

NIWAP



SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS

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National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

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Foreword

The National Immigrant Women’s Advocacy Project (“NIWAP”) at American University Washington College of Law has been leading a 5 year project developing training materials, training curricula, and delivering trainings for judges and court staff on Special Immigrant Juvenile Status findings, U visa certification by judges and providing judges with legally correct information about immigration law to assist courts when immigration issues arise in state family court proceedings. In the past few years, NIWAP has focused much of its efforts on helping to ensure that immigrant victims of domestic and sexual violence have access to just and fair outcomes in state family courts and that immigrant children who have suffered trauma have access to the appropriate legal, social, and economic remedies that they need to thrive in the United States.

This bench book on Special Immigrant Juvenile Status (“SIJS”) on of the resources NIWAP has developed to provide state court judges with access to legally correct information about immigration law issues that arise in state family court cases. NIWAP’s bench cards and training materials for state court judges can found in the NIWAP web library (www.niwap.org/go/sji). Our web library (www.library.niwap.org) is home to an array of information and resources useful to judges, courts, attorneys, advocates and other professionals who encounter immigrant survivors of domestic violence, sexual assault, dating violence, stalking, human trafficking or child abuse, neglect or abandonment in their work.

This bench book focuses on the legal rights and options for immigrant children who have been abused, abandoned, or neglected by at least one of their parents. Many of these children find themselves before the judiciary in state court proceedings and this bench book seeks to inform judges about immigrant children who may qualify for immigration relief offered through Special Immigrant Juvenile Status.

State courts play a crucial role issuing orders that address the custody, placement, and care of immigrant children. When the immigrant children before the court have suffered abuse, abandonment, neglect or a similar harm defined by state law perpetrated by one of the child’s parents, courts may include SIJS findings in their state court’s orders. In order for SIJS eligible children to file their immigration case, they must first obtain SIJS findings from a state court.

This Special Immigrant Juvenile Status bench book is a comprehensive tool that will be indispensable for state court judges and court staff who encounter children who may qualify for SIJS in a wide range of state court proceedings. The bench book contains quick reference guides that assist courts in ruling on requests for SIJS findings in the following types of cases including

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custody, guardianship, dependency, adoption, civil protection order, delinquency, paternity and declaratory judgments.

It provides an overview of SIJS, including relevant statutes, regulations, and legislative history, case law, social science research findings, information about policies and best practices and quick reference guides for various types of state court proceedings in which courts could issue SIJS findings. The manual also contains chapters that provide an overview of SIJS laws and best practices for court procedures, issuance, and drafting of findings in SIJS cases. The bench book includes appendices that catalogue state-by-state definitions of abuse, abandonment, neglect, SIJS case law from across the country and all state best interests of the child factors that apply in SIJS findings, custody and placement decisions under state law. These state by state charts will provide an important resource to judges hearing custody, protection order and other family court cases, particularly those involving victims of domestic violence and child abuse.

We have designed this bench book so each of its chapters and appendices can be used separately or in combination with other chapters. This approach helps judges and courts immediately access information about SIJS and how it applies to the proceeding that the court is hearing. It also allows us to quickly update the chapters as new laws, policies, or regulations are issued, or as new questions emerge from judicial audiences in response to this bench book. Our goal is to provide state court judges and court staff with a convenient and efficient way to obtain a broad spectrum of up-to-date information on SIJS.

This bench book would not have been possible without the commitment, creativity, diligence, and collaborative effort of numerous individuals who contributed to the brainstorming, researching, writing, and editing of this project. Our team included judges, law professors, attorneys, advocates, and social science researchers who are experts in SIJS, immigrant children, and trauma. Our deepest appreciation goes to Professor David B. Thronson and Professor Veronica T. Thronson of the Michigan State University College of Law, whose expertise, editorial assistance, direction, and insight made this bench book possible. This Bench Book would not have been possible without help from dedicated and hardworking law students who are also included as authors of the chapters to which they contributed. We also wish to thank the State Justice Institute for providing the funding to make this project possible.

NIWAP offers technical assistance for judges, court staff, law enforcement officers, prosecutors, attorneys, advocates, and other professionals who encounter immigrant crime victims and immigrant children in their work on a range of issues covered in this bench book and beyond. As you work with this bench book or any of the materials contained in our web library (library.niwap.org), please feel free to contact us for technical assistance by emailing info@niwap.org or calling (202) 274-4457.

We, of NIWAP, hope that this bench book will be of great assistance in your work.

Acknowledgements

We wish to give special acknowledgement to Professor David Thronson and Professor Veronica Thronson whose expertise, assistance, direction, and insight were invaluable in making this bench book a reality.

The development of this bench book was truly a collaborative effort. The breadth and depth of the material offered represents the cumulative expertise and experience of staff members of the National Immigrant Women's Advocacy Project, (NIWAP) American University, Washington College of Law, as well as our many allies and Deans' Fellows. This bench book would not have come to fruition without the extensive, insightful contributions from nationwide experts who work with immigrant children and their families. The bench book reflects the authors' dedication to ensuring access to justice for immigrant children and their families.

We also would like to thank to the many Deans' Fellows at American University Washington College of Law whose hard work made this bench book possible including Tolulope Adetayo, Zoe Baker, Monica Bates, Tarja Cajudo, Chloe Canetti, Muhammad Fadel, Kavel Joseph, Isabel LaLuna, Rachel Nyakotey, Sheerin Tehrani, and Kalli Ann Wells. As well as the Michigan State University College of Law Fellow Beth K. Zilberman and law students Reina Fostyk, Cassandra Green, and Claire Perna. The Deans' Fellows who contributed to each chapter are identified either as co-authors or in the first footnote of the chapters containing their work.

We also wish to thank all of the judges, court staff and attorneys who sought technical assistance, and attended conferences or trainings planned by the staff of NIWAP. The questions these professionals brought our attention shaped the issues addressed in this bench book and helped us ensure that this bench book addresses relevant concerns for judges and court staff who encounter immigrant children who are eligible for the protections offered by Special Immigrant Juvenile Status.

And finally, we are grateful to the State Justice Institute for the financial support that made this publication possible.

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Chapter I: Introduction to Special Immigrant Juvenile Status¹

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December 20, 2017

Overview

Special Immigrant Juveniles Status (SIJS) is a form of humanitarian immigration relief that provides for a path to lawful permanent residence (LPR) for children who are unable to be reunited with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law. SIJS status provides a path to legal permanent resident status and the hope of stability and safety for vulnerable immigrant children. This bench book focuses on SIJS and the role that Congress created for state court judges in an immigrant child's application process.

Family relationships form the core of the most common routes to lawful immigration status in the United States.³ This has long meant that children's immigration status is greatly reliant on their parents' status and actions.⁴ Recognizing that immigration law failed to provide protection for vulnerable immigrant children without lawful immigration status who are separated from parents, Congress created SIJS in 1990.⁵ The first version of SIJS was developed "to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care."⁶

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² This chapter was developed with the assistance of Tolulope Adetayo, Kendall Niles, and Kavell Joseph.

³ See Anita Ortiz Maddali, *Left Behind: The Dying Principle of Family Reunification Under Immigration Law*, 50 U. MICH. J.L. REFORM 107 (2016).

⁴ See David B. Thronson, *You Can't Get Here from Here: Toward a More Child-Centered Immigration Law*, 14 VA. J. SOC. POL'Y & L. 58 (2006).

⁵ Although enacted in 1990 as Section 153 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, Nov. 29, 1990, necessary technical amendments and regulations delayed implementation until late in 1993. See Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733, Dec. 12, 1991; 58 Fed. Reg. 42843-42851 (Aug. 12, 1993) (codified at 8 C.F.R. § 204.11 (2001)). Together with subsequent amendments, the provision is now codified at Immigration and Nationality Act (INA) § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012). *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, 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-a-sijs-statutory-and-regulatory-provisions/>.

⁶ 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(A) – Purpose*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep't of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

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SIJS has “evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.”⁷ While initially used sparingly, mostly for children in domestic foster care systems, over time Congress expanded this effective program to offer important humanitarian protection to greater numbers of immigrant children who have suffered abuse, abandonment, neglect, or similar harms perpetrated by at least one of the child’s parents. This protection includes children living with a non-abusive parent. SIJS has emerged as a prominent form of immigration relief for children arriving in the United States without lawful immigration status.⁸

Children separated from parents are very susceptible to various forms of violence, including child abuse, child sexual exploitation, incest, dating violence, domestic violence, sexual assault, and human trafficking.⁹ SIJS is one of several options that U.S. immigration law offers as possible forms of humanitarian immigration relief for immigrant children.¹⁰ Depending on the circumstances, children and youth also may be eligible for immigration relief under laws of asylum,¹¹ the Violence Against Women Act,¹² the U visa for immigrant crime victims,¹³ or the T visa for trafficking victims.¹⁴

Qualifying for immigration relief depends on where the abuse occurred, who perpetrated the abuse, and the form of abuse suffered. Some of these forms of relief have more narrow eligibility criteria, difficult application procedures, and longer case processing times than SIJS.

⁷ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁸ Only 287 children were granted special immigrant juvenile status in 1998. *Table 5*, 1998 Stat. Y.B. Immigr. & Naturalization Serv. 32, <https://www.dhs.gov/xlibrary/assets/statistics/yearbook/1998/1998yb.pdf>. That has certainly increased, with a peak of over 14,500 applications in the first three quarters of Fiscal Year 2016. *See* U.S. CITIZENSHIP & IMMIGRATION SERVS., NUMBER OF I-360 PETITIONS FOR SPECIAL IMMIGRANT WITH A CLASSIFICATION OF SPECIAL IMMIGRANT JUVENILE (SIJ) BY FISCAL YEAR AND CASE STATUS 2010-2016 1, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I360_sij_performancedata_fy2016_qtr4.pdf (last visited March 27, 2018).

⁹ *Review of the President’s Emergency Supplemental Request for Unaccompanied Children and Related Matters: Hearing on S. 272 DHS Appropriations Bill before the S. Comm. on Appropriations*, 113th Cong. (2014) (statements of Jeh Johnson, Sec. of Dept. of Homeland Security, and Sen. Dick Durbin).

¹⁰ *See* DHS Infographic: Protections for Immigrant Victims (January 12, 2017), NATIONAL IMMIGRANT WOMEN’S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/> (last visited Mar. 26, 2018); Alexandra Brown & Leslye Orloff, *The Department of Homeland Security’s Interactive Infographic on Protections for Immigrant Victims*, NATIONAL IMMIGRANT WOMEN’S ADVOCACY PROJECT (2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-interactive-infographic-on-protections-for-immigrant-victims-8-29-17/>.

¹¹ Asylum helps immigrant some children who fled victimization in their home country who can demonstrate a well-founded fear of persecution on account of one of five specified grounds. *See* INA § 208, 8 U.S.C. § 1158. Asylum cases often are more difficult than SIJS, VAWA self-petitioning, U visa, and T visa cases.

¹² Violence Against Women Act self-petitioning helps immigrant children who have been victims of forms of child abuse, child sexual assault, and neglect that fall within the definition of “battering or extreme cruelty” perpetrated by a parent, step parent, a spouse, or former spouse. *See* Leslye Orloff & Deborah Birnbaum, Legal Momentum & NIWAP, VAWA Self-Petitioning Flow Chart for Child Applicants (Feb. 19, 2009), <http://niwaplibrary.wcl.american.edu/pubs/vawa-flow-chart-child/>; Leslye Orloff & Deborah Birnbaum, Legal Momentum, Immigrant Women Program, VAWA Self-Petitioning Flow Chart for Adult Applicants, <http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-adults/> (last visited Mar. 30, 2018).

¹³ U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION OPTIONS FOR CRIME VICTIMS OF CRIMES: INFORMATION FOR LAW ENFORCEMENT, HEALTHCARE PROVIDERS, AND OTHERS (2010), <http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes/>.

¹⁴ DHS BLUE CAMPAIGN, MAKE THE CONNECTION: SUPPORTING AND STABILIZING VICTIMS OF HUMAN TRAFFICKING, <http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-victim-support-ngo-english/>; DHS BLUE CAMPAIGN, WHAT CAN YOU DO? RECOGNIZING AND SUPPORTING VICTIMS IN THE COURTROOM, <http://niwaplibrary.wcl.american.edu/pubs/blue-campaign-trafficking-judicial/>.

Depending on the child's country of origin, generally SIJS will be the swiftest, least complex route to lawful permanent residence for a qualifying child in comparison to other immigration options.

SIJS provides a means for the child to eventually attain lawful permanent residence. Once children have received lawful permanent residence status, they can live and work permanently in the United States, become eligible for certain public benefits, and may eventually apply for U.S. citizenship. Significantly, lawful permanent residence status reduces the fear of deportation, promotes stability, expands access to public benefits and services, and facilitates nurturing relationships, stable school environments, and community support. SIJS also is a path to economic security by creating a path to employment authorization, drivers' licenses, financial aid to attend university, and access to public and assisted housing.¹⁵

SIJS is unique in several respects. First, it is the only provision in federal immigration law that expressly incorporates a best interests of the child standard into its eligibility criteria. Second, it utilizes a hybrid system of state and federal collaboration, drawing on the state child welfare and best interest expertise of state court judges to inform federal adjudication of immigration status.¹⁶ The federal statute relies upon state court judges to make the factual determinations about children's best interest because state courts have particularized expertise in the area of child care and custody.¹⁷ The statute requires state court findings, on issues that are *inherent* in state court decisions about child care, custody and placement, including the best interests of the child and viability of parental reunification.¹⁸

These findings serve as the foundation for the child's application for federal immigration relief and contribute to the federal adjudication of the child's SIJS immigration application. In this scheme, state courts do not make immigration decisions, but rather make factual determinations on issues that are relevant to the state court proceeding before the court under state law. The factual determinations needed by children filing for SIJS are findings that flow from and are a part of the state court cases that judges commonly hear where the goal under state law is to issue rulings that promote the child's best interests, child welfare and a child's health,

¹⁵ See NIWAP STATE-BY-STATE PUBLIC BENEFITS MAP (INTERACTIVE), NIWAP.ORG <http://www.niwap.org/benefitsmap/> (last visited Mar. 30, 2018).

¹⁶ Congress has created somewhat similar roles for state court judges in two other areas of immigration law: the U visa certification and the T visa declaration. For more information on the role of state judges in U visa certifications and T Visa declarations, see DEP'T OF HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES 3 (2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

¹⁷ "The reliance upon state juvenile courts anticipated in the SIJ statutory scheme signals Congress' recognition that the states retain primary responsibility and administrative competency to protect child welfare. . . . The federal government lacks the professional staff and administrative support to make assessments of individual children's mental and physical conditions and their welfare needs. Furthermore, within the judicial branch, federal courts have more limited jurisdiction over such matters. As a result, state courts have developed greater competency for administration of child welfare matters." Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L.Q. 597, 609, 611 (2000).

¹⁸ See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>; 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/>.

well-being and stability. State court orders that promote child welfare and child best interests are designed to stabilize and support children including their move toward and transition into adulthood. These findings then form the basis for subsequent federal immigration decisions.

State Court Role

State courts play a central fact finding role that aids U.S. Citizenship and Immigration Services (USCIS) in the SIJS application and adjudication process. In fact, USCIS relies on required state court findings as evidence in its process of adjudicating applications. In order to complete an application for SIJS, the applicant must submit an order from a state “juvenile” court. For the purposes of SIJS cases federal immigration law defines a state “juvenile court” as any “court located in the United States having jurisdiction under State law to make judicial determinations about custody and care of juveniles.”¹⁹ The definition of “juvenile court” in SIJS cases is governed by the federal immigration laws definitions and is not limited to the state law definition of “juvenile court.” The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.”²⁰ Thus, courts can issue SIJS findings in any case in which the court is entering orders regarding the care, custody, or placement of a child.

For a child to establish eligibility for SIJS, a state court must make three best interest and child welfare related findings:

- (1) The child has been “declared dependent on a juvenile court” or the child has been “legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.”
- (2) The child’s “reunification with [one] or both of the [child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.”
- (3) It “would not be in the [child’s] best interest to be returned to the [child’s] or parent’s previous country of nationality or last habitual residence.”²¹

¹⁹ 8 C.F.R. § 204.11(a) (2012).

²⁰ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A) – Juvenile Court Orders and Administrative Documents*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also RACHEL G. SETTLAGE, ELIZABETH A. CAMPBELL & VERONICA T. THRONSON, *Special Immigrant Juvenile Status*, in IMMIGRATION RELIEF: LEGAL ASSISTANCE FOR NONCITIZEN CRIME VICTIMS 69 (ABA 2014) (noting that Special Immigrant Juvenile findings are made routinely for “undocumented children in a variety of settings in which state courts are involved in making determination of custody, such as juvenile delinquency proceedings and the placement of unaccompanied minors”), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report/>; Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. J. 48, 54 (2012) (“Whether a court is a ‘juvenile court’ under the federal definition is not determined by the label that the state gives to the court, but rather by the court’s function.”). For a list of the types of case proceedings in which SIJS findings can be issued see *Appendix J: Types of Proceedings in which State Courts Can Make Special 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/>.

²¹ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

The details regarding each of these findings are elaborated upon in the chapters of this Bench Book that follow.

The SIJS findings that are included in the state court's order do not constitute an adjudication of the child's SIJS immigration case. Instead, the SIJS findings in the state court's order are a federally required part of the child's SIJS application and provide evidence that is helpful but not controlling of the federal SIJS adjudication. Adjudication of immigration status is solely in the purview of USCIS.

The fact finding role of state courts in SIJS cases includes the types of findings that are within the expertise of and are akin to the daily responsibilities of state judges who routinely decide matters regarding the custody and care of children. State court judges routinely make findings of fact regarding harms children have suffered including abuse, abandonment or neglect and consider those findings together with other factors when applying state best interests factors to decide placement, custody and care of children. The findings required in SIJS cases include and build upon these findings on issues that state courts commonly address in cases involving children who come before state courts in a wide range of state court proceedings. Making SIJS findings supports the ability of an immigrant child who has been subjected to abuse, abandonment, neglect or similar harm under state law to access the humanitarian immigration relief Congress created to help these immigrant children. Providing immigrant children with SIJS findings simultaneously fulfills state law requirements that courts act in children's best interests and is consistent with furthering the humanitarian interests of the United States. When a state court judge declines to consider requests for SIJS findings, the judge undermines the federal immigration scheme and the best interests of children, effectively cutting off children's access to needed humanitarian relief.

In a few states there are state statutes or court rules that direct state child welfare systems to screen immigrant children they encounter for the possibility that children might qualify for SIJS.²² The fact that most jurisdictions, however, do not expressly require that state child welfare systems conduct this important screening has contributed to some confusion among trial courts regarding the state court's ability to issue SIJS findings. Despite some initial resistance in a few trial courts, ultimately every state court system that has published a decision on the matter has determined, across a range of state court case types and proceedings, that making SIJS findings is an appropriate and necessary exercise of a state court's authority.²³ If there is a

²² San Diego Superior Court requires counsel to develop a working knowledge of Special Immigrant Juvenile Status, among other areas of law. SAN DIEGO, CAL. SUP. CT. R. 6.3.4, http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/general_information/localrulesofcourt/localrulesindex/2018_san_diego_county_superior_court_rules.pdf. See also Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM. HUM. RTS. L. REV. 266, 302 (2014) (addressing some states' explicit policies regarding immigrant children in their care).

²³ See, e.g., *In re M.C.*, N.Y.L.J., at 25, col. 3 (Fam. Ct., Suffolk Cty. Mar. 4, 2010) (noting that the juvenile court's "primary role in guardianship proceedings is to make determinations which are in the best interest of the child and in the case of a request for 'special findings,' to determine if the requisite elements of 8 U.S.C. § 1101 (a)(27)(J)(i) apply"); *In re Juvenile 2002-098*, 813 A.2d 1197 (N.H. 2002) (upholding trial court's exercise of jurisdiction to issue special immigrant juvenile findings in case where abuse occurred in Romania); *S.H. v. Dep't of Children and Families*, 880 So. 2d 1279, 1281 n.2 (Fl. Dist. Ct. App. 2004) (noting "that the court did have subject matter jurisdiction" over 16-year-old child's request for special immigrant juvenile findings based on abandonment in Guatemala); *Leslie H. v. Superior Court*, 168 Cal. Rptr. 3d 729 (Cal. Ct. App. 2014) (finding that the lower court erred in denying the request for SIJS findings in a delinquency proceeding); *In re L.F.O.C., Minor*, 901 N.W.2d 906 (Mich. Ct. App. 2017).

legitimate state law purpose for a judge to be involved in a determination related to a child’s custody and care, a judge may make the required findings that allow the child to seek the immigration relief.

Significantly, in making SIJS findings, the state court applies applicable state law. For example, the federal statute intentionally does not define abuse, abandonment, or neglect, but rather relies upon state court judges’ expertise in applying their state law’s definitions of these terms to the facts of the case before the court. This approach promotes child welfare. There is “nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.”²⁴ The “juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification.”²⁵ This reliance on state procedures and law reinforces the distinct state and federal roles that Congress established.

Indeed, so distinct are these state proceedings that federal immigration authorities have no role at all in state juvenile court proceedings. Attorneys for the U.S. government need not, and do not, appear. The federal system has its opportunity to weigh the merits of the SIJS petition independently of state court proceedings. Obtaining an order from a state court making the requisite findings, an order often referred to as a “predicate order,” is only the beginning of the process for a child navigating the immigration system and obtain lawful immigration status.²⁶ Although the state court role in the immigration process does not extend beyond these findings, it is helpful for state courts to understand how the state court’s order fits into the child’s immigration process. This chapter next provides an overview of the immigration process in which the child is engaged and provides context for the SIJS findings requested of the state court.

The Federal Immigration Adjudication Process

Once state juvenile court findings are made, the child’s journey through the maze of immigration law to achieve lawful immigration status through SIJS can begin. Only USCIS can adjudicate the merits of whether a child meets the requirements for SIJS classification. This process is initiated by the child filing a petition for SIJS.²⁷ This application is filed together with two mandated pieces of evidence – the state court findings and proof of the age of the immigrant child applicant.²⁸ There is no fee required for this initial SIJS petition. Once children submit their

²⁴ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁵ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁶ *In re M.C.*, N.Y.L.J., at 25 (noting that “the ultimate determination as to an immigrant juvenile’s status rests squarely within the purview of the federal government”); *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (“[T]hese findings by the state court do not bestow any immigration status on SIJS applicants.”).

²⁷ The form is called “Petition for Amerasian, Widow(er), or Special Immigrant.” U.S. CITIZENSHIP & IMMIGRATION SERVS., OMB. NO. 1615-0020, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT, USCIS FORM I-360 (2016), <https://www.uscis.gov/i-360>.

²⁸ In the absence of a birth certificate issued by the government of the child’s country, which is a common occurrence, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, is charged with developing

application USCIS has 180 days to adjudicate it. However, as discussed below, the real processing times for this initial SIJS petition and the subsequent steps required by the process can be much longer.²⁹

For most immigration purposes, a child is defined as “an unmarried person under twenty-one years of age.”³⁰ While the definition of a child allows for SIJS filings up to age 21, the federal SIJS law requires that the child remain subject to the state court’s jurisdiction on the date the child’s SIJS application is filed. In many jurisdictions the definition of child is an individual who is younger than 18 years of age.³¹ Some states have extended the age at which children can enter the dependency system to permit persons between the age of 18 and 21 who meet other requirements to avail themselves of the jurisdiction of the state court and by extension, of the protections provided by SIJS.³² The age to which a child who is already in state care can remain in care or continue to receive support also varies by state.³³ USCIS considers the petitioner’s age at the time the SIJS petition is filed in determining whether a child meets the age requirement.³⁴ If the child was under the age of 21 and still under the jurisdiction of a state juvenile court under state law on the date of the filing of the SIJS application, the child meets the SIJS age eligibility requirement and USCIS cannot deny SIJS classification solely because the child may be older than 21 by the time the adjudication is complete.

The SIJS petition is just the first step of the federal adjudication process to obtain permanent lawful immigration relief for a child. If this SIJS is approved, a child then qualifies to apply for lawful permanent residence. Immigration law requires every individual seeking to enter or remain in the United States to be admissible. This involves background checks, including fingerprinting of the child. Even children with approved SIJS petitions are subject to grounds of inadmissibility that might prevent them from obtaining lawful permanent resident status. Fortunately, certain grounds of inadmissibility expressly do not apply to special immigrant juveniles and are automatically waived.³⁵ The critical issue of admissibility is discussed in detail, along with helpful lists, in Chapter VI: *Inadmissibility in Special Immigrant Juvenile Status Cases*.

To complicate matters for children in removal proceedings, USCIS has exclusive jurisdiction over the adjudication of SIJS petitions even when a child is in removal proceedings before an Immigration Judge. However, USCIS has no jurisdiction to adjudicate an immigrant SIJS child’s application for lawful permanent residence when the child has an open case before

procedures to determine the age of a child. These procedures “shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.” William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) § 235(b)(4), codified at 8 U.S.C. § 1232. *See also* discussion *infra* pp. 8-11.

²⁹ *See* Section 235(d)(2) of the TVPRA of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008).

³⁰ *See* 8 U.S.C. § 1101 (b)(1); 6 U.S.C. § 279(g)(2) (2012) (“The term ‘unaccompanied alien child’ means a child (A) who has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States, or (ii) no parent or legal guardian in the United States available to provide care and physical custody.”).

³¹ *See, e.g.*, MICH. COMP. LAWS § 722.1102(b) (2015).

³² *See, e.g.*, N.Y. FAM. CT. ACT § 661 (2012); MD. CODE ANN., CTS. & JUD. PROC. § 3-804 (2013). *See also* MASS. GEN. LAWS, ch. 215 § 6, ch. 231A §§ 1, 9 (conferring jurisdiction to enter declaratory and equitable relief in equity).

³³ For a discussion of the different jurisdictional requirements, see Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM. HUM. RTS. L. REV. 266, 322 (2014).

³⁴ *See* TVPRA 2008 § 235(d)(6) of the, Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections).

³⁵ *See* INA § 245(h), 8 U.S.C. § 1255(h).

an Immigration Judge.³⁶ When a child is in removal proceedings, the adjudication of pieces of the child's immigration case moves back and forth between the Immigration Court and USCIS to have all elements of the case adjudicated. In these cases, once a petition for SIJS is approved by USCIS, the child's lawful permanent residence application must be filed with the Immigration Court. At this point, many Immigration Judges will terminate removal proceedings upon a motion by the child, provided there is no opposition by Immigration and Customs Enforcement (ICE) counsel.

Terminating the removal proceeding then allows the child to proceed with the process of having his application for lawful permanent residence adjudicated by USCIS. This avoids putting the child through an Immigration Court trial to have the child's case adjudicated. For a child appearing before a USCIS officer for a lawful permanent residence interview is not always easy, but it generally is less stressful than having his case adjudicated in a trial setting with an immigration judge.

The federal process is not quick, and recently has become much slower. One source of delay is the 2016 decision to consolidate all of USCIS's adjudication of petitions for SIJS in the Department of Homeland Security's National Service Center in Lee's Summit, Missouri. Since state family or juvenile court orders are required and provide evidence in each SIJS application, previously local USCIS adjudicators would develop familiarity with the court orders issued in their jurisdictions. USCIS officers also developed knowledge about the details of each state's laws regarding abuse, abandonment, neglect, and child's best interest. Local USCIS officers also were familiar with local rules regarding state court jurisdiction.

The consolidation of all SIJS adjudications nationally in one location ended the role of local adjudicators familiar with the types of proceedings and court orders that are common in their jurisdictions. The local adjudicators have been replaced by a team of national adjudicators who are grappling with the immense variation in state laws across the country. This has resulted in greater scrutiny and questioning of state court orders resulting in increased requests for evidence and denials, resulting in more appeals. This has stretched the adjudication process for some children from months to potentially years. Crafting detailed state court orders that cite and explain the state laws being applied and the factual findings the state court is making under the cited state statutes will play an important role in reducing the numbers of cases in which SIJS adjudicators need more explanation of the state laws and the court's SIJS findings. To assist courts in issuing the detailed court orders containing SIJS findings in the range of state family and juvenile court proceedings, this manual provides courts with a discussion of how SIJS requests arise in different types of state court cases in Chapter V – *Quick Reference Guides for State Courts by Type of Proceedings*.³⁷

³⁶ See 8 C.F.R. § 1245.2 (“In the case of any alien who has been placed in deportation proceedings or in removal proceedings (other than as an arriving alien), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.”).

³⁷ Each of the Quick Reference Guides have been created to make information about SIJS readily available to judges, as judges will encounter these SIJS issues and receive requests for SIJS findings in each of the following proceedings. Each provides an overview of SIJS federal laws and their applicability to state courts, the basic information the court would need in such a proceeding to issue SIJS findings, and scenarios that provide common examples in the following types of proceedings: custody and child support, adoption, protection orders, dependency, delinquency, guardianship, paternity, and declaratory judgments.

An additional factor that contributes to delays in immigrant SIJS children's access to lawful permanent residence is the fact that immigration laws place caps by visa category on the number of immigrants who can receive lawful permanent residence each year.³⁸ These caps currently impact children from the countries of highest unaccompanied child migration, including El Salvador, Honduras, Guatemala, and Mexico, creating multiyear backlogs for SIJS applicants from those countries.³⁹ Some immigrant children qualify for multiple forms of immigration relief. Each program has a different application process, adjudication timeline, and eligibility requirements. There are pros and cons to each and children encountering adjudication delays need assistance of counsel to facilitate simultaneously filing for multiple forms of relief. However, children have no right to appointed counsel and most of them appear in immigration proceedings without an attorney.

How State Courts Will Encounter SIJS Eligible Children Proceedings

All children who qualify for relief under the Special Immigrant Juvenile Status program:

- Will be children who are foreign born and
- Will have suffered abuse, abandonment, neglect or similar harms defined by state statutes perpetrated by one or both of their parents.

Any time a child meets these two criterion and they are before the court, unless the child has already attained citizenship or lawful permanent residence, the child may be SIJS eligible. SIJS eligible children will have very different backgrounds, countries of origin and life experiences. Children will differ with regard to their trauma histories,⁴⁰ age, causes and manner of immigration, immigration enforcement experiences and the caregivers involved in the state court proceeding. Many SIJS eligible children will come before the court affirmatively requesting SIJS findings as a part of the state court relief they are seeking. An equal and possibly larger number of SIJS eligible children will be before the court in proceedings involving court orders regarding the custody or care of children in which the parties before the court do not recognize that the child is SIJS eligible.

When courts identify children who may be SIJS eligible children courts have the opportunity to provide U.S. Department of Homeland Security (DHS) produced “know your rights” information about SIJS to the children and their caregivers.⁴¹ The judge could ask

³⁸ See INA § 202, 8 U.S.C. § 1152.

³⁹ See *The Visa Bulletin*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Mar. 30, 2018).

⁴⁰ See *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/>.

⁴¹ See *Appendix F: DHS Interactive Infographic on Protections for Immigrant Victims*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims/>; *Appendix H: DHS SIJS Brochure – Immigration Relief for Abused Children*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-h-dhs-sijs-brochure/>. Translations of these DHS materials are available at <http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>. Department of Justice requirements for language access to state courts are contained in *Appendix I: DOJ Language Access Letter to Courts*, in NAT'L IMMIGRANT WOMEN'S

whether the parties have considered whether they wish to seek SIJS findings from the court as part of its orders in the case and grant a continuance. Judges may issue SIJS findings in any type of state court proceeding in which the court has the legal authority under state law to issue orders regarding the care, custody, or placement a child.⁴² This approach serves children’s best interests by providing children access to SIJS protection and the improved access to stability, benefits, services, safety and education that SIJS provides. It also improves efficiency for the courts because this approach reduces the need for SIJS eligible children to have to return to court in another proceeding to obtain SIJS findings.

All of the children eligible for SIJS will have suffered abuse, abandonment, neglect or similar harm perpetrated by one or both of their parents either in the United States or abroad. SIJS eligible children may have immigrated to the U.S. alone or with their parents. Some children who immigrated with their parents may have been separated by immigration authorities at the border. SIJS eligible children who were stopped, detained, and released⁴³ by federal officials will have open immigration removal cases. Others will have had no contact with U.S. immigration enforcement officials. The following provides a list of common scenarios in which courts may encounter SIJS eligible children who have been abused, abandoned, neglected, or suffered similar harm by one or both of their parents;

- Child has been living with both parents in the U.S. who are before the court for
 - A civil protection order
 - Custody
 - Divorce
 - Child abuse, neglect, welfare or delinquency case
- Child is living with the child’s non-abusive parent and the parent and child are before the court for
 - Custody
 - Guardianship
 - A civil protection order
 - Child support
 - Paternity
 - Child abuse, neglect, welfare or delinquency
- Child is living with a relative, god-parent, family friend or other adult and is before the court for
 - Guardianship
 - Adoption
 - Child abuse, neglect, welfare or delinquency

ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-i-language-access-letter-to-courts/>.

⁴² See *Appendix J: Types of Proceedings in which State Courts Can Make Special 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/>.

⁴³ When immigrant children are released to caregivers by immigration authorities, the caregiver has agreed to bring the child to immigration court proceedings, and the release may include minimal review of criminal history and/or child sex offender databases. The release decision does not address and is not based upon any state’s child’s best interests factors.

- Child has been removed⁴⁴ from the care of one or both parents and the child is before the court for
 - Child abuse, neglect, or welfare or delinquency
 - Termination of parental rights
 - Adoption
- The child may be before the court as the subject of a criminal child abuse case

⁴⁴ SIJS eligible children may have been placed with a non-abusive parent, in kinship care, foster care, or any other placement.

**Chapter II:
Details About Special Immigrant Juvenile Status (SIJS) Findings¹**

**By: Leslye E. Orloff
December 19, 2017**

State Court Findings Required

For a child to establish eligibility for SIJS, a state court must make three best interest and child welfare related findings:

- (1) The child has been “declared dependent on a juvenile court” or the child has been “legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States;”
- (2) The child’s “reunification with [one] or both of the [child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;” and
- (3) It “would not be in the [child’s] best interest to be returned to the [child’s] or parent’s previous country of nationality or last habitual residence.”²

This section elaborates upon these findings and provides a more in depth review of each. Since the state best interests of the child laws play an important and specific role in each of the required SIJS findings, Chapter IV- *Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Cases*, provides a detailed discussion of this role.

Dependency – Exercising Jurisdiction to Decide Matters of Care and Custody

A broad definition applies to the requirement in the SIJS statute that a child be “declared dependent on a juvenile court” or “legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.” This finding is usually the most straightforward of the SIJS findings, because it simply recognizes when a court has exercised jurisdiction under state law over a child welfare or custody matter.

First, regardless of its formal title under state law, for SIJS immigration purposes any state court that makes determinations regarding the care and custody of children is a “juvenile court.”³ The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile,

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² Immigration and Nationality Act (“INA”) § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012).

³ 8 C.F.R. § 204.11(a) (2012) (defining a state “juvenile court” as any “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles”).

family, dependency, orphans, guardianship, probate, and delinquency courts.”⁴ Stated differently, it is the function of the court to make decisions regarding children and not the court’s title that governs whether a court is a juvenile court.

Second, a child is “dependent on a juvenile court” whenever that court exercises its jurisdiction to make a decision about the care and custody of a child, regardless of the outcome of the proceeding. Simply exercising jurisdiction, i.e. any time a child is “the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court,”⁵ is sufficient to satisfy this requirement of the SIJS statute. This means that to establish “dependency,” state court proceedings require neither official state intervention, as in child welfare or child protection proceedings, nor a decision to place the child in any particular form of care. The mere “acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation.”⁶

Decisions about the care and custody of children can arise in a variety of proceedings, including but not limited to matters involving custody determination or modification, guardianship, adoption, dependency, delinquency, child support, divorce, legal separation, parenting plan modification, civil and criminal protection orders, paternity, termination of parental rights, or declaratory judgments. Just as the name of the court does not matter, the type of proceeding that leads a state court to make decisions about the care and custody does not matter for SIJS eligibility. For example, a decision adjudicating a child delinquent and making determinations about his custody can serve to establish the requisite dependency on the juvenile court.⁷ A chart below provides further detail regarding jurisdiction in a variety of settings, and Quick Reference Guides for courts presiding over several of the common types of state court proceedings in which SIJS orders are issued will be found in Chapter V – *Quick Reference Guides by Type of State Court Proceeding*.

⁴ 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*, 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/>. See also Rachel G. Settlege, Elizabeth A. Campbell & Veronica T. Thronson, *Special Immigrant Juvenile Status*, in IMMIGRATION RELIEF: LEGAL ASSISTANCE FOR NONCITIZEN CRIME VICTIMS 69 (ABA 2014) (noting that Special Immigrant Juvenile findings are made routinely for “undocumented children in variety of settings in which state courts are involved in making determination of custody, such as juvenile delinquency proceedings and the placement of unaccompanied minors”); Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. 48, 54 (2012) (“Whether a court is a ‘juvenile court’ under the federal definition is not determined by the label that the state gives to the court, but rather by the court’s function.”). For a list of the types of case proceedings in which SIJS findings can be issued see *Appendix J: Types of Proceedings in Which State Courts Can Make Special Immigrant Juvenile Status Findings* in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁵ See 8 C.F.R. § 204.11(c)(6).

⁶ See Menjivar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

⁷ *Leslie H. v. Superior Court*, 168 Cal. Rptr. 3d 729, 738 (Cal. Ct. App. 2012) (holding that a youth “adjudicated a delinquent, placed in juvenile hall, and committed upon release to ongoing child welfare agency supervision qualified under section 1101(a)(27)(J)(i) as a child in dependent, committed, or custodial care”). See also *In re Mario S.*, 954 N.Y.S.2d 843, 851 (N.Y. Fam. Ct., Queens Cty. 2012) (noting that “at the time the [SIJ] motion was filed and granted, the juvenile was a dependent child under New York law as he was a juvenile delinquent placed in the legal custody of a state agency and was under the continuing jurisdiction of the Family Court”); *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (finding juvenile court dependency in delinquency proceeding).

Critically, state courts making SIJS findings must exercise jurisdiction under state law. Most states have no provision for special proceedings to adjudicate requests for SIJS findings. Rather, the findings are made as part of the orders the court issues in underlying matters in which the court is exercising jurisdiction over children pursuant to state law. The “juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification. This includes the need for the juvenile court to follow their state laws on jurisdiction.”⁸

Further, the order should expressly state and explain the state law provisions under which the court is acting. USCIS notes that the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”⁹ Best practices are to include in the state court order a statement of the court’s jurisdiction citing the state statute, court rule, or other authority under which it is exercising jurisdiction. Similarly, courts should include in the court order state law citations to state statutes defining children’s best interests and to state law definitions of abuse, abandonment, neglect, and any other state statutes the court relies upon in issuing its orders regarding custody, care and/or placement determination. Including citations to state law is very helpful to USCIS adjudicators of SIJS cases who are responsible for adjudicating SIJS applications that include state court orders issued applying the 52 different state family laws from states and jurisdictions across the country.

Reunification – Exercising Jurisdiction to Decide Matters of Care and Custody

To qualify for SIJS, the state court must determine that “reunification with [one] or both of the [child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.”¹⁰ This finding involves a number of issues that are discussed below.

Viability of Reunification – Timing

A finding for SIJS purposes that reunification is not viable does not require formal termination of parental rights or a determination that reunification will never be possible.¹¹ Still, “[I]ack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent (or parents) remains in effect until the child ages out of the

⁸ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 2(D)(4): Validity of Order (Issued under State Law)*, 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*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁹ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 3(A)(2): Juvenile Court Orders and Administrative Documents, Findings*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL 12 (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*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁰ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

¹¹ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification* (August 23, 2017), 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*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (specifying that “actual termination of parental rights is not required”).

juvenile court's jurisdiction."¹² State court orders, however, often do not expressly state the duration of the order and this is an area where federal adjudicatory inexperience with family law can create confusion during the federal adjudication process. A well-crafted state court order can ameliorate this.

Most state jurisdictions do not specifically label decisions short of termination of parental rights as "permanent" or "in effect until child reaches the age of majority." Although some jurisdictions specifically label all decisions short of termination as "temporary" the expectation is that the decision will remain in effect indefinitely and, absent changed circumstances, until the child reaches adulthood. State court orders are final and appealable once the court completes the adjudication of the original case. When a state court issues a final order regarding the custody or placement of a child, whether the order is issued after a contested hearing or in settlement of a court action, this is a final order and not temporary.

State laws consider family court orders final in custody and protection order cases and courts can make non-viability findings in cases where the order includes supervised or unsupervised visitation between the child and his abusive parent. This is because custody and visitation serve different purposes. In family violence and child abuse cases state laws designed to ensure that custody is awarded to the non-abusive parent, do not preclude visitation with the abusive parent. The fact of visitation in these and most other family court cases involving child abuse, neglect or abandonment is not inconsistent with a court ruling that reunification, which essentially means returning the child to live with the abusive parent, is not viable.

Similarly, the fact that a court allows ongoing contact through visitation does not mean that reunification is viable. This is true even where the court plans to continue to monitor the case through status hearings in domestic violence related custody cases or periodic review hearings for children in delinquency, dependency and guardianship cases. These status hearings purpose is to maintain court involvement in monitoring children and to continue issuing orders that adapt to children's needs and best interests. To change the custody or placement of a child under state laws would require notice, motion, a substantial change in circumstances and a new potentially contested adjudication.

Further, the court can find that reunification is not viable even if there are ongoing, perhaps mandated, efforts to reunify the child with a parent. For example, just because "the [government] intends to return [a child] to the custody of his mother at the end of his current placement does not, standing alone, establish that reunification with the mother is viable. Planning for the return of appellant to his mother after his placement does not answer the question of whether appellant will be able to successfully live in her care."¹³ Just because the state goal is parental reunification, this does not mean that such reunification will take place unless a number of milestones and criteria are satisfied. If the status quo of non-reunification will

¹² U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification* (August 23, 2017), 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*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK, 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (last visited Mar. 26, 2018).

¹³ *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012).

remain in place absent further and different decisions by the court, the court can issue orders stating that reunification is not viable.

As with all other findings, this aspect of the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”¹⁴ An order expressly noting its finality would certainly be most clear for federal adjudicators who are unfamiliar with the variations of state family law. If that is not possible, some reference to the expectation that the court anticipates its decision will remain in effect, perhaps with identification of changes that could prompt reconsideration, will help the federal adjudicator understand the scope, appealability, and expectations about the permanence of the order. More explicit state court orders may help reduce the need for federal litigation of SIJS cases or may provide a mutually understood grounding for litigation should it become necessary.

Viability of Reunification – One or Both Parents

Among the changes to the SIJS statute that Congress made in 2008 was to make the reunification language more precise. Old language that the child must be “eligible for long-term foster care” and that “family reunification is no longer a viable option” was discarded in favor of the more precise language to specify viability of reunification with “1 or both parents.”¹⁵ USCIS was slow to reveal how it interpreted this change and, prior to the issuance of guidance, some state courts struggled with whether this language was intended to apply when a child could not be reunited with one parent yet continued to live with the other.¹⁶ However, USCIS has now published guidance on this provision and states unequivocally that it accepts the plain language of the statute so that it “interprets the TVPRA changes as a clarification that petitioners ... may

¹⁴ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 3(A)(2): Findings* (August 23, 2017), 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*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁵ See William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008); INA § 101(a)(27)(J); 8 U.S.C. § 1101 (a)(27)(J). See also *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. (“The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable.”)

¹⁶ *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (“The federal statute confers SIJS eligibility when reunification with one parent is not viable. A finding of viability of reunification with appellant’s mother therefore does not dispense with the need to determine the viability of reunification with appellant’s father.”). See also *In re Mario S.*, 954 N.Y.S.2d at 851 (Although respondent was able to be returned to the custody of his mother upon his discharge from agency custody and the jurisdiction of the Family Court, he was both dependent upon the Family Court and abandoned by his biological father at the time of the motion. The fact that respondent was returned to the care of his mother should not be determinative of his application for SIJ findings.); *In re Marcelina M.-G v Israel*, 973 N.Y.S.2d 714, 722 (N.Y. App. Div. 2014) (“We interpret the ‘1 or both’ language to provide SIJS eligibility where reunification with just one parent is not viable as a result of abuse, neglect, abandonment, or a similar State law basis . . .”). See *In re Erick M.*, 820 N.W.2d 639, 648 (Neb. 2012) (rejecting a “literal reading of the statute [that] would seem to permit a state court to ignore whether reunification with an absent parent is feasible”). This Nebraska decision resulted from the court’s reliance on a regulation issued prior to the passage of the 2008 amendments that explicitly superseded the regulation. It is important to note that since the Nebraska decision was rendered, the Department of Homeland Security has issued a policy manual on SIJS that implements the TVPRA 2008 amendments and confirm that a child is eligible for SIJS when reunification is not viable with one of the child’s parents. See *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

be reunified with one parent or other family members.”¹⁷ Therefore, a “qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, or abandonment of the petitioner.”¹⁸

As with all other SIJS orders, when children living with one parent ask the juvenile court to take jurisdiction, they will need to establish proper state law authority for the court to act. For example, in jurisdictions where guardianships are not available or commonly used by a parent, to determinations of custody, paternity, or termination of parental rights may provide an appropriate state law vehicle for the court to exercise jurisdiction related to the care and custody of children. Stating the basis of the jurisdiction for the findings under state law helps ensure that federal adjudicators will properly understand the nature of the underlying state proceeding.

It is not unusual that children who have had no or limited contact with a parent lack formal proof of the identity of the missing parent. This is exacerbated where a parent is not listed on the child’s birth certificate. Although immigration law has its own statutory definition indicating when a parent-child relationship is recognized for immigration purposes,¹⁹ it generally defers to state law in this context, such that “the findings must be based upon the person who is the petitioner’s parent (or parents) under state law.”²⁰ Under this approach, although immigration law generally recognizes step-parents as parents, USCIS asserts that the term parent “does not encompass a step-parent unless the step-parent is recognized as the petitioner’s legal parent under state law, such as when a step-parent has adopted the petitioner.”²¹ In cases where there is ambiguity regarding the identity of a parent, the state court should set forth the state law and any factual findings that it makes regarding the parent. In such instances, “[i]f the juvenile court order establishes that the person . . . is the petitioner’s parent . . . , USCIS generally considers this requirement met.”²²

Viability of Reunification – Due to Abuse, Neglect, Abandonment, or Similar Basis

To qualify for SIJS, the non-viability of reunification with a parent must be “due to abuse, neglect, abandonment, or a similar basis found under State law.”²³ There is no governing

¹⁷ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.9, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (“USCIS generally requires . . . that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority.”).

¹⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁹ INA § 101(b)(1), 8 U.S.C. § 1101(b)(1).

²⁰ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²¹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²² *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²³ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

federal definition of these terms, and USCIS states the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”²⁴ When the state law basis of the findings are clear, “USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about abuse, neglect, or abandonment.”²⁵

Abuse, Neglect, or Abandonment

Utilizing its own state definitions, the state court should identify the factual reasons that reunification is not viable and link its findings to the elements and factors found in these definitions. While each state has its own definitions of abuse, neglect, and abandonment, the underlying elements are remarkably consistent across jurisdictions. As appendices to this manual, we have included charts tracking state-by-state and highlighting the common themes in state law definitions of abuse, abandonment and neglect. These charts provide a helpful guide to judges in identifying the relevant inquiries.²⁶

Keep in mind that the court applies state law to acts of abuse, neglect, or abandonment when they took place in the state and when they took place abroad. For example, if a child was abused in Guatemala the court applies the state law definition of abuse and determines whether the treatment of the child in Guatemala would constitute abuse under state law. The court must, however, describe how the actions of the abusive parent fit the state law definition of abuse. Also, the statute requires a factual finding of abuse, neglect, or abandonment, but does not require that formal charges of abuse, neglect or abandonment be levied against a parent.²⁷ As with all the SIJS findings, these are simply articulations of the factual determinations that support the underlying care and custody decisions.

Similar Basis Under State Law

The term “similar basis under the state law” was added to the statute to give judges more leeway in states that use terminology or recognize additional state law child protection, child welfare, or child best interests bases that prevent a child’s reunification with a parent. This

²⁴ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁵ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 4, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁶ The SIJS Bench Book, Appendices K-M include charts with the state law definitions of abuse, abandonment, and neglect and track common themes in these state law definitions and list the multiple state statutes defining these terms. See *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/>; *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/>.

²⁷ *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (“[T]he SIJS statute does not require child-protection proceedings as a prerequisite for determining whether reunification is viable.”); see also Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. 48, 57 (2012) (“Importantly, the abuse, neglect, abandonment, or similar condition language does not require that formal charges of abuse, neglect, or abandonment be levied against parents.”).

addition accommodates the range of statutory language employed in various jurisdictions to determine when a state court can make decisions about custody of children, beyond the narrower categories of abuse, neglect or abandonment.²⁸ For example, a court may exercise jurisdiction to make a decision related to care and custody of “a destitute child” in New York,²⁹ a child who is “without proper custody or guardianship” in Michigan,³⁰ or a child whose parent is deceased.³¹ Where there is a legitimate underlying child welfare reason for the state court to exercise jurisdiction over a decision regarding the care and custody of a child, it need not be explicitly abuse, neglect, or abandonment.

However, the basis must be similar to abuse, neglect, or abandonment, and the court must spell out the connection. This means that in many cases even if the title of the harm caused to the child is different, it is more straightforward to simply identify the specific facts as meeting the state’s definition of abuse, neglect, or abandonment. A child without proper care or custody is certainly in a situation similar to that of an abandoned or neglected child. Depending on the precise wording of the relevant jurisdiction’s statute, it is likely that the child meets the definition of an abandoned or neglected child.³²

This effort to reconcile the facts of the child’s case to the state’s statutes can be critical. For example, the death of a parent alone may not fit neatly in the definition of abandonment under state law. But a parental death with no arrangement for future custody or which leaves the child without any provision for support may fit within neglect or other statutes under state law.³³ Identifying and articulating the connection between the legitimate need of the child and the state statute under which the court can take jurisdiction to ensure that the child receives care is critical. The court’s reasoning and authority to issue the court order which includes SIJS findings makes it possible to assert the child’s qualifications for SIJS before federal authorities.

Best Interest of the Child

Any time a state court makes a decision about the care and custody of a child, it takes the best interests of the child into account. It is this experience and expertise that Congress sought to tap when it required that SIJS petitioners provide a state court determination that it “would not be

²⁸ See William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, § 235(d), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008).

²⁹ See N.Y. SOC. SERVS. LAW § 371(3) (LexisNexis 2018).

³⁰ See MICH. COMP. LAWS § 712A.2(4)(b)(1) (2015).

³¹ *In re Luis R.*, 990 N.Y.S.2d 851, 852 (N.Y. App. Div. 2014) (finding “reunification . . . with one or both of his parents is not viable due to the death of his father”).

³² The SIJS Bench Book appendices include a review of state laws regarding domestic violence, child endangerment, and forced marriage and compares these to state law definitions demonstrating how in each state these crimes against children also fit within the state law’s definitions of abuse, abandonment, or neglect. The charts will help courts craft orders and findings of fact demonstrating that children protected by state domestic violence, child endangerment, and forced marriage statutes are also by definition covered by state laws protecting children against child abuse, abandonment, and/or neglect. See *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/>; *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/>; *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/>.

³³ See, e.g., CAL. WELF. & INST. CODE § 300(g) (West 2016).

in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or last habitual residence.”³⁴

As with the other portions of the SIJS statute, there is no federal definition of “best interests of the child,” and state law controls. In making its findings, the court must look to the best interest definitions and factors that it utilizes under its state law. While each state has its own definition, discussions, elements or factors to consider in making a best interests determination, the underlying elements follow consistent themes and often identical language across jurisdictions. Included as an appendix to this manual are maps that track the similarities among each best interests of the child laws of each U.S. state and jurisdiction.³⁵

The appendix to this manual contains information about the statutory language or case law governing best interests of the child determinations in each state. When state laws have more than one definition of best interests of the child, usually in the child welfare and child custody statutes, both are included. Appendix Q - *Best Interests of the Child Maps—Summary Matrix* opens with a summary matrix that provides a quick reference chart tracking common elements in state best interests of the child definitions. Next is a map identifying states with best interest of the child laws included in state statutes followed by the full text of each states' best interest of the child statute. Finally, Appendices Q1 to Q12 provide infographic maps for the 12 most common themes in state best interest of the child governing laws³⁶ statutes and case law and provide a map for each factor followed by the text of each state's laws discussing that factor. These infographic maps provide a quick reference that identifies when states have identical or similar best interests of the child factors, highlights the factors that are most commonly present in state law, and will facilitate access by judges, court staff and attorneys to case law decided applying similar or identical statutory best interests factors in other states. These maps and charts provide a helpful guide to judges in identifying the relevant factors to apply in SIJS, custody and child welfare cases.

Some factors which are commonly present include emotional ties and relationship between the child and parents, siblings, family and household members, or other care givers;³⁷ capacity of the parents to provide a safe home and adequate food, clothing, and medical care;³⁸ mental and physical health needs of the child;³⁹ mental and physical health of the parents;⁴⁰ and the presence of domestic violence in the home.⁴¹ It should be noted that, some states require that the socio-economic status of the birth parent or caregiver not be considered when determining the best interest of the child.⁴² For an in-depth discussion of best practices for how a court

³⁴ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

³⁵ See *Appendix Q: Best Interests of the Child Maps—Summary Matrix*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-4 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q-best-interests-of-the-child-matrix/>.

³⁶ The vast majority of states have at least one best interests of the child statute. In a few states, the best interests of the child standard have been set by case law, and there is no statutory authority. For these states, the charts include the text from the controlling case law. Case law is only referenced in these charts for this limited purpose. The maps provide a guide that will help courts and attorneys find case law from jurisdictions that is based upon identical or substantially similar statutes.

³⁷ Connecticut, Delaware, Florida, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Tennessee, Vermont, and Virginia.

³⁸ Florida, Georgia, Hawaii, Illinois, Maryland, Michigan, North Dakota, Texas, Vermont, and Wisconsin.

³⁹ Connecticut, Delaware, Florida, Georgia, Kansas, Maine, Michigan, Nevada, and Virginia.

⁴⁰ Delaware, Georgia, Kentucky, Michigan, North Dakota, South Dakota, Tennessee, Texas, and Virginia.

⁴¹ Delaware, Georgia, Kentucky, Michigan, North Dakota, Oregon, Tennessee, Texas, and Virginia.

⁴² California.

reaches the finding that it is not in the child's best interest to be returned to the child's or parent's home country or last habitual residence, see Chapter IV *Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Cases* of this manual discussing how state best interests laws apply to each of the SIJS findings.

**Chapter III:
Abuse, Abandonment, or Neglect:
The Role of State Law Definitions in Special Immigrant Juvenile Status Findings¹**

By: Rafaela Rodrigues and Leslye E. Orloff

December 19, 2017

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.² 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;³
- 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.⁴

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.⁵

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² 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/>.

³ 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.

⁴ 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.

⁵ 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,

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.⁶

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.⁷ 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.⁸ 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*.⁹ The definitions of abuse, abandonment, and neglect are found in a range of state laws:

- Family code;

⁶ 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/>.

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

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

⁹ 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.¹⁰

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 states¹¹ 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.¹² 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:¹³

- 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

¹⁰ 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/>.

¹¹ All except D.C., Massachusetts, and Virginia include it.

¹² 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/>.

¹³ *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.¹⁴ 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.¹⁵

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

¹⁴ 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/>.

¹⁵ 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.¹⁶
- Appendix O - *Child Endangerment Laws*
 - In all states require a higher level of harm or intent than child neglect laws.¹⁷
- 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.¹⁸

¹⁶ 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/>.

¹⁷ 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/>.

¹⁸ 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/>.

Chapter IV
Application of the Best Interest of the Child Standard in
Special Immigrant Juvenile Status Cases¹

By Leslye E. Orloff

December 15, 2017

Congressional and Immigration Policy Framework

The United States Congress created Special Immigrant Juvenile Status (“SIJS”) to provide humanitarian protection for abused, abandoned, or neglected immigrant children.² SIJS is one of several forms of humanitarian immigration relief developed since the late 1980s that provide protection and the stability of having a path to lawful permanent residence. These laws provide the essential support that immigrant crime victims, immigrant family violence victims, and abused, abandoned, or neglected immigrant children need to help them heal, develop, and thrive as healthy and productive members of our communities.³ Two of these forms of immigration relief, SIJS and the U visa,⁴ include congressionally created application procedures that involve state court judges.

When SIJS was created in 1990, the statute expressly required that the best interests of the child be applied to SIJS cases.⁵ The procedures that SIJS employs recognize that state courts that adjudicate cases involving children have particularized training and expertise with regard to applying best interests of the child factors to cases involving child custody, placement, welfare, abuse, and neglect.⁶ As such, SIJS application procedures rely on the expertise of state court

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² 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*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS, 1 (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³ See, e.g., Battered Spouse Waiver of 1980 (codified in the Immigration and Nationality Act (“INA”) § 216(c)(4)(C), 8 U.S.C. § 1186a(c)(4)(C) (2012)); Violence Against Women Acts, 42 U.S.C. § 13925 (1994), 42 U.S.C. § 3796 (2000), 42 U.S.C. § 1437 (2005); VAWA self-petitioning and VAWA cancellation of removal for abused spouses and children of citizens and lawful permanent residents and the abused parents of over twenty-one-year-old citizen children, Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013); U Visa for Immigrant Crime Victims, INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U); Trafficking Victim’s Protection Acts of 2000, 2003, 2005, 2008, 2011, 2013 (codified in INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T)) (creating and developing the T visa and continued presence for victims of severe forms of human trafficking); VAWA 2005’s work authorization for abused spouses of immigrant work visa holders (codified in INA § 106, 8 U.S.C. § 1106).

⁴ Judges constitute one group on the list of government officials authorized to sign U visa certifications, which are required as a prerequisite for filing for U visa immigration protections. See Pub. L. No. 106-386, 114 Stat. 1464 (2000); 8 CFR § 214.14(a)(2) (2012); DEP’T OF HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE: FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES (2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

⁵ Requiring a determination regarding SIJS children that “it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.” Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5006 (1990).

⁶ See generally *Gao v. Jenifer*, 185 F.3d 548, 555 (6th Cir. 1999); *Eddie E. v. Superior Court*, 167 Cal. Rptr. 3d 435, 438 (Cal. Ct. App. 2013); *B.F. v. Superior Court*, 143 Cal. Rptr. 3d 730, 734 (Cal. Ct. App. 2012); *In re Erick M.*, 820 N.W.2d 639, 641-42

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judges who regularly make decisions regarding the care, custody, placement, safety, health, welfare, and a range of critical life issues⁷ affecting children and apply state best interest of the child laws to these decisions.⁸ The U.S. Citizenship and Immigration Services (“USCIS”) Policy Manual states:

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.⁹

The U.S. Department of Health and Human Services (“HHS”), Child Welfare Gateway further states that:

“Best interests” determinations are generally made considering a number of factors related to the child’s circumstances ... with the child’s ultimate safety and well-being the paramount concern.

Guiding principles of best interests determinations ... reference overarching goals, purposes, and objectives that shape the analysis in making best interests determinations.

These include:

The health, safety and/or protection of the child... The importance of timely permanency decisions.... The assurance that a child ... will be given care, treatment, and the guidance that will assist the child in developing into a self-sufficient adult.¹⁰

Each child has unique needs, life experiences, and in the case of foreign-born children applying for SIJS, trauma histories. To be effective in meeting the needs of all children, state best interest laws are complex, flexible, and adaptable so that the particular factors that take precedence for an individual child are determined on a case-by-case basis.¹¹ A child’s best

(Neb. 2012); *In re Marisol N.H.*, 979 N.Y.S.2d 643, 645 (N.Y. App. Div. 2014); *In re Hei Ting C.*, 969 N.Y.S.2d 150, 152 (N.Y. App. Div. 2013); *In re Marcelina M.-G. v. Israel S.*, 973 N.Y.S.2d 714, 719 (N.Y. App. Div. 2013); *In re J.L.E.O.*, No. 14-10-00628-CV, 2011 WL 664642, at *1 (Tex. App. Feb. 4, 2011).

⁷ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 1(A): Purpose in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁸ *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/> (directing courts to apply their state laws and procedures to cases involving requests by immigrant children for SIJS findings); *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(3): Best Interests, 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/> (directing USCIS to defer to the state courts on matters of state law including best interests and the state law definitions of abuse, abandonment, or neglect).

⁹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁰ CHILD WELFARE INFORMATION GATEWAY, CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., DETERMINING THE BEST INTERESTS OF THE CHILD 2 (2016), https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

¹¹ U.N. Comm. on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶20 CRC/GC/2005/6 (Sept. 2005).

interest is defined by judges on an individual basis addressing the specific situation of the child and taking into consideration his personal context, situation, and needs, as well as his development,¹² including brain development, and the impact of any trauma that the child suffered.¹³

Applying State Best Interests of the Child in SIJS Cases – A Practical Guide

Which Law Applies to Which Facts

State courts are required under federal law to apply state substantive and procedural laws in all cases involving immigrant children seeking SIJS findings in state court proceedings.¹⁴ Judges apply the same state best interest of the child laws to cases involving SIJS eligible immigrant children that they apply in all cases involving children before the court. Immigrant children qualify for SIJS when they have suffered abuse, abandonment, or neglect by at least one of their parents either in the United States or abroad.

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.¹⁵ 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 or parents.
- 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.
- If the facts about the actions the child suffered constitute abuse, abandonment, and/or neglect 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
 - That is it not in the child’s best interest to be returned to his home country, and
 - That reunification with one or both parents is not viable due to abuse, abandonment, neglect, or similar basis under state law;

State Best Interest Law Factors to be Used in All Three SIJS Findings

¹² U.N. Comm. on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶20 CRC/GC/2005/6 (Sept. 2005).

¹³ *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 3 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

¹⁴ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(4): Validity of Order (Issued under State Law) in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.*

¹⁵ H.S.P. v. J.K., 121 A.3d 849, 858-59 (N.J. 2015).

Under state law in all states, in proceedings that affect the custody, placement, and care of children, courts' decisions require the application of the best interest of the child legal standard to the facts of the case of the particular child before the court. In every case in which an immigrant child is seeking SIJS findings, there is an underlying state court proceeding that has a purpose governed by state law. These proceedings have a core requirements that court orders issued by the judge presiding over the case emphasize the best interests of the child by designing orders that promote the child's welfare, safety, well-being, stability, care and individual needs.

To assist courts in applying the best interests of the child factors in cases involving SIJS eligible children, this manual includes appendices on the best interests of the child laws and factors considered in all U.S. states and jurisdictions. The best interests of the child factors listed in state statutes and/or described as applicable in state case law include many common goals, themes, elements, and factors.

- Appendix Q: Best Interests of the Child Maps – Summary Matrix provides a chart for comparing state best interests of the child factors from each U.S. state and jurisdiction
- Appendix Q1 Best Interests of the Child – Factors in State Law opens with a map of states with best interests of the child statutes. This is followed by a chart tracking the full text of each state's best interest laws
- Appendices Q2-Q12 provide maps and charts grouping state best interest of the child factors in each state's laws by common significant themes and quoting the text of the factors in each state's best interests of the child laws relating to that theme. The maps provide an infographic for each of the categories of best interest listed below and are followed by a chart listing each state's statutory language related to that factor.

The charts and maps contained in the appendices will assist courts in identifying and relying upon as persuasive and useful the legal analysis and rulings of courts whose statutes contain factors that are identical or substantially similar to their state law. These tools will also be helpful to courts in states with catch-all provisions allowing the court to consider any factors that court finds relevant beyond those specifically listed in the state's best interest statute. The usefulness of these tools extends to any case in which the court is considering the best interests of the child in its decision-making.

Appendix Q¹⁶ contains charts tracking the factors that apply to state best interest of the child determinations in all states and U.S. jurisdictions. This appendix tracks by state the factors that are most commonly considered by courts as part of their best interests of the child analysis or as factors under the state's best interests of the child laws. Each of the following is relevant to all three SIJS determinations. The most commonly considered factors are:

- Family Violence: Child abuse, neglect, sexual assault, kidnapping, or other physical or mental harm to the child¹⁷

¹⁶ Appendix Q: Best Interests of the Child Maps—Summary Matrix, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-4 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q-best-interests-of-the-child-matrix/>.

¹⁷ Appendix Q-7: Best Interests of the Child – Family Violence, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q7-best-interests-family-violence/>

- Child’s Needs:¹⁸ The child’s physical, emotional, educational, developmental, age, religious, cultural, ethnic, linguistic, physical and mental health, welfare, safety,¹⁹ vulnerabilities, sexual orientation, and social needs²⁰
- Fitness-Caregiving Capacity: Parent’s fitness and capacity to be a caregiver to meet the child’s needs (e.g., food, clothing, medical and mental health, safety, financial support, nurturing); the level and type of involvement or non-involvement in the child’s life, the capacity to provide a consistent routine, and the involvement of a non-parent caregiver or a de-facto custodian in the child’s life²¹
- Substance abuse or mental illness of a parent or other potential caregiver²²
- Continuity and stability of the home environment, the child’s adjustment to school, home, community, continuity of care and caregivers, and the potential

¹⁸ *Appendix Q-4: Best Interests of the Child – Child’s Needs Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), http://niwaplibrary.wcl.american.edu/pubs/appendix-q4-best-interests-child_s-needs/. Children’s needs typically correlate to factors related to the child’s identity (sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality). See U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶¶ 55-56, U.N. Doc. CRC/C/GC/14 (May 29, 2013) (“The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. . . . [W]hen considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background . . . and the decision-maker must take into consideration this specific context when assessing and determining the child’s best interests.”).

¹⁹ The NCJFCJ’s Judicial Guide to Child Safety in Custody Cases is an excellent tool designed to maximize child safety in custody and visitation cases. The Guide provides useful information for judges applying state best interest laws in issuing court orders that protect the safety of immigrant children and include SIJS findings. See JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat’l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf (“A child’s physical, emotional, and psychological safety are always in [the child’s] best interests. . . . [S]afety of the child is the primary factor in determining his or her best interest.”); see also U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶ 73, U.N. Doc. CRC/C/GC/14 (May 29, 2013) (declaring that the child’s need for safety includes the right to be protected from all forms of physical or mental violence, injury or abuse, sexual violence, and sexual exploitation); *Ratification Status for United States of America*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER,

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN (last visited Mar. 29, 2018) (showing the United States signed, but has not ratified, the U.N. Convention on the Rights of the Child (CRC) on Feb. 16, 1995).

²⁰ See also AM. BAR ASS’N, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 50-78 (2d ed. 2008) https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/judges_guide.pdf. This guide is a very useful resource tool for judges that provides discussions and recommendations regarding a developmental approach to best interest decision-making. Although developed for the contested custody context, the Guide is a rich resource on children’s needs and various stages of development. It contains excellent tips for in-chambers interviews of children of various ages that will be very helpful to judges taking evidence and making best interests of the child determinations in cases of children seeking Special Immigrant Juvenile Status findings in family court. The information contained in the Guide will be useful to courts both in contested cases where the abuse by a parent occurred in the United States and in uncontested cases in which the abuse may have occurred abroad, where the court’s interview of the child is an important evidentiary part of the state court cases in which SIJS findings will be issued.

²¹ *Appendix Q-9: Best Interests of the Child – Parental Cooperation and Conflict Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q9-best-interests-parental-cooperation-conflict/>.

²² *Appendix Q-12: Best Interests of the Child – Substance Abuse, Mental Illness, and Criminal History Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q12-best-interests-substance-abuse-mental-illness-crim-hist/>.

effect of change on the child.²³ This includes preservation of family integrity in cases where SIJS children are living with a non-abusive parent or family member caregiver.²⁴

- **Child’s Relationships:** The interactions and interrelationships with any person affecting the child’s best interests including parents, siblings, family members, and other caregivers²⁵
- **The child’s wishes** (taking into consideration the child’s age and capacity)²⁶ play an important role in best interest determinations. Decisions that do not take into account the child’s views or do not give their views due weight according to their age and maturity do not respect the possibility for the child to inform and influence the determination of his best interest.²⁷ Best practices include ensuring that young and vulnerable children also have the right to express and have their views equitably weighed.²⁸
- **The wishes of the parent:**²⁹ these will be particularly relevant in cases in which the SIJS applicant child is in the custody of a non-abusive parent and may not play a significant role with regard to the parent who perpetrated the abuse, neglect or abandonment of the child.
- **Catch-All Provisions:** Any other factors that the court deems relevant or that have reasonable bearing on the physical or psychological well-being of the child³⁰

²³ *Appendix Q-6: Best Interests of the Child – Continuity and Stability of Child Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q6-best-interests-continuity-stability-of-child/>.

²⁴ The Due Process and Equal Protection Clauses of the U.S. Constitution protect the integrity of the family and the parent-child relationship. See *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). These constitutional protections apply equally to all parent-child relationships, including cases in which a parent is undocumented, detained, or deported. See *In re Interest of Angelica L.*, 767 N.W.2d 74, 89 (Neb. 2009) (noting that state courts still have jurisdiction over child custody disputes even when a parent is in deportation proceedings, and federal immigration law does not trump state jurisdiction over custody).

²⁵ *Appendix Q-3: Best Interests of the Child – Child’s Family Relationships Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q3-best-interests-child-s-family-relationships/>.

²⁶ *Appendix Q-5: Best Interests of the Child – Child’s Wishes Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q5-best-interests-childs-wishes/>.

²⁷ U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶ 53, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

²⁸ U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶ 54, U.N. Doc. CRC/C/GC/14 (May 29, 2013). See also AM. BAR ASS’N, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 41 n.2 (2d ed. 2008), https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/judges_guide.pdf (citing *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1303 (1996)) (stating that the child’s expressed wishes are always part of the best interests determination).

²⁹ *Appendix Q-11: Best Interests of the Child – Parental Wishes Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q11-best-interests-parental-wishes/>.

³⁰ *Appendix Q-2: Best Interests of the Child – Catch-all Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q2-best-interests-catch-all/>. State best interest laws also include factors that will be most relevant in SIJS cases involving children who have been abused, abandoned, or neglected in the United States. These factors include: cooperation and conflict between the parents and joint custody. See *Appendix Q-9: Best Interests of the Child – Parental Cooperation and Conflict Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q9-best-interests-parental-cooperation-conflict/>; *Appendix Q-8: Best Interests of the Child – Joint Custody Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q8-best-interests-joint-custody/>.

A review of state best interests of the child statutes found no statute that listed immigration status as a best interest of the child statutory factor. The immigration status of a parent, guardian, or caregiver is not relevant to the core primary caretaker and parenting skills determinations that are a primary focus of adjudications requiring a consideration of the state's best interests of the child laws.³¹ The American Bar Association's ("ABA") Center on Children and the Law warned courts decades ago in 1991 about the dangers for children when courts focus on immigration status rather than the child's best interests.³² The ABA emphasized that the harm is most severe to children in families where domestic violence and child abuse are present.³³

Immigration law reforms in 1996 created a growing number of "mixed status" families in which not all family members share the same immigration status or citizenship, and in many cases, where current immigration laws leave undocumented family members without options to attain lawful permanent residence.³⁴ Crime victims, abused children, and parents of abused children or step-children can qualify to obtain legal immigration status under the Violence Against Women Act's ("VAWA") immigration protections³⁵ or the SIJS program.

For all of these reasons, it is extremely important that courts issuing custody, placement, and parenting time decisions apply the same state best interest analysis to cases involving only citizens as they do to cases involving citizen and immigrant children living in immigrant families. The immigration status of a parent, child, guardian, or caregiver should not affect the courts determination regarding custody, placement, commitment, or parenting time. When immigration law and state family laws intersect, it is important for courts to know how to access legally correct information about immigration laws to avoid applying incorrect information about immigration law to cases involving immigrant children and immigrant families.³⁶

³¹ Soraya Fata, Leslye E. Orloff, Andrea Carcamo-Cavazos, Alison Silber & Benish Anver, *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47 FAM. L.Q. 191, 194-96 (2013).

³² See generally HOWARD DAVIDSON, ABA CENTER ON CHILDREN AND THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (Aug. 1994), <http://library.niwap.org/wp-content/uploads/2015/FAM-Tool-ImpactDVChildren-8.94.pdf>.

³³ Veronica T. Thronson, Carole Angel, Soraya Fata, Rocio Molina, Benish Anver, Kalli Wells & Leslye E. Orloff, *Winning Custody Cases for Immigrant Survivors: The Clash of Laws Cultures, Custody and Parental Rights*, 9 FAM. & INTIMATE PARTNER VIOLENCE Q. 7, 85-90 (2016), <http://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>.

³⁴ David B. Thronson, *Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts*, 11 TEX. HISP. J. L. & POL'Y 45, 49-51 (2005), reprinted in 27 IMMIGR. & NAT'LITY L. REV. 637, 641-43 (2006).

³⁵ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006) (codified as amended in scattered sections of 8 U.S.C.); see, e.g., INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2) (2012); INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U); INA § 214(p), 8 U.S.C. § 1184(p); INA § 212(d)(14), 8 U.S.C. § 1182(d)(14). Some immigrants who have been in the U.S. for many years and who have citizen or lawful permanent resident spouses or children may qualify for cancellation of removal if placed in removal proceedings. See INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2). Cancellation of removal is a difficult form of relief to attain and requires that the immigrant has been in the United States for more than ten years.

³⁶ The National Immigrant Women's Advocacy Project, American University Washington College of Law is working together with Michigan State University College of Law Immigration Clinic to provide training materials, tools, and technical assistance for judges and court staff. Contact (202) 274-4457 or info@niwap.org. See e.g., LESLYE ORLOFF & ANDREA CARCAMO CAVAZOS, FAMILY COURT BENCH CARD ON ISSUES THAT ARISE IN CUSTODY CASES INVOLVING IMMIGRANT PARENTS, CHILD AND CRIME VICTIMS (Nat'l Immigrant Women's Advocacy Project 2013), <http://niwaplibrary.wcl.american.edu/pubs/benchcard-issues-arise-custody-cases/>; Leslye Orloff, Joyce Noche, Cecilia Olavarria, Laura Martinez-McIntosh, Jennifer Rose & Amanda Baran, *Countering Abuser's Attempts to Raise Immigration Status of the Victim in Custody Cases*, in BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS (2013), <http://niwaplibrary.wcl.american.edu/pubs/ch6-1-counterabuserraisingimmstatus/>; David B. Thronson, *Of Borders and Best*

Custody, Placement and Child's Best Interests

Decisions regarding where the child will live and who will care for the child are central determinations that are a standard part of many state court cases involving children. Custody, placement, commitment, and/or parenting time determinations are made in a wide range of state court proceedings, including but not limited to, custody, divorce, protection orders, child abuse, neglect, delinquency, adoption, and declaratory judgment cases.³⁷ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. In making best interests of the child determinations in SIJS cases, courts should consider the same range of factors that apply to all best interests of the child determinations that the court adjudicates. All SIJS cases will include findings using state law definitions to determine that a foreign-born child was abused, abandoned, neglected, or suffered similar harm defined by state law by at least one of the child's parents. These findings will naturally play an important role in the court's application of state best interest laws to decisions regarding a child's custody, placement, commitment, or parenting time.

Trauma, Stability and Healing: The State Court Role in Building Toward Self-Sufficiency For Immigrant Teens

There are two types of case scenarios that courts commonly see involving older (ages 14 to 17) immigrant children they see less frequently in families composed solely of citizen family members. These are:

- Uncontested custody or guardianship cases brought by longtime natural custodial non-abusive parents seeking custody or guardianship of their children and the issuance of SIJS findings
- Custody or guardianship proceedings brought by or on behalf of immigrant children who are a relatively short time period away from turning the age of majority under state law

All state laws set an age of majority before which courts as a matter of law have the legal authority to issue orders that are in the child's best interests and are designed to provide the care, treatment, stability, structure, and guidance that will help children become healthy, self-sufficient adults. Many SIJS eligible immigrants are children whose mothers fled with them from homes plagued by family violence. They have been raised in a safe and nurturing home with a primary caregiving mother and may have been out of contact with the child's abusive father for many years. The mother comes to court seeking custody of her child and seeking SIJS findings based on the father's abuse, neglect, and/or abandonment of the child. Securing a formal custody award and formal findings regarding the abuse, neglect, abandonment, or similar harm the father perpetrated against the child is very important for the child's best interest for reasons that go

Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts, 11 TEX. HISP. J. L. & POL'Y 45, 49-51 (2005), reprinted in 27 IMMIGR. & NAT'LITY L. REV. 637, 641-43 (2006).

³⁷ See Appendix J: *Types of Proceedings in which State Courts Can Make Special 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/>.

beyond the child's need for SIJS findings. For instance, should the mother be hospitalized, deported, or die in a car accident, the custody order containing findings regarding the abuse, neglect, abandonment, or other harms perpetrated by the child's father will help prevent a future court from placing the child in the care of the father or the father's relatives who are unable to protect the child from ongoing abuse.

Children who have lived through trauma experience delays in brain and emotional development. These children benefit greatly from court orders issued in their late teens designed to settle them in stable homes with a court plan and caregivers who will guide their transition into adulthood. Court orders in these cases can establish mental health treatment plans, tutoring arrangements, provide help accessing benefits and services available to the child in the state, and put in place other support necessary to thrive and grow. In many cases, immigrant children continue living with their court ordered custodians for long after the children turn the age of majority in the state. All of the benefits immigrant children receive from these types of court orders issued under state best interests law are amplified when an older immigrant child also receives findings required to enable the child to apply for SIJS.

Not in the Child's Best Interests to Return to his Home Country

In addition to deciding what placement, custody, commitment or parenting time is in the child's best interest, immigrant children need to obtain from the court a finding that it is not in the child's best interest to return to the child's home country. The state court will use the same best interest factors and analysis to make this determination as the court used in making determinations regarding the child's custody and care, as discussed in the previous section. These findings are inherent in, linked to, and a core part of the same best interest analysis that led the court to decide that it was in the child's best interest to award custody, placement, or guardianship of the child to the particular individual located in the United States that the court chose.

USCIS in its policy manual describes the role of the state family court as follows:

“[I]t must be determined . . . that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or his or her parents. Accordingly, this requires a determination . . . that a placement in the child's, or his or her parents', country of nationality or last habitual residence is not in the child's best interest.

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child. [12] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child. The court's finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner's country of

nationality would not be in the child’s best interest. [13] See 58 FR 42843-01, 42848 (August 13, 1993). USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.”³⁸

Best state court practice is to address each of the following issues specifically in the state court’s findings:

- Identify each of the potential persons who could provide care and take responsibility for custody of the child in the U.S. and in the child’s home country. This will include the parent who perpetrated the abuse, neglect, abandonment, or similar harm defined under state law. It should also include grandparents and other relatives in the U.S. or abroad who might serve as a placement for the child.
- Apply the state best interest factors to each placement
- State explicitly in the court order the factual findings the court made that support the placement chosen based on the child’s best interest
- Make findings of fact that illustrate why the court under the state best interests factors did not choose each of the other placements
- By demonstrating that placement in the child’s or the parent’s home country were either unavailable or unsuited under the state best interests factors, the court order in most cases is providing the factual underpinnings supporting the court's conclusion that it is not in the child’s best interests to return to the child’s home country.

