

**Chapter III:  
Abuse, Abandonment, or Neglect:  
The Role of State Law Definitions in Special Immigrant Juvenile Status Findings<sup>1</sup>**

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**Making SIJS Finding Using State Law Definitions of Abuse, Abandonment, and Neglect**

Special Immigrant Juvenile Status (SIJS) was created to provide humanitarian protection for immigrant children who have been abused, abandoned, neglected or suffered a similar harm defined in state law perpetrated by one or both of their parents. To be eligible for SIJS, the child must obtain a finding from a state court judge with jurisdiction to decide his custody, care, or placement that reunification with one or both parents is not viable due to abuse, abandonment, neglect or a similar basis under a state law.<sup>2</sup> The federal SIJS statute does not define “abuse,” “neglect,” and/or “abandonment.” Instead, for SIJS purposes state courts are required to:

- Make factual determinations as to the harms that were perpetrated on the child by the child’s parent or parents;<sup>3</sup>
- Apply the state law definitions of “abuse,” “abandonment,” and “neglect” to the facts of the case whether the harms took place in the United States, abroad or both;
- Decide using state law, which of the harms that the court found the child suffered constituted “abuse,” “abandonment,” “neglect,” or another similar harm defined by state law and address each separately in the court’s order. Describing each harm type, the facts that constitute that harm, and the parent who perpetrated that harm is useful for the immigration adjudicator.<sup>4</sup>

It is not required that formal charges of abuse, abandonment or neglect be initiated by the state in a child welfare or criminal case against the parent. Any court with jurisdiction to issue orders regarding the care, custody or placement of a child with a parent, guardian, the state or other individual can include SIJS findings as part of that court order. This can occur in a wide range of court proceedings including protection orders, child welfare, custody, divorce, guardianship, paternity, adoption, termination of parental rights, and delinquency cases.<sup>5</sup>

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<sup>2</sup> U.S. Citizenship & Immigration Servs., *Volume 6: Immigrants, Part J, Special Immigrant Juveniles*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(B) – Background*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

<sup>3</sup> If both parents perpetrated one or more of these harms against the child, the SIJS findings in the state court order should separately address the harm or harms caused by each parent.

<sup>4</sup> For example, the child’s mother may have abused the child and the child’s father may have abandoned the child. The harms perpetrated by each parent will need to be described separately in the court’s order.

<sup>5</sup> For more detail on the wide range of state court proceedings in which SIJS findings can be included in the state court’s order, see Leslye E. Orloff, *Chapter II: Details about Special Immigrant Juvenile Status (SIJS) Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and *Appendix J: Types of Proceedings in which State Courts Can Make Special*

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This chapter provides an overview of how state courts apply the state law definitions of “abuse,” “abandonment,” and “neglect” in issuing SIJS findings as part of state court orders. The chapter provides an overview of the helpful charts included as appendices that provide the state-by-state details and a national multi-state overview of how each of the terms are described in the law of each of the states and jurisdictions.

The first section of this chapter explains how courts should apply the state law definitions of abuse, abandonment, and neglect to facts that occurred outside and inside the United States. The second section will discuss the state law definitions of abuse, abandonment, and neglect and highlights the common themes in the state law definitions. These charts are included in this manual in the following appendices:

- Appendix K: *State Law Definitions of Child Abuse*
- Appendix L: *State Law Definitions of Abandonment*
- Appendix M: *State Law Definitions of Neglect*

The third section will build upon the discussion in Chapter II of “similar basis under state law” for harms that make children eligible for SIJS. In some instances, notably domestic violence, child endangerment and forced marriage statutes, the harms to children these statutes are designed to protect are identical to or include in the statutory definitions facts that also constitute child abuse, abandonment or neglect under state law. This manual includes the following state-by-state charts that illustrate how each of these harms also constitutes child abuse, abandonment or neglect under state law:

- Appendix N: *State Law Definitions of Domestic Violence Include Child Abuse*
- Appendix O: *All State Laws Define Child Endangerment as More Than Neglect*
- Appendix P: *Forced Marriage as Child Abuse: State Laws*

This manual includes in Appendix K, L and M the text of state law definitions of abuse, abandonment, and neglect in all 50 states, the District of Columbia, Puerto Rico, American Samoa and the U.S. Virgin Islands. The introduction to each chart discusses themes that emerge from examining these definitions from jurisdictions across the country. These charts will assist judges and court staff in identifying states when laws in one state use definitions of abuse, abandonment or neglect that are identical or substantially similar to the definitions used in another state. When statutes are identical or substantially similar, case law interpretations of the statute in one state can provide helpful analysis and interpretation for courts in another state. These materials will assist courts making SIJS findings as well as in a wide range of family court cases involving children.

