them to find attorneys and submitting BIDs to support their applications for relief. Child Advocates may also engage in best interests advocacy on behalf of Category 3 and Category 4 children who require a transfer to a less restrictive placement, such as long-term foster care, or release to URM. Although the proposed form includes "Child is undergoing complex reunification process that may increase the child's length of stay" as an option under "Reason for Referral" in Section C, Category 3 and Category 4 children may be referred for a different reason, and regardless, additional sponsor-related information is helpful in identifying children who would most benefit from child advocate services related to sponsor complications.

Sponsor-related information is also helpful in screening out cases that may have a less urgent need for child advocate services due to a high likelihood of reunification. In a number of cases, the Young Center has been appointed as Child Advocate to a child's case, only to find out that the child is in the process of imminently reunifying or has already been released to a sponsor. In these instances, Child Advocates put time and effort into preparing for an appointment for a child whose need for child advocate services was less urgent due to the child's impending release from custody. Obtaining sponsor information in the referral form would help to avoid these situations and ensure that Child Advocates seek appointment for children in higher need for their services.

⁹ Joanne M. Chiedi (Acting Inspector General), *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, U.S. DEP'T OF HEALTH AND HUM. SERVS. OFF. OF INSPECTOR GEN., 12 (Sept. 2019), <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>.

Recommendation 1: Sponsor-Related Information

We recommend adding the following sponsor-related queries to Section B:

- “Does the child have a sponsor?”
- “If yes, what category has ORR assigned to this sponsor (Category 1, 2, 3, or 4)?”
- “How many sponsors has the child had?”

• **Recommendation #2: Add fields to Section B for Information on a Child’s Entry into the United States**

We recommend that ORR add two fields to Section B of the proposed form for the referrer to provide the date the child was apprehended by the Department of Homeland Security (DHS) and the name of the Port of Entry (POE) through which the child entered the country. This information is helpful in identifying children who experienced prolonged detention in DHS custody. Except for exceptional circumstances, DHS is required by law to transfer unaccompanied children to ORR custody within 72 hours.¹⁰ Knowing the date of a child’s apprehension by DHS can help to identify children who were held in DHS detention for longer than 72 hours prior to transfer to ORR custody. Inhumane conditions in CBP and ICE detention facilities are well-documented¹¹, and these facilities are insufficiently equipped to meet the needs of children, particularly for any period of more than 1 or 2 days.¹² Given the likely harm of prolonged detention in DHS custody to a child, it is critical that children who have experienced such prolonged stays are identified during the referral process.

The child’s date of entry and port of entry information can also be very helpful for Child Advocates as they prepare for appointment and engage in advocacy for the child. For instance, this information is critical in cases of children who were transferred to ORR custody without their personal property. Child Advocates work with these children and their care providers to have children’s personal property returned to them from DHS. These items have included birth certificates, passports, and photographs. These documents may be critical in the reunification process or in a child’s immigration case. Knowing the POE through which the child entered will assist Child Advocates in locating a child’s personal property held by DHS.

A child’s entry information is also helpful for Child Advocates if the reason for referral is related to an incident of abuse or neglect in DHS custody or if the child discloses to the Child Advocate that they experienced such abuse or witnessed or experienced other violence or another crime near or at the border. Information regarding the child’s entry provides helpful context as the Child

¹⁰ 8 C.F.R. § 236.3(f)(3).

¹¹ Human Rights Watch, “*They Treat You Like You Are Worthless*”: Internal DHS Reports of Abuses by US Border Officials, HUMAN RIGHTS WATCH (Oct. 21, 2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>.

¹² ACLU, *ACLU Obtains Documents Showing Widespread Abuse of Child Immigrants in U.S. Custody*, ACLU (May 22, 2018, 5:45 pm), <https://www.aclu.org/press-releases/aclu-obtains-documents-showing-widespread-abuse-child-immigrants-us-custody>.