What is important to understand is that the analysis the court undertakes in issuing these findings is not a comparison of the U.S and the child’s country of origin to assess the risk of harm to the child upon return. That approach, without the accompanying comparison or potential custodial placements, could fail to provide court findings sufficient to support the child’s SIJS case and could lead to the court having to provide additional information and findings in response to a request for further information from USCIS adjudicators. Instead, what is required is a comparison of the placements available to offer care and custody of the child in both countries.

In making the best interest factual findings comparing “what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.”³⁹ The Violence Against Women Act created VAWA cancellation of removal and VAWA suspension of deportation as forms of immigration relief available in deportation proceedings designed to help immigrant victims of spousal or child abuse perpetrated by U.S. citizen or lawful permanent resident spouses, former spouses, parents, and step-parents. One of the elements of proof that victims of child and spouse abuse must prove to be granted VAWA

³⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(3): Best Interests*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT SIJS BENCH BOOK 6, 10 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(3): Best Interests*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, 10 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

cancellation of removal or suspension of deportation by an immigration judge is that the immigrant victim's deportation would cause extreme hardship to the immigrant or their citizen or lawful permanent resident spouse, child, or parent. The immigration regulations contain a list of extreme hardship factors used to compare services and support available for immigrant victims of child and spouse abuse in the U.S. compared to the child's or parent's home country. These extreme hardship factors provide excellent examples of the types of factors that are available as part of the state's best interest laws that the court can use in the court's analysis and findings indicating that it is not in the child's best interests to be returned to the child's home country.

The VAWA extreme hardship factors are

- (1) The nature and extent of the physical or psychological consequences of abuse;
- (2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations, and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);
- (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);
- (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
- (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
- (6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.⁴⁰

In SIJS cases, as in VAWA cancellation of removal and VAWA suspension of deportation cases, "traditional" forms of extreme hardship that historically applied in non-VAWA suspension of deportation cases can also be helpful in SIJS cases. This is particularly relevant when the court can identify a strong connection between the particular type of hardship and the abuse and/or the consequences of the abuse including when the hardship is exacerbated by the abuse. Many of the traditional extreme hardship factors are identical or similar to common best interests of the child factors. Traditional extreme hardship factors are:

- (1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

⁴⁰ 8 C.F.R. § 1240.58(c) (2012).

- (2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;
- (3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;
- (4) The alien's ability to obtain employment in the country to which the alien would be returned;
- (5) The length of residence in the United States;
- (6) The existence of other family members who are or will be legally residing in the United States;
- (7) The financial impact of the alien's departure;
- (8) The impact of a disruption of educational opportunities;
- (9) The psychological impact of the alien's deportation;
- (10) The current political and economic conditions in the country to which the alien would be returned;
- (11) Family and other ties to the country to which the alien would be returned;
- (12) Contributions to and ties to a community in the United States, including the degree of integration into society;
- (13) Immigration history, including authorized residence in the United States; and
- (14) The availability of other means of adjusting to permanent resident status.⁴¹

Reunification Not Viable

The last of the three determinations immigrant children need to receive from state courts is the finding that reunification with at least one of the child's parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. USCIS has made it clear that the burden of proof for a finding that reunification is not viable is lower than and different from the burden of proof necessary for findings made under state law for termination of parental rights.⁴²

It is important in making this determination to remember that in all cases in which the court is considering to be making findings that reunification with the parent is not viable will be cases in which the court has already found that the parent or parents have perpetrated abuse, neglect, abandonment, or similar offenses as defined by state law against the child. In assessing viability of reunification, there are a number of state best interest factors that should be revisited

⁴¹ 8 C.F.R. § 1240.58(b).

⁴² *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

and in particular, addressed, as factual findings related to the court's viability of reunification determination. The following factors are particularly pertinent:

- Family violence, including child abuse, child neglect, spouse abuse, sexual assault, and other crimes committed by the parent against the child, the child's siblings and/or the child's other parent;
- The child's needs, including physical, emotional, safety, and mental health needs related to overcoming the trauma the child suffered as a result of the parent's actions or inactions;
- The child's wishes, including that the child is fearful of being alone with the parent or being placed in the parent's care;
- The parent's fitness and caregiving capacity, including what level of involvement, if any, the parent has had over the course of the child's life; the parent's unwillingness to be a caregiver, the parent's substance abuse or mental illness, and the capacity the parent has demonstrated to care for the child's needs and provide a consistent routine for the child; and
- If the parent has demonstrated that the parent will or will not be able to provide the child with stability and continuity of care.

Many SIJS cases will involve child abuse, child neglect, and domestic violence. The National Council of Juvenile and Family Court Judges advises that:

“A child's physical, emotional, and psychological safety are always in his or her best interest.”⁴³

Courts should conduct “a thoughtful exploration of the child's safety risks when abusive behavior has been part of the family fabric...”⁴⁴

NCJFCJ found that: ⁴⁵

Numerous studies document the negative effects on children who are exposed to the abuse of one parent by the other. The studies provide evidence of the problems associated with their psychological, emotional, and cognitive functions, and longer-term development. Children who witness violence and coercive control by one parent toward the other experience at least the same level of serious effects as those who were direct targets of the abuse. The research also shows that each child's experiences, perceptions, and responses are unique. Any intervention should be tailored to that child's particular risk set and situation....

⁴³ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat'l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

⁴⁴ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat'l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

⁴⁵ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 6 (Nat'l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

Generally speaking, it is considered detrimental to a child and not in his or her best interest to be placed in sole custody, joint legal custody, or joint physical custody with the abusive parent. The most important protective resource to enable a child to cope with exposure to abuse is a strong relationship with a competent, nurturing, positive adult— most often, that adult will be the non-abusing parent. Providing for the physical, mental, and emotional safety of the child will include providing safe visitation by the abusive parent, if truly safe visitation can be arranged. You should award visitation to an abusive parent only if you find that adequate provisions for the child’s and the abused parent’s safety can be made, assuming that contact with the abusive parent is advised at all....⁴⁶

Any allegations of abuse, whether made by the at-risk parent or the child, should be taken seriously. Often when viewed through the lens of abuse and coercive control, though, the case comes into focus. It is important that abusive parents’ access to their children occurs only in safe environments or when the safety of both the child and the at-risk parent can be ensured.⁴⁷

When courts make a finding that reunification with the child’s parent is not viable, best practice in SIJS cases is to include in the court order the following:

- The best interests of the child factors that contributed to the finding, including findings of child abuse, child neglect, child abandonment and domestic violence
- The findings of fact related to the best interest factors upon which the court is basing its non-viability finding
 - It is important to address facts contributing to the court’s non-viability finding separately with regard to each parent

Most SIJS cases will fall into one of the following three scenarios. The analysis we provide for approaching non-viability findings in the SIJS scenarios below can provide a framework that courts can apply to other cases as well.

Scenario 1 – A Non-Parent is Being Awarded Custody, Guardianship, or Placement

Before the court issues an order that it is in the child’s best interest for a non-parent to get custody, placement, or guardianship of the child, the court is required under state law to eliminate each of the child’s parents as viable placements. It is also helpful to clarify in the order that it is a final court order. Best practices for court orders regarding viability in these cases is to explicitly state:

- That the court order is final

⁴⁶ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 7 (Nat’l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf. See also AM. BAR ASS’N, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 128-36, https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/judges_guide.pdf.

⁴⁷ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat’l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

- That the order involves no reunification plans for the parents
- The state-specific best interest factors and case-specific facts the court relied upon to make its finding that reunification with the child's parent or parents, in this case, is not viable.
- The order has no date certain on which it ends, and there is no triggering event contemplated that could occur in the future that would cause a change in the court's order

Scenario 2 – A Non-Abusive Parent is Being Awarded Custody

When the court is awarding custody or guardianship to a non-abusive protective parent in a contested or uncontested case, the court should articulate the specific state law best interest factors and factual findings upon which it is relying in making its non-viability determination. The court findings regarding non-viability of reunification with the abusive parent should include:

- Facts of child abuse, neglect, and domestic violence
- Facts and findings that placing the child in the sole or joint legal or physical custody of the abusive parent is detrimental to the child
- The court's finding that reunification with the abusive parent is not viable must be based on an articulation of the dangers the abusive parent poses to the child

Courts can reach a non-viability finding based on state law best interest factors even in cases where the court allows the abusive parent to have visitation with the child. Under immigration law, a finding of non-viability of reunification requires a different and lower standard of proof than that needed for termination of parental rights. Thus, a non-viability finding does not require that there be a no-contact order between the child and the abusive parent. The court can design visitation orders between the child and the abusive parent that protect the safety of the child and the nonabusive parent, and these will not undermine the non-viability finding. The fact that an abusive parent is allowed contact with a child through visitation does not mean that reunification of the child with the abusive parent is viable. Visitation is not akin to a reunification plan in a child welfare case. The fact that an abusive parent may be awarded supervised or unsupervised visitation with a child does mean visitation orders are in any way inconsistent or an impediment to a court finding that reunification of an abusive parent with a child is not viable.

Scenario 3 – A Child Welfare Case is Placing or Committing a Child

For immigrant children involved in dependency, child abuse, or neglect cases, a court can issue SIJS findings when the court makes a best interest adjudication that places the child in the care of the state, a family member, or another individual. The placement order should include a finding that the child has been a victim of abuse, abandonment, neglect, or a similar basis under state law, which was perpetrated by one or both of the child's parents, such that it is not in the child's best interests to return to the home country.

Although dependency courts are required by law to make reasonable efforts to reunite children with the parent who perpetrated abuse, in some cases courts find that reunification with the abusive parent is not viable. This can occur in a variety of ways:

- The facts of the abuse, abandonment, or neglect of the child are so severe that under state law, reasonable efforts may be waived;
- The court may have put in place a reunification plan but the parent is not complying;
- The nature of the parent's abandonment of the child may be such that the parent cannot be located and cannot be served with the reunification plan;
- The parent may have consistently failed to meet reunification plan requirements and target dates to the extent that these facts, combined with the harm caused by the parent, enable the courts under state best interests laws to enter a non-viability finding.

These non-viability findings can sometimes be entered in a dependency case without requiring a waiting period. When a court is issuing non-viability findings in cases of children involved in child welfare cases, the findings regarding non-viability of reunification with the abusive parent should include best interest factors such as the following:

- Detailed findings regarding the abuse, abandonment, neglect or other similar harm to the child under state law, including information about the severity of the harm caused;
- Facts about the perpetrator parent's lack of involvement in the child's life, failure to take steps to participate in a reunification plan, or lack of expressed interest in being reunited with the child.

Once the court enters a non-viability of reunification finding in the case of a SIJS child involved in a dependency case, if facts change significantly such that the court issues an order reunifying the child with the perpetrator parent, any previously approved SIJS petition granted by USCIS is automatically revoked.⁴⁸

⁴⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 4(E)(3): Revocation*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

Chapter V-1 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN PROCEEDINGS INVOLVING TERMINATION OF PARENTAL RIGHTS AND ADOPTION¹

By: Zoe Baker, Muhammad Fadel, and Leslye E. Orloff
October 29, 2017

What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁶

¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS [hereinafter SIJS BENCH BOOK] 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See Immigration and Nationality Act (“INA”) § 101(a)(27)(J)(i), 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁶ See INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (defining Special Immigrant Juveniles); see also 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>; NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/2018/03/sijs-manual-table-of-content/>.

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- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjívar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjívar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help the child heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for the child.¹¹

c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.

3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to either abuse, abandonment, neglect, **or** a similar basis under state law;¹²

a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.

- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both Department of Homeland Security (DHS) requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment, or other services would be available to help an immigrant child or immigrant crime victims in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See SIJS Bench Book, Chapter IV: *Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases* for a list of these factors and how they could be applied when courts make SIJS findings.

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child’s health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child’s deportation from the United States.

SIJS in Termination of Parental Rights (TPR) and Adoption Proceedings¹⁶

- Adoption is a frequent and appropriate state court proceeding in which children can obtain SIJS findings since adoption cases include determinations regarding custody and care of children. In adoption proceedings courts examine the history and dynamics of child abuse, neglect, abandonment or similar harms defined by state laws that a child experienced perpetrated by one or both of their parents. Courts adjudicating adoption cases apply the state best interests of the child laws to the facts they are adjudicating in all adoption cases.¹⁷
- SIJS findings are appropriate¹⁸ in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child’s natural or adoptive parents.
- *Making SIJS findings in adoption cases:* Adoption is one case type in which state courts will encounter SIJS eligible foreign-born children. When SIJS orders are requested on behalf of the child during an adoption proceeding, the judge has the ability to make the SIJS findings based on the facts presented in the case and/or based on facts determined by a court in any abuse, neglect or termination of parental rights proceeding that may have preceded the adoption case.¹⁹
- *Adoption following TPR proceedings:* Since SIJS is relatively new to state courts it will not be unusual for an adoption court to encounter cases involving SIJS eligible immigrant children in which a prior court ordered TPR but did not issue SIJS findings in the order. In these cases, the factual basis supporting the abuse, abandonment or neglect and non-viability of reunification would be inherent in and contained in the court record and orders in the termination of parental rights proceeding. The court adjudicating the adoption of an SIJS eligible child can include SIJS required findings in the adoption order based on the facts found and the application of state laws to those facts in both the adoption and TPR proceedings.

The statutory requirements for adoption are similar in many jurisdictions and include variations of:

- The minor has been abandoned by one or both of the child’s parents,
- The child’s parent or parents have died, or
- The parent(s) cannot provide for the care of the child by reason of misconduct, mental or physical or emotional health, or physical or mental incapacity, and
- The court finds these conditions or causes cannot or will not be remedied by the parent or parent(s).

¹⁶ *In re C.G.H.*, 75 A.3d 166, 169 (D.C. 2013).

¹⁷ Adoption by U.S. citizen parents does not automatically resolve a child’s immigration status. SIJS is often the best and most appropriate way to ensure the child’s stability. SIJS may still be needed and is not necessarily superfluous just because adoptive parents may be citizens or lawful permanent residents.

¹⁸ For more information, see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

¹⁹ *In re C.G.H.*, 75 A.3d 166.

- *One parent adoption by a step-parent or second parent:* It is common to have a child seeking SIJS orders based on the abuse, abandonment, or neglect by only one parent.²⁰ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both of the parents. In 2008 Congress amended the law in recognition of the importance of promoting ongoing nurturing relationships between children and their non-abusive parents. In adoption proceedings, SIJS orders can be requested in a proceeding involving adoption by a stepparent or a second parent when the child continues to live with the child's non-abusive parent.
- SIJS findings are appropriate in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by the other parent. It is very common to have a child seeking SIJS orders based on the abuse, abandonment, neglect, or similar harm under state law by only one parent. For example, courts will encounter immigrant children who suffered abuse by a parent in the home country who are currently residing with a non-perpetrator parent in the United States who is seeking a custody order. These facts could be present in a divorce, legal separation or custody case in which the court applies the state definitions of abuse, abandonment, neglect or similar harm defined under state law and the state best interests factors to decide custody of a child when the perpetrator parent lives outside the country. The abuse of the child may have occurred outside of the U.S. or in the U.S. and the perpetrator parent has never been to the U.S., been deported from the U.S. or may have left the U.S. for other reasons.
- Common Case Scenarios: When an immigrant child is being adopted who has been abused, abandoned, neglected, or subjected to harm from or another similar basis under state law the adoption court should issue SIJS findings as part of its court order. The following are examples of common scenarios in which an SIJS eligible immigrant child will typically come before the court in an adoption proceeding requesting such findings:
 - **TPR granted in a prior proceeding:** The parental rights of one or both of the child's parents were previously ordered and child is in adoption proceedings. When parental rights of one or both of the child's parents have already been terminated the pleadings will contain allegations identifying the parties, information supporting the court's jurisdiction, a statement of the relief sought and the statutory grounds for that relief, and petitioner's satisfaction of all conditions precedent to the grant of adoption.²¹
 - **Father abandoned the child:** The child's father's parental rights were terminated by prior court order. The father played no role in the child's life. Child is in the custody of mother and stepfather whose adoption petition is being granted by the court. It is in the child's best interest to remain in the custody and care of the child's mother and adoptive stepparent father.²²
 - **Both parents voluntarily surrendered parental rights:** The child was the subject of a TPR case in which one or both birth parents *voluntarily* give up

²⁰ 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/>.

²¹ *The Petition: Pleading Requirements and Required Attachments* in JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE (Matthew Bender 2017).

²² *In re C.G.H.*, 75 A.3d 166.

parental rights. No SIJS findings were made in the prior proceeding although the child was abandoned by one of their parents. The child was placed with a family member who is now filing for adoption of the child.

- **Both parents consent to the adoption:** In an adoption case with no prior TPR proceeding and the parents have not previously voluntarily surrendered their parental rights consent to the adoption from each parent is required. If one parent is deceased, the consent of the remaining parent is required for the adoption proceedings.²³ When parental consent has been given, the consent along with the other pleading requirements should suffice for adoption proceedings.²⁴ It is important to note that in adoption cases in which the child is seeking SIJS orders when the consenting parent is the parent who committed the abuse, abandonment, neglect or similar basis of harm to the child under state law, the parent's consent to the adoption may include information that is helpful to the court in making its rulings on abuse, abandonment or neglect and viability of reunification with the child's parent. Examples of consent:
 - **Step-parent and second parent** In a step-parent or second parent case where one parent continues to have custody of the child, the consent of the remaining parent will be required for the adoption proceedings by the step or second parent.
 - **Both parents consent to the adoption:** Immigrant child came to the U.S. by himself and is currently living in the state with the child's godparents. The child's father left the child and his mother when the child was young and has had little or no contact with the child. The child's mother found the child's father in the child's home country and both parents consent to the child's adoption by the child's godparents.
- **One or both parents object to the adoption and there was no prior TPR:** Termination of parental rights will be adjudicated as part of the contested adoption case. If such a case involves an immigrant child SIJS findings on behalf of the child should be included in any TPR or adoption order the court issues.²⁵
 - **Abusive father objects to the adoption:** Immigrant child came to the US by herself after suffering sexual abuse perpetrated by her father. The child is currently in the care of her maternal aunt who is seeking to adopt the child. Both of the child's parents are in the child's home country. The child's mother agrees to the adoption but the child's father objects to the adoption.
 - **Incarcerated father objects to the adoption:** The child's father perpetrated domestic violence against the child's mother, was convicted of the domestic violence and is serving a long prison sentence for the crime. The child's mother remarries and the child's mother and stepfather bring an action to terminate the parental rights of the father and for adoption of the child by the child's stepfather. The child's father objects to the adoption.
- **One or both of the child's parents are missing or dead:** Many of the adoption cases involving SIJS eligible children will involve cases in which one or more of the child's parents is missing and has not been involved in any significant way in the child's life.
 - **Missing parents:** In adoption cases involving SIJS eligible children with missing

²³ *Whose Consent Is Necessary in* JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE (Matthew Bender 2017).

²⁴ *The Petition: Pleading Requirements and Required Attachments in* JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE (Matthew Bender 2017).

²⁵ *In re L.F.O.C., Minor*, 901 N.W.2d 906 (Mich. Ct. App. 2017).

parents the court will make factual findings about the role each of the child's parents played or did not play in providing for the child's care. The court will apply state law to facts to determine whether a parent's actions or inactions constituted abandonment or neglect of the child.

- *Example:* The child's mother died when the child was 10 years old. Since that time the child has been raised by his physically abusive father living in the home of the child's paternal grandparents. At age 14 the child fled the abusive home and came to the United States where he is currently living with the child's maternal grandparents. The child's father was recruited by a gang and cannot be located. The child's maternal grandparents have filed for adoption of the child.
- **Deceased Parents:** In cases involving SIJS eligible children whose parents are deceased the court needs to review the facts of the case to determine whether prior to the parent's death the parent took actions or failed to act in ways that under state law constitute abuse, abandonment, neglect or a similar basis under state law. State statutes generally do not treat death of a parent as abandonment or neglect. However, in many states when a parent does not take steps to plan for the care of the child should the parent die or when children are found in the state without care, state laws recognize alternate basis in state neglect and/or abandonment laws for the state to intervene and care for a child. The court's SIJS orders in this case would be based, not on the fact of the death of the parent. The orders would be based instead on the fact that under state law one or more of the following constitutes abuse, abandonment, or neglect of the child:
 - The parent abused, abandoned or neglected the child before the parent died
 - The parent who died failed to make provisions for the care and custody of the child; or
 - The child was left without care of a responsible custodian.
 - *Example:* The child has a parent who abused the child and the child's mother. The child's abusive parent died. The child's mother has remarried, and the child's stepparent is seeking adoption of the child.

Procedural Considerations²⁶

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in an adoption or TPR proceedings are governed by state law. How service is to be effected is also governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other adoption or TPR case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the

²⁶ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing, this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency, but, due to procedural rules, the child cannot file certain cases on their own behalf and thus the attorney is limited to what kinds of cases they can seek relief for the child.

other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:

- In the child's country of origin;
- Unknown to the child and other parent;
- In a region of the home country that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for adoption or TPR adjudications. Attorneys representing parties seeking adoption or TPR for an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.²⁷ Swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter adoption or TPR orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
 - *UCCJEA AND UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in DHS's custody may have been moved from state to state while searching for appropriate placement.²⁸ In only a small minority of the SIJS cases might there be a prior order in another state or country. When an order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.²⁹

²⁷ For more information of service of process options see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

²⁸ See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

²⁹ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

- Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the custody matter and requesting SIJS orders from the child’s home state where the child has resided for more than 6 months; or
 - In custody cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state’s UCCJEA or the UCCJA based upon the child’s presence in the state and upon the child having suffered abuse, abandonment or mistreatment or upon threats to the child’s non-abusive parent or the child’s sibling when³⁰
 - No prior custody order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines to take jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older:* Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court’s jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.³¹ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Adoption Cases

- *Special Immigrant Juvenile Status Statute*³² requires that the immigrant child:

“[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND

³⁰ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

³¹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, Issued Under State Law*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³² INA §101(a)(27)(J).

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence”

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in the United States or abroad.
- State law governs:³³
 - The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
 - State court adoptions procedures including jurisdiction, evidentiary rules, parental notice, parental rights and due process.³⁴
 - Best Interests:³⁵ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. All state best interests of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interests of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interests of the child determinations the court adjudicates.
 - Abuse, Abandonment, Neglect or Similar Basis of Harm Under State Law: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of

³³ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose n.1, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁴ USCIS, *Immigration Relief for Abused Children: Information for Juvenile Court Judges, Child Welfare Workers, and Others Working with Abused Children*, available at http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/

³⁵ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings see Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

the child's parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court's application of state best interest laws in decisions regarding a child's custody, placement, commitment, or parenting time.

- *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.³⁶
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*³⁷ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*³⁸ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring³⁹
 - *Forced Marriage*:⁴⁰ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet their basic needs* under many states' laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
- *Best Practice*: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied to placement of the child in the custody of the adopting parents. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interests of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.

³⁶ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>.

³⁷ See *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/>

³⁸ See *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/>.

³⁹ See *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/>.

⁴⁰ See *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/>.

- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interests.
- *Examples of SIJS Findings in Adoptions and TPR Orders.* In an adoption case, the findings can be simply stated:
 - *Granting the Adoption of the Child:*
 - *Prior TPR adoption by a stepfather:* “The parental rights of, *child’s father’s name*, were terminated by prior court order. *Child’s father* abandoned the family when *name of child* was 1 year old, has had minimal contact with the child since that date with no contact for over the past 13 years. *Child’s father’s name* has never provided any support for *child’s name*. *Child’s stepfather’s name* who is the stepfather of *child’s name* is seeking adoption of *child’s name*. *Mother’s name*, the child’s mother who has had responsibility for the care and custody of *child’s name* since his birth has been married *stepfather’s name* for three years and consents to the adoption. The child’s stepfather and mother married they have both have been actively involved *child’s name’s* daily care, health care, and education. The court finds it is in the child’s best interest for the child’s mother and stepfather to continue raising *child’s name* and grant the adoption of *child’s name* by his stepfather.
 - *Best Interests to Not Return:* Describing why it is in the child’s best interest not to return to the home country of the child or the child’s parent. “After considering the totality of the circumstances in this case the Court finds that--
 - “This court is granting the adoption of the child by the child’s maternal grandparent who has been the primary care taker of the child for the past two years and it is in the child’s best interests to grant this adoption. *Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse, abandonment, neglect found regarding the child’s father and the facts demonstrating that there are not fit caregivers for the child in the child’s home country] the court finds that it is not in the child’s best interests to be returned to live in *Country*.”
 - “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect] continues to reside in the child’s home country, *Country*, is an unfit parent. It is not in the child’s best interest to be returned to *Country*.”
 - “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].”

- *Viability of Reunification*: Stating reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements that like “the child suffered abuse, abandonment or neglect perpetrated by *child’s parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Absent Parent Example*: “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*. It is in *child’s name’s* best interests to remain in the custody of her mother and stepfather who have been responsible for providing for the care of *child’s name*. This court is granting the request to terminate the parental rights of the child’s father and is approving the adoption of *child’s name* the child’s stepfather.”
 - *Abusive Parent Example*: “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. The child’s mother who has also been abused by the child’s father continues to live with the child’s abusive father in the *child’s name’s* home country. At 14 to protect *child’s name* from continuing abuse the child’s mother sent her to the United States to live their maternal aunt. The aunt has been caring for *child’s name* for the past 3 years and has helped her receive the counseling and therapy she needs to overcome the impact of the abuse she suffered and she watched her mother suffer at the hands of her father. [Insert details of the facts supporting the adoption being in the best interests of the child]. The child’s mother has consented to the adoption.

CHAPTER V-2 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN CIVIL AND CRIMINAL PROTECTION ORDERS PROCEEDINGS¹

By: Leslye E. Orloff and Rafaela Rodrigues
November 1, 2017

For Courts Hearing Civil and Criminal Protection Order and Protection Order Enforcement Cases

What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-2 (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See Immigration and Nationality Act (INA) § 101(a)(27)(J)(i), 8. U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent, is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

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Federal Requirement: State Courts Apply State Law⁶

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.

⁶ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

- b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help the child heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for the child.¹¹
 - c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.
3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to either abuse, abandonment, neglect, **or** a similar basis under state law;¹²
- a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.
- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment, or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. For a list of these factors and how they could be applied when courts make SIJS findings, see Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered where ever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

case help avoid both DHS requests for additional evidence and delays in the adjudication of the child's SIJS petition.

- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.
- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child's health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child's deportation from the United States.

SIJS in Civil and Criminal Protection Order Proceedings

- Courts issuing civil protection orders to persons who have been victims of spouse abuse, child abuse, intimate partner violence, or other criminal activities or abuse listed in the State's civil or criminal protection order statute committed against a family member or other covered individuals may encounter SIJS eligible immigrant children.
- Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a civil or criminal protection order proceeding are governed by state law. How service is to be effected in a civil protection order proceeding is also governed by state law. The civil or criminal protection order service requirements that apply in cases in which SIJS findings are being sought by a child as part of a protection order proceeding are as in any other protection order case.
- Civil and criminal protection orders are appropriate proceedings in which SIJS orders can be issued as part of a case in which the court is determining protective measures to stop an abusive family member from harming another family member when the evidence of abuse and violence before the court also includes evidence of abuse, abandonment or neglect of children by a parent;
- Most of the state protection order statutes authorize courts to issue custody awards as part of protection order proceedings¹⁶ applying the state best interest of the child statutes to these determinations.
- It is best practices to include child custody as a routine part of protection order proceedings because when the parties have a child in common ongoing contact between the abuser and the victim regularly occurs on connection with custody and visitation.¹⁷ In domestic violence cases, when the parties have children and when the protection order is protection a child against the child's abusive parent, structured child custody and visitation orders best promote the safety of the child and their child's non-abusive, protective parent when that are crafted with particular attention to the child's best interest, the benefits of the child of being in the custody of the non-

¹⁶ The states that do not award custody in protection order proceedings are: Arizona, Oklahoma, and Wisconsin. See *Appendix R: Custody in Protection Orders Proceedings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-r-custody-in-protection-orders-proceedings/>.

¹⁷ HOWARD DAVIDSON, ABA CENTER ON CHILDREN AND THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (Aug. 1994), <http://niwaplibrary.wcl.american.edu/pubs/impact-dv-children/>.

abusive protective parent,¹⁸ and the impact that witnessing domestic violence and/or experiencing child abuse have had on children's physical, emotional, and brain development.¹⁹

- Custody determinations in protection order cases provide the court an opportunity to craft custody, supervised visitation, limited visitation, and safe/supervised visitation exchange procedures. Court orders can include SIJS findings when the court makes finding about the domestic violence that has occurred between the child's parents, the abuse, abandonment, neglect, and/or similar harms as defined by state law that the child has suffered, the history and dynamics of the child's parental relationships, and the best interest of the child.²⁰
- When the case before the court contains evidence that the child has been a victim of abuse, abandonment or neglect by one of the child's natural or adoptive parent SIJS findings can be included as part of the civil protection order that the court issues.²¹ SIJS findings are appropriate²² in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by the child's other parent.²³
- The jurisdictional basis upon which state courts are authorized under state law to issue protection orders in civil or criminal court cases require findings of that family violence has occurred against a spouse, former spouse, a child or another relationship covered by the state protection order statute. The civil or criminal protection order must be based on findings by the court that a crime or another form of abuse, neglect, battering or harm listed in the state protection order statute has occurred. State courts issuing protection orders in civil or criminal court cases must be authorized and encouraged to enter SIJS findings when the protection order includes custody, allocation of parenting time, and/or supervised or unsupervised visitation or visitation exchange. The circumstances in which it would be appropriate for a protection order to include SIJS findings include but are not limited to the *following scenarios*:

¹⁸ See H.R. Con. Res. 172, 101st Cong. (1990) (enacted), <http://niwaplibrary.wcl.american.edu/pubs/h-con-res-172/>. This Congressional Resolution was passed unanimously by Congress. For purposes of determining child custody, it urges states that "credible evidence of physical abuse of [a] spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse." Supervised visitation can still occur with the abusive parent.

¹⁹ Allan R. De Jong, *Domestic Violence, Children, and Toxic Stress*, 22 WIDENER L. REV. 201, 214 (2016). See also *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/>; Dr. Linda Chamberlain: *A Trauma-Informed Approach to ACEs - Building Resilient Communities*, YOUTUBE (Nov. 12, 2014), <https://www.youtube.com/watch?v=gRTwoJsNhGE>; Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, JUDGES' J. Summer 2014, at 32, 37; *Adverse Childhood Experiences (ACEs)*, Ctr. Disease Control & Prevention, <https://www.cdc.gov/violenceprevention/acestudy/index.html> (last visited Mar. 30, 2018).

²⁰ GABRIELLE DAVIS ET AL., PRACTICE GUIDES FOR FAMILY COURT DECISION-MAKING IN DOMESTIC ABUSE-RELATED CHILD CUSTODY MATTERS (Battered Women's Justice Project 2015), <http://www.bwjp.org/assets/documents/pdfs/practice-guides-for-family-court-decision-making-ind.pdf>.

²¹ Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801 (1993).

²² For more information, see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

²³ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both to the child's parents. In 2008, Congress updated the law in recognition of the importance of promoting ongoing nurturing relationships between children and their nurturing non-abusive parents. See *Appendix B: Special Immigrant Juvenile Status Legislative History*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-b-sijs-legislative-history/>.

- **Non-abusive Parent Seeking Protection Order against Perpetrator Parent Based on Domestic Violence and Child Abuse:** Mother files for protection order alleging that she and the child have been abused by the father of the child who may or may not be the protective parent's spouse. The mother seeks for a protection order for both, herself and the child. The mother files a protection order and provides evidence that she was abused by the father and that the father abused the child.
- **Non-abusive Abused Parent Seeks a Protection Order Against a Domestic Violence Perpetrator Parent:** A mother who has experience domestic violence perpetrated by her child's father in a household where the child resides or that includes incidents of domestic violence perpetrated against the mother in the presence of the child or that the child directly witnessed. The mother seeks a protection order against the child's father, includes the child in the protection order, and seeks custody of the child and findings that impact that the domestic violence has had on the child constitutes child abuse or child neglect under state law. The protection order protects both the abused parent and the child from ongoing abuse;
- **Abused Child files Protection order:** An abused child files a protection order against their abusive parent. In the protection order case the child seeks findings regarding the facts that the harms perpetrated by the parent against the child constitutes under state law abuse and/or neglect of the child. The protection order includes a determination of who the court will grant the responsibility for the care and custody of the child;
- **Abused Child files Protection order for sexual assault:** An immigrant child files a sexual assault protection order against their sexually abusive parent. The order can issue findings for SIJS purposes.
- **Uncontested case abusive parent consents with the allegations:** the perpetrator is present at the hearing and consents to the issuance of a protection order and the court issues a protection order based on the uncontested allegations in the affidavit included in the protection order pleadings. The court can make findings that a child has been subjected to abuse and/or neglect or abandonment by the child's parent based on information contained in the affidavit. The court *must* however make additional SIJS findings. Evidence to support the SIJS finding could be obtained from the parties during testimony in a short hearing or by the parties agreeing to facts stipulated in a proposed order to the court.
- **Contested case abusive parent contests the allegations:** the perpetrator is present at the hearing but contests the allegations in the protection order pleadings and the court holds a full hearing. Based upon the testimony and evidence submitted, the court issues a protection order and appends to the standard protection order form additional findings of fact and conclusions of law that includes the required SIJS findings.
- **Uncontested case with no appearance of the parent:** the abuse occurred in the U.S. and the perpetrator is personally served with notice of the protection order, but does not appear for the hearing. The court takes evidence and issues a default protection order that includes findings of fact as the abuse the child suffered and makes each of the SIJS findings as part of the default protection order issued by the court.

Extended Families:

- **Child was abused by family member:** An immigrant child who has been abandoned by an absent parent is living with the child's other non-abusive parent in a home with extended family members. The child is abused by family members and the child's mother seeks a protection order on the child's behalf. The court enters a protection order against the abusive

family member, awards custody to the child's non-abusive mother, makes findings that the child's father abandoned the child and has not been involved in the child's life for many years and enters SIJS findings as part of the protection order.

- **Protection against abusive family member:** The child files a sexual assault protection order against the child's paternal grandfather; who has had custody or guardianship of the child. The child has been abandoned or neglected by his parents. The court enters a protection order against the grandfather, places the child in the custody of the child's maternal grandparents, makes findings about the child's abandonment by the child's parents, and includes SIJS findings in an addendum to the protection order issued.

Procedural Considerations²⁴

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a custody proceeding are governed by state law. How service is to be effected in protection order proceedings is also governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other proceeding.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child's country of origin;
 - Unknown to the child and other parent;
 - In a region of the home county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for protection order adjudications. Attorneys representing parties in a request for protection for an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.²⁵ State protection order laws will govern whether in a protection order proceeding avenues for alternate service are available. Generally, for protection orders to be enforceable notice of the proceeding must have been personally served. In family court cases when alternate services is available swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter custody orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;

²⁴ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency but due to procedural rules, the child cannot file certain cases on their own behalf and thus the attorney is limited to what kinds of cases they can seek relief for the child.

²⁵ For more information of service of process options, see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

- Service by publication;
- Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
- *UCCJEA AND UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in DHS's custody may have been moved from state to state while searching for appropriate placement.²⁶ In only a small minority of the SIJS cases might there be a prior custody order in another state or country. When a custody order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.²⁷
- Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UUCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the custody matter and requesting SIJS orders from the child's home state where the child has resided for more than 6 months; or
 - In custody cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state's UCCJEA or the UCCJA based upon the child's presence in the state and upon the child having suffered abuse, abandonment or mistreatment or upon threats to the child's non-abusive parent or the child's sibling when²⁸
 - No prior custody order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines to take jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older*: Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets

²⁶ See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/> (discussing the federal immigration adjudication process).

²⁷ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

²⁸ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court's jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.²⁹ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:

- Care of children who are incapacitated;
- Children still enrolled in school (K-12);
- Adult adoption statutes; or
- When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Protection orders

- *Special Immigrant Juvenile Status Statute*³⁰ requires that the immigrant child:
 - “[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND
 - “[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND
 - “[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence”
- *Location of Harm to Child*: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- *State law governs*:³¹

²⁹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁰ INA § 101(a)(27)(J).

³¹ *See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; *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/>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- *The types of court proceedings* in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
- *State court custody procedures* including jurisdiction, evidentiary rules, parties who are to receive notice and due process.
- *When the protection order is final.* Protection order proceedings are considered final under state law when the court issues a full protection order in a proceeding in which the perpetrator has been given notice and an opportunity to be heard. The protection order may have been issued following a contested hearing, by consent of the parties, or following state law default judgement procedures. When the court issues a full final protection order that includes an award of custody or parenting time for an immigrant child, that protection order can include an addendum containing the SIJS findings. All appealable state court orders are considered final orders. Although state statutes title custody of children issued as part of a protection order proceeding as “temporary custody,” civil protection order custody awards govern the custody of the child(ren) shared by the parents involved in the protection order proceeding.
 - A party seeking to change a custody award issued as part of a protection order would be required to initiate a separate custody action. The protection order should include specific findings as to the abuse or neglect the child suffered, how the custody placement is in the child’s best interest, why it is not in the child’s best interest to return to the child’s home country and the viability of the child’s reunification with the child’s abusive parent.
 - Temporary protection orders issued ex-parte that last for a short period of time that offer protection for victims while the respondent is being served and through the date of the full protection order hearing or the date by which a respondent is required by state law to request such a hearing would not be a final protection order. Once a full protection order is issued that order would be final. Securing changes in that protection order would require that a party to return to court to request a modification of the order. This generally occurs when there have been future incidents of abuse in violation of the order or when the parties have reunited and seek to modify the stay away provisions of the protection order to continue to protect the victim from abuse but allow the parties to reside together.
- *Best Interest.*³² In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interest of the child to live. All state best interest of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-

[vol-6/](#); Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³² For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings, see Leslye E. Orloff, Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interest of the child determinations the court adjudicates.

- *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law*: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the child’s parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court’s application of state best interest laws in decisions regarding a child’s custody, placement, commitment, or parenting time in protection order cases and will also apply to any visitation authorized to for the parent against whom the protection order is being issued.
- *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.³³
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*³⁴ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*³⁵ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring³⁶

³³ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>; *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/>.

³⁴ See *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/>.

³⁵ See *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/>.

³⁶ See *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/>.

- *Forced Marriage*:³⁷ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet their basic needs* under many states' laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
 - Best Practice: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in awarding custody or parenting time in protection order proceedings. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court order relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the state law best interest of the child factors applied to the custody or parenting time determinations made in the protection order case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order*: The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court's jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court's order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court's order furthers the child's welfare and best interest.
- *Examples of SIJS Findings in Protection Order*. In a protection order case, these findings can be simply stated:
 - *Custody, Care, Placement*: Addressing the placement of the child in custody of the domestic violence victim petitioner:
 - Example: "Petitioner, *name*, has been the primary caretaker for *child's name* for the past *number* of years and is a fit and proper parent. Petitioner, *name*, has been responsible for providing for [insert examples from the facts of the case may include health care, schooling, addressing special needs of the child including particularly needs related to healing from trauma and abuse]. The respondent *name* has committed the following [make findings about specific acts of abuse toward the child and if applicable the child's parent and state why is in the child's best interest not to be placed in the custody of the respondent] It is in the child's best interest to award custody of *Child* to the Petitioner. Respondent *name* shall [insert any supervised visitation, visitation restrictions, visitation exchange protections authorized to the respondent, state conditions that must be met before visitation will be granted to the respondent]";
 - *Best Interest to Not Return*: Describing why it is in the child's best interest not to return to the home country of the child or the child's parent. "After considering the totality of the circumstances in this case the Court finds that--

³⁷ See 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/>.

- “This court has placed the child in the custody of their parent *name* who has been the primary care taker of the child and who is a fit and proper custodian. *Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse, abandonment, neglect found] the court finds that it is not in the child’s best interest to be returned to live in *Country*.”
- “*Child’s Name* has been placed by this court in the custody of *Parent’s Name* with whom it is in the child’s best interest to reside in *State*. It would not be in the Child’s best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child.”
- “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect]
 - *When the abuser currently resides in the child’s home country add:*
 “*Abusive Parent’s Name* resides in the child’s home country, *Country*, is an unfit parent. It is not in the child's best interest to be returned to *Country*.”
- *Address any family members residing in the home country who under state law could be potential custodians for the child.* This can include a parent or grandparent or any other family member that state law would require be considered in a best interest determination for a custody under state law. As to each potential custodian state facts as to why placement with that custodian is not in the child’s best interest under state law:

Example: Respondent *father’s name* perpetrated acts of abuse against *child’s name* both in *State* and in *country of origin* prior to the family’s arrival in *State*. The abuse occurring in *county or origin* occurred in the child’s grandmother’s home and the grandmother took no action to stop the abuse. [Include findings of abuse that occurred in the home country in grandmother’s house and the steps that the grandmother took or did not take to protect the child and any participation the grandmother had in the abuse.]
- “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].
- *Viability of Reunification:* SIJS findings must include findings stating reunification is not viable due to *either* the abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements that like “the child suffered abuse, abandonment or neglect perpetrated by *child’s parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Abusive Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings, why visitation is denied or

restricted for the abusive parent and/or findings supporting the court order's limitation of contact of the abuser with the child to visitation]. These findings constitute abuse under *State Law Code Section.*"

- *Absent Parent Example:* "Reunification with the child's parent, *Name*, is not viable due to *Name's* abandonment of the *Name of Child* as defined in *Code Section.* *Parent's Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child.*"

Chapter V-3 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN PROCEEDINGS INVOLVING CUSTODY AND CHILD SUPPORT¹

By: Meaghan Fitzpatrick, Rafaela Rodrigues, and Leslye E. Orloff

December 27, 2017

For Courts Hearing Custody, Divorce, Legal Separations and Child Support Cases

What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See 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/2018/03/sijs-manual-table-of-content/>.

Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See Immigration and Nationality Act (INA) § 101(a)(27)(J)(i), 8. U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

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Federal Requirement: State Courts Apply State Law⁶

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings⁸:
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.

⁶ See INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

- b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help the child heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for the child.¹¹
 - c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.
3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to either abuse, abandonment, neglect, **or** a similar basis under state law;¹²
 - a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.
- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment, or other services would be available to help an immigrant child or immigrant crime victims in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

case help avoid both DHS requests for additional evidence and delays in the adjudication of the child's SIJS petition.

- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.
- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child's health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child's deportation from the United States.

SIJS in Custody and Child Support Proceedings

- There are many types of court proceedings in which courts adjudicate child custody and child support. This quick reference will be helpful to courts hearing cases in which married parties with children are seeking divorce or legal separation and the case involves determinations regarding custody, visitation and/or child support. The information is equally applicable to all other forms of custody cases including those brought by parents, grandparents or others.
- Custody is one of the primary types of state court proceedings in which state courts will encounter SIJS eligible immigrant children.
- Custody is a frequent and appropriate proceeding in which SIJS orders are issued as part of a case in which the court is determining the placement and/or visitation of the child based on factors that include abuse, abandonment, neglect, or other similar harms to the child, the history and dynamics of the child's parental relationships and the best interest of the child.
- SIJS findings are appropriate¹⁶ in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by their other parent.¹⁷
- It is very common to have a child seeking SIJS orders based on the abuse, abandonment, neglect, or similar harm under state law by only one parent. For example, courts will encounter immigrant children who suffered abuse by a parent in their home country who are currently residing with a non-perpetrator parent in the United States who is seeking a custody order. These facts could be present in a divorce, legal separation or custody case in which the court applies the state definitions of abuse, abandonment, neglect or similar harm defined under state law and the state best interest factors to decide custody of a child when the perpetrator parent lives outside the country.¹⁸ The abuse of the child may have occurred outside of the U.S. or in the U.S. and the perpetrator parent

¹⁶ For more information see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

¹⁷ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both to the child's parents. In 2008, Congress updated the law in recognition of the importance of promoting ongoing nurturing relationships between children and their nurturing non-abusive parents.

¹⁸ Marsha Mansfield & Stacy Tauer, *Using Family Court to Obtain Immigration Relief for Minors*, Wisconsin Access to Justice Commission (October 30, 2014), <http://repository.law.wisc.edu/items/show/127370>.

has never been to the U.S., has been deported from the U.S. or may have left the U.S. for other reasons.

- SIJS findings can be requested in both new custody proceedings where the child’s custody has never been adjudicated or in custody modification proceedings.
 - The opportune time to make SIJS findings is when the court issues its first custody orders involving the SIJS eligible child. However, in pro se custody cases and in cases in which counsel and the court did not identify the child's SIJS eligibility at the time custody was adjudicated, courts may issue SIJS findings in an amended court order:
 - Upon motion seeking to add the findings to an existing custody order without otherwise modifying the custody or visitation orders;
 - As part of a custody modification proceeding whether or not the court ultimately modifies the original custody order;
 - In a declaratory judgement proceeding that formally recognizes the existing custody order.¹⁹
- In child support proceedings, courts generally have the discretion to include determinations of custody and parenting time when issuing child support orders.²⁰ When courts address parenting time, visitation or custody as an issue addressed in a child support case, courts can enter SIJS orders in child support cases. Some states require that parenting time or custody be addressed when a child support award is issued.²¹ Whether courts have the ability to issue SIJS orders in child support cases depends on whether the court has the discretion and flexibility under state law to address parenting time, visitation or custody at the same time the court issues child support awards.²²
 - Anytime a court has the authority to address parenting time or custody in a child support case the court can include SIJS findings in its order, because parenting time or custody are before the court as part of the case.

¹⁹ For more information on issuance of SIJS orders in declaratory judgement proceedings, see Isabel LaLuna, Alina Hussain & Leslye E. Orloff, *Chapter V-4: Quick Reference Guide: Special Immigrant Juvenile Status Findings in Declaratory Judgment Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-13 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-4-sijs-in-declaratory-judgment-cases-quick-reference/>.

²⁰ *Child Support and Parenting Time Orders*, NAT’L CONF. ST. LEGISLATURES (Apr. 18, 2016), <http://www.ncsl.org/research/human-services/child-support-and-parenting-time-orders.aspx>.

²¹ Texas law employs presumptive parenting time guidelines together with presumptive child support guidelines resulting in universal inclusion of parenting time orders in all child support orders established in the state of Texas. See, e.g., TEX. FAM. CODE ANN. §§ 153.251, 153.252 (West 2017); TEX. FAM. CODE §§ 153.007- 153.3101. For additional information, see *Child Support and Parenting Time Orders*, NAT’L CONF. ST. LEGISLATURES (Apr. 18, 2016), <http://www.ncsl.org/research/human-services/child-support-and-parenting-time-orders.aspx>.

²² The venue for resolving child support and parenting time may be different in each state. States vary in how they establish child support orders. If the state has an administrative process that takes place outside of the courts system, child support orders issued through that system would not be able to include SIJS findings. The National Conference of States Legislatures has developed a very useful state-by-state chart summarizing each state’s approach to the issuance of child support orders through administrative process, judicial process, or a combination of both. See *Child Support Process: Administrative vs. Judicial, 50 State Table: Child Support Process* NAT’L CONF. ST. LEGISLATURES (Apr. 20, 2017), <http://www.ncsl.org/research/human-services/child-support-process-administrative-vs-judicial.aspx#Process>; Jessica Pearson, Research Brief: Child Support, Parenting Time, and Safety Concerns (updated Aug. 2015), at 2, https://www.acf.hhs.gov/sites/default/files/programs/css/center_for_policy_research_policy_brief.pdf (discussing how Section 303 of the Preventing Sex Trafficking and Strengthening Families Act establishes the incorporation of parenting time with strong family violence safeguards in new child support orders as an “important goal”; although nonbinding, this statement reinforces Public Law 113-183 that allows establishment of parenting time among voluntary activities in considering child support orders).

- The party seeking child support on the child’s behalf may be a parent, grandparent or other family member providing for the care of the child.²³
- Common scenarios include:
 - *Prior custody order issued in the same state*– When custody has been awarded to a party in a prior court order and the custodian is seeking child support and SIJS orders, the court can consolidate the child support action with the prior custody case and issue a court order that recognizes and does not change the prior custody order, orders child support and issues SIJS findings;
 - *Prior custody order issued by a foreign country* – When a foreign country has issued a child custody award to a parent and both of the child’s parents are now living in the United States, the custodial parent may bring a child support action in the U.S.²⁴ If the custodial parent will be seeking SIJS orders as part of the child support case from the state court, in order to issue the SIJS order the court would need jurisdiction over the custody or placement of the child.²⁵ The court could obtain jurisdiction over custody or placement in addition to child support in a number of ways.²⁶ The custodial parent:
 - Files a motion to domesticate the foreign order and includes a request for child support.
 - Once the foreign order has been domesticated, the custodial parent files a motion to enforce or modify the domesticated foreign custody order and requests child support and SIJS orders
 - *Prior custody order issued in another state*— When a court in another U.S. jurisdiction has issued a child custody order and the custodian is seeking child support in a second state.²⁷ In these cases in order for courts to issue SIJS orders as part of the child support award the court could recognize and restate or modify the prior state’s custody award and add child support and SIJS findings.
- State court judges will receive requests for SIJS predicate findings in custody cases based on many different fact patterns. Some frequent scenarios include:
 - **Contested custody between an abusive and a non-abusive parent:** Custody

²³ *Child Support 101: Child Support Basics*, NAT’L CONF. ST. LEGISLATURES (Aug. 2, 2012), http://www.ncsl.org/research/human-services/child-support-basics.aspx#Who_Gets_Child_Support .

²⁴ In some cases, the action the custodial parent may bring is to recognize a foreign custody order and an action to enforce a child support order issued abroad. Under the Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, a court may enforce child support determinations outside of the United States in countries with whom the US has foreign reciprocating jurisdiction. These countries and provinces are Australia, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, the United Kingdom, and select Canadian provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Saskatchewan, and Yukon). *Department of State: Public Notice 8832*, Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 79 Fed. Reg. 49368-04 (Aug. 20, 2014).

²⁵ *In re Hei Ting C.*, 969 N.Y.S.2d 150 (N.Y. App. Div. 2013).

²⁶ State UCCJEA jurisdictional laws would apply to cases involving modification of foreign custody awards. Under the UCCJEA, foreign countries are treated in the same manner as other states who have issued custody awards. Temporary jurisdiction under the UCCJEA would likely be applicable in cases involving domestic violence and/or child abuse.

²⁷ This will commonly happen when the custodial parent has moved to a new state with the child or when the custodial parent seeks a child support order in the state where the non-custodial parent is living. The Uniform Interstate Family Support Act (UIFSA), which has been adopted by all states, out uniform rules for which states have jurisdiction to issue child support orders, continuing jurisdiction, jurisdiction for child support enforcement and modification of child support orders. *Interstate Family Support Act Amendments 2008, Enactment Status Map*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20%282008%29>.

between parents where one parent abused, abandoned, neglected or perpetrated a similar harm under state law against the child. These cases could involve facts where the child was abused and their mother was not or where both the child and mother were abused. While many SIJS eligible children could also qualify for another form of immigration relief based on abuse, SIJS provides a faster path to legal immigration status for vulnerable children.

- **Custody cases brought by grandparents:** Custody between grandparents and parents where one or both of the child's parents abused, abandoned or neglected the child;
- **Uncontested cases where one parent abused, abandoned or neglected the child:** the child is residing with the custodial parent and
 - The child has no relationship with the other parent who abandoned the child when he was very young, or
 - The other parent abused or neglected the child;
- **Uncontested custody when the child's other parent is deceased:** The child is with a non-abusive parent and the other deceased parent abused, abandoned, neglected or perpetrated a similar harm defined by state law against the child prior to his death.
- **Uncontested custody when a parent is missing and/or living abroad:** A grandparent or family member seeks custody in a case in which one or both of the child's parents are missing and cannot be located and were last known to be living abroad. The missing parent's inactions toward the child constitute abandonment or neglect under state law.

Procedural Considerations²⁸

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a custody proceeding are governed by state law. How service is to be effected in custody proceeding is also governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other custody case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child's country of origin;
 - Unknown to the child and other parent;
 - In a region of the home county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for custody adjudications. Attorneys representing parties seeking custody of an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative

²⁸ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency, but due to procedural rules, the child cannot file certain cases on their own behalf, and thus the attorney is limited to what kinds of cases they can seek relief for the child.

service.²⁹ Swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter custody orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
 - *UCCJEA AND UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in DHS's custody may have been moved from state to state while searching for appropriate placement.³⁰ In only a small minority of the SIJS cases might there be a prior custody order in another state or country. When a custody order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.³¹
 - Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the custody matter and requesting SIJS orders from the child's home state where the child has resided for more than 6 months; or
 - In custody cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state's UCCJEA or the UCCJA based upon the child's presence in the state and upon the child

²⁹ For more information of service of process options, see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

³⁰ See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³¹ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

having suffered abuse, abandonment or mistreatment or upon threats to the child's non-abusive parent or the child's sibling when³²

- No prior custody order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines to take jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older:* Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court's jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.³³ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Custody Cases

- *Special Immigrant Juvenile Status Statute*³⁴ requires that the immigrant child:
 - “[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND
 - “[W]hose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND
 - “[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence”
- *Location of Harm to Child:* The abuse, abandonment, or neglect may have taken place in United States or abroad.

³² *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

³³ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁴ INA § 101(a)(27)(J).

- *State law governs:*³⁵
 - *The types of court proceedings* in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
 - *State court custody procedures* including jurisdiction, evidentiary rules, parties who are to receive notice and due process.
 - *When a custody order is final.* In issuing final custody orders awarding custody, visitation and providing for the care of an SIJS child that meets the definition of a final or permanent custody order under state law, it is appropriate for courts to adjudicate and issue findings that based on the evidence before the court reunification with the abusive parent is not viable. All appealable state court orders are considered final orders. Once a state court custody order has been finally adjudicated based on a court’s ruling in a contested case, by consent of the parties, or following state default judgment procedures, state law imposes requirements that parties must meet in order to secure modifications of the court’s final custody and/or visitation orders. Most state laws require proof of change in circumstances not anticipated at the time the court issued its custody order.
 - *Best Interest.*³⁶ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interest of the child to live. All state best interest of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interest of the child determinations the court adjudicates.
 - *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law:* All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the child’s parents. For purposes of making SIJS findings, these state law definitions are

³⁵ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁶ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings see Leslye E. Orloff, Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court's application of state best interest laws in decisions regarding a child's custody, placement, commitment, or parenting time.

- *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.³⁷
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*³⁸ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*³⁹ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring⁴⁰
 - *Forced Marriage*:⁴¹ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet their basic needs* under many states' laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
- *Best Practice*: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in awarding custody. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm

³⁷ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>; *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/>.

³⁸ See *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/>.

³⁹ See *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/>.

⁴⁰ See *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/>.

⁴¹ See *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/>.

under state law and the best interest of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.

- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interest.
- *Examples of SIJS Findings in Custody Orders.* In a custody case, these findings can be simply stated:
 - *Custody, Care, Placement:* Addressing the placement of the child with the petitioner for custody:
 - Example: “Petitioner, *name*, is/has been the primary caretaker for *child’s name* for the past *number* of years and is a fit and proper parent. Petitioner, *name*, has been responsible for providing for [insert examples from the facts of the case may include health care, schooling, addressing special needs of the child including particularly needs related to healing from trauma and abuse]. It is in the child’s best interest to award sole care, custody, and control of *Child* to the Petitioner.”
 - *Best Interest to Not Return:* Describing why it is in the child’s best interest not to return to the home country of the child or the child’s parent. “After considering the totality of the circumstances in this case the Court finds that--
 - “This court has placed the child in the custody of his parent *name* who has been the primary care taker of the child and who is a fit and proper custodian. *Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse, abandonment, neglect found] the court finds that it is not in the child’s best interest to be returned to live in *Country*.”
 - “*Child’s Name* has been placed by this court in the custody of *Parent’s Name* with whom it is in the child’s best interest to reside in *State*. It would not be in the Child’s best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child.”
 - “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect] continues to reside in the child’s home country, *Country*, is an unfit parent. It is not in the child’s best interest to be returned to *Country*.”
 - “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].
 - *Viability of Reunification:* Stating reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is

important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements such as “the child suffered abuse, abandonment or neglect perpetrated by *child’s parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.

- *Absent Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*.”
- *Abusive Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the child. Findings of abuse of child include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. *Non-Abusive Parent’s Name* has been awarded physical and legal custody *Name of Child* and *Abusive Parent’s Name* will be limited [insert the description of the visitation granted (e.g., overnight visitation every other weekend) and including all limitations on visitation with the child (e.g., supervised visitation, use of a visitation center to monitor visitation, supervised visitation exchange)].”

**Chapter V-4
Quick Reference Guide**

**SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS
IN DECLARATORY JUDGMENT CASES¹**

November 25, 2017

By: Isabel LaLuna, Alina Husain, and Leslye E. Orloff

For Courts Hearing Declaratory Judgement Cases

Court’s Authority to Issue Declaratory Judgements in SIJS Cases

- In the majority of U.S. Jurisdictions state courts have the authority under state declaratory judgement statutes to address family court matters.² Courts across the United States have used declaratory judgments in a variety of family cases including child custody, adoption, juvenile delinquency, and divorce.³

What is Special Immigrant Juvenile Status (SIJS)⁴

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.⁵ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms perpetrated by a parent.⁶

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² In forty-nine states and U.S. jurisdictions, family courts have the authority under state law to issue declaratory judgments in family court cases, and thirty-nine states and U.S. jurisdictions have case law on the use of declaratory judgments in family court cases. See 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/2018/03/sijs-manual-table-of-content/>; Appendix U: SIJS and Declaratory Judgment Statutes State-by-State, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/> (charting state declaratory judgment statutes, their use by state courts in family law matters, and the availability of declaratory judgment cases as an avenue for a court with jurisdiction over a child to issue a court order containing SIJS findings).

³ See Appendix S: Use of Declaratory Judgments in Family Law Matters, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-3 (2018), <http://niwaplibrary.wcl.american.edu/pubs/appendix-s-using-declaratory-judgment-in-family-law-matters/> (listing case law on use of declaratory judgments to address family law issues); Appendix T: Declaratory Judgment Case Law by Topic and State, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-27 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-t-declaratory-judgments-cases-bytopic-state/> (analyzing of how state court use declaratory judgments to address family law issues).

⁴ See Leslye E. Orloff, Chapter I: Introduction to Special Immigrant Juvenile Status, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

⁵ See 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁶ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state

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- Federal law **requires** that each application for SIJS include an order from a state court.⁷ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁸

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁹ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings¹⁰:
 1. *Finding 1*: The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;¹¹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹² an agency, a department of the state, or an entity appointed

paternity laws commonly presume the child to be the child of the husband and wife, and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁷ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁸ See Immigration and Nationality Act (INA) § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

¹⁰ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

¹¹ Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹² The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014),

by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.

2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help him heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for him.¹³
 - c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.
3. *Finding 3:* Reunification with one or both of the child’s parents is not viable due to either abuse, abandonment, neglect, **or** a similar basis under state law;¹⁴
 - a. The federal statute¹⁵ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each

http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, *or the non-abusive parent*” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012); see also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

¹³ A list of factors that are helpful when comparing what assistance, support, treatment or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹⁴ For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹⁵ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

state law’s definition of these terms.¹⁶ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.

- The order should indicate the factual basis for the each of the state court findings.¹⁷
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both DHS requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.
- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child’s health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child’s deportation from the United States.

SIJS in Declaratory Judgment Cases

- For SIJS purposes, a state court that has jurisdiction under state law to make a judicial determination about the placement, custody, or care of a child may enter SIJS findings.¹⁸ A motion for a declaratory judgment is one of the types of state court proceedings in which state courts may encounter SIJS eligible immigrant children. This quick reference guide will be helpful for courts hearing cases related to declaratory judgements where a court is authorized under state declaratory judgement laws to determine the rights of the child, including recognizing the child’s current custody or placement, without ordering any changes to the child’s current custody orders or situation. In the vast majority of states the state declaratory judgment statute is available to be used for proceedings in which children are seeking SIJS findings.¹⁹

¹⁶ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁷ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁸ See U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/.

¹⁹ In California, declaratory judgments apply only to property rights. In Missouri, declaratory judgments are only applicable to persons with interests in deeds, wills, and contracts. In New Hampshire, declaratory judgments apply to people claiming legal or equitable rights or title. In two states (Hawaii and Virginia), declaratory judgments are only available when the matter is contested. For an overview of how declaratory judgments are used in family law matters, see *Appendix S: Use of Declaratory Judgments in Family Law Matters*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-3 (2018), <http://niwaplibrary.wcl.american.edu/pubs/appendix-s-using-declaratory-judgment-in-family-law-matters/>. For information on state-specific rules, based on case law, regarding the way in which declaratory judgments may be used, see *Appendix T: Declaratory Judgment Case Law by Topic and State*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-27 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-t-declaratory-judgments-cases-bytopic-state/>. See also *Appendix U: SIJS and Declaratory Judgment Statutes State-by-State*, in NAT’L IMMIGRANT

- SIJS findings are appropriate²⁰ in cases in which the court is recognizing a prior court's order deciding custody or placement of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- When the case before the court contains evidence that the child has been a victim of abuse, abandonment, or neglect by one of the child's natural or adoptive parent, SIJS findings can be included as part of any state court case addressing the custody or placement of a child. Despite this fact, courts may issue orders in cases involving SIJS eligible children without required SIJS orders because neither the court nor the attorneys representing the child in the original court case recognized the child's eligibility.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by the child's other parent.²¹
- A declaratory judgement may be an avenue to recognize the prior custody order and issue SIJS findings. Declaratory judgments are useful when prior court orders regarding a child's custody or placement were made in a custody, divorce, protection order, or child abuse or neglect case and the court issuing the original custody or placement order did not make SIJS findings at the time the custody or placement award was issued.
- Seeking SIJS findings as part of a declaratory judgement case may provide a safe avenue to obtain SIJS orders when custody was previously determined by a state court judge in a contested custody, divorce or protection order proceeding in which the facts of the prior case included findings by the court about the abuse or neglect of the child by the abusive parent. It is not uncommon for a non-abusive parent in a contested case involving custody of an immigrant child to be unaware at the time of the contested case that the child was eligible for SIJS. When the parent granted custody later learns of the child's SIJS eligibility, declaratory judgements can provide a safer avenue to attain the needed missing SIJS findings rather than filing a motion for modification of the court's custody when no change in custody is being sought.
- The court hearing the declaratory judgement case can hear evidence and make SIJS findings about harms suffered by the child, the child's best interests and the viability of reunification with the abusive parent and issue orders together with orders recognizing prior court orders or the fact that a detained child is in federal foster care.
- In declaratory judgement cases the evidence that court relies upon to issue SIJS findings may include:
 - Findings of fact contained in prior court orders regarding the child,
 - Review of the court record in the prior proceeding, and/or

WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/>.

²⁰ For more information, see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

²¹ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both to the child's parents. In 2008, Congress updated the law in recognition of the importance of promoting ongoing nurturing relationships between children and their nurturing non-abusive parents. 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 5-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/>.

- Evidence presented in the declaratory judgement case.
- State court judges will receive requests for SIJS predicate findings in declaratory judgement cases based on many different fact patterns. The most common scenarios include:²²
 - **Child had previous orders:** These will be cases in which the child was the subject of previous court orders issued in a divorce, custody, protection order, dependency or other type of proceeding and is seeking a declaratory judgment that restates, in a single order, the findings included in the prior order and augments that order with additional findings required for the child to apply for SIJS. Obtaining SIJS findings through a declaratory judgment case is particularly helpful way promote safety and stability of the SIJS eligible child when the court order granting custody was issued in a family violence case or in a contested case that was fully litigated. Declaratory judgements provide an opportunity to augment the prior court orders regarding custody or placement without re-litigating or seeking to modify the terms of the custody award and the dangers that could be associated with reopening highly contested cases.
 - **Child is in federal custody:** Some SIJS eligible children have been placed by the United States Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR) in federal long-term foster care.²³ These are often children for whom ORR was unable to locate a safe placement outside of the foster care system. SIJS eligible children in federal foster care placements can seek declaratory judgements in which the state court formally recognizes in a court order the child’s custodial placement with the federal or state agency responsible for the child’s care and issues the required SIJS findings. No change in placement is being requested. In cases of children in ORR custody when the court order containing SIJS findings recognizes and simply restates the child’s placement²⁴ but does not “determine or alter their custody status”²⁵ HHS consent is not required.²⁶
 - **Child’s lack of standing:** Many of the state court cases in which courts have jurisdiction to determine child custody (e.g. custody, dependency, divorce) cannot be initiated by the child who will be the subject of the court’s custody orders.²⁷ As a result, some children will

²² This list is not exhaustive.

²³ The Office of Refugee Resettlement (ORR) contracts with facilities around the country to place this children who have no viable sponsor to care for the child with whom ORR can place the child.

²⁴ See *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 n.11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁵ See *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. May 4, 2010) (proposed settlement agreement), https://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Signed_Settlement_Agreement.pdf.

²⁶ “Specific consent” to the court’s jurisdiction is only required from federal government authorities (ORR) when a state court is being asked to “determine or alter” the child’s “custody status.” See *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. May 4, 2010) (proposed settlement agreement),

https://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Signed_Settlement_Agreement.pdf; see also *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; U.S. Dist. Court for the Central Dist. of Cal., *Notice for Special Immigrant Juveniles*, https://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Notice_Special_Immigrant_Juveniles.pdf (last visited Mar. 30, 2018).

²⁷ An alternate approach available in several states is for the child to initiate their own guardianship action, where the state may authorize a child to file their own guardianship action. See *Appendix V: Appointment of Guardianship: State Statutes*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-23 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-v-guardianship->

bring a declaratory judgment action as a mechanism to bring their own court action to have their prior court orders recognized and incorporated into a declaratory judgement containing SIJS orders.²⁸

- **Child is close to the age of majority in the state:** Declaratory judgment cases also may be filed seeking SIJS orders for children who are close to the age of majority who need to expedite access to an SIJS order. When prior court orders exist regarding the child and no changes in custody or jurisdiction are being requested, a declaratory judgement filed by the child or the child's non-abusive parent can be a swifter less cumbersome means to obtain SIJS findings expeditiously.

Procedural Considerations²⁹

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a custody proceeding are governed by state law. How service is to be effected in custody proceeding is also governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other custody case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child's country of origin;
 - Unknown to the child and other parent;
 - In a region of the home county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for custody adjudications. Attorneys representing parties seeking custody of an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.³⁰ Swift decisions by the court on requests for alternative service are very important to

[appointment-of-guardian-chart/](#); see, e.g., Arizona, Hawaii, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, and West Virginia).

²⁸ It is important to note that the legal representation eligibility requirements of some Violence Against Women Act grant programs do not allow attorneys to represent non-abused parents or guardians of abused children filing court cases on the child's behalf. However, organizations funded by the Legal Services Corporation are authorized to undertake this representation. See Legal Servs. Corp., Office of Legal Affairs, Advisory Opinion, AO-2016-002 (revised) (July 11, 2016 (revised August 26, 2016)), <http://niwaplibrary.wcl.american.edu/pubs/lsc-ao-2016-002-revised/>. Funding restrictions may influence the types of cases lawyers representing children seeking SIJS findings can file and lead to more declaratory judgment filings in which the lawyer can directly represent the SIJS eligible child.

²⁹ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency but due to procedural rules, the child cannot file certain cases on their own behalf and thus the attorney is limited to what kinds of cases they can seek relief for the child.

³⁰ For more information of service of process options see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

ensure that the court is authorized to take jurisdiction to enter custody orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Continuing Jurisdiction under State Law over Children 18 and Older:* Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court's jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.³¹ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Declaratory Judgement Cases

- *Special Immigrant Juvenile Status Statute*³² requires that the immigrant child:
 - “[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND

 - “[W]hose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

 - “[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence”

³¹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order - Continuing Jurisdiction*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³² INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- State law governs:³³
 - The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
 - State court declaratory judgement procedures apply to cases in which immigrant children are seeking SIJS findings including jurisdiction, evidentiary rules, and state laws regarding whether, to whom, and how service of process may need to be accomplished in declaratory judgement cases.
 - When a declaratory judgement order is final. All appealable state court orders are considered final orders.
 - Best Interests:³⁴ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. All state best interests of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interests of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interests of the child determinations the court adjudicates.
 - Abuse, Abandonment, Neglect or Similar Basis of Harm Under State Law: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the child's parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court's application of state best interest laws in decisions regarding a child's custody, placement, commitment, or parenting time.

³³ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11, 14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁴ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings see Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

- *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.³⁵
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*³⁶ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*³⁷ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring³⁸
 - *Forced Marriage*:³⁹ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet their basic needs* under many states’ laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
- *Best Practice*: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in awarding custody. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interests of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order*: The order should contain sufficient detail to clearly state

³⁵ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>; *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/>.

³⁶ See *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/>.

³⁷ See *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/>.

³⁸ See *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/>.

³⁹ See *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/>.

- The factual basis under state law for the court’s jurisdiction over the child;
- The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
- The citations for the state laws relied upon by the court in making findings and issuing orders; and
- Information discussing how the court’s order furthers the child’s welfare and best interests.
- *Examples of SIJS Findings in declaratory judgements.* In a declaratory judgement case, these findings can be simply stated:
 - *Custody, Care, Placement:*
 - *Dependency-Federal Foster Care:* Addressing the placement of the child:
 - “*Child’s name* has been placed at *name of institution* by the U.S. Department of Health and Human Service’s Office of Refugee Resettlement. Based upon the evidence before the court and the application of *insert state law code section*, this court enters a declaratory judgment confirming that the placement of *child’s name* with *name of institution* is in the child’s best interests. This court order does not modify the terms of the *child’s name’s* placement. This court makes the following findings of fact that support the court’s declaratory judgement regarding *child’s name*:
 - *Facts of abuse, abandonment, neglect or similar basis under state law suffered by the child perpetrated by child’s name’s mother*
[describe the facts of the harm caused by the mother to the child]
 - *Facts of abuse, abandonment, neglect or similar basis under state law suffered by the child perpetrated by child’s name’s father*
[describe the facts of the harm caused by the father to the child]
 - *Prior Court Order*
 - On *date*, *Judge name* after presiding over a multi-day trial in a contested custody case involving *Child’s name* found that based on the following facts it was in the child’s best interests for the child’s mother, *mother’s name*, to be granted sole physical and legal custody of *child’s name*. The findings of fact made by the court granting *child’s mother’s name* custody included the following facts:
 - [insert facts court’s findings in the contested custody case and attach the court’s written order or a transcript of the court’s order issued orally on the record as an appendix to this declaratory judgment. The facts included in the declaratory judgment should include facts found by the prior court regarding the details of:
 - The child abuse perpetrated by the child’s abusive parent
 - Domestic violence perpetrated by the child’s parent against the child’s other parent and/or the child
 - The child neglect perpetrated by the child’s abusive parent

- *This court* is issuing this declaratory judgement adopting the findings made by the court in the custody action and not changing the placement of the child.
- *Best Interests to Not Return:*
- *Dependency- Federal Foster Care:* Describing why it is in the child’s best interest not to return to the home country of the child or the child’s parent. “After considering the totality of the circumstances in this case the Court finds that--
 - *Child’s name* is currently under the care and custody of *name of institution* and this court has declared that under this state’s best interests laws *cite* and it is the child’s best interests to remain in that placement. The court has considered the totality of the evidence in this case and the findings of fact this court has made as to the [summarize the abuse, abandonment, neglect or similar harm described under state law suffered by the child. This summary should address each parent separately]. Additionally, having taken evidence on potential care givers in the *child’s name’s* home country and applied *this states’s code section* best interests of the child laws, this court has found that there are no fit and proper custodians for the child in *name of the child’s home country*. [Insert here findings as to each potential placement in the home country and why placement with the child with that person would not in the child’s best interests. For example: The child’s father and grandmother living in *name of country* are not fit and proper placements for *child’s name* because the father is the perpetrator of the abuse that *child’s name* suffered and the abuse took place in the home of the child’s paternal grandparents who took no actions to stop the abuse].
 - “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].”
 - *Prior Court Order*
 - “*Judge’s name* issued a prior court order at the end of a contested custody case in which the court placed the child in the custody of their parent *name* who has been the primary care taker of the child and who is a fit and proper custodian. *Name* resides in the state of *State*. After having considered the findings made by the prior court in this case and the evidence presented to this court in this declaratory judgement proceeding based on the totality of the evidence [refer to the details of the abuse, abandonment, neglect found] the court finds that it is not in the child’s best interests to be returned to live in *Country*.”

- “*Child’s Name* has been placed by this court in the custody of *Parent’s Name* with whom it is in the child’s best interests to reside in *State*. It would not be in the Child’s best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child.”
- “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect]
 - *When the abuser currently resides in the child’s home country add: “Abusive Parent’s Name* resides in the child’s home country, *Country*, is an unfit parent. It is not in the child’s best interest to be returned to *Country*.”
- *Address any family members residing in the home country who under state law could be potential custodians for the child.* This can include a parent or grandparent or any other family member that state law would require be considered in a best interests determination for a custody under state law. As to each potential custodian state facts as to why placement with that custodian is not in the child’s best interests under state law:

Example: Respondent *father’s name* perpetrated acts of abuse against *child’s name* both in *State* and in *country of origin* prior to the family’s arrival in *State*. The abuse occurring in *county or origin* occurred in the child’s grandmother’s home and the grandmother took no action to stop the abuse. [Include findings of abuse that occurred in the home country in grandmother’s house and the steps that the grandmother took or did not take to protect the child and any participation the grandmother had in the abuse.]

 - “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].
- *Viability of Reunification:* SIJS findings must include findings stating the court’s conclusion that reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements such as, “the child suffered abuse, abandonment, or neglect perpetrated by *child’s parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Abusive Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings, why visitation is denied or

restricted for the abusive parent and/or findings supporting the court order's limitation of contact of the abuser with the child to visitation]. These findings constitute abuse under *State Law Code Section*."

- *Absent Parent Example*: "Reunification with the child's parent, *Name*, is not viable due to *Name's* abandonment of the *Name of Child* as defined in *Code Section*. *Parent's Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*."

Chapter V-5 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN DELINQUENCY PROCEEDINGS¹

By: Leslye E. Orloff
December 17, 2017

What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁶

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter 1: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See 8. U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁶ See Immigration and Nationality Act (INA) § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”). See also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help him heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for him.¹¹

c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.

3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law,¹²

a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.

- The order should indicate the factual basis for each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both DHS requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child's health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child's deportation from the United States.

SIJS in Delinquency Proceedings

- *Delinquency proceedings are appropriate and common cases in which SIJS findings can be issued:* In a delinquency case, after the judge issues a juvenile delinquency adjudication, in the orders the court issues regarding placement of the child the court can include SIJS findings.
 - SIJS findings are appropriate in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
 - Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by the other parent.
 - SIJS findings can also be included in court orders when the child is ordered into a diversion program.
 - It is very common to have a child seeking SIJS orders based on the abuse, abandonment, neglect, or similar harm under state law by only one parent. For example, courts will encounter immigrant children who suffered abuse by a parent in their home country who are currently residing with a non-perpetrator parent in the United States who is asking that the child be placed with them. These facts could be present in a divorce, legal separation, custody, guardianship, or child welfare case in which the court applies the state definitions of abuse, abandonment, neglect or similar harm defined under state law and the state best interests factors to decide custody of a child when the perpetrator parent lives outside the country. The abuse of the child may have occurred outside of the U.S. or in the U.S. and the perpetrator parent has never been to the U.S., has been deported from the U.S. or may have left the U.S. for other reasons.
 - Some children against whom juvenile delinquency cases are initiated may be children whose cases are more appropriate for the juvenile dependency system. If these children win dismissal of the juvenile delinquency case, but qualify for SIJS, the child will not have an open court case in which the court could issue SIJS orders.
 - Under the law of some states, it may be possible to convert a delinquency proceeding to a proceeding focused on child protection when there is evidence that the child was abandoned, or subjected to abuse, neglect, or other maltreatment. This approach allows the child to benefit from the court protection offered to child victims in dependency cases with court orders that also make SIJS findings.
- *The fact that the child is seeking SIJS orders does not limit the delinquency court's placement options:* SIJS children can benefit from the full range of placement options states have available in any delinquency case to identify a placement that is in the child's best interest. The determination of which placement is in the child's best interest will focus on the state best interest factors and

immigration status is not relevant to this determination.¹⁶ Placement options include in SIJS cases as in all cases:

- In home placement with the child's non-abusive parent with ongoing court supervision of the juvenile
- Out of home placement that could include:
 - Kinship care placements (e.g. grandparents, other family members)
 - Fictive kinship placements (e.g. godparents, family friends, other responsible adults)
 - Juvenile detention facility
 - State foster care
- The goals of placement and supervision of children with juvenile delinquency adjudications is to issue court orders and placements that create the structure, support and ongoing court monitoring that is needed in the child's life and support that moves him child towards reaching his full potential.
- *Making findings about the acts of abuse, abandonment or neglect perpetrated by one or both of the child's parents in delinquency orders.* The court record in a delinquency case will contain evidence (e.g. probation report, testimony) about the child's history of child abuse, child neglect and/or abandonment that may have contributed to and/or that will affect placement decisions regarding the child. This evidence is relevant to and used in the court's decision-making and orders regarding identification of a placement for the child that is in the child's best interest.
- *Making findings separately for each parent:* When issuing SIJS findings in dependency cases court will need to separately determine which acts of abuse, abandonment and/or neglect were perpetrated by each of the child's parents. Common facts will include cases in which the:
 - Child was abandoned by his father years before in the child's home country and
 - The child is abused by a person living in his mother's home in the United States
 - The child's mother abused or neglected the child in the U.S.
 - Child was abused, neglected or abandoned by both parents in the child's home country and the child has come to child welfare attention because the child was abused by the persons caring for him in the U.S.
 - Child's parents or parent are deported from the United States and child has come to child welfare attention through a report from school officials
- *Best interest factors that affect the delinquency placement, monitoring and court supervision and the SIJS finding that it is not in the child's best interest to return to the child's or the parent's home country.* Courts issue orders in delinquency cases that create structure in the lives of the children who receive juvenile delinquency adjudications. Children are ordered to receive therapy, treatment

¹⁶ When an immigrant SIJS eligible child is placed with a citizen or qualified immigrant foster parent, the foster parent can receive the Title IV-E foster care payments for the care they provide the SIJS eligible child. Title IV-E foster care payments are funds paid from the Federal Foster Care Program to provide safe and stable out-of-home care for children until the child can be safely returned to their home, placed permanently with adoptive parents, or placed in other planned arrangements for permanency. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH AND HUMAN SERVS., TITLE IV-E FOSTER CARE (last reviewed 2015), <https://www.acf.hhs.gov/cb/resource/title-ive-foster-care>. However, when both the foster parent and the SIJS eligible child are not qualified immigrants or citizens, no Title IV-E foster care payments can be made to that household. Additionally, foster parents who recently became qualified immigrants will have to wait five years after the date they became qualified immigrants to receive foster care payments. See *Title IV-E, General Title IV-E Requirements, Aliens/Immigrants: Question 9, Are Title IV-E Agencies Required to Verify the Citizenship or Immigration Status of Individuals Receiving Services or Payments Under Title IV-E?*, in CHILDREN'S BUREAU, DEP'T OF HEALTH AND HUM. SERVS., CHILD WELFARE POLICY MANUAL (2018), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45. The list of qualified immigrants includes, but is not limited to: lawful permanent residents, refugees, asylees, Amerasians, T visa applicants, and VAWA self-petitioners. Soraya Fata, Leslye E. Orloff & Monique Drew, *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT 3, <http://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims/>.

and specialized services.¹⁷ Courts play an active role in monitoring the child's progress in treatment, in school, and in the placement chosen by the court through scheduled status hearings. It is important for courts writing SIJS orders to list the services and requirements that the court is ordering for the juvenile and to discuss how the child's return to his home country would interfere with the delivery of these services that under state law it is in the child's best interest to receive.

