

118TH CONGRESS
1ST SESSION

S. 3178

To establish the Children’s Court to improve the adjudication of immigration cases involving unaccompanied alien children.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1, 2023

Mr. BENNET (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish the Children’s Court to improve the adjudication of immigration cases involving unaccompanied alien children.

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 “Immigration Court Ef-
5 ficiency and Children’s Court Act of 2023”.

6 **SEC. 2. ESTABLISHMENT AND STRUCTURE OF THE CHIL-**
7 **DREN’S COURT.**

8 (a) ESTABLISHMENT OF THE CHILDREN’S COURT.—
9 Chapter 4 of title II of the Immigration and Nationality

1 Act (8 U.S.C. 1221 et seq.) is amended by inserting after
2 section 240C (8 U.S.C. 1230) the following:

3 **“SEC. 240D. CHILDREN’S COURT.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) CHILDREN’S COURT.—The term ‘Child-
6 dren’s Court’ means all of the specialized children’s
7 dockets described in this section.

8 “(2) DIRECTOR.—The term ‘Director’ means
9 the Director of the Executive Office for Immigration
10 Review.

11 “(3) DOCKET.—The term ‘docket’ means a
12 grouping of removal proceedings that are held dur-
13 ing a dedicated time on a court’s calendar and adju-
14 dicated separately from other immigration cases.

15 “(b) ESTABLISHMENT.—The Attorney General shall
16 establish and maintain, within the Executive Office for
17 Immigration Review, specialized children’s dockets for the
18 adjudication of removal proceedings for any individual
19 who—

20 “(1) was younger than 18 years of age on the
21 date on which such proceedings were initiated; and

22 “(2)(A) was previously determined by the De-
23 partment of Homeland Security or the Department
24 of Health and Human Services to be an unaccom-
25 panied alien child (as defined in section 462(g)(2) of

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

3 “(B) is the principal respondent in a proceeding
4 if such individual was referred to the children’s
5 docket by an immigration judge, unless such child
6 requests to remain on the court’s general docket.

7 “(e) JUDGES.—

8 “(1) GEOGRAPHIC AREAS.—The Director
9 shall divide all of the immigration courts into
10 geographical areas with not more than 5 immi-
11 gration courts in each such area.

12 “(2) DESIGNATIONS.—The Director, in
13 consultation with the Chief Immigration Judge,
14 shall designate—

15 “(A) an immigration judge to serve as
16 Chief Children’s Judge for the Children’s
17 Court; and

18 “(B) 1 immigration judge in each geo-
19 graphical area referred to in to paragraph
20 (1) to serve as the Assistant Chief Chil-
21 dren’s Judge for such area.

22 “(3) QUALIFICATIONS.—The Attorney
23 General shall establish, by regulation, qualifica-
24 tions for Children’s Court judges that ensure,
25 among any other requirements, that the Chief

1 Children’s Judge, each Assistant Chief Chil-
2 dren’s Judge, and each immigration judge as-
3 signed to the Children’s Court—

4 “(A) has substantial experience work-
5 ing with children in judicial or other set-
6 tings;

7 “(B) possess and have demonstrated a
8 commitment to ensuring the fair adminis-
9 tration of justice through child-appropriate
10 court procedures; and

11 “(C) apply for appointment to the
12 Children’s Court.

13 “(4) DUTIES.—

14 “(A) CHIEF CHILDREN’S JUDGE.—
15 The Chief Children’s Judge shall—

16 “(i) establish operating policies
17 and procedures for carrying out adju-
18 dications in the Children’s Court in a
19 manner that advances due process
20 and fairness; and

21 “(ii) oversee the implementation
22 of such policies and procedures.

23 “(B) ASSISTANT CHIEF CHILDREN’S
24 JUDGES.—In addition to his or her duties

1 as an immigration judge, each Assistant
2 Chief Children’s Judge shall—

3 “(i) promote fair and just proc-
4 esses for carrying out adjudications in
5 the specialized children’s dockets in
6 the immigration courts in his or her
7 assigned geographical area; and

8 “(ii) ensure that all of the immi-
9 gration judges assigned to a special-
10 ized children’s docket in the immigra-
11 tion courts in such area complete the
12 training described in paragraph (5).