Advocate determines how to best support and advocate for the child. This information can also provide crucial context for children who were separated from a family member at the border, giving a sense of the date and location of the separation and where the family member might be located or detained; this information could be critical in facilitating reunification of the child with their family. Collecting this information in the referral helps to ensure that Child Advocates have this information immediately upon referral so that they can best assess the child's needs and prepare for advocacy upon appointment.

Recommendation 2: Entry Information

We recommend adding the fields to Section B for: **"U.S. Port of Entry where child entered" and "Date of apprehension by DHS"**

- **Recommendation #3: Add a Dropdown Menu to "Gender" Field and Add a Field regarding Whether the Child Identifies as LGBTQI+ to Section B**

We recommend adding a drop-down menu to the "Gender" field to ensure that referrers are providing accurate information on the child's gender identity, as well as adding a field for the referrer to indicate whether the child identifies as LGBTQI+. These two queries will help identify LGBTQI+ youth and youth who identify as non-binary. In our experience, LGBTQI+ youth in ORR custody are more likely to face misunderstandings and rejection, as well as discrimination, bullying, and harassment, due to being LGBTQI+. Transgender and non-binary youth may confront attitudes and environments in ORR facilities that are not gender-affirming. These challenges can "lead to higher risks of mental and physical health issues."¹³ In these cases, Child Advocates can work with these youth to advocate with ORR and care providers to ensure that they are not mistreated while in custody and instead receive care that is affirming and supportive of their identities, as required by ORR policy.¹⁴ ORR also requires its care providers to "enroll ORR-eligible individuals into ORR-funded projects using their preferred gender and provide non-binary individuals alternatives from strict male/female designation, as possible."¹⁵ Child Advocates can work with transgender and non-binary youth to ensure that they are being placed in settings that are affirming of their identities.

For these reasons, we recommend that a dropdown menu be added to the "Gender" field under Section B with the following options to be selected by a referrer:

- Cisgender male: A person who was assigned male at birth and whose gender identity is male.

¹³ Children's Bureau Center for State's Capacity Building Collaborative, *Considerations for LGBTQ children and youth in foster care: Exploring normalcy as it relates to P.L. 113-183*, STATE'S CAPACITY BUILDING COLLABORATIVE 1, 3 (2016), <https://capacity.childwelfare.gov/states/resources/lgbtq-children-youth-foster-care>.

¹⁴ ADMIN. FOR CHILDREN AND FAMILIES, POLICY LETTER 22-14, SERVING LGBTQI+ ORR-ELIGIBLE POPULATIONS (July 28, 2022), <https://www.acf.hhs.gov/sites/default/files/documents/orr/PL-22-14-Serving-LGBTQI-ORR-Eligible-Populations.pdf>.

¹⁵ *Id.* at 2.

- Cisgender female: A person who was assigned female at birth and whose gender identity is female.
- Trans male: A person who was assigned female at birth but whose gender identity is male.
- Trans female: A person who was assigned male at birth but whose gender identity is female.
- Non-binary person: A person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do.
- Gender-nonconforming person: A person who behaves in a way that does not conform to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category.¹⁶

We also recommend that the query “Child identifies as LGBTQI+?” be added to Section B of the proposed form, with written guidance on the form that the referrer should not ask the child if they identify as LGBTQI+ and should only provide this information if the child voluntarily shares their LGBTQI+ identity.

Recommendation 3: Inclusive Gender and LGBTQI+ Identity Information

We recommend adding a drop-down menu to the “Gender” query in Section B and adding a field for “Child identifies as LGBTQI+?” to Section B.

• **Recommendation #4: Add a field to Section B to Provide Nicknames/Preferred Names for the Child**

We recommend adding the field “AKA (any nicknames or preferred names)” under “Child’s Last Names” in Section B to allow referrers to provide any nickname(s) or preferred name(s) other than the child’s legal name. A part of a Child Advocate’s role is to build trust and rapport with a child; this trust and rapport is critical to gathering the information needed to reach a best interest determination. By knowing in advance a child’s preferred name, a Child Advocate can address the child by their preferred name, show that they honor how the child wishes to be addressed and the child’s identity, and thereby build trust and rapport with the child.

