

Section-by-Section
Lieberman – Brownback Amendment to S. 2454
Securing America’s Borders Act

Section 1 Short Title “Secure and Safe Detention and Asylum Act.”

Section 2 Findings.

Section 3 Definitions.

Defines “asylum seeker,” “detainee,” “detention facility,” “standard,” and “vulnerable populations”. Existing statutory definitions are used for additional terms.

Section 4 Recording Secondary Inspection Interviews.

Establishes quality assurance procedures to ensure the accuracy and verifiability of sworn statements taken by Department of Homeland Security (DHS) employees exercising expedited removal authority. Sworn or signed statements taken from aliens would be accompanied by a recording of the credible fear interview; this recording would be included in the record of proceedings and could be considered as evidence in any further proceedings involving the alien. Translation services would be required where necessary to ensure the alien could understand the interview and confirm the accuracy of the sworn statement.

Section 5 Opportunity to Request Release from Detention

Establishes procedures for detained aliens to be considered for release on recognizance or into a secure alternatives to detention program. An initial decision on whether to detain an alien would be made by DHS within 72 hours of the alien’s detention. Within two weeks of the DHS decision, an Immigration Judge would review the detention.

In deciding whether to detain an alien, DHS and the Immigration Judge would consider:

- whether the alien poses a risk to public safety or national security;
- whether the alien has established his identity; and
- whether the alien has established a likelihood to appear for immigration proceedings.

Aliens in mandatory detention would not be entitled to a review of their detention. The DHS Secretary would have the discretion to release aliens in mandatory detention for humanitarian reasons.

Section 6 Legal Orientation Program

Ensures that all detained aliens have access to legal orientation programs which provide information about proceedings in Immigration Courts. The provision would require the nationwide implementation of a program that is currently administered by the Department of Justice Executive Office of Immigration Review.

The section also expands the use of public-private partnerships that facilitate pro bono counseling and legal assistance for asylum seekers awaiting a credible fear interview.

Section 7 Conditions of Detention.

Ensures that detention standards are fully implemented and enforced, and that all detention facilities comply with the standards. It directs the Secretary to develop new standards or modify existing standards to improve detention conditions in the following areas:

- fair and humane treatment of detainees;

- limitations on use of shackling, handcuffing, solitary confinement, and strip searches;
- prompt and effective investigation of grievances;
- access to telephones to contact lawyers and immigration courts;
- where practicable, the location of detention facilities near sources of legal representation;
- procedures governing transfer of detainees that take into account the detainee's access to legal representatives and proximity to the immigration court;
- prompt and adequate medical care; and
- provision of translation services and, where practicable, employment of detention personnel who speak the language of detainee population.

The Secretary is directed to promulgate standards recognizing the special characteristics of non-criminal non-violent detainees. Non-criminal non-violent detainees would have to be separated from inmates with criminal convictions.

The Secretary is directed to promulgate standards recognizing the unique needs of asylum seekers, victims of torture and trafficking, and other vulnerable populations.

The section also ensures that personnel at detention facilities are given adequate training to understand and work with detainees housed at their facilities.

Section 8 Office of Detention Oversight.

Establishes an Office of Detention Oversight to conduct inspections of detention facilities; receive and review written complaints from detainees; and report to the Secretary and to Immigration and Customs Enforcement all findings of a detention facility's noncompliance with detention standards. The Office could investigate allegations of systemic problems or serious incidents, and refer matters to other DHS offices and other agencies.

The section also requires an annual report to the Secretary of Homeland Security and Congress on the Office's findings on detention conditions, its investigations, and actions to remedy findings of noncompliance.

Section 9 Secure Alternatives Program.

Requires the nationwide implementation of a program establishing secure alternatives to detentions. Under the secure alternatives program, aliens would be released under enhanced supervision to prevent them from absconding and ensure that they make required appearances at immigration meetings.

Section 10 Less Restrictive Detention Facilities.

Directs the Secretary to facilitate the construction or use of secure but less restrictive detention facilities similar to the Department's detention facilities in Broward County, Florida and Berks County, Pennsylvania. Suggested criteria for the facilities are listed. The Secretary is directed to ensure appropriate conditions at detention facilities housing families with minor children. Parents and their minor children could not be physically separated.

Section 11 Authorization of Appropriations.

Authorizes such sums as are necessary.

Section 12 Effective Date.

The amendment takes effect six months after the date of enactment.