13 “(5) TRAINING.—

14 “(A) IN GENERAL.—Immigration
15 judges assigned to the Children’s Court
16 shall complete—

17 “(i) initial training upon assign-
18 ment; and

19 “(ii) annual supplementary train-
20 ing.

21 “(B) TOPICS.—Training required
22 under this paragraph shall encompass the
23 following topics:

24 “(i) Children’s claims for immi-
25 gration relief.

1 “(ii) Appropriate use of docket
2 management tools to facilitate chil-
3 dren’s pursuit of relief through an ap-
4 plication or petition to U.S. Citizen-
5 ship and Immigration Services.

6 “(iii) Child-sensitive questioning
7 techniques.

8 “(iv) Developmental- and trau-
9 ma-informed practice that accounts
10 for children’s developmental stage,
11 trauma history, and other factors im-
12 pacting a child’s capacity when deter-
13 mining appropriate courtroom proce-
14 dures, evaluating credibility, and con-
15 sidering testimony and other evidence
16 adduced by a child, among other ac-
17 tions.

18 “(v) Methods for explaining the
19 purpose and nature of court pro-
20 ceedings and procedures to children,
21 including developmentally appropriate
22 communication.

23 “(vi) The concept of the best in-
24 terests of the child.

1 “(vii) Human trafficking of chil-
2 dren.

3 “(C) LEGAL REPRESENTATION.—
4 Training required under this paragraph
5 shall include instruction from govern-
6 mental and nongovernmental experts in the
7 legal representation of unaccompanied chil-
8 dren, child development, child welfare, and
9 child psychology. Assistant Chief Chil-
10 dren’s Judges shall consult with such ex-
11 perts to design training plans.

12 “(6) PERFORMANCE METRICS.—The Exec-
13 utive Office for Immigration Review may not
14 implement minimal numeric case load or case
15 completion requirements, judicial performance
16 standards, or other standards for immigration
17 judges assigned to the Children’s Court that
18 could negatively impact the fair administration
19 of justice or promotion of the best interests of
20 the child by the Children’s Court.

21 “(7) ASSIGNMENT OF OTHER CASES.—Im-
22 migration judges assigned to the Children’s
23 Court may also be assigned cases that are not
24 on a specialized children’s docket if the total
25 caseload of such judges does not exceed 75 per-

1 cent of the average caseload of immigration
2 judges who are not assigned to the Children’s
3 Court.

4 “(d) PROCEDURAL PROTECTIONS.—Proceedings in
5 the Children’s Court shall utilize child-appropriate proce-
6 dures that allow for maximum participation of child re-
7 spondents and promote due process, including—

8 “(1) continuances that are sufficient for a child
9 to obtain counsel;

10 “(2) conferring among the parties to the max-
11 imum extent practicable to narrow the legal issues
12 in advance of an adjudication on the merits;

13 “(3) a rebuttable presumption in favor of grant-
14 ing a child’s request to dismiss or administratively
15 close proceedings when an application for relief is
16 pending before or approved by U.S. Citizenship and
17 Immigration Services;

18 “(4) explanations of court proceedings and
19 advisals by immigration judges regarding legal
20 rights and responsibilities that accommodate a
21 child’s developmental level and capacity;

22 “(5) appropriate accommodations, including
23 breaks during oral testimony by a child;

1 “(6) language screening protocols to ensure
2 that interpretation is provided in the child’s pre-
3 ferred language; and

4 “(7) the use of virtual hearings only—

5 “(A) at the request of the child or the
6 child’s counsel; or

7 “(B) if the immigration judge determines
8 that virtual hearings would be in the child’s
9 legal interests.

10 “(e) BEST INTERESTS OF THE CHILD.—

11 “(1) IN GENERAL.—The best interests of the
12 child may be considered in adjudicating motions,
13 forms of relief, or any other judicial decision requir-
14 ing a discretionary analysis.