In our experience, many children in ORR custody use a different name than their legal name to refer to themselves. They may use nicknames given to them by relatives or friends, and the child may have an emotional tie to the nickname. Some children may prefer to be addressed by a shortened version of their name. For example, “Beto” is a common nickname for Alberto, Humberto, or Roberto. An “AKA” field in Section B could also be used by the referrer to note that a child prefers to be called by their last name or middle name instead of their first name.

¹⁶ Cleveland Clinic, *Understanding Gender Identity*, CLEVELAND CLINIC (Mar. 30, 2022), <https://health.clevelandclinic.org/what-is-gender-identity>.

An “AKA” field is also helpful in cases where the child uses a name entirely different from their legal name. For instance, transgender, non-binary, and gender-nonconforming children may view their legal name as a “dead name” and in many instances, use a new name that reflects their gender identity. If a child voluntarily shares their preferred name, “deadnaming”¹⁷ the child can be harmful to the child, causing gender dysphoria, depression, and anxiety.¹⁸

Recommendation 4: Nicknames and/or Preferred Names

We recommend adding a field to Section B for: **“AKA (any nicknames or preferred names)”**.

- **Recommendation #5: Add a field in Section B to capture the child’s date of entry into ORR custody**

In the past, the “Admission Date” field under Section B has led to confusion as to what information the field seeks. Some referrers have interpreted it to mean the date that the child enters the specific ORR facility in which they are being held, while others have interpreted it to mean the date that the child entered ORR custody. We recommend revising the proposed language to “Provider Admission Date” to minimize confusion and ensure that the referrer enters the date of when the child entered their current placement. Information regarding the child’s length of stay in their current placement is helpful during the referral process, as a child with a prolonged stay with their current care provider may be facing complexities related to reunification or placement.

While Section B includes a field for “Child’s Length of Care in ORR custody,” we recommend that the form also include a field for the “Date of Entry into ORR Custody.” As explained above, children with protracted stays in ORR custody frequently face challenges that benefit from child advocate services. It is critical that the referral process identifies children experiencing protracted stays so that they may be prioritized for appointment of a Child Advocate.

Recommendation 5: Date of Entry into ORR Custody

We recommend adding and amending two fields to Section B: Add **“Date of Entry into ORR Custody”** next to **“Child’s Length of Care in ORR Custody”** and Replace **“Admission Date”** with **“Provider Admission Date.”**

¹⁷ The term “deadnaming” refers to addressing a person by a name typically given at birth, associated with a gender with which the person does not identify. See generally Uplift Center for Grieving Children, *Gender 101: How to Avoid Misgendering and Deadnaming*, UPLIFT PHILLY, <https://upliftphilly.org/wp-content/uploads/2020/11/Gender-101-Avoiding-Misgendering-and-Deadnaming.pdf> (last visited Aug. 16, 2024).

¹⁸ Cleveland Clinic, *Why Deadnaming Is Harmful*, CLEVELAND CLINIC (Nov. 18, 2021), <https://health.clevelandclinic.org/deadnaming>.

III. Section C of the Proposed Form Should be Amended to Include Other Common Reasons for Referral, Particularly the Circumstances Under Which ORR Requires Providers to Make Referrals for Child Advocates

The information provided by a referrer regarding the “Reason for Referral” under Section C of the proposed form is crucial to determining how to prioritize children for appointment of a Child Advocate. We appreciate that ORR has proposed changes to the form that expands the list of referral reasons. However, we recommend that ORR add other common reasons for referrals to the list. Adopting these changes will help to identify children’s specific vulnerabilities and needs and better ensure that children who would most benefit from child advocate services are being prioritized for appointment.