- *Lawful permanent residence and admissibility*: Once a child's SIJS application is approved a child is eligible to file for lawful permanent residence. The application for lawful permanent residence requires proof that the child is admissible to the U.S.
 - Although a juvenile delinquency disposition is not considered a "conviction" for immigration purposes, juvenile adjudications can have immigration consequences for immigrant children who will be filing for relief based on an approved SIJS application:
 - Juvenile adjudications can negatively affect discretionary determinations that DHS makes in the course of adjudicating the lawful permanent residence application. Criminal convictions are not required.
 - SIJS children may be able to obtain waivers of inadmissibility for certain offenses that DHS has the authority to exercise its discretion to waive. Other offenses will make a child inadmissible. For a discussion of the impact that juvenile adjudications, arrests, and criminal convictions may have on an immigrant child's SIJS application and ability to attain lawful permanent residence, see Chapter VI – *Inadmissibility in Special Immigrant Juvenile Status Cases*. This chapter contains lists of:
 - Exemptions from inadmissibility that apply in SIJS cases;
 - Offenses for which a discretionary waiver is available;¹⁸ and
 - Offenses that are not waivable.

Procedural Considerations¹⁹

- *Service of Process*: Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a delinquency proceeding are governed by state law. How service is to be effected in delinquency proceeding is also governed by state law. The same service

¹⁷ Orders for drug counseling or random drug testing included in the court's juvenile adjudication order could lead to Department of Homeland Security adjudicators finding that child inadmissible and denying his application for immigration relief. For children who have been crime victims and may be eligible for SIJS or another form of crime victim-based immigration relief, courts should consider including drug related services the child needs in a separate court order. See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (discussing inadmissibility and the extent to which files considered confidential or sealed in state courts are being obtained and reviewed by immigration adjudicators when immigrant children and adults file for immigration relief, including the forms of relief designed to help crime victims).

¹⁸ When the court ordered supervision and monitoring of a child who is the subject of a juvenile adjudication results in improvements in the child's behavior, success in school, healing from trauma, and participation in their community. These improvements can become an important part of the child's case seeking discretionary waivers from immigration officials adjudicating the child's SIJS and lawful permanent residence applications.

¹⁹ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency but due to procedural rules, the child cannot file certain cases on their own behalf and thus the attorney is limited to what kinds of cases they can seek relief for the child.

of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other delinquency case.

- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child’s country of origin;
 - Unknown to the child and other parent;
 - In a region of the home county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for delinquency adjudications. Attorneys representing parties in these proceedings may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.²⁰ Swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent’s country’s embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.

Best Practices for SIJS Findings in Delinquency Cases

- *Special Immigrant Juvenile Status Statute*²¹ requires that the immigrant child:
 - “[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States”
 - AND

²⁰ For more information of service of process options, see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

²¹ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence”

- *Location of Harm to Child*: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- *State law governs*:²²
 - *The types of court proceedings* in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement.
 - *State court delinquency procedures* including jurisdiction, evidentiary rules, parties who are to receive notice and due process.
 - *When a delinquency order is final*. Delinquency orders are final when the court adjudicates the matter and decides placement. All appealable state court orders are considered final orders. The court continues to monitor the juvenile’s progress with status hearings that can continue until the child turns the age of majority under state law.
 - *Best Interest*²³ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. All state best interests of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interests of the child determinations the court adjudicates.

²² See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²³ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings see Leslye E. Orloff, Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

- *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law*: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the child’s parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court’s application of state best interest laws in decisions regarding a child’s custody, placement, commitment, or parenting time.
- *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.²⁴
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*²⁵ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*²⁶ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring²⁷
 - *Forced Marriage*:²⁸ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet their basic needs* under many states’ laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.

²⁴ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>; *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/>.

²⁵ See *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/>.

²⁶ See *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/>.

²⁷ See *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/>.

²⁸ See *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/>.

- Best Practice: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in delinquency proceedings. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court order relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interests of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interests.

Examples of SIJS Findings in Delinquency. In a delinquency case, these findings can be simply stated:

- *Custody, Care, Placement:* Addressing the placement of the child with the petitioner for custody:
 - Example: “*Child’s name*, who has been adjudicated delinquent by this court, shall be placed in the care and custody of [insert the name and relationship of the placement e.g. child’s grandmother]. *Child’s grandmother, name*, will provide the structure and supervision *Child’s name* needs and is a fit and proper placement. *Child’s grandmother’s name*, has been and will continue to be responsible for providing for [insert examples from the facts of the *case* may include court ordered counseling and treatment, health care, schooling, addressing special needs of the child including particularly needs related to healing from trauma and abuse]. It is in the child’s best interests to be placed in the care, custody, and control the child’s grandmother.”
- *Best Interest to Not Return:* Describing why it is in the child’s best interest not to return to the home country of the child or the child’s parent. “After considering the totality of the circumstances in this case the Court finds that--
 - “This court has placed the child in the custody of their grandmother *Grandmother’s name* who is a fit and proper placement. *Grandmother’s Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse, abandonment, neglect found separately for each parent] the court finds that it is not in the child’s best interests to be returned to live in *Country*.”
 - “*Child’s Name* has been placed by this court in the custody of *Grandmother’s Name* with whom it is in the child’s best interest to reside in *State*. It would not be in the Child’s best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child. [Add detailed findings that support this conclusion].”
 - “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect] continues to reside in the child’s home country, *Country*, is an unfit parent. It is not in the child’s best interest to be returned to *Country*.”
 - “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered

perpetrated by *parent's name*. These services [list help, treatment, services being ordered that the child receive] are being offered in [city, state]. *Child's name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child's name* heal and thrive are not available in *Country or rural community in which the child would live if returned*].

- *Viability of Reunification*: Stating reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements that like “the child suffered abuse, abandonment or neglect perpetrated by *child's parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Absent Parent Example*: “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*.”
 - *Abusive Parent Example*: “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. *Non-Abusive Parent’s Name* has been awarded physical and legal custody *Name of Child* and *Abusive Parent’s Name* will be limited [insert the description of the visitation granted (e.g., overnight visitation every other weekend) and including all limitations on visitation with the child (e.g., supervised visitation, use of a visitation center to monitor visitation, supervised visitation exchange)].”

Chapter V-6 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN DEPENDENCY PROCEEDINGS¹

By: Meaghan Fitzpatrick and Leslye E. Orloff
December 18, 2017

For Courts Hearing Dependency, Child Abuse, Child Neglect and Child Welfare Cases

What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁶

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter 1: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS [hereinafter SIJS BENCH BOOK] 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See 8. U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁶ See Immigration and Nationality Act (INA) § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

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- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help the child heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for the child.¹¹

c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.

3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to either abuse, abandonment, neglect, **or** a similar basis under state law;¹²

a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.

- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both DHS requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017),

<http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017),

<http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018); *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child's health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child's deportation from the United States.

SIJS in Dependency Proceedings

- *The authority to issue SIJS findings is no longer limited to dependency courts as a matter of federal law.*
 - For many years until 2008, dependency actions were the only form of state court proceeding in which courts could issue the SIJS required findings immigrant children needed to file for SIJS. Immigrant children in long-term foster care were the first group to benefit from SIJS. Over the years SIJS eligibility expanded¹⁶ as did the range of state court proceedings in which SIJS findings could be issued.¹⁷
 - In any state court proceedings where the court is tasked to determine placement and/or custody of a child, that court can include in its order SIJS findings.
- SIJS findings are appropriate¹⁸ in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by their other parent.¹⁹
- It is very common to have a child seeking SIJS orders based on the abuse, abandonment, neglect, or similar harm under state law by only one parent. For example, courts will encounter immigrant children who suffered abuse by a parent in their home country who are currently residing with a non-perpetrator parent in the United States who is asking that the child be placed with them. These facts could be present in a divorce, legal separation, custody, guardianship, or child welfare case in which the court applies the state definitions of abuse, abandonment, neglect or similar harm defined under state law and the state best interest factors to decide custody of a child when the perpetrator parent lives outside the country.²⁰ The abuse of the child may have occurred outside of the U.S. or in the U.S. and the perpetrator parent has never been to the U.S., has been deported from the U.S. or may have left the U.S. for other reasons.

¹⁶ See *Appendix B: Special Immigrant Juvenile Status Legislative History*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-b-sijs-legislative-history/>.

¹⁷ SIJS findings can be issued by any state court with jurisdiction to issue orders regarding the custody, care, or placement of a child including, but not limited to: divorce, custody, civil protection order, paternity, guardianship, delinquency, adoption, termination of parental rights, and dependency.

¹⁸ For more information, see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

¹⁹ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both to the child's parents. In 2008, Congress updated the law in recognition of the importance of promoting ongoing nurturing relationships between children and their nurturing non-abusive parents.

²⁰ Marsha Mansfield & Stacy Taueber, *Using Family Court to Obtain Immigration Relief for Minors*, Wisconsin Access to Justice Commission (October 30, 2014), <http://repository.law.wisc.edu/items/show/127370>.

- *Dependency proceedings are appropriate and common cases in which SIJS findings can be issued:* When an immigrant child is before the court in a dependency case filed by the state child protective services agency the court can include in its orders SIJS findings. Dependency courts regularly make findings about child abuse, neglect or abandonment children have suffered and making special SIJS findings is proper.
- *Making findings separately for each parent:* When issuing SIJS findings in dependency cases court will need to separately determine which acts of abuse, abandonment and/or neglect were perpetrated by each of the child's parents. State court judges will receive requests for SIJS predicate findings in dependency cases based on many different fact patterns. Common facts will include cases such as:
 - Child was placed in foster care due to abuse, neglect or abandoned by one or both parents
 - Child was abandoned by his parents and is in the United States without proper care
 - Child was removed from the home due to child abuse or domestic violence
 - Child was victim of sexual abuse by a relative while living with mother. CPS gets involved due to mother's inability to protect.
- *The fact that the child is seeking SIJS orders does not limit the dependency court's placement options:* Since the long-term foster care requirement was eliminated from the SIJS statute, SIJS children can benefit from the full range of placement options states have available in any dependency case to identify a placement that is in the child's best interest. The determination of which placement is in the child's best interest will focus on the state best interest factors and immigration status is not relevant to this determination.²¹ Placement options include:
 - The child's non-abusive parent
 - Kinship care placements (e.g. grandparents, other family members)
 - Fictive kinship placements (e.g. godparents, family friends, other responsible adults)
 - Non-profit or faith based agencies
 - The state's foster care system
- *Establishing Paternity of Biological Father in Dependency Proceedings:* To qualify for SIJS a child must prove that the person who subjected the child to abuse, abandonment or neglect was the child's parent. Dependency actions include findings of paternity that provide important evidence of parentage for the child's SIJS case. The child welfare agency is required to identify and provide or attempt to provide notice of the dependency proceeding to each of the child's parents. For

²¹ When an immigrant SIJS eligible child is placed with a citizen or qualified immigrant foster parent, the foster parent can receive the Title IV-E foster care payments for the care they provide the SIJS eligible child. Title IV-E foster care payments are funds paid from the Federal Foster Care Program to provide safe and stable out-of-home care for children until the child can be safely returned to their home, placed permanently with adoptive parents, or placed in other planned arrangements for permanency. *Title IV-E, General Title IV-E Requirements, Aliens/Immigrants: Question 9, Are Title IV-E Agencies Required to Verify the Citizenship or Immigration Status of Individuals Receiving Services or Payments Under Title IV-E?*, in CHILDREN'S BUREAU, DEP'T OF HEALTH AND HUM. SERVS., CHILD WELFARE POLICY MANUAL (2018), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45. However, when both the foster parent and the SIJS eligible child are not qualified immigrants or citizens, no Title IV-E foster care payments can be made to that household. Additionally, foster parents who recently became qualified immigrants will have to wait five years after the date they became qualified immigrants to receive foster care payments. See *Title IV-E, General Title IV-E Requirements, Aliens/Immigrants: Question 9, Are Title IV-E Agencies Required to Verify the Citizenship or Immigration Status of Individuals Receiving Services or Payments Under Title IV-E?*, in CHILDREN'S BUREAU, DEP'T OF HEALTH AND HUM. SERVS., CHILD WELFARE POLICY MANUAL (2018), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45. The list of qualified immigrants includes, but is not limited to: lawful permanent residents, refugees, asylees, Amerasians, T visa applicants, and VAWA self-petitioners. Soraya Fata, Leslye E. Orloff & Monique Drew, *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT 3 (, <http://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims/>) (last visited Mar. 30, 2018).

children born out of wedlock the issues addressed in the dependency proceeding will include legally establishing paternity. Paternity can be established:

- By a signed acknowledgement of paternity
 - Through DNA evidence in the dependency case
 - By court order following default of the father in a dependency case based on evidence submitted to the court
 - In a court order issued following a contested dependency action
- *Non-viability of reunification does not require termination of parental rights:* When the court applies best interest factors and makes a placement with someone other than the child’s abusive parent, it can make a non-viability of reunification finding for an SIJS eligible child. Non-viability of reunification means that the court is issuing a final order and the court expects that that order will remain in effect for the foreseeable future until the child ages out of the court’s jurisdiction. Termination of parental rights is not required.²² Non-viability findings can be made even in cases where the court orders limited supervised visitation between the child and the abusive parent, subject to conditions imposed by the court, such as random drug testing.
 - *Non-viability determinations can be made before the court enters its final order in the dependency case:* The court does not have to wait for reunification services to be completed to make SIJS findings. For example, the court may issue its order and then schedule a “status” hearing on a later date where changes could be made to the order, such as expanded visitation.
 - *Special issues in dependency cases in which an immigrant child is returned to the care of the non-abusive parent.* There are cases in which the court may consider dismissing a dependency action by consent or after a contested hearing against a non-abusive parent or when the abusive parent did not participate in the proceedings. In these cases dismissal of the dependency case without an order may not be in the child’s best interest. For the child to qualify to eventually obtain lawful permanent residence, the state court must retain jurisdiction until the child ages out or is adopted. In cases like these, the child may be better protected if the court issues a final order in which the court determines the abusive or absent father’s parental or custody rights, and keeps the case open. Such an order prevents an absent father from later showing up and trying to exert his rights to possession of the child jeopardizing the child’s best interest and stability. Such an order can be entered as a settlement of the dependency matter or after a mother wins a contested hearing.²³

Procedural Considerations²⁴

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a dependency proceeding are governed by state law. How service is to be effected in dependency proceeding is also governed by state law. The same service

²² Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²³ Because the court will have taken steps to serve the absent father to assume jurisdiction over him in a dependency action, this approach prevents the mother from having to file a separate custody action against the child’s father.

²⁴ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization’s funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency, but due to procedural rules, the child cannot file certain cases on their own behalf, and thus the attorney is limited to what kinds of cases they can seek relief for the child.

of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other dependency case.

- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child's country of origin;
 - Unknown to the child and other parent;
 - In a region of the home county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for custody adjudications. Attorneys representing parties seeking custody of an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.²⁵ Swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter custody orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
 - *UCCJEA AND UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in DHS's custody may have been moved from state to state while searching for appropriate placement. In only a small minority of the SIJS cases might there be a prior custody order in another state or country. When a custody order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's

²⁵ For more information of service of process options see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.²⁶

- Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UUCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the dependency matter and requesting SIJS orders from the child's home state where the child has resided for more than 6 months; or
 - In dependency cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state's UCCJEA or the UCCJA based upon the child's presence in the state and upon the child having suffered abuse, abandonment or mistreatment or upon threats to the child's non-abusive parent or the child's sibling when²⁷
 - No prior dependency order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines to take jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older:* Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court's jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.²⁸ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Dependency Cases

- *Special Immigrant Juvenile Status Statute*²⁹ requires that the immigrant child:

²⁶ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

²⁷ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

²⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁹ INA § 101(a)(27)(J).

“[H]has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence”

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- State law governs:³⁰
 - The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
 - State court dependency procedures including jurisdiction, evidentiary and notice rules.
 - When a dependency order is final. In issuing final dependency orders awarding custody, visitation, or placement of an SIJS child, it is appropriate for courts to adjudicate and issue findings based on the evidence before the court. All appealable state court orders are considered final orders. Once a state court dependency order has been finally adjudicated based on a court’s ruling in a contested case, by consent of the parties, or following state default judgment procedures, state law imposes requirements that parties must meet in order to secure modifications of the court’s final placement, custody and/or visitation orders. In dependency proceedings, it may be that one of the parties files to modify based on having successfully complied with court mandated parenting plan or services, such as random drug testing, parenting classes, anger management classes, etc.

³⁰ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- *Best Interest*.³¹ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interest of the child to live. All state best interest of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interest of the child determinations the court adjudicates.
- *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law*: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the child’s parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court’s application of state best interest laws in decisions regarding a child’s custody, placement, commitment, or parenting time.
 - *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.³²
 - *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*³³ under most state statutes is similar to abuse and often requires more harm to a child than neglect.
 - *Domestic violence*³⁴ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in

³¹ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings, see Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

³² For further information, see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>; *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/>.

³³ See *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/>.

³⁴ See *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/>.

the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring.³⁵

- *Forced Marriage:*³⁶ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
- *Children present in the state without an adult able to meet their basic needs* under many states' laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
- Best Practice: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in dependency proceedings. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interest of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court's jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court's order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court's order furthers the child's welfare and best interest.
- *Examples of SIJS Predicate Orders in Dependency Cases.* In a dependency case, these findings can be simply stated:
 - *Placement of a Child Subject to a Dependency:* Addressing the placement of the child with the petitioner for custody:
 - Example: "Petitioner, [name], is/has been the primary caretaker for [name of child] for the past [number] of years and is a fit and proper parent. Petitioner has been responsible for providing for [insert examples from the facts of the case may include health care, schooling, addressing special needs of the child including particularly needs related to healing from trauma and abuse]. [cite state statute] It is in the child's best interest to award sole care, custody, and control of [name of child] to the Petitioner." [cite state statute]
 - *Best Interest to Not Return:* Describing why it is in the child's best interest not to return to the home country of the child or the child's parent. "After considering the totality of the circumstances in this case the Court finds that--
 - "This court has placed the child with the child's maternal grandmother [name] who has been the primary care taker of the child and who is a fit and proper custodian. *Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse,

³⁵ See 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/>.

³⁶ See 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/>.

abandonment, neglect found] the court finds that it is not in the child's best interest to be returned to live in *Country*."

- "*Child's Name* has been placed by this court in the custody of *Grandmother's Name* with whom it is in the child's best interest to reside in *State*. It would not be in the Child's best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child."
- "*Abusive Parent's Name* who subjected the child to [summarize abuse or neglect] continues to reside in the child's home country, *Country*, is an unfit parent. It is not in the child's best interest to be returned to *Country*."
- "*Child's Name* has been receiving the medical and mental health care and treatment *child's name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent's name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child's name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child's name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].
- *Viability of Reunification*: Stating reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements that like "the child suffered abuse, abandonment or neglect perpetrated by *child's parent*" and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Absent Parent Example*: "Reunification with the child's parent, *Name*, is not viable due to *Name's* abandonment of the *Name of Child* as defined in *Code Section*. *Parent's Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*."
 - *Abusive Parent Example*: "Reunification with the child's parent, *Name*, is not viable due to *Name's* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. This court is placing the child with/awarding custody to *Non-Abusive Parent's or Foster Parent's Name* who has been awarded physical and legal custody of *Name of Child*. *Abusive Parent's Name* [add details regarding the abusive parent: e.g. is not being granted any visitation with the child/is granted limited supervised visitation once a month provided he submits monthly to drug testing. Alternatively state that the order is terminating the parental rights of *Name of Abusive Parent*]."

Chapter V-7 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN PROCEEDINGS INVOLVING GUARDIANSHIP PROCEEDINGS¹

By: Kendall Niles, Tolulope Adetayo, and Leslye Orloff
December 20, 2017

What is Special Immigrant Juvenile Status (SIJS)?²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁶

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS [hereinafter SIJS BENCH BOOK] 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁶ See Immigration and Nationality Act (INA) § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. with those of the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help him heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for him.¹¹

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009)

(<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of*

- c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.
3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, **or** a similar basis under state law;¹²
- a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.
- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both DHS requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
 - The state court order does not confer any immigration status on the child.
 - Only federal immigrant officials can grant immigration status to the child.
 - However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child’s health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child’s deportation from the United States.

† SIJS findings are NOT immigration determinations but rather are simply factual findings that will form part of an immigration application to be adjudicated by the Department of Homeland Security’s U.S. Citizenship and Immigration Services.

the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

SIJS in Guardianship Proceedings

- When courts award guardianship of a minor to a grandparent, family member or other adult, the court is considering the child's best interest in placing the child in the care and custody of a responsible adult as the child's legal guardian. In guardianship cases involving immigrant children who have suffered abuse, abandonment or neglect by one or both of their parents, courts have the ability to include SIJS findings in its orders.
- SIJS findings are appropriate in cases in which the court is deciding guardianship of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- State court judges will receive requests for SIJS predicate findings in guardianship cases based on many different fact patterns. Some frequent scenarios include:
 - Uncontested cases in which a grandparent, adult sibling, aunt or other close family member seeks guardianship: this could be a case where an immigrant child flees his country of origin to escape abuse by a parent.
 - Uncontested case where child is apprehended at the border but released by the government to a relative or other sponsor. As part of the release, the sponsor commits to filing appropriate guardianship proceedings in state court.
 - Contested case where the child is removed from the home due to abuse or neglect and child is placed with a relative to care for him.
 - Uncontested case where child was sexually molested by step-parent after biological parent was deported and state placed child with her teacher.
 - **Uncontested guardianship cases filed for a child who is approaching the age of majority:** Courts may not be accustomed to seeing a child approaching the age of majority in an uncontested case but should consider the **best interest** of the child when hearing the case. Many times the guardian may not be aware of the existence of SIJS and may not have legal counsel help navigate the system. In these cases, this could mean that older teenagers approaching their 18th birthday will appear in court in guardianship cases in which they are requesting both guardianship and SIJS findings. Establishing guardianship, even at a late age when it will not continue legally for very long, helps stabilize the life of the child and provide him with important legal protections as he transitions to adulthood. This is particularly important for youth whose trauma experiences have affected their physical, brain and emotional development.¹⁶
 - **Uncontested cases where the child has never met one parent due to early abandonment:** a guardianship proceeding provides the venue to obtain SIJS findings based on abandonment.
 - **Uncontested cases with one parent living abroad and difficult to locate due to abandonment or neglect:** the guardianship process may be the best option for a child in this situation.
 - **Contested guardianship case in which the abusive parent objects:** example of a grandparent or close family member seeking guardianship

Procedural Considerations¹⁷

¹⁶ See *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/>.

¹⁷ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from

- *Service of Process*: SIJS imposes no additional service requirements. The rules for who must be served and how service is to be effected in a guardianship proceeding are governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other guardianship case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may have resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child’s country of origin;
 - Unknown to the child and other parent;
 - In a region of the home country that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for guardianship adjudications. Attorneys representing parties seeking guardianship of an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.¹⁸ Swift decisions by the court on requests for alternative service are very important to ensure that the court is able to take jurisdiction to enter guardianship orders including SIJS findings before the immigrant child ages out of the jurisdiction of the court. This may include:

- Enlisting assistance with service from the parent’s country’s embassy or consulate;
- Service by publication;
- Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.¹⁹
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children seeking SIJS should be treated in the same manner with regard to decisions to appoint guardian’s or attorney’s *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to require a GAL/AAL when the court would so order under state law in cases that did not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
- *UCCJEA and UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in Department of Homeland Security’s custody may have been moved from state to state while searching for

the agency but due to procedural rules, the child cannot file certain cases on their own behalf, and thus the attorney is limited to what kinds of cases they can seek relief for the child.

¹⁸ For more information of service of process options, see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

¹⁹ See Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

appropriate placement.²⁰ In only a small minority of the SIJS cases might there be a prior custody order in another state or country. When a custody order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.²¹

- Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UUCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the guardianship matter and requesting SIJS orders from the child's home state where the child has resided for more than 6 months; or
 - In guardianship cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state's UCCJEA or the UCCJA based upon the child's presence in the state and upon the child having suffered abuse, abandonment or mistreatment or upon threats to the child's non-abusive parent or the child's sibling when²²
 - No prior custody order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines taking jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older*: Generally, the child must be under the jurisdiction of a state court order at the time they file their SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court's jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship. Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state including children in foster care.

Best Practices for SIJS Findings in Guardianship Cases

- *Special Immigrant Juvenile Status Statute* requires that the immigrant child:

²⁰ See generally *Who We Serve – Unaccompanied Alien Children*, OFF. REFUGEE RESETTLEMENT (Oct. 2, 2012), <https://www.acf.hhs.gov/orr/resource/who-we-serve-unaccompanied-alien-children> (“An unaccompanied alien child (UAC) is one who has no lawful immigration status in the United States; has not attained 18 years of age, and with respect to whom; 1) there is no parent or legal guardian in the United States; or 2) no parent or legal guardian in the United States is available to provide care and physical custody.”).

²¹ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

²² *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

“[H]as been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.”²³

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- State law governs:²⁴
 - The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement.
 - State court guardianship procedures including jurisdiction, evidentiary rules, and notice rules.
 - When a custody order is final. In issuing final custody orders awarding custody, visitation and providing for the care of an SIJS child that meets the definition of a final or permanent custody order under state law, it is appropriate for courts to adjudicate and issue findings that based on the evidence before the court reunification with the abusive parent is not viable. Once a state court custody order has been finally adjudicated based on a court’s ruling in a contested case, by consent of the parties, or following state default judgment procedures, state law imposes requirements that parties must meet in order to secure modifications of the court’s final custody and/or visitation orders. Most state laws require proof of change in circumstances not anticipated at the time the court issued its custody order.
 - Best Interests: In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. All state best interest of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interest of the child determinations the court adjudicates.

²³ INA § 101(a)(27)(J).

²⁴ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law*: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the parents. For the purposes of making SIJS findings, these state law definitions are applied to the facts when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court’s application of state best interest laws in decisions regarding a child’s custody, placement, commitment, or parenting time.
 - *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.²⁵
 - *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*²⁶ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence* is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring.²⁷
 - *Forced Marriage*:²⁸ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet a child’s basic needs* under many states’ laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
 - *Best Practice*: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in awarding the guardianship. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court order relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interests of the child factors applied to the guardianship case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order*: The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;

²⁵ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>.

²⁶ See *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/>.

²⁷ See *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/>.

²⁸ See *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/>.

- The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interests.
- *Examples of SIJS Findings in Guardianship.* “After hearing on the Guardianship Proceedings and based on the allegations in the Petition for Appointment of Guardian and Motion for Special Findings, the Court makes the following Order of Special Findings of Fact and Rulings of Law:”

“This Court has jurisdiction pursuant to [cite state statute] to make determinations concerning the care and custody of [minor child]. This Court has legally placed [minor child] in the care and custody of her legal guardian, [name of legal guardian].

Reunification of [minor child] with both of his parents is not viable. [minor child]’s mother, [name of mother], neglected her when she failed to protect her from abuse by her stepfather, left her vulnerable to gang threats and sent her to the United States alone without a plan for her care and custody. [cite state statute]. [minor child]’s mother also abandoned her by failing to attempt reunification or provide any financial support. [cite state statute]. [minor child]’s mother also abused her under [cite state statute] by beating her with a rope. [minor child]’s father, [name of father], neglected and abandoned her as he has abstained from all parental responsibility since [minor child]’s birth. [cite state statute].

This Court further finds that it is not in the best interests of [minor child] to return to [country of origin], her country of nationality, as defined by [cite state statute]. [Minor child]’s mother beat her and allowed her stepfather to beat her as well. She was also unable to protect [minor child] from gang threats against her life, which prevented her from attending school. Unable to provide her with a safe, supportive, and stable life, her mother sent her to the United States alone and without any plan for her care and custody. Now, [minor child] is both emotionally and financially supported by her uncle and legal guardian, [name of legal guardian], and is able to attend school. It is therefore in [minor child]’s best interest to remain in the United States where she has found stability and safety, of which she would be deprived if returned to [home country].”

- *Absent Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name*’s abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*.”
- *Abusive Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name*’s abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. *Non-Abusive Parent’s Name* has been awarded physical and legal custody *Name of Child* and *Abusive Parent’s Name* will be limited [insert the description of the visitation granted (e.g., overnight visitation every other weekend) and including all limitations on visitation with the child (e.g., supervised visitation, use of a visitation center to monitor visitation, supervised visitation exchange)].”

Chapter V-8 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN PATERNITY AND PARENTAGE PROCEEDINGS¹

By: Kalli Ann Wells, Kendall Niles, and Leslye E. Orloff
December 7, 2017

For Courts Hearing Paternity, Parentage and Child Support Cases

What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms perpetrated by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child's immigration application.

Federal Requirement: State Courts Apply State Law⁶

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS [hereinafter SIJS BENCH BOOK] 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child's natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines "parent" to include "step-parent" does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a "predicate order."

⁶ See Immigration and Nationality Act (INA) § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings⁸:
 1. *Finding 1*: The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2*: It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjivar, 29 Immigr. Rep. B2-37, B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvptra2008-03-04-09/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent” and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation).

determination. Using the state best interest factors, the findings should include reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help him heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for him.¹¹

c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.

3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to abuse, abandonment, neglect, **or** a similar basis under state law;¹²

a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.

• The order should indicate the factual basis for the each of the state court findings.¹⁵

- Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both DHS requests for additional evidence and delays in the adjudication of the child’s SIJS petition.

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment or other services would be available to help an immigrant child or immigrant crime victim in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, 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 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); see also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep’t of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.
- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child's health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child's deportation from the United States.

SIJS in Paternity and Parentage Proceedings¹⁶

- SIJS findings are appropriate¹⁷ in cases in which the court is deciding paternity of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by their other parent.¹⁸
- For a child to attain SIJS the child must prove that the person who abused, abandoned, neglected or similarly harmed a child was the child's parent.
- State laws governing paternity generally presume when a child is born during a marriage that the child is the child of the husband and wife and paternity is established as a matter of law.
- When children are born out of wedlock the legal identity of the child's father is not automatically established. Children born out of wedlock who are abused, abandoned, neglected, or suffer similar harms perpetrated by their father will need to establish that the person who harmed them is their father. Under state laws unmarried parents can legally establish paternity by completing an acknowledgment of paternity form or by initiating a paternity action in state court. A paternity action is one of the types of state court proceedings through which state courts legally identify a child's father.
- *State Law Purpose of Paternity Laws*: State laws recognize that there are many benefits for the child, the father and the mother of establishing paternity. Paternity provides the child with a needed identity, can encourage interaction with other members of the father's family, it provides accurate family history information that can be crucial to a child's health, it affects inheritance, and permits a father to exercise parental rights to custody and visitation. Importantly, under state law, when paternity is established the father has a legal obligation to support the child. Establishing paternity can provide other financial benefits to the child that improve the child's economic stability. The child becomes eligible to receive benefits from the father including health insurance, social security, life insurance, and veteran's and other survivor's benefits.

¹⁶ For an additional and further discussion of issues relevant to child support proceedings, see Meaghan Fitzpatrick, Rafaela Rodrigues & Leslye E. Orloff, *Chapter V-3: Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Custody and Child Support*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-v3-custody-quick-reference-guide/>.

¹⁷ For more information, see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

¹⁸ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both to the child's parents. In 2008, Congress updated the law in recognition of the importance of promoting ongoing nurturing relationships between children and their nurturing non-abusive parents.

- A typical paternity action is usually brought in by the mother of the child. Once paternity is established, custody, visitation and child support are determined by the court.
- State court judges will receive requests for SIJS predicate findings in paternity cases based on many different fact patterns. Some frequent scenarios include:
 - **The child’s putative father is in the U.S., parents are unmarried:** The child’s mother brings an action to establish paternity, be awarded custody and support, and SIJS findings.
 - **The child’s putative father’s whereabouts are unknown:** the child’s mother brings an action to establish paternity and once paternity is established, seeks SIJS findings based on abandonment.
 - **The putative father abandoned mother while pregnant:** the child’s mother brings an action to establish paternity and for child support.
 - **The mother receives public assistance and assigns her rights to the state:** the state welfare agency brings an action to establish paternity and to recover benefits awarded to child.
 - **In some states, the putative father files a notice of intent to claim paternity:** while this is state specific, the putative father must receive notice related to any proceeding involving the child.¹⁹ Some states have putative father registries.²⁰

Procedural Considerations²¹

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a paternity proceeding are governed by state law. How service is to be effected in paternity proceeding is also governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other paternity case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:
 - In the child’s country of origin;
 - Unknown to the child and other parent;
 - In a region of the home county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for custody adjudications. Attorneys representing parties seeking custody of an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative

¹⁹ Alabama, Arizona, Arkansas, Connecticut, Florida, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, Texas, and Virginia.

²⁰ Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and Wyoming.

²¹ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing; this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization’s funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency, but due to procedural rules, the child cannot file certain cases on their own behalf, and thus the attorney is limited to what kinds of cases they can seek relief for the child.

service.²² Swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter custody orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent’s country’s embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
 - *Continuing Jurisdiction under State Law over Children 18 and Older*: Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court’s jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.²³ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Custody Cases

- *Special Immigrant Juvenile Status Statute*²⁴ requires that the immigrant child:

²² For more information of service of process options, see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

²³ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁴ INA § 101(a)(27)(J).

“[H]has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States” AND

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence”

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in United States or abroad.
- State law governs:²⁵
- The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
 - State court custody procedures including jurisdiction and evidentiary and notice rules.
 - When a paternity order is final. Once paternity is established, the order issued by the court is final. All appealable state court orders are considered final orders. As with any other family court order involving child custody, visitation and/or child support, a party can seek modification of the order upon proof of change in circumstances. The fact that the order could potentially be modified in the future by a party under state law does not prevent the order from being a final appealable court order.
 - Best Interest:²⁶ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interest of

²⁵ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(3) – Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁶ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings, see Leslye E. Orloff, Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

the child to live. All state best interest of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interest of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interest of the child determinations the court adjudicates.

- *Abuse, Abandonment, Neglect or Similar Basis of Harm under State Law*: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of the child's parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court's application of state best interest laws in decisions regarding a child's custody, placement, commitment, or parenting time.
- *Definitions*: State law controls the definition of the terms "abuse" "abandonment" and "neglect." The court may use *any* state definition in state law of these terms.²⁷
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to "abuse, abandonment, or neglect." Some examples include:
 - *Child endangerment*²⁸ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*²⁹ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring³⁰
 - *Forced Marriage*:³¹ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.

²⁷ For further information, see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>; *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/>; *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/>.

²⁸ See *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/>.

²⁹ See *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/>.

³⁰ See *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/>.

³¹ See *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/>.

- *Children present in the state without an adult able to meet their basic needs* under many states’ laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
 - Best Practice: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in determining paternity. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interest of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.
- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interest.
- *Examples of SIJS Findings in Paternity Cases.* In a custody case, these findings can be simply stated:
 - *Establishing Paternity:* the order should include the factual basis and state law to determine paternity.
 - *Custody, Care, Placement:* Addressing the placement of the child with the petitioner for custody:
 - Example: “Father, *name*, is the legal father of *child’s name*. Based on the following findings about the father’s interactions with *child’s name*, the court finds that *father’s name*, is not a fit parent to be granted custody of *child’s name*. [insert findings regarding the abuse, abandonment, neglect, or similar harm defined by state law the father perpetrated; discuss state best interest factors that contributed to the court’s decision not to award custody to the father]. [*cite state statute*] Petitioner, *name*, is has been the primary caretaker for *child’s name* for the past *number* of years and is a fit and proper parent. Petitioner, *name*, has been responsible for providing for [insert examples from the facts of the case may include health care, schooling, addressing special needs of the child including particularly needs related to healing from trauma and abuse]. It is in the child’s best interest to award sole care, custody, and control of *Child* to the Petitioner.”;
 - *Best Interest to Not Return:* Describing why it is in the child’s best interest not to return to the home country of the child or the child’s parent. “After considering the totality of the circumstances in this case the Court finds that--
 - “This court has placed the child in the custody of their parent *name* who has been the primary care taker of the child and who is a fit and proper custodian. *Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse, abandonment, neglect found] the court finds that it is not in the child’s best interest to be returned to live in *Country*.”

- “*Child’s Name* has been placed by this court in the custody of *Parent’s Name* with whom it is in the child’s best interest to reside in *State*. It would not be in the Child’s best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child.”
- “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect] [continues to reside in the child’s home country/does not have a permanent home/travels back and forth between the U.S. and *Country*], is an unfit parent. It is not in the child’s best interest to be returned to *Country*.”
- “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].
- *Viability of Reunification*: Stating reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements that like “the child suffered abuse, abandonment or neglect perpetrated by *child’s parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Absent Parent Example*: “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*.”
 - *Abusive Parent Example*: “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. *Non-Abusive Parent’s Name* has been awarded physical and legal custody *Name of Child* and *Abusive Parent’s Name* will be limited [insert the description of the visitation granted (e.g., overnight visitation every other weekend) and including all limitations on visitation with the child (e.g., supervised visitation, use of a visitation center to monitor visitation, supervised visitation exchange)].”

Chapter VI: Inadmissibility in Special Immigrant Juvenile Status Cases¹

By Leslye Orloff
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Receiving lawful permanent residence is a multiple step process. First, the immigrant must prove eligibility for immigration relief. For most forms of relief, after eligibility is established, the immigrant must then apply to become a lawful permanent resident. This chapter explains admissibility requirements and the inadmissibility waivers that may be available in cases of children applying for Special Immigrant Juvenile Status (SIJS).

As with all forms of immigration relief that lead to lawful permanent residence, a finding of inadmissibility can negatively impact an immigrant's case. A finding of inadmissibility can lead to denial of the immigrant's lawful permanent residence application and it can also be a basis for an immigrant's removal or deportation. SIJS is not a form of immigration status in and of itself. When an immigrant child is granted SIJS, the child becomes eligible to apply for lawful permanent residence, which provides the child full lawful immigration status in the United States. Whether or not someone who receives SIJS can remain in the United States and become a lawful permanent resident or must be deported is in large part decided by whether the individual is found to be inadmissible and whether he merits a favorable exercise of discretion by the U.S. Department of Homeland Security (DHS) or the Executive Office for Immigration Review. These are determinations that are made by United States Citizenship and Immigration Services (USCIS) adjudicators or an Immigration Judge, depending on the procedural posture of the immigrant child's case.

The Immigration and Nationality Act (INA) articulates certain grounds of inadmissibility that can be barriers to someone obtaining lawful permanent residence. A denial of lawful permanent residence can result in deportation of that immigrant despite the approval of the immigrant's underlying immigration petition including, but not limited to, an SIJS petition. For children granted SIJS, the INA provides an automatic statutory exemption from certain specific grounds of inadmissibility.² Additionally, other grounds of inadmissibility can be waived for immigrants with approved SIJS cases upon a showing that the waiver furthers "humanitarian purposes, family unity" or "the public interest," and that the immigrant merits a favorable exercise of discretion by USCIS or the immigration judge.³ However, there are grounds of inadmissibility that cannot be waived and serve as a bar to lawful permanent residence for SIJS children. These inadmissibility grounds can, and do, lead to the deportation of SIJS children.

It is important to note that in immigration proceedings before an immigration judge, an individual has a right to an attorney if the immigrant can retain an attorney, but there is generally no right to court appointed counsel. This includes children who have no right to appointed

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² 8 U.S.C. § 1255(h)(2)(A); Immigration and Nationality Act (INA) § 245(h)(2)(A).

³ 8 U.S.C. § 1255(h)(2)(B); Immigration and Nationality Act (INA) § 245(h)(2)(B).

counsel for either affirmative applications filed with USCIS or in Immigration Court deportation proceedings.⁴ It can be very difficult for immigrant children to meet their burden of proof of their admissibility without the assistance of counsel. In the Sixth Amendment effective assistance of counsel context, in criminal proceedings noncitizens must be advised about the immigration consequences of a plea.⁵ Though not required in the civil context where the Sixth Amendment does not govern, such as in juvenile delinquency matters, it can be best practices, useful, necessary, and in the children's best interests for state courts to appoint an attorney to a noncitizen minor to ensure he understands the immigration consequences of the state court proceedings.⁶

In immigration adjudications, the burden is on the often-unrepresented immigrant applicant to affirmatively show admissibility and persuade the adjudicator that a favorable exercise of discretion is warranted.⁷ Formal rules of evidence do not apply. Filings, orders, and other evidence that are part of a family court or delinquency proceedings can and are routinely used in determining inadmissibility by USCIS and Immigration Judges. Even when proceedings are confidential or when delinquency records are sealed or expunged, immigration adjudicators routinely request and receive state court documentation from state court proceedings and use it to influence their determinations on admissibility and discretion.⁸ Evidence of inadmissibility can come from many sources and generally can be considered in the immigration case, so long as the evidence is relevant.

Immigration adjudicators may ask for the noncitizen to produce state family or delinquency court filings, orders, or other portions of the state court file at various points in the immigration process. This includes USCIS adjudicators requesting documentation from the underlying state court proceedings during the SIJS application process.⁹ Additionally, when the noncitizen is applying for lawful permanent residence, the application specifically asks if the applicant has ever:

- “been arrested, cited, charged, or detained by any law enforcement official,” or
- “committed a crime of any kind (even if you were not arrested, cited charged with, or tried for that crime).”¹⁰

⁴ See 8 U.S.C. § 1362; INA § 292; 8 C.F.R. §292.5(b); 8 C.F.R. §1240.10(a)(1).

⁵ Padilla v. Kentucky, 555 U.S. 1169 (2009).

⁶ See generally Joanna C. Kloet, *It's Not (Fundamentally) Fair !: The Right to Counsel on the Immigration Consequences of Juvenile Misconduct*, 27 U. Fla. J.L. & Pub. Pol'y 329 (2016).

⁷ Brantigan, 11 B.I.A. 493 (1966); 8 U.S.C. § 1229a(c)(4)(A)(2006); 8 U.S.C. § 1229a(c)(2)(A); INA § 240(c)(4)(A).

⁸ U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, 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-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

⁹ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles* (August 23, 2017), in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html> (last visited Mar. 26, 2018); *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (last visited Mar. 26, 2018).

¹⁰ DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS (June 26, 2017), <https://www.uscis.gov/i-485> (last visited Mar. 26, 2018).

In addition as part of the immigration application process, USCIS will run an individual's fingerprints to determine if any arrests occurred.¹¹ If the applicant answers yes to either of these questions or the child's fingerprints lead to a record of arrest, even if the arrest or citation relates to juvenile delinquency, USCIS will routinely tell the applicant that he or she must obtain and submit the underlying police reports or court records.¹² Where the delinquency cases that stem from the arrests or other court actions have been sealed or expunged, immigration adjudicators require proof establishing that the court record has been sealed or expunged.¹³ In this context, USCIS or the immigration judge may attempt to require the applicant to request that the court provide them a copy of the sealed, expunged, or confidential court record to provide to the agency (USCIS or the immigration judge) adjudicating the child's SIJS based application for lawful permanent residence. Failing to provide a sufficient explanation of what occurred and/or failure to provide the documentation that the immigration adjudicator is seeking can lead to denial of the immigrant child's lawful permanent residence application for discretionary or inadmissibility reasons.¹⁴

Grounds of Inadmissibility and Special Immigrant Juvenile Status

Some grounds of inadmissibility can be triggered based on conduct alone, while others require a criminal conviction. Under immigration law, both a criminal conviction and admission of facts, in the context for example of a diversion agreement, can be treated as convictions under immigration law.¹⁵ Generally, delinquency adjudications and admissions made within the delinquency context are not considered convictions under immigration law.¹⁶ However, youthful offender statutes are a grey area with regard to whether criminal cases brought under these statutes will trigger inadmissibility. Depending on how the state defines its youthful offender laws, these may trigger the conviction-based grounds of inadmissibility.¹⁷ Further, though

¹¹ U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

¹² U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

¹³ U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

¹⁴ See Beth K. Zilberman, *The Myth of Second Chances: Noncitizen Youth and Confidentiality of Delinquency Records*, GEO. IMMIGR. L.J. (forthcoming 2018).

¹⁵ 8 U.S.C. § 1101(a)(48)(A); 8 U.S.C. § 1182(a)(2)(A)(i); INA § 212(a)(2)(A)(i); INA § 101(a)(48)(A).

¹⁶ *Devison-Charles*, 22 B.I.A. 1362 (2000); *M-U-*, 2 B.I.A. 92 (1944).

¹⁷ See *Uritsky v. Gonzales*, 399 F.3d 728, 731 (6th Cir. 2005).

juvenile delinquency adjudications are generally not sufficient for conviction-based grounds of inadmissibility, they can and often do serve as the basis for finding conduct-based grounds of inadmissibility and adverse discretionary findings that can bar an immigrant child's ability to attain lawful permanent resident status and potentially result in the child's deportation.¹⁸

Grounds of Inadmissibility That Statutorily Do Not Apply or Can be Waived in Cases of Special Immigrant Juvenile Status

Individuals with SIJS are categorically exempt from certain grounds of inadmissibility when applying to become lawful permanent residents.¹⁹ This means that immigrant children to whom these grounds of inadmissibility apply may still become lawful permanent residents if they are otherwise eligible and merit discretion. The grounds from which they are automatically exempt include:²⁰

- Being present in the United States without having been lawfully admitted or paroled,²¹
- Having fraudulently or willfully represented a material fact to obtain a visa or enter the United States,²²
- Having falsely claimed to be a United States Citizen,²³
- Having entered the U.S. as a stowaway,²⁴
- Having entered the U.S. without valid documentation,²⁵
- Those who have unlawful presence due to having been in the United States without permission or who overstayed a visa,²⁶
- Working without a labor certification,²⁷ and
- Being a public charge.²⁸

For certain other grounds of inadmissibility, an individual with SIJS who is applying for lawful permanent residence can apply for a discretionary waiver for "humanitarian purposes, family unity, or when it is otherwise in the public interest."²⁹ These grounds include:

- Prostitution and commercialized vice,³⁰
- Smuggling,³¹
- Trafficking in persons,³² and
- Association with terrorist organizations.³³

¹⁸ Devison-Charles, 22 B.I.A. 1362 (2000).

¹⁹ 8 U.S.C. § 1255(h)(2)(A); INA § 245(h)(2)(A).

²⁰ 8 U.S.C. § 1255(h)(2)(A); INA § 245(h)(2)(A).

²¹ 8 U.S.C. § 1182(a)(6)(A); INA § 212(a)(6)(A).

²² 8 U.S.C. § 1182(a)(6)(C)(i); INA § 212(a)(6)(C)(i).

²³ 8 U.S.C. § 1182(a)(6)(C)(ii); INA § 212(a)(6)(C)(ii).

²⁴ 8 U.S.C. § 1182(a)(6)(D); INA § 212(a)(6)(D).

²⁵ 8 U.S.C. § 1182(a)(7)(A); INA § 212(a)(7)(A).

²⁶ 8 U.S.C. § 1182(a)(9)(B); INA § 212(a)(9)(B).

²⁷ 8 U.S.C. § 1182(a)(5)(A); INA § 212(a)(5)(A).

²⁸ 8 U.S.C. § 1182(a)(4); INA § 212(a)(4).

²⁹ 8 U.S.C. § 1255(h)(2)(B); INA § 245(h)(2)(B).

³⁰ 8 U.S.C. § 1182(a)(2)(D); INA § 212(a)(2)(D).

³¹ 8 U.S.C. § 1182(a)(6)(E); INA § 212(a)(6)(E).

³² 8 U.S.C. § 1182(a)(2)(H); INA § 212(a)(2)(H).

³³ 8 U.S.C. § 1182(a)(3)(F); INA § 212(a)(3)(F).

- Failure to attend removal proceedings,³⁴
- Immigrants subject of civil penalty,³⁵
- Student visa abusers,³⁶
- Nonimmigrants without appropriate documentation,³⁷
- Ineligible for citizenship,³⁸
- Certain individuals previously removed,³⁹
- Unlawfully present after previous immigration violations,⁴⁰
- Certain individuals involved in serious criminal activity who have asserted immunity from prosecution,⁴¹
- Certain health-related grounds of inadmissibility,⁴²
- Foreign government officials who have committed particularly severe violations of religious freedom,⁴³
- Money laundering,⁴⁴
- Membership in a totalitarian party,⁴⁵
- Unqualified physicians,⁴⁶
- Uncertified foreign health care workers,⁴⁷ and
- Miscellaneous grounds (polygamists, unlawful voters etc.).⁴⁸

Grounds of Inadmissibility for That Cannot be Waived for Children Granted SIJS

For other grounds of inadmissibility there is no waiver available based on SIJS. For immigrant children who are in removal proceedings in immigration court who qualify for no other form of relief⁴⁹ from deportation, this would likely lead to child's deportation from the

³⁴ 8 U.S.C. § 1182(a)(6)(B); INA § 212(a)(6)(B).

³⁵ 8 U.S.C. § 1182(a)(6)(F); INA § 212(a)(6)(F).

³⁶ 8 U.S.C. § 1182(a)(6)(G); INA § 212(a)(6)(G).

³⁷ 8 U.S.C. § 1182(a)(7)(B); INA § 212(a)(7)(B).

³⁸ 8 U.S.C. § 1182(a)(8); INA § 212(a)(8).

³⁹ 8 U.S.C. § 1182(a)(9)(A); INA § 212(a)(9)(A).

⁴⁰ 8 U.S.C. § 1182(a)(9)(C); INA § 212(a)(9)(C).

⁴¹ 8 U.S.C. § 1182(a)(2)(E); INA § 212(a)(2)(E).

⁴² 8 U.S.C. § 1182(a)(1); INA § 212(a)(1).

⁴³ 8 U.S.C. § 1182(a)(2)(G); INA § 212(a)(2)(G).

⁴⁴ 8 U.S.C. § 1182(a)(2)(I); INA § 212(a)(2)(I).

⁴⁵ 8 U.S.C. § 1182(a)(3)(D); INA § 212(a)(3)(D).

⁴⁶ 8 U.S.C. § 1182(a)(5)(B); INA § 212(a)(5)(B).

⁴⁷ 8 U.S.C. § 1182(a)(5)(C); INA § 212(a)(5)(C).

⁴⁸ 8 U.S.C. § 1182(a)(10); INA § 212(a)(10).

⁴⁹ Some SIJS eligible children who have been victims criminal activities including but not limited to (domestic violence/child abuse) perpetrated against the child in the United States will qualify to apply for VAWA self-petitioning or U visas which include more generous inadmissibility waivers than are available through the SIJS. For information on which immigrant victims, including children, may be eligible for the U visas. See Leslye E. Orloff, Alisha Lineswala, Benish Anver, Karen Dryhurst & Lucia Macias, *U Visa Certification for Tool Kit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers*, NATIONAL IMMIGRANT WOMAN'S ADVOCACY PROJECT (last updated Nov. 7, 2017), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>. Children may also qualify for and should be screened for other forms of victim based immigration relief. See generally Alexandra Brown & Leslye Orloff, *The Department of Homeland Security's Interactive Infographic on Protections for Immigrant Victims*, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-interactive-infographic-on-protections-for-immigrant-victims-8-29-17/>; DHS Infographic: Protections for Immigrant Victims (January 12, 2017), NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/> (last

United States. The most problematic for SIJS children are inadmissibility grounds related to criminal activity, drugs, and gang activity. Certain grounds of inadmissibility require a conviction or admission of facts that would constitute an admission of guilt,⁵⁰ and do not generally include juvenile adjudications. However, seemingly minor criminal conduct can implicate these grounds of inadmissibility. Even though delinquency adjudications do not generally trigger inadmissibility grounds, the evidence in the record in the delinquency case has the potential to implicate other conduct-based grounds of inadmissibility that are not waivable.

Certain grounds of inadmissibility that cannot be waived are based on criminal convictions, admissions,⁵¹ or on multiple criminal convictions.⁵² Juvenile adjudications and admissions are not convictions that will trigger these grounds.⁵³ Depending on the nature of the state criminal statute, some of these grounds may be triggered even for seemingly minor offenses and consulting with an immigration expert is important. These grounds include:

- Crimes involving moral turpitude,⁵⁴ potentially including theft and shoplifting, domestic violence, child abuse or exploitation,
- Controlled substance conviction or admission (except less than 30 grams of marijuana),⁵⁵ and
- Multiple criminal convictions.⁵⁶

Non-waivable grounds of inadmissibility that are based on conduct alone can be triggered by many parts of a youth's state court record, including documents that are part of the youth's social file or dependency file, as well as any police reports, school reports, or probation reports included in the court records.⁵⁷ Also evidence used to determine suspicion of gang involvement does not need to rise to the level of proof that would be required for a state delinquency adjudication or for a criminal conviction under state law. This evidence may be present even when the evidence in the case was not sufficient to lead to the filing of a juvenile delinquency petition under state law. The most common conduct-based grounds of inadmissibility include inadmissibility of persons:

- For whom there is "reason to believe" the individual is a drug trafficker,⁵⁸

visited Mar. 26, 2018); U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION OPTIONS FOR VICTIMS OF CRIMES (June 30, 2011), <http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes/> (last visited Mar. 26, 2018).

⁵⁰ 8 U.S.C. § 1182(a)(2)(A); INA § 212(a)(2)(A).

⁵¹ 8 U.S.C. § 1182(a)(2)(A); INA § 212(a)(2)(A). There is an exception for crimes involving moral turpitude for acts that were committed before age eighteen and the application for admission was more than five years after any time served. 8 U.S.C. § 1182(a)(2)(A)(ii)(I); INA § 212(a)(2)(A)(ii)(I).

⁵² 8 U.S.C. § 1182(a)(2)(B); INA § 212(a)(2)(B).

⁵³ *Devison-Charles*, 22 B.I.A. 1362 (2000); *M-U-*, 2 B.I.A. 92 (1944).

⁵⁴ 8 U.S.C. § 1182(a)(2)(A)(i)(I); INA § 212(a)(2)(A)(i)(I). However, in addition to the exception for a crime committed under eighteen and more than five years has passed since application for benefit. 8 U.S.C. § 1182(a)(2)(A)(ii)(I); INA § 212(a)(2)(A)(ii)(I). There is an exception for a single petty offense § 1182(a)(2)(A)(ii)(II); INA § 212(a)(2)(A)(ii)(II).

⁵⁵ 8 U.S.C. § 1182(a)(2)(A)(i)(II); INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1255(h)(2)(B); INA § 245(h)(2)(B).

⁵⁶ 8 U.S.C. § 1182(a)(2)(B); INA § 212(a)(2)(B).

⁵⁷ If the child welfare agency does interviews of the adults in the home or teachers and enters that into the record, if the immigration adjudicator access it they will use it. The adjudicator will use any information from any court or agency that they can obtain. This includes information from interagency databases as well; it does not need to come from the court for it to be of use to the adjudicator in making these determinations.

⁵⁸ 8 U.S.C. § 1182(a)(2)(C); INA § 212(a)(2)(C). See JOHN KELLY, U.S. DEP'T OF HOMELAND SECURITY, MEMORANDUM: ENFORCEMENT OF THE IMMIGRATION LAWS TO SERVE THE NATIONAL INTEREST (2017), <https://www.dhs.gov/publication/enforcement-immigration-laws-serve-national-interest>.

- Who entered the United States to engage in unlawful activity⁵⁹ including virtually any gang activity and incidental gang affiliation,⁶⁰ and
- Who are involved in activities relating to terrorism and commission of extrajudicial killing, genocide, or torture.⁶¹

⁵⁹ 8 U.S.C. § 1182(a)(3)(A); INA § 212(a)(3)(A).

⁶⁰ The Department of State uses gang activity to find inadmissibility under 8 U.S.C. § 1182(a)(3)(A)(ii); INA § 212(a)(3)(A)(ii). U.S. DEP'T OF STATE FOREIGN AFFAIRS MANUAL, VOL. 9 – VISAS, 9 FAM 40.31, n.5.3. See JOHN KELLY, U.S. DEP'T OF HOMELAND SECURITY, MEMORANDUM: ENFORCEMENT OF THE IMMIGRATION LAWS TO SERVE THE NATIONAL INTEREST (2017), <https://www.dhs.gov/publication/enforcement-immigration-laws-serve-national-interest>.

⁶¹ 8 U.S.C. § 1182(a)(3)(B); INA § 212(a)(3)(B) (terrorist activities); 8 U.S.C. § 1182(a)(3)(C); INA § 212(a)(3)(C) (serious adverse foreign policy consequences); 8 U.S.C. § 1182(a)(3)(E); INA § 212(a)(3)(E) (participants in Nazi persecutions, genocide or the commission of any act of torture or extrajudicial killing).

**Chapter VII:
Service of Process in State Court:
Cases Seeking Special Immigrant Juvenile Status Findings¹**

By Leslye Orloff
December 29, 2017

As discussed in previous chapters, state court findings for Special Immigrant Juvenile Status (SIJS) are made in state proceedings where judges make determinations regarding child care and custody. As state court proceedings, the law governing who must be served and how service is made is state law. As United States Citizenship and Immigration Services (USCIS) notes:

There is nothing in USCIS guidance that should be construed as instructing juvenile courts² on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.³

The list of persons who must receive service of process in state court proceeding is set by state law and is the same in all matters that come before the court for the type of case filed. Seeking SIJS findings does not create a need to serve any federal government official with copies of proceedings taking place in state courts, including but not limited to: the Office of Refugee Resettlement, the Department of Homeland Security, or an Immigration Judge. After the state court findings are made, federal immigration officials have defined roles in the adjudication of subsequent SIJS immigration petitions filed by eligible immigrant children. USCIS officers will adjudicate the SIJS petition. The application for lawful permanent residence filed by an SIJS eligible child will be adjudicated by either an Immigration Judge or a USCIS officer, depending on the immigration posture of the case. In cases brought in immigration court the government is always represented by ICE Counsel. However, none of these federal players

¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² The definition of “juvenile courts” that controls for purposes of SIJS is the definition under federal immigration laws which include a wide range of state court proceedings fall outside of the limited definition the term “juvenile court” may have under state law. “A juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations about the custody and care of children. The title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.” U.S. Citizenship & Immigration Servs., *Volume 6: Special Immigrant Juveniles Part J*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter1.html> (last visited Mar. 28, 2018), *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, 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/> (last visited Mar. 26, 2018). *See also* 8 CFR 204.11(a) (2018).

³ U.S. Citizenship & Immigration Servs., *Volume 6: Special Immigrant Juveniles Part J*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter1.html> (last visited Mar. 28, 2018); *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (last visited Mar. 26, 2018).

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

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has a role in the state court proceedings regarding care and custody in which SIJS findings are sought, and service to them is not required.

Constitutional due process requires that certain affected individuals be given notice of the proceedings where their rights may be affected. Jurisdictions have widely differing rules regarding who must be served in various types of cases that affect the care and custody of children. State courts also have widely differing rules of what forms of service satisfy due process. These practices and rules are not altered simply because SIJS findings are sought. Service requirements in a matter in which SIJS findings are sought are not any different from the regular service of process that must take place in the underlying proceeding. More pointedly, the presence of federal immigration law related requests in a case and the likelihood of persons not in the United States having an interest in the case, do not change the underlying state nature of the state court proceeding.

For all court cases brought in a state court, the state's relevant service of process rules apply. Many states have specific rules governing extraterritorial service of process. For example, states may allow process to be served outside of the state in the same manner as service is made within the state.⁴ When state service rules require service of process on a party to a proceeding who resides outside of the U.S., this chapter provides an overview of general issues to consider when serving a person residing outside the United States. Judges and practitioners must be familiar with their local service rules and based on those rules, judges must determine the requirements for service of process in the case. Service in most cases will include personal service or service by mail. However, other sources of law regarding service can provide useful guidance and options to ensure that due process is afforded.

Common Forms of Service⁵

The most common form of service of process is to personally deliver a copy of a summons and complaint on the defendant. Generally the person delivering the documents must be over age 18 and not a party to the proceedings. Each jurisdiction will have its rules and nuances related to personal service that apply to all cases that come before the court including proceedings that include requests that the court's order include SIJS findings.

The most common alternative to personal delivery service of process is service by mail. Domestically, service by mail generally is accomplished by sending a summons and a copy of the complaint by registered or certified mail to the party being served, return receipt requested.

In crafting state rules regarding service by mail, many jurisdictions are influenced by and may even incorporate provisions from the following:

⁴ See Mich. Ct. R. §§ 2.103-2.108; N.M. R. Civ. P. 1-004(N) (mirroring Fed. R. Civ. P 4(f) and taking into account the special considerations required by international law).

⁵ It is important to note the information contained in this section describes examples of several service of process options that may be available for use in SIJS cases. State law governs service of process and notice requirements in that apply to each type of state court proceeding. The state laws regarding who must receive notice of court proceedings and how service can be accomplished may differ by the type of state court proceeding. However, the notice and service of process rules to be applied in SIJS cases are the same that apply to the underlying proceeding under state law.

- Federal Rule of Civil Procedure (FRCP) 4
- The 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention)⁶
- The Inter-American Convention on Letters Rogatory and its Additional Protocol (Inter-American Service Convention or IASC)⁷

Each of these sources of law is discussed below. Remember that the extent to which they are applicable or relevant to the interpretation of state requirements of service is determined by state law.

Service under Federal Rules of Civil Procedure

Many countries are not signatories to international treaties that set out service of process agreements between countries including the Hague Service Convention and the Inter-American Service Convention. When that is the case, Rule 4 of the Federal Rules of Civil Procedure, provides a framework for service of process on litigants outside the United States. If a foreign defendant agrees to accept service voluntarily, Rule 4(d) provides for waiver of formal service of process.⁸ Among the different methods available under FRCP 4, litigants should become particularly familiar with the provisions under FRCP 4(f):

(f) Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be served at a place not within any judicial district of the United States:

- (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
- (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

- (A) as prescribed by the foreign country’s law for service in that country in an action in its courts of general jurisdiction;
- (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
- (C) unless prohibited by the foreign country’s law, by:
 - (i) delivering a copy of the summons and of the complaint to the individual personally; or

⁶ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matter, *opened for signature* Nov. 15, 1965, 658 U.N.T.S. 163, <https://treaties.un.org/doc/Publication/UNTS/Volume%20658/volume-658-I-9432-English.pdf> (last visited Mar. 27, 2018).

⁷ U.S. DEP’T OF STATE, INTER-AMERICAN SERVICE CONVENTION AND ADDITIONAL PROTOCOL, <https://travel.state.gov/content/travel/en/legal-considerations/judicial/service-of-process/iasec-and-additional-protocol.html> (last visited Mar. 27, 2018).

⁸ An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. Fed. R. Civ. P. 4(d).

- (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
- (3) by other means not prohibited by international agreement, as the court orders.⁹

Service under the Hague Service Convention

Some state rules incorporate the principles and procedures of the Hague Service Convention. This treaty codifies universally accepted procedures for service of process in civil or commercial matters among the signatories, and eliminates the need to serve process through consular or diplomatic means. Hague service rules only apply in cases in which the address to the person being served is known. If the address for the defendant is not known, litigants are not able to avail themselves of the provisions provided under the Hague Service Convention.

The Hague Service Convention provides three main alternate methods for service:

- Use of the country's designated Central Authority.
- International service by mail.
- Direct service through an agent in the foreign country.

The Service Convention also allows for service through diplomatic or consular channels and for service under the destination state's local rules.

Service through the Central Authority

Article 2 of the Convention requires each signatory to designate a Central Authority to act as the service agent for process served under the Convention. Although service through a Central Authority is not required in many countries, litigants commonly choose to effect service through this method.¹⁰

Article 3 of the Convention states that litigants who want to serve through the Central Authority, must file a formal request form. In the United States litigants file a *Form USM-94*, available at the U.S. Marshals Service.¹¹

Article 5 of The Hague Service Convention requires that initial documents being served must be translated into the official language of the foreign country. Initial documents generally include the summons and the complaint. In light of this translation requirement, it is useful for courts to specifically state which documents the court requires be served.

Time to effectuate service

⁹ Fed. R. Civ. P. 4(f).

¹⁰ U.S. DEP'T OF STATE, JUDICIAL ASSISTANCE COUNTRY INFORMATION, <https://travel.state.gov/content/travel/en/legal-considerations/judicial/country.html> (last visited Mar. 27, 2018).

¹¹ U.S. DEP'T OF JUSTICE, REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS, <https://www.usmarshals.gov/district/la-e/general/usm94.pdf> (last visited Mar. 27, 2018).

The Convention does not give a time frame for service. However, Article 15 provides that alternative methods of service may be used if a Central Authority does not respond within six months of a request for service. Because the Convention does not provide a time for making service under its procedures, the Federal Rules of Civil Procedure 4(m) exempts service in a foreign country from the normal requirement that a summons and complaint be served within 120 days after commencing the action. But, a court may dismiss a case for failure to serve a foreign defendant within a reasonable time.

Service by mail

Article 10(a) of the Hague Service Convention preserves the right of litigants to effect service between signatory countries through mail, provided that the country of destination does not object. In *Water Splash, Inc. v. Menon*, the United States Supreme Court held that service by mail is permitted when:

- (a) the receiving country has not objected to service by mail; and (b) service by mail is authorized under otherwise applicable law.¹²

When a party will be attempting service by mail, best practice is to serve by registered mail. The US Post Office has a manual that lists countries that provide for registered mail service.¹³

Courts should be aware that service by mail has potential risks. It is possible that mail may not get delivered, or that mail is lost or misdirected, so a defendant may be able to vacate a default judgment if he is able to prove lack of delivery of mail.

Translation of Documents

According to Article 5 of the Hague Service Convention, papers must be translated into the official language of the foreign country if serving through a Central Authority. Standard practice is to have at least the summons and complaint translated. Otherwise, the defendant may be able to successfully argue that he did not receive fair notice of the lawsuit.

Service through diplomatic channels

Article 8 of the Hague Service Convention authorizes a contracting state to use its consular or diplomatic agents to serve judicial documents on persons located abroad. Article 9 authorizes contracting states to use consular or diplomatic channels to forward documents to the authorities of another Hague Service Convention participating country for service. However, US litigants rarely use this option because officers of the US Foreign Service are normally prohibited from serving process or legal papers or appointing other persons to do so.

Service under local rules

¹² *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504 (2017).

¹³ U.S. POSTAL SERV., INTERNATIONAL MAIL MANUAL: INDEX OF COUNTRIES AND LOCALITIES, <https://pe.usps.com/text/imm/immctry.htm> (last visited Mar. 27, 2018).

Article 11 of The Hague Service Convention provides that participating countries may allow judicial documents to be served by any means whether or not they are specifically set out by the Convention. Article 19 provides that the Convention does not affect a contracting country's internal laws permitting foreign documents to be served within that state by methods other than those set out in the Convention.

Service under the Inter-American Service Convention (IASC)

The IASC is an important supplement to The Hague Service Convention particularly when the defendants are located in Central and South America.¹⁴ A party makes a request for service under the IASC by completing an official Form *USM-272* and *272A*, available at the U.S. Marshals Office.¹⁵ The request consists of an original and two copies of the forms, and three copies of the summons and complaint and any other documents that court requires be served.

Letters Rogatory

Article 3 of the Additional Protocol to The Hague Service Convention and Article XX of the IASC both specify that "letters rogatory" must be prepared as part of the request to serve internationally. The United States has determined that Forms *USM-272/272A*¹⁶ satisfy this requirement, and that a separate, formal letter rogatory is not required. However, the IASC requires the form to bear the seal and signature of the clerk of the court from which the process issues, as well as the signature and stamp of the Central Authority of the country in which the court sits.

Translation and Service by mail

All documents must be translated to be able to serve under the IASC. The IASC does not provide for service by mail.

¹⁴ U.S. DEP'T OF STATE, INTER-AMERICAN SERVICE CONVENTION AND ADDITIONAL PROTOCOL, <https://travel.state.gov/content/travel/en/legal-considerations/judicial/service-of-process/iasc-and-additional-protocol.html> (last visited Mar. 27, 2018) (currently in force in Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela).

¹⁵ U.S. DEP'T. OF JUSTICE, REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS PURSUANT TO THE ADDITIONAL PROTOCOL TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY, <https://www.usmarshals.gov/process/usm272.pdf> (last visited Mar. 27, 2018).

¹⁶ U.S. DEP'T. OF JUSTICE, REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS PURSUANT TO THE ADDITIONAL PROTOCOL TO THE INTER-AMERICAN CONVENTION ON LETTERS ROGATORY, <https://www.usmarshals.gov/process/usm272.pdf> (last visited Mar. 27, 2018).

**Appendix A:
Statutory Provisions Related to Special Immigrant Juvenile Status¹**

By Alina Husain and Leslye E. Orloff

December 19, 2017

Introduction:

Special Immigrant Juvenile Status (SIJS) was created in 1990 and then changed over the years through efforts of Congress to offer protection to a great number of immigrant children who have suffered abuse, abandonment or neglect by a parent. Once Congress passes an immigration law, the U.S. Department of Homeland Security issues implementing regulations that authorize individuals to apply for immigration relief under that law. In many instances after an initial set of regulations is issued, when Congress acts to amend the statute, the DHS regulations process can fall behind and often will not keep up with the statutory amendments. When this occurs the regulations issued prior to the subsequent statutory amendments will be superseded by the new law changes. When there is a conflict between the statute and the regulations issued prior to the passage of the statutory amendments, the language of the statute prevails. To address this issue the United States Citizenship and Immigration Services (USCIS) will issue policy memoranda that implement the new law changes. These policy manuals, guides, and/or memorandums provide guidance to USCIS adjudicators and to the field implementing the statutory changes.

SIJS is one of several areas of immigration law² in which the Immigration and Nationality Act statute has overruled and superseded many parts of the SIJS regulations. This Appendix provides courts easy access to the SIJS statute, USCIS implementing policies and those portions of the USCIS regulations that have not been superseded by statute.

SIJS Statutes

Immigration and Naturalization Act, § 101(a)(27)(J) (codified at 8 U.S.C. § 1101(a)(27)(J).)

(a) As used in this chapter—

...

(27) The term “special immigrant” means—

...

(J) an immigrant who is present in the United States—

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² These same inconsistencies between the statute and the regulations occur in many areas of immigration law including implementation of the Violence Against Women Act and the Trafficking Victims Protection Act. *See*, Leslye Orloff and Benish Anver, *Current State of Violence Against Women Act and Trafficking Victims Protection Act Implementing Regulations and Policies*, NIWAP (Feb. 13, 2013), <http://niwaplibrary.wcl.american.edu/pubs/state-vawa-regs-policies/>.

located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
 - (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
 - (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter...

Immigration and Naturalization Act, § 245(h) (codified at 8 U.S.C. 1255)

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

...

(h)APPLICATION WITH RESPECT TO SPECIAL IMMIGRANTS In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title—

- (1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and
- (2) in determining the alien's admissibility as an immigrant—
 - (A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply; and
 - (B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien’s natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

SIJS Regulations

Many of the SIJS regulations issued in 1991, 1993 and 2007 have been largely superseded by the statutory amendments made to the Special Immigrant Juvenile Status statutes as part of the Trafficking Victims Protection and Reauthorization Act of 2008.³ The following provisions of the SIJS regulations that were not superseded by the statute and are still legally binding.

United States Citizenship and Immigration Service Policies

On March 24, 2009, Donald Neufeld, Acting Associate Director of Operations and Pearl Chang, Acting Chief of the Office of Policy and Strategy at the Department of Homeland Security’s (“DHS”) United States Citizenship and Immigration Services (“USCIS”) issued a memorandum to field leadership on the Special Immigrant Juvenile Status Provisions of the Trafficking Victims Protection Reauthorization Act of 2008.⁴ The memorandum sought to offer guidance to immigration services offers based on updates on legislations that would affect the adjudication of SIJS applications. The text of the memorandum is attached in Appendix C – USCIS, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*.

USCIS also released a Policy Manual, updated on August 23, 2017, that addresses SIJS and is a useful tool for individuals working with SIJS petitions, particularly in the absence of legally binding regulations. The August 23, 2017 update of the USCIS Policy Manual can be found in Appendix D1- *USCIS Policy Manual – Volume 6, Part J, Special Immigrant Juvenile Status* and Appendix D2 – *USCIS Policy Manual – Volume 7, Part F, Chapter 7 Adjustment of Status, Special Immigrant Juveniles*.⁵

³ See Pub. L. No. 110-457, 122 Stat. 5044 (2008).

⁴ *Appendix C: USCIS Memo on Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, 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), http://niwaplibrary.wcl.american.edu/pubs/appendix-c-tvpra_sij-neufeld-memo-03-24-2009/.

⁵ USCIS periodically updates this policy manual. Updates can be found in two locations on the USCIS website. U.S. Citizenship & Immigr. Servs., USCIS Policy Manual, Vol. 6 – Immigrants, Part J – Special Immigrant Juveniles (last updated Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html> [hereinafter USCIS Policy Manual]. U.S. Citizenship & Immigr. Servs., USCIS Policy Manual, Vol. 7 – Adjustment of Status, Part F – Special Immigrant-Based (EB-4) Adjustment (last updated Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html>; SIJS Bench Book, Appendix D1, *USCIS Policy Manual*, Chapter 7: Special Immigrant Juveniles. Since the structure of the manual on the USCIS website makes citation to specific pages of the policy manual difficult, the authors have downloaded the portions of the manual that address SIJS cases and have compiled them into a single document included as Appendix D1 and D2. This facilitates more precise page citations to sections of the USCIS Policy Manual that will be used throughout this Bench Book.

Appendix B:**Special Immigrant Juvenile Status Legislative History¹**

By: Kavel Joseph, Kendall Niles, Tolulope Adetayo, and Leslye E. Orloff

December 19, 2017

Special Immigrant Juvenile Status in the Context of Humanitarian Protections for Victims

Many children arriving in the United States may have been victims of violence in their home countries, during their journey to the U.S., and/or after their arrival. Children arriving in the United States are very susceptible to various forms of violence, including child abuse, child sexual exploitation, incest, dating violence, domestic violence sexual assault, and human trafficking.² Between 1990 and 2013 a wide range of humanitarian forms of immigration relief were created by Congress to offer help, protection, and a path to lawful permanent residence for immigrant crime victims and children.

Depending on the circumstances, children and teens may be eligible for immigration relief through VAWA Self-Petitions, Special Immigrant Juvenile Status (SIJS), U visa for immigrant crime victims, T visa for trafficking victims or asylum. It is important for state courts responding to requests for SIJS findings in court orders addressing the care, custody and placement of children to understand the evolution of the protections that SIJS offers. The legislative history described in this Appendix provides courts important legally correct information about current SIJS statutes and their evolution countering myths and misconceptions about the SIJS program.

SIJS was original created by Congress in 1990 as part of the Immigration and Nationality Act. The Act created this category as a way to assist foreign born children who have been abused, neglected or abandoned. The law has evolved over time to offer protection for a broader range of needy immigrant children who have suffered abuse, abandonment or neglect perpetrated by a parent. This evolution provides more types of circumstances of immigrant child victims than was originally contemplated at the time of the promulgation of the original law. This Appendix discusses the legislative history and the evolution of SIJS statutory protections.

Legislative History of SIJS*The Immigration & Nationality Act – 1990*

In 1990, Congress included SIJS as one of the forms of immigration relief included in the Immigration and Nationality Act (INA). SIJS was created as a form of relief for undocumented or foreign born children living in the United States who had been abused, neglected, or

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² *Review of the President's Emergency Supplemental Request for Unaccompanied Children and Related Matters: Hearing on S. 272 DHS Appropriations Bill before the S. Comm. on Appropriations*, 113th Cong. (2014) (statements of Jeh Johnson, Sec. of Dept. of Homeland Security, and Sen. Dick Durbin).

abandoned. Immigrant children in long term foster care were the first group of immigrant children whom the original statute made eligible for SIJS.

To qualify under the original statute, the following requirements had to have been met:

- State juvenile court had to declare the petitioner dependent on the court;
- The court had to deem the individual eligible for long term foster care;
- The court had to determine that it was not in the petitioner's best interest to return to his home country.³

*Miscellaneous and Technical Immigration and Nationality Amendments of 1991*⁴

In 1991, the INA was amended recognizing that SIJS children need a path to lawful permanent residence as an important part of the relief from abuse, abandonment and/or neglect. Access to lawful permanent residence enhances stability for SIJS eligible children. These 1991 Congressional amendments made the following changes in the SIJS program:

- Children whose SIJS applications had been approved were to be considered paroled into the United States so that they could file to adjust their immigration status and receive lawful permanent residence.
- Foreign national children cannot apply for admission or be admitted to the United States in order to obtain SIJS. Immigrant children must be in the United States at the time that the child applies for SIJS.

*The Immigration and Nationality Technical Corrections Act of 1994*⁵

The amendments of 1994 expanded eligibility for SIJS to additional groups of immigrant children. Following the 1994 amendments to qualify for SIJS an immigrant children would need to meet one of the following criteria:

- The immigrant child was declared dependent on a juvenile court; or
- A court had legally committed to, or placed under the custody of, a state agency or department.

The 1998 Appropriation Act

Congress amended the law as part of the *Departments of Commerce, Justice and State, the Judiciary, and Related Agencies 1998 Appropriations Act*⁶ to more closely connect the ability for immigrant children to receive SIJS to the abuse, abandonment or neglect the child suffered and to require federal immigration authorities' involvement when the immigrant child is in federal government custody. The 1998 amendments did the following:⁷

³ Immigration and Nationality Act of 1965, Pub. L. No. 101-649, § 153(a)(3), 104 Stat. 4978, 5005-06 (1990).

⁴ Pub. L. No. 102-232, 105 Stat. 1733.

⁵ Pub. L. No. 103-416, 108 Stat. 4305.

⁶ Pub. L. No. 105-119, § 113, 111 Stat. 2440, 2460 (1997).

⁷ 3-35 CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR, & RONALD Y. WADA, IMMIGRATION LAW AND PROCEDURE § 35.09 (2017).

- Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment
- Provided that children are eligible for SIJS only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the federal immigration authorities granting the child SIJS
- Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court's jurisdiction

Reauthorization of the Violence Against Women Act -2005

Prior to 2005, it was a common practice for immigration officials, immigration enforcement agencies and government officials to directly contact the child's abusive parent or parents (or family member of the alleged abuser) during the investigation and adjudication of an abused immigrant child's SIJS case. Contacting a child's parent and/or family members who had been involved in perpetrating or covering up the abuse, abandonment or neglect the child experience jeopardized the safety of the immigrant child. Perpetrating parents were often not cooperative and used the facts they learned to further harm their victims. Congress amended the SIJS statute in the Violence Against Women Act of 2005⁸ to stop these practices and improve the ability of abused, abandoned or neglected SIJS children to safely apply for SIJS. The Bi-Partisan House legislative history states that:

Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings....These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims...This Committee wants to ensure that immigration enforcement agents and government officials do not initiate contact with abusers, call abusers as witnesses or rely on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence.⁹

This statutory change ensured that any immigrant child who had been abused, neglected or abandoned could no longer be compelled to contact the alleged abuser at any stage of applying for SIJS.¹⁰ In furtherance of the amendment, the Department of Homeland Security issued a policy implementing VAWA 2005 SIJS provisions.¹¹ The implementing memo directed DHS officers not to contact SIJS applicant children's parents about the SIJS application or any details of the abuse. Findings regarding the abuse were to be made instead by the state court judges

⁸ Pub. L. No. 109-162, § 826, 119 Stat. 2960, 3065-66 (amending 8 U.S.C. § (1965)).

⁹ 146 Cong. Rec. H9,046 (2000), at 126, H.R. REP.NO. 109-233.

¹⁰ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 826, 119 Stat. 2960, 3065-66.

¹¹ Memorandum from Donald Neufeld, Acting Associate Director of Domestic Operations, & Pearl Chang, Acting Chief of Office of Policy and Strategy to Field Leadership, U.S. Dept. of Homeland Security (March 24, 2009) ("During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law."),

<http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISMemoTVPRA2008-03.04.09.pdf>.

with expertise on child welfare matters who would be issuing the state court predicate orders that are a prerequisite to a child's ability to file an SIJS application. State court judges have the requisite expertise in working sensitively with traumatized children.

The Trafficking Victims Protection and Reauthorization Act of 2008

On December 23, 2008, the William Wilberforce Trafficking Victim Protection Reauthorization Act of 2008 (TVPRA) further amended the SIJS law making significant changes to both the substantive and procedural requirements for eligibility for SIJS.¹² The amendments contained in TVPRA 2008 were designed to promote healing, security, and stability for immigrant children who have been abused, abandoned, or neglected by one or both of their parents. Prior eligibility requirements limited SIJS relief to immigrant children who has suffered harm from both of their parents in the form of abuse, abandonment or neglect.

In one of its most significant amendments, TVPRA allows immigrant children who were abused, abandoned or neglected by one of their parents to apply for SIJS immigration relief while continuing to live with the child's caregiving non-abusive parent. The TVPRA amendments were designed to offer immigrant children the immigration protection they needed without requiring the child be placed in a state or federal institution or foster care system. Children who were living with a primary caretaker, nurturing, non-abusive parent or guardian who was helping the child heal from the trauma the child had experienced, could file for and receive SIJS based on abuse, abandonment, or neglect by only of the child's parents.¹³ Children who had suffered these harms perpetrated by both of their parents also continued to be eligible for SIJS.¹⁴ This amendment allows for abused, abandoned or neglected immigrant children to remain in loving and stable home environments while maintaining SIJS eligibility.

Until 2008 in order to qualify for SIJS the applicant must have been deemed eligible for long-term foster care by a juvenile court.¹⁵ This option places the child's non-abusive caregiving parent in the position of having to surrender their immigrant child to long-term foster care for the child to receive the humanitarian protections offered by SIJS. For immigrant child trauma survivors who have suffered abuse, abandonment or neglect by a parent to avoid removal to a home country where they had no safe caregivers, the child had to be subjected to the additional trauma of separation from their nurturing parent or guardian. This placed immigrant children and their protective parent, guardian and other supportive care providers who under State law would be granted custody or guardianship of the child in the child's best interest in the untenable position of having to choose between options that were antithetical to the child's best interests.

¹² Pub. L. No. 110-457, 122 Stat. 5044 § 235(d) (2008).

¹³ See Policy Memorandum, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement*, U.S. CITIZENSHIP AND IMMIGRATION SERVICE, (June 25, 2015), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf.

¹⁴ See Policy Memorandum, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement*, U.S. CITIZENSHIP AND IMMIGRATION SERVICE, (June 25, 2015), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf.

¹⁵ Immigration Act of 1990, Pub. L. No. 101-649, § 153(a)(3), 104 Stat. 4978, 5005-06 (1990).

This approach was inconsistent with the outcomes called for under state child's best interests' laws, best practices and research on the needs of children who were victims of child abuse, abandonment or neglect or of witnessing domestic violence at home. State family laws prohibit or discourage placement of a child in the custody of perpetrators of domestic violence perpetrators and instead encourage courts to award custody to the non-abusive protective parent.¹⁶ State family courts recognize that the best interests of children who suffer or witness abuse in the home is best served by placing the child in the care of a protective non-abusive parent or guardian rather than placing the child in foster care.¹⁷ State family courts play a significant role in intervening to mitigate the harms children suffer at the hands of their parents and court intervention can mean the difference between a child merely surviving or thriving.¹⁸

¹⁶ Men who perpetrate domestic violence against their intimate partners who are the mothers of their children parent differently from non-abusive men. See Jeffrey L. Edelson, *Children's Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839 (1999); *Behind Closed Doors: The Impact of Domestic Violence on Children*, U.N. CHILDREN'S FUND (2006), <http://www.unicef.org/protection/files/BehindClosedDoors.pdf>; see Rashida Manjoo, *Violence Against Women in the U.S. and the State's Obligation to Protect: Civil Society Briefing Papers on Community, Military and Custody Submitted to the United Nations Special Rapporteur on Violence Against Women*, Rashida Manjoo in Advance of her Mission to the U.S. of America January 24 – February 7, 2011 (2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf?OpenElement> (citing PETER G. JAFFE, DAVID A. WOLFE, & SUSAN KAYE WILSON, CHILDREN OF BATTERED WOMEN (1990)). Perpetrators of domestic violence are less involved with their children and use parenting practices that are harmful to their children including spanking, shaming and displays of anger. George W. Holden & Kathy L. Ritchie, *Linking Extreme Marital Discord, Child Rearing, and Child Behavior Problems: Evidence from Battered Women*, 62 CHILD DEVELOPMENT 311, 321 (1991); George W. Holden, Joshua D. Stein, Kathy L. Ritchie, Susan D. Harris & Earnest N. Juries, *Parenting Behaviors and Beliefs of Battered Women*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH AND APPLIED ISSUES, 185 (George W. Holden, et al. eds., 1998), cited with approval in Manjoo, *supra* note 45. Abusive men do not serve as role models for healthy relationships and conflict resolution in relationships. See generally R. LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (2002); A.A. Levendosky & S.A. Graham-Bergmann, *Mothers' Perceptions of the Impact of Abuse on Their Parenting*, 6 VIOLENCE AGAINST WOMEN 247-71 (2000).

¹⁷ See H. Lien Bragg, *Child Protection in Families Experiencing Domestic Violence*, U.S. DEP'T OF HEALTH AND HUM. SERVS., ADMIN. FOR CHILD. & FAMS. 35 (2003), <https://www.childwelfare.gov/pubpdfs/domesticviolence.pdf> (issuing guiding principles for child protective services workers that recognize that offering protection to domestic violence victims, enhances protection for children and has the benefit in domestic violence cases of keeping children with their non-abusive parent).

The following guiding principles can serve as a foundation for child protection practice with families when domestic violence has been confirmed. The safety of abused children often is linked to the safety of the adult victims. By helping victims of domestic violence secure protection, the well-being of the children also is enhanced. Perpetrators of domestic violence who abuse their partner also emotionally or psychologically harm their children, even if the children are not physically or sexually harmed. Identifying and assessing domestic violence at all stages of the child protection process is critical in reducing risks to children. It is important to understand potential effects of domestic violence to children beyond those that are physical in nature. If the family's circumstances are clear and it is appropriate, every effort should be made to keep the children in the care of the non-offending parent. Supportive, non-coercive, and empowering interventions that promote the safety of victims and their children should be incorporated in child protection efforts. Once domestic violence has been substantiated, the perpetrators must be held solely responsible for the violence while receiving interventions that address their abusive behaviors. CPS must collaborate with domestic violence programs and other community service providers to establish a system that holds abusers accountable for their actions.

¹⁸ See Linda Burgess Chamberlain, *The Amazing Brain: Trauma and the Potential for Healing* http://www.instituteforsafefamilies.org/sites/default/files/isfFiles/The_Amazing_Brain-2.pdf (providing an overview of how trauma affects the brain development of children and youth, discusses the actions that can be taken to make a difference and highlights how intervention at all ages improves outcomes for children and youth and provides links to excellent resources on the latest research and supportive strategies); see also, *Appendix E: Understanding the Significance of a Minor's Trauma History in Family Court Proceedings*, 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), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

After the enactment of TVPRA 2008, a non-abusive immigrant parent whose child was abused could take the child, flee the abusive home, and the child could remain in the nurturing care of the non-abusive parent and could be eligible to pursue SIJS protection. By basing SIJS eligibility in abuse, abandonment or neglect by either one **or** both parents, the TVPRA 2008 amendment promoted consistency with State laws that direct courts to issue orders that promote safety and healing from trauma as a crucial step in promoting the best interests of children. The TVPRA 2008 amendment helped keep SIJS eligible children out of long-term foster care and opened up more stable options for abused, abandoned or neglected immigrant children with a range of possible supportive care providers.

Since the amendments no longer required the child that a child be placed into long-term foster care to qualify for SIJS, a child could qualify without any termination of parental rights of the abusive parent. As a result of the TVPRA 2008 amendments, if a child has one abusive parent and one protective parent, the court may find that reunification between the abusive parent and the child is not viable due to abuse, while granting physical and legal custody to the non-abusive parent.

Each of the significant changes made by the TVPRA of 2008 to SIJS are listed below:¹⁹

- Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that a state court with jurisdiction over the child's care, custody or placement find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law;²⁰
- Expanded eligibility to include children whom a state court has placed under the custody of an individual person or an entity chosen by state court;²¹
- Provided age-out protections so that SIJS could not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJS petition, regardless of the SIJS petitioner's age at the time of adjudication;²²
- Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJS status by DHS instead of expressly consenting to the state court order;²³
- Altered the "specific consent" function for children who are in federal custody²⁴ by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary the Department of Homeland Security;²⁵

¹⁹ See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d), 122 Stat. 5044 (2008).

²⁰ Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act of 1965, Pub. L. No. 89-236, § 101(a)(27)(J)(i), 79 Stat. 911; 8 U.S.C. § 1101(a)(27)(J)(i).

²¹ Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(i); 8 U.S.C. § 1101(a)(27)(J)(i) (this can be custody or placement in a wide variety of state court proceedings in which family, juvenile, probate or other state courts issue court orders regarding the custody, care or placement of children).

²² Trafficking Victims Protection Reauthorization Act § 235(d)(6).

²³ Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(iii)(I); 8 U.S.C. § 1101(a)(27)(J)(iii)(I) (this amendment eliminates the need for any federal government agency involvement or service in the state court proceeding in which the immigrant child is seeking SIJS findings).

²⁴ Usually federal foster care.

Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(iii)(I); 8 U.S.C. § 1101(a)(27)(J)(iii)(I).

- Added a timeframe for adjudication: USCIS shall adjudicate SIJS petitions within 180 days of filing.²⁶

These amendments had the effect of following best practices in the field that aim to promote placement of children with family members or other care providers whom state courts determined it was in the child's best interests.²⁷ Children who are able to remain with family members or other familiar and caring guardians are better able to adjust to their settings and are less likely to face behavioral problems.²⁸

²⁶ Trafficking Victims Protection Reauthorization Act § 235(d)(2).

²⁷ See *Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families*, THE ANNIE E. CASEY FOUNDATION (January 1, 2012), <http://www.aecf.org/resources/stepping-up-for-kids/> (reporting that “extended family members and close family friends care for more than 2.7 million children in this country, an increase of almost 18 percent over the past decade.”).

²⁸ See *Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families*, THE ANNIE E. CASEY FOUNDATION (January 1, 2012), <http://www.aecf.org/resources/stepping-up-for-kids/>.



HQOPS 70/8.5

Memorandum

TO: Field Leadership

FROM: Donald Neufeld /s/
Acting Associate Director
Domestic Operations

Pearl Chang /s/
Acting Chief
Office of Policy & Strategy

DATE: March 24, 2009

SUBJECT: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions

1. Purpose

This memorandum will inform immigration service officers working Special Immigrant Juvenile (SIJ) petitions about new legislation affecting adjudication of petitions filed for SIJ status.

2. Background

On December 23, 2008, the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA 2008 amends the eligibility requirements for SIJ status at section 101(a)(27)(J) of the Immigration and Nationality Act (INA), and accompanying adjustment of status eligibility requirements at section 245(h) of the INA. Most SIJ provisions of the TVPRA 2008 take effect March 23, 2009, although some provisions took effect on December 23, 2008, the date of enactment of the TVPRA 2008.

3. Field Guidance

Eligibility for Special Immigrant Juvenile Status

The TVPRA 2008 amended the definition of a “Special Immigrant Juvenile” at section 101(a)(27)(J) of the INA in two ways. First, it expanded the group of aliens eligible for SIJ status. An eligible SIJ alien now includes an alien:

- who has been declared dependent on a juvenile court;
- whom a juvenile court has legally committed to, or placed under the custody of, an agency or department of a State; or
- who has been placed under the custody of *an individual or entity appointed by a State or juvenile court.*

Accordingly, petitions that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian now may be eligible. In addition, section 235(d)(5) of the TVPRA 2008 specifies that, if a state or an individual appointed by the state is acting *in loco parentis*, such a state or individual is not considered a legal guardian for purposes of SIJ eligibility.

The second modification made by the TVPRA 2008 to the definition of special immigrant juvenile concerns the findings a juvenile court must make in order for a juvenile court order to serve as the basis for a grant of SIJ status. Previously, the juvenile court needed to deem a juvenile eligible for long term foster care due to abuse, neglect or abandonment. Under the TVPRA 2008 modifications, the juvenile court must find that the juvenile’s *reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.* In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. If a juvenile court order includes a finding that reunification with one or both parents is not viable due to *a similar basis found under State law*, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment. Officers should ensure that juvenile court orders submitted as evidence with an SIJ petition filed on or after March 23, 2009, include this new language.

A petitioner is still required to demonstrate that he or she has been the subject of a determination in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.

Age Requirements

Section 235(d)(6) of the TVPRA 2008 provides age-out protection to SIJ petitioners. As of December 23, 2008, if an SIJ petitioner was a “child” on the date on which an SIJ petition was properly filed, U.S. Citizenship and Immigration Services (USCIS) cannot deny SIJ status to anyone, regardless of the petitioner’s age at the time of adjudication. *Officers must now consider the petitioner’s age at the time of filing to determine whether the petitioner has met the age requirement.* Officers must not deny or revoke SIJ status based on age if the alien was a child on

the date the SIJ petition was properly filed if it was filed on or after December 23, 2008, or if it was pending as of December 23, 2008. USCIS interprets the use of the term “child” in section 235(d)(6) of the TVPRA 2008 to refer to the definition of child found at section 101(b)(1) of the INA, which states that a child is an unmarried person under 21 years of age. The SIJ definition found at section 101(a)(27)(J) of the INA does not use the term “child,” but USCIS had previously incorporated the child definition at section 101(b)(1) of the INA into the regulation governing SIJ petitions.

Consent

The TVPRA 2008 also significantly modifies the two types of consent required for SIJ petitions.

Consent to the grant of SIJ status (previously express consent)

The TVPRA 2008 simplified the “express consent” requirement for an SIJ petition. *The Secretary of Homeland Security (Secretary) must consent to the grant of special immigrant juvenile status.* This consent is no longer termed “express consent” and is no longer consent to the dependency order serving as a precondition to a grant of SIJ status.

The consent determination by the Secretary, through the USCIS District Director, is an acknowledgement that the request for SIJ classification is bona fide. This means that the SIJ benefit was not “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” See H.R. Rep. No. 105-405, at 130 (1997). An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.

Specific consent

The TVPRA 2008 completely altered the “specific consent” function for those juveniles in federal custody. The TVPRA 2008 vests this function with the Secretary of Health and Human Services (HHS) rather than the Secretary of the Department of Homeland Security as previously delegated to Immigration and Customs Enforcement (ICE). In addition, Congress simplified the language to refer simply to “custody,” not actual or constructive custody, as was previously delineated. However, the requirement remains that an SIJ petitioner need only seek specific consent if the SIJ petitioner seeks a juvenile court order determining or altering the SIJ petitioner’s custody status or placement. If an SIJ petitioner seeks to obtain or obtains a juvenile court order that makes no findings as to the SIJ petitioner’s custody status or placement, the SIJ petitioner is not required to have sought specific consent from HHS. Therefore, on or after March 23, 2009, *officers must ensure that juveniles in the custody of HHS obtained specific consent from HHS to juvenile court jurisdiction where the juvenile court order determines or alters the juvenile’s custody status or placement.* USCIS will provide HHS guidance regarding adjudications of specific consent as soon as it is available.

Due to the complex nature and changing requirements of specific consent determinations, USCIS Headquarters (HQ) is temporarily assisting in making the determination on specific consent

requirements. As outlined in the February 20, 2009 guidance email, Field Officers are instructed to forward certain documents to HQ for those SIJ petitions that may involve specific consent that are filed prior to March 23, 2009. HQ will notify the Field Office of the decision on specific consent. The Field Office will then complete adjudication of the petition. This temporary guidance providing HQ assistance with specific consent determinations will remain in effect until further notice.

Expeditious Adjudication

Section 235(d)(2) of the TVPRA 2008 *requires USCIS to adjudicate SIJ petitions within 180 days of filing.* Field Offices need to be particularly aware of this new requirement and take measures locally to ensure timely adjudication. Officers are reminded that under 8 CFR 245.6 an interview may be waived for SIJ petitioners under 14 years of age, or when it is determined that an interview is unnecessary. Eliminating unnecessary interviewing of SIJ petitioners may help in expeditiously adjudicating petitions. Necessary interviews should be scheduled as soon as possible. During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law. Under no circumstances can an SIJ petitioner, at any stage of the SIJ process, be required to contact the individual (or family members of the individual) who allegedly abused, abandoned or neglected the juvenile. This provision was added by the Violence Against Women Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006) and is incorporated at section 287(h) of the INA. Officers must ensure proper completion of background checks, including biometric information clearances and name-checks.

Adjustment of Status for Special Immigrant Juveniles

The TVPRA 2008 amends the adjustment of status provisions for those with SIJ classification at section 245(h) of the INA, to include four new exemptions. Approved SIJ petitioners are now exempted from seven inadmissibility grounds of the INA:

- 212(a)(4) (public charge);
- 212(a)(5)(A) (labor certification);
- *212(a)(6)(A) (aliens present without inspection);*
- *212(a)(6)(C) (misrepresentation);*
- *212(a)(6)(D) (stowaways);*
- 212(a)(7)(A) (documentation requirements); and
- *212(a)(9)(B) (aliens unlawfully present).*

On or after March 23, 2009, none of the above listed grounds of inadmissibility shall apply to SIJ adjustment of status applicants.

Officers are reminded that this list of exemptions is in addition to the waivers available for most other grounds of inadmissibility for humanitarian purposes, family unity, or otherwise being in the public interest. The only unwaivable grounds of inadmissibility for SIJ petitioners are those listed at INA 212(a)(2)(A)-(C) (conviction of certain crimes, multiple criminal convictions, and

USCIS Policy Manual

Current as of August 23, 2017

Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 1 - Purpose and Background

USCIS periodically updates this policy manual. Updates can be found in two locations on the USCIS website. Volume 6 -- Immigrants, Part J – Special Immigrant Juveniles is available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>. Volume 7 – Adjustment of Status, Part F – Special Immigrant-Based (EB-4) Adjustment, Chapter 7 – Special Immigrant Juveniles if available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html>. Since the structure of the manual on the USCIS website makes citation to specific pages of the policy manual difficult. The authors have downloaded the portions of the manual that address SIJS cases and have compiled them into a single document included as Appendix D. This facilitates more precise page citations to sections of the USCIS Policy Manual that will be used throughout this Bench Book.

A. Purpose

Congress initially created the special immigrant juvenile (SIJ) classification to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care. This protection evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. While there is no longer a requirement that a child be found eligible for long-term foster care, a juvenile court finding that reunification with one or both parents is not viable is still required for SIJ classification. ^[1]

Children in a variety of different circumstances may be eligible for SIJ classification, including but not limited to:

- Children who have been abused prior to their arrival in the United States, or while in the United States;
- Children in federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Unaccompanied Children’s Services Program; ^[2] or
- Children in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of a person or entity appointed by a state or juvenile court.

B. Background

Congress first established the SIJ immigrant visa classification in 1990. Since then, Congress has enacted several amendments. The table below provides an overview of major legislation related to SIJ classification.

Special Immigrant Juvenile Classification: Acts and Amendments	
Acts and Amendments	Key Changes
The Immigration Act of	<ul style="list-style-type: none"> • Established an SIJ classification for children declared dependent upon a juvenile court in the United States,

1990 [3]	eligible for long-term foster care, and for whom it would not be in their best interest to return to their country of origin
Miscellaneous and Technical Immigration and Nationality Amendments of 1991 [4]	<ul style="list-style-type: none"> • Provided that children with SIJ classification were considered paroled for the purpose of adjustment of status to lawful permanent residence • Provided that foreign national children cannot apply for admission or be admitted to the United States in order to obtain SIJ classification
The Immigration and Nationality Technical Corrections Act of 1994 [5]	<ul style="list-style-type: none"> • Expanded eligibility from those declared dependent on a juvenile court to children whom such a court has legally committed to, or placed under the custody of, a state agency or department
The 1998 Appropriations Act [6]	<ul style="list-style-type: none"> • Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment • Provided that children are eligible only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the grant of status • Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court's jurisdiction
Violence Against Women Act of 2005 [7]	<ul style="list-style-type: none"> • Prohibited compelling an SIJ petitioner to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for SIJ classification
The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) [8]	<ul style="list-style-type: none"> • Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law • Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court

- Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner’s age at the time of adjudication
- Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order
- Altered the “specific consent” function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary of the Department of Homeland Security
- Added a timeframe for adjudication: USCIS shall adjudicate SIJ petitions within 180 days of filing

C. Legal Authorities

- [INA 101\(a\)\(27\)\(J\)](#); [8 CFR 204.11¹⁹¹](#) – Special immigrant status for certain children declared dependent on a juvenile court (special immigrant juvenile)
- [INA 203\(b\)\(4\)](#) – Certain special immigrants
- [INA 204\(a\)\(1\)\(G\)\(i\)](#) – Petitioning procedure
- [INA 245\(h\)](#) – Adjustment of special immigrant juveniles
- [INA 287\(h\)](#) – Protecting abused juveniles
- [8 CFR 205.1\(a\)\(3\)\(iv\)](#) – Reasons for automatic revocation
- [8 CFR 205.2](#) – Revocation on notice

Footnotes

1. There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.
2. See Section 462 of the Homeland Security Act of 2002, [Pub. L. 107-296](#), 116 Stat. 2135, 2202 (November 25, 2002).

3. See [Pub. L. 101-649](#) (November 29, 1990).

4. See [Pub. L. 102-232](#) (December 12, 1991).

5. See [Pub. L. 103-416](#) (October 25, 1994).

6. See [Pub. L. 105-119](#) (November 26, 1997).

7. See [Pub. L. 109-162](#) (January 5, 2006).

8. See [Pub. L. 110-457](#) (December 23, 2008).

9. Certain portions of the regulations have been superseded. This part provides up-to-date guidance.

Chapter 2 - Eligibility Requirements

A. Determining Eligibility

The special immigrant juvenile (SIJ) classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. If a juvenile court has made certain findings, under state law, on dependency or custody, parental reunification, and the best interests of the child, then the child may be eligible for SIJ classification.

USCIS determines if the petitioner meets the requirements for SIJ classification by adjudicating a Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).^[11] USCIS' adjudication of the SIJ petition includes review of the petition, the juvenile court order (or orders), and supporting evidence to determine if the petitioner is eligible for SIJ classification. USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about abuse, neglect, or abandonment.

B. General

A petitioner must satisfy the following requirements to qualify for SIJ classification:

General Eligibility Requirements for SIJ Classification
Physically present in the United States
Unmarried
Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)
Juvenile court order (or orders) issued in the United States that meets the specified requirements
U.S. Department of Homeland Security consent
U.S. Department of Health and Human Services (HHS) consent, if applicable

C. Age-out Protections

In general, a “child” is an unmarried person under 21 years of age for purposes of SIJ classification.^[2] USCIS considers the petitioner’s age at the time the SIJ petition is filed when determining whether the petitioner has met the age requirement.^[3]

If a petitioner was under 21 years of age on the date of the proper filing of [Form I-360](#), USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.

D. Juvenile Court Order

To be eligible for SIJ classification, a juvenile court in the United States must have issued order (or orders) with the following findings:

- Dependency or Custody – Declares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court;^[4]
- Parental Reunification – Declares, under the state child welfare law, that the petitioner cannot reunify with one or both of the petitioner’s parents prior to aging out of the juvenile court’s jurisdiction due to abuse, neglect, abandonment, or a similar basis under state law; and
- Best Interests – Finds that it would not be in the petitioner’s best interest to be returned (to a placement) in the petitioner’s, or his or her parent’s, country of nationality or last habitual residence.

1. Dependency ^[5] or Custody

The petitioner must be the subject of a juvenile court order that declares him or her dependent on a juvenile court, or legally commits to or places the petitioner under the custody of either an agency or department of a state, or a person or entity appointed by a state or juvenile court. Placing the petitioner “under the custody of” a person requires physical custody. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, or abandonment of the petitioner.

Court-ordered dependency or custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification.^[6] A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent,^[7] is not considered a custodian for purposes of establishing SIJ eligibility.^[8]

2. Parental Reunification ^[9]

The juvenile court must find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws. Lack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent (or parents) remains in effect until the child ages out of the juvenile court’s jurisdiction.^[10] The temporary unavailability of a child’s parent does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not required.

The findings must be based upon the person (or persons) who is the petitioner’s parent (or parents)^[11] under state law. If the juvenile court order establishes that the person (or persons) is the petitioner’s parent (or parents), USCIS generally considers this requirement met. However, if the record does not establish that the person (or persons) is the petitioner’s parent (or parents), USCIS may request additional evidence. For example, if the findings are based on a father not listed on the petitioner’s birth certificate, a determination that the claimed father is the father under state law should be established in the juvenile court order.

3. Best Interests

Juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country. However, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or his or her parents. Accordingly, this requires a determination by the juvenile court that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.^[12] The court’s finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner’s country of nationality would not be in the child’s best interest.^[13] USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.

4. Validity of Order

Issued under State Law

The juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification. This includes the need for the juvenile court to follow their state

laws on jurisdiction.^[14] For example, a juvenile court may not be able to take jurisdiction and issue a dependency or custody order for a juvenile who is 18 years of age or older even though the juvenile may file his or her petition with USCIS until the age of 21. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.

Continuing Jurisdiction

In general, the petitioner must remain under the jurisdiction of the juvenile court at the time of the filing and adjudication of the SIJ petition, subject to some exceptions discussed below. If the petitioner is no longer under the jurisdiction of the juvenile court for a reason related to their underlying eligibility for SIJ classification, the petitioner is not eligible for SIJ classification. This may include cases in which the petitioner is no longer under the jurisdiction of the court because:

- The court vacated or terminated its findings that made the petitioner eligible because of subsequent evidence or information that invalidated the findings; or
- The court reunified the petitioner with the parent with whom the court previously deemed reunification was not viable because of abuse, neglect, abandonment, or a similar basis under state law.

However, this requirement does not apply if the juvenile court jurisdiction ended solely because:

- The petitioner was adopted, or placed in a permanent guardianship; or
- The petitioner was the subject of a valid order that was terminated based on age before or after filing the SIJ petition (provided the petitioner was under 21 years of age at the time of filing the SIJ petition).^[15]

A petitioner with a juvenile court order who moves to the jurisdiction of a different juvenile court may need to either submit evidence that the petitioner is still under the jurisdiction of the court that issued the order or submit a new court order.

A juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction. In general, a court maintains jurisdiction when it orders the child placed in a different state or makes a custody determination and the legal custodian relocates to a new jurisdiction.^[16] If, however, a child relocates to a new jurisdiction and is not living in a court ordered placement or with the court ordered custodian, then the petitioner must submit:

- Evidence that the court is still exercising jurisdiction over the petitioner; or
- A new juvenile court order from the court that has jurisdiction.^[17]

If the original order is terminated due to the relocation of the child but another order is issued in a new jurisdiction, USCIS considers the dependency or custody to have continued through the time of adjudication of the SIJ petition, even if there is a lapse between court orders.

5. USCIS Consent

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008)^[18] simplified but did not remove the Department of Homeland Security (DHS) consent requirement. In order to consent, USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit.^[19] The court

ordered dependency or custodial placement of the child is the relief being sought from the juvenile court, and the factual basis of each of the required findings is evidence that the request for SIJ classification is bona fide.

USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the findings necessary for classification as a SIJ. The evidence needed does not have to be overly detailed, but must confirm that the juvenile court made an informed decision in order to be considered “reasonable.” USCIS generally consents to the grant of SIJ classification when the order includes or is supplemented by a reasonable factual basis for all of the required findings.

USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make findings in separate hearings and the petitioner may request an order that compiles the findings of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the findings that were made so that USCIS can determine the petitioner’s eligibility for SIJ classification does not mean that the order is not bona fide.

E. HHS Consent

If a petitioner is currently in the custody of the U.S. Department of Health and Human Services (HHS) and seeks a juvenile court order that also alters ^[20]his or her custody status or placement, HHS must consent to the juvenile court’s jurisdiction. HHS consent is not required if the order simply restates the petitioner’s current placement.

F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition. ^[21]Therefore, a petitioner does not need to apply for a waiver of any applicable grounds of inadmissibility in order to be eligible for SIJ classification.

G. Family Members

Unlike some other immigrant visa petitions, SIJ classification does not allow the petitioner’s family members to be included on the petition as derivative beneficiaries. SIJ petitioners that have adjusted status to that of a lawful permanent resident may petition for qualifying family members through the family-based immigration process. However, a petitioner who adjusts status as a result of an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents. ^[22]This prohibition also applies to a non-abusive, custodial parent, if applicable.

Footnotes

1. USCIS also adjudicates the Application to Register Permanent Residence or Adjust Status ([Form I-485](#)), which determines eligibility for adjustment of status to lawful permanent residence. See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [[7 USCIS-PM F.7](#)].
2. USCIS interprets the use of the term “child” in Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection

Reauthorization Act of 2008 (TVPRA 2008), [Pub. L. 110-457](#), 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in [INA 101\(b\)\(1\)](#), which states that a child is an unmarried person under 21 years of age.

3. Section 235(d)(6) of the TVPRA 2008, [Pub. L. 110-457](#), 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.
4. For information on which state courts USCIS considers a juvenile court, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Orders and Administrative Documents, Subsection 1, Qualifying Juvenile Court Proceedings [[6 USCIS-PM J.3\(A\)\(1\)](#)].
5. This requires that the petitioner has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while he or she is in the United States and under the jurisdiction of the court. See [8 CFR 204.11\(c\)\(3\)](#). For an example of state law governing declarations of dependency, see California Welfare and Institutions Code Section 300.
6. USCIS generally requires that the court order be valid at the time of filing and must determine that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority. See [8 CFR 204.11\(c\)\(5\)](#). See Subsection 2, Parental Reunification [[6 USCIS-PM J.2\(D\)\(2\)](#)].
7. See Black's Law Dictionary (10th ed. 2014) (defining "in loco parentis").
8. A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 ([6 U.S.C. 279](#)). See Section 235(d)(5) of the TVPRA 2008, [Pub. L. 110-457](#), 122 Stat. 5044, 5080 (December 23, 2008).
9. The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term "eligible for long-term foster care" is defined at [8 CFR 204.11\(a\)](#), as requiring that family reunification no longer be viable and that this determination would be expected to remain in place until the child reached the age of majority. USCIS interprets the TVPRA changes as a clarification that petitioners do not need to be eligible for or placed in foster care and that they may be reunified with one parent or other family members. However, USCIS requires that the reunification no longer be a viable option with at least one parent, and USCIS maintains that the court's determination is meant to be in place until the child reaches the age of majority. See [8 CFR 204.11\(a\)](#). See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457](#), 122 Stat. 5044, 5079 (December 23, 2008).

10. For example, when parental reunification is no longer the goal of the child welfare authority's plan for a permanent living situation for the child (known as a "permanency plan").
11. The term "parent" does not encompass a step-parent unless the step-parent is recognized as the petitioner's legal parent under state law, such as when a step-parent has adopted the petitioner.
12. See [U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child](#).
13. See [58 FR 42843-01](#), 42848 (August 12, 1993).
14. For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the care and custody of juveniles. See [8 CFR 204.11\(a\)](#). See [Perez-Olano v. Holder](#), Case No. CV 05-3604 (C.D. Cal. 2005) at paragraph 8.
15. See [Perez-Olano v. Holder](#), Case No. CV 05-3604 (C.D. Cal. 2005).
16. Some states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact for the Placement of Children (ICPC). The UCCJEA is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA is effective only upon adoption by state legislatures. See Sections 201-204 of UCCJEA available at the [Uniform Law Commission website on UCCJEA](#). ICPC is a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children. Each state and the District of Columbia have enacted the provisions of the ICPC under state law.
17. See [8 CFR 204.11\(c\)\(5\)](#).
18. See [Pub. L. 110-457](#) (December 23, 2008).
19. See [INA 101\(a\)\(27\)\(J\)\(iii\)](#) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

20. See [Perez-Olano v. Holder](#), Case No. CV 05-3604 (C.D. Cal. 2005).

21. For discussion on the applicability of inadmissibility grounds to SIJ-based applicants for adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [[7 USCIS-PM E.7](#)].

22. See [INA 101\(a\)\(27\)\(J\)\(iii\)\(II\)](#).

Chapter 3 - Documentation and Evidence

A petitioner seeking special immigrant juvenile (SIJ) classification must submit all of the following documentation to USCIS:

- Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#));^[1]
- A copy of the petitioner's birth certificate or other evidence of the petitioner's age;^[2]
- Copies of the juvenile court order (or orders) and administrative document (or orders), as applicable, that establish eligibility and evidence of the factual basis for the juvenile court's findings; and
- A copy of U.S. Department of Health and Human Services (HHS) consent, if applicable.

The petitioner may file [Form I-360](#) alone or concurrently with his or her Application to Register Permanent Residence or Adjust Status ([Form I-485](#)), if there is an immigrant visa currently available for the SIJ immigrant classification and he or she is otherwise eligible.^[3]

A. Juvenile Court Orders and Administrative Documents

1. Qualifying Juvenile Court Proceedings

A juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations about the custody and care of children.^[4] The title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.

The juvenile court may make the required determination that it is not in the petitioner's best interest to be returned (to a placement) in the petitioner's or his or her parent's country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a finding from that process may satisfy this requirement.

2. Findings^[5]

The juvenile court order (or orders) must provide the required findings regarding dependency or custody, parental reunification, and best interests. These findings may be made in a single juvenile court order or in separate juvenile court orders. The order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law. The order (or orders) should not just mirror or cite to immigration law and regulations. The juvenile court order may use different legal terms than those found in the INA as long as the findings have the same meaning as the requirements for SIJ classification.^[6]

There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.

The language of the order may vary based on individual state child welfare law. If a juvenile court order makes the findings based upon a state law similar to abuse, neglect, or abandonment,^[7] the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. Petitioners are encouraged to submit the juvenile court's findings of how the basis is similar to abuse, neglect, or abandonment and copies of the relevant laws.

3. Factual Basis and USCIS Consent

Template orders that simply recite the immigration statute or regulatory language are generally not sufficient. Orders that have the necessary findings or rulings and include, or are supplemented by, the factual basis for the court's findings (for example, the judicial findings of fact) are usually sufficient to establish eligibility. If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all of the required findings, USCIS may request evidence of the factual basis for the court's findings.

USCIS does not require specific documents to establish the factual basis or the entire record considered by the court. However, the burden is on the petitioner to provide the factual basis for the court's findings. Examples of documents that a petitioner may submit to USCIS that may support the factual basis for the court order include:

- Any supporting documents submitted to the juvenile court, if available;
- The petition for dependency or complaint for custody or other documents which initiated the juvenile court proceedings;
- Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and
- Affidavits or records that are consistent with the findings made by the court.

4. Supporting Evidence

The order or supporting evidence should specifically indicate:

- With whom the child is placed (for example, the name of the person, or entity, or agency if the child is adjudicated dependent) and the factual basis for this finding;
- Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent (or parents) and the factual basis for the court's findings on non-viability of parental reunification; and

- The factual basis for the determination that it is not in the petitioner’s best interest to return to (a placement in) the petitioner’s or his or her parents’ country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child’s country of nationality or last habitual residence).

B. Limitations on Additional Evidence

USCIS is mindful that there are often confidentiality rules that govern disclosure of records from juvenile-related proceedings. For this reason, officers generally do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.^[8]

Children often do not share personal accounts of their family life with an unknown adult until they have had the opportunity to form a trusting relationship with that adult. Therefore, officers exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the findings made by the juvenile court.

Additionally, the juvenile court may make child welfare placement, custody, and best interest decisions that differ from the child’s stated intentions at the time of apprehension. However, if there is significant contradictory information in the file that the juvenile court was likely not aware of or that may impact whether a reasonable factual basis exists for the court’s findings, officers may request additional evidence from the petitioner or his or her legal representative.

However, officers may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner.^[9]

Footnotes

1. See Instructions for [Form I-360](#). There is no fee to file [Form I-360](#) to seek SIJ classification.
2. For more information on evidence that can be used to provide proof of age see [8 CFR 204.11\(d\)\(1\)](#).
3. For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [[7 USCIS-PM F.7](#)].
4. See [8 CFR 204.11\(a\)](#).
5. The term “findings” refers to the conclusions of law.
- 6.

See [101\(a\)\(27\)\(J\)](#).

7. For example, under Connecticut law, a child may be found “uncared for” if the child is “homeless” or if his or her “home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.” See Conn. Gen. Stat. Ann. section 46b-120(9). “Uncared for” may be similar to abuse, neglect, or abandonment because children found “uncared for” are equally entitled to juvenile court intervention and protection. The outcomes for children found “uncared for” are the same as they are for children found abused, neglected, or abandoned. See Conn. Gen. Stat. Ann. section 46b-120(8),(9); 121(a).
8. USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.
9. See Violence Against Women Act of 2005, [Pub. L. 109-162](#) (January 5, 2006), codified at [INA 287\(h\)](#).

Chapter 4 - Adjudication

A. Jurisdiction

USCIS has sole jurisdiction over petitions for special immigrant juvenile (SIJ) classification.^[1] Provided the petitioner is otherwise eligible, classification as an SIJ establishes eligibility to apply for adjustment of status.^[2]

B. Expeditious Adjudication

USCIS generally adjudicates SIJ petitions within 180 days.^[3] The 180-day timeframe begins on the Notice of Action ([Form I-797](#)) receipt date. If the petitioner has not submitted sufficient evidence to establish his or her eligibility for SIJ classification, the clock stops the day USCIS sends a request for additional evidence and resumes the day USCIS receives the requested evidence from the petitioner.^[4]

The 180-day timeframe applies only to the initial adjudication of the SIJ petition. The requirement does not extend to the adjudication of any motion or appeal filed after a denial of a SIJ petition.

C. Interview

1. Determining Necessity of Interview

USCIS has discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition.^[5] USCIS recognizes the vulnerable nature of SIJ petitioners and generally conducts interviews of SIJ petitioners when an interview is deemed necessary. USCIS conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted. USCIS will generally not require an interview if the record

contains sufficient information and evidence to approve the petition without an in-person assessment. However, USCIS retains the discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition, as appropriate.

2. Conducting the Interview

Given the vulnerable nature of SIJ petitioners and the hardships they may face because of the loss of parental support, USCIS strives to establish a child-friendly interview environment if an interview is scheduled. During an interview, officers avoid questioning the petitioner about the details of the abuse, neglect, or abandonment suffered, because these issues are handled by the juvenile court. Officers generally focus the interview on resolving issues related to the eligibility requirements, including age.

The petitioner may bring a trusted adult to the interview in addition to an attorney or representative. The trusted adult may serve as a familiar source of comfort to the petitioner, but should not interfere with the interview process or coach the petitioner during the interview. Given potential human trafficking and other concerns, officers assess the appropriateness of the adult's attendance in the interview and observe the adult's interaction with the child. When appropriate, the officer may interview the child without that adult present.

D. Requests for Evidence

Additional evidence may be requested at the discretion of the officer if needed to determine eligibility.^[6] To provide petitioners an opportunity to address concerns before issuing a denial, officers generally issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), where the evidence is insufficient to approve the petition. The officer may request additional evidence for reasons such as, but not limited to:

- The record lacks the required dependency or custody, parental reunification, or best interest findings;
- It is unclear if the order was made by a juvenile court or in accordance with state law;
- The evidence provided does not establish a reasonable factual basis for the findings;
- The record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for the court order; or
- Additional evidence is needed to determine eligibility.

E. Decision

1. Approval

The Secretary of Homeland Security must consent to the grant of SIJ classification. The Department of Homeland Security (DHS) delegates this authority to USCIS. Therefore, USCIS approval of the SIJ petition is evidence of DHS consent. USCIS notifies petitioners in writing upon approval of the petition.^[7]

2. Denial

If the petitioner does not provide necessary evidence or does not meet the eligibility requirements, USCIS may deny the [Form I-360](#) petition. If USCIS denies the SIJ petition, USCIS provides the petitioner with a written

denial which includes a detailed basis for the denial.^[8] An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision.^[9] The denial notice includes instructions for filing a Notice of Appeal or Motion ([Form I-290B](#)).

3. Revocation

Automatic Revocation

An approved SIJ petition is automatically revoked as of the date of approval if any one of the circumstances below occurs before USCIS issues a decision on the petitioner's application for adjustment of status:^[10]

- Marriage of the petitioner;
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order,^[11] where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law;^[12] or
- Reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned (to a placement) in the petitioner's, or his or her parent's, country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition.^[13]

Revocation on Notice

In addition, USCIS, with notice, may revoke an approved petition for SIJ classification for good and sufficient cause such as fraud.^[14] In these instances, USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.^[15]

Footnotes

1. See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).
2. See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)). Generally, an applicant may only apply to USCIS for adjustment of status if there is a visa number available for the special immigrant classification (EB-4), and the applicant is not in removal proceedings. If an SIJ is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application. Conversely, the applicant may seek adjustment of status with the immigration court based on USCIS' approval of the SIJ petition. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures [[7 USCIS-PM A](#)], Part B, 245(a) Adjustment [[7 USCIS-PM B](#)], and Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].
3. See Section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA 2008), [Pub. L. 110-457](#), 122 Stat. 5044, 5080 (December 23, 2008).

4. See [8 CFR 103.2\(b\)\(10\)](#).
5. See [8 CFR 103.2\(b\)\(9\)](#).
6. See [8 CFR 103.2\(b\)\(8\)](#).
7. See [8 CFR 103.2\(b\)\(19\)](#).
8. See [8 CFR 103.3\(a\)](#).
9. See [8 CFR 103.3](#). See [8 CFR 103.5](#).
10. See [8 CFR 205.1\(a\)\(3\)\(iv\)](#).
11. Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.
12. TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term “eligible for long-term foster care” is defined at [8 CFR 204.11\(a\)](#) as requiring that family reunification no longer be viable. USCIS interprets this change as clarifying that the child does not need to be eligible for or placed in foster care. USCIS also views this change as modifying the regulation that requires auto-revocation upon the termination of the beneficiary’s eligibility for long-term foster care. A petition will be revoked if reunification with the parent is now viable where a juvenile court previously deemed reunification with that parent not viable. See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457](#), 122 Stat. 5044, 5079 (December 23, 2008).
13. See [8 CFR 205.1\(b\)](#).
14. See [INA 205](#) and [8 CFR 205.2](#).

15. See [8 CFR 205.2\(b\)](#).

Chapter 5 - Appeals, Motions to Reopen, and Motions to Reconsider

A. General

A petitioner may submit a Notice of Appeal or Motion ([Form I-290B](#)), with the appropriate filing fee or a request for a fee waiver, to file: [\[1\]](#)

- An appeal with the Administrative Appeals Office (AAO);
- A motion to reconsider a USCIS decision (made by the AAO, a field office, or a service center); or
- A motion to reopen a USCIS decision (made by the AAO, a field office, or a service center).

The petitioner must file the appeal or motion within 30 days of the denial or dismissal, or 33 days if the denial or dismissal decision was sent by mail. [\[2\]](#) If the appeal relates to a revocation of an approved special immigrant juvenile (SIJ) petition, the appeal must be filed within 15 calendar days after service of the decision, or 18 days if the decision was sent by mail. [\[3\]](#) There is no exception to the filing period for appeals and motions to reconsider.

For a motion to reopen, USCIS may excuse the petitioner's failure to file before this period expires where the petitioner demonstrates that the delay was reasonable and beyond his or her control. [\[4\]](#)

B. Requirements for Perez-Olano Litigation Class Members [\[5\]](#)

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of certain foreign national juveniles who may have been eligible for SIJ classification or SIJ-based adjustment of status but whose SIJ petition or adjustment application was denied or revoked for certain reasons. Certain persons whose petition for SIJ classification [\[6\]](#) or SIJ-based application for adjustment of status [\[7\]](#) was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied or revoked SIJ petition or SIJ-based application for adjustment of status.

A class action member may file a motion to reopen if his or her SIJ petition or SIJ-based application for adjustment of status was denied or revoked on account of:

- Age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;
- Dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently terminated based on age; or

- Specific consent, if the petitioner did not receive a grant of HHS specific consent before going before the juvenile court and the court order did not alter the petitioner's HHS custody status or placement.

There is also a stipulation to the settlement agreement involving cases in which SIJ petitions or SIJ-based applications for adjustment of status were denied, terminated, or revoked on or after December 15, 2010 because the applicant's state court dependency order had expired at the time of the filing. The requirements and process for a class member to request that his or her case be reopened under the stipulation differ from requirements under the original Settlement Agreement. ^[8]

Under the stipulation, USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition, the applicant:

- Is or was under 21 years of age, unmarried, and otherwise eligible; and
- Is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

Footnotes

1. See [8 CFR 103.3](#). See [8 CFR 103.5](#).
2. See [8 CFR 103.3\(a\)\(2\)\(i\)](#). See [8 CFR 103.5\(a\)\(1\)\(i\)](#). See [8 CFR 103.8\(b\)](#).
3. See [8 CFR 205.2\(d\)](#) (revocation appeals) and [8 CFR 103.8\(b\)](#) (effect of service by mail).
4. See [8 CFR 103.5\(a\)\(1\)\(i\)](#).
5. See [Perez-Olano v. Holder](#), Case No. CV 05-3604 (C.D. Cal. 2005).
6. See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).
7. See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)).
8. See [Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement](#), issued June 25, 2015.

Chapter 6 - Data

USCIS compiles and makes available to the public annual reports disclosing the number of special immigrant juvenile (SIJ) petitions received, approved, and denied.^[1] The number includes the filing and adjudication of SIJ petitions under the Settlement Agreement, as well as the filing and adjudication of regularly filed SIJ petitions. To ensure accuracy of information, officers must promptly enter all decisions on all petitions and motions related to SIJ into the relevant systems.

Footnotes

1. See the USCIS website for [Data Set: Form I-360 Petition for Special Immigrant Juveniles](#).

Appendices

Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.

USCIS Policy Manual

Current as of August 23, 2017

Volume 7 - Adjustment of Status

Part F - Special Immigrant-Based (EB-4) Adjustment

Chapter 7 - Special Immigrant Juveniles

A. Purpose and Background ^[1]

Congress created the special immigrant juvenile (SIJ) classification when it enacted the Immigration Act of 1990 (IMMACT 90).^[2] Certain juveniles in the United States may be eligible for SIJ classification. Once classified as an SIJ, juveniles may be eligible to adjust status, if they meet all eligibility requirements.

B. Legal Authorities

- [INA 101\(a\)\(27\)\(J\)](#) – Special immigrant juveniles
- [INA 203\(b\)\(4\)](#) – Certain special immigrants
- [INA 245](#); [8 CFR 245](#) – Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- [INA 245\(h\)](#) – Application of adjustment provisions with respect to special immigrants
- [8 CFR 245.1\(e\)\(3\)](#) – Special immigrant juveniles
- [8 CFR 204.11](#) – Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile)
- Section 153 of the Immigration Act of 1990 (IMMACT 90)^[3] – Special immigrant status for certain aliens declared dependent on a juvenile court
- Section 302 of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991^[4]
- Section 113 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1998^[5]

USCIS periodically updates this policy manual. Updates can be found in two locations on the USCIS website. Volume 6 -- Immigrants, Part J – Special Immigrant Juveniles is available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>. Volume 7 – Adjustment of Status, Part F – Special Immigrant-Based (EB-4) Adjustment, Chapter 7 – Special Immigrant Juveniles if available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html>. Since the structure of the manual on the USCIS website makes citation to specific pages of the policy manual difficult. The authors have downloaded the portions of the manual that address SIJS cases and have compiled them into a single document included as Appendix D. This facilitates more precise page citations to sections of the USCIS Policy Manual that will be used throughout this Bench Book.

- Section 235(d) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) [\[6\]](#)— Permanent protection for certain at-risk children

C. Eligibility Requirements

To adjust to lawful permanent resident (LPR) status as an SIJ, an applicant must meet the eligibility requirements shown in the table below. [\[7\]](#)

SIJ-Based Adjustment of Status Eligibility Requirements	
Eligibility Requirement	Where can I find more information?
<p>The applicant must have been:</p> <ul style="list-style-type: none"> • Inspected and admitted into the United States; or • Inspected and paroled into the United States. 	<p>See Subsection 1, Inspected and Admitted or Inspected and Paroled [7 USCIS-PM F.7(C)(1)].</p>
<p>The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.</p>	<p>See Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].</p>
<p>The applicant is eligible to receive an immigrant visa.</p>	<p>See Subsection 2, Eligibility to Receive an Immigrant Visa [7 USCIS-PM F.7(C)(2)].</p>
<p>The applicant has an immigrant visa immediately available when he or she files the adjustment of status application and at the time of final adjudication.</p>	<p>See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of “Properly Filed” [7 USCIS-PM A.3(B)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].</p>
<p>The applicant is not subject to any applicable bars to adjustment of status.</p>	<p>See Subsection 3, Bars to Adjustment [7 USCIS-PM F.7(C)(3)].</p>
<p>The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.</p>	<p>See Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM F.7(C)(4)].</p>
<p>The applicant merits the favorable exercise of discretion.</p>	<p>See Part A, Adjustment of Status Policies and Procedures, Chapter 9,</p>

Legal Analysis and Use of Discretion [7 USCIS-PM A.9] and Part B, 245(a) Adjustment [7 USCIS-PM B].

1. Inspected and Admitted or Inspected and Paroled

SIJs are not exempt from the general adjustment requirement that applicants be inspected and admitted or inspected and paroled.^[8] However, the INA expressly states that SIJs are considered paroled into the United States for purposes of adjustment under [INA 245\(a\)](#). Accordingly, the beneficiary of an approved SIJ petition is treated for purposes of the adjustment application as if the beneficiary has been paroled, regardless of his or her manner of arrival in the United States.^[9]

2. Eligibility to Receive an Immigrant Visa^[10]

An applicant must be eligible to receive an immigrant visa to adjust status.^[11] An adjustment applicant typically establishes eligibility for an immigrant visa through an approved immigrant petition. An SIJ can establish eligibility for an immigrant visa by obtaining classification from USCIS by filing an SIJ-based Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)) (SIJ petition).^[12]

Therefore, in order for an SIJ-based adjustment applicant to be eligible to receive an immigrant visa, he or she must be one of the following:

- The applicant is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)) classifying him or her as an SIJ;
- The applicant has a pending [Form I-360](#) (that is ultimately approved); or
- The applicant is filing the adjustment application concurrently with the Form I-360 (and the [Form I-360](#) is ultimately approved).

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility^[13]

The SIJ petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the SIJ petition at the time of the adjudication of the adjustment application. However, the officer should ensure that the applicant remains classified as an SIJ and thus is eligible to adjust as an SIJ. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as an SIJ. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

Revocation of Approved Petition

USCIS may revoke an approved SIJ petition upon notice as necessary^[14] for what it deems to be good and sufficient cause,^[15] such as, if the record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for petitioner's eligibility for SIJ classification. USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approved petition.^[16]

Furthermore, USCIS automatically revokes an approved SIJ petition, as of the date of approval, if any one of the circumstances below occurs before a decision on the adjustment application is issued:

- Marriage of the petitioner;^[17]

- Reunification of the petitioner with one or both parents by virtue of a juvenile court order,^[18] where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law; or
- Reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned (to a placement) to the petitioner's or his or her parent's country of nationality or last habitual residence.

If one of the above grounds for automatic revocation occurs, USCIS issues a notice to the petitioner of such revocation of the SIJ petition, which means the applicant is no longer classified as a SIJ.^[19]

If the petition is revoked, either upon notice or as an automatic revocation,^[20] then the officer should deny the adjustment application because the applicant no longer has an underlying basis to adjust status.

3. Bars to Adjustment^[21]

An applicant classified as an SIJ is subject to the terrorist-related bar to adjustment.^[22] There is no waiver of or exemption to this adjustment bar if it applies. Therefore, if the terrorist-related bar to adjustment applies, an SIJ is ineligible for adjustment of status.

4. Admissibility and Waiver Requirements^[23]

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available.^[24] In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome an inadmissibility ground that applies.^[25] USCIS may approve the application to adjust status if a waiver or other form of relief is granted and the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility do not apply to applicants seeking LPR status based on the SIJ classification.^[26]

Inadmissibility Grounds that Do Not Apply to Special Immigrant Juveniles	
INA 212(a)(4)	Public Charge
INA 212(a)(5)(A)	Labor Certification
INA 212(a)(6)(A)	Present without admission or parole
INA 212(a)(6)(C)	Misrepresentation
INA 212(a)(6)(D)	Stowaways

INA 212(a)(7)(A)	Documentation Requirements for Immigrants
INA 212(a)(9)(B)	Unlawful Presence

The following table specifies which grounds of inadmissibility do apply to applicants seeking LPR status based on the SIJ classification and for which a waiver or other form of relief may be available.

Inadmissibility Grounds that Apply to Special Immigrant Juveniles	
INA 212(a)(1)	Health-Related
INA 212(a)(2)	Crime-Related
INA 212(a)(3)	Security-Related
INA 212(a)(6)(B)	Failure to Attend Removal Proceedings
INA 212(a)(6)(E)	Smugglers
INA 212(a)(6)(F)	Subject of Civil Penalty
INA 212(a)(6)(G)	Student Visa Abusers
INA 212(a)(8)	Ineligibility for Citizenship
INA 212(a)(9)(A)	Certain Foreign Nationals Previously Removed
INA 212(a)(9)(C)	Foreign Nationals Unlawfully Present After Previous Immigration Violations
INA 212(a)(10)	Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation

An applicant found inadmissible based on any of the above applicable grounds may be eligible for an SIJ-specific waiver of these inadmissibility grounds for:

- Humanitarian purposes;
- Family unity; or
- When it is otherwise in the public interest.^[27]

The following table specifies which grounds of inadmissibility cannot be waived under the SIJ-specific waiver for such purposes.^[28]

Inadmissibility Grounds that Cannot Be Waived ^[29]	
INA 212(a)(2)(A)	Conviction of Certain Crimes
INA 212(a)(2)(B)	Multiple Criminal Convictions
INA 212(a)(2)(C)	Controlled Substance Traffickers
INA 212(a)(3)(A)	Security and Related Grounds
INA 212(a)(3)(B)	Terrorist Activities
INA 212(a)(3)(C)	Foreign Policy Related
INA 212(a)(3)(E)	Participants in Nazi Persecution, Genocide, or the Commission of Any Act of Torture or Extrajudicial Killing

Juvenile Delinquency

Findings of juvenile delinquency are not considered criminal convictions for purposes of immigration law. However, certain grounds of inadmissibility do not require a conviction. In some cases, certain conduct alone may be sufficient to trigger an inadmissibility ground.^[30]

Furthermore, findings of juvenile delinquency may also be part of a discretionary analysis.^[31] USCIS will consider findings of juvenile delinquency on a case-by-case basis based on the totality of the evidence to determine whether a favorable exercise of discretion is warranted. Therefore, an adjustment applicant must disclose all arrests and charges. If any arrest or charge was disposed of as a matter of juvenile delinquency, the applicant must include the court or other public record that establishes this disposition.

In the event that an applicant is unable to provide such records because the applicant's case was expunged or sealed, the applicant must provide information about the arrest and evidence demonstrating that such records are

unavailable under the law of the particular jurisdiction. USCIS evaluates sealed and expunged records according to the nature and severity of the criminal offense.

5. Treatment of Family Members

Dependents of SIJs cannot file as derivative applicants. SIJ beneficiaries may petition for certain qualifying family members through family-based immigration after they have adjusted status to LPR.^[32] However, a juvenile who adjusts status based on an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents after naturalization.^[33] This prohibition also applies to a non-abusive, custodial parent, if one exists.

6. Requirements for Perez-Olano Litigation Class Members^[34]

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of certain foreign national juveniles who may have been eligible for SIJ classification or SIJ-based adjustment of status but whose SIJ petition or adjustment application was denied or revoked for certain reasons. Certain persons whose petition for SIJ classification^[35] or SIJ-based application for adjustment of status^[36] was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied SIJ petition or SIJ-based application for adjustment of status. A class action member may file a motion to reopen if his or her SIJ petition or SIJ-based application for adjustment of status was denied or revoked on account of:

- Age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;
- Dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently terminated based on age; or
- Specific consent, if the petitioner did not receive a grant of the Department of Health and Human Services (HHS) specific consent before going before the juvenile court and the court order did not alter the petitioner's HHS custody status or placement.

There is also a stipulation to the settlement agreement involving cases in which SIJ petitions or SIJ-based applications for adjustment of status were denied, terminated, or revoked on or after December 15, 2010, because the applicant's state court dependency order had expired at the time of the filing. The requirements and process for a class member to request that his or her case be reopened under the Stipulation differ from requirements under the original Settlement Agreement.^[37]

Under the stipulation, USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition, the applicant:

- Is or was under 21 years of age, unmarried, and otherwise eligible; and
- Is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as an SIJ: [\[38\]](#)

- Application to Register Permanent Residence or Adjust Status ([Form I-485](#)), with the correct fee or with a Request for Fee Waiver ([Form I-912](#));
- Copy of the receipt or approval notice (Form I-797) for the applicant's SIJ petition (unless the applicant is filing the petition together with [Form I-485](#)); [\[39\]](#)
- Two passport-style photographs;
- Biographic Information Sheet ([Form G-325A](#)), if the applicant is 14 through 79 years of age;
- Copy of government-issued identity document with photograph (if available);
- Copy of birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable); [\[40\]](#)
- Any other evidence, as needed, to show that the terrorist-related adjustment bar does not apply;
- Report of Medical Examination and Vaccination Record ([Form I-693](#)); [\[41\]](#)
- Certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable);
- Application for Waiver of Grounds of Inadmissibility ([Form I-601](#)) or other form of relief (if applicable); and
- Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under [INA 212\(e\)](#) (if applicable). [\[42\]](#)

E. Adjudication [\[43\]](#)

1. Filing

An applicant seeking adjustment of status as a special immigrant juvenile may file his or her adjustment application with USCIS concurrently with the SIJ petition, while the SIJ petition is pending, or after USCIS approves the SIJ petition (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application; [\[44\]](#) and
- The visa availability requirements are met. [\[45\]](#)

2. Interview

Determining Necessity of Interview

USCIS recognizes the vulnerable nature of SIJ based applicants for adjustment of status and generally conducts interviews of SIJ based applicants for adjustment of status when an interview is deemed necessary. USCIS conducts a full review of the record and supporting evidence to determine whether an interview may be warranted.

USCIS will generally not require an interview if the record contains sufficient information and evidence to approve the adjustment application without an in-person assessment. However, USCIS retains the discretion to interview SIJ based adjustment applicants for the purposes of adjudicating the adjustment of status application, as applicable. [\[46\]](#)

Conducting the Interview

Given the vulnerable nature of SIJ based adjustment applicants and the hardships they may face because of the loss of parental support, USCIS takes special care to establish a child-friendly interview environment. During an interview, USCIS avoids questioning the applicant about the details of the abuse, neglect, or abandonment suffered because these issues are handled by the juvenile court. USCIS generally focuses the interview on resolving issues related to eligibility for adjustment of status.

The applicant may bring a trusted adult to the interview in addition to an attorney or representative. The trusted adult may serve as a familiar source of comfort to the applicant, but should not interfere with the interview process or coach the applicant during the interview. Given potential human trafficking and other concerns, USCIS assesses the appropriateness of the adult to attend the interview and is observant of the adult's interaction with the child. If USCIS has any concerns related to appropriateness of the adult's presence, USCIS may continue the interview without that adult present.

3. Age-Out Protections

There is no age limit for SIJ-based applicants for adjustment of status. In cases where an SIJ petitioner is under 21 years of age on the date of proper filing of the SIJ petition, USCIS does not deny an SIJ-based adjustment application solely because the applicant is older than 21 years of age at the time of filing or adjudication of the [Form I-485](#). [\[47\]](#)

4. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements and merits the favorable exercise of discretion [\[48\]](#) before approving the application to adjust status as an SIJ. If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication. [\[49\]](#)

If approved, USCIS assigns the following code of admission to applicants adjusting under this category:

Class of Applicant and Code of Admission	
Applicant	Code of Admission

The applicant becomes an LPR as of the date of approval of the adjustment application. [\[50\]](#)

Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial. [\[51\]](#) Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider, or renew the application in Immigration Court. The denial notice should include instructions for filing a Notice of Appeal or Motion ([Form I-290B](#)).

Footnotes

1. For more information on the legislative history of the SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles [[6 USCIS-PM J](#)].
2. See [Pub. L. 101-649](#), 104 Stat. 4978 (November 29, 1990).
3. See [Pub. L. 101-649](#), 104 Stat. 4978, 5005 (November 29, 1990).
4. See [Pub. L. 102-232](#), 105 Stat. 1733, 1744 (December 12, 1991).
5. See [Pub. L. 105-119](#), 111 Stat. 2440, 2460 (November 26, 1997).
6. See [Pub. L. 110-457](#), 122 Stat. 5044, 5079 (December 23, 2008).
7. See [INA 245\(a\) and \(c\)](#). See [8 CFR 245](#), [8 CFR 245.1\(a\)](#) and [8 CFR 245.1\(e\)\(3\)](#). See Instructions to [Form I-485](#).
8. See [INA 245\(a\)](#). See [8 CFR 245.1\(e\)\(3\)](#). See Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, “Inspected and Admitted” or “Inspected and Paroled” [[7 USCIS-PM B.2\(A\)](#)].

9. See [INA 245\(h\)\(1\)](#).

10. See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [[7 USCIS-PM A.6](#)] and Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section C, Eligible to Receive an Immigrant Visa [[7 USCIS-PM B.2\(C\)](#)].

11. See [INA 245\(a\)\(2\)](#).

12. To see what requirements applicants must meet to obtain such classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements [[6 USCIS-PM J.2](#)].

13. For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [[7 USCIS-PM A.6](#)].

14. See [8 CFR 205.2\(a\)](#).

15. See [INA 205](#).

16. See [8 CFR 205.2\(b\)](#).

17. The applicant must be unmarried at the time of filing the adjustment application and at the time of final adjudication of the form. See [8 CFR 205.1\(a\)\(3\)\(iv\)](#).

18. Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.

19. See [8 CFR 205.1\(b\)](#).

20. See [8 CFR 205.1\(b\)](#).
21. See [INA 245\(c\)](#). See Part B, 245(a) Adjustment [[7 USCIS-PM B](#)].
22. See [INA 245\(c\)\(6\)](#), which bars from adjustment any foreign national deportable due to involvement in a terrorist activity or group under [INA 237\(a\)\(4\)\(B\)](#). Special immigrant juveniles are exempt from [INA 245\(c\)\(2\)](#) and [INA 245\(c\)\(8\)](#). See [62 FR 39417, 39422](#) (July 23, 1997). See [8 CFR 245.1\(b\)\(5\)](#), [8 CFR 245.1\(b\)\(6\)](#), and [8 CFR 245.1\(b\)\(10\)](#). [INA 245\(c\)\(7\)](#) also does not apply. See [8 CFR 245.1\(b\)\(9\)](#). See Part B, 245(a) Adjustment, Chapter 5, Employment-Based Applicant Not in Lawful Nonimmigrant Status – [INA 245\(c\)\(7\)](#) [[7 USCIS-PM B.5](#)]. Finally, [INA 245\(c\)\(1\)](#), [INA 245\(c\)\(3\)](#), [INA 245\(c\)\(4\)](#), and [INA 245\(c\)\(5\)](#) do not apply since a special immigrant juvenile is considered to be paroled into the United States and, when reviewing these bars, USCIS focuses on the most recent admission. See [INA 245\(h\)\(1\)](#). See [8 CFR 245.1\(a\)](#) and [8 CFR 245.1\(c\)\(3\)](#). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [[7 USCIS-PM B](#)].
23. For more information, see Volume 8, Admissibility [[8 USCIS-PM](#)] and Volume 9, Waivers [[9 USCIS-PM](#)].
24. See [INA 212\(a\)](#) for the specific grounds of inadmissibility.
25. See Volume 9, Waivers [[9 USCIS-PM](#)].
26. See [INA 245\(h\)\(2\)\(B\)](#) and [8 CFR 245.1\(e\)\(3\)](#). Grounds of removal under [INA 237\(c\)](#) that correspond with exempted inadmissibility grounds are also waived for SIJs.
27. See [INA 245\(h\)\(2\)\(B\)](#) and [8 CFR 245.1\(e\)\(3\)](#).
28. However, an applicant found inadmissible based on one of the grounds of inadmissibility listed below may be eligible to obtain a waiver under other statutory authorities. For more information on other types of waivers, see Volume 9, Waivers [[9 USCIS-PM](#)].
29. This table includes inadmissibility grounds that cannot be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest.

30. For example, see [INA 212\(a\)\(2\)\(A\)](#) (inadmissibility based on conviction of or admission that the foreign national committed certain criminal acts).
31. For more information, see Part A, Adjustment of Status Policies and Procedures [[7 USCIS-PM A](#)] and Part B, 245(a) Adjustment [[7 USCIS-PM B](#)].
32. See INA [101\(a\)\(27\)\(J\)](#).
33. See [INA 101\(a\)\(27\)\(J\)\(iii\)\(II\)](#).
34. See [Perez-Olano v. Holder](#), Case No. CV 05-3604 (C.D. Cal. 2005).
35. See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).
36. See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)).
37. See [Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement](#), issued (June 25, 2015).
38. For information about limitations on additional evidence, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 3, Documentation and Evidence, Section B, Limitations on Additional Evidence [[6 USCIS-PM J.3\(B\)](#)].
39. USCIS may also require the applicant to provide additional evidence to show he or she continues to be classified as an SIJ. See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).
40. Foreign nationals admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such foreign nationals may visit the [CBP website](#) to obtain a paper version of an electronic Form I-94. CBP **does not** charge a fee for this service.

41. The applicant may submit [Form I-693](#) together with [Form I-485](#) or later at USCIS' request. See the [USCIS website](#) for more information. For more information on when to submit [Form I-693](#), see Volume 8, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [[8 USCIS-PM B.4](#)].
42. See Part A, Adjustment of Status Policies and Procedures, Chapter 2, Eligibility Requirements, Section B, Who is Not Eligible to Adjust Status, 3. Other Eligibility Requirements [[7 USCIS-PM A.2\(B.3\)](#)].
43. For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [[7 USCIS-PM A.6](#)].
44. For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [[7 USCIS-PM A.3\(D\)](#)].
45. The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [[7 USCIS-PM F.7\(C\)](#)].
46. See [8 CFR 103.2\(b\)\(9\)](#).
47. See [INA 101\(b\)\(1\)](#) (definition of child is an unmarried person under 21 years of age). See Section 235(d)(6) of the TVPRA, [Pub. L. 110-457](#), 122 Stat. 5044, 5080 (December 23, 2008) (provides age-out protection to SIJ petitioners). Although the SIJ definition at [INA 101\(a\)\(27\)\(J\)](#) does not use the term child, USCIS incorporated the child definition at [INA 101\(b\)\(1\)](#) into SIJ-related regulations. For more information on age-out protections for purposes of an SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements, Part C, Age-out Protections [[6 USCIS-PM J.2\(C\)](#)].
48. See [INA 245\(a\)](#). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 9, Legal Analysis and Appropriate Use of Discretion [[7 USCIS-PM A.9](#)].
49. For more information on visa availability and visa retrogression, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [[7 USCIS-PM A.6\(C\)](#)].

50. The date of approval is shown in the USCIS approval notice mailed to the applicant. That date is also shown on the actual Permanent Resident Card (Form I-551) the applicant receives after adjustment approval.

51. See [8 CFR 103.2\(b\)\(19\)](#) and [8 CFR 103.3\(a\)](#).

Appendices

Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.

Appendix E

Understanding the Significance of a Minor's Trauma History in Family Court Rulings¹²

By: Meaghan Fitzpatrick, Alina Husain, Giselle Hass and Leslye E. Orloff

September 27, 2017

Many immigrant children involved in family court proceedings are survivors of traumatic events such as domestic violence, sexual assault, human trafficking, child abuse, abandonment, or neglect. Immigrant children may have experienced trauma in their home country, throughout their journey to the United States, or during the resettlement and adaptation to life in the United States. Understanding the history of traumatic events is a crucial component for state family court judges to decide the best placement, care plan, and services to be ordered for the child.

Experiencing or witnessing abuse as a minor affects the child's health and wellbeing,³ and may affect their neurocognitive development, intellectual functioning and development, and physical actions. Research indicates that the physical development of the human brain is negatively affected when a child or adolescent faces maltreatment or violence, particularly when such trauma is long-term or continuing.⁴ For instance, experiencing or witnessing abuse has a negative effect on the brain's frontal lobes, which are the most important brain areas regarding executive functions. As such, children or adolescents who experience trauma will be developmentally behind children or adolescents of the same age without a history of trauma. As these children attain safety and grow up, they need additional time and space to heal from their impairments and developmental delays.

Minors who have witnessed or experienced abuse often also suffer from:

- Post-traumatic stress disorder;⁵
- Profound sense of helplessness;
- Hypervigilance;
- Low self-esteem; and

¹ This publication was developed under grant numbers SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² This publication was developed based upon an Amicus Brief to the Board of Immigration Appeals: Developmental and Psychological Effects of Trauma on Immigrant Minors NO. 16-06-09 (July 11, 2016) written by Crowell and Moring with input from the authors of this publication. See Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/>.

³ Diana J. English, David B. Marshall & Angela J. Stewart, *Effects of Family Violence on Child Behavior and Health During Early Childhood*, 18 J. FAM. VIOLENCE 43 (2003); Alissa C. Huth-Bocks, Alytia A. Levendosky & Michael A. Semel, *The Direct and Indirect Effects of Domestic Violence on Young Children's Intellectual Functioning*, 16 J. FAM. VIOLENCE 269 (2001); Joy D. Osofsky, *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, 6 CLINICAL CHILD & FAM. PSYCHOL. REV. 161 (2003).

⁴ Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 (2016), <http://niwaplibrary.wcl.american.edu/pubs/final-amicus-brief-niwap-et-al-stamped/> (amicus brief submitted to the Department of Justice that discusses the effects of trauma in minors, particularly in immigrant minors).

⁵ Jerome R. Kolbo, Eleanor H. Blakely & David Engelman, *Children Who Witness Domestic Violence: A Review of Empirical Literature*, 11 J. INTERPERSONAL VIOLENCE 281 (1996); B.B. Robbie Rossman, Richard D. Bingham & Robert N. Emde, *Symptomatology and Adaptive Functioning for Children Exposed to Normative Stressors, Dog Attack, and Parental Violence*, 36 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1089 (1998); Mary Ann Dutton et al., *Intimate Partner Violence, PTSD, and Adverse Health Outcomes*, 21 J. INTERPERSONAL VIOLENCE 955 (2006).

- Behavioral problems⁶
 - Self-medicating with street drugs
 - Aggression
 - Delinquency
 - Adult criminal acts⁷
 - Bullying⁸

Immigrant children often face additional obstacles related to their immigration claims that exacerbate underlying problems related to their experience with abuse. For instance, many children applying for asylum have to relive the trauma that they experienced in their home country, which delays the rehabilitation process. Furthermore, a survey of school-children who were recent immigrants determined that 32% had clinical symptoms of Post-Traumatic Stress Disorder (PTSD) and 16% has symptoms of depression.⁹ In addition, immigrant children, especially immigrant girls, are at an increased risk of sexual assault. High school aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers.¹⁰ Immigrant girls are legally and socially vulnerable to recurring sexual assault due to factors associated with their immigration status such as increased isolation, language barriers to reporting, and the break-up and restructuring of families during the immigration process. The severe impact of sexual abuse of minors commonly manifests itself physically through:¹¹

- Cognitive deficits, depression, dissociation, and/or persistent posttraumatic stress disorder;
- Severe anxiety known as hypothalamic–pituitary–adrenal attenuation;
- High rates of obesity;
- Chronic health complaints such as headaches or stomach aches. As victims mature problems can become chronic conditions disorders leading to gastrointestinal, cardiovascular, respiratory, muscular-skeletal, dermatological, and/or urological problems;¹²
- Early onsets of puberty, maladaptive sexual development, sexual re-victimization;
- Dropping out of high school;
- Drug and alcohol abuse;
- Experience dating and domestic violence in relationships;¹³ and
- Teen motherhood which is further complicated by premature deliveries, offspring who are at increased risk for child maltreatment and overall mal-development

⁶ Timothy E. Moore & Debra J. Pepler, *Correlates of Adjustment in Children at Risk*, 157–84 (G.W. Holden, R.A. Geffner & E.N. Jouriles eds., 1998); Christine E. Cox, Jonathan B. Kotch & Mark D. Everson, *A Longitudinal Study of Modifying Influences in the Relationship Between Domestic Violence and Child Maltreatment*, 18 J. FAM. VIOLENCE 5 (2003).

⁷ Cathy Spatz Widom, *Child Abuse, Neglect, and Violent Criminal Behavior*, 27 CRIMINOLOGY 251 (1989).

⁸ Laurence Steinberg, *Youth Violence: Do Parents and Families Make a Difference?* NAT'L INST. JUST. J. (April 2000) at 30; David P. Farrington, *Understanding and Preventing Bullying*, 17 CRIME AND JUSTICE 381(1993); Anna C. Baldry, *Bullying in Schools and Exposure to Domestic Violence*, 27 CHILD ABUSE & NEGLECT 713-32 (2003).

⁹ Lisa H. Jaycox et al., *Violence Exposure, Posttraumatic Stress Disorder, and Depressive Symptoms Among Recent Immigrant Schoolchildren*, 41 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1104 (2002).

¹⁰ Michele R. Decker, Anita Raj & Jay G. Silverman, *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 VIOLENCE AGAINST WOMEN 498 (2007).

¹¹ Penelope K. Trickett, Jennie G. Noll & Frank W. Putnam, *The Impact of Sexual Abuse on Female Development: Lessons From a Multigenerational, Longitudinal Research Study*, 23 DEV. & PSYCHOPATHOLOGY 453 (2011).

¹² The Nat'l Child Traumatic Stress Network, *Impact of Complex Trauma*, <http://www.nctsn.org/trauma-types/complex-trauma/effects-of-complex-trauma#q2>; CTR. FOR SUBSTANCE ABUSE TREATMENT (US), TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES, TREATMENT IMPROVEMENT PROTOCOL (TIP) SER. NO. 57 (2014), <https://www.ncbi.nlm.nih.gov/books/NBK207201/>.

¹³ Louise Silvern et al, *Retrospective Reports of Parental Partner Abuse: Relationships to Depression Trauma Symptoms and Self-Esteem Among College Students*, 10 J. FAM. VIOLENCE 177 (1995); Jennifer Langhinrichsen-Rohling et al., *What's Love Got to Do With It? Perceptions of Marital Positivity in H-to-W Aggressive, Distressed, and Happy Marriages*, 13 J. FAM. VIOLENCE 197 (1998).

These symptoms may surface in juvenile delinquency or dependency cases and can help state court judges identify victims of abuse and sexual assault. Family courts are often the first to encounter minors with unreported or untreated trauma. Awareness of signs that a minor has been a victim of child abuse and sexual assault provides the court with the opportunity to assist immigrant minors with history of trauma in accessing stability and relief from abuse. In state family court, the minor's trauma history may affect:

- Best interests of the child determination, including the best placement or custody arrangement for that child considering the importance of placing the minor with a non-abusive parent, family member, guardian, or other safe placement;
- Minor's immigration options including findings or certifications needed as part of the immigration application;
- Minor's communication with and demeanor in court; and
- Minor's need for therapy, treatment & health care needs including victims' services & public benefits to help the minor process the trauma and begin to heal.

It is important for family court judges to consider the psychological and neurobiological research as it applies to victims of trauma when dealing with such individuals. The Supreme Court of the United States and federal policy makers have used the emerging scientific research to address questions regarding the maturity of children and adolescents to increase the age until which an individual ought to be considered a minor.¹⁴ The Supreme Court has found that "a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the youth."¹⁵ The Court has also held that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."¹⁶ Furthermore, based on scientific evidence regarding the effects of trauma on minors, Congress decided in the Violence Against Women Act to give all minor victims of abuse until the age of 25 to file a VAWA self-petition.¹⁷ Congress also deemed explicitly that victims of abuse up to the age of 24 would be considered "youth," not adults, in order to obtain the benefits outlined in VAWA.¹⁸ If an individual faces trauma in his or her youth, cognitive development can be delayed even further, and it is indispensable that family courts recognize the effects of trauma well dealing with older teens and young adults.