The charts contain the statutory text and include a discussion of the common scenarios for children seeking SIJS findings who have suffered traumatic events including child abuse, abandonment, neglect, domestic violence, and/or sexual assault perpetrated by one or both of their parents over the course of their lifetime. These traumatic events may have occurred in the child’s home country, during his journey to the U.S. or during the course of his resettlement,

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*Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-j-types-of-proceedings-sijs-findings/>.

adaptation, and life in the United States. Appendix E of this manual includes a discussion of how these traumas affect a child’s physical, brain and emotional development.<sup>6</sup>

### **Apply state law for facts that happened outside or inside United States.**

SIJS findings are factual determinations made in a state court proceeding by a judge applying state law about the abuse, neglect, or abandonment; family reunification; and best interest of the child. State law applies to facts of the case wherever in the world those facts took place.<sup>7</sup> When the abuse, abandonment or neglect of the immigrant child seeking SIJS findings occurred abroad, state court judges are to apply their state’s abuse, abandonment and neglect definitions and the state’s best interests of the child law factors to the facts that took place outside of the United States.<sup>8</sup> The process will proceed as follows:

- The court first makes findings about the facts of the abuse, the abandonment and/or the neglect that occurred in the child’s home country perpetrated by the child’s parent(s).
- These findings address the abuse, abandonment, neglect or similar harm defined by state law perpetrated by each parent separately. If only one parent has harmed the child the court order should make clear which parent harmed the child and which parent did not.
- Next, the court will determine whether under the law of the state in which the court is located those facts constitute abuse, abandonment or neglect under state law.
- If the facts about the actions the child suffered constitute abuse, abandonment and/or neglect, or similar harm under state law the court will consider those facts in applying the state law on the best interest of the child in making each of the following three SIJS findings:
  - Addressing a child’s custody, placement, commitment, or parenting time
  - Finding that reunification with one or both the child’s parents is not viable due to abuse, abandonment, neglect or similar basis under state law; and
  - Finding that it is not in the child’s best interest to be returned to the child’s or his parent’s home country.

There is no requirement for a specific type of state court proceeding in which the abuse, abandonment, neglect, or similar basis of harm to a child and child’s best interest findings may be made. Judges may issue these orders containing SIJS findings in any state proceeding in which the court has the legal authority under state law to issue orders regarding the care, custody, or placement of an immigrant child. For this reason, it is helpful for state courts to be on the alert for children who qualify for SIJS who may benefit from state court predicate findings.

### **Judges may apply any state definition of abuse, abandonment, or neglect**

Under the SIJS statute, reunification with one or both parents must not be viable due to abuse, neglect or abandonment, or a similar basis found under *state law*.<sup>9</sup> The definitions of abuse, abandonment, and neglect are found in a range of state laws:

- Family code;

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<sup>6</sup> Appendix E: Understanding the Significance of a Minor’s Trauma History in Family Court Proceedings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

<sup>7</sup> *In re Y.V.*, 160 So.3d 576 (Fla. Dist. Ct. App. 2015).

<sup>8</sup> *H.S.P. v. J.K.*, 121 A.3d 849, 211-12 (N.J. 2015).

<sup>9</sup> Immigration and Nationality Act (INA) § 101(a)(27)(J)(i), 8 U.S.C. § 1101(a)(27)(J) (2012).

- Criminal code;
- Juvenile codes;
- Termination of parental rights;
- The State Uniform Child Custody Jurisdiction and Enforcement Act;
- Adoption laws;
- Child protection or child welfare laws;
- Children’s codes;
- State social services codes; and
- Domestic violence statutes.

