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State Justice Institute

AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW

Appendix U - SIJS and Declaratory Judgment Statutes-- State-by-State							
By Isabel LaLuna, Monica Bates, and Leslye E. Orloff (November 26, 2017)							
State	**Statute**	**Standard Approach**	**Variation**	**Type of Variation**	**"Actual Controversy" Requirement**	**Case Law Using DJ on Family law Issues**	**Available Option for SJIS?**
Alabama	Ala. Code § 6-6-223	X				*Waite v. Waite*, 891 So.2d 341 (Ala.Civ.App. 2004) (Divorce); *Wilmore v. Wilmore*, 91 So.3d 701 (Ala.Civ.App. 2012) (Divorce)	Yes
Alaska	AS § 22.10.020		X		X	*Jacob v. State of Alaska*, 177 P.3d 1181 (Alaska 2008) (Grandparents' Right to Notice and Hearing); *State of Alaska v. Native Vill. of Tanana*, 249 P.3d 734 (Alaska 2011) (Jurisdiction over Child Custody Proceedings)	Yes
American Samoa	Am. Samoa Ann. § 43.1101		X	Only applicable to Wills, Deeds, other written instruments or property-related controversies	X		No
Arizona	A.R.S. § 12-1831	X				*Russell Piccoli P.L.C. v. O'Donnell*, 237 Ariz. 43 (Ariz.Ct.App. 2015) (Divorce); *Srock, Jr. v. Srock*, 11 Ariz.App. 483 (Ariz.Ct.App. 1970) (Divorce)	Yes
Arkansas	A.C.A. § 16-111-103 & 104	X				*Grays v. Arkansas Office of Child Support Enforcement*, 375 Ark. 38 (Ark. 2008) (Child Support); *Pianalto v. Pianalto*, 2010 Ark. App. 80 (Ark.Ct.App. 2010) (Marital Property/Divorce)	Yes
California	West's Ann. Cal. C.C.P. § 1060		X	Only applies to property rights.		*In Re Claudia E. v. J.E.*, 163 Cal.App.4th 627 (Cal.Ct.App. 2008) (Custody)	No
Colorado	C.R.S.A. § 13-51-106	X				*Schwartz v. Schwartz*, 183 P.3d 552 (Colo. 2008) (Antenuptial Agreement/Divorce)	Yes
Connecticut	Conn. Gen. Stat. §17-55	X		Party seeking declaratory judgment has an interest, legal or equitable, by reason of danger of loss or of uncertainty as to the party's rights or other jural relations; Case law notes that this is to be used only in extraordinary situations as an extraordinary remedy; Case law also indicates that the scope of the CT statute is to be construed more broadly than the federal statute.		*Mirto v. Bodine*, 29 Conn.Supp. 510 (Conn.Super.Ct. 1972) (Grandparents' Visitation Rights); *B. v. Ment*, 244 Conn. 296 (Conn. 1998) (Custody)	Yes
Delaware	10 Del. § 6501	X				*C.L. v. C.*, 1990 WL 34699 (Del.Fam.Ct. 1990) (Support and Custody)	Yes
D.C.	SCR-Dom. Rel. Rule 57	X		Applies the federal statute (28 U.S.C. § 2201)	X	*In Re Estate of Glover*, 470 A.2d 743 (D.C. 1983) (Illegimate Child)	Yes
Florida	West's F.S.A. § 86.021	X		Court extends jurisdiction over juveniles for SJIS adjudication purposes. *See* Fla. Stat. § 39.013(2).		*Kendrick v. Everheart*, 390 So.2d 53 (Fla. 1980) (Paternity); *F.L.M. v. Dep't of Children and Families*, 912 So.2d 1264 (Fla.Dist.Ct. App. 2005) (Status of Immigrant Juvenile); *Peregood v. Cosmides*, 663 So.2d 665 (Fla.Dist.Ct.App. 1995) (Adoption)	Yes
Georgia	Ga. Code Ann. § 9-4-2		X		X	*Weaver v. Jones*, 260 Ga. 493 (Ga. 1990) (Child Custody/Support under Divorce Decree); *Hardman v. Hardman*, 295 Ga. 732 (Ga. 2014) (Child Support; Rights/Duties under Divorce Decree); *Acevedo v. Kim*, 284 Ga. 629 (Ga. 2008)(Child Support under Divorce Decree)	Yes
Guam	7 Guam Code Ann. § 26801		X	Only applies to property rights, wills and contracts.	X		No
Hawaii	HRS § 632-1		X	Language makes it appear that the statute only applies to antagonistic situations in which a "party asserts a legal relation, status, right, or privilege in which the party has a concrete interest and that there is a challenge or denial of the asserted relation, status, right, or privilege by an adversary party who also has or asserts a concrete interest therein"	X	*Filipo v. Chang*, 62 Haw. 626 (Haw. 1980) (Support for Unborn Child)	Only in contested cases
Idaho	I.C. § 10-1202	X				*Foster v. Schorr*, 139 Idaho 563 (Idaho 2003) (Divorce/Rights in Former Marital Residence)	Yes