Family court judges often preside over custody, protection order, dependency, and delinquency matters involving immigrant children many of whom may be older immigrant teens and young adults. For these children and young adults ways in which trauma impacts their brain development and maturation continues into early adulthood. Even for individuals who have not suffered trauma, recent neuroscience research shows that brain development continues into the mid-twenties. Biological developments of the human brain, particularly in the frontal lobes where cognitive, memory-related, and executive functioning takes place, continue into an individual's mid- or late-twenties.¹⁹ Many of the areas of the brain that develop at a later age are "linked to higher-order, complex skills such as decision-making function and

¹⁴ Brief for Amicus Invitation No. 16-06-09 as Proposed Brief of National Immigrant Women's Advocacy Project, Lutheran Immigration and Refugee Service, Dr. Giselle Hass, Tahirih Justice Center, and National Center on Domestic Violence, Trauma & Mental Health, U.S. Dep't of Justice Exec. Office for Immigration Review Bd. of Immigration Appeals, Amicus Invitation No. 16-06-09 at 7 (2016), <http://niwaplibrary.wcl.american.edu/pubs/niwap-bia-amicus-child-brain-development/>.

¹⁵ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

¹⁶ *Graham v. Florida*, 560 U.S. 48, 68 (2010).

¹⁷ VAWA 2005, Pub. L. No. 109-162, § 805(c) (2006).

¹⁸ 42 U.S.C. § 13925(a)(45) (defining "youth" as a "person who is 11 to 24 years old").

¹⁹ See, e.g., Pia Pechtel & Diego A. Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, 214 *PSYCHOPHARMACOLOGY* 55 (2011).

inhibition,”²⁰ in addition to emotional regulation, future and planning skills, and impulse control. The trauma that minors suffer takes a toll on their mental health and cognitive functioning, and delays the normal maturation process beyond the age of majority. For children who have suffered trauma the extent of these delays are longer.

Family courts have the opportunity to intervene and mitigate the harms of abuse against minors. Providing comprehensive orders and making formal records of abuse that are necessary or helpful to the immigration application and allow a minor to access immigration relief improves the minor’s access to a wide array of service and support that help children heal and thrive.²¹ This includes providing minors with access to economic opportunity, healthcare access, role models and mentors, organized community programs for youth and families, school environments that promote prevention, and having adult family members who are nurturing and provide consistent, structured supervision.

For these reasons, the best interests of immigrant children requires courts to exercise jurisdiction in family court cases over children of all ages including immigrant youth close to the age of majority. Court orders that decide custody, child support, or placement, issue protection orders, and otherwise direct care of children that further the child’s best interest, are of great assistance to all children who have suffered trauma, including immigrant children. United States immigration laws contain several forms of immigration relief that particularly benefit immigrant children who have suffered abuse.

In 2017, the U.S. Department of Homeland Security (DHS) developed and distributed an Infographic entitled “Protections for Immigrant Victims” that provides a brief overview and links to DHS materials on the major forms of immigration relief available for immigrant children who have suffered child abuse, abandonment, neglect, or having been victims or witnesses of domestic violence.²² Congress authorized state court judges to play a special role in two types of immigration cases involving immigrant children who have been victims of abuse, abandonment, neglect, domestic violence, or other violent crimes: the U Visa and Special Immigrant Juvenile Status (SIJS). Congress authorized state courts to sign U visa certifications that are a prerequisite to a crime victims filing for U visa immigration relief.²³ Congress also required state court involvement in the issuance of state court findings in cases of immigrant children filing for SIJS.²⁴ Judges are encouraged to become knowledgeable about the immigration laws and benefits available for immigrant child survivors of abuse because of the indispensable role they play in facilitating immigration relief for immigrant children who have suffered trauma.²⁵

²⁰ Pia Pechtel & Diego A. Pizzagalli, *Effects of Early Life Stress on Cognitive and Affective Function: An Integrated Review of Human Literature*, 214 *PSYCHOPHARMACOLOGY* 55 (2011).

²¹ JANET CARTER, *DOMESTIC VIOLENCE, CHILD ABUSE, AND YOUTH VIOLENCE: STRATEGIES FOR PREVENTION AND EARLY INTERVENTION* (Family Violence Prevention Fund 2000).

²² DEPARTMENT OF HOMELAND SECURITY, *PROTECTIONS FOR IMMIGRANT VICTIMS* (2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/>. See also *The Department of Homeland Security’s Interactive Infographic on Protections for Immigrant Victims*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/> (last visited Mar. 29, 2017).

²³ See LESLYE ORLOFF, ALISHA LINESWALA, BENISH ANVER, KAREN DRYHURST & LUCIA MACIAS, *U VISA CERTIFICATION TOOLKIT FOR FEDERAL, STATE, AND LOCAL JUDGES, COMMISSIONERS, MAGISTRATES AND OTHER JUDICIAL OFFICERS* (last updated 2017), <http://library.niwap.org/wp-content/uploads/2015/IMM-Tkit-UVisaCertification-02.03.14.pdf>.

²⁴ See *Special Immigrant Juvenile Status*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/topic/immigration/sijs/> (last visited Mar. 29, 2018).

²⁵ See *Training Manual for Courts*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/manual/judicial-training-manual/> (last visited Mar. 29, 2018).

PROTECTIONS FOR IMMIGRANT VICTIMS

CONSIDERATIONS

- ▶ Must be in the US on account of the trafficking
- ▶ Law enforcement certification is encouraged but not required



If approved, benefit provides:

1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

To apply:
USCIS
Form I-914

T VISA

For victims of trafficking

CONSIDERATIONS

- ▶ Perpetrator must be US citizen or Lawful Permanent Resident spouse or parent or US citizen adult son or daughter



If approved, benefit provides:

1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

To apply:
USCIS
Form I-360

VAWA

For victims of Domestic Violence married to US citizens or permanent residents

CONSIDERATIONS

- ▶ Qualifying crime must be in the US or have violated US law
- ▶ Must have law enforcement certification

To apply:
USCIS
Form I-918

U VISA

For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes



If approved, benefit provides:

1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Ability to apply for permanent status

CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in particular social group



If approved, benefit provides:

1. Asylee status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status

To apply:
USCIS or
Immigration
Judge
Form I-589

ASYLUM

For victims of persecution

SIJS

Special Immigrant Juvenile Status for child victims

To apply:
USCIS
Form I-360



If approved, benefit provides:

1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status

CONSIDERATIONS

- ▶ Must have juvenile court order
- ▶ For victims of abuse, abandonment, or neglect by one or both parents

CONTINUED PRESENCE

For victims of trafficking

To apply:
ICE - Federal law enforcement must seek this protection for you



If approved, benefit provides:

1. Protection from removal designation may be granted initially for a period of 2 years and renewed in increments of up to 2 years
2. Work authorization
3. Access to federal social services benefits

CONSIDERATIONS

- ▶ Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
- ▶ Law enforcement support is required



Many immigrants are fearful of admitting that they have been a victim of a crime in part because they believe they will be removed (deported) from the United States if they report the crime. Officials such as police officers, healthcare providers, judges, and prosecutors are often the first to see the signs of violence and are therefore in a unique position to provide information and assistance to those who have been victims. This brochure is designed to



assist front-line workers in this endeavor.

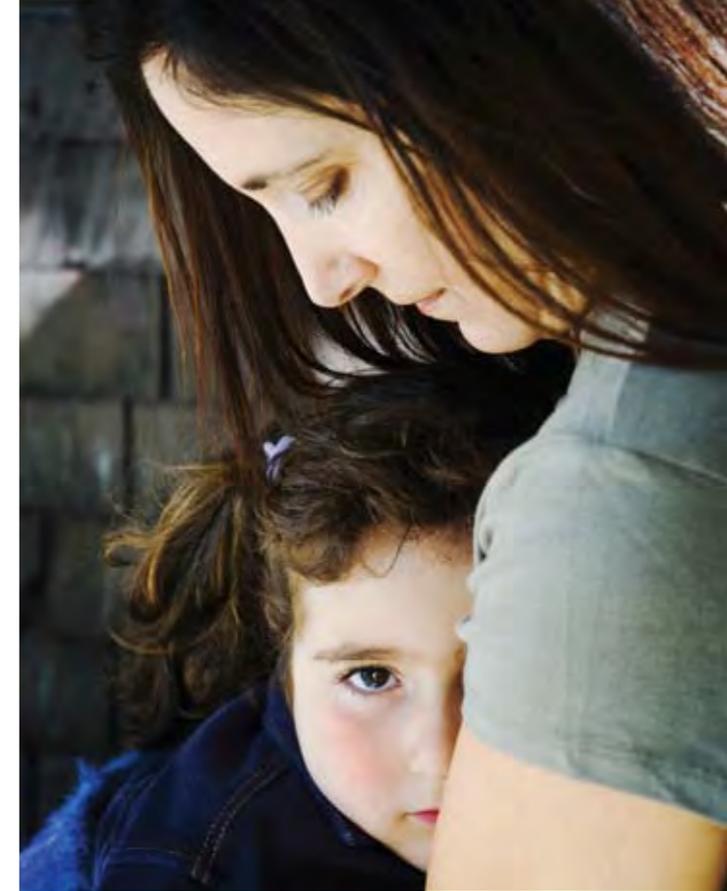


U.S. law provides several protections for legal and undocumented immigrants who have been victims of a crime. Often victims are unaware of such protections, thus frontline workers serve as a critical link for immigrant victims. There are specific protections for victims of domestic violence, victims of certain crimes, and victims of human trafficking.

All agencies within the Department of Homeland Security (DHS), including USCIS, are legally prohibited from disclosing that a victim has applied for VAWA, T, or U immigration benefits.

Visit the “Humanitarian” section of the USCIS website
www.uscis.gov

Law Enforcement Officials and Representatives of Record contact USCIS at **1 802 527 4888**
All others should call **1 800 375 5283**



Immigration Options for Victims of Crimes

Information for Law Enforcement, Healthcare Providers, and Others

Violence Against Women Act
U Nonimmigrant Status
T Nonimmigrant Status



U.S. Citizenship and Immigration Services



U.S. Citizenship and Immigration Services

Victims are not required to be in legal immigration status, but they must:

- Be a victim of a severe form of trafficking in persons,
- Be physically present in the United States on account of the trafficking,
- Comply with any reasonable requests for assistance in the investigation or prosecution (or be under the age of 18), and
- Suffer extreme hardship involving unusual and severe harm if removed from the United States.

To apply for a T nonimmigrant status, applicants must file Form I-914, Application for T Nonimmigrant Status. Qualifying family members may also be eligible to apply for benefits.

Violence Against Women Act

(VAWA) Self-Petitioners



Some immigrants may be afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

Victims of domestic violence who are the child, parent, or current/former spouse of a United States citizen or a permanent resident (green card holder) and are abused by the citizen or permanent resident may be eligible to apply for a green card themselves without needing the abuser to file for immigration benefits on their behalf. This provision of the law was created under the Violence Against Women Act (VAWA).

Victims must establish that they:

- Have or had a qualifying relationship with the abuser spouse, or, are the parent or child of the abuser,
- Reside or resided with the abuser,
- Have good moral character, and
- Have been victims of battery or extreme cruelty.

VAWA provisions apply equally to men and women.

Victims of domestic violence, whether a spouse, child, or parent of the abuser, may self-petition by filing Form I-360, Petition for Widow(er)s, Amerasians, and Special Immigrants. This form is available on USCIS' website, www.uscis.gov.

U Nonimmigrant Status

U nonimmigrant status (or U visa) offers immigration protection for victims and is also a tool for law enforcement. To obtain U status, the victim must obtain a certification from law enforcement, however, law enforcement officials should note that providing a certification does not grant a benefit—only USCIS has the authority to grant or deny this benefit.

Victims are not required to be in legal immigration status, but they must:

- Be a victim of qualifying criminal activity and have suffered substantial physical or mental abuse as a result of the crime,
- Possess credible and reliable information about the qualifying criminal activity,
- Be, have been, or are likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity, and
- Be a victim of criminal activity that violated a U.S. law.



Victims of the following crimes may be eligible for a U nonimmigrant visa:

Abduction	Manslaughter
Abusive Sexual Contact	Rape
Blackmail	Murder
Domestic Violence	Obstruction of Justice
Extortion	Witness Tampering
False Imprisonment	Prostitution
Female Genital Mutilation	Sexual Assault
Perjury	Slave Trade
Felonious Assault	Torture
Hostage Taken	Trafficking
Incest	Sexual Exploitation
Peonage	Unlawful Criminal Restraint
Involuntary Servitude	Other Related Crimes
Kidnapping	

To apply for U nonimmigrant status, the victim must file Form I-918, Petition for U Nonimmigrant Status. Law enforcement official must certify Form I-918, Supplement B. Qualifying family members may also be eligible to apply for benefits.

Visit the “Humanitarian” section of the USCIS website
www.uscis.gov

Law Enforcement Officials and Representatives of Record contact USCIS at **1 802 527 4888**

All others should call **1 800 375 5283**



T Nonimmigrant Status

Trafficking in persons—also known as “human trafficking”—is a form of modern-day slavery. Traffickers prey on many types of people, often including individuals who are poor, unemployed, underemployed, or who lack the safety and protection of strong social networks. Victims are often lured under the false pretenses of good jobs and better lives, and then forced to work under brutal and inhumane conditions. Many believe that human trafficking is a problem that only occurs in other countries—but human trafficking also happens in the United States.

The T nonimmigrant status (or T visa) provides immigration protection to victims of severe forms of trafficking in persons who assist law enforcement in the investigation and prosecution of human trafficking cases.

Overview

Special Immigrant Juvenile (SIJ) status is an immigration classification for certain foreign children present in the United States who have been abused, neglected or abandoned by a parent. Children may be eligible if they are the subject of a juvenile court order that makes certain findings regarding:

- Their court-ordered custody, placement or dependency;
- The non-viability of parental reunification; and
- The best interests of the child.

SIJ classification allows these individuals to apply for lawful permanent resident (LPR) status (also known as getting a Green Card). Children eligible for SIJ classification may include those who are:

- In a state's child welfare system;
- Currently (or were previously) in federal custody due to their undocumented status; or
- Living with a foster family, an appointed guardian or the non-abusive custodial parent.



Questions to USCIS

State juvenile courts and child welfare agencies can submit general questions or outreach requests to USCIS-IGAOOutreach@uscis.dhs.gov.

General SIJ Information

Visit the “Humanitarian” section of the USCIS Website www.uscis.gov/humanitarian.

Reporting Crimes

Contact DHS Homeland Security Investigations at **(866) DHS-2-ICE** for concerns regarding human trafficking

General Information on Adjustment of Status

<https://www.uscis.gov/green-card/green-card-processes-and-procedures/adjustment-status>

Questions Regarding a Case

You may ask USCIS about a case by calling **(800) 375-5283**, or making an INFOPASS appointment at <https://infopass.uscis.gov>.

Check Case Status

Check the status of a case by visiting the “Check your Case Status” section of www.uscis.gov.



Immigration Relief for Abused Children

SPECIAL IMMIGRANT JUVENILE STATUS

Information for Juvenile Court Judges and Child Welfare Professionals



U.S. Citizenship and Immigration Services

Additional Tips

1. BE FAMILIAR WITH THE CURRENT ELIGIBILITY REQUIREMENTS.

Section 101(a)(27)(J) of the Immigration and Nationality Act establishes the definition of Special Immigrant Juvenile

2. PROVIDE THE FACTUAL BASIS FOR THE JUVENILE COURT ORDER FINDINGS.

Template court orders are generally insufficient. Court orders that include a reasonable factual basis for the findings on dependency or custody, parental reunification and best interests are usually sufficient for USCIS to grant consent. If the court order does not include a reasonable factual basis for the court's findings, petitioners may submit alternative evidence such as: separate orders containing findings of fact, records from the judicial proceedings or affidavits summarizing the evidence presented to the court.

3. BE TIMELY.

- The child must obtain the juvenile court order before he or she ages out of the court's jurisdiction. State laws on jurisdiction vary, but jurisdiction may end at 18 years of age.

NOTE: If a child (who is otherwise eligible) ages out of the juvenile's court's jurisdiction prior to filing the SIJ petition with USCIS, he or she remains eligible to petition for SIJ classification.

- The child must submit the SIJ petition to USCIS before turning 21, even in states where court jurisdiction extends beyond age 21.

NOTE: If a child (who is otherwise eligible) turns 21 years of age after filing the SIJ petition with USCIS, he or she remains eligible for SIJ classification.

Eligibility Requirements

To qualify, a child must meet the following four requirements:

1. Be under 21 years of age at time of filing the SIJ petition;
 2. Be unmarried;
 3. Be physically present in the United States; and
 4. Have an order from a juvenile court that makes the following three findings
- **DEPENDENCY/CUSTODY:** Declares the child dependent on the court, or legally places the child under the custody of an agency or department of a state, or an individual or entity appointed by a state or juvenile court.
 - Temporary orders are generally not sufficient.
 - **PARENTAL REUNIFICATION:** Reunification with one or both of the child’s parents is not viable because of abuse, neglect, abandonment or a similar basis under state law.
 - “Not viable” generally means the child cannot be reunified with his or her parent(s) before the age of majority.
 - The abuse, neglect, abandonment or similar basis under state law may have occurred in the child’s home country or in the United States.
 - **BEST INTEREST:** It would not be in the child’s best interest to be returned to his or her country of origin.

Role of Child Welfare Professionals

Child welfare professionals are uniquely positioned to identify and assist victims of child abuse, neglect or abandonment who may be eligible for SIJ classification. Child welfare professionals may assist by:

- Referring the child’s case to an immigration attorney or accredited representative;
- Providing assessments and reports to assist the juvenile court in making findings that may establish SIJ eligibility; and
- Collecting important documents, such as proof of the child’s age and identity.

Role of Juvenile Courts

For SIJ purposes, a juvenile court is a court that has jurisdiction under state law to make judicial determinations about the care and custody of



juveniles. Examples of courts that are considered juvenile courts are: dependency, delinquency, probate and family courts. Juvenile courts make findings based on state law about the abuse, neglect or abandonment, family reunification, an best interests of the child. Juvenile court judges apply state law on issues

such as jurisdiction, evidentiary standards, and parental notice, parental rights and due process.

Although USCIS relies on the juvenile court’s findings on child welfare issues to determine whether a child is eligible for SIJ classification, only USCIS can adjudicate the SIJ petition.

Role of USCIS

USCIS determines if the child meets the statutory requirements for SIJ classification under immigration law by reviewing the SIJ petition (Form I-360) and supporting evidence, including the juvenile court order. USCIS reviews the juvenile court order to ensure that all of the requisite findings were made. USCIS also determines whether or not to consent to the granting of SIJ classification. In order to consent, USCIS must determine that the request for SIJ classification is bona fide, which means the court order was sought for relief from abuse, neglect, abandonment or a similar basis under state law, rather than primarily to obtain an immigration benefit. To make this determination, USCIS requires the factual basis for the court’s findings, as described under the Additional Tips section.

Filing with USCIS

Petition for SIJ Classification

The child must have a juvenile court order that contains the required findings before filing the following forms and supporting documentation with USCIS: **Petition for SIJ Classification**

SIJ-Based Lawful Permanent Resident (LPR) Application

A child who is granted SIJ classification must file a separate application to obtain LPR status, which is also known as “adjustment of status.” An application for LPR status may be filed together with the Form I-360 if a visa number is immediately available at the time of filing (in the EB-4 category) and USCIS has jurisdiction over the child’s application to adjust status. To apply for LPR status, a child submits a Form I-485, Application to Register Permanent Residence or Adjust Status, with all required documentation and evidence. Form I-485 instructions provide detailed information about the filing requirements.

NOTE: Biological or former adoptive parents of a child who obtains LPR status through SIJ classification can never be granted any immigration benefits through the SIJ child. However, a child who obtains lawful permanent residence or U.S. citizenship may petition for certain other qualifying family members through family-based immigration.

	Petition for SIJ Classification
Form	Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant
Fee	None
Supporting Documentation	<ul style="list-style-type: none">• The child’s birth certificate or other evidence of the child’s age;• Certified copy of the juvenile court order which includes the judicial findings and a reasonable factual basis for each finding or alternative evidence to establish the factual basis for the findings; and• U.S. Department of Health and Human Services consent, if a child in their custody seeks a juvenile court order that alters his or her HHS custody status or placement.
Supporting Forms	Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, if applicable.

Any documents submitted in a foreign language must be accompanied by a full English translation. Translators must certify that they are competent to translate and that the translation is accurate.



U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

August 16, 2010

Dear Chief Justice/State Court Administrator:

In the past decade, increasing numbers of state court systems have sought to improve their capacity to handle cases and other matters involving parties or witnesses who are limited English proficient (LEP). In some instances the progress has been laudable and reflects increased recognition that language access costs must be treated as essential to sound court management. However, the Department of Justice (DOJ) continues to encounter state court language access policies or practices that are inconsistent with federal civil rights requirements. Through this letter, DOJ intends to provide greater clarity regarding the requirement that courts receiving federal financial assistance provide meaningful access for LEP individuals.

Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone. They may also place state courts in violation of long-standing civil rights requirements. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) (Safe Streets Act), both prohibit national origin discrimination by recipients of federal financial assistance. Title VI and Safe Streets Act regulations further prohibit recipients from administering programs in a manner that has the effect of subjecting individuals to discrimination based on their national origin. *See* 28 C.F.R. §§ 42.104(b)(2), 42.203(e).

The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. *See Lau v. Nichols*, 414 U.S. 563 (1974). Executive Order 13166, which was issued in 2000, further emphasized the point by directing federal agencies to publish LEP guidance for their financial assistance recipients, consistent with initial general guidance from DOJ. *See* 65 Fed. Reg. 50,121 (Aug. 16, 2000). In 2002, DOJ issued final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 Fed. Reg. 41,455 (June 18, 2002) (DOJ Guidance). The DOJ Guidance and subsequent technical assistance letters from the Civil Rights Division explained that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI, the Safe Streets Act, and their implementing regulations. The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules.

Despite efforts to bring courts into compliance, some state court system policies and practices significantly and unreasonably impede, hinder, or restrict participation in court proceedings and access to court operations based upon a person's English language ability. Examples of particular concern include the following:

1. Limiting the types of proceedings for which qualified interpreter services are provided by the court. Some courts only provide competent interpreter assistance in limited categories of cases, such as in criminal, termination of parental rights, or domestic violence proceedings. DOJ, however, views access to *all* court proceedings as critical. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. *See* DOJ Guidance, 67 Fed. Reg. at 41,462. It states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions," *id.* at 41,471 (emphasis added), including administrative court proceedings. *Id.* at 41,459, n.5.

Courts should also provide language assistance to non-party LEP individuals whose presence or participation in a court matter is necessary or appropriate, including parents and guardians of minor victims of crime or of juveniles and family members involved in delinquency proceedings. Proceedings handled by officials such as magistrates, masters, commissioners, hearing officers, arbitrators, mediators, and other decision-makers should also include professional interpreter coverage. DOJ expects that meaningful access will be provided to LEP persons in all court and court-annexed proceedings, whether civil, criminal, or administrative including those presided over by non-judges.

2. Charging interpreter costs to one or more parties. Many courts that ostensibly provide qualified interpreters for covered court proceedings require or authorize one or more of the persons involved in the case to be charged with the cost of the interpreter. Although the rules or practices vary, and may exempt indigent parties, their common impact is either to subject some individuals to a surcharge based upon a party's or witness' English language proficiency, or to discourage parties from requesting or using a competent interpreter. Title VI and its regulations prohibit practices that have the effect of charging parties, impairing their participation in proceedings, or limiting presentation of witnesses based upon national origin. As such, the DOJ Guidance makes clear that court proceedings are among the most important activities conducted by recipients of federal funds, and emphasizes the need to provide interpretation free of cost. Courts that charge interpreter costs to the parties may be arranging for an interpreter's presence, but they are not "providing" the interpreter. DOJ expects that, when meaningful access requires interpretation, courts will provide interpreters at no cost to the persons involved.

3. Restricting language services to courtrooms. Some states provide language assistance only for courtroom proceedings, but the meaningful access requirement extends to court functions that are conducted outside the courtroom as well. Examples of such court-managed offices, operations, and programs can include information counters; intake or filing offices; cashiers; records rooms; sheriff's offices; probation and parole offices; alternative dispute resolution programs; *pro se* clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Access to these points of public contact is essential to the fair administration of justice, especially for unrepresented LEP persons. DOJ expects courts to provide meaningful access for LEP persons to such court operated or managed points of public contact in the judicial process, whether the contact at issue occurs inside or outside the courtroom.

4. Failing to ensure effective communication with court-appointed or supervised personnel. Some recipient court systems have failed to ensure that LEP persons are able to communicate effectively with a variety of individuals involved in a case under a court appointment or order. Criminal defense counsel, child advocates or guardians *ad litem*, court psychologists, probation officers, doctors, trustees, and other such individuals who are employed, paid, or supervised by the courts, and who are required to communicate with LEP parties or other individuals as part of their case-related functions, must possess demonstrated bilingual skills or have support from professional interpreters. In order for a court to provide meaningful access to LEP persons, it must ensure language access in all such operations and encounters with professionals.

DOJ continues to interpret Title VI and the Title VI regulations to prohibit, in most circumstances, the practices described above. Nevertheless, DOJ has observed that some court systems continue to operate in apparent violation of federal law. Most court systems have long accepted their legal duty under the Americans with Disabilities Act (ADA) to provide auxiliary aids and services to persons with disabilities, and would not consciously engage in the practices highlighted in this letter in providing an accommodation to a person with a disability. While ADA and Title VI requirements are not the same, existing ADA plans and policy for sign language interpreting may provide an effective template for managing interpreting and translating needs for some state courts.

Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost. Court systems have many operating expenses – judges and staff, buildings, utilities, security, filing, data and records systems, insurance, research, and printing costs, to name a few. Court systems in every part of the country serve populations of LEP individuals and most jurisdictions, if not all, have encountered substantial increases in the number of LEP parties and witnesses and the diversity of languages they speak. Budgeting adequate funds to ensure language access is fundamental to the business of the courts.

We recognize that most state and local courts are struggling with unusual budgetary constraints that have slowed the pace of progress in this area. The DOJ Guidance acknowledges that recipients can consider the costs of the services and the resources available to the court as part of the determination of what language assistance is reasonably required in order to provide meaningful LEP access. *See id.* at 41,460. Fiscal pressures, however, do not provide an exemption from civil rights requirements. In considering a system's compliance with language access standards in light of limited resources, DOJ will consider all of the facts and circumstances of a particular court system. Factors to review may include, but are not limited to, the following:

- The extent to which current language access deficiencies reflect the impact of the fiscal crisis as demonstrated by previous success in providing meaningful access;
- The extent to which other essential court operations are being restricted or defunded;
- The extent to which the court system has secured additional revenues from fees, fines, grants, or other sources, and has increased efficiency through collaboration, technology, or other means;
- Whether the court system has adopted an implementation plan to move promptly towards full compliance; and
- The nature and significance of the adverse impact on LEP persons affected by the existing language access deficiencies.

DOJ acknowledges that it takes time to create systems that ensure competent interpretation in all court proceedings and to build a qualified interpreter corps. Yet nearly a decade has passed since the issuance of Executive Order 13166 and publication of initial general guidance clarifying language access requirements for recipients. Reasonable efforts by now should have resulted in significant and continuing improvements for all recipients. With this passage of time, the need to show progress in providing all LEP persons with meaningful access has increased. DOJ expects that courts that have done well will continue to make progress toward full compliance in policy and practice. At the same time, we expect that court recipients that are furthest behind will take significant steps in order to move promptly toward compliance.

The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons as an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans can provide additional benefits to recipients' managers in the areas of training, administering, planning, and budgeting. The DOJ Guidance goes on to note that these benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. In court systems, we have found that meaningful access inside the courtroom is most effectively implemented in states that have adopted a court rule, statute, or administrative order providing for universal, free, and qualified court interpreting. In addition, state court systems that have strong leadership and a designated coordinator of language services in the office of the court administrator, and that have identified personnel in charge of ensuring language access in each courthouse, will more likely be able to provide effective and consistent language access for LEP

individuals. Enclosed, for illustrative purposes only, are copies of Administrative Order JB-06-3 of the Supreme Judicial Court of Maine, together with the September 2008 Memorandum of Understanding between that court and DOJ. Also enclosed for your information is a copy of "Chapter 5: Tips and Tools Specific to Courts" from DOJ, *Executive Order 13166 Limited English Proficiency Document: Tips and Tools from the Field* (2004).

The Office of Justice Programs provides Justice Assistance Grant funds to the states to be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems that will improve or enhance criminal justice programs including prosecution and court programs. Funding language services in the courts is a permissible use of these funds.

DOJ has an abiding interest in securing state and local court system compliance with the language access requirements of Title VI and the Safe Streets Act and will continue to review courts for compliance and to investigate complaints. The Civil Rights Division also welcomes requests for technical assistance from state courts and can provide training for court personnel. Should you have any questions, please contact Mark J. Kappelhoff, Acting Chief, Federal Coordination and Compliance Section (formally known as Coordination and Review Section) at (202) 307-2222.

Sincerely,

A handwritten signature in black ink, appearing to read "Th. E. Perez", written in a cursive style.

Thomas E. Perez
Assistant Attorney General

Enclosures

Appendix J

Types of Proceedings in Which State Courts Can Make Special Immigrant Juvenile Status Findings¹

By: Eileen Lohmann, Rafaela Rodrigues, and Leslye E. Orloff
December 2017

In order for an immigrant child to apply for immigration relief through Special Immigrant Juvenile Status (SIJS) the child needs to receive an order from a state court judge with jurisdiction over the child regarding care, custody, placement, or dependency.

The role of the Court is to make factual findings based on state law about abuse, abandonment, or neglect of an immigrant child, viability of parental reunification, and best interests of the child.² Each of the determinations listed below is to be made applying the law of the state in which the court is located. The specific findings of fact the federal SIJS statutes require an SIJS eligible child to obtain are:

- A state or juvenile court has declared, issued a court order, or made a finding awarding custody to, or placing the child in the custody or care of an individual, an agency, or a department; and
- The court has found that reunification with one or both of the immigrant child's parents is not viable due to abuse, abandonment, neglect, or similar basis found under state law; and
- It has been determined in an administrative or judicial proceeding that it would not be in the best interest of the immigrant child to be returned to his or her country of nationality or last residence.

These findings about the abuse, abandonment, or neglect the child suffered and child's best interests can be made in any specific type of state court proceeding. The U.S. Citizenship and Immigration Services (USCIS) at the U.S. Department of Homeland Security defines the term "juvenile court" as "a court in the United States that has jurisdiction under state law to make determinations about custody and care of children."³ When the case before the court involves a child who has been abused, abandoned or neglected by a parent and that child is an immigrant who is not a naturalized citizen or lawful permanent resident, the court should be aware that the child may be eligible for SIJS immigration relief and would benefit from the state court issuing SIJS findings.⁴

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (July 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

³ *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (July 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

⁴ In some cases the parties will affirmatively include requests for SIJS findings on the child's behalf. In many others the parties before the court seeking orders that include custody or placement of an immigrant child will not know about SIJS or that the child is eligible. For approaches courts can take in these cases See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 9 (2017) [hereinafter SIJS Bench Book], <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

The factual findings supporting the Court’s findings in SIJS cases will be based on facts that the court regularly obtains when making any child placement and custody decisions. The court applies the same state law’s best interest of the child that the court uses to award custody, guardianship, or to order placement of a child with natural parent, an adoptive parent, a grandparent, an immediate relative, other family members, godparents, family friends and other forms of kinship care.⁵

Table 1 contains a non-exclusive list of state judicial proceedings in which SIJS findings may be entered that have been provided as examples by USCIS in their training materials and policies.

Table 1

<u>Custody</u> ⁶	SIJS findings can be potentially made in any custody proceedings in which a non-abusive parent, family member or any third party is being awarded custody of a child who was subjected to child abuse, abandonment or neglect or a similar basis under state law by one or both of the child’s parent(s) or adopted parent(s). This includes but is not limited to custody determinations made when parents separate, divorce, or experience domestic violence. ⁷
<u>Guardianship Proceedings</u> ⁸	SIJS findings are appropriate in guardianship proceedings when the court is deciding a guardianship of an immigrant child who is not a US citizen or a lawful permanent resident to an adult who will have custody of the child based on factors that include abuse, abandonment, neglect, or other similar harms to the child, the history and dynamics of the child’s parental relationships and the best interest. ⁹
<u>Probate Proceedings</u> ¹⁰	State courts issuing court orders in guardianship proceedings are authorized and encouraged to issue SIJS findings when the juvenile

⁵ The focus of the court should be on identifying the best custodian or placement for the child. The immigration status of that individual should not be a factor. For a fuller discussion of child custody and immigration status, *see generally* Soraya Fata, Leslye E. Orloff, Andrea Carcamo-Cavazos, Alison Silber, & Benish Anver, *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47 FAM. L. Q. 191 (2013), <http://niwaplibrary.wcl.american.edu/pubs/mixed-status-fams-child-custody/>.

⁶ See U.S. Citizenship & Immigration Servs., USCIS Policy Manual, Vol. 6 – Immigrants, Part J – Special Immigrant Juveniles (last updated Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter1.html#S-A> (last visited Oct. 23, 2017); SIJS Bench Book, Appendix D1, *USCIS Policy Manual*, Chapter 2(D)(5): USCIS Consent, page 5 [hereinafter USCIS Policy Manual]. See *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>; see also *Immigration Relief for Abused Children: Special Immigrant Juvenile Status: Information for Juvenile Court judges and Child Welfare Professionals*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2016), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure.

⁷ See SIJS Bench Book, Chapter V-3: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Custody and Child Support*, <http://niwaplibrary.wcl.american.edu/pubs/ch-v3-custody-quick-reference-guide/>.

⁸ See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

⁹ See SIJS Bench Book, Chapter V-7: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Guardianship*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v7-guardianship-quick-reference/>.

¹⁰ See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1, <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

<p><i>Note:</i> In some states, probate proceedings are identified as Orphan proceedings.</p>	<p>who is the subject of the guardianship proceeding has been abused, abandoned, neglected, or any other similar basis under state law, which may include battering or extreme cruelty.</p>
<p><u>Dependency Proceedings</u>¹¹</p>	<p>In any suit affecting the parent-child relationship state courts make determinations and enter orders regarding the custody and care of children. State courts hearing child abuse and neglect cases are encouraged to use best practices for placements that are in the child’s best interest. Placements can include kinship care, placement with a non-abusive parent, relative, family friend, godparent or if no other placements are available, foster care. Child abuse and neglect and other dependency proceedings are appropriate cases in which courts should consider making SIJS findings when the child is not a US citizen or lawful permanent resident.¹²</p>
<p><u>Adoption Proceedings</u>¹³</p>	<p>Child adoption proceedings involve the issuance of court rulings in which the court terminates the parental rights of either or both parents or in which a birth parent voluntarily gives up parental rights and those rights are transferred to another individual. When an immigrant child is adopted and the child has been abused, abandoned or neglected the court issuing the adoption decree should consider including SIJS findings.¹⁴</p>

¹¹ See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014) <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>; IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS: INFORMATION FOR JUVENILE COURT JUDGES AND CHILD WELFARE PROFESSIONALS (2016) http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure.

¹² See SIJS Bench Book, Chapter V-6: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Dependency*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference/>.

¹³ See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014); IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS: INFORMATION FOR JUVENILE COURT JUDGES AND CHILD WELFARE PROFESSIONALS (2016) http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure.

¹⁴ See SIJS Bench Book, Chapter V-1: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Termination Of Parental Rights And Adoption*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference/>.

<u>Delinquency Proceedings</u> ¹⁵	<p>SIJS finding are appropriate in juvenile delinquency proceedings when the court issues an order confining an immigrant juvenile to state juvenile detention centers, boot camps, or other forms of supervision in which the state is responsible for the care and custody of the juvenile. This can include placement of delinquent children under the custody of probation departments, foster care and other state agencies.¹⁶</p> <p>The court can also issue SIJS findings when it places the child in the care of a non-abusive parent, relative, family friend, godparent, guardian or other less restrictive placement. Experiencing child abuse, battering, extreme cruelty, neglect or abandonment are traumatic events that have profound effects on child development and can contribute to juvenile delinquency.¹⁷</p>
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Table 2 contains a non-exhaustive list of other examples of state court proceedings where SIJS findings MIGHT also be made, depending on the circumstances surrounding the proceedings:

Table 2

Qualifying State Proceeding for SIJS Findings?	
<u>Protection Orders</u>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>
	<p>The jurisdictional basis upon which state courts are authorized under state law to issue protection orders in civil or criminal court cases require findings that family violence has occurred against a spouse, former spouse, a child, a step-child or another relationship covered by the state protection order statute. Protection orders are based on findings by the court that a crime or a form of abuse, battering, or harm listed in the state protection order statute has occurred. When the parties involved in the protection order case have children, state protection order statutes authorize courts issuing protection orders to make an award of custody in the protection order. State courts issuing protection orders in civil or criminal court cases may include in</p>

¹⁵ See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014); IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS: INFORMATION FOR JUVENILE COURT JUDGES AND CHILD WELFARE PROFESSIONALS (2016) http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure.

¹⁶ See SIJS Bench Book, Chapter V-5: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Delinquency Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-5-delinquency-quick-reference/>.

¹⁷SIJS Bench Book, Appendix E: Meaghan Fitzpatrick, Alina Husain, Giselle Hass and Leslye E. Orloff, *Understanding the Significance of a Minor's Trauma History in Family Court Rulings*, NIWAP (September 26, 2017), <http://niwaplibrary.wcl.american.edu/pubs/effects-of-trauma-on-minors-fact-sheet>.

		<p>the protection order SIJS findings when the protection order includes custody, visitation, and/ or child support orders.¹⁸ The circumstances in which it would be appropriate for a protection order to include SIJS findings include but are not limited to the following:</p> <ul style="list-style-type: none"> • The child has been abused by one parent and the protection order gives custody to the non-abusive parent • One of the child’s parents has abused the other parent; the abuse occurred in the presence of the immigrant child and the court enters findings that such abuse constitutes abuse or neglect of the child; the protection order includes a custody award to the non-abusive parent and protects both the abused parent and the child from continued abuse; • An abused child files a protection order against the abusive parent and the order includes provisions regarding custody or safe placement, often with stay away provisions from the child’s person, residence, school, daycare and other locations the child regularly frequents; <p>An under 21 year old immigrant child files a sexual assault protection order against the sexually abusive parent.¹⁹</p>
<p><u>Divorce/ Legal Separation Proceedings</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>(2) Does Judge have the authority under state law to make judicial determinations about the custody</p>	<p>SIJS findings can be made in any family court proceedings in which a parent, family member or any other party is being awarded custody of the minor child where abuse, neglect, abandonment, or other similar grounds by one or both of the child’s parents is a factor in the placement, custody, or care determination.</p>

¹⁸ See SIJS Bench Book, Appendix R: *Custody in Protection Orders Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/appendix-r-custody-in-protection-orders-proceedings/>.

¹⁹ See SIJS Bench Book, Chapter V-2: *Quick Reference Guide: Special Immigrant Juvenile Status Findings In Civil and Criminal Protection Orders Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/ch-v2-civil-protection-orders-quick-reference-guide/>.

	<p>and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	
<p><u>Paternity and Child Support Proceedings</u>²⁰</p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>The most common circumstances in which SIJS findings may be entered in are paternity and child support cases brought by a custodial parent, guardian, grandparent or other care giver of a child against a non-custodial parent who has abandoned, abused or neglected the immigrant child. This occurs in a number of cases including when the natural parent does not recognize the child as his own or when the child was born as the result of rape or incest. In these proceedings the court orders can address a number of issues including establishing paternity, addressing custody and awarding child support.</p> <p>In child support proceedings where courts also address parenting time, visitation or custody, courts can enter SIJS orders in child support cases.²¹</p>

²⁰ See SIJS Bench Book, Chapter V-8: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Paternity and Parentage Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v8-paternity-quick-reference-guide/>

²¹ See SIJS Bench Book, Chapter V-3: *Quick Reference Guide: Special Immigrant Juvenile Status Findings In Proceedings Involving Custody And Child Support*, <http://niwaplibrary.wcl.american.edu/pubs/ch-v3-custody-quick-reference-guide/>

<p><u>Parenting Plan Modifications</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>(2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>In most states, modifications of parenting plans require a showing of a change in circumstances and that the modification is in the best interest of the child. A modification can be an appropriate vehicle for SIJS findings if a child is living with one fit parent, but there has been abuse, abandonment, neglect or similar treatment by the other parent.</p>
<p><u>Termination of Parental Rights</u>²²</p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>(2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>Judges in termination of parental rights proceedings should include SIJS findings in their court orders when one or both parents' parental rights are terminated due to abuse, abandonment, neglect, or any other similar basis under state law, which could include battering or extreme cruelty. Courts should consider issuing SIJS orders any time the child is an immigrant child who is not a US citizen or lawful permanent resident.</p>
<p><u>Motions for Declaratory Judgment</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>2) Does Judge have the authority under state law to make judicial determinations about the custody</p>	<p>Immigrant children can initiate an action before a state court requesting a declaratory judgment which includes findings and orders that recognize a child's placement or custody with an individual or agency. Further when the court finds that the immigrant child has been abused, abandoned or neglected, the court can issue orders under state law that</p>

²² See SIJS Bench Book, Chapter V-1: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Termination Of Parental Rights And Adoption*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-1-adoption-quick-reference/>.

	<p>and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Finding.</p>	<p>further the child’s bests interests. Examples include:</p> <ul style="list-style-type: none"> • The child is in Office of Refugee Resettlement (ORR) custody in a facility that will not seek state court orders on the child’s behalf. The child comes to court seeking a declaratory judgment recognizing the ORR placement and includes in that order SIJS findings; • The child is living with a relative who does not have custody and the child needs to establish residence to access public school, public benefits or other services requiring state residence. The court issues a declaratory judgment recognizing the child’s residence with the relative and includes SIJS orders. • The court may also issue declaratory judgments for other expedited purposes. <p>The abused, abandoned or neglected child presents testimony and introduces supporting evidence to the court sufficient to receive a court order. In declaratory judgment proceedings, an abused immigrant child is not required to serve the abusive parents with notice of the proceeding.²³</p>
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²³ See SIJS Bench Book, Chapter V-1: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings In Declaratory Judgment Cases*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-1-adoption-quick-reference/>.

Appendix K

State Law Definitions of Child Abuse¹

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December 19, 2017²

Multi-State Overview – Child Abuse Definitions

This document summarizes the common themes in state definitions of child abuse. We developed the list below to help courts identify when other state have statutory language similar to their state statute. When state statutes are similar, case law in one jurisdiction can provide persuasive authority interpreting the statute that may be useful to state courts in a wide range of family court proceedings. The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status (SIJS). Any state law definition of child abuse can apply in any state court proceeding for purposes of the court applying state law to issue the required SIJS findings.

The first section of this document highlights the common themes in state laws defining child abuse and lists that which states adopt define which actions or failures to act as constituting child abuse under state law. The last section of this document contains a list by state of each of the child abuse definitions under state law.

Child Abuse Prevention and Treatment Act (CAPTA)

- 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.”

Justice for Victims of Trafficking Act of 2015

- Justice for Victims of Trafficking Act of 2015 adds that children identified as victims of sex trafficking or severe forms of trafficking in persons shall be considered victims of child abuse (and neglect).

Types of Abuse:

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² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

- **Physical abuse:** any non-accidental physical injury to the child
 - Striking, kicking, burning, biting, or any action that results in a physical impairment of the child: Arkansas, D.C., Minnesota, Pennsylvania, Washington
 - Causing bruising, bleeding, failure to thrive, bone fractures, subdural hematoma, and other injuries that are inconsistent with the explanations given for them: Colorado, Connecticut, Hawaii, Idaho, Massachusetts, Montana, Nevada, New Mexico, Texas, Wisconsin, Wyoming
 - Labor trafficking, involuntary servitude, and/or trafficking of minors: Hawaii, Illinois, North Carolina

- **Neglect:** 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
 - Failure to educate the child as required by law: Colorado, Indiana, Kentucky, New Jersey, South Carolina, South Dakota
 - Failure to provide any special medical treatment or mental health care needed by the child (medical neglect): Alaska, California, Colorado, D.C., Hawaii, Indiana, Iowa, Kentucky, New Jersey, Oregon, Rhode Island, South Dakota
 - A few states include the withholding of medical treatment or nutrition from disabled infants with life-threatening conditions

- **Sexual abuse/ exploitation:**
 - Allowing the child to engage in prostitution: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin
 - Allowing the child to engage in the production of child pornography: Alabama, California, Colorado, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Rhode Island, Texas, Utah, Vermont, Washington
 - Twenty-one states include human trafficking, sex trafficking, and/or trafficking of children for sexual purposes: Arkansas, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Minnesota, Missouri, North Carolina, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Wisconsin

- **Emotional abuse:** injury to the psychological capacity or emotional stability of the child as evidenced by an observable or substantial change in behavior, emotional response, or cognition, OR injury as evidenced by anxiety depression, withdrawal, or aggressive behavior

- **Parental Substance Abuse:**

- Prenatal exposure of a child to harm due to the mother’s use of an illegal drug or other substance: Colorado, Indiana, Massachusetts, South Dakota, Wisconsin
 - Manufacture or storing of a controlled substance in the presence of a child or on the premises occupied by a child: Arizona, Colorado, Iowa, Ohio, Oregon, South Dakota, Virginia, Wisconsin
 - Selling, distributing, or giving drugs or alcohol to a child: Arkansas, Florida, Hawaii, Iowa, Illinois, Minnesota, Oregon, Texas
 - Use of a controlled substance by a caregiver that impairs the caregiver’s ability to adequately care for the child: California, Kentucky, Rhode Island, Texas
- **Abandonment:** when the parent’s identity or whereabouts are unknown, the child has been left by the in circumstances in which the child suffers serious harm, or the parent has failed to maintain contact with the child or to provide reasonable support for a specified period of time.
 - Abandonment included in definition of child abuse: Florida, Indiana, Kentucky, Maine, Minnesota, Montana, New Jersey, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, Wyoming
- **Domestic violence:**
 - States in which child abuse is not included in domestic violence definition: Iowa, Kansas, Maine, Montana, Nebraska,³ New Jersey,³ New York,⁴ Oregon, South Carolina, Washington, Wisconsin, Wyoming

Jurisdiction	Factors a court will consider:
Alabama	<p>Physical Abuse – Ala. Code § 26-14-1(1)-(3)</p> <ul style="list-style-type: none"> ● Harm or threatened harm to the health or welfare of the child through non-accidental physical injury <p>Sexual Abuse/ Exploitation - Ala. Code § 26-14-1(1)-(3)</p> <ul style="list-style-type: none"> ● Employing, using, persuading, inducing, enticing, or coercing to engage in or have child assist another person to engage in sexually explicit conduct ● Any simulation of sexual conduct for purpose of producing a visual depiction of the conduct ● Rape, molestation, prostitution, or other form of sexual exploitation ● Incest <p>Emotional Abuse - Ala. Code § 26-14-1(1)-(3)</p> <ul style="list-style-type: none"> ● Non-accidental mental injury
Alabama	<ul style="list-style-type: none"> ● Non-accidental mental injury

³ Domestic violence is not child abuse in New Jersey unless the child is an emancipated minor and the perpetrator is or was at any time a member of the household.

⁴ “Victim of domestic violence” in New York includes a parent whose child is a victim of a crime committed by a family or household member.

	<p>Domestic Violence as Child Abuse⁵ – Ala. Code § 13A-6-139.1</p>
Alaska	<p>Physical Abuse – Alaska Stat. §47.17.290</p> <ul style="list-style-type: none"> • Physical injury or maltreatment that threatens or harms child’s health or welfare • Maltreatment: act or omission that results in reasonable cause to suspect that a child may be in need of aid <p>Neglect included in abuse statute – Alaska Stat. §47.17.290</p> <ul style="list-style-type: none"> • Failing to provide necessary food, care, clothing, shelter, or medical attention <p>Sexual Abuse/ Exploitation - Alaska Stat. §§ 47.17.290, 11.66.110</p> <ul style="list-style-type: none"> • Allowing, permitting, or encouraging child to engage in prostitution, or actual or simulated activities of a sexual nature that are prohibited by criminal statute • Inducing or causing a person to engage in prostitution through the use of force • As other than a patron of a prostitute, inducing or causing a person under age 20 to engage in prostitution <p>Emotional Abuse - Alaska Stat. §47.17.290</p> <ul style="list-style-type: none"> • Causing serious injury to child as evidenced by observable and substantial impairment in the child’s ability to function in a developmentally appropriate manner and the existence of that impairment is supported by the opinion of a qualified expert witness <p>Domestic Violence as Child Abuse – Alaska Stat. §18.66.990</p>
Arizona	<p>Physical Abuse – Ariz. Rev. Stat. Ann. § 8-201</p> <ul style="list-style-type: none"> • Inflicting or allowing physical injury, impairment of bodily function, or disfigurement • Physical injury resulting from allowing a child in a structure/ vehicle where dangerous chemicals or equipment are used for purpose of manufacturing a dangerous drug • Unreasonable confinement • Serious physical injury that creates reasonable risk of death, causes serious/ permanent disfigurement, physical pain, impairment of health, loss or protracted impairment of organs/ limbs, or is the result of sexual conduct with a child <p>Sexual Abuse/ Exploitation – Ariz. Rev. Stat. Ann. § 8-201</p> <ul style="list-style-type: none"> • Inflicting or allowing sexual abuse
Arizona	

⁵ Almost every state includes domestic violence as a form of child abuse. See *Appendix K: State Law Definitions of Child Abuse*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-33 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-k-state-law-definitions-of-child-abuse-chart/>

	<ul style="list-style-type: none"> • Sexual conduct with a minor, sexual assault, molestation, commercial sexual exploitation, sexual exploitation, incest, child prostitution • Neglect: deliberate exposure to sexual conduct, sexual contact, intercourse, bestiality, or explicit sexual materials <ul style="list-style-type: none"> ○ Sexual contact, oral sexual contact, sexual intercourse, or bestiality committed with reckless disregard as to whether the child is present <p>Emotional Abuse – Ariz. Rev. Stat. Ann. § 8-201</p> <ul style="list-style-type: none"> • Inflicting or allowing a person to cause serious emotional damage to child • Evidenced by severe anxiety, depression, withdrawal, aggressive behavior • Emotional damage diagnosed by a doctor or psychologist • Serious emotional injury that seriously impairs mental faculties, causes emotional or social dysfunction, or is the result of sexual abuse <p>Domestic Violence as Child Abuse – Ariz. Rev. Stat. Ann. § 13-3601</p>
Arkansas	<p>Physical Abuse – Ark. Code Ann. §12-18-103</p> <ul style="list-style-type: none"> • Extreme or repeated cruelty, realistic and serious threats of death or impairment, any non-accidental injury • Throwing, kicking, burning, biting, cutting, striking, shaking, tying up, binding limbs together, interfering with breathing, allowing to consume a poisonous substance or chemical, exposing to a dangerous chemical, subjecting to Munchausen syndrome • Striking a child under 7 (even without physical injury) or shaking a child under 4 (even without physical injury) • Pinching, biting, striking a child in the genital area <p>Sexual Abuse/ Exploitation – Ark. Code Ann. §§ 12-18-103, 12-18-1201</p> <ul style="list-style-type: none"> • Statutory rape, forcing to watch sexual activity, attempted sexual contact, solicitation of sexual contact, forcing or allowing exposure to sexual activity, voyeurism, encouraging participation in prostitution, sex trafficking <p>Emotional Abuse – Ark. Code Ann. §12-18-103</p> <ul style="list-style-type: none"> • Acts or omissions that result in injury to child's intellectual, emotional, or psychological development, as evidenced by observable and substantial impairment of child's ability to function within normal range of performance and behavior <p>Domestic Violence as Child Abuse – Ark. Code Ann. § 9-15-103(a)</p>
California	<p>Physical Abuse – Cal. Welf. & Inst. Code § 300</p> <ul style="list-style-type: none"> • Serious physical harm inflicted non-accidentally • Any single act that causes physical trauma of sufficient severity that, left untreated, would cause permanent disfigurement, disability, or death

California	<ul style="list-style-type: none"> • Any single act of sexual abuse that causes significant bleeding, bruising, or swelling • More than one act of abuse that causes any bleeding, bruising, swelling, bone fracture, or unconsciousness • Willful, prolonged failure to provide adequate food <p>Neglect included in abuse statute – Cal. Welf. & Inst. Code § 300</p> <ul style="list-style-type: none"> • Physical harm or illness caused by failure to adequately supervise or protect, willful or negligent failure to adequately supervise or protect from a custodian, willful or negligent failure to provide with food/ clothing/ shelter/ medical treatment • Inability to provide regular care for child due to parent’s mental illness, disability, or substance abuse⁶ <p>Sexual Abuse/ Exploitation – Cal. Welf. & Inst. Code § 300; Cal. Penal Code §11165.1</p> <ul style="list-style-type: none"> • Sexual assault: rape, incest, sodomy, lewd or lascivious acts upon the child, molestation • Sexual exploitation: depicting minor engaged in obscene acts, distributing child pornography, employing child to perform obscene acts, permitting or encouraging child to engage in prostitution or other sex acts or to pose nude, depicting child in or knowingly distributing depictions of children in sexual acts <p>Emotional Abuse – Cal. Welf. & Inst. Code § 300</p> <ul style="list-style-type: none"> • Engaging in conduct or failing to provide appropriate care that results in serious emotional damage, as evidenced by severe anxiety, depression, withdrawal, or aggressive behavior <p>Domestic Violence as Child Abuse – Cal. Penal Code § 11165.6</p>
Colorado	<p>Physical Abuse – Colo. Rev. Stat. Ann. § 19-1-103</p> <ul style="list-style-type: none"> • Act or omission that threatens health or welfare of child • Skin bruising, bleeding, malnutrition, failure to thrive, burns, fractures, subdural hematoma, soft tissue swelling, or death when the condition is not justifiably explained and circumstances indicate that the condition might have been non-accidental • Manufacturing a controlled substance in presence or residence of child • Prenatal drug abuse of an schedule I or II drug <p>Neglect included in abuse statute – Colo. Rev. Stat. Ann. §§ 19-1-103, 19-3-102</p>
Colorado	

⁶ California addresses abuse by factors that make a person a “dependent child of the court,” so it is unclear by the wording in the statute whether this factor always constitutes neglect, or simply makes a child dependent on the court without a neglect finding

	<ul style="list-style-type: none"> • Failing to provide adequate food, shelter, clothing, medical care, education, or supervision • Allowing child to be subjected to mistreatment and failing to prevent abuse from recurring • Failing to provide safe living environment <p>Sexual Abuse/ Exploitation – Colo. Rev. Stat. Ann. §§ 19-1-103, 16-22-102</p> <ul style="list-style-type: none"> • Act or omission in which child is subjected to unlawful sexual behavior • Sexual assault, unlawful sexual contact, enticement, incest, human trafficking, sexual exploitation, procurement of child for exploitation, indecent exposure, soliciting/ pimping/ keeping child for prostitution, promoting obscenity, internet luring, internet sexual exploitation <p>Emotional Abuse – Colo. Rev. Stat. Ann. § 19-1-103</p> <ul style="list-style-type: none"> • Identifiable and substantial impairment or a substantial risk of impairment of child’s intellectual or psychological functioning or development <p>Domestic Violence as Child Abuse – Colo. Rev. Stat. Ann. § 18-6-800.3</p> <ul style="list-style-type: none"> • Domestic violence can include any crime against a child when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the perpetrator is involved in an intimate relationship
Connecticut	<p>Physical Abuse – Conn. Gen. Stat. Ann. § 46b-120</p> <ul style="list-style-type: none"> • Infliction of physical injury by non-accidental means • Injuries that are at variance with the explanations given for them • Other abuse: Malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment, or cruel punishment <p>Sexual Abuse/ Exploitation – Conn. Gen. Stat. Ann. § 46b-120</p> <ul style="list-style-type: none"> • Included in general abuse definition <p>Emotional Abuse – Conn. Gen. Stat. Ann. § 46b-120</p> <ul style="list-style-type: none"> • Emotional maltreatment included in general abuse definition <p>Domestic Violence as Child Abuse – Conn. Gen. Stat. Ann. §17b-112a</p> <ul style="list-style-type: none"> • Victim of domestic violence means a person who has been abused or subjected to extreme cruelty by various forms of physical injury, sexual abuse, mental abuse, and neglect
Delaware	<p>Physical Abuse – Del. Code Ann. tit. 16, § 902; tit. 10, § 901</p> <ul style="list-style-type: none"> • Physical injury through unjustified force, torture, exploitation, maltreatment/ mistreatment

Delaware	<p>Sexual Abuse/ Exploitation – Del. Code Ann. tit. 16, § 902; tit. 10, § 901</p> <ul style="list-style-type: none"> • Any sex offense • Sexual contact (anus, breast, buttocks, genitalia), sexual intercourse (with mouth, anus, or genitalia), sexual penetration <p>Emotional Abuse – Del. Code Ann. tit. 10, § 901</p> <ul style="list-style-type: none"> • Threats to inflict undue physical or emotional harm • Chronic or recurring incidents of ridiculing, demeaning, making derogatory remarks, or cursing <p>Domestic Violence as Child Abuse – Del. Code Ann. tit. 13, §703A</p>
District of Columbia	<p>Physical Abuse – D.C. Code Ann. § 16-2301</p> <ul style="list-style-type: none"> • Infliction of physical injury: bodily harm greater than transient pain or minor temporary marks • Burning, biting, cutting, striking, shaking, kicking, throwing, interfering with breathing, threatening with a dangerous weapon, using a weapon on child, non-accidental injury to child under 18 months <p>Neglect included in abuse statute – D.C. Code Ann. § 16-2301</p> <ul style="list-style-type: none"> • Failure to provide adequate food, clothing, shelter, medical care (includes medical neglect) <p>Sexual Abuse/ Exploitation – D.C. Code Ann. § 16-2301</p> <ul style="list-style-type: none"> • Engaging in or attempting to engage in sexual act or sexual contact with child, causing child to engage in sexually explicit conduct, exposing to sexually explicit conduct including: sexual act, sexual contact, bestiality, masturbation, or lascivious exhibition of genitals/ anus/ pubic area <p>Emotional Abuse – D.C. Code Ann. § 16-2301</p> <ul style="list-style-type: none"> • Mental injury: harm to psychological/ intellectual functioning, exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors (demonstrated by change in behavior/ emotional response/ cognition) <p>Domestic Violence as Child Abuse – D.C. Code Ann. § 4-551</p>
Florida	<p>Physical Abuse – Fla. Stat. Ann. § 39.01</p> <ul style="list-style-type: none"> • Willful or threatened act (or omission) that results in physical injury or harm that causes or is likely to cause physical injury • Injury that causes death, permanent or temporary disfigurement, or impairment of any body part <p>Sexual Abuse/ Exploitation – Fla. Stat. Ann. § 39.01</p>

Florida	<ul style="list-style-type: none"> • Juvenile sexual abuse: any behavior that occurs without consent or equality, or by coercion, including but not limited to obscene phone calls, exhibitionism, voyeurism, showing or taking lewd photos, frottage, fondling, digital penetration, rape, fellatio, sodomy, other sexually aggressive acts • Sexual abuse of a child: any penetration of vagina or anus, any sexual contact between genitals or anus of one person and mouth of another, any intrusion into the genitals or anus (including with an object) for a nonmedical purpose, intentionally touching genitals or intimate parts, intentional masturbation in child's presence, intentional exposure of genitals or sexual acts in front of child for purpose of sexual arousal, sexual exploitation, soliciting or engaging child in prostitution, sexual performance, human trafficking <p>Emotional Abuse – Fla. Stat. Ann. § 39.01</p> <ul style="list-style-type: none"> • Mental injury: injury to the intellectual or psychological capacity of child as evidenced by a discernibly and substantial impairment in ability to function with in normal range of performance and behavior <p>Harm included in abuse statute – Fla. Stat. Ann. § 39.01 Includes, but is not limited to:</p> <ul style="list-style-type: none"> • Willful acts that produce specific serious injuries • Purposely giving child poison, alcohol, drugs, or other substances that substantially affect child's behavior, motor coordination, or judgment or that result in sickness or internal injury • Leaving child without adult supervision or arrangement appropriate for child's age or mental/ physical condition • Using inappropriate or excessively harsh discipline that is likely to result in physical/ mental/ emotional injury • Committing or allowing sexual battery • Allowing, encouraging, or forcing sexual exploitation • Abandonment • Neglect • Exposing child to a controlled substance or alcohol • Using mechanical devices, unreasonable restraints, or extended periods of isolation to control child • Engaging in violent behavior that demonstrates a wanton disregard for presence of child and could reasonably result in serious injury to child • Negligently failing to protect child from physical, mental, or sexual injury caused by another • Allowing child's sibling to die as a result of abuse, abandonment, or neglect • Making child unavailable for purpose of impeding or avoiding a protective investigation unless the court determines that the parent was fleeing from a situation involving domestic violence <p>Domestic Violence as Child Abuse – Fla. Stat. Ann. § 741.28</p>
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Georgia	<p>Physical Abuse – Ga. Code Ann. § 19-7-5</p> <ul style="list-style-type: none"> • Non-accidental physical injury or death <p>Neglect included in abuse statute – Ga. Code Ann. § 19-7-5</p> <ul style="list-style-type: none"> • Neglect, exploitation, endangerment <p>Sexual Abuse/ Exploitation – Ga. Code Ann. § 19-7-5</p> <ul style="list-style-type: none"> • Sexual abuse: Employing, using, persuading, inducing, enticing, or coercing child into sexual intercourse, bestiality, masturbation, lewd exhibition of genitals, flagellation/ torture on a person who is nude, binding or physically restraining someone who is nude, sexual stimulation, defecation/urination for sexual stimulation, penetration of the vagina/rectum by an object • Sexual exploitation: allowing, permitting, encouraging, or requiring child to engage in prostitution or sexually explicit conduct for the purpose of producing any medium depicting such conduct <p>Domestic Violence as Child Abuse – Ga. Code Ann. § 19-13-1</p> <ul style="list-style-type: none"> • Family violence includes child abuse
Hawaii	<p>Physical Abuse – Haw. Rev. Stat. Ann. § 350-1</p> <ul style="list-style-type: none"> • Causing bruising, bleeding, any skin injury causing substantial bleeding, malnutrition, failure to thrive, burns, poisoning, bone fractures, subdural hematoma, swelling, extreme pain, extreme distress gross degradation, or death • Providing dangerous drugs without a prescription • Labor trafficking <p>Neglect included in abuse statute – Haw. Rev. Stat. Ann. § 350-1</p> <ul style="list-style-type: none"> • Failing to provide adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision <p>Sexual Abuse/ Exploitation – Haw. Rev. Stat. Ann. § 350-1</p> <ul style="list-style-type: none"> • Sexual conduct or contact, sexual assault, molestation, fondling, incest, prostitution, pornographic depiction, other sexual exploitation • Sex trafficking <p>Emotional Abuse – Haw. Rev. Stat. Ann. § 350-1</p> <ul style="list-style-type: none"> • Injury to psychological capacity as evidenced by an observable and substantial impairment in ability to function <p>Domestic Violence as Child Abuse – Haw. Rev. Stat. Ann. § 321-471</p>

Idaho	<p>Physical Abuse – Idaho Code Ann. § 16-1602</p> <ul style="list-style-type: none"> • Act or omission causing skin bruising, bleeding, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained <p>Sexual Abuse/ Exploitation – Idaho Code Ann. § 16-1602</p> <ul style="list-style-type: none"> • Sexual conduct or contact, sexual assault, molestation, fondling, incest, prostitution, pornographic depiction, other sexual exploitation • Sex trafficking <p>Emotional Abuse – Idaho Code Ann. § 16-1602</p> <ul style="list-style-type: none"> • Substantial impairment in the intellectual or psychological ability of a child to function within a normal range of performance/ behavior <p>Domestic Violence as Child Abuse – Idaho Code Ann. § 39-6303</p>
Illinois	<p>Physical Abuse – 325 Ill. Comp. Stat. Ann. 5/3</p> <ul style="list-style-type: none"> • Allowing infliction or substantial risk of physical injury by non-accidental means that causes death, disfigurement, impairment of physical health, or loss/ impairment of bodily function • Torture, excessive corporal punishment, female genital mutilation, giving child a controlled substance, involuntary servitude/ trafficking <p>Sexual Abuse/ Exploitation – 325 Ill. Comp. Stat. Ann. 5/3</p> <ul style="list-style-type: none"> • Committing or allowing to be committed any sex offense (including female genital mutilation and human trafficking) <p>Emotional Abuse – 325 Ill. Comp. Stat. Ann. 5/3</p> <ul style="list-style-type: none"> • Impairment or substantial risk of impairment to child’s emotional health <p>Domestic Violence as Child Abuse – 750 Ill. Comp. Stat. Ann. 60/103</p>
Indiana ⁷	<p>Physical Abuse – Ind. Code Ann. § 31-34-1-2</p> <ul style="list-style-type: none"> • Act or omission that results in injury that seriously endangers physical health <p>Neglect included in abuse statute – Ind. Code Ann. §§ 31-34-1-1, 31-34-1-9, 31-34-1-10, 31-34-1-11</p> <ul style="list-style-type: none"> • Failure to provide child with necessary food, shelter, clothing, medical care, education, or supervision • Causing child to be born with Fetal Alcohol Syndrome • Causing or aggravating any abnormal physical or psychological development through alcohol or substance abuse during pregnancy

⁷ All abuse in the Indiana statutes is defined by what makes a child “in need of services.”

<p>Indiana</p>	<p>Sexual Abuse/ Exploitation – Ind. Code Ann. §§ 31-34-1-3, 31-34-1-4, 31-34-1-3.5, 31-9-2-133.1</p> <ul style="list-style-type: none"> • Rape, molestation, exploitation, child pornography, seduction, sexual misconduct, indecent exposure, prostitution, incest, human/ sexual trafficking <p>Emotional Abuse – Ind. Code Ann. § 31-34-1-2</p> <ul style="list-style-type: none"> • Act or omission that seriously endangers mental health <p>Abandonment included in abuse statute – Ind. Code Ann. § 31-34-1-2, 31.9.2.0.5</p> <ul style="list-style-type: none"> • Knowingly or intentionally leaving child in an environment that endangers child’s life or health • Knowingly and intentionally leaving child and an emergency medical services provider without intent to return, when the child is over 30 days old <p>Domestic Violence as Child Abuse – Ind. Code Ann. §§ 34-6-2-34.5, 35-31.5-2-128</p>
<p>Iowa</p>	<p>Physical Abuse – Iowa Code Ann. § 232.68</p> <ul style="list-style-type: none"> • Any non-accidental physical injury or injury that is at variance with the history given of it <p>Neglect included in abuse statute – Iowa Code Ann. § 232.68</p> <ul style="list-style-type: none"> • Failure to provide adequate food, shelter, clothing, medical, or mental health treatment, supervision, or other care necessary for health and welfare • Presence of an illegal drug in child’s body as a direct and foreseeable consequence of acts or omissions of caretaker • Manufacturing or possessing a dangerous substance in presence of the child <p>Sexual Abuse/ Exploitation – Iowa Code Ann. § 232.68</p> <ul style="list-style-type: none"> • Committing a sexual offense with or to child • Bestiality in child’s presence • Knowingly allowing a sex offender control/ custody/ unsupervised access to child • Knowingly allowing child access to obscene material • Recruiting/ harboring/ transporting/ providing/ obtaining/ patronizing/ soliciting child for purpose of commercial sexual activity <p>Emotional Abuse – Iowa Code Ann. § 232.68</p> <ul style="list-style-type: none"> • Any mental injury to intellectual/ psychological capacity, evidenced by observable and substantial impairment in ability to function within child’s normal range of performance/ behavior as the result of acts or omissions of parent, if impairment is diagnosed by a qualified mental health professional

Iowa	<p>Domestic Violence as Child Abuse – Iowa Code Ann. § 236.2</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Iowa
Kansas	<p>Physical Abuse – Kan. Stat. Ann. § 38-2202</p> <ul style="list-style-type: none"> • Infliction of physical harm or causing deterioration of child, including maltreatment or exploitation to the extent that child’s health or well-being is endangered <p>Sexual Abuse/ Exploitation – Kan. Stat. Ann. § 38-2202</p> <ul style="list-style-type: none"> • Any contact in which child is being used for sexual stimulation of the perpetrator/child/another person • Includes allowing, permitting, or encouraging a child to sell sexual relations, engage in commercial exploitation, be depicted in pornographic material, or engage in aggravated human trafficking <p>Emotional Abuse – Kan. Stat. Ann. § 38-2202</p> <ul style="list-style-type: none"> • Inflicting mental or emotional harm or causing deterioration of child, including maltreatment or exploitation to the extent that child’s health or emotional well-being is endangered <p>Domestic Violence as Child Abuse – Kan. Stat. Ann. § 21-5414</p> <ul style="list-style-type: none"> • Domestic battery applies to children and stepchildren above the age of 18 years •
Kentucky	<p>Physical Abuse – Ky. Rev. Stat. Ann. § 600.020</p> <ul style="list-style-type: none"> • Physical injury: substantial physical pain or any impairment of physical condition • Inflicting or allowing infliction of physical injury, creating risk of physical injury by non-accidental means <p>Neglect included in abuse statute – Ky. Rev. Stat. Ann. § 600.020</p> <ul style="list-style-type: none"> • Engaging in conduct that renders parent incapable of caring for immediate and ongoing needs of child, including parental incapacity due to alcohol/ drug abuse • Continuously/ repeatedly failing to provide essential parental care and protection • Failing to provide child with adequate care, supervision, food, clothing, shelter, education, medical care • Failing to make sufficient progress toward identified goals set forth by court order to allow for safe return of child from foster care

Kentucky	<p>Sexual Abuse/ Exploitation – Ky. Rev. Stat. Ann. § 600.020</p> <ul style="list-style-type: none"> • Sexual abuse: includes any contracts/interactions using, allowing, permitting, or encouraging use of child for purposes of sexual stimulation of the perpetrator/ another person • Sexual exploitation: includes allowing/permitting/encouraging child to engage in prostitution or an act of obscene or pornographic photographing/ filming/ depiction • Allowing sexual abuse or risk of sexual abuse, exploitation, or prostitution <p>Emotional Abuse – Ky. Rev. Stat. Ann. § 600.020</p> <ul style="list-style-type: none"> • Emotional injury: injury to mental/psychological capacity or emotional stability of child, evidenced by substantial and observable impairment in child's ability to function within a normal range of performance and behavior with due regard to age, development, culture, and environment as testified to by a qualified mental health professional • Inflicting or allowing emotional injury, creating risk of emotional injury by non-accidental means <p>Abandonment included in abuse statute – Ky. Rev. Stat. Ann. § 600.020</p> <ul style="list-style-type: none"> • Included in the definition of “abused or neglected child” <p>Domestic Violence as Child Abuse – Ky. Rev. Stat. Ann. § 403.720</p>
Louisiana	<p>Physical Abuse – La. Child. Code Ann. art. 603</p> <ul style="list-style-type: none"> • Allowing infliction of physical injury on the child • Allowing overworking or exploitation of child <p>Sexual Abuse/ Exploitation – La. Child. Code Ann. art. 603</p> <ul style="list-style-type: none"> • Commercial sexual exploitation • Involving child in a sexual act • Aiding or tolerating another person to involve child in any sexual act, pornographic display, or criminal sexual activity • Coerced abortion: use of force, intimidation, threat of force, threat of deprivation of food or shelter, in order to compel female child to undergo an abortion against her will <p>Emotional Abuse – La. Child. Code Ann. art. 603</p> <ul style="list-style-type: none"> • Allowing infliction of mental injury on child <p>Crimes against a child – La. Child. Code Ann. art. 603</p> <ul style="list-style-type: none"> • Homicide, battery, assault, rape, sexual battery, kidnapping, criminal neglect, criminal abandonment, carnal knowledge, indecent behavior, pornography, molestation, crime against nature, cruelty, contributing to delinquency/

Louisiana	<p>dependency, selling a minor child, human trafficking, trafficking for sexual purposes</p> <p>Domestic Violence as Child Abuse – La. Rev. Stat. Ann. § 14:35.3</p>
Maine	<p>Physical Abuse – Me. Rev. Stat. Ann. tit. 22, § 4002</p> <ul style="list-style-type: none"> • Threatening child’s health or welfare by physical injury or impairment • Serious injury: serious physical or mental impairment <p>Neglect included in abuse statute – Me. Rev. Stat. Ann. tit. 22, § 4002</p> <ul style="list-style-type: none"> • Threatening child’s health or welfare by deprivation of essential needs, failing to protect from other abuse, failing to ensure child’s compliance with school attendance <p>Sexual Abuse/ Exploitation – Me. Rev. Stat. Ann. tit. 22, § 4002</p> <ul style="list-style-type: none"> • Threatening child’s health or welfare by sexual abuse or exploitation • Criminal sexual exploitation: intentionally/ knowingly involves child in sexually explicit conduct, while knowing or intending that the conduct will be photographed • Criminal aggravated sex trafficking: promoting prostitution, sex trafficking, patronizing child prostitute <p>Emotional Abuse – Me. Rev. Stat. Ann. tit. 22, § 4002</p> <ul style="list-style-type: none"> • Threatening child’s health or welfare by mental or emotional injury or impairment • Serious harm: serious mental or emotional injury or impairment that is likely to cause serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior <p>Abandonment included in abuse statute – Me. Rev. Stat. Ann. tit. 22, § 4002</p> <ul style="list-style-type: none"> • Any conduct showing intent to forego parental duties or relinquish parental claims, as evidenced by failure to communicate or maintain regular visitation with child for at least 6 months, failure to participate in any plan to reunite with child, deserting child, failure to respond to notice of child protective proceedings, any other conduct showing intent to abandon <p>Domestic Violence as Child Abuse – Me. Rev. Stat. Ann. tit. 7-A, § 207-A; Me. Rev. Stat. Ann. tit. 19-A, § 4002(4)</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Maine

Maryland	<p>Physical Abuse – Md. Code Ann., Fam. Law §5-701</p> <ul style="list-style-type: none"> Physical injury of child under circumstances that indicate child’s health or welfare is harmed or at substantial risk of being harmed <p>Sexual Abuse/ Exploitation – Md. Code Ann., Fam. Law §5-701</p> <ul style="list-style-type: none"> Sexual molestation or exploitation: allowing or encouraging child to engage in pornography or similar activity, prostitution, incest, rape, sexual offenses, sodomy, unnatural or perverted sexual practices Sex trafficking: recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting child for purpose of commercial sex act <p>Emotional Abuse – Md. Code Ann., Fam. Law §5-701</p> <ul style="list-style-type: none"> Mental injury of child under circumstances that indicate child’s health or welfare is harmed or at substantial risk of being harmed <p>Domestic Violence as Child Abuse – Md. Code Ann., Fam. Law § 4-501(b)(2)</p>
Massachusetts	<p>Physical Abuse – 110 Mass. Code Regs. 2.00</p> <ul style="list-style-type: none"> Non-accidental act that causes or creates substantial risk of physical injury Death, bone fracture, subdural hematoma, burns, impairment of any organ, any other nontrivial injury, soft tissue swelling, skin bruising (depending on circumstances), addiction to drug at birth, failure to thrive <p>Sexual Abuse/ Exploitation –110 Mass. Code Regs. 2.00</p> <ul style="list-style-type: none"> Non-accidental act that constitutes a sexual offense or any sexual contact between parent and child <p>Emotional Abuse – 110 Mass. Code Regs. 2.00</p> <ul style="list-style-type: none"> Non-accidental act that causes or creates substantial risk of emotional injury Emotional injury: impairment to or disorder of intellectual or psychological capacity of child as evidenced by observable and substantial reduction in child’s ability to function within normal range of performance and behavior <p>Domestic Violence as Child Abuse – Mass. Gen. Laws Ann. ch. 209A, § 1</p>
Michigan	<p>Physical Abuse – Mich. Comp. Laws Ann. § 722.622</p> <ul style="list-style-type: none"> Harm or threatened harm to health or welfare through non-accidental physical injury or maltreatment <p>Sexual Abuse/ Exploitation – Mich. Comp. Laws Ann. § 722.622</p> <ul style="list-style-type: none"> Harm or threatened harm to health or welfare through sexual abuse, sexual exploitation, or maltreatment

Michigan	<ul style="list-style-type: none"> • Sexual abuse: engaging in sexual contact or penetration • Sexual exploitation: allowing, permitting, or encouraging child to engage in prostitution or visually depicting child engaged in a sexual act <p>Emotional Abuse – Mich. Comp. Laws Ann. § 722.622</p> <ul style="list-style-type: none"> • Harm or threatened harm to health or welfare through non-accidental mental injury or maltreatment <p>Domestic Violence as Child Abuse – Mich. Comp. Laws Ann. § 400.1501</p>
Minnesota	<p>Physical Abuse – Minn. Stat. Ann. § 626.556</p> <ul style="list-style-type: none"> • Any physical injury, mental injury, or threatened injury, inflicted by non-accidental means, that cannot reasonably be explained by child's history of injuries, any aversive or deprivation procedures, or regulated interventions • Includes throwing, kicking, burning, biting, cutting, striking, shaking child (under 3 years), actions that result in non-accidental injury (to child under 18 months), unreasonable interference with breathing, threatening with a weapon, striking child (under 1 year) on the face or head, striking child (between 1 and 4 years) on the face or head which results in injury, purposely giving child poison or controlled substance, unreasonable physical confinement/ restraint <p>Sexual Abuse/ Exploitation – Minn. Stat. Ann. § 626.556</p> <ul style="list-style-type: none"> • Subjecting child to criminal sexual conduct, including prostitution, sex trafficking, or threatened sexual abuse <p>Emotional Abuse – Minn. Stat. Ann. § 626.556</p> <ul style="list-style-type: none"> • Mental injury included under definition of physical abuse <p>Substantial Child Endangerment included in abuse statute – Minn. Stat. Ann. § 626.556</p> <ul style="list-style-type: none"> • Egregious harm, abandonment, neglect that substantially endangers child's physical or mental health, murder, manslaughter, assault, solicitation/ inducement/ promotion of prostitution, criminal sexual conduct, solicitation to engage in sexual conduct, malicious punishment, neglect/ endangerment, use in a sexual performance, acts that would result in termination of parental rights <p>Domestic Violence as Child Abuse – Minn. Stat. Ann. §260C.007</p>
Mississippi	<p>Physical Abuse – Miss. Code Ann. § 43-21-105</p> <ul style="list-style-type: none"> • Causing or allowing non-accidental physical injury or maltreatment (not including reasonable physical discipline such as spanking) <p>Sexual Abuse/ Exploitation – Miss. Code Ann. § 43-21-105</p> <ul style="list-style-type: none"> • Causing or allowing sexual abuse, sexual exploitation, or sexual maltreatment