- **Recommendation #6: Add “Child is reported to be involved with law enforcement on site” under “Reason for Referral” in Section C**

The ORR Policy Guide requires care providers to refer a child for a Child Advocate when the child is involved in “incidents involving law enforcement on-site.”¹⁹ Given that it is mandatory for providers to make a referral for this reason, this reason should be specifically enumerated in Section C of the proposed form. It is critical that children who are arrested or are otherwise involved with law enforcement while in ORR custody are identified during the referral process. In our experience working with numerous children over the years who have been arrested while in ORR custody, these youth are especially vulnerable and at risk of harm. Youth who are arrested while in custody may be incarcerated in a state jail or prison. They may spend prolonged periods in CBP or ICE detention because their transfer back to ORR custody is delayed while ORR finds a restrictive placement. In these cases, Child Advocates have advocated for less restrictive placements by providing additional information and context about what a child needs and what factors led to their arrest.

Child Advocates have also seen cases of children who age-out of ORR custody while in state criminal custody, and when they are released from criminal custody, the youth is left on the street, homeless, without any support or even a way to contact their family. This in turn places these youth at greater risk of further criminalization, as well as trafficking and exploitation. Child Advocates can work with these youth to connect them with the support, resources, and services they need to be safe and healthy.

Children who have been arrested are much more likely to be placed in or stepped up to restrictive settings, including secure facilities (which have historically been juvenile detention facilities), that are harmful to their health and wellbeing and are not in their best interests. Child Advocates meet with these children and advocate for placement in less restrictive settings by providing additional information and context to ORR about the child’s needs and the situation leading to their arrest.

¹⁹ OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE, § 5.8.11 NOTIFICATION TO ATTORNEYS, LEGAL REPRESENTATIVES, CHILD ADVOCATES, FAMILIES, AND SPONSORS (revised Aug. 2, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.11>.

Furthermore, youth who are arrested are also more likely to be transferred to ICE detention upon age-out when they turn 18. Child Advocates often provide BIDs to prevent transfer to ICE detention by providing additional context and information that led to the child's arrest. Child Advocates also support and advocate for youth who are facing criminal proceedings. This support is critical to advancing a child's safety, permanency, and stability, as a criminal record can negatively impact a child's immigration case, even if there is no formal conviction.²⁰

Recommendation 6: Add Law Enforcement Involvement as a Referral Reason

We recommend adding the following field to Section C: **"Child is reported to be involved with law enforcement on site."**

- **Recommendation #7: Add "Child is reported to be involved in an allegation of sexual abuse or harassment in ORR care" under "Reason for Referral" in Section C**

Under ORR Policy, care providers are required to refer a child reported to be involved in allegations of sexual abuse or sexual harassment for a Child Advocate within 48 hours of the allegation(s) being made.²¹ Given that it is mandatory for providers to make a referral for this reason, it should be specifically enumerated in Section C of the proposed form. In fact, ORR policy specifically states that care providers are permitted to provide Child Advocates with "basic information about the reason for the referral in the form" in these cases.²²

It is critical that children who experience sexual abuse and harassment while in ORR custody are identified during the referral process. Children who experience abuse are extremely vulnerable and would benefit greatly from the support and advocacy of a Child Advocate. Children who have experienced such abuse will often have trauma and may suffer from other mental health conditions. These children are often involved with criminal investigations related to the abuse, during which they undergo questioning by various agencies about the abuse. This process can be scary and may even risk compounding the trauma of the abuse itself. Through child-centered, trauma-informed approaches, Child Advocates can accompany these children and advocate for their best interests as they navigate challenges associated with the abuse or harassment.

²⁰ Immigrant Legal Resource Center, *Immigration Consequences of Juvenile Delinquency*, IMMIGRANT LEGAL RESOURCE CENTER (January 2018), [juvenile delinquency cheat sheet ilrc jan 2018 update 0.pdf](https://www.ilrc.org/sites/default/files/2018-01/juvenile_delinquency_cheat_sheet_ilrc_jan_2018_update_0.pdf).