The non-viability of reunification with just one parent or both due to abuse, abandonment, neglect or similar basis is a required prerequisite finding that a child must receive from a state court in order to be able to apply for SIJS. This non-viability finding can be made as part of the court’s order regarding the award of custody, guardianship or placement of the child in any state court proceeding. The SIJS statute does not require formal charges of abuse, abandonment or neglect against the parents. The child can qualify for SIJS with or without a state child abuse, termination of parental rights or criminal proceeding against the perpetrator. In some cases, the parental rights could have already been terminated.

The following section discusses the abuse, abandonment and neglect definition charts in the appendix of this manual. These charts will help judges and court staff identify states with identical or similar statutory language regarding the definition of child abuse. This information can help courts identify decisions from other jurisdictions that can provide useful legal analysis and persuasive reasoning that can be useful to the court’s interpretation of its own statute and application of that statute to facts in a range of family court cases that the court decides including SIJS findings.

#### *Child Abuse*

The Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse as:

“[a]ny recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”

This includes:

“employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or [t]he rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.”

The charts in Appendix K - *State Law Definitions of Child Abuse* provide state-by-state details of the factors included in each state’s child abuse laws. Definitions of abuse under state laws often includes:

- Physical abuse;
- Sexual abuse or exploitation;

- Domestic violence;
- Failure of a parent or other person with responsibility for the child to provide needed food, clothing, shelter, medical care, or supervision to the degree that the child's health, safety, and well-being are threatened with harm, sexual abuse/exploitation, emotional abuse, such as injury to the psychological capacity and stability of the child;
- Parental substance abuse;
- Abandonment, such as when a child has been left in circumstances in which the child can suffer serious harm.<sup>10</sup>

### *Child Abandonment*

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) defines as “abandoned” a child who is left without provision for reasonable and necessary care or supervision. Almost all 50 states<sup>11</sup> include this definition in their statutes. In addition, to the UCCJEA abandonment definition, states generally include in their state laws other definitions of abandonment. Factors commonly included in the definition of abandonment under state laws include when parents fail to provide reasonable care, support, communication or visitation with the child.<sup>12</sup> Abandonment definitions included in the following state statutes:

- The Uniform Child Custody Jurisdiction and Enforcement Act
- The Uniform Child Custody Jurisdiction Act
- Family code
- Termination of parental rights laws
- Criminal codes
- Child welfare legislation.

### *Neglect*

The themes commonly consistent among state statutes defining neglect are:<sup>13</sup>

- The failure to meet the child's basic needs which include failure to provide clothing, shelter, adequate food among other factors;
- Abuse, harm or failure to prevent harm to a child;
- Failure to discharge responsibilities to care for a child;
- Exposure to drugs at or before birth;

The definitions of abuse, abandonment, and neglect in some states can overlap, sharing common factors under state laws. In states like Arkansas, Colorado, and Connecticut abandonment of a child is defined as child neglect under state law. In cases where the concept of neglect and abandonment overlap, it is important for the court making SIJS findings to clearly

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<sup>10</sup> See e.g., Florida, Indiana, Kentucky, Maine, Minnesota, Montana, New Jersey, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, and Wyoming. Details are included in *Appendix K: State Law Definitions of Child Abuse*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-33 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-k-state-law-definitions-of-child-abuse-chart/>.

<sup>11</sup> All except D.C., Massachusetts, and Virginia include it.

<sup>12</sup> See *Appendix L: State Law Definitions of Abandonment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-l-abandonment-of-children-statutes-definitions/>.

<sup>13</sup> *Appendix M: State Law Definitions of Child Neglect*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-m-state-law-definitions-of-child-neglect-chart/>.

indicate in the order which harms the child has suffered. If the child suffered multiple harms, the state court order should address each harm separately and the court order must clearly indicate which state law definitions of abuse, abandonment or neglect it is applying in its order.

### **Similar basis under state law**

The SIJS statute allows courts to issue SIJS findings on behalf of children who have suffered harms perpetrated by a parent that are defined in state law and that are “similar” to abuse, abandonment, or neglect. States use different vocabulary to describe similar harmful actions to children in their statutes. The abuse, neglect or abandonment of the child can be defined in a variety of state statutes in addition to the definitions in the state child abuse, abandonment and neglect statutes.

