

Center for Adoption Policy

www.adoptionpolicy.org

Dr. Diane B. Kunz, Esq.
Executive Director
dianekunz@msn.com

Ann N. Reese
Co-Executive Director
annnreese@aol.com

Cassie Statuto Bevan*
Legislative Advisor
cstatutobevan@aol.com

* Contact

Comments on S.1458, Families for Orphans Act

Sections 1& 2: Findings and Purpose

The bill is primarily focused on the US establishing, leading, and funding a comprehensive strategy to provide foreign assistance worldwide for capacity building, infrastructure development and the mobilization of resources to deliver services to families and children. Yet funding under S.1458 would only duplicate work currently being done by USAID and UNICEF and provide an additional funding stream.

The title of the bill: Families for Orphans must be the central purpose of the proposal, i.e., to encourage the development and implementation of a comprehensive global strategy that recognizes and promotes the basic human rights of all children, including but not limited to orphans and institutionalized children, to grow up in safe, loving and permanent families established, when appropriate through family preservation and reunification services as well as adoption promotion and support services.

Section 3: Definitions

The definitions are not consistent with US child welfare and adoption laws (see 42 USC) nor are they consistent with language used in the Preamble to The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention). The use of the term “permanent parental care” as a substitute for the term “family for orphans” is ambiguous and inconsistent with US policy and not found in Hague documents dealing with children.

US law does not use the term “legal kinship” because placements with kin are an alternative to placement in foster care but are not viewed as permanent. The definition of “orphan” is not consistent with the Immigration and Naturalization Act (INA). This will cause confusion in the US and worldwide.

The definitions must be consistent with what the purpose of the bill should be: to promote and support the basic human rights of children to grow up in safe, loving and permanent families.

Section 4: Office for Orphan Policy Diplomacy and Development

The use of the term “development” in the title of this Office puts too high a value on funding the infrastructure, capacity building, and resource mobilization functions of this Office. The central function of this Office must be to promote and support families for orphans. An “Office of Families for Orphans Policy and Diplomacy” would serve the purposes of this bill as rewritten.

The appointment of the Coordinator must be confirmed by the Senate to allow for full transparency and vetting of the Coordinator and to ensure that the highest qualifications for this Office are met. It is critical that this Office develop orphan policy in coordination with the Office of Children’s Issues at DOS. The bill as written risks confusion with the role of the Central Authority under the Intercountry Adoption Act of 2000 (IAA) as Diplomatic Representation would reside in this Coordinator without any coordination with the Office charged with implementing the core functions of the IAA.

Cultural Sensitivity: The US condemns cultural practices of child marriage or genital mutilation. What makes promoting and supporting safe and loving families for orphans in the form of adoption subject to a different set of rules?

Principle of Subsidiarity: This is inconsistent with US law under the Adoption and Safe Families Act of 1997 (ASFA) and the Preamble of the Hague Convention. These principles as written lay out a clear and rigid hierarchy where attempts to reunify children with their families must be made and fail before pursuing adoption. Concurrent planning, a child welfare service established by ASFA, is ignored in this bill. The Preamble to the Hague Convention avoids establishing a rigid hierarchy by “recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.”

Technical Assistance (TA): The TA to foreign countries to develop child welfare policies, as drafted, limits this assistance to services to preserve and reunify families and does not specifically mention adoption. Technical Assistance is focused on systems development, establishing an infrastructure and training a workforce in child welfare services but not on supporting families for orphans. The bill will measure the outcomes of all of this activity but will not measure how many orphans were adopted as a result of the TA.

Coordination between DOS and HHS is required to maintain a consistency between US domestic and foreign policies. But the bill itself is inconsistent from the start by failing to use definitions in current domestic law or even language from the Hague Convention.

Section 5: Policy Coordinating Committee In Support of Orphan Policy, Diplomacy, and Development

This section establishes an interagency policy committee headed by the DOS. The DOS is also the Central Authority for the Implementation of the IAA and the Hague

Convention. However, the purpose of this interagency policy committee is not to find families for orphans. For DOS to head this committee is inconsistent with its role as the Central Authority and sends the message to US citizens and to foreign governments that the US is changing its policy towards orphans.

Section 6: Minimum Standards for the Provision of Permanent Parental Care

A country meets these standards by “promoting” legal guardianship and kinship care; “promoting” domestic adoption; “reducing” the number of abandoned children; and “allowing” for international adoption. The US promotes and subsidizes domestic adoption. Most of the \$12,500 adoption tax credit taken by Americans is used for intercountry adoption. For the US to comply with the coordination of domestic and foreign adoption policy as required under Section 4, the US would have to dramatically change its policies in terms of intercountry adoption. This would have an adverse impact on orphans worldwide as Americans adopt more foreign-born children than any other country in the world.

Section 7: Grant, Pilot and Development Programs

The development focus of the bill as written is evident in the use of assistance funds to include trade and debt relief. The use of funds for family preservation and family reunification services are measured by the increase in the number of children reunified and an increase in the number of children with legal guardians and in kinship arrangements. But the numbers of orphans living in families built through international adoption will not be measured. This bias will result in a decrease in the number of orphans adopted by Americans and will likely mean that the bill will fail in its purpose – to find families for orphans.

The eligibility criteria to receive grants under this Act are limited to experts in family preservation and family reunification services. Despite the fact that there is extensive research to indicate that these services are ineffective in providing safe, and permanent families for children the funds are targeted to these services. Experts in the promotion and support for adoption services are specifically not eligible for these funds resulting in the loss of an important service for orphans.

Section 8: Authorization of Appropriations

\$10 million of the \$16 million authorized for the first fiscal year are deemed for increasing foreign assistance for the development of capacity building and for grants to increase services for family preservation or reunification. There are no increased funds for intercountry adoption as a service to orphans in need of families.

The result of S.1458 as currently written will increase foreign assistance but will unlikely lead to families for orphans.

3-11-10