

118TH CONGRESS
1ST SESSION

S. 3065

To provide counsel for unaccompanied children, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2023

Ms. HIRONO (for herself, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. BUTLER, Mr. CARDIN, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mr. FETTERMAN, Mrs. GILLIBRAND, Mr. HICKENLOOPER, Ms. KLOBUCHAR, Mr. LUJÁN, Mr. MARKEY, Mr. MENENDEZ, Mr. MERKLEY, Mr. MURPHY, Mr. OSSOFF, Mr. PADILLA, Mr. SANDERS, Mr. SCHATZ, Ms. SMITH, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide counsel for unaccompanied children, 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 “Fair Day in Court
5 for Kids Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) NONCITIZEN.—The term “noncitizen”
2 means an individual who is not a citizen or national
3 of the United States.

4 (2) UNACCOMPANIED CHILD.—The term “unac-
5 companied child” has the meaning given the term
6 “unaccompanied alien child” in section 462(g) of the
7 Homeland Security Act of 2002 (6 U.S.C. 279(g)).

8 **SEC. 3. REFERENCES TO ALIENS.**

9 With respect to an individual who is not a citizen or
10 national of the United States, any reference in this Act
11 to a “noncitizen” shall be deemed to refer to an individual
12 otherwise described as an “alien” in any Federal law, Fed-
13 eral regulation, or any written instrument issued by the
14 executive branch of the Government.

15 **SEC. 4. IMPROVING IMMIGRATION COURT EFFICIENCY AND**
16 **REDUCING COSTS BY INCREASING ACCESS**
17 **TO LEGAL INFORMATION.**

18 (a) DEFINITIONS.—Section 101(a) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1101(a)) is amended
20 by adding at the end the following:

21 “(53) The term ‘noncitizen’ means an individual who
22 is not a citizen or national of the United States.

23 “(54) The term ‘unaccompanied child’ has the mean-
24 ing given the term ‘unaccompanied alien child’ in section

1 462(g) of the Homeland Security Act of 2002 (6 U.S.C.
2 279(g)).”.

3 (b) APPOINTMENT OF COUNSEL IN REMOVAL PRO-
4 CEEDINGS; RIGHT TO REVIEW CERTAIN DOCUMENTS IN
5 REMOVAL PROCEEDINGS.—Section 240(b) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1229a(b)) is
7 amended—

8 (1) in paragraph (4), in the matter preceding
9 subparagraph (A), by striking “under regulations of
10 the Attorney General” and inserting “under regula-
11 tions of the Attorney General, or in the case of an
12 unaccompanied child, under regulations of the Sec-
13 retary of Health and Human Services”—

14 (A) in subparagraph (A)—

15 (i) by striking “, at no expense to the
16 Government,”; and

17 (ii) by striking the comma at the end
18 and inserting a semicolon;

19 (B) by redesignating subparagraphs (B)
20 and (C) as subparagraphs (D) and (E), respec-
21 tively;

22 (C) by inserting after subparagraph (A)
23 the following:

24 “(B) the Attorney General, or in the case
25 of an unaccompanied child, the Secretary of

1 Health and Human Services, may appoint or
2 provide counsel, at Government expense, to
3 noncitizens in immigration proceedings;

4 “(C) the noncitizen, or the noncitizen’s
5 counsel, not later than 7 days after receiving a
6 notice to appear under section 239(a), shall re-
7 ceive a complete copy of the noncitizen’s immi-
8 gration file (commonly known as an ‘A-file’) in
9 the possession of the Department of Homeland
10 Security (other than documents protected from
11 disclosure under section 552(b) of title 5,
12 United States Code);” and

13 (D) in subparagraph (D), as redesignated,
14 by striking “, and” and inserting “; and”; and
15 (2) by adding at the end the following:

16 “(8) FAILURE TO PROVIDE NONCITIZEN RE-
17 QUIRED DOCUMENTS.—A removal proceeding may
18 not proceed until the noncitizen, or the noncitizen’s
19 counsel if the noncitizen is represented—

20 “(A) has received the documents required
21 under paragraph (4)(C); and

22 “(B) has been provided at least 10 days to
23 review and assess such documents, unless the
24 noncitizen or the noncitizen’s counsel expressly
25 waives such review period.”.

1 (c) CLARIFICATION REGARDING THE AUTHORITY OF
2 THE FEDERAL GOVERNMENT TO APPOINT COUNSEL TO
3 NONCITIZENS IN IMMIGRATION PROCEEDINGS.—

4 (1) IN GENERAL.—Section 292 of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1362) is amend-
6 ed to read as follows:

7 **“SEC. 292. RIGHT TO COUNSEL.**

8 “(a) IN GENERAL.—In any removal proceeding be-
9 fore the Attorney General, an appeal from such a removal
10 proceeding, and any related matter before the Department
11 of Homeland Security or a State court, an unaccompanied
12 child shall have the privilege of being represented by such
13 counsel as may be authorized to practice in such pro-
14 ceeding or matter as he or she may choose. This sub-
15 section shall not apply to screening proceedings described
16 in section 235(b)(1)(A).

