

114TH CONGRESS
2D SESSION

S. 3031

To require certain standards and enforcement provisions to prevent child abuse and neglect in residential programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2016

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require certain standards and enforcement provisions to prevent child abuse and neglect in residential programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Child Abuse in
5 Residential Programs for Teens Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) CHILD.—The term “child” means an indi-
9 vidual who has not attained the age of 18.

1 (2) CHILD ABUSE AND NEGLECT.—The term
2 “child abuse and neglect” has the meaning given
3 such term in section 3 of the Child Abuse Preven-
4 tion and Treatment Act (42 U.S.C. 5101 note).

5 (3) COVERED PROGRAM.—

6 (A) IN GENERAL.—The term “covered pro-
7 gram” means a program (including the portion
8 of a program at each affiliated facility) that is
9 operated by a public or private entity and that,
10 with respect to one or more children who are
11 unrelated to the owner or operator of the pro-
12 gram, purports to provide treatment or modify
13 behaviors in a residential environment, such
14 as—

15 (i) a program with a wilderness or
16 outdoor experience, expedition, or interven-
17 tion;

18 (ii) a boot camp experience or other
19 experience designed to simulate character-
20 istics of basic military training or correc-
21 tional regimes;

22 (iii) a therapeutic boarding school; or

23 (iv) a behavioral modification pro-
24 gram.

1 (B) EXCLUSION.—The term “covered pro-
2 gram” does not include—

3 (i) a hospital licensed by the State; or

4 (ii) a foster family home or foster
5 group home that provides 24-hour sub-
6 stitute care for children placed away from
7 their parents or guardians and for whom
8 the State child welfare services agency has
9 placement and care responsibility and that
10 is licensed and regulated by the State as a
11 foster family home or foster group home.

12 (4) LICENSED CLINICIAN.—The term “licensed
13 clinician” means such a clinician, as defined by
14 State law.

15 (5) MECHANICAL RESTRAINT.—The term “me-
16 chanical restraint” has the meaning given the term
17 in section 595(d)(1) of the Public Health Service
18 Act (42 U.S.C. 290jj(d)(1)).

19 (6) MENTAL HEALTH PRACTITIONER.—The
20 term “mental health practitioner” means such a
21 practitioner, as defined by State law.

22 (7) PHYSICAL RESTRAINT.—The term “physical
23 restraint” means a personal restriction on an indi-
24 vidual that immobilizes or reduces the ability of the
25 individual to move freely the individual’s arms, legs,

1 torso, or head, except that such term does not in-
 2 clude voluntary physical escort (as such term is de-
 3 fined in section 595(d)(2) of the Public Health Serv-
 4 ice Act (42 U.S.C. 290jj(d)(2))).

5 (8) PROTECTION AND ADVOCACY SYSTEM.—The
 6 term “protection and advocacy system” means a sys-
 7 tem established by a State under section 143 of the
 8 Developmental Disabilities Assistance and Bill of
 9 Rights Act of 2000 (42 U.S.C. 15043).

10 (9) SECLUSION.—The term “seclusion” means
 11 the involuntary confinement of a child alone in a
 12 room or area from which the child is physically pre-
 13 vented from leaving.

14 (10) SECRETARY.—The term “Secretary”
 15 means the Secretary of Health and Human Services.

16 (11) STAFF MEMBER.—The term “staff mem-
 17 ber” includes a volunteer and an applicant to be a
 18 staff member.

19 (12) STATE.—The term “State” has the mean-
 20 ing given such term in section 3 of the Child Abuse
 21 Prevention and Treatment Act (42 U.S.C. 5101
 22 note).

23 **SEC. 3. STANDARDS AND ENFORCEMENT.**

24 (a) MINIMUM STANDARDS.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Sec-
3 retary shall require each covered program in a State,
4 in order to provide for the basic health and safety
5 of children at such a program and in order for the
6 State to remain eligible as described in section
7 114(b) of the Child Abuse Prevention and Treat-
8 ment Act (as added by section 7 of this Act), to
9 meet the following minimum standards:

10 (A) PROHIBITION ON CHILD ABUSE AND
11 NEGLECT.—Child abuse and neglect shall be
12 prohibited.