²¹ OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE, § 4.10.4 NOTIFICATION AND ACCESS TO ATTORNEYS/LEGAL REPRESENTATIVES, FAMILIES, CHILD ADVOCATES, AND SPONSORS (revised Aug. 8, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-4#4.10.4>.

²² *Id.*

Recommendation 7: Add Involvement in Allegation of Sexual Abuse or Harassment as Referral Reason

We recommend adding the following field to Section C: **“Child is reported to be involved in an allegation of sexual abuse or harassment in ORR care”**

- **Recommendation #8: Add “Child experienced severe abuse and neglect” under “Reason for Referral” in Section C**

The ORR Policy Guide requires care providers to refer a child for a Child Advocate when the child has an emergency SIR for “severe abuse and neglect.”²³ In Section 5.8.1, “severe abuse and neglect” is defined as “[a]buse or neglect in ORR care where there is an immediate and severe threat to the child’s safety and well-being, such as physical assault resulting in serious injury, sexual abuse, or suicide attempt.”²⁴ Given that it is mandatory for providers to make a referral for this reason, this reason should be specifically enumerated in Section C of the form. Clearly, children who are under immediate and severe threat to their safety and well-being are especially vulnerable, would benefit from child advocate services, and should be identified during the referral process.

Recommendation 8: Add Severe Abuse and Neglect as a Referral Reason

We recommend adding the following field to Section C: **“Child experienced severe abuse and neglect”**.

- **Recommendation #9: Add “Child undergoing age determination process” under “Reason for Referral” in Section C**

The TVPRA authorizes ORR to develop and use procedures to “make a prompt determination” of the age of individuals in ORR custody.²⁵ “At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.”²⁶ In practice, however, ORR’s age determination procedures pose a great risk of erroneous age determinations due to unreliable methods of determining age. For example, ORR often relies on dental radiographs to determine that an individual is an adult. Yet,

²³ OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE, § 5.8.11 NOTIFICATION TO ATTORNEYS, LEGAL REPRESENTATIVES, CHILD ADVOCATES, FAMILIES, AND SPONSORS (revised Aug. 2, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.11>.

²⁴ OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE, § 5.8.1 EMERGENCY INCIDENTS (revised Aug. 1, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.1>.

²⁵ 8 U.S. Code § 1232(b)(4).

²⁶ *Id.*

research has shown that dental radiographs are unreliable in determining a person's age, and at best, they can only provide an age range for an individual.²⁷

The risk of harm to a child caused by an erroneous age determination cannot be overstated. Those who are redetermined by ORR to be adults are immediately transferred to ICE adult detention. Once in ICE adult detention, children no longer have access to the protections and services to which they are entitled. Medical experts and human rights advocates have wholly condemned ICE detention of children, noting that their facilities “do not meet the basic standards for the care of children in residential settings.”²⁸

Child Advocates have worked with many children who are at risk of or have been subjected to an age determination process. They have helped gather supporting documentation verifying a child's age. This documentation may include written or photographic evidence, relevant cultural and ethnic context, and statements from the child's family. Gathering such evidence has been successful in a number of cases to establish that a child is under the age of 18. Given the significant risk of harm to a child due to an erroneous age determination and the enormous benefit of child advocate services to a child undergoing an age determination process, it is critical that children undergoing age determinations are identified during the referral process.

Recommendation 9: Add Age Determination as Referral Reason

We recommend adding the following field to Section C: **“Child undergoing age determination process.”**

- **Recommendation #10: Add Sex and Labor Trafficking Risk and Disclosure Under “Reason for Referral” in Section C**

Under the ORR Policy Guide, a care provider must refer a child with a Significant Incident Report (SIR) for a sex or labor trafficking concern or risk for a Child Advocate within 48 hours of the SIR.²⁹ A referral for a Child Advocate is also required when a child discloses past sex or labor

²⁷ See B.S. Manjunatha & Nishit K. Soni, Review Article, *Estimation of age from development and eruption of teeth*, 6 J. OF FORENSIC DENTAL SCI. 73 (2014), <https://pubmed.ncbi.nlm.nih.gov/25125911/>.

