

IMMIGRATION COURT EFFICIENCY AND CHILDREN'S COURT ACT

Section-by-Section Summary

SEC. 1. SHORT TITLE

Establishes the short title of the Act as the "The Immigration Court Efficiency and Children's Court Act of 2023."

SEC. 2. ESTABLISHMENT AND STRUCTURE OF THE CHILDREN'S IMMIGRATION COURT.

Sec.2(a). Establishment. Amends the Immigration and Nationality Act to create a new Section 240D establishing a Children's Court.

Sec.240D(a). Provides definitions for the Section, including a definition of the Children's Court which means the specialized children's dockets described in the Section.

Sec.240D(b). Directs the Attorney General to establish within the Executive Office for Immigration Review (EOIR) specialized dockets for the adjudication of the removal proceedings of unaccompanied children and certain other children who are principal respondents.

Sec.240D(c)(1). Directs the Director of EOIR to establish geographical areas containing not more than five immigration courts.

Sec.240D(c)(2). Chief Children's Judges. Directs the Director of EOIR to designate a Chief Children's Judge and assign an Assistant Chief Children's Judge for each geographical area.

Sec.240D(c)(3). Qualifications. Requires that judges in the Children's Immigration Court be selected because of their experience working with children and demonstrated commitment to the fair administration of justice through child-appropriate court procedures.

Sec.240D(c)(4). Outlines the duties of the Chief Children's Judge and the Assistant Chief Children's Judges.

Sec.240D(c)(5). Training. Requires that judicial training for Children's Immigration Court judges include topics such as:

- children's claims for immigration relief
- docket management tools that facilitate children's pursuit of relief via application to U.S. Citizenship and Immigration Services (USCIS)
- child-sensitive questioning techniques
- developmental- and trauma-informed practice
- methods for explaining the purpose and goals of the proceeding to children
- the concept of best interests of the child
- human trafficking of children.

Requires that trainings include instruction from governmental and non-governmental experts in the legal representation of unaccompanied children, child development, child welfare, and child psychology.

Sec.240D(c)(6). Performance Metrics. Prohibits EOIR from implementing numeric case load judicial performance standards or other standards for Children’s Court judges that could negatively impact the fair administration of justice or the promotion of the best interests of the child.

Sec.240D(c)(7). Allows for Children’s Court judges to be assigned cases other than Children’s Court cases. Prohibits Children’s Court judges’ caseloads from exceeding 75% of the average caseload of immigration judges overall.

Sec.240D(d). Procedural Protections. Requires utilization of child-appropriate procedures for proceedings in the Children’s Court, including:

- continuances for a child to obtain counsel
- conferring among the parties to the maximum extent practicable to narrow the legal issues at contention during the proceedings
- a rebuttable presumption in favor of granting a child’s request to dismiss or administratively close proceedings when an application for relief is pending before or approved by USCIS
- explanations of court proceedings and advisals regarding legal rights and responsibilities that accommodate a child’s developmental stage
- appropriate accommodations including breaks during testimony by a child
- language screening protocols to ensure that interpretation is provided in the child’s preferred language
- use of virtual hearings only at the request of the child or their counsel or if assessed by the judge to be in the child’s legal interests.

Sec.240D(e). Best Interests of the Child. Allows judges in the Children’s Court to consider the best interests of the child when adjudications require a discretionary analysis. Requires that a best interests of the child determination be made by a Child Advocate or other qualified entity and take into account:

- the safety and well-being of the child
- the expressed interests of the child, taking into account the child’s age and stage of development
- the physical and mental health of the child
- the right of the child to family integrity, liberty, and development
- the identity of the child, including religious, ethnic, linguistic, gender, sexual orientation, and cultural identity.

Sec.240D(f). Legal Assistance. Requires that Assistant Chief Children’s Judges for each region coordinate with local providers of legal services for unaccompanied children; make appropriate space available in the court building for confidential meetings between such providers and children; coordinate with the Department of Health and Human Services (HHS) for purposes of ensuring access to legal information and representation for unaccompanied children to the greatest extent practicable.

Sec.240D(g)(1). Department of Homeland Security Children’s Cohort. Establishes a Children’s Cohort within the Office of the Principal Legal Advisor in the Department of Homeland Security (DHS) to represent the agency in any removal proceedings involving an unaccompanied child.

Sec.240D(g)(2). Training. Requires that attorneys assigned to the Children’s Cohort receive initial training upon appointment and annual supplementary training in areas including unaccompanied children’s claims for immigration relief, child-sensitive questioning techniques, and trauma-informed interviewing and adjudication methods. Requires that training include instruction from non-governmental experts in child development, child psychology, and children’s immigration law.

Sec.240D(g)(3). Performance Metrics. Prohibits DHS from applying to the staff assigned to the Children’s Cohort performance standards or agency strategic measures based on case outcomes or other standards that could negatively impact the fair administration of justice.

Sec.240D(g)(4). Prosecutorial Discretion. Reiterates the authority of attorneys within the Children’s Cohort to utilize their existing authority to exercise prosecutorial discretion to resolve cases in a manner that promotes the fair administration of justice.

Sec.240D(g)(5). Right to Review Certain Documents. Requires that an unaccompanied child and/or their counsel receive a complete copy of the child’s immigration file.

Sec.2(b). Rulemaking. Requires the Attorney General to promulgate associated regulations.

Sec.2(c). Amends the table of contents of the Immigration and Nationality Act to include Section 240D.

SEC. 3. PROHIBITION ON INFORMATION SHARING

Sec.3(a). Limits the ability of the Office of Refugee Resettlement (ORR) to provide information about unaccompanied children or their prospective sponsors to DHS or the Department of Justice (DOJ) without the consent of the child or sponsor concerned.

Sec.3(b). Generally prohibits information sharing between ORR and DHS for purposes of immigration enforcement. Requires notification to sponsors and prospective sponsors of unaccompanied children that information provided to ORR may only be shared with DHS with their consent.

Sec.3(c). Prohibits information sharing between ORR and DHS or DOJ for purposes of relief from removal.

Sec.3(d). Creates exceptions to the prohibition on information sharing for certain purposes, including national security, law enforcement, eligibility for benefits, and adjudication of applications for relief.

Sec.3(e). Provides for a rule of construction for disclosure of information in certain circumstances if confidentiality is protected.

SEC. 4. REPORTING AND EVALUATION.

Requires annual reporting on the implementation and activities of the Children’s Court. Requires biennial evaluations by the Comptroller General of compliance with this Act and effectiveness of the Children’s Court.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Authorizes appropriations to the Departments of Justice, Homeland Security, and Health and Human Services to carry out this Act.