13 (B) PROHIBITION ON CERTAIN DISCIPLI-
14 NARY TECHNIQUES.—Disciplinary techniques or
15 other practices that involve the withholding of
16 essential food, water, clothing, shelter, or med-
17 ical care necessary to maintain physical health,
18 mental health, and general safety, shall be pro-
19 hibited.

20 (C) PROHIBITION ON PHYSICAL OR MEN-
21 TAL ABUSE.—Acts of physical or mental abuse
22 designed to humiliate or degrade a child, or un-
23 dermine a child’s self-respect, shall be prohib-
24 ited.

1 (D) LIMITATION ON RESTRAINTS AND SE-
2 CLUSION.—

3 (i) CERTAIN RESTRAINTS AND SECLU-
4 SION.—The use of seclusion, mechanical
5 restraints, and physical restraints that im-
6 pair breathing or communication shall be
7 prohibited.

8 (ii) PHYSICAL RESTRAINTS IN EMER-
9 GENCIES.—Physical restraints other than
10 the restraints described in clause (i) may
11 be used (if not contraindicated) only in
12 emergency situations in which a child pre-
13 sents an imminent danger of harm to self
14 or others and only after less restrictive
15 interventions have been determined to be
16 ineffective.

17 (E) ACCESS TO COMMUNICATIONS.—Each
18 child at such a program—

19 (i) shall have reasonable access to a
20 telephone and means for electronic and
21 written communications, and be informed
22 of the child's right to such access, to main-
23 tain frequent contact with parents or
24 guardians, including making, sending, and
25 receiving scheduled and unscheduled calls,

1 unrestricted written correspondence, and
2 electronic communications, with as much
3 privacy as possible; and

4 (ii) shall have access to current and
5 appropriate national, State, and local hot-
6 line numbers for reporting child abuse and
7 neglect.

8 (F) STAFF-TO-CHILD RATIO.—The pro-
9 gram shall have appropriate ratios of medical,
10 clinical, and line staff members to children, as
11 determined by the Secretary, to ensure child
12 safety and the efficacy of treatment.

13 (G) SENIOR MANAGEMENT.—Not less than
14 one full-time licensed clinician or mental health
15 practitioner shall be employed as a senior man-
16 ager of the program.

17 (H) LICENSED CLINICIAN.—Not less than
18 one licensed clinician shall be present at all
19 times for the program. The licensed clinician
20 may be on call unless having such a clinician
21 physically present is necessary to ensure safety
22 and clinically appropriate care.

23 (I) PROGRAM POLICIES.—The program
24 shall have policies to require—

1 (i) parents or guardians of a child at-
2 tending such a program to notify, in writ-
3 ing, such program of any medication the
4 child is taking;

5 (ii) a full-time licensed clinician—

6 (I) to obtain consent from the
7 parents or guardians of the child to
8 make any change to the child's med-
9 ical treatment, except in the case of
10 an emergency;

11 (II) in the case of an emergency,
12 to notify the parents or guardians
13 within 24 hours after any change to
14 the child's medical treatment, to de-
15 scribe the change and the reason for
16 such change; and

17 (III) to notify the parents or
18 guardians within 24 hours after any
19 change to the child's prescribed medi-
20 cation or any occurrence of a missed
21 dose of prescribed medication, to de-
22 scribe the change or occurrence and
23 the reason for such change or occur-
24 rence; and

1 (iii) the covered program to notify
2 parents or guardians of a child of any
3 change to the program's treating provider
4 team within 48 hours after the change.