Mississippi	<ul style="list-style-type: none"> • Sexual abuse: obscene or pornographic photographing, filming or depiction children for commercial purposes, rape, molestation, incest, prostitution or other such forms of sexual exploitation under circumstances indicating the child's health/ welfare is harmed or threatened <p>Emotional Abuse – Miss. Code Ann. § 43-21-105</p> <ul style="list-style-type: none"> • Causing or allowing emotional abuse, mental injury, or maltreatment <p>Domestic Violence as Child Abuse – Miss. Code Ann. §97-3-7</p>
Missouri	<p>Physical Abuse – Mo. Ann. Stat. § 210.110</p> <ul style="list-style-type: none"> • Any physical injury inflicted by non-accidental means (except reasonable spanking) <p>Sexual Abuse/ Exploitation – Mo. Ann. Stat. § 210.110</p> <ul style="list-style-type: none"> • Sexual abuse inflicted by non-accidental means • Sex trafficking <p>Emotional Abuse – Mo. Ann. Stat. § 210.110</p> <ul style="list-style-type: none"> • Emotional abuse inflicted by non-accidental means <p>Domestic Violence as Child Abuse – Mo. Ann. Stat. § 455.010</p>
Montana	<p>Physical Abuse – Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • Intentional act or omission/ gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ/ function, or death <p>Neglect included in abuse statute – Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • Included in definition of “child abuse or neglect” • Includes exposing child to criminal distribution or production of dangerous drugs • Physical neglect: failure to provide basic necessities such as nutrition, shelter, clothing, cleanliness, and general supervision; exposing or allowing child to be exposed to unreasonable physical or psychological risk • Psychological abuse or neglect: severe maltreatment through acts or omissions that injure the child’s emotional, intellectual, or psychological capacity to function <p>Sexual Abuse/ Exploitation – Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • Sexual abuse: sexual assault, sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse, incest

<p>Montana</p>	<ul style="list-style-type: none"> • Sexual exploitation: allowing, permitting, or encouraging child to engage in prostitution or sexual abuse of children <p>Emotional Abuse – Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • Psychological abuse or neglect: severe maltreatment through acts or omissions that injure child’s emotional, intellectual, or psychological capacity to function <p>Abandonment included in abuse statute – Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • Included in the definition of “child abuse or neglect” <p>Domestic Violence as Child Abuse – Mont. Code Ann. § 45-5-206</p> <ul style="list-style-type: none"> • Family member assault is a form of child abuse •
<p>Nebraska</p>	<p>Physical Abuse – Neb. Rev. Stat. Ann. § 28-710</p> <ul style="list-style-type: none"> • Knowingly, intentionally, or negligently causing or permitting child to be placed in a situation that endangers life or physical health, or to be cruelly confined or punished <p>Neglect included in abuse statute – Neb. Rev. Stat. Ann. § 28-710</p> <ul style="list-style-type: none"> • Knowingly, intentionally, or negligently causing or permitting child to be deprived of necessary food, clothing, shelter or care • Knowingly, intentionally, or negligently causing or permitting child to be left unattended in a motor vehicle when the child is 6 years or younger <p>Sexual Abuse/ Exploitation – Neb. Rev. Stat. Ann. § 28-710</p> <ul style="list-style-type: none"> • Sexual abuse • Sexual exploitation: allowing, encouraging, or forcing child to solicit for or engage in prostitution, debauchery, public indecency, or obscene/ pornographic visual depictions <p>Emotional Abuse – Neb. Rev. Stat. Ann. § 28-710</p> <ul style="list-style-type: none"> • Knowingly, intentionally, or negligently causing or permitting child to be placed in a situation that endangers mental health <p>Domestic Violence as Child Abuse – Neb. Rev. Stat. Ann. § 28-323</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Nebraska
<p>Nevada</p>	<p>Physical Abuse – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.090</p> <ul style="list-style-type: none"> • Non-accidental physical injury • Physical injury includes: sprain, dislocation, damage to cartilage, fracture of bone or skull, intracranial hemorrhage/ injury to another internal organ, burn,

Nevada	<p>scalding, cut, laceration, puncture, bite, permanent or temporary disfigurement, permanent or temporary loss/ impairment of a body part/ organ</p> <p>Neglect included in abuse statute – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.140</p> <ul style="list-style-type: none"> • Negligent treatment or maltreatment is included in definition of “abuse or neglect” <p>Sexual Abuse/ Exploitation – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.110</p> <ul style="list-style-type: none"> • Sexual abuse: incest, lewdness, sado-masochistic abuse, sexual assault, statutory sexual seduction, open or gross lewdness, female genital mutilation • Sexual exploitation: forcing, allowing, or encouraging child to solicit or engage in prostitution, view pornography, engage in exhibition of the child’s genitals, or sexual conduct with child <p>Emotional Abuse – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.070</p> <ul style="list-style-type: none"> • Non-accidental mental injury • Mental injury: injury to intellectual or psychological capacity or emotional condition, as evidenced by an observable and substantial impairment of child’s ability to function within a normal range of performance or behavior <p>Domestic Violence as Child Abuse – Nev. Rev. Stat. Ann. § 33.018</p>
New Hampshire	<p>Physical Abuse – N.H. Rev. Stat. Ann. § 169-C:3</p> <ul style="list-style-type: none"> • Intentional physical injury, physical injury by non-accidental means <p>Sexual Abuse/ Exploitation – N.H. Rev. Stat. Ann. § 169-C:3</p> <ul style="list-style-type: none"> • Employment, use, persuasion, inducement, enticement, or coercion of any child to engage in sexually explicit conduct or any simulation of such conduct for purpose of producing visual depiction of such conduct • Rape, molestation, prostitution, or other form of sexual exploitation, incest <p>Emotional Abuse – N.H. Rev. Stat. Ann. § 169-C:3</p> <ul style="list-style-type: none"> • Psychological injury that causes child to exhibit symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect <p>Domestic Violence as Child Abuse – N.H. Rev. Stat. Ann. § 173-B:1</p> <ul style="list-style-type: none"> • Domestic violence can constitute child abuse when the child is related to the defendant but does not reside with the defendant
New Jersey	<p>Physical Abuse – N.J. Stat. Ann. § 9:6-8.21</p> <ul style="list-style-type: none"> • Inflicting or allowing (or creating risk of) physical injury by non-accidental means that causes substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of a bodily organ

New Jersey	<ul style="list-style-type: none"> • Using excessive physical restraint under circumstances that do not indicate child’s behavior is harmful to himself or others <p>Neglect included in abuse statute – N.J. Stat. Ann. § 9:6-8.21</p> <ul style="list-style-type: none"> • Failure to exercise a minimum degree of care in providing child with food, clothing shelter, education, medical care, supervision, or protection from harm, which results in impairment or imminent danger of impairment of physical, mental, or emotional condition <p>Sexual Abuse/ Exploitation – N.J. Stat. Ann. § 9:6-8.21</p> <ul style="list-style-type: none"> • Committing or allowing acts of sexual abuse <p>Emotional Abuse – N.J. Stat. Ann. § 9:6-8.21</p> <ul style="list-style-type: none"> • Institutionalizing child inappropriately for a continued period, knowing that the placement causes the child mental harm • Institutionalizing and willfully isolating child from ordinary social contact under circumstances that indicate emotional or social deprivation <p>Abandonment included in abuse statute – N.J. Stat. Ann. § 9:6-8.21</p> <ul style="list-style-type: none"> • Willful abandonment <p>Domestic Violence as Child Abuse – N.J. Stat. Ann. § 2C:25-19</p> <ul style="list-style-type: none"> • Domestic violence can constitute child abuse if the child is an emancipated minor and the perpetrator is or was at any time a household member
New Mexico	<p>Physical Abuse – N.M. Stat. Ann. § 32A-4-2</p> <ul style="list-style-type: none"> • Any skin bruising, bleeding, malnutrition, failure to thrive, burns, bone fracture, subdural hematoma, soft tissue swelling, or death, when there is no justifiable explanation for the condition, or circumstances indicate that the condition was not accidental • Torture, cruel confinement, cruel punishment <p>Neglect included in abuse statute – N.M. Stat. Ann. § 32A-4-2</p> <ul style="list-style-type: none"> • Negligently placing child in a situation that may endanger life or health <p>Sexual Abuse/ Exploitation – N.M. Stat. Ann. § 32A-4-2</p> <ul style="list-style-type: none"> • Sexual abuse: criminal sexual contact, incest, criminal sexual penetration • Sexual exploitation: allowing, permitting, or encouraging child prostitution or child pornography, filming or depicting child for pornographic commercial purposes

New Mexico	<p>Emotional Abuse – N.M. Stat. Ann. § 32A-4-2</p> <ul style="list-style-type: none"> • Emotional and psychological abuse are included in general definition of “abused child” • Domestic Violence as Child Abuse – N.M. Stat. Ann. § 40-13-2
New York	<p>Physical Abuse – N.Y. Soc. Serv. Law § 371</p> <ul style="list-style-type: none"> • Inflicting or allowing infliction (or creating risk) of physical injury by non-accidental means, which causes substantial risk of death, serious or protracted disfigurement, protracted impairment of physical health, or protracted loss or impairment of function of a bodily organ <p>Sexual Abuse/ Exploitation – N.Y. Soc. Serv. Law § 371</p> <ul style="list-style-type: none"> • Committing or allowing sexual abuse <p>Emotional Abuse</p> <ul style="list-style-type: none"> • Emotional abuse is included under New York’s definition of neglect <p>Domestic Violence as Child Abuse – N.Y. Soc. Serv. Law § 459-a</p> <ul style="list-style-type: none"> • “Victim of domestic violence” includes a parent whose child is a victim of a crime committed by a family or household member
North Carolina	<p>Physical Abuse – N.C. Gen. Stat. Ann. § 7B-101</p> <ul style="list-style-type: none"> • Inflicting or creating substantial risk of serious physical injury by non-accidental means • Using or allowing use of cruel or grossly inappropriate procedures, or cruel or grossly inappropriate devices to modify behavior • Committing or allowing human trafficking or involuntary servitude <p>Sexual Abuse/ Exploitation – N.C. Gen. Stat. Ann. § 7B-101</p> <ul style="list-style-type: none"> • Committing, permitting, or encouraging rape, statutory rape, forcible sex offenses, unlawful sale/ surrender/ purchase of a minor, crime against nature, incest, preparation of obscene depictions, violation of obscenity laws, dissemination of obscene material to child, displaying material harmful to a child, sexual exploitation, promoting prostitution, taking indecent liberties • Committing or allowing sexual servitude <p>Emotional Abuse – N.C. Gen. Stat. Ann. § 7B-101</p> <ul style="list-style-type: none"> • Creating or allowing serious emotional damage, as evidenced by child’s severe anxiety, depression, withdrawal, or aggressive behavior

North Carolina	Domestic Violence as Child Abuse – N.C. Gen. Stat. Ann. §50B-1
North Dakota	<p>Physical Abuse – N.D. Cent. Code Ann. § 14-09-22</p> <ul style="list-style-type: none"> • Willfully inflicting or allowing infliction of bodily injury, substantial bodily injury, or serious bodily injury <p>Sexual Abuse/ Exploitation – N.D. Cent. Code Ann. § 50-25.1-02</p> <ul style="list-style-type: none"> • Sexual abuse: includes gross sexual imposition, continuous sexual abuse, sexual imposition, corruption or solicitation of minors, luring minors by computer or other electronic means, sexual assault, incest, deviate sexual act, indecent exposure, surreptitious intrusion, or sexual exploitation (sexual performances with children) <p>Emotional Abuse – N.D. Cent. Code Ann. § 14-09-22</p> <ul style="list-style-type: none"> • Willfully inflicting or allowing infliction of mental injury <p>Domestic Violence as Child Abuse – N.D. Cent. Code Ann. § 14-07.1-01</p>
Ohio	<p>Physical Abuse – Ohio Rev. Code Ann. §§ 2151.031, 2919.22</p> <ul style="list-style-type: none"> • Creating a substantial risk to health or safety by violating a duty of care, protection, or support • Abuse, torture, cruel abuse, excessive corporal punishment or other physical discipline, cruel physical restraint for a prolonged period, excessive restraint that creates a substantial risk of serious physical harm <p>Neglect included in abuse statute – Ohio Rev. Code Ann. §§ 2151.031, 2919.22</p> <ul style="list-style-type: none"> • Knowingly allowing child to be on the same property within 100 feet of the manufacturing of dangerous substances • Driving under the influence with child in the vehicle <p>Sexual Abuse/ Exploitation – Ohio Rev. Code Ann. §§ 2151.031, 2919.22</p> <ul style="list-style-type: none"> • Sexual activity that would constitute an offense, whether or not there is a conviction • Encouraging, using, or allowing child to participate in any performance the offender knows or reasonably should know is obscene or sexually oriented <p>Emotional Abuse – Ohio Rev. Code Ann. §§ 2151.031, 2919.22</p> <ul style="list-style-type: none"> • Repeated administration of unwarranted discipline that creates a substantial risk of impairment or retardation of child’s mental health or development <p>Domestic Violence as Child Abuse – Ohio Rev. Code Ann. § 2919.25</p>
Oklahoma	<p>Physical Abuse – Okla. Stat. Ann. tit. 10A, § 1-1-105</p> <ul style="list-style-type: none"> • Harm or threatened harm to health, safety, or welfare of child

Oklahoma	<ul style="list-style-type: none"> • Any real or threatened non-accidental physical injury or damage to the body <p>Sexual Abuse/ Exploitation – Okla. Stat. Ann. tit. 10A, § 1-1-105</p> <ul style="list-style-type: none"> • Sexual abuse: includes rape, incest, lewd or indecent acts/ proposals made to child • Sexual exploitation: includes allowing, permitting, encouraging, or forcing child to engage in prostitution, or the lewd, obscene, or pornographic visual depiction of child in those acts <p>Emotional Abuse – Okla. Stat. Ann. tit. 10A, § 1-1-105</p> <ul style="list-style-type: none"> • Harm or threatened harm to health, safety, or welfare of child • Any real or threatened non-accidental mental injury <p>Domestic Violence as Child Abuse – Okla. Stat. Ann. tit. 21, §644(c)</p>
Oregon	<p>Physical Abuse – Or. Rev. Stat. Ann. § 419B.005</p> <ul style="list-style-type: none"> • Any assault, any non-accidental physical injury • Threatened harm that subjects child to substantial risk of harm to health or welfare • Buying or selling a child <p>Neglect included in abuse statute⁸ – Or. Rev. Stat. Ann. § 419B.005</p> <ul style="list-style-type: none"> • Failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger child’s health or welfare • Permitting child on premises where methamphetamines are being manufactured • Unlawfully exposing child to a controlled substance <p>Sexual Abuse/ Exploitation – Or. Rev. Stat. Ann. § 419B.005</p> <ul style="list-style-type: none"> • Rape, sodomy, unlawful sexual penetration, incest • Sexual abuse • Sexual exploitation: contributing to sexual delinquency; allowing, encouraging, or using child to engage in sexual conduct for performance purposes; allowing, encouraging, or hiring child to engage in prostitution or commercial sex acts <p>Emotional Abuse – Or. Rev. Stat. Ann. § 419B.005</p> <ul style="list-style-type: none"> • Any mental injury, including only observable and substantial impairment of child’s mental or psychological ability to function, caused by cruelty to the child <p>Domestic Violence as Child Abuse – Or. Rev. Stat. Ann. § 659A.270</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Oregon

⁸ Although these acts are not specifically labeled as “neglect” in the statute, they appear in other state statutes as neglect and have therefore been categorized under the “neglect” portion of the Oregon abuse statute

Pennsylvania	<p>Physical Abuse – 23 Pa. Cons. Stat. § 6303</p> <ul style="list-style-type: none"> • Causing or creating reasonable likelihood of bodily injury through act or omission • Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease that results in a potentially harmful medical evaluation or treatment to the child • Kicking, biting, throwing, burning, stabbing, cutting child in a manner that endangers the child, unreasonably restraining or confining child, forcefully shaking child (under 1 year old), forcefully slapping or striking child (under 1 year old), interfering with breathing <p>Neglect included in abuse statute – 23 Pa. Cons. Stat. § 6303</p> <ul style="list-style-type: none"> • Causing serious physical neglect • Causing child to be present near the operation of a methamphetamine laboratory • Leaving child unsupervised with a sex offender, sexually violent predator, or sexually violent delinquent child • Causing death of child through act or omission <p>Sexual Abuse/ Exploitation – 23 Pa. Cons. Stat. § 6303</p> <ul style="list-style-type: none"> • Causing or creating likelihood of sexual abuse or exploitation through act or omission • Engaging child in a severe form of trafficking or sex trafficking <p>Emotional Abuse – 23 Pa. Cons. Stat. § 6303</p> <ul style="list-style-type: none"> • Causing or substantially contributing to serious mental injury through act or omission <p>Domestic Violence as Child Abuse – 23 Pa. Cons. Stat. § 6102</p>
Rhode Island	<p>Physical Abuse – 40 R.I. Gen. Laws Ann. §40-11-2</p> <ul style="list-style-type: none"> • Harming or threatening to harm physical health or welfare by inflicting, allowing, or creating substantial risk of physical injury or excessive corporal punishment <p>Neglect included in abuse statute – 40 R.I. Gen. Laws Ann. §40-11-2</p> <ul style="list-style-type: none"> • Failing to supply child with adequate food, clothing, shelter, or medical care • Failing to provide child with minimum degree of care/ supervision through unwillingness or inability to do so because of social problems, mental incompetency, drug use, or other

Rhode Island	<p>Sexual Abuse/ Exploitation – 40 R.I. Gen. Laws Ann. §40-11-2</p> <ul style="list-style-type: none"> • Committing or allowing sexual abuse • Sexually exploiting or encouraging child to engage in prostitution • Allowing, encouraging, or engaging in pornographic depiction of child in a setting that suggests the child is about to engage in, or has engaged in, any sexual act, or that depicts child performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality • Committing or allowing any sexual offense • Committing or allowing sexual penetration or contact <p>Emotional Abuse – 40 R.I. Gen. Laws Ann. §40-11-2</p> <ul style="list-style-type: none"> • Harming or threatening to harm mental health or welfare by inflicting, allowing, or creating substantial risk of mental injury • Mental injury: substantially diminished psychological or intellectual functioning such as failure to thrive, inability to think or reason, lack of control of aggressive or self-destructive impulses, acting-out or misbehavior, when the injury is clearly attributable to unwillingness or inability to exercise a minimum degree of care toward child <p>Abandonment included in abuse statute – 40 R.I. Gen. Laws Ann. §40-11-2</p> <ul style="list-style-type: none"> • Abandoning or deserting child <p>Domestic Violence as Child Abuse – 12 R.I. Gen. Laws Ann. § 12-29-2</p> <p>Domestic violence does not constitute child abuse in Rhode Island</p>
South Carolina	<p>Physical Abuse – S.C. Code Ann. § 63-7-20</p> <ul style="list-style-type: none"> • Inflicting, allowing, or causing substantial risk of physical injury through act or omission, including excessive corporal punishment <p>Neglect included in abuse statute – S.C. Code Ann. § 63-7-20</p> <ul style="list-style-type: none"> • Failing to provide adequate food, clothing, shelter, education, or health care <p>Sexual Abuse/ Exploitation – S.C. Code Ann. § 63-7-20</p> <ul style="list-style-type: none"> • Committing or allowing sexual offense or engaging in act or omission that presents substantial risk sexual offense will be committed • Encouraging or approving commission of delinquent acts, including sexual trafficking or exploitation <p>Emotional Abuse – S.C. Code Ann. § 63-7-20</p> <ul style="list-style-type: none"> • Inflicting, allowing, or causing substantial risk of mental injury through act or omission

South Carolina	<p>Abandonment included in abuse statute – S.C. Code Ann. § 63-7-20</p> <ul style="list-style-type: none"> • Included in the definition of “child abuse or neglect” <p>Domestic Violence as Child Abuse – S.C. Code Ann. § 16-25-10</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in South Carolina
South Dakota	<p>Physical Abuse – S.D. Codified Laws § 26-8A-2</p> <ul style="list-style-type: none"> • Subjecting child to maltreatment or abuse • Threatening child with substantial harm <p>Neglect included in abuse statute – S.D. Codified Laws § 26-8A-2</p> <ul style="list-style-type: none"> • Failing to provide proper care through acts or omissions • Creating an environment that is injurious to child’s welfare • Failing to provide necessary subsistence, supervision, education, medical care, or any other care necessary for child’s health, guidance, or well-being • Prenatal exposure to alcohol or illegal drugs • Knowingly exposing child to manufacture, use, or distribution of methamphetamines or other illegal drugs <p>Sexual Abuse/ Exploitation – S.D. Codified Laws § 26-8A-2</p> <ul style="list-style-type: none"> • Sexual abuse, sexual molestation, sexual exploitation <p>Emotional Abuse – S.D. Codified Laws § 26-8A-2</p> <ul style="list-style-type: none"> • Emotional harm or mental injury that injures child’s intellectual or psychological capacity, as evidenced by an observable and substantial impairment to child’s ability to function within normal range of performance and behavior <p>Abandonment included in abuse statute – S.D. Codified Laws § 26-8A-2</p> <ul style="list-style-type: none"> • Included in definition of “abused or neglected child” <p>Domestic Violence as Child Abuse – S.D. Codified Laws § 25-10-1</p>
Tennessee ⁹	<p>Physical Abuse – Tenn. Code Ann. § 37-1-102</p> <ul style="list-style-type: none"> • Knowingly exposing child to, or failing to protect child from, abuse that is likely to cause serious bodily injury or death • Knowing use of force that is likely to cause serious bodily injury or death • Specific brutality, abuse or neglect towards child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or

⁹ Tennessee statute only defines “severe child abuse” and does not distinguish it from general or more moderate child abuse

Tennessee	<p>intellectual disability, or severe impairment of child's ability to function, and knowing failure to protect child from such conduct</p> <ul style="list-style-type: none"> • Knowingly allowing child to be present within a structure where methamphetamines are being created <p>Sexual Abuse/ Exploitation – Tenn. Code Ann. §§ 37-1-102, 37-1-602</p> <ul style="list-style-type: none"> • Any act involving sexual abuse, molestation, fondling, or carnal knowledge, including: aggravated rape, aggravated sexual battery, assault with intent to rape, begetting child on wife’s sister¹⁰, crimes against nature, incest, promotion of performance including sexual conduct, rape, sexual battery, use of minor for obscene purposes • Any penetration of vagina or anus by penis of another, any contact between genitals or anus of one person and mouth of another, any intrusion by one person into the genitals or anus of another (including by use of any object), intentional touching of genitals, breasts, groin, inner thighs, or buttocks • Intentional exposure of genitals in child’s presence for purposes of sexual arousal, any sexual act intentionally perpetrated in child’s presence for sexual purposes, sexual exploitation, allowing/ encouraging/ forcing child to engage in prostitution or other sexual activity <p>Emotional Abuse – Tenn. Code Ann. §§ 37-1-102, 37-1-602</p> <ul style="list-style-type: none"> • Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or intellectual disability, or severe impairment of child's ability to function, and knowing failure to protect child from such conduct • Mental injury: injury to intellectual or psychological capacity of child as evidenced by discernible and substantial impairment in child's ability to function within normal range of performance/ behavior <p>Domestic Violence as Child Abuse – Tenn. Code Ann. § 39-13-111</p>
Texas	<p>Physical Abuse – Tex. Fam. Code Ann. § 261.001</p> <ul style="list-style-type: none"> • Physical injury that results in substantial harm or genuine threat of substantial harm, including an injury that is at variance with the history or explanation given for it • Failing to make reasonable effort to prevent act by another person that results in physical injury that substantially harms child • Using a controlled substance in a manner that results in physical injury to child • Causing, expressly permitting, or encouraging child to use a controlled substance

¹⁰ This is no longer a crime under Tennessee law, but the act still constitutes child abuse

Texas	<p>Sexual Abuse/ Exploitation – Tex. Fam. Code Ann. § 261.001</p> <ul style="list-style-type: none"> • Sexual conduct, including continuous sexual abuse, indecency with a child, sexual assault, and aggravated sexual assault • Failure to make reasonable effort to prevent sexual conduct • Compelling or encouraging child to engage in sexual conduct, including trafficking in persons, prostitution, or compelling prostitution • Causing, permitting, encouraging, engaging in, or allowing depiction of child when the resulting depiction is obscene or pornographic • Causing, permitting, or encouraging child to engage in sexual performance • Knowingly causing, permitting, encouraging, engaging in, or allowing child to be trafficked, or failing to make reasonable effort to prevent child from being trafficked • Forcing or coercing child to enter into marriage <p>Emotional Abuse – Tex. Fam. Code Ann. § 261.001</p> <ul style="list-style-type: none"> • Causing or permitting mental or emotional injury that results in observable and material impairment in child’s growth, development, or psychological functioning • Using a controlled substance in a manner that results in mental or emotional injury to child <p>Domestic Violence as Child Abuse – Tex. Fam. Code Ann. § 71.003</p>
Utah	<p>Physical Abuse – Utah Code Ann. § 78A-6-105</p> <ul style="list-style-type: none"> • One parent intentionally, knowingly, or recklessly causing the death of child’s other parent • Causing physical injury or damage <p>Sexual Abuse/ Exploitation – Utah Code Ann. § 78A-6-105</p> <ul style="list-style-type: none"> • Sexual abuse: act or attempted act of sexual intercourse, sodomy, incest, or molestation, engaging in any conduct that would constitute a sex offense, child bigamy, incest, lewdness, sexual battery, lewdness involving a child, voyeurism • Sexual exploitation: knowingly employing, using, persuading, inducing, enticing, or coercing child to pose nude, engage in sexual or simulated sexual contact for purpose of creating a depiction; distributing, displaying, or selling material depicting child in the nude or engaged in actual or simulated sexual conduct <p>Emotional Abuse – Utah Code Ann. § 78A-6-105</p> <ul style="list-style-type: none"> • Causing emotional damage that results in serious impairment to child’s growth, development, behavior, or psychological functioning

Utah	<p>Domestic Violence as Child Abuse – Utah Code Ann. §77-36-1</p> <ul style="list-style-type: none"> • Domestic violence includes child abuse against a cohabitant¹¹
Vermont	<p>Physical Abuse – Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • Physical injury: death, permanent or temporary disfigurement/ impairment of any bodily organ or function by non-accidental means • Serious physical injury: injury that creates substantial risk of death, loss/ impairment of function of body part, substantial impairment of health, or substantial disfigurement; strangulation by intentionally impeding normal breathing or circulation through pressure to throat or neck/ by blocking the nose or mouth <p>Neglect included in abuse statute – Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • Failing to provide child with adequate food, clothing, shelter, or health care <p>Sexual Abuse/ Exploitation – Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • Sexual molestation or exploitation, including incest, prostitution, rape, sodomy, lewd and lascivious conduct, aiding/ counseling/ procuring child to participate in depiction of pornography, viewing/ possessing. Transmitting child pornography, human trafficking, sexual assault, voyeurism, luring child, obscenity <p>Emotional Abuse – Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • Emotional maltreatment: pattern of malicious behavior that results in impaired psychological growth and development <p>Abandonment included in abuse statute – Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • Included in the definition of “abused or neglected child” <p>Domestic Violence as Child Abuse – Vt. Stat. Ann. tit. 15, § 1101</p>
Virginia	<p>Physical Abuse – Va. Code Ann. § 63.2-100</p> <ul style="list-style-type: none"> • Creating, inflicting, allowing, or threatening to inflict non-accidental physical injury • Creating substantial risk of death, disfigurement, or impairment of bodily function, including during the manufacture or sale of unlawful substances <p>Neglect included in abuse statute – Va. Code Ann. § 63.2-100</p> <ul style="list-style-type: none"> • Failing to provide care necessary for health

¹¹ Utah Code Ann. § 76-5-109.1 describes the crime of committing domestic violence in the presence of a child

Virginia	<p>Sexual Abuse/ Exploitation – Va. Code Ann. § 63.2-100</p> <ul style="list-style-type: none"> • Committing or allowing acts of sexual exploitation, or any illegal sexual act • Creating a substantial risk of physical or mental injury by knowingly leaving child alone with a sex offender • Sex trafficking <p>Emotional Abuse – Va. Code Ann. § 63.2-100</p> <ul style="list-style-type: none"> • Creating, inflicting, allowing, or threatening to inflict non-accidental mental injury • Creating substantial risk of impairment of mental function <p>Abandonment included in abuse statute – Va. Code Ann. § 63.2-100</p> <ul style="list-style-type: none"> • Included in the definition of “abused or neglected child” <p>Domestic Violence as Child Abuse – Va. Code Ann. § 16.1-228</p>
Washington	<p>Physical Abuse – Wash. Rev. Code Ann. §§ 26.44.020, 26.44.030, 9A.16.100</p> <ul style="list-style-type: none"> • Injury that causes harm to child’s health, welfare, or safety • Unreasonable force: throwing, kicking, burning, cutting, striking, shaking (child under 3 years old), interfering with breathing, threatening with a deadly weapon, any other act that is likely to cause and does cause harm greater than transient pain or minor temporary marks • Severe abuse: any single act of abuse that causes physical trauma that could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness <p>Sexual Abuse/ Exploitation – Wash. Rev. Code Ann. § 26.44.020</p> <ul style="list-style-type: none"> • Sexual exploitation: allowing, permitting, or encouraging child to engage in prostitution or pornographic depictions <p>Emotional Abuse</p> <ul style="list-style-type: none"> • Emotional abuse is not mentioned in the statute <p>Domestic Violence as Child Abuse – Wash. Rev. Code Ann. § 26.50.010</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Washington
West Virginia	<p>Physical Abuse – W. Va. Code Ann. § 49-1-201</p> <ul style="list-style-type: none"> • Knowingly or intentionally inflicting, attempting, or allowing physical injury, including excessive corporal punishment • Domestic violence • Selling child

West Virginia	<ul style="list-style-type: none"> • Serious physical abuse: bodily injury which creates a substantial risk of death, causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss/ impairment of function of a bodily organ <p>Sexual Abuse/ Exploitation – W. Va. Code Ann. § 49-1-201</p> <ul style="list-style-type: none"> • Selling child • Child conceived of sexual assault¹² • Engaging in, attempting to engage in, or knowingly procuring someone to engage in sexual intercourse, sexual intrusion, sexual contact or conduct, regardless of whether child suffered any apparent physical injury or mental or emotional injury as a result of that conduct • Displaying genitals to child for purpose of sexual arousal or to alarm child • Sexual exploitation: persuading, inducing, enticing or coercing child to engage in sexually explicit conduct, display his or her sex organs for the sexual gratification of another, or display his or her sex organs under circumstances in which the parent knows the display is likely to be observed by others who would be affronted or alarmed <p>Emotional Abuse – W. Va. Code Ann. § 49-1-201</p> <ul style="list-style-type: none"> • Knowingly or intentionally inflicting, attempting, or allowing mental or emotional injury <p>Domestic Violence as Child Abuse – W. Va. Code Ann. § 48-27-204</p>
Wisconsin	<p>Physical Abuse – Wis. Stat. Ann. § 48.02</p> <ul style="list-style-type: none"> • Non-accidental physical injury • Serious physical harm to unborn child • Alcohol and substance abuse during pregnancy that creates risk of serious physical harm to child • Manufacturing methamphetamines when child is in the home, in the child’s home, or under circumstances where reasonable person should know the child would witness the manufacture • Lacerations, bone fractures, burns, internal injuries, severe or frequent bruising, great bodily harm <p>Sexual Abuse/ Exploitation – Wis. Stat. Ann. § 48.02</p> <ul style="list-style-type: none"> • Sexual intercourse or sexual contact, sexual assault, sexual exploitation, trafficking, prostitution, causing child to view or listen to sexual activity, exposing genitals/ pubic area/ intimate parts <p>Emotional Abuse – Wis. Stat. Ann. § 48.02</p>

¹² Although a child conceived through sexual assault is considered an abused child, the victim parent is not considered an abusive parent, just the perpetrator

Wisconsin	<ul style="list-style-type: none"> • Failing to obtain necessary treatment or take steps to ameliorate symptoms of emotional damage • Emotional damage: harm to psychological or intellectual functioning, evidenced by severe anxiety, depression, withdrawal, outward aggressive behavior, or substantial and observable change in behavior, emotional response, or cognition <p>Domestic Violence as Child Abuse – Wis. Stat. Ann. § 968.075</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Wisconsin
Wyoming	<p>Physical Abuse – Wyo. Stat. Ann. § 14-3-202</p> <ul style="list-style-type: none"> • Inflicting or causing physical injury, harm, or imminent danger to physical health or welfare by non-accidental means; excessive or unreasonable corporal punishment • Physical injury: includes disfigurement, impairment of any bodily organ, skin bruising if greater in magnitude than minor bruising associated with reasonable corporal punishment, bleeding, burns, bone fractures, subdural hematoma, substantial malnutrition <p>Neglect included in abuse statute – Wyo. Stat. Ann. § 14-3-202</p> <ul style="list-style-type: none"> • Malnutrition or substantial risk thereof by reason of intentional or unintentional neglect <p>Sexual Abuse/ Exploitation – Wyo. Stat. Ann. § 14-3-202</p> <ul style="list-style-type: none"> • Committing or allowing sexual offense <p>Emotional Abuse – Wyo. Stat. Ann. § 14-3-202</p> <ul style="list-style-type: none"> • Mental injury: injury to psychological capacity/ emotional stability, as evidenced by observable or substantial impairment in ability to function within normal range of performance and behavior <p>Abandonment included in abuse statute – Wyo. Stat. Ann. § 14-3-202</p> <ul style="list-style-type: none"> • Included in definition of abuse <p>Domestic Violence as Child Abuse – Wyo. Stat. Ann. § 35-21-102</p> <ul style="list-style-type: none"> • Domestic violence does not constitute child abuse in Wyoming

Appendix L State Law Definitions of Abandonment¹

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Overview – State Law Definitions of Abandonment

This document summarizes the common themes in state definitions of abandonment.³ Some states define abandonment in more than one statute and almost all states have adopted the UCCJEA definition of abandonment. We developed the list below to help courts identify when other states have statutory language similar to their state statute. When state statutes are similar, case law in one jurisdiction can provide persuasive authority interpreting the statute that may be useful to state courts in a wide range of family court proceedings. The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status (SIJS). Any state law definition of abandonment can apply in any state court proceeding for purposes of issuing the required SIJS findings.

The first section of this document highlights the common themes in state laws defining child abandonment and lists which states define which actions or failures to act as constituting abandonment under state law. The last section of this document contains a list by state of each of the child neglect definitions.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA):

- 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*. All states (except D.C., Massachusetts, and Virginia) include this exact definition in their statutes.

States that define abandonment as failure to provide reasonable care, support, communication, or visitation with the child:

- **Failure to provide reasonable support** - Alaska, Arizona, Arkansas, California, Delaware, D.C., Florida, Georgia, Idaho, Iowa, Massachusetts, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Tennessee, Utah, West Virginia;

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² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

- **Failure to provide reasonable care and protection** - Alabama, Alaska, California, Connecticut, Idaho, Kansas, Louisiana, Nebraska, New Hampshire, New Jersey, North Dakota, Texas, Utah, Vermont, West Virginia;
- **Leaving child at substantial risk of serious harm** - Delaware, Indiana, New Jersey, Texas, Wisconsin;
- **Failure to communicate and visit the child**- Alaska, Arizona, Arkansas, Delaware, Florida, Louisiana, Massachusetts, Mississippi, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Tennessee, Wisconsin;

States that define abandonment as failure to perform duties as parents, or as unwillingness to take physical custody of the child or make arrangements for the child's care:

- **Failure to perform duties of a parent** - Alabama, Arizona, Florida, Hawaii, Idaho, Iowa;
- **Unwillingness to have physical custody** - Colorado, Delaware, Louisiana, Maine, Montana, South Carolina, Utah, Vermont;
- **Failure to make appropriate arrangements for the child's care** – Colorado, Montana, South Carolina, Utah, Vermont;
- **Failure to come forward and claim a relationship with the child:** Virginia

States that require evidence of a person's intention or willingness to abandon the child:

- **Intentional abandonment**- Alabama, Alaska, Arkansas, Delaware, Illinois, Indiana, Iowa, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Utah, Washington, Wisconsin

When the parent or his/her location is unknown, it could be declared abandonment in the following states:

- **Identity or location of parent is unknown** - Colorado, Hawaii, Montana, Nevada, Oregon, Vermont, Virginia, and Wisconsin;

States that include incarceration as one of the reasons to declare abandonment of a child:

- **Incarceration** - Florida, Tennessee, West Virginia.

Children present in the state without proper care or supervision- are children that under the laws of all states meet the definition of abandonment including but not limited to in the following ways:

- They are children who have been left without provision for reasonable and necessary care or supervision (48 states)
- The child has not been provided with reasonable care or protection (15 states)
- They are children who have not been provided reasonable support by their parents (20 states); or
- The parent has failed to come forward to claim a relationship with the child (Virginia)

Note: In all states the abandonment definitions included in state law apply to parents. In some states they also apply to other persons who assume responsibility for a child’s care. (Alabama, Alaska, Arkansas, D.C., Florida, Indiana, Iowa, Louisiana, Maine, New Hampshire, New York, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington)

Jurisdiction	Factors a court will consider:
Alabama	<p>UCCJEA - Ala. Code § 30-3B-102</p> <ul style="list-style-type: none"> • Abandoned. — Left without provision for reasonable and necessary care or supervision. <p>Termination of Parental Rights (TPR) - § 12-15-301</p> <ul style="list-style-type: none"> • A voluntary and intentional relinquishment of the custody; care; love; protection; maintenance; or the failure to claim the rights of a parent; or failure to perform the duties of a parent. <p>TPR - § 12-15-319 (b)</p> <ul style="list-style-type: none"> • A rebuttable presumption that the parents are unable or unwilling to act as parents, period of four months. <p>Criminal Code - § 13A-13-5</p> <ul style="list-style-type: none"> • The intent wholly to abandon it.
Alaska	<p>UCCJEA - Alaska Stat. § 25.30.909</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Social Services – Children in need of aid - Alaska Stat. § 47.10.013</p> <ul style="list-style-type: none"> • conscious disregard of parental responsibilities; reasonable support; maintain regular contact, or provide normal supervision • left the child with another person for a period of three months; • communication • a period of at least six months without regular visitation with the child; • failed to participate in a suitable plan or program designed to reunite the parent or guardian with the child; • left the child without affording means of identifying the child and the child’s parent or guardian; • substantial risk of serious harm to a child left in the home; • failed to respond to notice of child protective proceedings; or • unwilling to provide care, support, or supervision for the child.
Arizona	<p>UCCJEA - Ariz. Rev. Stat. § 25-1002</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision. <p>Juvenile Court - Ariz. Rev. Stat. § 8-201; Ariz. Rev. Stat. § 8-531(1)</p> <ul style="list-style-type: none"> • reasonable support; to maintain regular contact with the child; failure to maintain normal parental relationship period of six months.
Arkansas	<p>UCCJEA - Ark. Code Ann. § 9-19-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision;

	<p>Child Maltreatment Act - Ark. Code Ann. § 12-18-103</p> <ul style="list-style-type: none"> • reasonable support and to maintain regular contact with a child • accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future OR without just cause; or • an articulated intent to forego parental responsibility. <p>Arkansas Juvenile Code - Ark. Code Ann. § 9-27-303</p> <ul style="list-style-type: none"> • "Abandoned infant" less than nine (9) months of age • parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or • with an expression of intent by words, actions, or omissions not to return for the infant.
California	<p>UCCJEA - Cal. Fam. Code § 3402</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Abandonment and Neglect of Children - Cal. Penal Code § 270</p> <ul style="list-style-type: none"> • to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his or her child • willful and without lawful excuse. <p>Abandoned Child – Cal. Fam. Code § 7822</p> <ul style="list-style-type: none"> • child has been left without provision for the child’s identification by the child’s parent or parents. • child has been left by both parents or the sole parent in the care and custody of another person for a period of six months; • without any provision for the child’s support, or without communication from the parent or parents.
Colorado	<p>UCCJEA - Colo. Rev. Stat. § 14-13-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - Colo. Rev. Stat. § 19-3-604</p> <ul style="list-style-type: none"> • surrendered physical custody of the child for a period of six months or more • and have not manifested the firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; • the identity of the parent of the child is unknown and has been unknown for three months or more and that reasonable efforts to identify and locate the parent in accordance with section 19-3-603 have failed.
Connecticut	<p>UCCJEA - Conn. Gen. Stat. § 46b-115a</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - Conn. Gen. Stat. § 45a-717</p> <ul style="list-style-type: none"> • reasonable degree of interest, concern or responsibility as to the welfare of the child.
Delaware	<p>UCCJEA - Del. Code Ann. tit. 13, § 1902</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - Del. Code Ann. tit. 13, § 1103 and Del. Code Ann. Tit. 13 § 1101</p> <ul style="list-style-type: none"> • Intended to abandon the child; and

	<p>Less than 6 months of age:</p> <ul style="list-style-type: none"> • Pay reasonable prenatal, natal and postnatal expenses in accordance with the respondent's financial means; • Visit regularly with the minor; and • Manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent; 6 months of age or more: • Communicate or visit regularly with the minor; and • Manifest an ability and willingness to assume legal and physical custody of the minor, if, during this time, the minor was not in the physical custody of the other parent; or • Substantial risk of injury or death.
District of Columbia	<p>Proceedings Regarding Delinquency, Neglect, or Need of Supervision - D.C. Code § 16-2301</p> <ul style="list-style-type: none"> • Parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child.
Florida	<p>UCCJEA - § 61.503.</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Proceedings Relating to Children - § 39.01.</p> <ul style="list-style-type: none"> • Failed to make a significant contribution to the child’s care and maintenance or establish or maintain a substantial and positive relationship with the child, or both. • Frequent and regular contact, visitation, and communication • The exercise of parental rights and responsibilities. • The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child’s welfare may support a finding of abandonment.
Georgia	<p>UCCJEA - Ga. Code Ann. § 19-9-41</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Abandonment of child - § 19-10-1.</p> <ul style="list-style-type: none"> • Furnish sufficient food, clothing, or shelter for the needs of the child.
Hawaii	<p>UCCJEA - Haw. Rev. Stat. Ann. § 583A-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Child Protective Act - § 587A-4</p> <ul style="list-style-type: none"> • “Abandoned infant” means a child who is three years old or younger • extreme disinterest in or lack of commitment for assuming parental responsibility for the child; • not known the identity or whereabouts of the child's parents for sixty days or more, and reasonable efforts have been made to identify or locate the child's parents.
Hawaii	
Idaho	<p>UCCJEA - Idaho Code § 32-11-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Person with disabilities (minor) - § 15-5-204.</p> <ul style="list-style-type: none"> • Failure to maintain a normal parental relationship with the child;

	<ul style="list-style-type: none"> • Reasonable support or regular personal contact; • Period of 6 (six) months without just cause. <p>Child Protective Act - Idaho Code § 16-1602</p> <ul style="list-style-type: none"> • Failure to maintain a normal parental relationship with the child; • Reasonable support or regular personal contact; • Period of one (1) year without just cause.
Illinois	<p>UCCJEA - 750 Ill. Comp. Stat. Ann. 36/102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Adoption Act - 750 ILCS 50/1 Definitions</p> <ul style="list-style-type: none"> • Evidence suggests that the parent intended to relinquish his or her parental rights. • Failure to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare. • Desertion of the child for more than 3 months preceding the commencement of the adoption proceeding.
Indiana	<p>UCCJEA - Ind. Code Ann. § 31-21-2-2 and Ind. Code § 31-9-2-0.3</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Family Law and Juvenile Law (abandonment of child) - Ind. Code Ann. § 31-9-2-0.4</p> <ul style="list-style-type: none"> • not more than thirty (30) days of age and whose parent: • has knowingly or intentionally left the child with an emergency medical services provider; and • did not express an intent to return for the child. <p>Title 31 Family Law and Juvenile Law (abandoned infant) - Ind. Code Ann. § 31-9-2-0.5</p> <ul style="list-style-type: none"> • a child who is less than twelve (12) months of age and whose parent, guardian, or custodian has knowingly or intentionally left the child in: • an environment that endangers the child’s life or health; or • a hospital or medical facility; and has no reasonable plan to assume the care, custody, and control of the child; or • a child who is, or who appears to be, not more than thirty (30) days of age and whose parent: • has knowingly or intentionally left the child with an emergency medical services provider; and • Did not express an intent to return for the child.
Iowa	<p>UCCJEA - Iowa Code § 598B.102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - Iowa Code § 600A.2</p> <ul style="list-style-type: none"> • A parent, putative father, custodian, or guardian rejects the duties imposed by the parent-child relationship, • Make no provision or making only a marginal effort to provide for the support of the child or to communicate with the child.

	<p>Juvenile Justice - Iowa Code § 232.2</p> <ul style="list-style-type: none"> • The relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. • Must include both the intention to abandon and the acts by which the intention is evidenced. <p>TPR – Iowa Code § 600A.8</p> <ul style="list-style-type: none"> • The fitness and ability of the parent in personally assuming custody of the child, including a personal and financial commitment which is timely demonstrated. • Whether efforts are substantial enough to evince a settled purpose to personally assume all parental duties. • Whether the putative father publicly acknowledged paternity or held himself out to be the father of the child during the six continuing months immediately prior to the termination proceeding. • Whether the putative father paid a fair and reasonable sum, demonstrated emotional support as evidenced by the putative father’s conduct toward the mother. • Any measures taken by the parent to establish legal responsibility for the child. • Any other factors evincing a commitment to the child.
Kansas	<p>UCCJEA - Kan. Stat. Ann. § 23-37,102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Revised Kansas Code for Care of Children - Kan. Stat. Ann. § 38-2202</p> <ul style="list-style-type: none"> • To forsake, desert or, without making appropriate provision for substitute care, cease providing care for the child.
Kentucky	<p>UCCJEA - Ky. Rev. Stat. § 403.800</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Louisiana	<p>UCCJEA – La. Rev. Stat. Ann. § 13:1802 “abandoned” means left without provision for reasonable and necessary care or supervision;</p> <p>TPR - La. Child. Code Ann. § art.1015</p> <ul style="list-style-type: none"> • Abandonment of the child by placing him in the physical custody of a nonparent, or the department, or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following: • For a period of at least four months as of the time of the hearing, despite a diligent search, the whereabouts of the child’s parent continue to be unknown. • As of the time the petition is filed, the parent has failed to provide significant contributions to the child’s care and support for any period of six consecutive months. • As of the time the petition is filed, the parent has failed to maintain significant contact with the child by visiting him or communicating with him for any period of six consecutive months. <p>Criminal abandonment - La. Rev. Stat. Ann. § 14:79.1</p>
Louisiana	

	<ul style="list-style-type: none"> • Intentional physical abandonment of a minor child under the age of ten years, unattended and to his own care • Did not intend to return to the minor child or provide for adult supervision of the minor child.
Maine	<p>UCCJEA - Me. Rev. Stat. tit. 19-A, § 1732</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Abandonment of child - Me. Rev. Stat. tit. 17-A, § 553</p> <ul style="list-style-type: none"> • The person leaves the child who is less than 14 years of age in a place with the intent to abandon the child. • The person leaves the child who is less than 6 years of age in a place with the intent to abandon the child. • The person, with the intent to avoid or divest the person of permanent parental responsibility, places the child who is less than 18 years of age with or transfers the physical custody of the child to a nonrelative without court approval. • The person, with the intent to avoid or divest the person of permanent parental responsibility, places the child who is less than 6 years of age with or transfers the physical custody of the child to a nonrelative without court approval.
Maryland	<p>UCCJEA - Md. Code Ann., Fam. Law § 9.5-101</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Massachusetts	<p>Abandonment of Infant Under Ten Years of Age - Mass. Ann. Laws ch. 119, § 39</p> <ul style="list-style-type: none"> • infant under the age of ten within or without any building, or • if of sufficient physical and mental ability, neglects to visit or remove such infant or notify the department of his inability to support such infant.
Michigan	<p>UCCJEA - Mich. Comp. Laws Serv. § 722.1102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Minnesota	<p>UCCJEA - Minn. Stat. Ann. § 518D.102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Mississippi	<p>UCCJEA - Miss. Code Ann. § 93-27-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - Miss. Code Ann. § 93-15-103</p> <ul style="list-style-type: none"> • any conduct by the parent, whether consisting of a single incident or actions over an extended period of time, that evinces a settled purpose to relinquish all parental claims and responsibilities to the child. • For a child who is under three (3) years of age on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for six (6) months; • (ii) For a child who is three (3) years of age or older on the date that the petition for termination of parental rights was filed, that the parent has deliberately made no contact with the child for at least one (1) year; or • (iii) If the child is under six (6) years of age, that the parent has exposed the child in any highway, street, field, outhouse, or elsewhere with the intent to wholly abandon the child.
Mississippi	

Missouri	<p>UCCJEA - Mo. Rev. Stat. § 452.705</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Montana	<p>UCCJEA - Mont. Code Ann. § 40-7-103</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Minors - Child Abuse and Neglect - Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future; • willfully surrendering physical custody for a period of 6 months or to make permanent legal arrangements for the care of the child; • that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or • the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider.
Nebraska	<p>UCCJEA - Neb. Rev. Stat. Ann § 43-1227</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Juvenile Code – Abandonment - Neb. Rev. Stat. Ann § 43-245</p> <ul style="list-style-type: none"> • parent intentionally withholding from a child, without just cause or excuse, the parent’s presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child.
Nevada	<p>UCCJEA - Nev. Rev. Stat. Ann. § 125A.025</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - Nev. Rev. Stat. Ann. § 128.012</p> <ul style="list-style-type: none"> • Any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child. • No communication for a period of 6 months; OR • Identity of the parents is unknown and cannot be ascertained despite diligent searching, and the parents do not come forward to claim the child within 3 months after the child is found.
New Hampshire	<p>UCCJEA - N.H. Rev. Stat. Ann. § 458-A:1</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Child Protection Act - N.H. Rev. Stat. Ann. § 169-C:3</p> <ul style="list-style-type: none"> • The child has been left by his parent, guardian or custodian, without provision for his care, supervision or financial support although financially able to provide such support.
New Hampshire	<p>TPR - N.H. Rev. Stat. Ann. § 170-C:5</p> <ul style="list-style-type: none"> • Intention to abandon the child who has been left by his parent without provision for his identification or who has been left by his parent in the care and custody of another without any provision for his support, or • Without communication from such parent for a period of 6 months.

	<ul style="list-style-type: none"> • If the parent has made only minimal efforts to support or communicate with the child, the court may declare the child to be abandoned.
New Jersey	<p>UCCJEA - N.J. Stat. § 2A:34-54</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Juvenile and Domestic Relations Courts - N.J. Stat. § 9:6-1</p> <ul style="list-style-type: none"> • willfully forsaking a child; • failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; • failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.
New Mexico	<p>UCCJEA - N.M. Stat. Ann. § 40-10A-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Children’s code - N.M. Stat. Ann. § 32A-4-2</p> <ul style="list-style-type: none"> • left the child without provision for the child’s identification for a period of fourteen days; or • left the child with others, including the other parent or an agency, without provision for support and without communication for a period of: • three months if the child was under six years of age at the commencement of the three-month period; or • six months if the child was over six years of age at the commencement of the six-month period.
New York	<p>UCCJEA - N.Y. Dom. Rel. Law § 75-a</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Social Services Law - Children - N.Y. Soc. Serv. Law § 384-b(5)</p> <ul style="list-style-type: none"> • Intention to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child <p>Penal Law- Offenses Relating to Children - N.Y. Penal Law § 260.00</p> <ul style="list-style-type: none"> • child less than fourteen years old, • Deserts such child in any place with intent to wholly abandon such child. <p>Social Services Law - Care and Protection of Children - N.Y. Soc. Serv. Law § 371</p> <ul style="list-style-type: none"> • child under the age of eighteen years who is abandoned by both parents, in accordance with the definition and other criteria set forth in § 384-b(5)
North Carolina	<p>UCCJEA - N.C. Gen. Stat. § 50A-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TPR - N.C. Gen. Stat. § 7B-1111</p>

	<ul style="list-style-type: none"> • The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition or motion, or • The parent has voluntarily abandoned an infant pursuant to G.S. 7B-500 for at least 60 consecutive days immediately preceding the filing of the petition or motion.
North Dakota	<p>UCCJEA - N.D. Cent. Code § 14-14.1-01</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Adoption Act - N.D. Cent. Code § 14-15-01</p> <ul style="list-style-type: none"> • As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause to: • Communicate with the child; or • Provide for the care and support of the child as required by law.
Ohio	<p>UCCJEA - Ohio Rev. Code Ann. § 3127.01</p> <ul style="list-style-type: none"> • Failed to visit or maintain contact with the child for more than ninety days.
Oklahoma	<p>UCCJEA - Okla. Stat. tit. 43, § 551-102(1)</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Oklahoma Children's Code - Okla. Stat. tit. 10A, § 1-1-105</p> <ul style="list-style-type: none"> • the willful intent by words, actions, or omissions not to return for a child, or • The failure to maintain a significant parental relationship with a child through visitation or communication in which incidental or token visits or communication are not considered significant, or, the failure to respond to notice of deprived proceedings;
Oregon	<p>UCCJEA - ORS § 109.704</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>TRP - Or. Rev. Stat. Ann. § 419B.508</p> <ul style="list-style-type: none"> • The child or ward was left under circumstances such that the identity of the parent or parents of the child or ward was unknown and could not be ascertained, despite diligent searching, and the parent or parents have not come forward to claim the child or ward within three months following the finding of the child or ward.
Pennsylvania	<p>UCCJEA - 23 Pa. Cons. Stat. Ann. § 5402</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Rhode Island	<p>UCCJEA - 15 R.I. Gen. Laws § 14.1-2</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
South Carolina	<p>UCCJEA - S.C. Code Ann. § 63-15-302</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
South Carolina	<p>Children’s Code - S.C. Code Ann. § 63-7-20</p> <ul style="list-style-type: none"> • Parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child’s needs or the continuing care of the child.

South Dakota	<p>UCCJEA - S.D. Codified Laws § 26-5B-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision.
Tennessee	<p>UCCJEA - 36-6-205</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision. <p>Adoption – TPR Tenn. Code Ann. § 36-1-102</p> <p>For purposes of TPR or guardian rights of a parent to make that child available for adoption, "abandonment" means that:</p> <ul style="list-style-type: none"> • Willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child, period 4 (four) months. • The child has been removed from the as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date.; • willfully failed to visit or willfully failed to make reasonable payments toward the support of the child's mother during the four (4) months immediately preceding the birth of the child • A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, • or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and <ul style="list-style-type: none"> • either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, • or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child. • The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255; and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under § 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant.
Texas	<p>UCCJEA - Tex. Fam. Code § 152.102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision. <p>Offenses Against the Person - Tex. Penal Code § 22.041</p> <ul style="list-style-type: none"> • (I) Leave a child in any place without providing reasonable and necessary care for the child;

	<ul style="list-style-type: none"> • Under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability. • (II) a child younger than 15 years, • Intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.
Utah	<p>UCCJEA - Utah Code Ann. § 78B-13-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Title 76 Utah Criminal Code - Utah Code Ann. § 76-5-109</p> <ul style="list-style-type: none"> • intentionally ceases to maintain physical custody of the child; • intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and • intentionally fails to provide the child with food, shelter, or clothing; • manifests an intent to permanently not resume physical custody of the child; or • for a period of at least 30 days: <ul style="list-style-type: none"> ○ intentionally fails to resume physical custody of the child; and ○ Fails to manifest a genuine intent to resume physical custody of the child.
Vermont	<p>UCCJEA - § 1061</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Human Services – Juvenile proceedings - Vt. Stat. Ann. tit. 33, § 5102</p> <ul style="list-style-type: none"> • unwilling to have physical custody of the child; • unable, unwilling, or has failed to make appropriate arrangements for the child's care; • unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or • has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful;
Virginia	<p>Juvenile Courts - Va. Code Ann. § 16.1-228</p> <ul style="list-style-type: none"> • When used in this chapter, unless the context otherwise requires: "Abused or neglected child" means any child: <ul style="list-style-type: none"> ○ Whose parents or other person responsible for his care abandons the child; <p>Juvenile and Domestic Relations District Courts - Va. Code Ann. § 16.1-283</p> <ul style="list-style-type: none"> • The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and • The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and • Diligent efforts have been made to locate the child's parent or parents without avail.
Washington	<p>UCCJEA - Wash. Rev. Code Ann. § 26.27.021</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision;

	<p>TPR - Wash. Rev. Code Ann. § 13.34.030</p> <ul style="list-style-type: none"> • Parent or custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. • Period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.
West Virginia	<p>UCCJEA - W. Va. Code § 48-20-102</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Adoption – Abandonment- W. Va. Code § 48-22-306</p> <ul style="list-style-type: none"> • Abandonment of a child over the age of six months shall be presumed when the birth parent: <ul style="list-style-type: none"> ○ Fails to financially support the child; ○ fails to visit or otherwise communicate with the child; • (b) Abandonment of a child under the age of six months shall be presumed when the birth father: <ul style="list-style-type: none"> ○ (1) Denounces the child’s paternity any time after conception; ○ (2) Fails to contribute within his means toward the expense of the prenatal and postnatal care of the mother and the postnatal care of the child; ○ (3) Fails to financially support the child ○ (4) Fails to visit the child when he knows where the child resides. • (c) Abandonment of a child shall be presumed when the unknown father fails, prior to the entry of the final adoption order, to make reasonable efforts to discover that a pregnancy and birth have occurred as a result of his sexual intercourse with the birth mother. • In no event may incarceration provide a compelling circumstance if the crime resulting in the incarceration involved a rape in which the child was conceived.
Wisconsin	<p>UCCJEA - Wis. Stat. Ann. § 822.02</p> <ul style="list-style-type: none"> • “abandoned” means left without provision for reasonable and necessary care or supervision; <p>Criminal Code - Wis. Stat. Ann. § 948.20</p> <ul style="list-style-type: none"> • intent to abandon the child, leaves any child in a place where the child may suffer because of neglect <p>TPR - Wis. Stat. Ann. § 48.415</p> <ul style="list-style-type: none"> • That the child has been left without provision for the child’s care or support; for 60 days the petitioner has been unable to find either parent. • That the child has been left by the parent without provision for the child’s care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death. • The parent has failed to visit or communicate with the child for a period of 3 months or longer.
Wisconsin	

	<ul style="list-style-type: none"> The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.
Wyoming	<p>UCCJEA - Wyo. Stat. Ann. § 20-5-202</p> <ul style="list-style-type: none"> “abandoned” means left without provision for reasonable and necessary care or supervision;

Appendix M

State Law Definitions of Child Neglect¹

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Multi-State Overview – Child Neglect Definitions

This document provides a chart of state law definitions of child neglect and summarizes the common themes in state definitions of child neglect. Some states define child neglect in more than one statute. We developed the list below to help courts identify when other states have statutory language similar to their state statute. When state statutes are similar, case law in one jurisdiction can provide persuasive authority interpreting the statute that may be useful to state courts in a wide range of family court proceedings. The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status. Any state law definition of child neglect can apply in any state court proceeding for purposes of issuing the required SIJS findings.

The first section of this document highlights the common themes in state laws defining child neglect and lists which states define which actions or failures to act as constituting child neglect under state law. The themes commonly consistent among state statutes defining neglect are:

- Failure to meet the child’s basic needs;
- Abuse, harm or failure to prevent harm to a child;
- Abandonment of a child
- Failure to discharge responsibilities to care for a child
- Exposure to drugs at or before birth

Failure to Meet Child’s Basic Needs:

States that define neglect as failure to provide adequate food, clothing, shelter, health care, education or supervision:

- **Failure to provide necessary care and maintenance necessary for the child’s emotional, physical, or mental health and general wellbeing**– Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Louisiana, Nevada, Ohio, Wyoming
- **Failure to provide clothing or shelter** – Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, New Jersey, New York, Oklahoma, Rhode Island, South Carolina, Texas
- **Failure to provide adequate food** – Alabama, Alaska, Arizona, California, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, New Jersey, New York, Oklahoma, Rhode Island, South Carolina, Texas,

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² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

- **Failure to provide medical care** – Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Rhode Island, Tennessee, Texas, Wyoming
- **Failure to provide education** – Alabama, Alaska, Arkansas, California, Colorado, Delaware, D.C., Idaho, Indiana, Kansas, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, South Carolina, Wyoming
- **Lack of supervision** – Alabama, Arizona, Arkansas, California, Florida, Hawaii, Indiana, Minnesota, New York, Tennessee, Wyoming

Abuse or Failure to Prevent Abuse of a Child

States that define child neglect as failure to prevent physical injury, mental injury, sexual exploitation, or sexual abuse of a child or child maltreatment

- **Acts or omissions which causes physical or mental injury-** Alaska, Florida, Hawaii, Iowa, Kansas, South Carolina
- **Failure to prevent or take reasonable action to protect the child from sexual abuse (by parent or failure to prevent the abuse)** – Alaska, Arizona, Arkansas, New Mexico, Oklahoma, South Carolina, Texas
- **Failure to prevent abuse:** D.C., Florida, Hawaii
- **Any maltreatment of the child** – Alabama, Alaska, Arkansas

Abandonment of a Child is Child Neglect Under State Law

- **Abandoned** – Arkansas, Colorado, Connecticut, Illinois, Montana, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Rhode Island
- **A child without a parent** - Tennessee, Texas
- **Placement for care or adoption in violation of the law** – Idaho, New Mexico

Failure to Discharge Responsibilities to Care for the Child

- **Lack of parental care because of incarceration, mental incapacity, hospitalization, or other physical incapacity** – Colorado, Connecticut, D.C, Idaho, Maryland, Nevada, New Hampshire, New Mexico, North Dakota, Ohio
- **Failure of parent, custodian or guardian to discharge responsibilities due to**
 - **Incarceration** – D.C., New Hampshire, New Mexico
 - **Hospitalization** – D.C., New Hampshire, New Mexico
 - **Mental or physical incapacity** – D.C., New Hampshire, New Mexico

Exposure to Drugs At or Before Birth

- **Prenatal exposure to drugs or at birth-** Arizona, Arkansas, Colorado, D.C.

Placing a child in environment injurious to his/her welfare

- **Environment injurious to welfare of the child** – Colorado, Illinois

State	Text of the Statutes
<i>Alabama</i>	<p>Child Abuse and Neglect Prevention - Ala. Code § 26-16-2(6)</p> <ul style="list-style-type: none"> • Neglect. Harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care <p>Infants and Incompetents-> Reporting of Child Abuse or Neglect - Ala. Code § 26-14-1(2)</p> <ul style="list-style-type: none"> • Negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, supervision, clothing, or shelter. <p>Termination of Parental Rights - Ala. Code § 12-15-301</p> <ul style="list-style-type: none"> • Negligent treatment or maltreatment of a child, including, but not limited to, the failure to provide adequate food, medical treatment, supervision, education, clothing, or shelter.
<i>Alaska</i>	<p>Welfare, Social Services, and Institutions - Alaska Stat. § 47.10.014</p> <ul style="list-style-type: none"> • The court may find neglect of a child if the parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so. <p>Welfare, Social Services, and Institutions->Child Protection – Alaska Stat. § 47.17.290</p> <ul style="list-style-type: none"> • “child abuse or neglect” means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; in this paragraph, “mental injury” means an injury to the emotional well-being, • intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child's ability to function; • the failure by a person responsible for the child's welfare to provide necessary food, care, clothing, shelter, or medical attention for a child.
<i>Arizona</i>	<p>Child Safety - Juvenile Court-> Article 1. General Provisions - Ariz. Rev. Stat. Ann. § 8-201(25)</p> <ul style="list-style-type: none"> • “Neglect” or “neglected” means: The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services. • Permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purposes of manufacturing a dangerous drug as defined in § 13-3401. • A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in § 13-3401 and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by

<p><i>Arizona</i></p>	<p>a health professional. This subdivision does not expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in § 13-3401 beyond the requirements prescribed pursuant to § 13-3620, subsection E. The determination by the health professional shall be based on one or more of the following:</p> <ul style="list-style-type: none"> ○ Clinical indicators in the prenatal period including maternal and newborn presentation. ○ History of substance use or abuse. ○ Medical history. ○ Results of a toxicology or other laboratory test on the mother or the newborn infant. ○ Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects. ○ Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in § 13-3551 or to sexual contact, oral sexual contact sexual intercourse as defined in § 13-1401, bestiality as prescribed in § 13-1411 or explicit sexual materials as defined in § 13-3507. ○ Any of the following acts committed by the child's parent, guardian or custodian with reckless disregard as to whether the child is physically present: <ul style="list-style-type: none"> ○ Sexual contact as defined in § 13-1401. ○ Oral sexual contact as defined in § 13-1401. ○ Sexual intercourse as defined in § 13-1401. ○ Bestiality as prescribed in § 13-1411.
<p><i>Arkansas</i></p>	<p>Family Law-Child Abuse and Neglect Prevention - Ark. Code Ann. § 9-30-103(4) “Neglect” means: Failure to provide, by those legally responsible for:</p> <ul style="list-style-type: none"> ● The care and maintenance of the child and the proper or necessary support; ● Education, as required by law; or ● Medical, surgical, or any other care necessary for his or her well-being; or ● Any maltreatment of the child. <p>Child Maltreatment Act - Ark. Code Ann. § 12-18-103(14)(A) “Neglect” means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:</p> <ul style="list-style-type: none"> ● Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused; ● Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered; ● Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;

	<ul style="list-style-type: none"> • Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child; • Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care; • Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility; • Failure to appropriately supervise the child that results in the child's being left alone: <ul style="list-style-type: none"> ○ At an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm; or ○ In inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm; • Failure to appropriately supervise the child that results in the child's being placed in: <ul style="list-style-type: none"> ○ Inappropriate circumstances creating a dangerous situation; or ○ A situation that puts the child at risk of harm; or • Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled or as a result of an act or omission by the child's parent or guardian, the child is habitually and without justification absent from school. <p>(B)(i) "Neglect" shall also include:</p> <ul style="list-style-type: none"> ○ Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or ○ At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child. <ul style="list-style-type: none"> • As used in this subdivision (14)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq. • A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(a) of this section. • A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(b) of this section
<p><i>California</i></p>	<p>Child Abuse and Neglect Reporting Act - Cal. Penal Code § 11165.2</p> <ul style="list-style-type: none"> • "Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. • "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. <ul style="list-style-type: none"> ○ "Severe neglect" also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.

<i>California</i>	<ul style="list-style-type: none"> • “General neglect” means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.
<i>Colorado</i>	<p>Title 19. Children's Code - Colo. Rev. Stat. Ann. § 19-3-102(1) A child is neglected if:</p> <ul style="list-style-type: none"> • A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; • The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; • The child's environment is injurious to his or her welfare; • A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being; • The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian; • The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian; • The child tests positive at birth for either a schedule I controlled substance, as defined in section 18-18-203, C.R.S., or a schedule II controlled substance, as defined in section 18-18-204, C.R.S., unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed. • A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse
<i>Connecticut</i>	<p>Title 46b. Family Law-> Juvenile Matters - Conn. Gen. Stat. § 46b-120(6) A child or youth may be found “neglected” who, for reasons other than being impoverished,</p> <ul style="list-style-type: none"> • has been abandoned, • is being denied proper care and attention, physically, educationally, emotionally or morally, • is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth
<i>Delaware</i>	<p>The Family Court of the State of Delaware - Del. Code Ann. tit. 10, § 901(18) “Neglect” or “neglected child”</p> <ul style="list-style-type: none"> • Failure to provide necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being; or • Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child’s safety and general well-being; or • Failure to provide necessary supervision appropriate for a child when the child is unable to care for that child’s own basic needs or safety, after considering such

<i>Delaware</i>	factors as the child's age, mental ability, physical condition, the length of the caretaker's absence, and the context of the child's environment.
<i>District of Columbia</i>	<p>Proceedings Regarding Delinquency, Neglect, or Need of Supervision - D.C. Code § 16-2301</p> <p>“neglected child” means a child:</p> <ul style="list-style-type: none"> • Who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term “reasonable efforts” includes filing a petition for civil protection from intra-family violence pursuant to section 16-1003; • who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian; • whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; • whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control, or subsistence and the person or institution which is providing for the child states an intention to discontinue such care; • who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused; • who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian; • who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child; • who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth; • in whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or • Who is regularly exposed to illegal drug-related activity in the home.
<i>Florida</i>	<p>Crimes Abuse of Children - Fla. Stat. § 827.03(1)(e)</p> <p>“Neglect of a child” means:</p> <ul style="list-style-type: none"> • A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or • A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person. •

<p>Georgia</p>	<p>Juvenile Code -> Definitions - Ga. Code Ann. § 15-11-2 “Neglect” means:</p> <ul style="list-style-type: none"> • Failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals; • Failure to provide a child with adequate supervision necessary for such child's well-being; or • Abandonment of a child by his or her parent, guardian, or legal custodian.
<p>Hawaii</p>	<p>Social Services-> Child Abuse - Haw. Rev. Stat. § 350-1 “Child abuse or neglect” means:</p> <ul style="list-style-type: none"> • The acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to: • When the child has been the victim of sexual contact or conduct, including but not limited to sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b); • When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function; • When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; • When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this subparagraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240; or • When the child has been the victim of labor trafficking under chapter 707
<p>Idaho</p>	<p>Child Protective Act- Idaho Code Ann. § 16-1602 For purposes of this chapter:</p> <ul style="list-style-type: none"> • “Neglected” means a child: Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or • Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or • Who has been placed for care or adoption in violation of law; or

<i>Idaho</i>	<ul style="list-style-type: none"> • Who is without proper education because of the failure to comply with section 33-202, Idaho Code.
<i>Illinois</i>	<p>Adoption Act - 750 Ill. Comp Stat. 50/1</p> <ul style="list-style-type: none"> • “Neglected child” means any child whose parent or other person responsible for the child's welfare withholds or denies nourishment or medically indicated treatment including food or care denied solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise does not provide the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or • Who is abandoned by his or her parents or other person responsible for the child's welfare? <p>Abused and Neglected Child Reporting Act - 325 Ill. Comp. Stat. 5/3</p> <ul style="list-style-type: none"> • “Neglected child” means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or • who is subjected to an environment which is injurious insofar as (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent, caretaker, or agency responsibilities; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care.
<i>Indiana</i>	<p>Family Law and Juvenile Law- Ind. Code §§ 31-34-1-1 - 31-34-1-11</p> <p>A child is a child in need of services if before the child becomes eighteen (18) years of age... the child's physical or mental condition is seriously impaired or seriously endangered as a result of the</p> <ul style="list-style-type: none"> • Inability, refusal, or neglect of parent, guardian or custodian to supply child with necessary food, clothing, shelter, medical care, education, or supervision.
<i>Iowa</i>	<p>Juvenile Justice - Iowa Code § 232.2</p> <ul style="list-style-type: none"> • “Abuse or neglect” means any non-accidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian, or custodian or other person legally responsible for the child.
<i>Kansas</i>	<p>Revised Kansas Code for Care of Children - Kan. Stat. Ann. § 38-2202</p> <ul style="list-style-type: none"> • “Neglect” means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. • Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;

<i>Kansas</i>	<ul style="list-style-type: none"> • failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or • Failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening.
<i>Kentucky</i>	<p>Unified Juvenile Code -> Definitions - Ky. Rev. Stat. Ann. § 600.020</p> <ul style="list-style-type: none"> • “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when: • His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child: • Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means; • Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means; • Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005; • Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child; • Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; • Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; • Abandons or exploits the child; • Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; • Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or • A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age.
<i>Louisiana</i>	<p>Louisiana Children's Code- La. Child. Code. Ann. art. 603</p> <ul style="list-style-type: none"> • “Neglect” means the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any

Louisiana	injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired.
Maine	Health and Welfare -> Child and Family Services and Child Protection Act - Me. Rev. Stat. Ann. tit. 22, § 4002 “Abuse or neglect” means <ul style="list-style-type: none"> • Threatening child’s health or welfare by deprivation of essential needs, failing to protect from other abuse, failing to ensure child’s compliance with school attendance.
Maryland	Family Law - Md. Code Ann., Fam. Law, § 5-701(s) <ul style="list-style-type: none"> • “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: <ul style="list-style-type: none"> ○ that the child's health or welfare is harmed or placed at substantial risk of harm; or ○ Mental injury to the child or a substantial risk of mental injury.
Massachusetts	Department of Children and Families – 110 Mass. Code Regs. 2.00 Neglect means <ul style="list-style-type: none"> • Failure <i>by a caretaker</i>, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. This definition is <i>not</i> dependent upon location (<i>i.e.</i>, neglect can occur while the child is in an out-of-home or in-home setting.)
Michigan	Child Abuse and Neglect Prevention Act - Mich. Comp. Laws § 722.602(d) <ul style="list-style-type: none"> • “Neglect” means harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
Minnesota	Criminal Code->Crimes Against the Family - Minn. Stat. § 609.378 <ul style="list-style-type: none"> • A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age... is guilty of neglect of a child.
Mississippi	Public Welfare -> Youth Court – Miss. Code Ann. § 43-21-105 “Neglected child” means <ul style="list-style-type: none"> • A child whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

<i>Mississippi</i>	<ul style="list-style-type: none"> • Who is otherwise without proper care, custody, supervision or support; or • Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or • Who, for any reason, lacks the care necessary for his health, morals or well-being.
<i>Missouri</i>	<p>Child Protection and Reformation -> Child Abuse – Mo. Ann. Stat. § 210.110</p> <ul style="list-style-type: none"> • Failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary support, education as required by law, nutrition or medical, surgical, or any other care necessary for the child's well-being. Victims of neglect shall also include any victims of sex trafficking or severe forms of trafficking as those terms are defined in 22 U.S.C. 78 Section 7102(9)-(10)
<i>Montana</i>	<p>Minors - Child Abuse and Neglect - Mont. Code Ann. § 41-3-102</p> <ul style="list-style-type: none"> • “Abused or neglected” means the state or condition of a child who has suffered child abuse or neglect • “Child abuse or neglect” means: actual physical or psychological harm to a child; • substantial risk of physical or psychological harm to a child; or • Abandonment. • failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child. • Severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.
<i>Nebraska</i>	<p>Offenses Involving the family relation – Neb. Rev. Stat. Ann. § 28-710</p> <p>Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:</p> <ul style="list-style-type: none"> • Placed in a situation that endangers his or her life or physical or mental health; • Cruelly confined or cruelly punished; • Deprived of necessary food, clothing, shelter, or care; • Left unattended in a motor vehicle if such minor child is six years of age or younger; • Sexually abused; or • Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions.
<i>Nevada</i>	<p>Termination of Parental Rights - Nev. Rev. Stat. § 128.014</p> <p>“Neglected child” includes a child:</p> <ul style="list-style-type: none"> • Who lacks the proper parental care by reason of the fault or habits of his or her parent, guardian or custodian; • Whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child’s health, morals or well-being;

<i>Nevada</i>	<ul style="list-style-type: none"> • Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by the child’s physical or mental condition; • Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or • Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of the child or others.
<i>New Hampshire</i>	<p>Child Protection Act - N.H. Rev. Stat. Ann. § 169-C:3(XIX) “Neglected child” means a child:</p> <ul style="list-style-type: none"> • Who has been abandoned by his parents, guardian, or custodian; or • Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, when it is established that his health has suffered or is very likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian or custodian; or • Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity.
<i>New Jersey</i>	<p>Juvenile and Domestic Relations Courts - N.J. Stat. Ann. § 9:6-1 Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child:</p> <ul style="list-style-type: none"> • Willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or • Failure to do or permit to be done any act • The continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.
<i>New Mexico</i>	<p>Children’s code - N.M. Stat. Ann. § 32A-4-2 “Neglected child” means a child:</p> <ul style="list-style-type: none"> • who has been abandoned by the child's parent, guardian or custodian; • who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them; • who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm; • whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or • who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly

<i>New Mexico</i>	accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code.
<i>New York</i>	<p>Family Court Act - N.Y. Family Court Act § 1012(f) “Neglected child” means a child less than eighteen years of age whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care</p> <ul style="list-style-type: none"> • in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or • in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision.
<i>North Carolina</i>	<p>Juvenile Code - N.C. Gen. Stat. §§ 7B-101 (15), (19a)</p> <ul style="list-style-type: none"> • Neglected juvenile.--A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or • Who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or • who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or • Who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. <p>Serious neglect. --Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.</p>
<i>North Dakota</i>	<p>Domestic Relations and Persons - N.D. Cent. Code § 14-09-22.1</p> <ul style="list-style-type: none"> • A parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony:

North Dakota	<ul style="list-style-type: none"> ○ Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals. ○ Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons. ○ Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
Ohio	<p>Juvenile Courts-- Ohio Rev. Code Ann. § 2151.03 “neglected child” includes any child:</p> <ul style="list-style-type: none"> ● Who is abandoned by the child's parents, guardian, or custodian; ● Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian; ● Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or wellbeing; ● Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition; ● Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code; ● Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare; ● Who is subjected to out-of-home care child neglect.
Oklahoma	<p>Oklahoma Children's Code - Okla. Stat. tit. 10A, § 1-1-105 “Neglect” means the failure or omission to provide any of the following:</p> <ul style="list-style-type: none"> ● adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education, ● medical, dental, or behavioral health care, ● supervision or appropriate caretakers, or ● special care made necessary by the physical or mental condition of the child, ● the failure or omission to protect a child from exposure to any of the following: <ul style="list-style-type: none"> ○ the use, possession, sale, or manufacture of illegal drugs, ○ illegal activities, or ● sexual acts or materials that are not age-appropriate, or ● abandonment. <p>Oklahoma Guardianship and Conservatorship Act - Okla. Stat. tit. 30, § 1-11</p> <ul style="list-style-type: none"> ● “Neglect” means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of a lack of awareness,

<i>Oklahoma</i>	incompetence, or incapacity, which has resulted or may result in physical or mental injury.
<i>Oregon</i>	<p>Offenses Against Family -> Child Neglect in the Second Degree – Or. Rev. Stat. Ann. § 163.545</p> <ul style="list-style-type: none"> • A person having custody or control of a child under 10 years of age commits the crime of child neglect in the second degree if, with criminal negligence, the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child. <p>Offenses Against Family -> Child Neglect in the First Degree – Or. Rev. Stat. Ann. § 163.547</p> <p>A person having custody or control of a child under 16 years of age commits the crime of child neglect in the first degree if the person knowingly leaves the child, or allows the child to stay:</p> <ul style="list-style-type: none"> • In a vehicle where controlled substances or cannabinoid extracts as defined in ORS 475B.015 are being criminally delivered or manufactured; • In or upon premises, or in the immediate proximity of premises, where a cannabinoid extract as defined in ORS 475B.015 is being processed, if the premises have not been licensed under ORS 475B.090; • In or upon premises and in the immediate proximity where controlled substances are criminally delivered or manufactured for consideration or profit or where a chemical reaction involving one or more precursor substances: <ul style="list-style-type: none"> ○ Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or ○ Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance and the premises have not been certified as fit for use under ORS 453.885; or • In or upon premises that have been determined to be not fit for use under ORS 453.855 to 453.912.
<i>Pennsylvania</i>	<p>Child Protective Services – 23 Pa. Cons. Stat. § 6303</p> <p>“Serious physical neglect.” Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:</p> <ul style="list-style-type: none"> • A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities. • The failure to provide a child with adequate essentials of life, including food, shelter or medical care.
<i>Rhode Island</i>	<p>Delinquent and Dependent Children - R.I. Gen. Laws § 14-1-3</p> <ul style="list-style-type: none"> • “Neglect” means a child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed, or threatened with harm, when the parents or guardian: • Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so; • Fails to provide the child proper education as required by law; or

<i>Rhode Island</i>	<ul style="list-style-type: none"> Abandons and/or deserts the child.
<i>South Carolina</i>	<p>South Carolina Children's Code - S.C. Code Ann. § 63-7-20(6) “Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child's welfare:</p> <ul style="list-style-type: none"> inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child; fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law; abandons the child; encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; <p>or</p>
<i>South Dakota</i>	<p>Protection of Children from Abuse or Neglect -> Abused or neglected child defined – S.D. Codified Laws § 26-8A-2 The term, abused or neglected child, means a child:</p> <ul style="list-style-type: none"> Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse; Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian; Whose environment is injurious to the child's welfare; Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being; Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian; Who is threatened with substantial harm; Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;

South Dakota	<ul style="list-style-type: none"> • Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care; • Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or • Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.
Tennessee	<p>Juvenile Courts and Proceedings - Tenn. Code Ann. § 37-1-102 “neglected child” means a child:</p> <ul style="list-style-type: none"> • Who is without a parent, guardian or legal custodian; • Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child; • Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school; • Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child; • Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; • Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; • Who is suffering from abuse or neglect; • Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; • Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or • Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative.
Texas	<p>Tex. Fam. Code Ann. § 261.001 “neglected child” means a child:</p> <ul style="list-style-type: none"> • Who is without a parent, guardian or legal custodian; • Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child; • Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

<p><i>Texas</i></p>	<ul style="list-style-type: none"> • Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child; • Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; • Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; • Who is suffering from abuse or neglect; • Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; • Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or • Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative <p>“Neglect”: includes:</p> <ul style="list-style-type: none"> • the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child; • the following acts or omissions by a person: • placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child; • failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child; • the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; • placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or • placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; • the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or
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<i>Texas</i>	<ul style="list-style-type: none"> • a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and
<i>Utah</i>	<p>Juvenile Court -> General provisions – Utah Code Ann. § 78A-6-105</p> <ul style="list-style-type: none"> • (27)(a) “Neglect” means action or inaction causing: • abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child; • lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian; • failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; • a child to be at risk of being neglected or abused because another child in the same home is neglected or abused; or • abandonment of a child through an unregulated custody transfer. • (28) “Neglected child” means a child who has been subjected to neglect. • (38) “Severe neglect” means neglect that causes or threatens to cause serious harm to a child.
<i>Vermont</i>	<p>Child welfare services -> reporting abuse of children - Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • “Abused or neglected child” means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. • An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.
<i>Virginia</i>	<p>Juvenile and domestic relations district courts - Va. Code Ann. § 63.2-100</p> <p>“Abused or neglected child” means any child:</p> <ul style="list-style-type: none"> • Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248; • Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child; • Whose parents or other person responsible for his care abandons such child;

<i>Virginia</i>	<ul style="list-style-type: none"> • Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; • Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis; • Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or • Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.
<i>Washington</i>	<p>Domestic relations -> abuse of children - Wash. Rev. Code Ann. § 26.44.020</p> <ul style="list-style-type: none"> • “Abuse or neglect” means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.
<i>West Virginia</i>	<p>Crimes and punishment -> child abuse – W. Va. Code Ann. § 61-8D-1(7)</p> <p>“Neglect” means the unreasonable failure by a parent, guardian or custodian of a minor child to exercise a minimum degree of care to assure the minor child's physical safety or health. For purposes of this article, the following do not constitute “neglect” by a parent, guardian or custodian:</p> <ul style="list-style-type: none"> • Permitting a minor child to participate in athletic activities or other similar activities that if done properly are not inherently dangerous, regardless of whether that participation creates a risk of bodily injury; • Exercising discretion in choosing a lawful method of educating a minor child; or • Exercising discretion in making decisions regarding the nutrition and medical care provided to a minor child based upon religious conviction or reasonable personal belief.
<i>Wisconsin</i>	<p>Social services -> Children’s code - Wis. Stat. Ann. § 48.02(12g)</p> <ul style="list-style-type: none"> • “Neglect” means failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.
<i>Wyoming</i>	<p>Child Protective Services Wyo. Stat. Ann. §14-3-202</p> <ul style="list-style-type: none"> • “Neglect” means a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's wellbeing.