Illinois	735 ILCS 5/2-701		X	Court should construe declaratory judgment statute broadly so as not to restrict remedy by unduly technical interpretation. *Barrington Community Unit School Dist. No. 220 v. Special Educ. Dist. of Lake County*, 615 N.E.2d 1153 (Ill. App. Ct. 1993)		*In re Marriage of Best*, 228 Ill.2d 107 (Ill. 2008) (Dissolution of Marriage/Premarital Agreement)	Yes
Indiana	Ind. Code § 34-14-1-2	X				*Garcia v. Garcia*, 789 N.E.2d 993 (Ind.Ct.App. 2003) (Child Support)	Yes
Iowa	I.C.A. Rule 1.1101	X				*In Re Marriage of McEnvoy*, 414 N.W.2d 855 (Iowa Ct.App. 1987) (Child Custody and Visitation)	Yes
Kansas	K.S.A. 60-1701	X				*Wornkey v. Wornkey*, 12 Kan.App.2d 506 (Kan.Ct.App. 1988) (Child Support)	Yes
Kentucky	KRS § 418.020		X	Further relief, based on a declaratory judgment, order or decree, **may be granted whenever necessary or proper.** *See* § 38:4.Statutory provisions in Kentucky, 5 Ky. Prac. Methods of Prac. § 38:4 (emphasis added)		*Carter v. Nance*, 304 Ky. 256 (Ky.Ct.App. 1947) (Custody)	Yes
Louisiana	LSA-C.C.P. Art. 1872	X				*Spicer v. Spicer*, 62 So.3d 798 (La.Ct.App. 2011) (Child Support)	Yes
Maine	14 M.R.S.A. § 5954	X				*Johannesen v. Pfeiffer*, 387 A.2d 1113 (Me. 1978) (Paternity); *Randlett v. Randlett*, 401 A.2d 1008 (Me. 1979) (Divorce)	Yes
Maryland	MD Code Ann. § 3-406	X				*Green v. Sollenberger*, 338 Md. 118 (Md. 1995) (Child Adoption)	Yes
Massachusetts	M.G.L.A. § 231A § 2		X	Applies to: Wills, deeds, written contracts, or other writings constituting a contract		*Gardner v. Rothman*, 370 Mass. 79 (Mass. 1976) (Visitation Rights); *D.L. v. Comm'r of Soc. Serv.*, 412 Mass. 558 (Mass. 1992) (Placement/Custody)	No
Michigan	MI Rules MCR 2.605		X		X	*Ellehaf v. Tarraf*, 2006 WL 736561 (Mich.Ct.App. 2006) - Westlaw/Unpublished Opinion (Marriage); *Wayne Cnty. v. State of Mich.*, 202 Mich.App. 530 (Mich.Ct. App. 1993)(Foster Care for Abused/Neglected Children)	Yes
Minnesota	M.S.A. § 555.01	X				*Cnty. of Ramsey v. Wilson*, 526 N.W.2d 384 (Minn.Ct.App. 1995) (Child Placement/Adoption Subsidy); *In the Matter of the Guardianship of O'Brien*, 847 N.W.2d 710 (Minn.Ct.App. 2014) (Ward's Right to Marry)	Yes
Mississippi	M.R.C.P. Rule 57(b)(1)	X				*McManus v. Howard*, 569 So.2d 1213 (Miss. 1990) (Child Custody)	Yes
Missouri	Mo. Rev. Stat. § 87.02		X	Only applicable to persons interested under Deeds, Wills, Contracts, Statutes		*K.D.R. v. D.E.S.*, 637 S.W.2d 691 (Mo. 1982) (Paternity)	No
Montana	MCA 27-8-202	X				*D'Ewart, v. Neibauer*, 228 Mont. 335 (Mont. 1987) (Child Care)	Yes
Nevada	Neb. Rev. St. § 25-21, 149	X				*Warren v. Warren*, 94 Nev. 309 (Nev. 1978) (Divorce)	Yes
Nebraska	N.R.S. 30.030	X				*McCombs v. Haley*, 13 Neb.App. 729 (Neb.Ct.App. 2005) (Null and Void Marriage)	Yes
New Hampshire	N.H. Rev. Stat. § 491:22		X	Applies to people claiming legal or equitable right or title			No
New Jersey	N.J.S.A. 2A:16-52	X					Yes
New Mexico	N.M.S.A. § 44-6-2	X					Yes
New York	N.Y.C.P.L.R. § 3001 (McKinney)		X		X	*Cardosanto v. Cardosanto*, 14 Misc.2d 498 (N.Y.Sup.Ct. 1957) (Marital Status); *On the Petition of Amoury for Declaratory Judgment*, 307 F.Supp. 213 (S.D.N.Y. 1969) (Deportation of Immigrant Parents)	Yes
North Carolina	N.C.G.S.A. § 1-256	X					Yes
North Dakota	N.D. Cent. Code § 32-23-01	X				*Schaff v. Schaff*, 446 N.W.2d 28 (N.D. 1989) (Paternity/Custody and Support)	Yes
Northern Mariana Islands	7 N. Mar. I. Code § 2421		X	Requires "Case of actual controversy" + "Within its jurisdiction"	X		Only in contested cases
Ohio	R.C. § 2721.02		X	Essential elements of declaratory relief are (1) real controversy between parties; (2) controversy is justiciable in character; and (3) speedy relief is necessary to preserve rights of parties. *Ohio Assn. of Life Underwriters, Inc. v. Duryee*, 642 N.E.2d 1145(Oh. App. 1994). Ohio Rev. Code Ann. § 2721.07 (West)	X	*In Re Guardianship of Maurer*, 108 Ohio App.3d 354 (Ohio Ct.App. 1995) (Guardianship)	Yes
Oklahoma	12 Okl. St. Ann. § 1651		X		X	*Clark v. Edens*, 254 P.3d 672 (Okla. 2011) (Paternity)	Yes