5 (J) NOTIFICATION PROCEDURES.—The
6 program shall have procedures for notifying im-
7 mediately, to the maximum extent practicable,
8 but not later than 6 hours after the occurrence
9 involved, parents or guardians of a child at
10 such a program and the appropriate protection
11 and advocacy system of any occurrence of an—

12 (i) onsite investigation of a report of
13 child abuse and neglect;

14 (ii) violation of a standard described
15 in any of subparagraphs (A) through (D);
16 and

17 (iii) violation of a State licensing re-
18 quirement.

19 (K) STAFF MEMBER DISCLOSURES.—Full
20 disclosure, in writing, of staff member qualifica-
21 tions and their roles and responsibilities at such
22 a program, including any medical, emergency
23 response, and mental health training received
24 by such staff members, shall be given to par-

1 ents or guardians of children at such a pro-
2 gram.

3 (L) DISCLOSURE OF RIGHT OF ACTION.—
4 Full disclosure, in writing, of the private right
5 of action established under subsection (b)(3),
6 shall be given to parents or guardians of chil-
7 dren at such a program.

8 (M) CHILD ABUSE AND NEGLECT RE-
9 SPONSE TRAINING.—Each staff member at such
10 a program shall be required, as a condition of
11 employment, to become trained in the acts and
12 omissions that constitute child abuse and ne-
13 glect, State law relating to mandated reporters,
14 and procedures for reporting child abuse and
15 neglect, in the State in which the program is lo-
16 cated, and information on current and appro-
17 priate national, State, and local hotline num-
18 bers for reporting child abuse and neglect.

19 (N) MEDICAL RESPONSE TRAINING.—Each
20 staff member at such a program shall be re-
21 quired, as a condition of employment, to become
22 trained in recognizing the signs, symptoms, and
23 appropriate responses associated with common
24 medical emergencies and mental health crises,

1 including warning signs of suicide and wors-
2 ening symptoms of mental illness.

3 (O) CRIMINAL HISTORY CHECK.—

4 (i) REQUIREMENT.—Each staff mem-
5 ber for such a program shall be required,
6 as a condition of employment, to submit to
7 a criminal history check, including a name-
8 based search of the National Sex Offender
9 Registry established pursuant to the Adam
10 Walsh Child Protection and Safety Act of
11 2006 (42 U.S.C. 16901 et seq.), a search
12 of the State criminal registry or repository
13 in the State in which the covered program
14 is operating, and a Federal Bureau of In-
15 vestigation fingerprint check. An individual
16 shall be ineligible to serve in a position
17 with any contact with children at a covered
18 program if any such criminal history check
19 reveals a conviction for a violent felony
20 that, by virtue of its nature, proximity in
21 time, or other factor, is likely to directly
22 increase a child's risk of harm in the pro-
23 gram as determined by the Secretary.

24 (ii) APPEALS.—The covered program
25 shall provide an independent process

1 through which a staff member who is de-
2 termined to be ineligible for employment as
3 a result of a criminal history check under
4 clause (i) shall have the right—

5 (I) to obtain a copy of the report
6 resulting from the check; and

7 (II) within 10 business days after
8 receipt of the report, to appeal, in
9 order to dispute the accuracy of the
10 information obtained through the
11 check.

12 (P) INFORMATIONAL MATERIALS.—Full
13 disclosure, in writing, in promotional and infor-
14 mational materials produced by a covered pro-
15 gram, shall be given to parents or guardians of
16 children at such a program, which shall include
17 disclosure of—

18 (i) the name and location of the pro-
19 gram, including the names of any owners
20 and operators;

21 (ii) the number and percentage of
22 children who terminated participation prior
23 to completion of that program in the past
24 5 years, including children discharged
25 against medical advice;

1 (iii) any past violations of the stand-
2 ards required under this paragraph by the
3 program and any penalties levied against
4 the program as a result of such violations;

5 (iv) its current status (current as of
6 the date the materials were given to the
7 parents or guardians) with respect to State
8 licensing requirements;

9 (v) the number of deaths that oc-
10 curred in that program during the most re-
11 cent 10-year period and the cause of each
12 death;

13 (vi) the names of owners and opera-
14 tors of the program that have violated
15 State licensing requirements;

16 (vii) information on evidence-based or
17 promising practices employed as treatment
18 in the covered program, and information to
19 aid parents and guardians in finding com-
20 munity-based treatment resources; and

21 (viii) any national, State, and local
22 telephone hotline numbers that the pro-
23 gram made available to children and staff
24 members to report complaints of child

1 abuse and neglect, or a violation of this
2 paragraph, by the program.