15 “(2) CONSIDERATIONS.—A best interests of the
16 child determination shall be made by a child advo-
17 cate or other entity or professional with comparable
18 expertise in such determinations, after taking into
19 account—

20 “(A) the safety and well-being of the child;

21 “(B) the expressed interests of the child,
22 taking into account the child’s age and stage of
23 development;

24 “(C) the physical and mental health of the
25 child;

1 “(D) the right of the child to family integ-
2 rity, liberty, and development; and

3 “(E) the identity of the child, including re-
4 ligious, ethnic, linguistic, gender, sexual ori-
5 entation, and cultural identity.

6 “(3) APPOINTMENT OF INDEPENDENT CHILD
7 ADVOCATES.—Immigration judges assigned to the
8 Children’s Court, on their own initiative or at the re-
9 quest of a child’s counsel in an immigration pro-
10 ceeding, shall consider the referral of a child for ap-
11 pointment of an independent child advocate in ac-
12 cordance with section 235(c)(6).

13 “(f) LEGAL ASSISTANCE FOR UNACCOMPANIED
14 CHILDREN.—Each Assistant Chief Children’s Judge
15 shall—

16 “(1) coordinate with qualified local providers of
17 legal services for children in the geographic area for
18 purposes of maximizing providers’ capacity to pro-
19 vide legal assistance;

20 “(2) on each day when any unrepresented child
21 is on the Children’s Court docket, make sufficient
22 appropriate space available in the court building to
23 afford such child the opportunity to meet confiden-
24 tially with qualified providers of legal services at no
25 cost to the child; and

1 “(3) coordinate with the Secretary of Health
2 and Human Services for purposes of ensuring access
3 to legal information and representation for unaccom-
4 panied children to the greatest extent practicable, in
5 accordance with section 235(c)(5).

6 “(g) ESTABLISHMENT OF DEPARTMENT OF HOME-
7 LAND SECURITY CHILDREN’S COHORT.—

8 “(1) IN GENERAL.—There is established, within
9 the Office of the Principal Legal Advisor, a Chil-
10 dren’s Cohort to represent U.S. Immigration and
11 Customs Enforcement in the Children’s Court.

12 “(2) TRAINING.—Attorneys assigned to the
13 Children’s Cohort shall receive, from governmental
14 and nongovernmental experts in child development,
15 child psychology, and children’s immigration law,
16 initial training upon appointment and annual sup-
17 plementary training regarding—

18 “(A) unaccompanied children’s claims for
19 immigration relief;

20 “(B) child-sensitive questioning techniques;
21 and

22 “(C) trauma-informed interviewing and ad-
23 judication methods.

24 “(3) PERFORMANCE METRICS.—Attorneys as-
25 signed to the Children’s Cohort may not be sub-

1 jected to performance standards or agency strategic
2 measures that are based on case outcomes or other
3 standards that could negatively impact the fair ad-
4 ministration of justice.

5 “(4) PROSECUTORIAL DISCRETION.—Attorneys
6 assigned to the Children’s Cohort, consistent with
7 their existing authority to exercise prosecutorial dis-
8 cretion, may seek resolution of cases in a manner
9 that promotes the fair administration of justice, in-
10 cluding by—

11 “(A) moving to dismiss or administratively
12 close removal proceedings when an application
13 for relief is pending before or approved by U.S.
14 Citizenship and Immigration Services;

15 “(B) agreeing to join motions for dis-
16 missal, administrative closure, or continuances;

17 “(C) stipulating to facts or conclusions of
18 law;

19 “(D) joining motions to grant relief; and

20 “(E) not pursuing appeals.

21 “(5) RIGHT TO REVIEW CERTAIN DOCU-
22 MENTS.—Not later than 7 days after providing a no-
23 tice to appear to an unaccompanied child or to such
24 child’s legal counsel pursuant to section 239(a), the
25 Director of U.S. Immigration and Customs Enforce-

1 ment shall provide to such child or such legal coun-
2 sel, as appropriate, a complete copy of the child’s
3 immigration file (commonly known as an ‘A-file’) in
4 the possession of the Department of Homeland Se-
5 curity (other than documents protected from disclo-
6 sure under section 552(b) of title 5, United States
7 Code).”.