Appendix N

State Law Definitions of Domestic Violence Include Child Abuse¹

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December 14, 2017²

National Overview:

Comparing State Law Definitions of Domestic Violence and Child Abuse

The purpose of the chart is to assist judges in identifying how in the vast majority of states child abuse is included in the definitions of domestic violence. If child abuse is included under the domestic violence state law definition and the child (or the child's parent, or custodian, or guardian) can apply for a civil protection order, such order can include findings for Special Immigrant Juvenile Status (SIJS) purposes.

The potential victims of domestic violence who are typically included under state domestic violence laws are:

- Spouses
- Ex-spouses,
- Present spouses of ex-spouses
- Parents, including grandparents, stepparents, adoptive parents and foster parents,
- Children, including grandchildren, stepchildren, adopted children and foster children,
- Persons otherwise related by blood or marriage
- Persons living in the same household or who formerly lived in the same household, and
- Persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time.

Most of the state definitions of domestic violence are in family law protection order codes and criminal codes. Perpetrators of domestic violence that subject children to any one of the multiple forms of abuse described in the state domestic violence statutes are committing acts that also constitute child abuse under state law.³ Definitions of domestic abuse can include:

- Threatening to cause, attempting to cause or causing physical harm, bodily injury or assault;
- Placing another in fear of imminent serious physical harm;
- Causing another to engage involuntarily in sexual relations by force, threat or duress;

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

³ To see the state law definitions of domestic violence and the children covered in this chart compare *Appendix K: State Law Definitions of Child Abuse*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-33 (2017) [hereinafter SIJS Bench Book], <http://niwaplibrary.wcl.american.edu/pubs/appendix-k-state-law-definitions-of-child-abuse-chart/>

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

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- Stalking
- Harassment
- Criminal damage to property

In addition to physical battery and sexual abuse, the domestic violence definition under immigration law explicitly includes “acts that, in and of themselves, may not initially appear violent but that is a part of an overall pattern of violence.”⁴ In domestic violence relationships children can be witnesses to the abuse of their parent and/or suffer direct abuse themselves. Many battered immigrant women are the primary caretakers of their children and research have found that 60% of households where immigrant women face abuse, their children are also victims of abuse.⁵ Both witnessing and experiencing domestic violence have a negative impact on a child’s health, brain, and emotional development, particularly when such violence is long-term or continuing. As such, children or adolescents who experience domestic abuse may be developmentally behind children or adolescents of the same age without a history of trauma.⁶

When an immigrant child who is not a US citizen or lawful permanent resident, has experienced and/or witnessed domestic violence in the home, including SIJS findings in court orders promotes children’s welfare, stability, health, and healing. When including SIJS findings in court orders in domestic violence cases, best practices involve the court citing and applying the state child abuse statute in the order in addition to citing the state civil protection order or criminal domestic violence statutes. In addition to any domestic violence findings, clearly describing the facts of violence and abuse that the child suffered as child abuse under state child abuse laws strengthens the usefulness of the court’s order for SIJS purposes. For courts hearing criminal child abuse cases involving immigrant children who have suffered child abuse perpetrated by a parent, it is particularly important that the criminal court identify an avenue to issue a criminal protection order which provides the criminal court a vehicle in which the court can address the abused immigrant child’s custody or placement. The court can include in the criminal protection order issued the SIJS findings.

This chart will be useful to judges in a number of contexts. These include courts issuing SIJS findings, civil protection orders, child custody and other family law cases that involve domestic violence and child abuse as defined under state law. In SIJS cases the charts below point out important similarities between state domestic violence and child abuse statutes which provide opportunities for courts to craft orders including SIJS findings.

Including this detail in state court orders helps inform United States Citizenship and Immigration Services (USICS) adjudicators that under state law the facts of the domestic violence perpetrated against a child is child abuse. This is important because it helps USCIS adjudicators who see court orders from every U.S. state and jurisdiction clearly understand that although the abuse suffered by the child constituted domestic violence under state law, those same factual findings of abuse suffered by the child also meet the state law’s definition of child abuse. Having this level of clarity prevents USCIS from having to adjudicate whether the state domestic violence law is similar to

⁴ DHS Immigration Regulations, 8 C.F.R. § 204.2(c)(1) (2007).

⁵ Kathleen Sullivan & Leslye Orloff, *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS* 4 (2013), <http://library.niwap.org/wp-content/uploads/2015/pdf/FAM-Manual-Full-BreakingBarriers07.13.pdf>.

⁶ For a discussion of the impact of child abuse, child sexual abuse, and trauma on children see Meaghan Fitzpatrick, Alina Husain, Giselle Hass & Leslye E. Orloff, Appendix E: *Understanding the Significance of a Minor’s Trauma History in Family Court Rulings*, in *SIJS Bench Book* (Sept. 26, 2017), <http://niwaplibrary.wcl.american.edu/pubs/effects-of-trauma-on-minors-fact-sheet>.

the state child abuse law. This chart will also be useful to judges, their clerks and court staff in many types of family law cases. When state statutes are similar, case law in one jurisdiction can provide persuasive authority for interpreting the state’s domestic violence or child abuse statutes that could be useful to state courts in a wide range of family court proceedings.

The research contained in the chart below found that the vast majority of states law definitions of domestic violence include child abuse as one of the acts perpetrated against a family member that are sufficient to serve as a basis for issuance of a civil or criminal protection order or are domestic violence crimes. Each state’s domestic violence statute describes the types of violence and abuse covered by the statute and the relationships between victims and perpetrators that are covered by the state domestic violence statute. Most states statute include children as one of the relationships protected by the states’ domestic violence statutes.⁷

**Chart Comparing State Laws:
Domestic Violence Protection Orders, Criminal Domestic Violence and Child Abuse**

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Alabama	Yes	<p>Criminal Code - Domestic Violence – Ala. Code § 13A-6-139.1</p> <p>(3) Victim. An individual who is related to the person who commits an act of domestic violence in any of the following ways:</p> <p>a. Is related by marriage to the defendant, including a common law marriage. [...]</p> <p>g. An individual who is a parent, stepparent, child, or stepchild and who is in or has maintained a living arrangement with the defendant.</p> <p>Marital and Domestic Relations - Protection from Abuse – Ala. Code § 30-5-2 (7)(g)</p> <p>The text of the statute is the same as above.</p>	<p>Criminal Code - Domestic Violence – Ala. Code § 13A-6-139.1</p> <p>(2) Domestic violence. Any of the following acts committed against a victim:</p> <p>d. Child Abuse. Torture or willful abuse of a child, aggravated child abuse, or chemical endangerment of a child [...]</p> <p>Marital and Domestic Relations - Protection from Abuse – Ala. Code § 30-5-2 (1)</p> <p>(1) Abuse. An act of domestic violence committed against a victim, which is any of the following:</p> <p>d. Child abuse. Torture or willful abuse of a child, aggravated child abuse, or chemical endangerment of a child as provided in Chapter 15, commencing with Section 26-15-1, of Title 26, known as the Alabama Child Abuse Act.</p>	<p>Ala. Code § 30-5-2</p> <p>(5) Protection order. Any order of protection from abuse issued under this chapter for the purpose of preventing acts of abuse as defined in this chapter.</p>
Alaska	Yes	<p>Health, Safety, Housing, Human Rights, and Public Defender.</p>	<p>Health, Safety, Housing, Human Rights, and Public Defender.</p>	<p>Health, Safety, Housing, Human Rights, and</p>

⁷ All states and U.S. jurisdictions include children except Iowa, Maine, Oregon, South Carolina, and Wyoming.

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		<p>Domestic Violence and Sexual Assault – Alaska Stat. Ann. § 18.66.990</p> <p>(5) “household member” includes (A) adults or minors who are current or former spouses; (B) adults or minors who live together or who have lived together; (C) adults or minors who are dating or who have dated; (D) adults or minors who are engaged in or who have engaged in a sexual relationship; (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law; (G) persons who have a child of the relationship; and (H) minor children of a person in a relationship that is described in (A)-(G) of this paragraph</p>	<p>Domestic Violence and Sexual Assault – Alaska Stat. Ann. § 18.66.990</p> <p>(3) “domestic violence” and “crime involving domestic violence” mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member: (A) a crime against the person under AS 11.41; (B) burglary under AS 11.46.300--11.46.310; (C) criminal trespass under AS 11.46.320--11.46.330; (D) arson or criminally negligent burning under AS 11.46.400--11.46.430; (E) criminal mischief under AS 11.46.475--11.46.486; (F) terrorist threatening under AS 11.56.807 or 11.56.810; (G) violating a protective order under AS 11.56.740(a)(1); (H) harassment under AS 11.61.120(a)(2)--(4); or (I) cruelty to animals under AS 11.61.140(a)(5) if the animal is a pet.</p>	<p>Public Defender. Domestic Violence and Sexual Assault. Protective Orders. - Alaska Stat. Ann. § 18.66.100</p> <p>(a) A person who is or has been a victim of a crime involving domestic violence may file a petition in the district or superior court for a protective order against a household member. A parent, guardian, or other representative appointed by the court under this section may file a petition for a protective order on behalf of a minor</p>
Arizona	Yes	<p>Criminal Code - Domestic Violence – Ariz. Rev. Stat. Ann. § 13-3601</p> <p>A. “Domestic violence” means any act that is a dangerous crime against children as defined in section 13-705 or [...] if any of the following applies: 4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-</p>	<p>Criminal Code - Domestic Violence - Ariz. Rev. Stat. Ann. § 13-3601</p> <p>A. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-</p>	<p>Criminal Code - Family Offenses - Ariz. Rev. Stat. Ann. § 13-3602</p> <p>A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence[...]</p>
Arizona				

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		<p>grandchild, brother-in-law or sister-in-law.</p> <p>5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.</p>	<p>2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:</p>	
Arkansas	Yes	<p>Family Law - Domestic Abuse Act – Ark. Code Ann. § 9-15-103</p> <p>(4) “Family or household members” means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, in-laws, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together.</p>	<p>Family Law - Domestic Abuse Act - Ark. Code Ann. § 9-15-103</p> <p>(3) “Domestic abuse” means: (A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or (B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state.</p>	<p>Family Law - Domestic Abuse Act - Ark. Code Ann. § 9-15-207</p> <p>(a) Any order of protection granted under this chapter is enforceable by a law enforcement agency with proper jurisdiction.</p>
California	Yes	<p>Prevention of Domestic Violence – Cal. Fam. Code § 6211</p> <p>“Domestic violence” is abuse perpetrated against any of the following persons: (a) A spouse or former spouse. (b) A cohabitant or former cohabitant, as defined in Section 6209. (c) A person with whom the respondent is having or has had a dating or engagement relationship. (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12). (e) A child of a party or a child who is the subject of an action</p>	<p>Prevention of Domestic Violence – Cal. Fam. Code § 6203</p> <p>“Abuse” (a) For purposes of this act, “abuse” means any of the following: (1) To intentionally or recklessly cause or attempt to cause bodily injury. (2) Sexual assault. (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. 4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320. (b) Abuse is not limited to the actual infliction of physical injury or assault.</p>	<p>Protective Orders and Other Domestic Violence Prevention Orders – Cal. Fam. Code § 6301</p> <p>Persons who may be granted restraining order: (a) An order under this part may be granted to any person described in Section 6211, including a minor pursuant to subdivision (b) of Section 372 of the Code of Civil Procedure.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		<p>under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.</p> <p>(f) Any other person related by consanguinity or affinity within the second degree</p>		
Colorado	Yes	<p>Domestic Violence – Definitions - Colo. Rev. Stat. Ann. § 18-6-800.3</p> <p>(2) “Intimate relationship” means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.</p>	<p>Sexual Abuse/ Exploitation – Colo. Rev. Stat. Ann. §§ 19-1-103, 16-22-102</p> <ul style="list-style-type: none"> • Act or omission in which child is subjected to unlawful sexual behavior • Sexual assault, unlawful sexual contact, enticement, incest, human trafficking, sexual exploitation, procurement of child for exploitation, indecent exposure, soliciting/ pimping/ keeping child for prostitution, promoting obscenity, internet luring, internet sexual exploitation <p>Emotional Abuse – Colo. Rev. Stat. Ann. § 19-1-103</p> <ul style="list-style-type: none"> • Identifiable and substantial impairment or a substantial risk of impairment of child’s intellectual or psychological functioning or development <p>Domestic Violence as Child Abuse – Colo. Rev. Stat. Ann. § 18-6-800.3</p> <p>Domestic violence can include any crime against a child when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the perpetrator is involved in an intimate relationship</p>	-----
Connecticut	Yes	Family Law – Family Violence - Conn. Gen. Stat. Ann. § 46b-38a	Family Law – Family Violence - Conn. Gen. Stat. Ann. § 46b-38a	Family Law - Orders of Protection and Relief -

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		(2) "Family or household member" means any of the following persons, regardless of the age of such person: (A) Spouses or former spouses; (B) parents or their children; (C) persons related by blood or marriage; (D) persons other than those persons described in subparagraph (C) of this subdivision presently residing together or who have resided together; (E) persons who have a child in common regardless of whether they are or have been married or have lived together at any time; and (F) persons in, or who have recently been in, a dating relationship.	(1) "Family violence" means an incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur.	Conn. Gen. Stat. Ann. § 46b-15 (a) Any family or household member, as defined in section 46b-38a, who has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening, including, but not limited to, a pattern of threatening, as described in section 53a-62, by another family or household member may make an application to the Superior Court for relief under this section. The court shall provide any person who applies for relief under this section with the information set forth in section 46b-15b.
Delaware	Yes	Domestic Relations- Child Protection from Domestic Violence Act- Del. Code Ann. tit. 13, § 703A (a) "Domestic violence" includes but is not limited to physical or sexual abuse or threats of physical or sexual abuse and any other offense against the person committed by 1 parent against the other parent, against any child living in either parent's home, or against any other adult living in the child's home. "Domestic violence" does not include reasonable acts of self-defense by 1 parent for self-protection or in order to protect the child from abuse or threats of abuse by the other parent or other adult living in the child's home. Courts and Judicial Procedure- Protection from Abuse Proceedings- Del. Code Ann. tit. 10, § 1041	Domestic Relations- Child Protection from Domestic Violence Act- Del. Code Ann. tit. 13, § 703A (b) "Perpetrator of domestic violence" means any individual who has been convicted of committing any of the following criminal offenses in the State, or any comparable offense in another jurisdiction, against the child at issue in a custody or visitation proceeding, against the other parent of the child, or against any other adult or minor child living in the home: (1) Any felony level offense; (2) Assault in the third degree; (3) Reckless endangering in the second degree; (4) Reckless burning or exploding; (5) Unlawful imprisonment in the second degree; (6) Unlawful sexual contact in the third degree; or (7) Criminal contempt of Family Court protective order based on an	Courts and Judicial Procedure- Protection from Abuse Proceedings- Del. Code Ann. tit. 10, § 1041 (4) "Protective order" means an order issued by the court to a respondent restraining said respondent from committing domestic violence against the petitioner, or a person in whose interest a petition is brought, and may include such measures as are necessary in order to prevent domestic violence.
Delaware				

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
District of Columbia		offense that is committed or threatened to be committed by an offender upon a person to whom the offender is related by blood, adoption, legal custody, marriage, or domestic partnership, or with whom the offender has a child in common.		<p>(1) If the petitioner is a minor, the petitioner's parent, guardian, custodian, or other appropriate adult may file a petition for civil protection on the petitioner's behalf;</p> <p>(2) A minor who is 16 years of age or older may file a petition for civil protection on his or her own behalf;</p> <p>(3) A minor who is at least 12 but less than 16 years of age and a victim of intimate partner violence may file a petition for civil protection and participate in a hearing to seek a temporary protection order without a parent, guardian, custodian, or other appropriate adult acting on his or her behalf, but, under these circumstances, the court may appoint an attorney for the minor in accordance with section 16-1005(a-1)(3), if necessary, and if doing so will not unduly delay the issuance or denial of a temporary protection order;</p> <p>(4) A minor who is at least 12 but less than 16 years of age and a victim of interpersonal or intrafamily violence may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf;</p> <p>(5) A minor who is less than 12 years of age may petition for civil protection only if his or her parent, guardian, or custodian files the petition on his or her behalf; and</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
				(6) A custodial parent, guardian, or custodian of a minor may not file a petition for civil protection against the minor.
Florida	Yes	<p>Domestic Relations- Domestic Violence- Fla. Stat. Ann. § 741.28</p> <p>(3) “Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.</p>	<p>Domestic Relations- Domestic Violence- Fla. Stat. Ann. § 741.28</p> <p>(2) “Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.</p>	<p>Domestic Relations- Domestic Violence; injunction- Fla. Stat. Ann. § 741.30</p> <p>(a) Any person described in paragraph (e), who is either the victim of domestic violence as defined in s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.</p> <p>(e) This cause of action for an injunction may be sought by family or household members. No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such person is not a spouse.</p>
Georgia	Yes	<p>Domestic Relations- Family Violence- Ga. Code Ann. § 19-13-1</p> <p>As used in this article, the term “family violence” means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household...</p>	<p>Domestic Relations- Family Violence- Ga. Code Ann. § 19-13-1</p> <p>As used in this article, the term “family violence” means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:</p> <p>(1) Any felony; or</p>	<p>Domestic Relations- Family Violence- Protective Orders- Ga. Code Ann. § 19-13-4</p> <p>(a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
			<p>(2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.</p> <p>The term “family violence” shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.</p>	
Hawaii	Yes	<p>Health- Domestic Violence Fatality Review- Haw. Rev. Stat. Ann. § 321-471</p> <p>“Family or household members” as used in this section means:</p> <ol style="list-style-type: none"> (1) Each legal parent; (2) The natural mother; (3) The natural father; (4) Each natural or adopted child; (5) Each sibling or person related by consanguinity; (6) Spouses or former spouses; (7) Reciprocal beneficiaries or former reciprocal beneficiaries; (8) Each person who has or has had a dating relationship; (9) Each person jointly residing or formerly residing in the same dwelling unit; and (10) Any other person who, or legal entity that, is a victim's legal or physical custodian or guardian, or who is otherwise responsible for the victim's care, other than an authorized agency that assumes such a legal status or relationship with the victim under chapter 587A. 	<p>Health- Domestic Violence Fatality Review- Haw. Rev. Stat. Ann. § 321-471</p> <p>“Domestic violence” means physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members.</p>	<p>Property; Family-Domestic Abuse Protective Orders- Haw. Rev. Stat. Ann. § 586-3</p> <p>(b) A petition for relief under this chapter may be made by:</p> <ol style="list-style-type: none"> (1) Any family or household member on the member's own behalf or on behalf of a family or household member who is a minor or who is an incapacitated person as defined in section 560:5-102 or who is physically unable to go to the appropriate place to complete or file the petition; or (2) Any state agency on behalf of a person who is a minor or who is an incapacitated person as defined in section 560:5-102 or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.
Idaho	Yes	<p>Health and Safety- Domestic Violence Crime Prevention- Idaho Code Ann. § 39-6303</p>	<p>Health and Safety- Domestic Violence Crime Prevention- Idaho Code Ann. § 39-6303</p>	<p>Health and Safety- Domestic Violence Crime Prevention- Idaho Code Ann. § 39-6303</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		<p>(3) “Family member” means spouses, former spouses and persons related by blood, adoption or marriage.</p> <p>(6) “Household member” means persons who reside or have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.</p>	<p>(1) “Domestic violence” means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship.</p>	<p>(8) “Protection order” means any order issued for the purpose of preventing violent or threatening acts or acts of harassment against, or contact or communication with, or physical proximity to, another person, where the order was issued</p> <p>Health and Safety- Domestic Violence Crime Prevention- Idaho Code Ann. § 39-6304</p> <p>(2) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the magistrates division of the district court, alleging that the person or a family or household member, whether an adult or a child, is the victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter. A custodial or noncustodial parent or guardian may file a petition on behalf of a minor child who is the victim of domestic violence.</p>
Illinois	Yes	<p>Families- Illinois Domestic Violence Act of 1986- Orders of Protection- 750 Ill. Comp. Stat. Ann. 60/201</p> <p>(a) The following persons are protected by this Act:</p> <p>(i) any person abused by a family or household member;</p> <p>(ii) any high-risk adult with disabilities who is abused,</p>	<p>Families- Illinois Domestic Violence Act of 1986- 750 Ill. Comp. Stat. Ann. 60/103</p> <p>For the purposes of this Act, the following terms shall have the following meanings:</p> <p>(1) “Abuse” means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a</p>	<p>Families- Illinois Domestic Violence Act of 1986- 750 Ill. Comp. Stat. Ann. 60/103</p> <p>(12) “Order of protection” means an emergency order, interim order or plenary order, granted pursuant to this Act, which includes any or all of the remedies</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Illinois		<p>neglected, or exploited by a family or household member; (iii) any minor child or dependent adult in the care of such person; and (iv) any person residing or employed at a private home or public shelter which is housing an abused family or household member.</p> <p>Families- Illinois Domestic Violence Act of 1986- 750 Ill. Comp. Stat. Ann. 60/103</p> <p>6) “Family or household members” include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers as defined in Section 12-4.4a of the Criminal Code of 2012.¹ For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship. In the case of a high-risk adult with disabilities, “family or household members” includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order</p>	<p>minor child by a parent or person in loco parentis. (3) “Domestic violence” means abuse as defined in paragraph (1)</p>	<p>authorized by Section 214 of this Act. (13) “Petitioner” may mean not only any named petitioner for the order of protection and any named victim of abuse on whose behalf the petition is brought, but also any other person protected by this Act.</p> <p>Families- Illinois Domestic Violence Act of 1986- Orders of Protection- 750 Ill. Comp. Stat. Ann. 60/201</p> <p>(b) A petition for an order of protection may be filed only: (i) by a person who has been abused by a family or household member or by any person on behalf of a minor child or an adult who has been abused by a family or household member and who, because of age, health, disability, or inaccessibility, cannot file the petition, or (ii) by any person on behalf of a high-risk adult with disabilities who has been abused, neglected, or exploited by a family or household member. However, any petition properly filed under this Act may seek protection for any additional persons protected by this Act.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Indiana	Yes	<p>Civil Law and Procedure- Definitions- Ind. Code Ann. § 34-6-2-44.8</p> <p>(a) An individual is a “family or household member” of another person if the individual:</p> <ol style="list-style-type: none"> (1) is a current or former spouse of the other person; (2) is dating or has dated the other person; (3) is or was engaged in a sexual relationship with the other person; (4) is related by blood or adoption to the other person; (5) is or was related by marriage to the other person; (6) has or previously had an established legal relationship: <ol style="list-style-type: none"> (A) as a guardian of the other person; (B) as a ward of the other person; (C) as a custodian of the other person; (D) as a foster parent of the other person; or (E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); or (7) has a child in common with the other person. <p>(b) An individual is a “family or household member” of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) applies if the individual is a minor child of one (1) of the persons.</p>	<p>Civil Law and Procedure- Definitions- Ind. Code Ann. § 34-6-2-34.5</p> <p>“Domestic or family violence” means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:</p> <ol style="list-style-type: none"> (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member. (2) Placing a family or household member in fear of physical harm. (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress. (4) Beating (as described in IC 35-46-3-0.5(2)), torturing (as described in IC 35-46-3-0.5(5)), mutilating (as described in IC 35-46-3-0.5(3)), or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member. <p>For purposes of IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member.</p>	<p>Civil Law and Procedure- Indiana Civil Protection Order Act- Ind. Code Ann. § 34-26-5-2</p> <p>(a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a:</p> <ol style="list-style-type: none"> (1) family or household member who commits an act of domestic or family violence; or (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner. <p>(b) A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a:</p> <ol style="list-style-type: none"> (1) family or household member who commits an act of domestic or family violence; or (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child.
Iowa	No ⁸	<p>Human Services- Children and Families- Domestic Abuse- Iowa Code Ann. § 236.2</p>	<p>Human Services- Children and Families- Domestic Abuse- Iowa Code Ann. § 236.2</p>	<p>Human Services- Children and Families-</p>

⁸ See Iowa Code Ann. § 232.68; see also 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/>.

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Iowa		<p>2. “Domestic abuse” means committing assault as defined in section 708.1 under any of the following circumstances:</p> <p>a. The assault is between family or household members who resided together at the time of the assault.</p> <p>b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.</p> <p>c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.</p> <p>d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.</p> <p>e. The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonexclusive list of factors:</p> <p>(a) The duration of the relationship.</p> <p>(b) The frequency of interaction.</p> <p>(c) Whether the relationship has been terminated.</p> <p>(d) The nature of the relationship, characterized by either party’s expectation of sexual or romantic involvement.</p> <p>4. a. “Family or household members” means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity.</p>	<p>2. “Domestic abuse” means committing assault as defined in section 708.1...</p> <p>Criminal Law and Procedure- Assault- Iowa Code Ann. § 708.1</p> <p>1. For the purposes of this chapter, “domestic abuse assault” means an assault, as defined in section 708.1, which is domestic abuse as defined in section 236.2, subsection 2, paragraph “a”, “b”, “c”, or “d”.</p> <p>Criminal Law and Procedure- Assault- Iowa Code Ann. § 708.2A</p> <p>1. For the purposes of this chapter, “domestic abuse assault” means an assault, as defined in section 708.1, which is domestic abuse as defined in section 236.2, subsection 2, paragraph “a”, “b”, “c”, or “d”.</p>	<p>Domestic Abuse- Iowa Code Ann. § 236.3</p> <p>1. A person, including a parent or guardian on behalf of an unemancipated minor, may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		b. "Family or household members" does not include children under age eighteen of persons listed in paragraph "a".		
Kansas	No (unless child is over age 18) ⁹	<p>Crimes Against Persons- Domestic Battery- Kan. Stat. Ann. § 21-5414</p> <p>(1) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time...</p>	<p>Crimes Against Persons- Domestic Battery- Kan. Stat. Ann. § 21-5414</p> <p>(a) Domestic battery is: (1) Knowingly or recklessly causing bodily harm by a family or household member against a family or household member; or (2) Knowingly causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.</p>	<p>Civil Procedure- Protection from Abuse Act- Kan. Stat. Ann. § 60-3104</p> <p>(a) An intimate partner or household member may seek relief under the protection from abuse act by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member. (b) A parent of or an adult residing with a minor child may seek relief under the protection from abuse act on behalf of the minor child by filing a verified petition with any district judge or with the clerk of the court alleging abuse by another intimate partner or household member.</p>
Kentucky	Yes	<p>Domestic Relations- Dissolution of Marriage- Domestic Violence and Abuse- Ky. Rev. Stat. Ann. § 403.720</p> <p>(2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim.</p>	<p>Domestic Relations- Dissolution of Marriage- Domestic Violence and Abuse- Ky. Rev. Stat. Ann. § 403.720</p> <p>As used in KRS 403.715 to 403.785: (1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple.</p>	<p>Domestic Relations- Dissolution of Marriage- Domestic Violence and Abuse- Ky. Rev. Stat. Ann. § 403.750</p> <p>(1) Any family member or any member of an unmarried couple may file for and receive protection under this chapter from domestic violence and abuse, notwithstanding the existence of or intent to file</p>

⁹ See KAN. STAT. ANN. § 38-2202 (2016); see also *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/>.

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Kentucky				an action under this chapter by either party.
Louisiana	Yes	<p>Protection from Family Violence- Domestic Abuse Assistance- La. Stat. Ann. § 46:2132</p> <p>(4) “Family members” means spouses, former spouses, parents and children, stepparents, stepchildren, foster parents, and foster children. “Household members” means any person presently or formerly living in the same residence with the defendant and who is involved or has been involved in a sexual or intimate relationship with the defendant and who is seeking protection under this Part. “Dating partner” means any person protected from violence under R.S. 46:2151 who is seeking protection under this Part. If a parent or grandparent is being abused by an adult child, adult foster child, or adult grandchild, the provisions of this Part shall apply to any proceeding brought in district court.</p> <p>Criminal Code- Domestic abuse battery- La. Stat. Ann. § 14:35.3</p> <p>(5) “Household member” means any person presently or formerly living in the same residence with the offender and who is involved or has been involved in a sexual or intimate relationship with the offender, or any child presently or formerly living in the same residence with the offender, or any child of the offender regardless of where the child resides.</p>	<p>Protection from Family Violence- Domestic Abuse Assistance- La. Stat. Ann. § 46:2132</p> <p>(3) “Domestic abuse” includes but is not limited to physical or sexual abuse and any offense against the person, physical or non-physical, as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family member, household member, or dating partner against another. “Domestic abuse” also includes abuse of adults as defined in R.S. 15:1503 when committed by an adult child or adult grandchild.</p> <p>Criminal Code- Domestic abuse battery- La. Stat. Ann. § 14:35.3</p> <p>A. Domestic abuse battery is the intentional use of force or violence committed by one household member upon the person of another household member without the consent of the victim.</p>	<p>Protection from Family Violence- Domestic Abuse Assistance- La. Stat. Ann. § 46:2136</p> <p>A. The court may grant any protective order or approve any consent agreement to bring about a cessation of domestic abuse as defined in R.S. 46:2132, or the threat or danger thereof, to a party, any minor children, or any person alleged to be incompetent...</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Maine	No ¹⁰	<p>Domestic Relations- Protection from Abuse- Me. Rev. Stat. Ann. tit. 19-A, § 4002</p> <p>“Family or household members” means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 209-A, 210-B, 210-C, 211-A, 1201, 1202 and 1253 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute “living as spouses.” For purposes of this subsection, “domestic partners” means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.</p>	<p>Domestic Relations- Protection from Abuse- Me. Rev. Stat. Ann. tit. 19-A, § 4002</p> <p>1. Abuse. “Abuse” means the occurrence of the following acts between family or household members or dating partners or by a family or household member or dating partner upon a minor child of a family or household member or dating partner:</p> <p>A. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults under Title 17-A, chapter 11,¹ except that contact as described in Title 17-A, section 106, subsection 1 is excluded from this definition;</p> <p>B. Attempting to place or placing another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior;</p> <p>C. Compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage;</p> <p>D. Knowingly restricting substantially the movements of another person without that person's consent or other lawful authority by:</p> <p>(1) Removing that person from that person's residence, place of business or school;</p> <p>(2) Moving that person a substantial distance from the vicinity where that person was found; or</p> <p>(3) Confining that person for a substantial period either in the place where the restriction commences or</p>	<p>Domestic Relations- Protection from Abuse- Me. Rev. Stat. Ann. tit. 19-A, § 4005</p> <p>1. Filing. An adult who has been abused by a family or household member or a dating partner may seek relief by filing a complaint alleging that abuse. When a minor child in the care or custody of a family or household member or a dating partner has been abused by a family or household member or a dating partner, a person responsible for the child, as defined in Title 22, section 4002, subsection 9, or a representative of the department may seek relief by filing a petition alleging that abuse.</p>

¹⁰ See ME. REV. STAT. ANN. tit. 22, § 4002 (2015); see also 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/>.

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Maine			<p>in a place to which that person has been moved;</p> <p>E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed;</p> <p>F. Repeatedly and without reasonable cause:</p> <p>(1) Following the plaintiff; or</p> <p>(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;</p> <p>G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or</p> <p>H. Engaging in aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or 853, respectively.</p>	
Maryland	Yes	<p>Family Law- Domestic Violence- Md. Code Ann., Fam. Law § 4-501</p> <p>(m) "Person eligible for relief" includes:</p> <p>(1) the current or former spouse of the respondent;</p> <p>(2) a cohabitant of the respondent;</p> <p>(3) a person related to the respondent by blood, marriage, or adoption;</p> <p>(4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within 1 year before the filing of the petition;</p>	<p>Family Law- Domestic Violence- Md. Code Ann., Fam. Law § 4-501</p> <p>(b)(1) "Abuse" means any of the following acts:</p> <p>(i) an act that causes serious bodily harm;</p> <p>(ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;</p> <p>(iii) assault in any degree;</p> <p>(iv) rape or sexual offense under §§ 3-303 through 3-308 of the Criminal Law Article or attempted rape or sexual offense in any degree;</p> <p>(v) false imprisonment; or</p> <p>(vi) stalking under § 3-802 of the Criminal Law Article.</p> <p>(2) If the person for whom relief is sought is a child, "abuse" may also</p>	<p>Family Law- Domestic Violence- Md. Code Ann., Fam. Law § 4-505</p> <p>(a)(1) If, after a hearing on a petition, whether ex parte or otherwise, a judge finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the judge may enter a temporary protective order to protect any person eligible for relief from abuse.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Maryland		(5) a vulnerable adult; (6) an individual who has a child in common with the respondent; or (7) an individual who has had a sexual relationship with the respondent within 1 year before the filing of the petition.	include abuse of a child, as defined in Title 5, Subtitle 7 of this article. Nothing in this subtitle shall be construed to prohibit reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child, from being performed by a parent or stepparent of the child. (3) If the person for whom relief is sought is a vulnerable adult, "abuse" may also include abuse of a vulnerable adult, as defined in Title 14, Subtitle 1 of this article.	
Massachusetts	Yes	<p>Domestic Relations- Abuse Prevention- Mass. Gen. Laws Ann. ch. 209A, § 1</p> <p>"Family or household members", persons who:</p> <p>(a) are or were married to one another;</p> <p>(b) are or were residing together in the same household;</p> <p>(c) are or were related by blood or marriage;</p> <p>(d) having a child in common regardless of whether they have ever married or lived together; or</p> <p>(e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:</p> <p>(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.</p>	<p>Domestic Relations- Abuse Prevention- Mass. Gen. Laws Ann. ch. 209A, § 1</p> <p>"Abuse", the occurrence of one or more of the following acts between family or household members:</p> <p>(a) attempting to cause or causing physical harm;</p> <p>(b) placing another in fear of imminent serious physical harm;</p> <p>(c) causing another to engage involuntarily in sexual relations by force, threat or duress.</p>	<p>Domestic Relations- Abuse Prevention- Mass. Gen. Laws Ann. ch. 209A, § 3</p> <p>A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse...</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Michigan	Yes	<p>Social Services- Domestic Violence- Mich. Comp. Laws Ann. § 400.1501</p> <p>(e) “Family or household member” includes any of the following: <i>(i)</i> A spouse or former spouse. <i>(ii)</i> An individual with whom the person resides or has resided. <i>(iii)</i> An individual with whom the person has or has had a dating relationship. <i>(iv)</i> An individual with whom the person is or has engaged in a sexual relationship. <i>(v)</i> An individual to whom the person is related or was formerly related by marriage. <i>(vi)</i> An individual with whom the person has a child in common. <i>(vii)</i> The minor child of an individual described in subparagraphs <i>(i)</i> to <i>(vi)</i>.</p>	<p>Social Services- Domestic Violence- Mich. Comp. Laws Ann. § 400.1501</p> <p>(d) “Domestic violence” means the occurrence of any of the following acts by a person that is not an act of self-defense: <i>(i)</i> Causing or attempting to cause physical or mental harm to a family or household member. <i>(ii)</i> Placing a family or household member in fear of physical or mental harm. <i>(iii)</i> Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress. <i>(iv)</i> Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.</p>	<p>Provisions Concerning Specific Actions- Personal Protection Orders- Mich. Comp. Laws Ann. § 600.2950</p> <p>Sec. 2950. (1) Except as provided in subsections (27) and (28), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following...</p>
Minnesota	Yes	<p>Domestic Relations- Domestic Abuse Act- Minn. Stat. Ann. § 518B.01</p> <p>(b) “Family or household members” means: (1) Spouses and former spouses; (2) Parents and children; (3) Persons related by blood; (4) Persons who are presently residing together or who have resided together in the past; (5) persons who have a child in common regardless of whether</p>	<p>Domestic Relations- Domestic Abuse Act- Minn. Stat. Ann. § 518B.01</p> <p>(a) “Domestic abuse” means the following, if committed against a family or household member by a family or household member: (1) Physical harm, bodily injury, or assault; (2) The infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, within the meaning of section 609.713,</p>	<p>Domestic Relations- Domestic Abuse Act- Minn. Stat. Ann. § 518B.01</p> <p>Subd. 4. Order for protection. There shall exist an action known as a petition for an order for protection in cases of domestic abuse.</p> <p>(a) A petition for relief under this section may be made by any family or</p>

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Minnesota		they have been married or have lived together at any time; (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and (7) persons involved in a significant romantic or sexual relationship.	subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.	household member personally or by a family or household member, a guardian as defined in section 524.1-201, clause (27), or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age 16 or older may make a petition on the minor's own behalf against a spouse or former spouse, or a person with whom the minor has a child in common, if the court determines that the minor has sufficient maturity and judgment and that it is in the best interests of the minor.
Mississippi	Yes	Domestic Relations- Protection from Domestic Abuse- Miss. Code Ann. § 93-21-3 (a) "Abuse" means the occurrence of one or more of the following acts between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children in common, other individuals related by consanguinity or affinity who reside together or who formerly resided together or between individuals who have a current or former dating relationship...	Domestic Relations- Protection from Domestic Abuse- Miss. Code Ann. § 93-21-3 (a) "Abuse" means the occurrence of one or more of the following acts between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children in common, other individuals related by consanguinity or affinity who reside together or who formerly resided together or between individuals who have a current or former dating relationship: (i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; (ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury;	Domestic Relations- Protection from Domestic Abuse- Miss. Code Ann. § 93-21-7 (1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent. Any parent, adult household member, or next friend of the abused person may seek a domestic abuse protection order on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the respondent. Cases seeking relief under this chapter shall be priority cases on the court's docket and the judge shall be immediately notified when a case is

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Mississippi			<p>(iii) Criminal sexual conduct committed against a minor within the meaning of Section 97-5-23;</p> <p>(iv) Stalking within the meaning of Section 97-3-107;</p> <p>(v) Cyberstalking within the meaning of Section 97-45-15; or</p> <p>(vi) Sexual offenses within the meaning of Section 97-3-65 or 97-3-95.</p> <p>Crimes Against the Person- Simple and Aggravated Assault; Simple and Aggravated Domestic Violence- Miss. Code Ann. § 97-3-7</p> <p>(3)(a) When the offense is committed against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child, a person is guilty of simple domestic violence who:</p> <p>(i) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another;</p> <p>(ii) Negligently causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm; or</p> <p>(iii) Attempts by physical menace to put another in fear of imminent serious bodily harm.</p>	filed in order to provide for expedited proceedings.
Missouri	Yes	<p>Domestic Relations- Adult Abuse- Mo. Ann. Stat. § 455.010</p> <p>(7) “Family” or “household member”, spouses, former spouses, any person related by blood or marriage, persons who are</p>	<p>Domestic Relations- Adult Abuse- Mo. Ann. Stat. § 455.010</p> <p>(5) “Domestic violence”, abuse or stalking committed by a family or household member, as such terms are defined in this section;</p>	<p>Domestic Relations- Adult Abuse- Mo. Ann. Stat. § 455.020</p> <p>1. Any person who has been subject to domestic violence by a present or former family or household</p>

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Missouri		presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common regardless of whether they have been married or have resided together at any time	<p>(1) "Abuse" includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner.</p> <p>Crimes and Punishment- Domestic Assault- Mo. Ann. Stat. § 565.072</p> <p>1. A person commits the offense of domestic assault in the first degree if he or she attempts to kill or knowingly causes or attempts to cause serious physical injury to a domestic victim, as the term "domestic victim" is defined under section 565.002.</p>	<p>member, or who has been the victim of stalking or sexual assault, may seek relief under sections 455.010 to 455.085 by filing a verified petition alleging such domestic violence, stalking, or sexual assault by the respondent.</p> <p>2. A person's right to relief under sections 455.010 to 455.085 shall not be affected by the person leaving the residence or household to avoid domestic violence.</p>
Montana	Yes	<p>Offenses Against the Person- Assault- Partner or Family Member Assault- Mont. Code Ann. § 45-5-206</p> <p>(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.</p> <p>(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.</p>	<p>Offenses Against the Person- Assault- Partner or Family Member Assault- Mont. Code Ann. § 45-5-206</p> <p>(1) A person commits the offense of partner or family member assault if the person:</p> <p>(a) Purposely or knowingly causes bodily injury to a partner or family member;</p> <p>(b) negligently causes bodily injury to a partner or family member with a weapon; or</p> <p>(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.</p>	<p>Family Law- Partner and Family Assault- Eligibility for Order of Protection- Mont. Code Ann. § 40-15-102</p> <p>(1) A person may file a petition for an order of protection if:</p> <p>(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or</p> <p>(b) the petitioner is a victim of one of the following offenses committed by a partner or family member...</p> <p>(2) The following individuals are eligible to file a petition for an order of protection against the offender regardless of the</p>

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Montana				<p>individual's relationship to the offender:</p> <p>(a) a victim of assault as defined in 45-5-201, aggravated assault as defined in 45-5-202, assault on a minor as defined in 45-5-212, stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503; or</p> <p>(b) a partner or family member of a victim of deliberate homicide as defined in 45-5-102 or mitigated deliberate homicide as defined in 45-5-103.</p> <p>(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.</p>
Nebraska	Yes	<p>Households and Families-Protection from Domestic Abuse Act- Neb. Rev. Stat. Ann. § 42-903</p> <p>(3) Family or household members includes spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or</p>	<p>Households and Families-Protection from Domestic Abuse Act- Neb. Rev. Stat. Ann. § 42-903</p> <p>(1) Abuse means the occurrence of one or more of the following acts between family or household members:</p> <p>(a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;</p>	<p>Households and Families-Protection from Domestic Abuse Act- Neb. Rev. Stat. Ann. § 42-924</p> <p>(1) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in subsections (2) and (3) of this section.</p>

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Nebraska		affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.	<p>(b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct that is made by a person with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or</p> <p>(c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.</p> <p>Crimes and Punishments- Domestic Assault- Neb. Rev. Stat. Ann. § 28-323</p> <p>(1) A person commits the offense of domestic assault in the third degree if he or she:</p> <p>(a) Intentionally and knowingly causes bodily injury to his or her intimate partner;</p> <p>(b) Threatens an intimate partner with imminent bodily injury; or</p> <p>(c) Threatens an intimate partner in a menacing manner.</p> <p>(2) A person commits the offense of domestic assault in the second degree if he or she intentionally and knowingly causes bodily injury to his or her intimate partner with a dangerous instrument.</p> <p>(3) A person commits the offense of domestic assault in the first degree</p>	

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Nebraska			if he or she intentionally and knowingly causes serious bodily injury to his or her intimate partner.	
Nevada	Yes	<p>Special Actions and Proceedings- Injunctions- Protection Against Domestic Violence- Nev. Rev. Stat. Ann. § 33.018</p> <p>1. Domestic violence occurs when a person commits one of the following acts against or upon the person’s spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person’s minor child or any other person who has been appointed the custodian or legal guardian for the person’s minor child...</p>	<p>Special Actions and Proceedings- Injunctions- Protection Against Domestic Violence- Nev. Rev. Stat. Ann. § 33.018</p> <p>(a) A battery. (b) An assault. (c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform. (d) A sexual assault (e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to: (1) Stalking. (2) Arson. (3) Trespassing. (4) Larceny. (5) Destruction of private property. (6) Carrying a concealed weapon without a permit. (7) Injuring or killing an animal. (f) A false imprisonment. (g) Unlawful entry of the other person’s residence, or forcible entry against the other person’s will if there is a reasonably foreseeable risk of harm to the other person from the entry.</p>	<p>Special Actions and Proceedings- Injunctions- Protection Against Domestic Violence- Nev. Rev. Stat. Ann. § 33.020</p> <p>1. If it appears to the satisfaction of the court from specific facts shown by a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order. A temporary or extended order must not be granted to the applicant or the adverse party unless the applicant or the adverse party has requested the order and has filed a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence.</p>
New Hampshire	In some cases ¹¹	<p>Public Safety and Welfare- Protection of Persons from Domestic Violence- N.H. Rev. Stat. Ann. § 173-B:1</p> <p>X. “Family or household member” means:</p>	<p>Public Safety and Welfare- Protection of Persons from Domestic Violence- N.H. Rev. Stat. Ann. § 173-B:1</p> <p>IX. “Domestic violence” means abuse as defined in RSA 173-B: 1, I.</p>	<p>Public Safety and Welfare- Protection of Persons from Domestic Violence- N.H. Rev. Stat. Ann. § 173B:5</p> <p>I. A finding of abuse shall mean the defendant</p>

¹¹ See N.H. REV. STAT. ANN. § 169-C:3 (2018); see also 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/>.

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New Hampshire		<p>(a) Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the same residence.</p> <p>(b) Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.</p> <p>Domestic Violence as Child Abuse – N.H. Rev. Stat. Ann. § 173-B:1</p> <p>Domestic violence can constitute child abuse when the child is related to the defendant but does not reside with the defendant.</p>	<p>I. “Abuse” means the commission or attempted commission of one or more of the acts described in subparagraphs (a) through (h) by a family or household member or by a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner’s safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being:</p> <p>(a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.</p> <p>(b) Criminal threatening as defined in RSA 631:4.</p> <p>(c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.</p> <p>(d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.</p> <p>(e) Destruction of property as defined in RSA 634:1 and RSA 634:2.</p> <p>(f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.</p> <p>(g) Harassment as defined in RSA 644:4.</p> <p>(h) Cruelty to animals as defined in RSA 644:8.</p>	<p>represents a credible threat to the safety of the plaintiff. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse. Such relief shall direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order. Other relief may include:</p> <p>(a) Protective orders...</p>
New Jersey	Yes	<p>Code of Criminal Justice- Offenses Against Others- N.J. Stat. Ann. § 2C:25-19</p> <p>d. “Victim of domestic violence” means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a</p>	<p>Code of Criminal Justice- Offenses Against Others- N.J. Stat. Ann. § 2C:25-19</p> <p>a. “Domestic violence” means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:</p> <p>(1) Homicide N.J.S.2C:11-1 et seq.</p> <p>(2) Assault N.J.S.2C:12-1</p> <p>(3) Terroristic threats N.J.S.2C:12-3</p> <p>(4) Kidnapping N.J.S.2C:13-1</p> <p>(5) Criminal restraint N.J.S.2C:13-2</p>	<p>Code of Criminal Justice- Offenses Against Others- N.J. Stat. Ann. § 2C:25-28</p> <p>a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. The court shall</p>

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		household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.	(6) False imprisonment N.J.S.2C:13-3 (7) Sexual assault N.J.S.2C:14-2 (8) Criminal sexual contact N.J.S.2C:14-3 (9) Lewdness N.J.S.2C:14-4 (10) Criminal mischief N.J.S.2C:17-3 (11) Burglary N.J.S.2C:18-2 (12) Criminal trespass N.J.S.2C:18-3 (13) Harassment N.J.S.2C:33-4 (14) Stalking P.L.1992, c. 209 (C.2C:12-10) (15) Criminal coercion N.J.S.2C:13-5 (16) Robbery N.J.S.2C:15-1 (17) Contempt of a domestic violence order pursuant to subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly persons offense (18) Any other crime involving risk of death or serious bodily injury to a person protected under the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C.2C:25-17 et al.) (19) Cyber-harassment P.L.2013, c. 272 (C.2C:33-4.1)	not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.
New Mexico	Yes	Domestic Affairs- Family Violence Protection- N.M. Stat. Ann. § 40-13-2 E. "household member" means a spouse, former spouse, parent, present or former stepparent, present or former parent in-law, grandparent, grandparent-in-law, child, stepchild, grandchild, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.	Domestic Affairs- Family Violence Protection- N.M. Stat. Ann. § 40-13-2 D. "domestic abuse": (1) means an incident of stalking or sexual assault whether committed by a household member or not; (2) means an incident by a household member against another household member consisting of or resulting in: (a) physical harm; (b) severe emotional distress; (c) bodily injury or assault; (d) a threat causing imminent fear of bodily injury by any household member; (e) criminal trespass; (f) criminal damage to property; (g) repeatedly driving by a residence or work place; (h) telephone harassment; (i) harassment; or	Domestic Affairs- Family Violence Protection- N.M. Stat. Ann. § 40-13-3 A. A victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.

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New Mexico			(j) harm or threatened harm to children as set forth in this paragraph; and (3) does not mean the use of force in self-defense or the defense of another.	
New York	Yes	<p>Social Services Law- Domestic Violence Prevention Act- N.Y. Soc. Serv. Law § 459-a</p> <p>2. "Family or household members" mean the following individuals: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; (e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; (f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to</p>	<p>Social Services Law- Domestic Violence Prevention Act- N.Y. Soc. Serv. Law § 459-a</p> <p>As used in this article: 1. "Victim of domestic violence" means any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member.</p>	<p>Family Court- Family Offenses Proceedings- Person who may Originate Proceedings- N.Y. Soc. Serv. Law § 822</p> <p>(a) Any person in the relation to the respondent of spouse, or former spouse, parent, child, or member of the same family or household; (b) A duly authorized agency, association, society, or institution; (c) A peace officer, acting pursuant to his special duties, or a police officer; (d) A person on the court's own motion.</p>

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New York		constitute an “intimate relationship”; or (g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.		
North Carolina	Yes	<p>Domestic Violence- N.C. Gen. Stat. Ann. § 50B-1</p> <p>(b) For purposes of this section, the term “personal relationship” means a relationship wherein the parties involved:</p> <ol style="list-style-type: none"> (1) Are current or former spouses; (2) Are persons of opposite sex who live together or have lived together; (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. <p>For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;</p> <ol style="list-style-type: none"> (4) Have a child in common; (5) Are current or former household members; (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship for purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship. 	<p>Domestic Violence- N.C. Gen. Stat. Ann. § 50B-1</p> <p>(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:</p> <ol style="list-style-type: none"> (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or (3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33. 	<p>Domestic Violence- Institution of Civil Action- N.C. Gen. Stat. Ann. § 50B-2</p> <p>(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person...</p>
North Dakota	Yes	<p>Domestic Relations and Persons- Domestic Violence- N.D. Cent. Code Ann. § 14-07.1-01</p> <p>4. “Family or household member” means a spouse, family member, former spouse, parent, child,</p>	<p>Domestic Relations and Persons- Domestic Violence- N.D. Cent. Code Ann. § 14-07.1-01</p> <p>2. “Domestic violence” includes physical harm, bodily injury, sexual activity compelled by physical force,</p>	<p>Domestic Relations and Persons- Domestic Violence Protection Order- N.D. Cent. Code Ann. § 14-07.1-02</p>

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North Dakota		persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.	assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.	1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
Ohio	Yes	<p>Offenses Against the Family-Domestic Violence- Ohio Rev. Code Ann. § 2919.25</p> <p>(1) “Family or household member” means any of the following:</p> <p>(a) Any of the following who is residing or has resided with the offender:</p> <p>(i) A spouse, a person living as a spouse, or a former spouse of the offender;</p> <p>(ii) A parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;</p> <p>(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.</p> <p>(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.</p> <p>(2) “Person living as a spouse” means a person who is living or</p>	<p>Offenses Against the Family-Domestic Violence- Ohio Rev. Code Ann. § 2919.25</p> <p>(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.</p> <p>(B) No person shall recklessly cause serious physical harm to a family or household member.</p> <p>(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.</p>	<p>Offenses Against the Family- Domestic Violence- Temporary Protection Orders- Ohio Rev. Code Ann. § 2919.26</p> <p>(A)(1) Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of</p>

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Ohio		has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.		the offense, or any sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file, or, if in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense under section 2935.03 of the Revised Code may file on behalf of the alleged victim, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint.
Oklahoma	Yes	<p>Crimes Against the Person- Assault and Battery- Okla. Stat. Ann. tit. 21, § 644</p> <p>... a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the</p>	<p>Crimes Against the Person- Assault and Battery- Okla. Stat. Ann. tit. 21, § 644</p> <p>C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, a former spouse of a present spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is or was in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant,</p>	<p>Prevention of Public Offenses- Protection from Domestic Abuse Act- Protective Order- Okla. Stat. Ann. tit. 22, § 60.2</p> <p>A. A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under</p>

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Oklahoma		<p>defendant, or a person living in the same household as the defendant...</p> <p>Criminal Procedure- Prevention of Public Offenses- Protection from Domestic Abuse Act- Okla. Stat. Ann. tit. 22, § 60.1</p> <p>4. "Family or household members" means:</p> <ul style="list-style-type: none"> a. spouses, b. ex-spouses, c. present spouses of ex-spouses, d. parents, including grandparents, stepparents, adoptive parents and foster parents, e. children, including grandchildren, stepchildren, adopted children and foster children, <p>persons otherwise related by blood or marriage,</p> <ul style="list-style-type: none"> g. persons living in the same household or who formerly lived in the same household, and h. persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped. 	<p>or a person living in the same household as the defendant shall be guilty of domestic abuse.</p> <p>Criminal Procedure- Prevention of Public Offenses- Protection from Domestic Abuse Act- Okla. Stat. Ann. tit. 22, § 60.1</p> <p>1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship.</p>	<p>the provisions of the Protection from Domestic Abuse Act.</p>
Oregon	No ¹²	<p>Domestic Relations- Marital Dissolution- Family Abuse Prevention Act- Or. Rev. Stat. Ann. § 107.705</p> <p>(4) "Family or household members" means any of the following:</p> <ul style="list-style-type: none"> (a) Spouses. (b) Former spouses. (c) Adult persons related by blood, marriage or adoption. 	<p>Human Services- Violence Prevention and Treatment Programs- Or. Rev. Stat. Ann. § 409.290</p> <p>(3) "Domestic violence" means abuse as defined in ORS 107.705 between family and household members, as those terms are defined in ORS 107.705.</p> <p>(4) "Family violence" means the physical injury, sexual abuse or forced imprisonment, or threat thereof, of a person by another who</p>	<p>Domestic Relations- Marital Dissolution- Family Abuse Prevention Act- Or. Rev. Stat. Ann. § 107.710</p> <p>(1) Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 107.700 to 107.735, if the person is in imminent</p>

¹² See OR. REV. STAT. ANN. § 419B.005 (2017); see also 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/>.

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Oregon		<p>(d) Persons who are cohabiting or who have cohabited with each other.</p> <p>(e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710.</p> <p>(f) Unmarried parents of a child.</p>	<p>is related by blood, marriage or intimate cohabitation at the present or has been related at some time in the past, to the extent that the person's health or welfare is harmed or threatened thereby, as determined in accordance with rules prescribed by the director.</p> <p>Domestic Relations- Marital Dissolution- Family Abuse Prevention Act- Or. Rev. Stat. Ann. § 107.705</p> <p>(1) "Abuse" means the occurrence of one or more of the following acts between family or household members:</p> <p>(a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.</p> <p>(b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.</p> <p>(c) Causing another to engage in involuntary sexual relations by force or threat of force.</p>	<p>danger of further abuse from the abuser. The person may seek relief by filing a petition with the circuit court alleging that the person is in imminent danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition. The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.735.</p>
Pennsylvania	Yes	<p>Domestic Relations- Abuse of Family- Protection from Abuse- 23 Pa. Cons. Stat. § 6102</p> <p>"Family or household members." Spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.</p>	<p>Domestic Relations- Abuse of Family- Protection from Abuse- 23 Pa. Cons. Stat. § 6102</p> <p>"Abuse." The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:</p> <p>(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.</p> <p>(2) Placing another in reasonable fear of imminent serious bodily injury.</p> <p>(3) The infliction of false imprisonment pursuant to 18 Pa.C.S.</p>	<p>Domestic Relations- Abuse of Family- Protection from Abuse- 23 Pa. Cons. Stat. § 6106</p> <p>(a) General rule.--An adult or an emancipated minor may seek relief under this chapter for that person or any parent, adult household member or guardian ad litem may seek relief under this chapter on behalf of minor children, or a guardian of the person of an adult who has been declared incompetent under 20 Pa.C.S. Ch. 51 Subch. B (relating to appointment of guardian) may seek relief on behalf of the incompetent adult, by filing a petition with the</p>

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Pennsylvania			<p>§ 2903 (relating to false imprisonment).</p> <p>(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).</p> <p>(5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).</p>	court alleging abuse by the defendant.
Rhode Island	Yes, the Domestic Abuse Statute	<p>Criminal Procedure- Domestic Violence Prevention Act- 12 R.I. Gen. Laws Ann. § 12-29-2</p> <p>(b) “Family or household member” means spouses, former spouses, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past three (3) years, and persons who have a child in common regardless of whether they have been married or have lived together, or persons who are, or have been, in a substantive dating or engagement relationship within the past one year which shall be determined by the court's consideration of the following factors:</p> <p>(1) The length of time of the relationship;</p> <p>(2) The type of the relationship;</p> <p>(3) The frequency of the interaction between the parties.</p> <p>(1) the length of time of the relationship;</p> <p>(2) the type of the relationship;</p> <p>(3) the frequency of the interaction between the parties.</p>	<p>Criminal Procedure- Domestic Violence Prevention Act- 12 R.I. Gen. Laws Ann. § 12-29-2</p> <p>(a) “Domestic violence” includes, but is not limited to, any of the following crimes when committed by one family or household member against another:</p> <p>(1) Simple assault (§ 11-5-3);</p> <p>(2) Felony assaults (chapter 5 of title 11);</p> <p>(3) Vandalism (§ 11-44-1);</p> <p>(4) Disorderly conduct (§ 11-45-1);</p> <p>(5) Trespass (§ 11-44-26);</p> <p>(6) Kidnapping (§ 11-26-1);</p> <p>(7) Child-snatching (§ 11-26-1.1);</p> <p>(8) Sexual assault (§§ 11-37-2, 11-37-4);</p> <p>(9) Homicide (§§ 11-23-1 and 11-23-3);</p> <p>(10) Violation of the provisions of a protective order entered pursuant to § 15-5-19, chapter 15 of title 15, or chapter 8.1 of title 8 where the respondent has knowledge of the order and the penalty for its violation, or a violation of a no contact order issued pursuant to § 12-29-4;</p> <p>(11) Stalking (chapter 59 of title 11);</p>	<p>Domestic Relations- Domestic Abuse § 15-15-1. Definitions</p> <p>(4) “Domestic abuse” means:</p> <p>the occurrence of one or more of the following acts between present or former family members, parents, stepparents, or persons who are or have been in a substantive dating or engagement relationship within the past one year in which at least one of the persons is a minor:</p> <p>(i) Attempting to cause or causing physical harm;</p> <p>(ii) Placing another in fear of imminent serious physical harm;</p> <p>(iii) Causing another to engage involuntarily in sexual relations by force, threat of force, or duress;</p> <p>or</p>

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Rhode Island			(12) Refusal to relinquish or to damage or to obstruct a telephone (§ 11-35-14); (13) Burglary and Unlawful Entry (chapter 8 of title 11); (14) Arson (chapter 4 of title 11); (15) Cyberstalking and cyberharassment (§ 11-52-4.2); (16) Domestic assault by strangulation § 11-5-2.3; and (17) Electronic tracking of motor vehicles (§ 11-69-1).	(iv) Stalking or cyberstalking. Prevention- 15 R.I. Gen. Laws Ann. § 15-15-3 (a) A person, or a parent, custodian, or legal guardian on behalf of a minor child or the director of the department of children, youth and families (“DCYF”) or its designee for a child in the custody of DCYF, pursuant to §§ 40-11-7 and 40-11-7.1, suffering from domestic abuse or sexual exploitation as defined in § 15-15-1, may file a complaint in the family court requesting any order that will protect and support her or him from abuse or sexual exploitation
South Carolina	No ¹³	Crimes and Offenses- Domestic Violence- S.C. Code Ann. § 16-25-10 (3) “Household member” means: (a) a spouse; (b) a former spouse; (c) persons who have a child in common; or (d) a male and female who are cohabiting or formerly have cohabited.	Crimes and Offenses- Domestic Violence- S.C. Code Ann. § 16-25-20 (A) It is unlawful to: (1) cause physical harm or injury to a person's own household member; or (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril...	Domestic Relations- Protection from Domestic Abuse- Petition for Order of Protection- S.C. Code Ann. § 20-4-40 There is created an action known as a “Petition for an Order of Protection” in cases of abuse to a household member. (a) A petition for relief under this section may be made by any household members in need of protection or by any household members on behalf of minor household members.

¹³ See S.C. CODE ANN. § 63-7-20 (2018); see also 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/>.

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<p>South Dakota</p> <p>South Dakota</p>	<p>Yes</p>	<p>Domestic Relations- Protection from Domestic Abuse- S.D. Codified Laws § 25-10-3.1</p> <p>Any person who is involved in one of the following relationships with another party:</p> <p>(1) Spouse or former spouse;</p> <p>(2) Is in a significant romantic relationship or has been in one during the past twelve months with the abusing party;</p> <p>(3) Has a child or is expecting a child with the abusing party;</p> <p>(4) Parent and child, including a relationship by adoption, guardianship, or marriage; or</p> <p>(5) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage;</p> <p>is entitled to apply for a protection order or a temporary protection order pursuant to the provisions of this chapter.</p>	<p>Domestic Relations- Protection from Domestic Abuse- S.D. Codified Laws § 25-10-1</p> <p>(1) “Domestic abuse,” physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § 25-10-3.1. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship;</p>	<p>Domestic Relations- Protection from Domestic Abuse- S.D. Codified Laws § 25-10-1</p> <p>(2) “Protection order,” an order restraining any person in a relationship described in § 25-10-3.1 from committing any act of domestic abuse or an order excluding any person in a relationship described in § 25-10-3.1 from the dwelling or residence of another person in such a relationship, whether or not the dwelling or residence is shared. A protection order has a duration of five years or less.</p>
<p>Tennessee</p>	<p>Yes</p>	<p>Domestic Relations- Marriage-Domestic Abuse- Tenn. Code Ann. § 36-3-601</p> <p>(5) “Domestic abuse victim” means any person who falls within the following categories:</p> <p>(A) Adults or minors who are current or former spouses;</p> <p>(B) Adults or minors who live together or who have lived together;</p> <p>(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, “dating” and “dated” do not include fraternization between two (2) individuals in a business or social context;</p> <p>(D) Adults or minors related by blood or adoption;</p>	<p>Domestic Relations- Marriage-Domestic Abuse- Tenn. Code Ann. § 36-3-601</p> <p>(1) “Abuse” means inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor...</p> <p>(4) “Domestic abuse” means committing abuse against a victim, as defined in subdivision (5).</p>	<p>Domestic Relations- Marriage- Domestic Abuse- Tenn. Code Ann. § 36-3-602</p> <p>(a) Any domestic abuse victim, stalking victim or sexual assault victim who has been subjected to, threatened with, or placed in fear of, domestic abuse, stalking, or sexual assault, may seek relief under this part by filing a sworn petition alleging domestic abuse, stalking, or sexual assault by the respondent.</p>

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Tennessee		<p>(E) Adults or minors who are related or were formerly related by marriage; or (F) Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E).</p> <p>Criminal Offenses- Assaultive Offenses- Domestic Assault- Tenn. Code Ann. § 39-13-111</p> <p>Same as § 36-3-601</p>	<p>Criminal Offenses- Assaultive Offenses- Domestic Assault- Tenn. Code Ann. § 39-13-111</p> <p>(b) A person commits domestic assault who commits an assault as defined in § 39-13-101 against a domestic abuse victim.</p> <p>Criminal Offenses- Assaultive Offenses- Assault- Tenn. Code Ann. § 39-13-101</p> <p>(a) A person commits assault who: (1) Intentionally, knowingly or recklessly causes bodily injury to another; (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.</p>	
Texas	Yes	<p>Family Code- Protective Orders and Family Violence- Tex. Fam. Code Ann. § 71.003</p> <p>“Family” includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.</p> <p>Family Code- Protective Orders and Family Violence- Tex. Fam. Code Ann. § 71.005</p> <p>“Household” means a unit composed of persons living together in the same dwelling,</p>	<p>Family Code- Protective Orders and Family Violence- Tex. Fam. Code Ann. § 71.004</p> <p>“Family violence” means: (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household; or (3) dating violence, as that term is defined by Section 71.0021.</p>	<p>Family Code- Protective Orders and Family Violence- Tex. Fam. Code Ann. § 81.001</p> <p>A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.</p>

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		<p>without regard to whether they are related to each other.</p> <p>Family Code- Protective Orders and Family Violence- Tex. Fam. Code Ann. § 71.006</p> <p>“Member of a household” includes a person who previously lived in a household.</p>		
Utah	No (unless above age 16)¹⁴	<p>Protective Orders- Cohabitant Abuse Act- Utah Code Ann. § 78B-7-102</p> <p>(2) “Cohabitant” means an emancipated person pursuant to Section 15-2-1 or a person who is 16 years of age or older who:</p> <p>(a) is or was a spouse of the other party;</p> <p>(b) is or was living as if a spouse of the other party;</p> <p>(c) is related by blood or marriage to the other party;</p> <p>(d) has or had one or more children in common with the other party;</p> <p>(e) is the biological parent of the other party's unborn child; or</p> <p>(f) resides or has resided in the same residence as the other party.</p>	<p>Code of Criminal Procedure- Cohabitant Abuse Procedures Act- Utah Code Ann. § 77-36-1</p> <p>(4) “Domestic violence” or “domestic violence offense” means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another. “Domestic violence” or “domestic violence offense” also means commission or attempt to commit, any of the following offenses by one cohabitant against another:</p> <p>(a) aggravated assault, as described in Section 76-5-103;</p> <p>(b) assault, as described in Section 76-5-102;</p> <p>(c) criminal homicide, as described in Section 76-5-201;</p> <p>(d) harassment, as described in Section 76-5-106;</p> <p>(e) electronic communication harassment, as described in Section 76-9-201;</p> <p>(f) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;</p> <p>(g) mayhem, as described in Section 76-5-105;</p> <p>(h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual</p>	<p>Protective Orders- Cohabitant Abuse Act- Utah Code Ann. § 78B-7-103</p> <p>(1) Any cohabitant who has been subjected to abuse or domestic violence, or to whom there is a substantial likelihood of abuse or domestic violence, may seek an ex parte protective order or a protective order in accordance with this chapter, whether or not that person has left the residence or the premises in an effort to avoid further abuse.</p>

¹⁴ See UTAH CODE ANN. §78A-6-105 (West 2017); see also [State Law Definitions of Child Abuse Chart](#).

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Utah			<p>Offenses, and Section 76-5b-201, Sexual exploitation of a minor-- Offenses;</p> <p>(i) stalking, as described in Section 76-5-106.5;</p> <p>(j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;</p> <p>(k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;</p> <p>(l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3, Robbery;</p> <p>(m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507;</p> <p>(n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508;</p> <p>(o) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly conduct is the result of a plea agreement in which the defendant was originally charged with a domestic violence offense otherwise described in this Subsection (4).</p> <p>Conviction of disorderly conduct as a domestic violence offense, in the manner described in this Subsection (4)(o), does not constitute a misdemeanor crime of domestic violence under 18 U.S.C. Sec. 921, and is exempt from the provisions of the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.; or</p> <p>(p) child abuse as described in Section 76-5-109.1.</p>	
Vermont	Yes	Domestic Relations- Abuse Prevention- Vt. Stat. Ann. tit. 15, § 1101	Domestic Relations- Abuse Prevention- Vt. Stat. Ann. tit. 15, § 1101	Domestic Relations- Abuse Prevention- Vt. Stat. Ann. tit. 15, § 1103

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
Vermont		<p>(2) “Household members” means persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling, are engaged in or have engaged in a sexual relationship, or minors or adults who are dating or who have dated. “Dating” means a social relationship of a romantic nature. Factors that the court may consider when determining whether a dating relationship exists or existed include:</p> <p>(A) the nature of the relationship;</p> <p>(B) the length of time the relationship has existed;</p> <p>(C) the frequency of interaction between the parties;</p> <p>(D) the length of time since the relationship was terminated, if applicable.</p>	<p>(1) “Abuse” means the occurrence of one or more of the following acts between family or household members:</p> <p>(A) Attempting to cause or causing physical harm.</p> <p>(B) Placing another in fear of imminent serious physical harm.</p> <p>(C) Abuse to children as defined in 33 V.S.A. chapter 49, subchapter 2.</p> <p>(D) Stalking as defined in 12 V.S.A. § 5131(6).</p> <p>(E) Sexual assault as defined in 12 V.S.A. § 5131(5).</p>	<p>(a) Any family or household member may seek relief from abuse by another family or household member on behalf of him- or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in subdivision 1101(2) of this chapter, may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.</p>
Virginia	Yes	<p>Courts Not of Record- Juvenile and Domestic Relations District Courts- Va. Code Ann. § 16.1-228</p> <p>“Family or household member” means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided</p>	<p>Courts Not of Record- Juvenile and Domestic Relations District Courts- Va. Code Ann. § 16.1-228</p> <p>“Family abuse” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.</p>	<p>Courts Not of Record- Juvenile and Domestic Relations District Courts- Immediate Custody- Preliminary Protective Orders in Cases of Family Abuse- Va. Code Ann. § 16.1-253.1</p> <p>A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
		together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.		
Washington	Yes	<p>Domestic Relations- Domestic Violence Prevention- Wash. Rev. Code Ann. § 26.50.010</p> <p>(6) “Family or household members” means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.</p>	<p>Domestic Relations- Domestic Violence Prevention- Wash. Rev. Code Ann. § 26.50.010</p> <p>(3) “Domestic violence” means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.</p>	<p>Domestic Relations- Domestic Violence Prevention- Wash. Rev. Code Ann. § 26-50.020</p> <p>(1)(a) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.</p> <p>(b) Any person thirteen years of age or older may seek relief under this chapter by filing a petition with a court alleging that he or she has been the victim of violence in a dating relationship and the respondent is sixteen years of age or older.</p> <p>(2)(a) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.</p> <p>(b) A person under sixteen years of age who is seeking relief under subsection (1)(b) of this section is required to seek relief by a parent, guardian, guardian ad litem, or next friend.</p>

Jurisdiction	Parent-Child Relationship Covered By The Domestic Violence Statute?	Text Defining Relationships Covered By State Domestic Violence Statutes	Text of Statute Covering Acts That Constitute Child Abuse	Domestic Violence Protection Order Statutes
West Virginia		defined in subdivisions (1) through (6) of this section.	family or household member, or unlawfully commits an act that places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months or fined not more than \$100, or both fined and confined.	
Wisconsin	Yes	<p>Civil Procedure- Injunctions- Domestic Abuse Restraining Orders- Wis. Stat. Ann. § 813.12</p> <p>(b) “Family member” means a spouse, a parent, a child or a person related by blood or adoption to another person. (c) “Household member” means a person currently or formerly residing in a place of abode with another person.</p>	<p>Civil Procedure- Injunctions- Domestic Abuse Restraining Orders- Wis. Stat. Ann. § 813.12</p> <p>(am) “Domestic abuse” means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver's care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:</p> <ol style="list-style-type: none"> 1. Intentional infliction of physical pain, physical injury or illness. 2. Intentional impairment of physical condition. 3. A violation of s. 940.225(1), (2) or (3). 4. A violation of s. 940.32. 5. A violation of s. 943.01, involving property that belongs to the individual. 6. A threat to engage in the conduct under subd. 1., 2., 3., 4., or 5. <p>Criminal Procedure- Commencement of Criminal Proceedings- Domestic Abuse Incidents- Wis. Stat. Ann. § 968.075</p> <p>The text of this statute is encompassed by § 813.12</p>	<p>Civil Procedure- Injunctions- Domestic Abuse Restraining Orders- Wis. Stat. Ann. § 813.12</p> <p>(2) Commencement of action and response. (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (5)(a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service....</p> <p>(5)(d) A petition may be prepared and filed by the person who alleges that he or she has been the subject of domestic abuse or by the guardian of an individual adjudicated incompetent in this state who has been the subject of domestic abuse.</p>

Appendix O

States Definitions of Child Endangerment as More Severe Than Neglect¹

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This document summarizes the common themes in state definitions of child endangerment and compares the statutory language with child neglect. There are over twenty states in the United States with child endangerment laws, each state providing statutory language that suggests that the former is similar to child neglect. In addition, child endangerment also constitutes child abuse in some states. State laws often categorize child endangerment as placing a child in a situation that might endanger the child's life, health, welfare, morals, or emotional well-being. While neglect focus on failure to meet a child's basic needs including the failure to provide adequate health care, supervision, clothing, nutrition, housing as well as their physical, emotional needs. Furthermore, the statutory language suggests that the standard of endangerment is more severe than neglect.

We developed the list below to help courts identify when other states have statutory language similar to their state statute. When state statutes are similar, case law in one jurisdiction can provide persuasive authority interpreting the statute that may be useful to state courts in a wide range of family court proceedings. The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status (SIJS). Any state law definition of child endangerment can apply in any state court proceeding for purposes of issuing the required SIJS findings.

The first section of this document highlights the common themes in state laws defining child endangerment and lists which actions or failures act as constituting child endangerment. The last section of this document contains a list by state of each of the child endangerment and neglect statutory language that suggest that the standard in the former could be higher than the latter depending on the state.

- **Reasonably fails to prevent the child from becoming dependent or delinquent** - Alabama, Delaware;
- **States that define endangerment as substantial risk to death** – Alaska, Arizona, Arkansas, California, Illinois, Kentucky, Maryland, Missouri, New York;
- **Substantial risk of physical injury** – Arizona, Arkansas, California, Kentucky, Maryland, Massachusetts, New Hampshire;
- **Health Endangerment/Health Impairment** – California, Connecticut, Illinois, Kansas, Maine, Missouri, Ohio, New Hampshire;
- **Child Abuse** – Delaware, Ohio, Nebraska, New Jersey;
 - Risk of bodily injury – D.C.;
 - Mental or emotional harm – Iowa;
- **Deprivation of food, clothing, health care or supervision** – Iowa, Nebraska;

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² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

- **Physical and sexual abuse** – Iowa, Massachusetts;
- **Violating duty of care, protection, or support** – Montana, New Hampshire, Pennsylvania, Ohio.