3 (Q) TREATMENT AND DISCHARGE
4 PLANS.—The entity carrying out the covered
5 program shall work with the parents or guard-
6 ians of a child of the program and the child’s
7 community-based providers in the development,
8 modification, and implementation of treatment
9 and discharge plans, including a plan for com-
10 munity reintegration and linkage to community-
11 based providers and supports.

12 (R) PROHIBITION ON DISCRIMINATION.—
13 The entity carrying out the program shall en-
14 sure that no person shall, on the basis of actual
15 or perceived race, color, religion, national ori-
16 gin, sex, gender identity, sexual orientation, or
17 disability, be subjected to discrimination in the
18 provision of any program or activity, in whole
19 or in part, covered by this Act.

20 (S) EVIDENCE-BASED PRACTICES.—The
21 entity carrying out the program shall ensure
22 that the program employs safe, evidence-based
23 practices, and that children are protected
24 against harmful or fraudulent practices, includ-

1 ing use of isolation or of mechanical restraints
2 or physical restraints.

3 (T) OTHER STANDARDS.—The program
4 shall meet any other standard the Secretary de-
5 termines appropriate to provide for the basic
6 health and safety of children at a covered pro-
7 gram.

8 (2) REGULATIONS.—

9 (A) INTERIM REGULATIONS.—Not later
10 than 180 days after the date of enactment of
11 this Act, the Secretary shall promulgate and en-
12 force interim regulations to carry out paragraph
13 (1).

14 (B) PUBLIC COMMENT.—The Secretary
15 shall, for a 90-day period beginning on the date
16 of the promulgation of interim regulations
17 under subparagraph (A), solicit and accept pub-
18 lic comment concerning such regulations. Such
19 public comment shall be submitted in written
20 form.

21 (C) FINAL REGULATIONS.—Not later than
22 90 days after the conclusion of the 90-day pe-
23 riod referred to in subparagraph (B), the Sec-
24 retary shall promulgate and enforce final regu-
25 lations to carry out paragraph (1).

1 (b) MONITORING AND ENFORCEMENT.—

2 (1) REVIEW PROCESS.—Not later than 180
3 days after the date of enactment of this Act, the
4 Secretary shall implement a review process for over-
5 seeing, investigating, and evaluating reports, of child
6 abuse and neglect at covered programs, that are re-
7 ceived by the Secretary from the appropriate State,
8 in accordance with paragraph (4) or (5) of section
9 114(b) of the Child Abuse Prevention and Treat-
10 ment Act, as added by section 7 of this Act. Such
11 review process shall—

12 (A) include an investigation to determine if
13 a violation of the standards required under sub-
14 section (a)(1) has occurred; and

15 (B) include consultation and collaboration
16 with relevant Federal and State agencies.

17 (2) CIVIL PENALTIES.—Not later than 180
18 days after the date of enactment of this Act, the
19 Secretary shall promulgate regulations establishing
20 civil penalties for violations of the standards re-
21 quired under subsection (a)(1). The regulations es-
22 tablishing such penalties shall incorporate the fol-
23 lowing:

24 (A) AMOUNT.—Any owner or operator of a
25 covered program at which the Secretary has

1 found a violation of the standards required
2 under subsection (a)(1) may be assessed a civil
3 penalty not to exceed \$50,000 per violation.