8 (b) RULEMAKING.—The Attorney General shall pro-
9 mulgate regulations to implement the amendment made
10 by subsection (a).

11 (c) CLERICAL AMENDMENT.—The table of contents
12 of the Immigration and Nationality Act (8 U.S.C. 1101
13 note) is amended by inserting after the item relating to
14 section 240C the following:

“Sec. 240D. Children’s Court.”.

15 **SEC. 3. PROHIBITION ON INFORMATION SHARING.**

16 (a) CHILD IN CUSTODY AND PROSPECTIVE SPON-
17 SORS.—The Director of the Office of Refugee Resettle-
18 ment may not provide any information about an unaccom-
19 panied alien child in the custody of the Secretary of
20 Health and Human Services, or prospective sponsors, to
21 the Attorney General or the Secretary of Homeland Secu-
22 rity without the consent of—

23 (1) such child or the child’s prospective spon-
24 sor, as applicable; and

1 (2) the legal counsel of such child or sponsor,
2 respectively.

3 (b) IMMIGRATION ENFORCEMENT.—

4 (1) IN GENERAL.—No information about an un-
5 accompanied alien child may be shared between the
6 Office of Refugee Resettlement and the Department
7 of Homeland Security for purposes of immigration
8 enforcement.

9 (2) EXPLANATION FOR PROSPECTIVE SPON-
10 SORS.—The Director of the Office of Refugee Reset-
11 tlement shall ensure that communications by the Of-
12 fice of Refugee Resettlement with sponsors and pro-
13 spective sponsors, including the family reunification
14 application packet, include an explanation that infor-
15 mation about a child, sponsor, or prospective spon-
16 sor provided to the Office of Refugee Resettlement
17 may only be shared with the Department of Home-
18 land Security if such child and such child’s sponsor
19 or prospective sponsor have provided informed con-
20 sent.

21 (c) RELIEF FROM REMOVAL.—No information about
22 an unaccompanied alien child may be shared between the
23 Office of Refugee Resettlement and the Department of
24 Homeland Security or the Department of Justice for pur-
25 poses of relief from removal.

1 (d) EXCEPTIONS.—

2 (1) IN GENERAL.—The Secretary of Health and
3 Human Services may provide for the disclosure of
4 information about an unaccompanied alien child in
5 the same manner and circumstances as census infor-
6 mation may be disclosed by the Secretary of Com-
7 merce under section 8 of title 13, United States
8 Code.

9 (2) NATIONAL SECURITY PURPOSES.—The Sec-
10 retary of Health and Human Services may provide
11 for the disclosure of information about an unaccom-
12 panied alien child to national security officials to be
13 used solely for a national security purpose in a man-
14 ner that protects the confidentiality of such informa-
15 tion.

16 (3) LAW ENFORCEMENT PURPOSES.—The Sec-
17 retary of Health and Human Services may provide
18 for the disclosure of information about an unaccom-
19 panied alien child to law enforcement officials to be
20 used solely for a legitimate law enforcement purpose
21 in a manner that protects the confidentiality of such
22 information.

23 (4) ELIGIBILITY FOR BENEFITS.—The Sec-
24 retary of Health and Human Services may disclose
25 information about an unaccompanied alien child to

1 Federal, State, and local public and private agencies
2 providing benefits, to be used solely in making deter-
3 minations of eligibility for benefits pursuant to sec-
4 tion 431 of the Personal Responsibility and Work
5 Opportunity Reconciliation Act of 1996 (8 U.S.C.
6 1641).

7 (5) ADJUDICATION OF APPLICATIONS FOR RE-
8 LIEF.—

9 (A) IN GENERAL.—Government entities
10 adjudicating applications for relief under the
11 immigration laws and government personnel
12 carrying duties required under section 101(i)(1)
13 of the Immigration and Nationality Act (8
14 U.S.C. 1101(i)(1)) may, with the prior written
15 consent of the noncitizen involved, communicate
16 with nonprofit, nongovernmental victims' serv-
17 ice providers for the sole purpose of assisting
18 victims in obtaining victim services from pro-
19 grams with expertise in working with immigrant
20 victims. Agencies receiving referrals under this
21 subparagraph are bound by the restrictions
22 under this section.