17 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
18 CHILDREN.—

19 “(1) IN GENERAL.—In any removal proceeding
20 before the Attorney General, an appeal from such a
21 removal proceeding, and any related matter before
22 the Department of Homeland Security or a State
23 court, an unaccompanied child shall be represented
24 by counsel appointed or provided by the Secretary of
25 Health and Human Services, at Government ex-

1 pense, unless the child has obtained at his or her
2 own expense counsel authorized to practice in such
3 proceeding or matter.

4 “(2) TIMING.—The Secretary of Health and
5 Human Services shall appoint or provide counsel to
6 an unaccompanied child under paragraph (1) as ex-
7 peditiously as possible after the earlier of—

8 “(A) the date on which a Notice to Appear
9 for removal proceedings is issued to the unac-
10 companied child, regardless of whether the No-
11 tice to Appear has been filed with an immigra-
12 tion court; or

13 “(B) the date on which the unaccompanied
14 child is placed in the custody of the Secretary
15 of Health and Human Services.

16 “(3) LENGTH OF REPRESENTATION.—An unac-
17 companied child shall be represented by counsel
18 under paragraph (1) at every stage of the pro-
19 ceedings, beginning with the unaccompanied child’s
20 initial appearance before an official with adjudica-
21 tory authority in removal proceedings or in related
22 matters before the Department of Homeland Secu-
23 rity or a State court, through the termination of im-
24 migration proceedings and resolution of any related
25 matter before the Department of Homeland Security

1 or a State court, even if the child attains 18 years
2 of age or is reunified with a parent or legal guardian
3 while the proceedings are pending.

4 “(4) CONTINUITY IN REPRESENTATION.—If
5 counsel retained by an unaccompanied child at his or
6 her own expense ceases representing the child for
7 any reason, the Secretary of Health and Human
8 Services shall ensure continued representation of the
9 child by appointing or providing new counsel as ex-
10 peditiously as possible.

11 “(5) NOTICE.—Not later than 72 hours after
12 an unaccompanied child is taken into Federal cus-
13 tody, the child shall be notified that he or she will
14 be provided with legal counsel in accordance with
15 this subsection.

16 “(6) WITHIN DETENTION FACILITIES.—The
17 Secretary of Homeland Security shall ensure that
18 unaccompanied children have access to counsel in-
19 side all detention, holding, and border facilities.

20 “(c) PRO BONO REPRESENTATION.—

21 “(1) IN GENERAL.—To the maximum extent
22 practicable, the Secretary of Health and Human
23 Services shall make every effort to use the services
24 of competent counsel who agree to provide represen-

1 tation to such children under subsection (b) without
2 charge to the child.

3 “(2) DEVELOPMENT OF NECESSARY INFRA-
4 STRUCTURES AND SYSTEMS.—The Secretary of
5 Health and Human Services shall establish the nec-
6 essary infrastructure and systems for the appro-
7 priate identification, recruitment, training, and over-
8 sight of counsel available to provide assistance and
9 representation to unaccompanied children under sub-
10 section (b) without charge to the child.

11 “(d) MODEL GUIDELINES ON LEGAL REPRESENTA-
12 TION OF CHILDREN.—

13 “(1) DEVELOPMENT OF GUIDELINES.—The Di-
14 rector of the Office of Refugee Resettlement, in con-
15 sultation with the Director of the Executive Office
16 for Immigration Review, the Secretary of Homeland
17 Security, and nongovernmental stakeholders with
18 relevant expertise in providing immigration-related
19 legal services to children, shall develop model guide-
20 lines for the legal representation of unaccompanied
21 children in immigration proceedings, which shall be
22 based on—

23 “(A) the 2018 report of the American Bar
24 Association entitled ‘Standards for the Custody,
25 Placement and Care; Legal Representation; and

1 Adjudication of Unaccompanied Alien Children
2 in the United States’;

3 “(B) the American Bar Association Model
4 Rules of Professional Conduct; and

5 “(C) any other source the Director of the
6 Office of Refugee Resettlement considers appro-
7 priate.

8 “(2) PURPOSE OF GUIDELINES.—The guide-
9 lines developed under paragraph (1) shall be de-
10 signed to help protect each child from any individual
11 suspected of involvement in any criminal, harmful,
12 or exploitative activity associated with the smuggling
13 or trafficking of children, while ensuring the fairness
14 of the immigration proceeding in which the child is
15 involved.