4 (B) DEPOSIT TO TREASURY.—All penalties
5 collected under this paragraph shall be depos-
6 ited in the appropriate account of the Treasury
7 of the United States.

8 (3) PRIVATE RIGHT OF ACTION.—Any person
9 who suffers injury by reason of a violation of sub-
10 section (a)(1) may bring a civil action against the al-
11 leged violator to obtain appropriate compensatory
12 damages and injunctive relief or other equitable re-
13 lief.

14 (c) ACTION.—The Secretary shall establish a process
15 to assist States in the oversight and enforcement of this
16 Act, which shall include—

17 (1) assisting States in implementing oversight
18 mechanisms to ensure compliance of covered pro-
19 grams in the States with the standards required
20 under subsection (a)(1);

21 (2) maintaining oversight of covered programs
22 in a State, in a case in which a State has not estab-
23 lished, within 3 years after the date of the enact-
24 ment of this Act, mechanisms sufficient to ensure

1 compliance of such programs with the standards re-
2 quired under subsection (a)(1); and

3 (3) encouraging the use by States of national,
4 State, or local hotline numbers for reporting child
5 abuse and neglect and any other resources the Sec-
6 retary determines to be appropriate.

7 **SEC. 4. ENFORCEMENT BY THE ATTORNEY GENERAL.**

8 If the Secretary determines that a violation of section
9 3(a)(1) has not been remedied through the enforcement
10 process described in section 3(b)(2), the Secretary shall
11 refer such violation to the Attorney General for appro-
12 priate action. Regardless of whether such a referral has
13 been made, the Attorney General may, sua sponte, bring
14 an action in any court of competent jurisdiction seeking
15 equitable relief or any other relief authorized by this Act
16 for such violation.

17 **SEC. 5. REPORT.**

18 Not later than 1 year after the date of enactment
19 of this Act and annually thereafter, the Secretary of
20 Health and Human Services, in coordination with the At-
21 torney General shall submit to the Committee on Edu-
22 cation and the Workforce of the House of Representatives
23 and the Committee on Health, Education, Labor, and
24 Pensions of the Senate, a report on the activities carried

1 out by the Secretary and the Attorney General, as author-
 2 ized and as required under this Act.

3 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

4 There is authorized to be appropriated to the Sec-
 5 retary of Health and Human Services \$5,000,000 for each
 6 of fiscal years 2017 through 2021 to carry out this Act
 7 (excluding the amendment made by section 7 of this Act).

8 **SEC. 7. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR**
 9 **GRANTS TO STATES TO PREVENT CHILD**
 10 **ABUSE AND NEGLECT AT RESIDENTIAL PRO-**
 11 **GRAMS.**

12 (a) IN GENERAL.—Title I of the Child Abuse Preven-
 13 tion and Treatment Act (42 U.S.C. 5101 et seq.) is
 14 amended by adding at the end the following new section:

15 **“SEC. 114. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR**
 16 **GRANTS TO STATES TO PREVENT CHILD**
 17 **ABUSE AND NEGLECT AT RESIDENTIAL PRO-**
 18 **GRAMS.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) CHILD.—The term ‘child’ means an indi-
 21 vidual who has not attained the age of 18.

22 “(2) COVERED PROGRAM.—The term ‘covered
 23 program’ has the meaning given the term in section
 24 2 of the Stop Child Abuse in Residential Programs
 25 for Teens Act of 2016.