²⁸ See Julie M. Linton, Marsha Griffin & Alan J. Shapiro, *Detention of Immigrant Children*, *Pediatrics* (2017) 139 (5): e20170483. <https://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483.short>. See also Ashoka Mukpo, The ‘ICE Kids’, *The Nation* (May 13, 2021), <https://www.thenation.com/article/society/icejuvenile-jail-detention/>; Center for Human Rights, University of Washington, *Immigrant Family Separation in Northwest Juvenile Jails* (Apr. 22, 2020), <https://jsis.washington.edu/humanrights/2020/04/22/cowlitz-norcorimmigrant-family-separation/>.

²⁹ OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE, § 5.8.11 NOTIFICATION TO ATTORNEYS, LEGAL REPRESENTATIVES, CHILD ADVOCATES, FAMILIES, AND SPONSORS (Revised Aug. 2, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.11>.

trafficking.³⁰ Given that it is mandatory for providers to make a referral for these reasons, they should be specifically enumerated in Section C of the form. Specifically, we recommend that the following four options be added under “Reason for Referral”:

- Concern or risk of sex trafficking
- Concern or risk of labor trafficking
- Historical disclosure of sex trafficking
- Historical disclosure of labor trafficking

Since it would be helpful during the referral process to have as much information as possible regarding the concern or risk of sex or labor trafficking, we recommend that those two options include a notation stating “please provide more details below,” in order to prompt the referrer to add more details by utilizing the text field we propose in Recommendation #11 below.

Recommendation 10: Add Sex and Labor Trafficking Risk and History under Referral Reasons

We recommend adding the following fields to Section C:

- **Concern or Risk of Sex Trafficking (please provide more details below)**
- **Concern or Risk of Labor Trafficking (please provide more details below)**
- **Historical Disclosure of Sex Trafficking**
- **Historical Disclosure of Labor Trafficking**

• **Recommendation #11: Add a Field to Section C Allowing Referrers to Provide More Context or Details Regarding the Reason for Referral**

Additional information about the child and the reason(s) for the referral can be very helpful in prioritizing referrals for appointment of Child Advocates. For instance, if the reason for the referral is “Child is pregnant,” additional information such as how far along the youth is in their pregnancy would assist in determining how to prioritize the referral. Likewise, for a child with a suspected or diagnosed disability, information about the type of disability and how it affects the child would be helpful. In general, the more details that are provided in a referral form about a child and their needs, the more helpful it is in assessing how to prioritize the referral.

Recommendation 11: Option to Provide Additional Information Regarding Reason(s) for Referral

We recommend adding the following field to the end of Section C: **“Provide additional information or details regarding above reason(s) for the referral.”**

³⁰ OFF. OF REFUGEE RESETTLEMENT, ORR UNACCOMPANIED CHILDREN BUREAU POLICY GUIDE, § 5.8.12 BEHAVIORAL NOTES AND HISTORICAL DISCLOSURES (Revised Aug. 2, 2023), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.8.12>.

IV. Conclusion

We thank ORR for the opportunity to comment on the Proposed Child Advocate Referral Form. We appreciate ORR's efforts to improve the form. We recommend additional changes to further improve the referral and appointment process and to help ensure that Child Advocate referrals include relevant and critical information in order for the Young Center to be able to identify and seek appointment to the most vulnerable children in ORR custody.

If you have any questions or concerns about these recommendations, please contact Alexis Bay at abay@theyoungcenter.org and Jane Liu at jliu@theyoungcenter.org.

Sincerely,



Alexis Bay
Young Center for Immigrant Children's Rights



Jane Liu
Young Center for Immigrant Children's Rights