23 (B) RULE OF CONSTRUCTION.—Nothing in
24 this paragraph may be construed as affecting
25 the ability of an applicant to designate a safe

1 organization through which governmental agen-
2 cies may communicate with the applicant.

3 (e) **RULE OF CONSTRUCTION.**—Subsections (a), (b),
4 and (c) shall not be construed as preventing—

5 (1) disclosure of information in connection with
6 judicial review of a determination in a manner that
7 protects the confidentiality of such information; or

8 (2) the Secretary of Health and Human Serv-
9 ices from disclosing to the chair and ranking mem-
10 ber of the Committee on the Judiciary of the Senate
11 or to the chair and ranking member of the Com-
12 mittee on the Judiciary of the House of Representa-
13 tives, for the exercise of congressional oversight au-
14 thority, information on closed cases described in this
15 section in a manner that—

16 (A) protects the confidentiality of such in-
17 formation; and

18 (B) omits personally identifying informa-
19 tion (including locational information about in-
20 dividuals).

21 **SEC. 4. REPORTING AND EVALUATION.**

22 (a) **DEFINED TERM.**—In this section, the term “ap-
23 propriate congressional committees” means—

24 (1) the Committee on the Judiciary of the Sen-
25 ate;

1 (2) the Committee on Appropriations of the
2 Senate;

3 (3) the Committee on the Judiciary of the
4 House of Representatives; and

5 (4) the Committee on Appropriations of the
6 House of Representatives.

7 (b) ANNUAL REPORTS.—Not later than 1 year after
8 the date of the enactment of this Act, and annually there-
9 after, the Attorney General shall submit to the appropriate
10 congressional committees and publish on a publicly acces-
11 sible website a report describing—

12 (1) the level of compliance of each relevant im-
13 migration court with the requirements described in
14 section 240D of the Immigration and Nationality
15 Act, as added by section 2(a);

16 (2) corrective actions the Attorney General is
17 taking or plans to take to ensure that any relevant
18 immigration court that is not in compliance with the
19 requirements referred to in paragraph (1) expedi-
20 tiously achieves such compliance;

21 (3) training that has been provided to judges
22 assigned to the Children’s Court (as defined in such
23 section 240D);

24 (4) the number of unaccompanied alien chil-
25 dren’s cases pending before the Children’s Court;

1 (5) the number of unaccompanied alien chil-
2 dren's cases receiving final decisions in the Chil-
3 dren's Court during the reporting period,
4 disaggregated by—

5 (A) decision type, including orders of re-
6 moval, grants of relief, dismissals, and termi-
7 nations; and

8 (B) whether the children were represented
9 by an attorney at the time they received the
10 final decisions;

11 (6) unaccompanied alien children's appearance
12 rates at hearings before the Children's Court,
13 disaggregated by whether the children were rep-
14 resented by an attorney at the time of such hear-
15 ings; and

16 (7) any immigration court resources conserved
17 by the establishment and administration of special-
18 ized children's dockets.

19 (c) BIENNIAL EVALUATIONS.—Not later than 2 years
20 after the date of the enactment of this Act, and biennially
21 thereafter, the Comptroller General of the United States
22 shall submit to the appropriate congressional committees
23 and publish on a public website a report evaluating—

24 (1) the Attorney General's compliance with the
25 requirements described in section 240D of the Immi-

1 gration and Nationality Act, as added by section
2 2(a) across the Children’s Court as a whole and
3 disaggregated by relevant immigration courts; and

4 (2) the effectiveness of the Children’s Court
5 in—

6 (A) upholding fairness and due process in
7 unaccompanied alien children’s proceedings;
8 and

9 (B) limiting adjudication redundancy be-
10 tween the Executive Office for Immigration Re-
11 view and U.S. Citizenship and Immigration
12 Services.

13 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

14 There is authorized to be appropriated to the Depart-
15 ment of Justice, the Department of Homeland Security,
16 and the Department of Health and Human Services such
17 sums as may be necessary to carry out this Act and the
18 amendment made by this Act.

○