1 “(b) ELIGIBILITY REQUIREMENTS.—To be eligible to
2 receive a grant under section 106, a State shall—

3 “(1) not later than 3 years after the date of en-
4 actment of this section, develop policies and proce-
5 dures to prevent child abuse and neglect at covered
6 programs operating in such State, including stand-
7 ards that meet or exceed the standards required
8 under section 3(a)(1) of the Stop Child Abuse in
9 Residential Programs for Teens Act of 2016;

10 “(2) provide a private right of action under
11 State law for any person who suffers injury by rea-
12 son of a violation of the standards required under
13 paragraph (1);

14 “(3) develop policies and procedures to enforce
15 compliance with the requirements developed in ac-
16 cordance with paragraph (1), including—

17 “(A) establishing and monitoring health
18 and safety licensing requirements applicable to
19 and necessary for the operation of each location
20 of such covered programs in the State; and

21 “(B) conducting unannounced site inspec-
22 tions at each location of a covered program;

23 “(4) develop policies and procedures for timely
24 notification to the Secretary and the appropriate
25 protection and advocacy system if—

1 “(A) the State determines there is evidence
2 of a pattern of violations of the standards re-
3 quired under paragraph (1) at a covered pro-
4 gram operating in the State or by an owner or
5 operator of such a program; or

6 “(B) there is a child fatality at a covered
7 program operating in the State; and

8 “(5) annually submit to the Secretary a report
9 that includes all covered programs within the juris-
10 diction of the State, including any violations by each
11 program or any information that the Secretary de-
12 termines to be necessary for enforcement of this Act.

13 “(c) OVERSIGHT.—If, within the 3-year period begin-
14 ning on the date of enactment of this section, the Sec-
15 retary determines that the State is not satisfying the re-
16 quirements of this subsection, the Secretary shall provide
17 assistance to the State to satisfy such requirements or
18 withhold funding until such policies and procedures are
19 established.”.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
21 112(a)(1) of the Child Abuse Prevention and Treatment
22 Act (42 U.S.C. 5106h(a)(1)) is amended by striking
23 “\$120,000,000” and all that follows through the period
24 and inserting “\$200,000,000 for each of fiscal years 2017
25 through 2021.”.

1 (c) CONFORMING AMENDMENTS.—

2 (1) COORDINATION WITH AVAILABLE RE-
3 SOURCES.—Section 103(c)(1)(D) of the Child Abuse
4 Prevention and Treatment Act (42 U.S.C.
5 5104(c)(1)(D)) is amended by inserting after “spe-
6 cific” the following: “(including reports of child
7 abuse and neglect occurring at covered programs (as
8 such term is defined in section 114), except that
9 such reports shall not contain any personally identi-
10 fiable information relating to the identity of individ-
11 uals who were the victims of such child abuse and
12 neglect)”.

13 (2) FURTHER REQUIREMENT.—Section
14 106(b)(1) of the Child Abuse Prevention and Treat-
15 ment Act (42 U.S.C. 5106a(b)(1)) is amended by
16 adding at the end the following new subparagraph:

17 “(D) FURTHER REQUIREMENT.—To be eli-
18 gible to receive a grant under this section, a
19 State shall comply with the requirements under
20 section 114(b) and shall include in the State
21 plan submitted pursuant to subparagraph (A) a
22 description of the activities the State will carry
23 out to comply with the requirements under such
24 section 114(b).”.

1 (3) ANNUAL STATE DATA REPORTS.—Section
2 106(d) of the Child Abuse Prevention and Treat-
3 ment Act (42 U.S.C. 5106a(d)) is amended—

4 (A) in paragraph (1), by inserting before
5 the period at the end the following: “(including
6 reports of child abuse and neglect occurring at
7 covered programs (as such term is defined in
8 section 114), except that such reports shall not
9 contain any personally identifiable information
10 relating to the identity of individuals who were
11 the victims of such child abuse and neglect”);
12 and

13 (B) in paragraph (6), by inserting before
14 the period at the end the following: “or who
15 were in the care of a covered program, as such
16 term is defined in section 114”.

17 (d) CLERICAL AMENDMENT.—Section 1(b) of the
18 Child Abuse Prevention and Treatment Act (42 U.S.C.
19 5101 note) is amended by inserting after the item relating
20 to section 113 the following new item:

 “Sec. 114. Additional eligibility requirements for grants to States to prevent
 child abuse and neglect at residential programs.”.

○