Oregon	O.R.S. § 28.010	X					Yes
Pennsylvania	42 Pa. C.S.A. § 7532	X				*Coal. To Save Our Kids v. Dep't of Pub. Welfare* , 745 A.2d 82 (Pa.Commw.Ct. 2000) (Child Placement/Juvenile Detention)	Yes
Puerto Rico	P.R. Laws Ann. 32 Ap. III, Rule 59.2	X					Yes
Rhode Island	R.I. Gen. Laws § 9-30-2	X					Yes
South Carolina	S.C. Code Ann. § 15-53-20	X					Yes
South Dakota	S.D. Codified Laws § 21-24-1	X				*Howe v. Ellenbecker*, 774 F.Supp. 1224 (D.S.D. 1991) (Child Support Enforcement Services)	Yes
Tennessee	Tenn. Code Ann. § 29-14-103	X					Yes
Texas	Civ. Prac. & Rem. § 37.004	X				*Monk v. Pomberg*, 263 S.W.3d 199 (Tex.App.2007) (Parental Right); *Morris v. Dearborne*, 69 F.Supp.2d 868 (E.D. Tex. 1999) (Child Abuse/Right to Family Integrity); In the Interest of J.L.E.O., a child, Lexis 1342 (Tex. App., 14th Dist. Houston 2011—no writ).	Yes
Utah	Utah Code Ann. § 78B-6-401	X					Yes
U.S. Virgin Islands	V.I. Code Ann. § 1262	X					Yes
Vermont	Vt. Stat. Ann. § 4711	X					Yes
Virginia	Va. Code Ann. § 8.01-184		X	Must be "actual antagonistic assertion and denial of right."	X	*Doe v. Doe*, 15 Va.App. 242 (Va.Ct.App. 1992) (Parental Rights)	Only in contested cases
Washington	Wash. Rev. Code § 7.24.010	X					Yes
West Virginia	W. Va. Code § 55-13-2	X				*Smith v. Smith*, 140 W.Va. 298 (W.Va. 1954) (Custody)	Yes
Wisconsin	Wis. Stat. § 806.04 (1)&(2)	X				*Slawek v. Stroh*, 62 Wis.2d 295 (Wis. 1974) (Paternity/Rights and Duties)	Yes
Wyoming	Wyo. Stat. Ann. § 1-37-102 & 103		X	103 is slightly modified to include interested persons whose rights, status, or other legal relations are specifically affected by the WY Constitution in addition to the standard " statute, municipal ordinance, contract, or franchise" language.			Yes

SIJS and State Declaratory Judgment Statutes:

Motions for Declaratory Judgment

Juveniles may initiate an action before the family court to request a declaratory judgment containing the findings required for the immigrant juveniles (SIJS) application. Here, juveniles will not be required to serve abusive parents notice of the SIJS proceeding.

Applicable Federal Immigration Statute

Under 8 U.S.C.A. § 1101(a)(27)(J), it is the purview of the juvenile court to determine whether sufficient evidence was presented to designate Special Immigrant Juvenile Status. Juvenile court is defined as "any court having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a).

Standard Statutory Language for Declaratory Judgment (taken from Indiana and mirrors federal statute)

"Courts of record within their respective jurisdiction have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or processing is open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. The declaration has the force and effect of a final judgment or decree."

"Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration."

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Declaratory Judgments– U.S. Territories

Territory	Statute	Standard Language	Variation	"Actual Controversy" Requirement	Useful for SJIS?	Notes
Am. Samoa	Am. Samoa Ann. § 43.1101		X	X	No	Only applicable to Wills, Deeds, other written instruments or property-related controversies
Guam	7 Guam Code Ann. § 26801		X		No	
N. Mariana Islands	7 N. Mar. I. Code § 2421		X	X	Unclear	Requires "Case of actual controversy" + "Within its jurisdiction"
Puerto Rico	P.R. Laws Ann. 32 Ap. III, Rule 59.2	X			Yes	
Virgin Islands	V.I. Code Ann. § 1262	X			Yes	