



Prior to 2003, unaccompanied alien children were held in INS custody. Conditions of confinement were wholly inappropriate and many problems emerged because conditions were not child friendly and because the children's custodian was also the prosecutor. In March 2003, the HSA transferred responsibility for care and custody of unaccompanied alien children from the former INS to the Department of Health and Human Services. The Division of Unaccompanied Alien Children's Services (DUCS) is the office within HHS' Office of Refugee Resettlement that directly services this population. Children in the custody of DUCS may be housed in residential shelters, staff secure and secure facilities and a small number are placed into DUCS' contracted foster care homes. Despite the transfer of custody, DHS retained prosecutorial authority over UAC and remains responsible for apprehending, screening and repatriating UAC.

If the proposed PREA language is accepted as currently drafted, the protections would apply to UAC in the custody of CBP and ICE but would cease to apply once a child is transferred from DHS to HHS. These transfers typically happen within 48 hours, and children who go to DUCS are generally not returned to DHS until just prior to deportation. Failure to extend PREA to the DUCS' population would create the same inconsistency that presently exists for adults in civil immigration detention who enjoy PREA protections while in criminal custody but lose those protections once transferred to immigration detention. The same arguments about legislative intent that have been made in regards to extending PREA to DHS can be made regarding HHS and the failure to propose language that covers HHS was a drafting oversight.

UAC are particularly vulnerable to sexual assault while in DUCS custody because of their age and level of maturity. In addition, many, especially girls, are past victims and as such are in need of identification and care. Few have legal counsel or a child advocate from whom they can seek guidance and advice if they have been victims. Therapeutic bed space and mental health care are badly lacking. Many UAC have been emotionally, physically and sexually abused, either in their home country or en route to the United States and are badly in need of medical and mental health care and other supportive services.

The need to extend PREA to HHS is evidenced by a 2007 incident at Away From Home, Texas Sheltered Care Facility in Nixon, Texas. Following allegations of repeated sexual, physical and emotional abuse of children a staff member was arrested and subsequently convicted of sexual assault involving a child at the facility. Advocates at the local and national level told Women's Refugee Commission that there had been warning signs of these incidents for over a year, but their efforts to communicate their concerns to DUCS went unheeded.

The benefits of appropriate staff training and procedures for identifying, reporting and protecting UAC who are victims of sexual assault within a DUCS facility are evidenced by an incident at the Crittenton facility in California. A Crittenton staff member was found to have sexually abused a child and the facility took immediate and appropriate action. In addition to addressing the needs of the impacted child and cooperating fully in the criminal investigation, the facility instituted an immediate plan to address the situation and prevent future incidents, including counseling for all children and education on rights and recourse.