For example, being present in a state without proper care or custody is similar to neglect. In some states this is a factor included in the neglect statute. In other states it is in another statute separate from the definition of neglect.<sup>14</sup> Also although death of a parent does not constitute abandonment under any state’s statute, death is sometimes considered a similar basis for abandonment, abuse or neglect. However, in some jurisdictions death can constitute abandonment when parents failed to make appropriate arrangements for the child's care.<sup>15</sup>

State statutes designed to protect and promote child welfare and children’s best interests will often include protections that are similar basis under state law for authorizing courts to take jurisdiction and issue orders to benefit children. These laws may provide protection for children, allow for state or court intervention on a child’s behalf, and/or may criminalize actions or failure to act with regard to a child. For purposes of SIJS eligibility, when children suffer harms or are placed at risk of harm in ways described in these statutes, a child may qualify for SIJS.

Specific examples of state statutes that offer protection to children are domestic violence, child endangerment and forced marriage laws. Essentially, children who benefit from these laws will also have experienced actions or inactions by their parent(s) that make them eligible for state law protection as child victims of abuse, abandonment and/or neglect. With these types of statutory protections of children, rather than relying solely on articulating in the court order how these harms are a similar basis, courts issuing SIJS findings should base their findings on the facts of abuse, abandonment, and/or neglect by the child’s parents. The state court order may demonstrate in the court’s findings that the harm the parent has caused the child meets both the state law definition of child abuse, abandonment or neglect as well as other similar harms defined in the state statute.

It is important to note also that many states have criminal, family violence prevention and child welfare laws that offer protection to children that define crimes and criminal activities that are harmful to children that are distinct from the state law definitions of “abuse,” “neglect,” and “abandonment.” These are laws in which child neglect or child abuse is included within the definition of the crime or abusive activity that harms children. These statutes treat child abuse or

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<sup>14</sup> See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(A) – Determining Eligibility, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 4 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

<sup>15</sup> See Appendix L: State Law Definitions of Abandonment, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-l-abandonment-of-children-statutes-definitions/>; Appendix M: State Law Definitions of Child Neglect, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-m-state-law-definitions-of-child-neglect-chart/>.

child neglect in the same manner as lesser-included offenses are treated in many criminal law statutes. When this is true, the offense or harm to the child defined by the statute would not fall under “similar basis.” Instead, best practices for issuance of SIJS orders is to clarify that the facts of the case before the court constitute one of the following crimes and meet the definition of child abuse or child neglect under the state statute. Whenever the harm to a child meets the state law definition of abuse or neglect, the court should make SIJS findings under the abuse or neglect definitions in addition to the findings regarding other crimes or harms that are the focus of the proceeding before the court.

This approach will reduce the number of instances in which USCIS adjudicators unfamiliar with the details of the laws in each U.S. state and jurisdiction request further information and require that children return to state court for additional information or more detailed orders. The state court has the expertise to explain in the order how the facts of harm that the child suffered constitute abuse or neglect under state law in addition to constituting crimes or criminal activities like those on the following list. The following appendices provide a multi-state overview and charts tracking how state law definitions of the following harms to children also constitute abuse, abandonment or neglect of children under the same state’s laws:

- Appendix N - *Domestic Violence Laws*
  - In the vast majority of states the civil protection order and criminal domestic violence statutes offer protection to child victims. All of the facts that would meet the definition of domestic violence under these state statutes if perpetrated against a child also meet the state law definitions of child abuse and/or child neglect. Thus, domestic violence offenses committed against children for SIJS purposes in most states also constitute child abuse and/or child neglect.<sup>16</sup>
- Appendix O - *Child Endangerment Laws*
  - In all states require a higher level of harm or intent than child neglect laws.<sup>17</sup>
- Appendix P - *Forced Marriage Laws*
  - Include elements of harm to a child involving rape, sexual assault, kidnapping or other harms that are also included in the definition of child abuse under state law.<sup>18</sup>

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<sup>16</sup> Appendix N: *Domestic Violence Includes Child Abuse and Child Neglect*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect/>.

<sup>17</sup> Appendix O: *States that Define Endangerment Higher than Neglect*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-o-endangerment-chart/>.

<sup>18</sup> Appendix P: *Forced Marriage as Child Abuse: State Laws*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-p-forced-marriage-chart/>.