16 “(e) DUTIES OF COUNSEL.—The duties of counsel
17 appointed or provided under this section shall include—

18 “(1) representing the unaccompanied alien child
19 concerned—

20 “(A) in all proceedings and matters relat-
21 ing to the immigration status of the child and;

22 “(B) with respect to any other action in-
23 volving the Department of Homeland Security;

24 “(2) appearing in person for each of the
25 child’s—

1 “(A) individual merits hearings and master
2 calendar hearings before the Executive Office
3 for Immigration Review; and

4 “(B) interviews involving the Department
5 of Homeland Security;

6 “(3) owing the same duties of undivided loyalty,
7 confidentiality, and competent representation to the
8 child as is due to an adult client;

9 “(4) advocating for the child’s legal interests,
10 as directed by the child’s express wishes;

11 “(5) in the case of a child who does not express
12 the objectives of representation, or is found incom-
13 petent, referring the child for the appointment of an
14 independent child advocate, as described in section
15 235(c)(6) of the William Wilberforce Trafficking
16 Victims Protection Reauthorization Act of 2008 (8
17 U.S.C. 1232(c)(6)); and

18 “(6) carrying out other such duties as may be
19 prescribed by the Secretary of Health and Human
20 Services or the Director of the Executive Office for
21 Immigration Review.

22 “(f) SAVINGS PROVISION.—Nothing in this section
23 may be construed to supersede—

1 “(1) any duties, responsibilities, disciplinary, or
2 ethical responsibilities an attorney may have to his
3 or her client under State law;

4 “(2) the admission requirements under State
5 law; or

6 “(3) any other State law pertaining to the ad-
7 mission to the practice of law in a particular juris-
8 diction.”.

9 (2) RULEMAKING.—The Secretary of Health
10 and Human Services shall promulgate regulations to
11 implement section 292 of the Immigration and Na-
12 tionality Act, as added by paragraph (1), in accord-
13 ance with the requirements set forth in section
14 3006A of title 18, United States Code.

15 **SEC. 5. ACCESS BY COUNSEL TO DEPARTMENT OF HOME-**
16 **LAND SECURITY FACILITIES.**

17 The Secretary of Homeland Security shall provide ac-
18 cess to counsel for all noncitizens detained in—

19 (1) a facility under the supervision of U.S. Im-
20 migration and Customs Enforcement or U.S. Cus-
21 toms and Border Protection; or

22 (2) a private facility that contracts with the De-
23 partment of Homeland Security to house, detain, or
24 hold noncitizens.

1 **SEC. 6. REPORT ON ACCESS TO COUNSEL.**

2 (a) REPORT.—Not later than December 31 of each
3 year, the Secretary of Health and Human Services, in con-
4 sultation with the Attorney General, shall prepare and
5 submit a report to the Committee on the Judiciary of the
6 Senate and the Committee on the Judiciary of the House
7 of Representatives regarding the extent to which the Sec-
8 retary has provided counsel for unaccompanied children
9 as described in subsection (b) of section 292 of the Immi-
10 gration and Nationality Act, as amended by section 4(c).

11 (b) CONTENTS.—Each report submitted under para-
12 graph (a) shall include, for the immediately preceding 1-
13 year period—

14 (1) the number and percentage of unaccom-
15 panied children described in subsection (b) of section
16 292 of the Immigration and Nationality Act, as
17 amended by section 4(c), who were represented by
18 counsel, including information specifying—

19 (A) the stage of the legal process at which
20 representation of each such child commenced;

21 (B) whether each such child was in govern-
22 ment custody on the date on which such rep-
23 resentation commenced; and

24 (C) the nationality and ages of such chil-
25 dren;

1 (2) the number and percentage of children who
2 received Know Your Rights presentations or legal
3 screenings, including the nationality and ages of
4 such children; and

5 (3) a description of the mechanisms used under
6 subsection (b) of section 292 of the Immigration and
7 Nationality Act, as added by section 4(c), for identi-
8 fying, recruiting, and training pro bono counsel to
9 represent unaccompanied children.

10 **SEC. 7. MOTIONS TO REOPEN.**

11 Section 240(c)(7)(C) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1229a(c)(7)(C)) is amended by adding
13 at the end the following:

14 “(v) SPECIAL RULE FOR UNACCOM-
15 PANIED CHILDREN ENTITLED TO APPOINT-
16 MENT OF COUNSEL.—If the Secretary of
17 Health and Human Services fails to ap-
18 point or provide counsel for an unaccom-
19 panied child under section 292(b)—

20 “(I) the limitations under this
21 paragraph with respect to the filing of
22 a motion to reopen by such child shall
23 not apply; and

24 “(II) the filing of such a motion
25 shall stay the removal of the child.”.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There is authorized to be appro-
3 priated to the Office of Refugee Resettlement such sums
4 as may be necessary to carry out this Act.

5 (b) BUDGETARY EFFECTS.—The budgetary effects of
6 this Act, for the purpose of complying with the Statutory
7 Pay-As-You-Go Act of 2010, shall be determined by ref-
8 erence to the latest statement titled “Budgetary Effects
9 of PAYGO Legislation” for this Act, submitted for print-
10 ing in the Congressional Record by the Chairman of the
11 Senate Budget Committee, provided that such statement
12 has been submitted prior to the vote on passage.

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