States	Endangerment –Knowingly/Intentional	Neglect
Alabama	<p>Endangering welfare of child - Ala. Code § 13A-13-6</p> <p>(a) A man or woman commits the crime of endangering the welfare of a child when:</p> <p>(1) He or she knowingly directs or authorizes a child less than 16 years of age to engage in an occupation involving a substantial risk of danger to his life or health; or</p> <p>(2) He or she, as a parent, guardian or other person legally charged with the care or custody of a child less than 18 years of age, fails to exercise reasonable diligence in the control of such child to prevent him or her from becoming a “dependent child” or a “delinquent child,” as defined in Section 12-15-1.</p>	<p>Definitions - Ala. Code § 26-16-2(6)</p> <p>(6) NEGLECT. Harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.</p> <p>Definitions - Ala. Code § 26-14-1(2)</p> <p>(2) NEGLECT. Negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, supervision, clothing, or shelter.</p>
Alaska	<p>Endangering the welfare of a child in the first degree - Alaska Stat. Ann. § 11.51.100</p> <p>(a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person</p> <p>(1) Intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child;</p> <p>(2) Leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person</p> <p>(A) Is registered or required to register as a sex offender under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;</p> <p>(B) Has been charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or</p> <p>(C) Has been charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph; or</p> <p>(3) Leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury or engages in sexual contact with the child.</p> <p>(b) A person commits the crime of endangering the welfare of a minor in the first degree if the person transports a child in a motor</p>	<p>Neglect - Alaska Stat. Ann. § 47.10.014</p> <p>For purposes of this chapter, the court may find neglect of a child if the parent, guardian, or custodian fails to provide the child with adequate food, clothing, shelter, education, medical attention, or other care and control necessary for the child's physical and mental health and development, though financially able to do so or offered financial or other reasonable means to do so.</p> <p>Definitions - Alaska Stat. Ann. § 47.17.290(3)</p> <p>(3) “child abuse or neglect” means the physical injury or neglect, mental injury, sexual abuse, sexual exploitation, or maltreatment of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; in this paragraph, “mental injury” means an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child's ability to function.</p>

<p>Alaska (Cont.)</p>	<p>vehicle, aircraft, or watercraft while in violation of AS28.35.030 .</p> <p>(c) In this section, "physically mistreated" means</p> <p>(1) Having committed an act punishable under AS 11.41.100 - 11.41.250; or</p> <p>(2) Having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of</p> <p>(A) Death;</p> <p>(B) Serious or protracted disfigurement;</p> <p>(C) Protracted impairment of health;</p> <p>(D) Loss or impairment of the function of a body member or organ;</p> <p>(E) Substantial skin bruising, burning, or other skin injury;</p> <p>(F) Internal bleeding or subdural hematoma;</p> <p>(G) Bone fracture; or</p> <p>(H) Prolonged or extreme pain, swelling, or injury to soft tissue.</p> <p>(d) Endangering the welfare of a child in the first degree under (a)(3) of this section is a</p> <p>(1) Class B felony if the child dies;</p> <p>(2) Class C felony if the child suffers sexual contact, sexual penetration, or serious physical injury; or</p> <p>(3) Class A misdemeanor if the child suffers physical injury.</p> <p>(e) Endangering the welfare of a child under (b) of this subsection is a class A misdemeanor.</p> <p>(f) Endangering the welfare of a child in the first degree under (a)(1) or (2) of this section is a class C felony</p>	
<p>Arizona</p>	<p>Endangerment - Ariz. Rev. Stat. Ann. § 13-1201</p> <p>A. A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury.</p> <p>B. Endangerment involving a substantial risk of imminent death is a class 6 felony. In all other cases, it is a class 1 misdemeanor.</p> <p>Child or vulnerable adult abuse - Ariz. Rev. Stat. Ann. § 13-3623</p> <p>A. Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or</p>	<p>Definitions - Ariz. Rev. Stat. Ann. § 8-201(25)</p> <p>“Neglect” or “neglected” means:</p> <p>(a) The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare, except if the inability of a parent, guardian or custodian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services.</p> <p>(b) Permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purposes of</p>

<p>Arizona (Cont.)</p>	<p>vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:</p> <ol style="list-style-type: none"> 1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to § 13-705. 2. If done recklessly, the offense is a class 3 felony. 3. If done with criminal negligence, the offense is a class 4 felony. <p>B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:</p> <ol style="list-style-type: none"> 1. If done intentionally or knowingly, the offense is a class 4 felony. 2. If done recklessly, the offense is a class 5 felony. 3. If done with criminal negligence, the offense is a class 6 felony. <p>C. For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of § 13-3407, subsection A, paragraph 3 or 4. Notwithstanding any other provision of this section, a violation committed under the circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult...</p>	<p>manufacturing a dangerous drug as defined in § 13-3401.</p> <p>(c) A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in § 13-3401 and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by a health professional. This subdivision does not expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in § 13-3401 beyond the requirements prescribed pursuant to § 13-3620, subsection E. The determination by the health professional shall be based on one or more of the following:</p> <ol style="list-style-type: none"> (i) Clinical indicators in the prenatal period including maternal and newborn presentation. (ii) History of substance use or abuse. (iii) Medical history. (iv) Results of a toxicology or other laboratory test on the mother or the newborn infant. <p>(d) Diagnosis by a health professional of an infant under one year of age with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects.</p> <p>(e) Deliberate exposure of a child by a parent, guardian or custodian to sexual conduct as defined in § 13-3551 or to sexual contact, oral sexual contact or sexual intercourse as defined in § 13-1401, bestiality as prescribed in § 13-1411 or explicit sexual materials as defined in § 13-3507.</p> <p>(f) Any of the following acts committed by the child's parent, guardian or custodian with reckless disregard as to whether the child is physically present:</p> <ol style="list-style-type: none"> (i) Sexual contact as defined in § 13-1401. (ii) Oral sexual contact as defined in § 13-1401. (iii) Sexual intercourse as defined in § 13-1401. (iv) Bestiality as prescribed in § 13-1411.
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<p>Arkansas</p>	<p>Endangering welfare of minor - Ark. Code Ann. § 5-27-205</p> <p>(a) A person commits the offense of endangering the welfare of a minor in the first degree if, being a parent, guardian, person legally charged with care or custody of a minor, or a person charged with supervision of a minor, he or she purposely:</p> <p>(1) Engages in conduct creating a substantial risk of death or serious physical injury to a minor; or</p> <p>(2) Deserts a minor less than ten (10) years old under circumstances creating a substantial risk of death or serious physical injury.</p>	<p>Definitions - Ark. Code Ann. § 9-30-103(4)</p> <p>“Neglect” means:</p> <p>(A) Failure to provide, by those legally responsible for:</p> <p>(i) The care and maintenance of the child and the proper or necessary support;</p> <p>(ii) Education, as required by law; or</p> <p>(iii) Medical, surgical, or any other care necessary for his or her well-being; or</p> <p>(B)(i) Any maltreatment of the child.</p> <p>(ii) The term includes both acts and omissions. This chapter shall not be construed to mean a child is neglected or abused for the sole reason he or she is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment;</p> <p>Definitions - Ark. Code Ann. § 12-18-103</p> <p>(14)(A) “Neglect” means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:</p> <p>(i) Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;</p> <p>(ii) Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;</p> <p>(iii) Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of the condition was known or should have been known;</p> <p>(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including</p>
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<p>Arkansas (Cont.)</p>		<p>the failure to provide a shelter that does not pose a risk to the health or safety of the child;</p> <p>(v) Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;</p> <p>(vi) Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;</p> <p>(vii) Failure to appropriately supervise the child that results in the child's being left alone:</p> <p>(a) At an inappropriate age creating a dangerous situation or a situation that puts the child at risk of harm; or</p> <p>(b) In inappropriate circumstances creating a dangerous situation or a situation that puts the child at risk of harm;</p> <p>(viii) Failure to appropriately supervise the child that results in the child's being placed in:</p> <p>(a) Inappropriate circumstances creating a dangerous situation; or</p> <p>(b) A situation that puts the child at risk of harm; or</p> <p>(ix) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home schooled or as a result of an act or omission by the child's parent or guardian, the child is habitually and without justification absent from school.</p> <p>(B)(i) "Neglect" shall also include:</p> <p>(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or</p> <p>(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.</p>
<p>California</p>	<p>Willful harm or injury to child - Cal. Penal Code § 273a</p> <p>(a) Any person who, under circumstances or conditions <i>likely to produce great bodily harm or death</i>, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered.</p>	<p>Neglect, severe neglect, and general neglect - Cal. Penal Code § 11165.2</p> <p>Neglect" means the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term includes both acts and omissions on the part of the responsible person</p> <p>(a) "Severe neglect" means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. "Severe neglect" also means those</p>

	<p>(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.</p>	<p>situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.</p> <p>(b) “General neglect” means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.</p>
<p>Colorado</p>	<p><i>Colorado’s endangerment statute applies to all persons.</i></p> <p>Reckless endangerment - Colo. Rev. Stat. Ann. §18-3-208 A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment, which is a class 3 misdemeanor.</p> <p>Child abuse- Colo. Rev. Stat. Ann. § 18-6-401(1)(a) (1)(a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.</p>	<p>Neglected or dependent child - Colo. Rev. Stat. Ann. § 19-3-102</p> <p>(1) A child is neglected or dependent if:</p> <p>(a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring;</p> <p>(b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian;</p> <p>(c) The child's environment is injurious to his or her welfare;</p> <p>(d) A parent, guardian, or legal custodian fails or refuses to provide the child with proper or necessary subsistence, education, medical care, or any other care necessary for his or her health, guidance, or well-being;</p> <p>(e) The child is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian through no fault of such parent, guardian, or legal custodian;</p> <p>(f) The child has run away from home or is otherwise beyond the control of his or her parent, guardian, or legal custodian;</p> <p>(g) The child tests positive at birth for either a schedule I controlled substance, as defined in section 18-18-203, C.R.S., or a schedule II controlled substance, as defined in section 18-18-204, C.R.S., unless the child tests positive for a schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.</p> <p>(2) A child is neglected or dependent if:</p> <p>(a) A parent, guardian, or legal custodian has subjected another child or children to an identifiable pattern of habitual abuse; and</p> <p>(b) Such parent, guardian, or legal custodian has been the respondent in another proceeding</p>

<p>Colorado (Cont.)</p>		<p>under this article in which a court has adjudicated another child to be neglected or dependent based upon allegations of sexual or physical abuse, or a court of competent jurisdiction has determined that such parent's, guardian's, or legal custodian's abuse or neglect has caused the death of another child; and</p> <p>(c) The pattern of habitual abuse described in paragraph (a) of this subsection (2) and the type of abuse described in the allegations specified in paragraph (b) of this subsection (2) pose a current threat to the child.</p>
<p>Connecticut</p>	<p>Injury or risk to, or impairing morals of, children - Conn. Gen. Stat. Ann. § 53-21</p> <p>(a) Any person who</p> <p>(1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child, or (2) has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child, or (3) permanently transfers the legal or physical custody of a child under the age of sixteen years to another person for money or other valuable consideration or acquires or receives the legal or physical custody of a child under the age of sixteen years from another person upon payment of money or other valuable consideration to such other person or a third person, except in connection with an adoption proceeding that complies with the provisions of chapter 803,¹ shall be guilty of (A) a class C felony for a violation of subdivision (1) or (3) of this subsection, and (B) a class B felony for a violation of subdivision (2) of this subsection, except that, if the violation is of subdivision (2) of this subsection and the victim of the offense is under thirteen years of age, such person shall be sentenced to a term</p>	<p>Definitions - Conn. Gen. Stat. Ann. §46b-120(6)</p> <p>(6) A child or youth may be found “neglected” who, for reasons other than being impoverished, (A) has been abandoned, (B) is being denied proper care and attention, physically, educationally, emotionally or morally, or (C) is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child or youth.</p>

	of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.	
Delaware Delaware (Cont.)	<p>Endangering the welfare of a child - Del. Code Ann. tit. 11, § 1102</p> <p>(a) A person is guilty of endangering the welfare of a child when:</p> <p>(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child the person:</p> <p>a. Intentionally, knowingly or recklessly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or</p> <p>b. Intentionally, knowingly or recklessly does or fails to do any act, including failing to report a missing child, with the result that the child becomes a neglected or abused child.</p> <p>(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or</p> <p>(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or</p> <p>(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, unlawful imprisonment second degree, or child abuse third degree against a victim, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family; or</p> <p>(5) The person commits the offense of driving under the influence as set forth in § 4177 of Title 21, or the offense of operating a vessel or boat under the influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat; or</p> <p>(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time; or</p> <p>(7) The person provides or permits a child to consume or inhale any substance not prescribed to the child by a physician, as defined in § 4714, 4716, 4718, 4720, and 4722 of Title 16.</p>	<p>Definitions - Del. Code Ann. tit. 10, § 901(18) (18) "Neglect" or "neglected child" means that a person:</p> <p>a. Is responsible for the care, custody, and/or control of the child; and</p> <p>b. Has the ability and financial means to provide for the care of the child; and</p> <p>1. Fails to provide necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being; or</p> <p>2. Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child's safety and general well-being; or</p> <p>3. Fails to provide necessary supervision appropriate for a child when the child is unable to care for that child's own basic needs or safety, after considering such factors as the child's age, mental ability, physical condition, the length of the caretaker's absence, and the context of the child's environment.</p>

<p>Florida (Cont.)</p>	<p><i>Aircraft Systems Act, FL ST § 330.41 and 327.33. Reckless or careless operation of vessel, FL ST § 327.33.</i></p>	<p>(e) “Neglect of a child” means:</p> <ol style="list-style-type: none"> 1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or 2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person. <p>Except as otherwise provided in this section, neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.</p>
<p>Georgia</p>	<p>Reports by physicians, treating personnel, institutions and others as to child abuse - Ga. Code Ann. § 19-7-5(6.1) “Endangering a child” means:</p> <ol style="list-style-type: none"> (A) Any act described by subsection (d) of Code Section 16-5-70; (B) Any act described by Code Section 16-5-73; (C) Any act described by subsection (l) of Code Section 40-6-391; or (D) Prenatal abuse, as such term is defined in Code Section 15-11-2. 	<p>Definitions - Ga. Code Ann., § 15-11-2(48) (48) “Neglect” means:</p> <ol style="list-style-type: none"> (A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals; (B) The failure to provide a child with adequate supervision necessary for such child's well-being; or (C) The abandonment of a child by his or her parent, guardian, or legal custodian.
<p>Hawaii</p>	<p><i>Hawaii’s endangerment laws all relate to environmental hazards, such as pollution and asbestos.</i></p>	<p>Definitions - Haw. Rev. Stat. § 350-1 “Child abuse or neglect” means:</p> <ol style="list-style-type: none"> (1) The acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child's care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to: <ol style="list-style-type: none"> (A) When the child exhibits evidence of: <ol style="list-style-type: none"> (i) Substantial or multiple skin bruising or any other internal bleeding; (ii) Any injury to skin causing substantial bleeding; (iii) Malnutrition; (iv) Failure to thrive; (v) Burn or burns; (vi) Poisoning;

<p>Hawaii (Cont.)</p>		<p>(vii) Fracture of any bone; (viii) Subdural hematoma; (ix) Soft tissue swelling; (x) Extreme pain; (xi) Extreme mental distress; (xii) Gross degradation; or (xiii) Death; and such injury is not justifiably explained, or when the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence; (B) When the child has been the victim of sexual contact or conduct, including but not limited to sexual assault as defined in the Penal Code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation, including but not limited to acts that constitute an offense pursuant to section 712-1202(1)(b); (C) When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child's ability to function; (D) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; (E) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this subparagraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240; or (F) When the child has been the victim of labor trafficking under chapter 707; or (2) The acts or omissions of any person that have resulted in sex trafficking or severe forms of trafficking in persons; provided that no finding by the department pursuant to this chapter shall be used as conclusive evidence that a person has committed an offense under part VIII of chapter 707 or section 712-1202.</p>
<p>Idaho</p>	<p>Injury to children - Idaho Code Ann. § 18.501 (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or</p>	<p>Definitions - Idaho Code Ann. § 16-1602 (31) "Neglected" means a child: (a) Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them; however, no child whose parent or</p>

<p>Idaho (Cont.)</p>	<p>willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.</p> <p>(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor...</p> <p>(5) As used in this section, "willfully" means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.</p>	<p>guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being, but this subsection shall not prevent the court from acting pursuant to section 16-1627, Idaho Code; or</p> <p>(b) Whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child and, as a result of such inability, the child lacks the parental care necessary for his health, safety or well-being; or</p> <p>(c) Who has been placed for care or adoption in violation of law; or</p> <p>(d) Who is without proper education because of the failure to comply with section 33-202, Idaho Code.</p>
<p>Illinois</p>	<p>Endangering the life or health of a child - 720 Ill. Comp. Stat. Ann. 5/12c-5</p> <p>(a) A person commits endangering the life or health of a child when he or she knowingly: (1) causes or permits the life or health of a child under the age of 18 to be endangered; or (2) causes or permits a child to be placed in circumstances that endanger the child's life or health. It is not a violation of this Section for a person to relinquish a child in accordance with the Abandoned Newborn Infant Protection Act.</p> <p>(b) A trier of fact may infer that a child 6 years of age or younger is unattended if that child is left in a motor vehicle for more than 10 minutes.</p> <p>(c) "Unattended" means either: (i) not accompanied by a person 14 years of age or older; or (ii) if accompanied by a person 14 years of age or older, out of sight of that person.</p>	<p>Definitions - 750 Ill. Comp. Stat. 50/1</p> <p>Q. "Neglected child" means any child whose parent or other person responsible for the child's welfare withholds or denies nourishment or medically indicated treatment including food or care denied solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise does not provide the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare.</p>
<p>Indiana</p>	<p><i>Knowingly or intentionally endangering a child is included in the Indiana neglect statute.</i></p>	<p>Neglect of a dependent³ - Ind. Code Ann. § 35-46-1-4</p> <p>Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:</p> <p>(1) places the dependent in a situation that endangers the dependent's life or health;</p> <p>(2) abandons or cruelly confines the dependent;</p>

³ IND. CODE ANN. § 35-46-1-1 (West 2018) (defining a "dependent" as "an unemancipated person" under 18 years old).

		<p>(3) deprives the dependent of necessary support; or (4) deprives the dependent of education as required by law; commits neglect of a dependent, a Level 6 felony...</p>
<p>Iowa</p>	<p>Child endangerment - Iowa Code Ann. § 726.6 1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:</p> <p>a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.</p> <p>b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.</p> <p>c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.</p> <p>d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor's physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.</p> <p>e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.</p> <p>f. Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.</p> <p>g. Knowingly permits a child or minor to be present at a location where amphetamine, its</p>	<p>Neglect or abandonment of a dependent person - Iowa Code Ann. §726.3 A person who is the father, mother, or some other person having custody of a child, or of any other person who by reason of mental or physical disability is not able to care for the person's self, who knowingly or recklessly exposes such person to a hazard or danger against which such person cannot reasonably be expected to protect such person's self or who deserts or abandons such person, knowing or having reason to believe that the person will be exposed to such hazard or danger, commits a class "C" felony.</p> <p>Definitions - Iowa Code Ann. § 232.2 42. "Physical abuse or neglect" or "abuse or neglect" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian, or custodian or other person legally responsible for the child.</p>
<p>Iowa (Cont.)</p>		

<p>Iowa (Cont.)</p>	<p>salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured in violation of section 124.401, subsection 1, or where a product is possessed in violation of section 124.401, subsection 4.</p> <p>h. Knowingly allows a person custody or control of, or unsupervised access to a child or a minor after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a parent or guardian of a child or a minor, who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.</p> <p>i. Knowingly provides direct supervision of a person under section 724.22, subsection 5, while intoxicated as provided under the conditions set out in section 321J.2, subsection 1 , paragraph “a”, “b”, or “c”.</p>	
<p>Kansas</p>	<p>Endangering a child - Kan. Stat. Ann. § 21-5601 (a) Endangering a child is knowingly and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be endangered.</p> <p>(b) Aggravated endangering a child is:</p> <p>(1) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is endangered;</p> <p>(2) causing or permitting such child to be in an environment where the person knows or reasonably should know that any person is distributing, possessing with intent to distribute, manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or</p> <p>(3) causing or permitting such child to be in an environment where the person knows or reasonably should know that drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.</p>	<p>Definitions - Kan. Stat. Ann. § 38-2202 (t) “Neglect” means acts or omissions by a parent, guardian or person responsible for the care of a child resulting in harm to a child, or presenting a likelihood of harm, and the acts or omissions are not due solely to the lack of financial means of the child's parents or other custodian. Neglect may include, but shall not be limited to:</p> <p>(1) Failure to provide the child with food, clothing or shelter necessary to sustain the life or health of the child;</p> <p>(2) failure to provide adequate supervision of a child or to remove a child from a situation which requires judgment or actions beyond the child's level of maturity, physical condition or mental abilities and that results in bodily injury or a likelihood of harm to the child; or</p> <p>(3) failure to use resources available to treat a diagnosed medical condition if such treatment will make a child substantially more comfortable, reduce pain and suffering, or correct or substantially diminish a crippling condition from worsening. A parent legitimately practicing religious beliefs who does not provide specified medical treatment for a child because of religious beliefs shall not for that reason be considered a negligent parent; however, this exception shall not preclude a court from entering an order pursuant to K.S.A. 38-2217(a)(2), and amendments thereto.</p>
<p>Kentucky</p>	<p>Endangerment of Persons included children - Wanton endangerment in the first degree - Ky. Rev. Stat. Ann. § 508.060</p>	<p>Definitions - Ky. Rev. Stat. Ann. §600.020</p>

<p>Kentucky (Cont.)</p>	<p>(1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person...</p> <p>Wanton endangerment in the second degree - Ky. Rev. Stat. Ann. § 508.070 (1) A person is guilty of wanton endangerment in the second degree when he wantonly engages in conduct which creates a substantial danger of physical injury to another person.</p> <p>Controlled substance endangerment to a child in the first degree - Ky. Rev. Stat. Ann. §218A.1441 (1) A person is guilty of controlled substance endangerment to a child in the first degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child dies as a result of the commission of the offense.</p> <p>Controlled substance endangerment to a child in the second degree -- Penalty - Ky. Rev. Stat. Ann. §218A.1442 (1) A person is guilty of controlled substance endangerment to a child in the second degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child receives serious physical injury as a result of the commission of the offense. (2) Controlled substance endangerment to a child in the second degree is a Class B felony.</p> <p>Controlled substance endangerment to a child in the third degree – Penalty - Ky. Rev. Stat.</p>	<p>(1) “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when: (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child: 1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means; 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means; 3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005; 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child; 5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child; 6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child; 7. Abandons or exploits the child; 8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; 9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age...</p>
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<p>Kentucky (Cont.)</p>	<p>Ann. § 218A.1443 (1) A person is guilty of controlled substance endangerment to a child in the third degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child receives physical injury as a result of the commission of the offense. (2) Controlled substance endangerment to a child in the third degree is a Class C felony.</p> <p>Controlled substance endangerment to a child in the fourth degree -- Penalty. - Ky. Rev. Stat. Ann. § 218A.1444 (1) A person is guilty of controlled substance endangerment to a child in the fourth degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child is not injured as a result of the commission of the offense. (2) Controlled substance endangerment to a child in the fourth degree is a Class D felony.</p>	
<p>Louisiana</p>	<p>Child desertion - La. Rev. Stat. § 14:93.2.1 A. Child desertion is the intentional or criminally negligent exposure of a child under the age of ten years, by a person who has the care, custody, or control of the child, to a hazard or danger against which the child cannot reasonably be expected to protect himself, or the desertion or abandonment of such child, knowing or having reason to believe that the child could be exposed to such hazard or danger.</p>	<p>Definitions - La. Child. Code Ann. art. 603 (18) “Neglect” means the refusal or unreasonable failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired. Neglect includes prenatal neglect. Consistent with Article 606(B), the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect. Whenever, in lieu of medical care, a child is being provided treatment in accordance with the tenets of a well-recognized religious method of healing which has a reasonable, proven record of success, the child shall not, for that reason alone, be considered to be neglected or maltreated. However, nothing herein shall prohibit the court from ordering medical services for the child when there is</p>

		substantial risk of harm to the child's health or welfare.
Maine	<p>Endangering the welfare of a child - Me. Rev. Stat. Ann. tit. 17, § 554</p> <p>1. A person is guilty of endangering the welfare of a child if that person:</p> <p>A. Knowingly permits a child to enter or remain in a house of prostitution. Violation of this paragraph is a Class D crime;</p> <p>B. Knowingly sells, furnishes, gives away or offers to sell, furnish or give away to a child under 16 years of age any intoxicating liquor, cigarettes, tobacco, air rifles, gunpowder, smokeless powder or ammunition for firearms. Violation of this paragraph is a Class D crime;</p> <p>B-2. Being a parent, foster parent, guardian or other person responsible for the long-term general care and welfare of a child, recklessly fails to take reasonable measures to protect the child from the risk of further bodily injury after knowing:</p> <p>(1) That the child had, in fact, sustained serious bodily injury or bodily injury under circumstances posing a substantial risk of serious bodily injury; and</p> <p>(2) That such bodily injury was, in fact, caused by the unlawful use of physical force by another person.</p> <p>Violation of this paragraph is a Class C crime;</p> <p>B-3. Being the parent, foster parent, guardian or other person having the care and custody of a child, knowingly deprives the child of necessary health care, with a result that the child is placed in danger of serious harm. Violation of this paragraph is a Class D crime; or</p> <p>C. Otherwise recklessly endangers the health, safety or welfare of the child by violating a duty of care or protection. Violation of this paragraph is a Class D crime.</p>	<p>Definitions - Me. Rev. Stat. Ann. tit. 22, § 4002(1)</p> <p>“Abuse or neglect” means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation including under Title 17-A, sections 282, 852, 853 and 855, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or section 5051-A, subsection 1, paragraph C, by a person responsible for the child.</p>
Maine (Cont.)		
Maryland	<p><i>Maryland's endangerment statute includes all persons including children.</i></p> <p>Reckless endangerment- Md. Code Ann., Crim. Law § 3-204</p> <p>(a) A person may not recklessly:</p> <p>(1) engage in conduct that creates a substantial risk of death or serious physical injury to another; or</p> <p>(2) discharge a firearm from a motor vehicle in a manner that creates a substantial risk of death or serious physical injury to another.</p>	<p>Definitions - Md. Code Ann., Fam. Law § 5-701(s)</p> <p>(s) “Neglect” means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:</p> <p>(1) that the child's health or welfare is harmed or placed at substantial risk of harm; or</p> <p>(2) mental injury to the child or a substantial risk of mental injury.</p>

<p>Massachusetts</p>	<p>Wanton or reckless behavior creating a risk of serious bodily injury or sexual abuse to a child - Mass. Gen. Laws ch. 265, § 13L Whoever wantonly or recklessly engages in conduct that creates a substantial risk of serious bodily injury or sexual abuse to a child or wantonly or recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act shall be punished by imprisonment in the house of correction for not more than 2 ½ years. For the purposes of this section, such wanton or reckless behavior occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that his acts, or omissions where there is a duty to act, would result in serious bodily injury or sexual abuse to a child. The risk must be of such nature and degree that disregard of the risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.</p>	<p>Glossary - 110 Mass. Code Regs. 2.00 Neglect means failure <i>by a caretaker</i>, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. This definition is <i>not</i> dependent upon location (<i>i.e.</i>, neglect can occur while the child is in an out-of-home or in-home setting.)</p>
<p>Michigan</p>	<p>Definitions; child abuse; degrees; penalties; exception; affirmative defense – Mich. Penal Code § 750.136b (2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for life or any term of years. (3) A person is guilty of child abuse in the second degree if any of the following apply: (a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm or serious mental harm to a child. (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results. (c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results. (d) The person or a licensee as licensee is defined in section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of 1993 PA 218, MCL 722.125. (4) Child abuse in the second degree is a felony punishable by imprisonment as follows: (a) For a first offense, not more than 10 years. (b) For a second or subsequent offense, not more than 20 years. (5) A person is guilty of child abuse in the third degree if any of the following apply:</p>	<p>Definitions - Mich. Comp. Laws § 722.602 (d) "Neglect" means harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.</p>

<p>Michigan (Cont.)</p>	<p>(a) The person knowingly or intentionally causes physical harm to a child.</p> <p>(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child.</p> <p>(6) Child abuse in the third degree is a felony punishable by imprisonment for not more than 2 years.</p> <p>(7) A person is guilty of child abuse in the fourth degree if any of the following apply:</p> <p>(a) The person's omission or reckless act causes physical harm to a child.</p> <p>(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.</p> <p>(8) Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.</p> <p>(9) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.</p>	
<p>Minnesota</p>	<p>Neglect or endangerment of child- Minn. Stat. Ann. § 609.378</p> <p>(b) A parent, legal guardian, or caretaker who endangers the child's person or health by:</p> <p>(1) intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death; or</p> <p>(2) knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with intent to manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision 4, in violation of section 152.021, 152.022, 152.023, 152.024, or 152.0262; is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.</p> <p>If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to</p>	<p>Neglect or endangerment of child - Minn. Stat. Ann. § 609.378</p> <p>(a)(1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. If the deprivation results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.</p> <p>(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or</p>

<p>Minnesota (Cont.)</p>	<p>payment of a fine of not more than \$10,000, or both.</p> <p>This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).</p> <p>(c) A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.</p> <p>If the endangerment results in substantial harm to the child's physical health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.</p>	<p>sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.</p>
<p>Mississippi</p>	<p>Child neglect, delinquency or abuse - Miss. Code Ann. § 97-5-39</p> <p>(4)(a) A parent, legal guardian or caretaker who endangers a child's person or health by knowingly causing or permitting the child to be present where any person is selling, manufacturing or possessing immediate precursors or chemical substances with intent to manufacture, sell or possess a controlled substance as prohibited under Section 41-29-139 or 41-29-313, is guilty of child endangerment and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.</p> <p>(b) If the endangerment results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than twenty (20) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.</p>	<p>Deserting, neglecting or refusing to support child - Miss. Code Ann. §97-5-3</p> <p>Any parent who shall desert or wilfully neglect or refuse to provide for the support and maintenance of his or her child or children, including the natural parent of an illegitimate child or children wherein paternity has been established by law or when the natural parent has acknowledged paternity in writing, while said child or children are under the age of eighteen (18) years shall be guilty of a felony...</p> <p>Child neglect, delinquency or abuse- Miss. Code Ann. § 97-5-39</p> <p>(1)(a) Except as otherwise provided in this section, any parent, guardian or other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child, as defined in Section 43-21-105(m) of the Youth Court Law, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which the child shall have been</p>

		<p>committed by the youth court shall be guilty of a misdemeanor...</p> <p>(e) A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child...</p>
<p>Missouri</p>	<p>Endangering the welfare of a child in the first degree - Mo. Ann. Stat. § 568.045</p> <p>1. A person commits the offense of endangering the welfare of a child in the first degree if he or she:</p> <p>(1) Knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years of age; or</p> <p>(2) Knowingly engages in sexual conduct with a person under the age of seventeen years over whom the person is a parent, guardian, or otherwise charged with the care and custody;</p> <p>(3) Knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which violates the provisions of chapter 579;</p> <p>(4) In the presence of a child less than seventeen years of age or in a residence where a child less than seventeen years of age resides, unlawfully manufactures, or attempts to manufacture compounds, possesses, produces, prepares, sells, transports, tests or analyzes amphetamine or methamphetamine or any of their analogues.</p> <p>Endangering the welfare of a child in the second degree, penalties - Mo. Ann. Stat. § 568.050 — 1. A person commits the offense of endangering the welfare of a child in the second degree if he or she:</p> <p>(1) With criminal negligence acts in a manner that creates a substantial risk to the life, body or health of a child less than seventeen years of age; or</p> <p>(2) Knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which causes or tends to cause the child to come within the provisions of paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031; or</p> <p>(3) Being a parent, guardian or other person legally charged with the care or custody of a child less than seventeen years of age, recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent him or her from coming within the provisions of paragraph (c) of subdivision (1) of subsection 1 or</p>	<p>Abuse or neglect of a child - Mo. Ann. Stat. § 568.060</p> <p>(4) “Neglect”, the failure to provide, by those responsible for the care, custody, and control of a child under the age of eighteen years, the care reasonable and necessary to maintain the physical and mental health of the child, when such failure presents a substantial probability that death or physical injury or sexual injury would result...</p>

<p>Missouri (Cont.)</p>	<p>paragraph (d) of subdivision (2) of subsection 1 or subdivision (3) of subsection 1 of section 211.031; or</p> <p>(4) Knowingly encourages, aids or causes a child less than seventeen years of age to enter into any room, building or other structure which is a public nuisance as defined in section 579.105.</p> <p>2. Nothing in this section shall be construed to mean the welfare of a child is endangered for the sole reason that he or she is being provided nonmedical remedial treatment recognized and permitted under the laws of this state.</p> <p>3. The offense of endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity, in which case the offense is a class E felony.</p>	
<p>Montana</p>	<p><i>Montana’s state law definition of endangerment is less severe than neglect.</i></p> <p>Endangering welfare of children - Mont. Code Ann. § 45-5-622 A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support...</p>	<p>Definitions - Mont. Code Ann. § 41-3-102</p> <p>(3) “Abused or neglected” means the state or condition of a child who has suffered child abuse or neglect...</p> <p>(7)(a) “Child abuse or neglect” means:</p> <p>(i) Actual physical or psychological harm to a child;</p> <p>(ii) Substantial risk of physical or psychological harm to a child; or</p> <p>(iii) Abandonment...</p> <p>(20) “Physical neglect” means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child...</p> <p>(23)(a) “Psychological abuse or neglect” means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home...</p>
<p>Nebraska</p>	<p><i>Nebraska’s state law has the same definition for endangerment and neglect.</i></p>	<p>Article 7. Offenses Involving the Family Relation - Act, how cited; terms, defined - Neb. Rev. Stat. Ann. §28-710</p> <p>(b) Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be:</p>

		<ul style="list-style-type: none"> (i) Placed in a situation that endangers his or her life or physical or mental health; (ii) Cruelly confined or cruelly punished; (iii) Deprived of necessary food, clothing, shelter, or care; (iv) Left unattended in a motor vehicle if such minor child is six years of age or younger; (v) Sexually abused; or (vi) Sexually exploited by allowing, encouraging, or forcing such person to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions...
<p>Nevada</p>	<p><i>Nevada’s definition of endangerment is less severe than neglect.</i></p> <p>Abuse, neglect or endangerment of child: Penalties, definitions. - Nev. Rev. Stat. § 200.508</p> <p>1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:</p> <p>(a) If substantial bodily or mental harm results to the child:</p> <p>(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or</p> <p>(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or</p> <p>(b) If substantial bodily or mental harm does not result to the child:</p> <p>(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or</p> <p>(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of</p>	<p>Termination of Parental Rights - Nev. Rev. Stat. § 128.014</p> <p>“Neglected child” includes a child:</p> <ul style="list-style-type: none"> Who lacks the proper parental care by reason of the fault or habits of his or her parent, guardian or custodian; Whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for the child’s health, morals or well-being; Whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by the child’s physical or mental condition; Who is found in a disreputable place, or who is permitted to associate with vagrants or vicious or immoral persons; or Who engages or is in a situation dangerous to life or limb, or injurious to health or morals of the child or others

<p>Nevada (Cont.)</p>	<p>a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, Ë unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.</p> <p>2. A person who is responsible for the safety or welfare of a child pursuant to NRS 432B.130 and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:</p> <p>(a) If substantial bodily or mental harm results to the child:</p> <p>(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or</p> <p>(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or</p> <p>(b) If substantial bodily or mental harm does not result to the child:</p> <p>(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or</p> <p>(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130, Ë unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.</p> <p>3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that the person delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.</p> <p>4. As used in this section:</p> <p>(a) “Abuse or neglect” means physical or mental injury of a nonaccidental nature, sexual</p>	
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<p>Nevada (Cont.)</p>	<p>abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child’s health or welfare is harmed or threatened with harm.</p> <p>(b) “Allow” means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.</p> <p>(c) “Permit” means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.</p> <p>(d) “Physical injury” means:</p> <p>(1) Permanent or temporary disfigurement; or</p> <p>(2) Impairment of any bodily function or organ of the body.</p> <p>(e) “Substantial mental harm” means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior.</p>	
<p>New Hampshire</p>	<p>Endangering Welfare of Child or Incompetent - N.H. Rev. Stat. § 639:3</p> <p>Knowingly endangers the welfare of a child under 18 years of age or of an incompetent person by purposely violating a duty of care, protection or support he owes to such child or incompetent, or by inducing such child or incompetent to engage in conduct that endangers his health or safety.</p>	<p>Child Protection Act - N.H. Rev. Stat. § 169-C:3</p> <p>“Neglected child” means a child:</p> <p>(a) Who has been abandoned by his parents, guardian, or custodian; or</p> <p>(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, when it is established that his health has suffered or is very likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian or custodian; or</p> <p>(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity</p>
<p>New Jersey</p>	<p>Endangering welfare of children -N.J.S.A. 2C:24-4</p> <p>a. (1) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this</p>	<p>Abuse, Abandonment, Cruelty and Neglect of Child - N.J.S.A. § 9:6-1</p> <p>Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or</p>

<p>New Jersey (Cont.)</p>	<p>paragraph to a child is guilty of a crime of the third degree.</p> <p>(2) Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c. 119, § 1 (C.9:6-8.21)</p>	<p>permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being</p> <p>c. "Abused or neglected child" means a child less than 18 years of age whose parent or guardian, as herein defined, (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who has been willfully isolated</p>
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	be deemed prima facie evidence of abuse of the child.	
New York	<p>Endangering the welfare of a child - McKinney’s Penal Law § 260.10</p> <p>He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health;</p>	<p>N.Y. Family Court Act § 1012(f)</p> <p>(f) “Neglected child” means a child less than eighteen years of age</p> <p>(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care</p> <p>(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or</p> <p>(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or</p> <p>(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care</p>
New York (Cont.)		
North Carolina	<p><i>North Carolina’s state law defines endangerment as less severe than neglect.</i></p> <p>Child abuse a felony – N.C. Gen. Stat. § 14-318.4</p> <p>(a) A parent or any other person providing care to or supervision of a child less</p>	<p>Juvenile Code - N.C. Gen. Stat. §§ 7B-101 (15), (19a)</p> <ul style="list-style-type: none"> • Neglected juvenile.--A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or

<p>North Carolina (Cont.)</p>	<p>than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class D felony, except as otherwise provided in subsection (a3) of this section.</p> <p>(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the child is guilty of child abuse and shall be punished as a Class D felon.</p> <p>(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon the child is guilty of a Class D felony.</p> <p>(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class B2 felony.</p> <p>(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.</p> <p>(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class G felony if the act or omission results in serious physical injury to the child.</p> <p>(a6) For purposes of this section, a "grossly negligent omission" in providing care to or supervision of a child includes the failure to report a child as missing to law enforcement as provided in G.S. 14-318.5(b).</p> <p>(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.</p> <p>(c) Abandonment of an infant less than seven days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for</p>	<ul style="list-style-type: none"> • Who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or • who lives in an environment injurious to the juvenile's welfare; or the custody of whom has been unlawfully transferred under G.S. 14-321.2; or • Who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home. <p>Serious neglect. --Conduct, behavior, or inaction of the juvenile's parent, guardian, custodian, or caretaker that evidences a disregard of consequences of such magnitude that the conduct, behavior, or inaction constitutes an unequivocal danger to the juvenile's health, welfare, or safety, but does not constitute abuse.</p>
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	<p>a conviction under this section involving that infant.</p> <p>(d) The following definitions apply in this section:</p> <p>(1) Serious bodily injury. - Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.</p> <p>(2) Serious physical injury. - Physical injury that causes great pain and suffering. The term includes serious mental injury.</p>	
<p>North Dakota</p>	<p><i>The North Dakota endangerment statute includes all persons including children.</i></p> <p>Reckless endangerment – N.D. Cent. Code § 12.1-17-03</p> <p>A person is guilty of an offense if he creates a substantial risk of serious bodily injury or death to another. The offense is a class C felony if the circumstances manifest his extreme indifference to the value of human life. Otherwise it is a class A misdemeanor. There is risk within the meaning of this section if the potential for harm exists, whether or not a particular person's safety is actually jeopardized.</p>	<p>Domestic Relations and Persons - N.D. Cent. Code § 14-09-22.1</p> <p>A parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony:</p> <ul style="list-style-type: none"> • Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals. • Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons. <p>Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others</p>
<p>Ohio</p>	<p>Endangering children - R.C. § 2919.22</p> <p>(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care,</p>	<p>Neglected child defined – failure to provide medical or surgical care for religious reasons - R.C. § 2151.03</p> <p>(A) As used in this chapter, "neglected child" includes any child:</p> <p>(1) Who is abandoned by the child's parents, guardian, or custodian;</p>

<p>Ohio (Cont.)</p>	<p>protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.</p> <p>(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:</p> <p>(1) Abuse the child;</p> <p>(2) Torture or cruelly abuse the child;</p> <p>(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;</p> <p>(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;</p> <p>(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;</p>	<p>(2) Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;</p> <p>(3) Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well-being;</p> <p>(4) Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;</p> <p>(5) Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of sections 5103.16 and 5103.17 of the Revised Code;</p> <p>(6) Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare?</p>
<p>Oklahoma</p>	<p><i>Oklahoma does not have child endangerment definition.</i></p>	<p>Oklahoma Children's Code - Okla. Stat. tit. 10A, § 1-1-105</p> <p>“Neglect” means the failure or omission to provide any of the following:</p> <ul style="list-style-type: none"> • adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education, • medical, dental, or behavioral health care, • supervision or appropriate caretakers, or • special care made necessary by the physical or mental condition of the child, • the failure or omission to protect a child from exposure to any of the following: <ul style="list-style-type: none"> ○ the use, possession, sale, or manufacture of illegal drugs, ○ illegal activities, or • sexual acts or materials that are not age-appropriate, or • abandonment.

		<p>Oklahoma Guardianship and Conservatorship Act - Okla. Stat. tit. 30, § 1-11 “Neglect” means the failure to provide protection for an incapacitated person, a partially incapacitated person, or a minor who is unable to protect the person's own interest; or the failure to provide adequate shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of a lack of awareness, incompetence, or incapacity, which has resulted or may result in physical or mental injury</p>
<p>Oregon</p>	<p>Endangering the welfare of a minor - O.R.S. § 163.575 (1) A person commits the offense of endangering the welfare of a minor if the person knowingly: (a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse as defined in ORS 167.060; (b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances or cannabis is maintained or conducted; (c) Induces, causes or permits a person under 18 years of age to participate in gambling as defined in ORS 167.117; (d) Distributes, sells or allows to be sold tobacco in any form to a person under 18 years of age; (e) Distributes, sells or allows to be sold an inhalant delivery system, as defined in ORS 431A.175, to a person under 18 years of age; or (f) Sells to a person under 18 years of age any device in which tobacco, cannabis, cocaine or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, cannabis smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to: (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls; (B) Carburetion tubes and devices, including carburetion masks; (C) Bonges;</p>	<p>Child neglect in the second degree -O.R.S. § 163.545 (1) A person having custody or control of a child under 10 years of age if the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child</p>

<p>Oregon (Cont.)</p>	<p>(D) Chillums; (E) Ice pipes or chillers; (F) Cigarette rolling papers and rolling machines; and (G) Cocaine free basing kits.</p>	
<p>Pennsylvania</p>	<p>Endangering welfare of children -18 Pa.C.S.A. § 4304 1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.</p>	<p>Definitions Title 23 Pa.C.S.A. Domestic Relations (Refs & Annos) - 23 Pa.C.S.A. § 6303</p> <p>“Neglect.” The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. An older adult who does not consent to the provision of protective services shall not be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.</p>
<p>Rhode Island</p>	<p><i>Rhode Island does not have an endangerment statute.</i></p>	<p>Delinquent and Dependent Children - R.I. Gen. Laws § 14-1-3</p> <ul style="list-style-type: none"> • “Neglect” means a child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed, or threatened with harm, when the parents or guardian: • Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so; • Fails to provide the child proper education as required by law; or <p>Abandons and/or deserts the child.</p>
<p>South Carolina</p>	<p>Unlawful conduct toward a child -S.C. Code Ann. § 63-5-70</p> <p>(A) It is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or who is responsible for the welfare of a child as defined in Section 63-7-20 to:</p> <p>(1) place the child at unreasonable risk of harm affecting the child’s life, physical or mental health, or safety;</p> <p>(2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that</p>	<p>South Carolina Children's Code - S.C. Code Ann. § 63-7-20(6)</p> <p>“Child abuse or neglect” or “harm” occurs when the parent, guardian, or other person responsible for the child's welfare:</p> <ul style="list-style-type: none"> • inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, • commits or allows to be committed against the child a sexual offense as defined by the laws of this State or

<p>South Carolina (Cont.)</p>	<p>the life or health of the child is endangered or likely to be endangered; or</p>	<p>engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;</p> <ul style="list-style-type: none"> • fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law; • abandons the child; <p>encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or</p>
<p>South Dakota</p>	<p><i>The South Dakota statute regarding endangerment refers to situations where involving hunting.</i></p>	<p>Protection of Children from Abuse or Neglect - Abused or neglected child defined – S.D. Codified Laws § 26-8A-2</p> <p>The term, abused or neglected child, means a child:</p> <ul style="list-style-type: none"> • Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse; • Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian; • Whose environment is injurious to the child's welfare; • Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being; • Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian; • Who is threatened with substantial harm;

<p>South Dakota (Cont.)</p>		<ul style="list-style-type: none"> • Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture; • Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care; • Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or <p>Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.</p>
<p>Tennessee</p>	<p>Child abuse and child neglect or endangerment - Tenn. Code Ann. § 35-15-401 (c)</p> <p>(1) A parent or custodian of a child eight (8) years of age or less commits child endangerment who knowingly exposes such child to or knowingly fails to protect such child from abuse or neglect resulting in physical injury or imminent danger to the child.</p> <p>(2) For purposes of this subsection (c):</p> <p>(A) "Imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious bodily injury;</p> <p>(B) "Knowingly" means the person knew, or should have known upon a reasonable inquiry, that abuse to or neglect of the child would occur which would result in physical injury to the child. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary parent or legal custodian of a child eight (8) years of age or less would exercise under all the circumstances as viewed from the defendant's standpoint; and</p>	<p>Juvenile Courts and Proceedings - Tenn. Code Ann. § 37-1-102</p> <p>“neglected child” means a child:</p> <ul style="list-style-type: none"> • Who is without a parent, guardian or legal custodian; • Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child; • Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school; • Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child; • Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; • Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; • Who is suffering from abuse or neglect;

<p>Tennessee (Cont.)</p>		<ul style="list-style-type: none"> • Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; • Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or • Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative. <p>Child abuse and child neglect or endangerment. - Part 4 Children - Tenn. Code Ann. § 39-15-401.</p> <p>(b) Any person who knowingly abuses or neglects a child under eighteen (18) years of age, so as to adversely affect the child's health and welfare, commits a Class A misdemeanor; provided, that, if the abused or neglected child is eight (8) years of age or less, the penalty is a Class E felony.</p>
<p>Texas</p>	<p>Abandoning or Endangering Child - Tex. Penal Code § 22.041</p> <p>(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.</p>	<p>Investigation of report of child abuse or neglect - Tex. Fam. Code Ann. § 261.001</p> <p>“neglected child” means a child:</p> <ul style="list-style-type: none"> • Who is without a parent, guardian or legal custodian; • Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child; • Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school; • Whose parent, guardian or custodian neglects or refuses to provide necessary

<p>Texas (Cont.)</p>		<p>medical, surgical, institutional or hospital care for such child;</p> <ul style="list-style-type: none"> • Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law; • Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others; • Who is suffering from abuse or neglect; • Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; • Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or • Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative <p>“Neglect”: includes:</p> <ul style="list-style-type: none"> • the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child; • the following acts or omissions by a person: • placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
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<p>Texas (Cont.)</p>		<ul style="list-style-type: none"> • failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child; • the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; • placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or • placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; • the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and
<p>Utah</p>	<p><i>The state law definition of endangerment is less severe than neglect.</i></p> <p>Endangerment of a child or vulnerable adult – Utah Code Ann. § 76-5-112.5 (1) As used in this section: (a) (i) "Chemical substance" means: (A) a substance intended to be used as a precursor in the manufacture of a controlled substance; (B) a substance intended to be used in the manufacture of a controlled substance; or (C) any fumes or by-product resulting from the manufacture of a controlled substance. (ii) Intent under this Subsection (1)(a)</p>	<p>Juvenile Court General provisions – Utah Code Ann. § 78A-6-105</p> <ul style="list-style-type: none"> • (27)(a) "Neglect" means action or inaction causing: • abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child; • lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

<p>Utah (Cont.)</p>	<p>may be demonstrated by: (A) the use, quantity, or manner of storage of the substance; or (B) the proximity of the substance to other precursors or to manufacturing equipment. (b) "Child" means a human being who is under 18 years of age. (c) "Controlled substance" is as defined in Section 58-37-2. (d) "Drug paraphernalia" is as defined in Section 58-37a-3. (e) "Exposed to" means that the child or vulnerable adult: (i) is able to access or view an unlawfully possessed: (A) controlled substance; or (B) chemical substance; (ii) has the reasonable capacity to access drug paraphernalia; or (iii) is able to smell an odor produced during, or as a result of, the manufacture or production of a controlled substance. (f) "Prescription" is as defined in Section 58-37-2. (g) "Vulnerable adult" is as defined in Subsection 76-5-111(1). (2) Unless a greater penalty is otherwise provided by law: (a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the third degree if the person knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia; (b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second degree, if: (i) the person engages in the conduct described in Subsection (2)(a); and (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or (c) a person is guilty of a felony of the first degree, if: (i) the person engages in the conduct described in Subsection (2)(a); and (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable adult dies. (3) It is an affirmative defense to a violation of this section that the controlled substance: (a) was obtained by lawful prescription; and (b) is used or possessed by the person to whom it was lawfully prescribed. (4) The penalties described in this section are separate from, and in addition to, the penalties and enhancements described in Title 58, Occupations and Professions.</p>	<ul style="list-style-type: none"> • failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child's health, safety, morals, or well-being; • a child to be at risk of being neglected or abused because another child in the same home is neglected or abused; or • abandonment of a child through an unregulated custody transfer. <p>(28) "Neglected child" means a child who has been subjected to neglect.</p> <p>(38) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.</p>
<p>Vermont</p>	<p>Assessment and investigation - 33 Vt. Stat. Ann. § 4915.</p> <p>(d) The Department shall conduct an investigation when an accepted report involves allegations indicating substantial child endangerment. For purposes of this section, "substantial child endangerment" includes conduct by an adult involving or</p>	<p>Child welfare services - reporting abuse of children - Vt. Stat. Ann. tit. 33, § 4912</p> <ul style="list-style-type: none"> • "Abused or neglected child" means a child whose physical health, psychological growth and development, or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare.

	<p>resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury. The Department may conduct an investigation of any report.</p>	<p>An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person and a child who has died as a result of abuse or neglect.</p>
<p>Virginia</p>	<p><i>Virginia’s endangerment statute does not pertain specifically to children.</i></p>	<p>Juvenile and domestic relations district courts - Va. Code Ann. § 63.2-100 “Abused or neglected child” means any child:</p> <ul style="list-style-type: none"> • Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248; • Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child; • Whose parents or other person responsible for his care abandons such child; • Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; • Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis;
<p>Virginia (Cont.)</p>		

		<ul style="list-style-type: none"> • Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or <p>Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.</p>
Washington	<p>Applies to adults and children Reckless endangerment – Wash. Rev. Code Ann. § 9a.36.050</p> <p>(1) A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person.</p> <p>(2) Reckless endangerment is a gross misdemeanor.</p>	<p>Domestic relations - abuse of children - Wash. Rev. Code Ann. § 26.44.020</p> <p>“Abuse or neglect” means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.</p>
West Virginia	<p>West Virginia’s state law has the same definition for endangerment and neglect</p>	<p>Crimes and punishment - child abuse – W. Va. Code Ann. § 61-8D-1(7)</p> <p>“Neglect” means the unreasonable failure by a parent, guardian or custodian of a minor child to exercise a minimum degree of care to assure the minor child's physical safety or health. For purposes of this article, the following do not constitute “neglect” by a parent, guardian or custodian:</p> <ul style="list-style-type: none"> • Permitting a minor child to participate in athletic activities or other similar activities that if done properly are not inherently dangerous, regardless of whether that participation creates a risk of bodily injury; • Exercising discretion in choosing a lawful method of educating a minor child; or <p>Exercising discretion in making decisions regarding the nutrition and medical care provided to a minor child based upon religious conviction or reasonable personal belief.</p>

Wisconsin	Wisconsin does not have endangerment definition.	Social services - Children’s code - Wis. Stat. Ann. § 48.02(12g) “Neglect” means failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child
Wyoming	<p>Abandoning or endangering children; penalties; “child”; disclosure or publication of identifying information; “minor victim” - Wyo. Stat. § 6-4-403</p> <p>(b) No person shall knowingly: (...)</p> <p>(vi) Cause, encourage, aid or contribute to the endangering of a child's health, welfare or morals, by using, employing or permitting a child:</p> <p>(A) In any business enterprise which is injurious or dangerous to the health, morals, life or physical safety of the child;</p> <p>(B) In any place for purposes of begging;</p> <p>(C) To be exhibited for the purpose of displaying any deformity of a child, except to physicians, nurses or other health professionals; or</p> <p>(D) In a place used for prostitution.</p>	<p>Child Protective Services - Wyo. Stat. Ann. § 14-3-202</p> <ul style="list-style-type: none"> • “Neglect” means a failure or refusal by those responsible for the child's welfare to provide adequate care, maintenance, supervision, education or medical, surgical or any other care necessary for the child's wellbeing.

Appendix P

Forced Marriage as Child Abuse: State Laws¹

By: Tolulope Adetayo & Leslye E. Orloff

December 27, 2017²

“There is very clear distinction of what constitutes a forced marriage and an arranged marriage. One is tradition; the other is abuse” – Jasvinder Sanghera

Several states³ in the United States have criminalized forced marriage. The key elements of forced marriage in these states include elements that are also considered child abuse under the same state’s laws. Most commonly forced marriage, by its nature, includes acts of sexual assault, rape, kidnapping and other violent acts.

For example, Virginia’s statute states in pertinent part defining forced marriage as follows:

“any person who takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled [...] is guilty.”⁴

Most state statutes defining forced marriage contain similar definitional elements with a few modifications. In all of the statutes general intent is the same -- that forced marriage when committed against a minor constitutes child abuse. Perpetrators of forced marriage subject children to multiple forms of abuse and coercive tactics that constitute child abuse or child neglect under state law. The vast majority of children forced into marriages are girls. The tactics used against children in forced marriages include:

- Taking them out of school;
- Depriving them of food;
- Imprisoning them in a room at home;
- Cutting their social ties and networks;
- Emotional and/or blackmail;
- Rape, sexual assault and sexual exploitation; and
- In some cases death.

Forced marriage, like all child abuse and child sexual abuse has a negative effect on a child’s health, brain, and emotional development.⁵ The sexual nature of the abuse in forced marriage is particularly heinous and harmful.

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² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

³ As at 2013, the following states have enacted the law: California, District of Columbia, Maryland, Minnesota, Mississippi, Nevada, Oklahoma, Virginia, Virgin Islands, and West Virginia

⁴ Va. Code Ann. § 18.2-355

⁵ For a discussion of the impact of child abuse, child sexual abuse and trauma on children see *Appendix E: Understanding the Significance of a Minor’s Trauma History in Family Court Proceedings*, 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), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

A forced marriage is one that takes place without the full and free consent of one or both parties and often involves the element of force, fraud, or coercion.⁶ Duress is a major factor in forced marriages. This duress may take the form of emotional, financial, physical, sexual threats and/or abuse.⁷ While arranged marriage may be a cultural practice that parties agree to participate in, forced marriage is very different.⁸ Perpetrators of forced marriage attempt to justify it by arguing that it is anchored in and a part of a culture and/or tradition. Other factors that contribute to forced marriage include:⁹

- Preservation of family honor,
- Families that are motivated to ensure that marriage take place within their family circle of relationships, within their class, or to gain access to a higher class,
- Marriages that provide a path to citizenship through a spousal visa because the child who is forced to marry is a U.S. citizen or lawful permanent resident.

Forced marriage is not only prevalent among adults who are capable of making decisions and who understand the consequence of such action. Studies have shown that there is a high rate of forced marriage among children or minors. The perpetrators of the forced marriage can often include the child’s parents, caretakers, and/or other custodians.¹⁰ State laws on child abuse and the child abuse response protocols often focus primarily on physical injury and do not encompass the full range of coercive threats and emotional abuse common in forced marriage cases.¹¹

Forced Marriage Includes Child Abuse - Child Neglect

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act’s That Constitute Child Abuse
California Cal. Penal § 265	Women Only	Every person who takes any woman unlawfully, against her will, and by force, menace or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison.	Sexual-Abuse/Exploitation Citation: Welf. & Inst. Code § 300; Penal Code § 11165.1 A child is considered dependent if he or she has been sexually abused; there is a substantial risk that the child will be sexually abused, as defined in § 11165.1 of the Penal Code, by his or her parent, guardian, or a household

⁶ Casey Swegman, *Tahirih Justice Center Forced Marriage Initiative - The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States*, http://www.tahirih.org/wp-content/uploads/2016/02/AR_ForcedMarriage.pdf.

⁷ Casey Swegman, *Tahirih Justice Center Forced Marriage Initiative - The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States*, http://www.tahirih.org/wp-content/uploads/2016/02/AR_ForcedMarriage.pdf.

⁸ Casey Swegman, *Tahirih Justice Center Forced Marriage Initiative - The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States*, http://www.tahirih.org/wp-content/uploads/2016/02/AR_ForcedMarriage.pdf.

⁹ Karma Nirvana (2008), *Survivors of Honour Based Violence & Forced Marriage in the UK*. Retrieved from <http://www.karmanirvana.org.uk/wp-content/uploads/2013/07/Survivors-of-HBV-FM-Aug-2008.pdf>.

¹⁰ Tahirih Justice Centre Survey, *Forced Marriage in Immigrant Communities (2011)*. (Victims under the age of 18, and 41% of respondents in a Gangashakti survey discussed issues of child protection when asked about case characteristics) (Sri and Raja, 2013); Another study by Sauti Yetu of forced and early marriage in African immigrant communities in New York City found that 40% of their youth population was married, engaged, or promised, and that “of the 30 [study] participants...all but two faced pressures to marry or were already married before the age of 18” (Bangura, Tran, & Schermerhorn, 2012). The South Asian Legal Clinic of Ontario (SALCO) conducted a study on forced marriage in Canada and found that 10% of victims were between the ages of 12-15 and 25% of victims were between the ages of 16-18. See Helen Sowey, *From an emic perspective: Exploring consent in forced marriage law*, *Australian & New Zealand Journal of Criminology* (April 7, 2017). <http://journals.sagepub.com/doi/abs/10.1177/0004865817701982#articleCitationDownloadContainer>.

¹¹ Casey Swegman, *Tahirih Justice Center Forced Marriage Initiative - The Intersectionality of Forced Marriage with Other Forms of Abuse in the United States*, http://www.tahirih.org/wp-content/uploads/2016/02/AR_ForcedMarriage.pdf.

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
<p>California</p>		<p>Penalties for Violating:</p> <ul style="list-style-type: none"> Imprisonment in state prison 	<p>member; or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.</p> <p>Welf. & Inst. Code § 300</p> <p>For the purposes of this subdivision, 'severe physical abuse' means:</p> <ol style="list-style-type: none"> Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death Any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling More than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.
<p>District of Columbia</p> <p>DC Code Ann. § 22-2705</p>	<p>Any person</p>	<p>(a) It is unlawful for any person, within the District of Columbia to:</p> <p>(3) Take or detain an individual against the individual's will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person</p> <p>Penalties for violating the law:</p> <p>A person shall be guilty of a felony and subject to:</p> <ul style="list-style-type: none"> imprisonment for not more than 5 years; or a fine of "not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012," i.e., not more than \$12,500 for offenses punishable by imprisonment for 5 years or less but more than one year; or both. If the victim is under 18 years of age, a person 	<p>Code § 16-2301</p> <p>'Abused,' when used in reference to a child, means:</p> <p>Infliction of physical or mental injury Sexual abuse or exploitation Negligent treatment or maltreatment</p> <p>Code § 16-2301</p> <p>'Sexual abuse' means:</p> <p>Engaging in, or attempting to engage in, a sexual act or sexual contact with a child Causing or attempting to cause a child to engage in sexually explicit conduct Exposing the child to sexually explicit conduct</p>

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
District of Columbia		<p>shall be guilty of a felony and subject to:</p> <ul style="list-style-type: none"> • imprisonment for not more than 20 years; • or a fine of “not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012,” i.e., not more than \$50,000 for offenses punishable by imprisonment for 20 years or less but more than 15 years; • or both. 	
Maryland Md. Code Ann., Crim. Code §11-303	Any person	<p>(b)(2) A person may not knowingly take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse.</p> <p>Penalties for violating the law</p> <p>A person shall be guilty of the felony of human trafficking and subject to:</p> <ul style="list-style-type: none"> • imprisonment not exceeding 25 years • or a fine not 	<p>Fam. Law § 5-701</p> <p>'Abuse' means: The physical or mental injury of a child by any parent or other person who has permanent or temporary care, custody, or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed Sexual abuse of a child, whether physical injuries are sustained or not</p> <p>Fam. Law § 5-701</p> <p>'Sexual abuse' means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. 'Sexual abuse' includes: Allowing or encouraging a child to engage in: Obscene photography, films, poses, or similar activity Pornographic photography, films, poses, or similar activity Prostitution Human trafficking Incest Rape Sexual offense in any degree Sodomy Unnatural or perverted sexual practices</p>

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
<p>Minnesota Minn. Stat. Ann. § 609.265</p> <p>Minnesota</p>	<p>Persons under the age of 18 (but only if they are taken without the consent of the parents, guardian, or other person having legal custody of such person).</p>	<p>Whoever, for the purpose of marriage, takes a person under the age of 18 years, without the consent of the parents, guardian, or other person having legal custody of such person is guilty of abduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000 or both.</p> <p>Penalties for violating the law: A person is guilty of abduction and may be sentenced to: • imprisonment for not more than one year • or payment of a fine of not more than \$3,000 • or both.</p>	<p>Sexual Abuse/Exploitation</p> <p>Ann. Stat. §§ 626.556, Subd. 2; 260C.007, Subd. 31</p> <p>'Sexual abuse' means the subjection of a child to any act that constitutes criminal sexual conduct by a person responsible for the child's care, a person who has a significant relationship to the child, or a person in a position of authority. Sexual abuse includes any act that involves a minor that constitutes a violation of prostitution offenses. Sexual abuse also includes threatened sexual abuse, including the status of a parent or household member who has committed a violation that requires registration as a predatory offender.</p> <p>'Sexually exploited youth' means an individual who:</p> <ul style="list-style-type: none"> • Is alleged to have engaged in conduct that would, if committed by an adult, violate any Federal, State, or local law relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual conduct • Is a victim of the crime of criminal sexual conduct, criminal sexual predatory conduct, use of minors in sexual performances, or possession of child pornography • Is a victim of the Federal offenses of child pornography or child sex trafficking • Is a sex trafficking victim
<p>Mississippi Miss. Code Ann. § 97-3-1</p>	<p>Any person over the age of 14.</p>	<p>Every person who shall take any person over the age of fourteen (14) years unlawfully, against his or her will, and by force, menace, fraud, deceit, stratagem or duress, compel or induce him or her to marry such person or to marry any other person, or to be defiled, and shall be thereof duly convicted, shall be punished by imprisonment in the penitentiary not less than</p>	<p>Code § 43-21-105</p> <p>'Abused child' means a child whose parent, guardian, custodian, or any person responsible for his or her care or support, whether or not legally obligated to do so, has caused or allowed to be caused upon the child non-accidental physical injury or other maltreatment. The term 'abused child' also means a child who is or has been trafficked within the meaning of the Mississippi Human</p>

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
Mississippi		<p>five (5) years and not more than fifteen (15) years.</p> <p>Penalties for violating the law: Imprisonment in the penitentiary not less than five (5) years and not more than fifteen (15) years.</p>	<p>Trafficking Act by any person, without regard to the relationship of the person to the child.</p> <p>Sexual Abuse/Exploitation</p> <p>Citation: Ann. Code § 43-21-105</p> <p>The term 'abused child' includes sexual abuse or sexual exploitation.</p> <p>'Sexual abuse' means obscene or pornographic photographing, filming, or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution, or other such forms of sexual exploitation of children under circumstances that indicate that the child's health or welfare is harmed or threatened.</p>
Nevada Nev. Rev. Stat. 201.300	Any person	<p>2. A person: (a) Is guilty of sex trafficking if the person: ... (4) Takes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him or her or any other person.</p> <p>Penalties for violating the law</p> <p>Penalties depend on whether the victim was an adult or a child, and the age of the child at the time the offense was committed. • If the victim of the sex trafficking is an adult: - the person is guilty of a category B felony; - shall be punished by 3-10 years' imprisonment in the state prison; and - may be fined not more than \$10,000. • If the victim of the sex trafficking is a child under 14 years old: - the person is guilty of a category A felony; - shall be punished by imprisonment in the state prison for life with the possibility of parole (eligible only after serving 15 years); and - may be fined not more than \$20,000. • If the victim of the sex trafficking</p>	<p>Rev. Stat. §§ 432B.020; 432B.090; 432B.150</p> <p>'Abuse or neglect of a child' means physical or mental injury of a non-accidental nature; sexual abuse or sexual exploitation; or negligent treatment or maltreatment of a child caused or allowed by a person responsible for his or her welfare under circumstances that indicate that the child's health or welfare is harmed or threatened with harm.</p> <p>Sexual Abuse/Exploitation</p> <p>Citation: Rev. Stat. §§ 432B.100; 432B.110</p> <p>'Sexual abuse' includes acts upon a child constituting:</p> <ul style="list-style-type: none"> • Incest • Lewdness with a child • Sadomasochistic abuse • Sexual assault • Statutory sexual seduction • Mutilation of the genitalia of a female child; aiding, abetting, encouraging, or participating in the mutilation of the genitalia of a female child; or removal of a female child from this

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
Nevada		<p>is a child 14-16 years old: - the person is guilty of a category A felony; - shall be punished by imprisonment for life in the state prison with the possibility of parole (eligible only after serving 10 years); and - may be fined not more than \$10,000.</p> <ul style="list-style-type: none"> • If the victim of the sex trafficking is a child 16-18 years old: - the person is guilty of a category A felony; - shall be punished by imprisonment for life in the state prison with the possibility of parole (eligible only after serving 5 years); and - may be fined not more than \$10,000. The court may impose an additional penalty for the primary offense – a fine of up to \$500,000 – where physical force or violence or the immediate threat of physical force or violence was used on a child (NV ST 201.352). The statute prohibits probation or suspended sentences for anyone convicted of sex trafficking a child (i.e., would prohibit the same for anyone convicted under the forced marriage provision if the victim were a child). 	State for the purpose of mutilating the genitalia of the child
Oklahoma Okla. Stat. Tit. 21 § 1117, §1118, and §1119	§§1117-1118: Women only; §1119: Anyone under age 15, but only if the parents do not consent to the marriage.	§1117, Compelling woman to marry: Any person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not less than ten (10) years. §1118, Intent to compel woman to marry: Any person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or	Citation: Ann. Stat. Tit. 10A, § 1-1-105 'Abuse' means harm, threatened harm, or failure to protect from harm or threatened harm, to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including, but not limited to, non-accidental physical or mental injury, sexual abuse, or sexual exploitation. 'Harm or threatened harm to the health or safety of a child' means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental, including, but not limited to, sexual

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
Oklahoma		<p>duress to marry him, or to marry any other person, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding (10) years. §1119, Abduction of person under fifteen: Every person who takes away or induces to leave any person under the age of fifteen (15) years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage... shall be guilty of a felony punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.</p> <p>Penalties for violating the law:</p> <p>All are felonies, punishable as follows: §1117: Imprisonment in the State Penitentiary not less than 10 years. §1118: Imprisonment in the State Penitentiary not exceeding 10 years. §1119: Imprisonment in the county jail not exceeding 1 year, or a fine not exceeding \$1000, or both</p>	<p>abuse, sexual exploitation, neglect, or dependency.</p> <p>Sexual Abuse/Exploitation</p> <p>Citation: Ann. Stat. Tit. 10A, § 1-1-105</p> <p>'Harm or threatened harm to a child's health or safety' includes, but is not limited to, sexual abuse or sexual exploitation.</p> <p>'Sexual abuse' includes, but is not limited to, rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety, or welfare.</p> <p>'Sexual exploitation' includes, but is not limited to:</p> <ul style="list-style-type: none"> • Allowing, permitting, encouraging, or forcing a child to engage in prostitution, as defined by law, by any person age 18 or older or by a person responsible for the health, safety, or welfare of a child • Allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts by a person responsible for the child's health, safety, or welfare
Virginia Va. Code Ann. § 18.2-355	Any person	<p>Any person who: (2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled [...] is guilty of pandering, and shall be guilty of a Class 4 felony</p> <p>Penalties for violating the law: A person is guilty of a Class 4 felony and subject to:</p>	<p>Ann. Code § 63.2-100</p> <p>'Abused or neglected child' means any child younger than age 18 whose parents or other person responsible for his or her care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon the child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his or her parent or other person responsible for his or her care either (i) during the manufacture or attempted</p>

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
Virginia		<ul style="list-style-type: none"> • Imprisonment of not less than two years nor more than 10 years • and a fine of not more than \$100,000 	<p>manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his or her care, when such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation.</p> <p>Sexual Abuse/Exploitation</p> <p>Ann. Code § 63.2-100</p> <p>The term 'abused or neglected child' includes any child younger than age 18 whose parents or other person responsible for his or her care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.</p>
Virgin Islands 14 V.I. Code Ann. § 1301	Women only	<p>Whoever takes any woman unlawfully, against her will, and by force, menace or duress, compels her- (1) to marry him; (2) to marry any other person; or (3) to be defiled</p> <p>Shall be imprisoned not more than 10 years.</p> <p>Penalties for violating the law:</p> <p>Imprisonment for not more than 10 years</p>	<p>Ann. Code Tit. 5, § 2502</p> <p>'Abuse' means any physical injury inflicted on a child, other than by accidental means, by those responsible for the care and maintenance of the child, which causes or creates substantial risk of death, serious or protracted disfigurement, protracted impairment of physical health, or loss or protracted impairment of the function of any bodily organ.</p> <p>'Imminent danger to that child's life or health' means danger that involves:</p> <ul style="list-style-type: none"> • Substantial physical pain • Serious bodily injury resulting in physical disfigurement • Substantial impairment of the function of a bodily member or organ • Injury that may result in death
West Virginia W. Va. Code, § 61-2-14	Everyone	(a) Any person who takes away another person, or detains another person against such person's will, with intent to marry or defile the person, or to cause the person to be married or defiled by another	<p>Ann. Code § 49-1-201</p> <p>'Abused child' means a child whose health or welfare is being harmed or threatened by:</p> <ul style="list-style-type: none"> • A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
West Virginia		<p>person; or takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.</p> <p>Penalties for violating the law: A felony conviction and imprisonment for not less than three nor more than ten years.</p>	<p>inflict, or knowingly allows another person to inflict physical injury or mental or emotional injury upon the child or another child in the home, including an injury to the child as a result of excessive corporal punishment</p> <ul style="list-style-type: none"> • Sexual abuse or sexual exploitation • The sale or attempted sale of a child by a parent, guardian, or custodian in violation of § 61-2-14h • Domestic violence as defined in § 48-27-202 <p>Sexual Abuse/Exploitation</p> <p>Citation: Ann. Code § 49-1-201</p> <p>'Imminent danger to the physical well-being of the child' includes an emergency situation in which there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited.</p> <p>'Sexual abuse' means:</p> <ul style="list-style-type: none"> • Engaging in, attempting to engage in, or knowingly procuring another person to engage in sexual intercourse, sexual intrusion, or sexual contact with a child younger than age 16, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical, mental, or emotional injury as a result of such conduct • Engaging in, attempting to engage in, or knowingly procuring another person to engage in sexual intercourse, sexual intrusion, or sexual contact with a child age 16 or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical, mental, or emotional injury as a result of such conduct • Any conduct whereby a parent, guardian, or custodian displays his or her sex organs to a child or procures another person to display his

Jurisdiction	Who the law protects	Text of Statute Covering Acts of forced marriage	Text of Statute Covering Act's That Constitute Child Abuse
West Virginia			<p>or her sex organs to a child for the purpose of gratifying the sexual desire of the parent, guardian, or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child</p> <p>'Sexual exploitation' means an act whereby a parent, guardian, or custodian:</p> <ul style="list-style-type: none"> • Whether for financial gain or not, persuades, induces, entices, or coerces a child to engage in sexually explicit conduct • Persuades, induces, entices, or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, or custodian knows such display is likely to be observed by others who would be affronted or alarmed

Best Interests of the Child Maps– Summary Matrix¹

By Morgan Lewis and Bockius LLP²– December 29, 2017

The table below indicates the general categories of “best interest” factors that apply in each US state and territory for custody determinations. Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes. The tables that follow include more details on the factors that apply in each state, including the more specific factors that apply in each category.

Disclaimer: The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at knowledgemanagement@morganlewis.com.

Jurisdiction	Catch-all	Child's Family Relationships	Child's Needs	Child's Wishes	Continuity & Stability of Child	Family Violence and Criminal History	Joint Custody	Parental Cooperation & Conflict	Parental Fitness	Parental Wishes	Substance Abuse & Mental Illness
Alabama					X	X	X	X			
Alaska	X	X	X	X	X	X		X	X		X
American Samoa	X					X					
Arizona		X	X	X	X	X		X	X		X
Arkansas				X		X	X				X
California	X		X			X		X			X
Colorado	X	X	X	X	X	X		X	X	X	X

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² Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law.

Jurisdiction	Catch-all	Child's Family Relationships	Child's Needs	Child's Wishes	Continuity & Stability of Child	Family Violence and Criminal History	Joint Custody	Parental Cooperation & Conflict	Parental Fitness	Parental Wishes	Substance Abuse & Mental Illness
Connecticut		X	X	X	X	X		X	X	X	X
Delaware		X	X	X	X	X			X	X	X
District of Columbia		X	X	X	X	X	X	X	X	X	X
Florida			X	X	X	X		X	X		X
Georgia		X	X	X	X	X		X	X		X
Guam			X	X		X					
Hawaii		X	X	X		X		X	X		X
Idaho		X	X	X	X	X	X		X	X	
Illinois	X	X	X	X	X	X		X	X	X	X
Indiana		X	X	X	X	X			X	X	X
Iowa		X	X	X	X	X	X	X	X		X
Kansas		X		X	X	X		X		X	X
Kentucky		X	X	X	X	X		X	X	X	X
Louisiana		X	X	X	X			X	X		X
Maine		X	X	X	X	X	X	X	X		X
Maryland		X	X	X	X	X			X	X	
Massachusetts		X				X		X	X		X

Jurisdiction	Catch-all	Child's Family Relationships	Child's Needs	Child's Wishes	Continuity & Stability of Child	Family Violence and Criminal History	Joint Custody	Parental Cooperation & Conflict	Parental Fitness	Parental Wishes	Substance Abuse & Mental Illness
Michigan	X	X	X	X	X	X		X	X		X
Minnesota		X	X	X	X	X	X	X	X	X	X
Mississippi	X	X	X	X	X	X	X		X		X
Missouri		X	X	X	X	X		X	X	X	X
Montana	X	X	X	X	X	X		X	X	X	X
Nebraska	X	X	X	X	X	X			X		
Nevada		X	X	X		X		X	X	X	X
New Hampshire	X	X	X	X	X	X		X	X		X
New Jersey		X	X	X	X	X		X	X		X
New Mexico		X	X	X	X	X	X	X	X	X	X
New York	X	X	X	X		X		X	X	X	X
North Carolina			X			X	X		X		
North Dakota	X	X	X	X	X	X		X	X		X
Northern Mariana Islands	X		X			X	X				
Ohio	X	X	X	X	X	X		X	X	X	X

Jurisdiction	Catch-all	Child's Family Relationships	Child's Needs	Child's Wishes	Continuity & Stability of Child	Family Violence and Criminal History	Joint Custody	Parental Cooperation & Conflict	Parental Fitness	Parental Wishes	Substance Abuse & Mental Illness
Oklahoma	X		X			X		X			X
Oregon		X				X		X	X		
Pennsylvania	X	X	X	X	X	X		X	X		X
Puerto Rico	X	X	X		X	X	X	X	X	X	X
Rhode Island		X	X	X				X	X	X	X
South Carolina	X	X	X	X	X	X		X	X	X	X
South Dakota		X		X	X				X		
Tennessee	X	X	X	X	X	X		X	X		X
Texas		X	X			X			X		X
U.S. Virgin Islands	X	X	X		X	X			X		
Utah	X	X	X	X	X	X	X	X	X		
Vermont		X	X		X	X		X	X		
Virginia	X	X	X	X		X		X	X		X
Washington	X	X	X		X	X		X	X		X
West Virginia		X			X	X		X	X		

Jurisdiction	Catch-all	Child's Family Relationships	Child's Needs	Child's Wishes	Continuity & Stability of Child	Family Violence and Criminal History	Joint Custody	Parental Cooperation & Conflict	Parental Fitness	Parental Wishes	Substance Abuse & Mental Illness
Wisconsin	X	X	X	X	X	X		X	X	X	X
Wyoming	X	X			X	X		X	X		X

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Jurisdiction	Governed by Statute	Regulatory Requirement
Alabama	Yes	<p>Alabama provides the following factors to determine the best interests of the child in joint custody cases:</p> <ul style="list-style-type: none"> • agreement or lack of agreement of parents on joint custody • capacity of each parent to cooperate in child care and make decisions jointly • capacity of parents to encourage sharing of love, affection, and contact between the child and the other parent • history of or potential for child/spousal abuse or kidnapping • location/proximity of parents • presumption that joint custody is in child's best interest (absent specific findings) <p>Ala. Code § 30-3-152</p>
Alaska	Yes	<p>Alaska provides the following factors to determine the best interests of the child in custody cases:</p> <ul style="list-style-type: none"> • physical, emotional, mental, religious, and social needs of the child and the capability and desire of each parent to meet these needs • child's preference if the child is of sufficient age and capacity to form a preference • love and affection existing between the child and each parent • length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity • willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child (except in cases of sexual assault or domestic violence, and where a continuing relationship with the other parent will endanger the health or safety of either the parent or the child) • any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • substance abuse affecting the emotional or physical well-being of the child • other factors that the court considers pertinent <p>Alaska Stat. § 25.24.150</p> <p>In considering whether to award shared custody, the court will consider the following factors:</p> <ul style="list-style-type: none"> • advantages of keeping child’s current home • capacity of parent to encourage close and continuing relationship between child and other parent (exception related to sexual assault and domestic violence) • any other factors the court considers pertinent • criminal history of parent (sexual abuse, domestic violence, child neglect) • education of child • findings of a neutral mediator • needs of the child • proximity of home to school, other parent • preference of the child (if child has reached sufficient age or has capacity - not defined) • stability of proposed home environment • substance abuse affecting the child • time spent with each parent <p>Alaska Stat. § 25.20.090</p>
American Samoa	Yes	<p>American Samoa provides the following factors to determine the best interests of the child (where the court has found domestic or family violence):</p> <ul style="list-style-type: none"> • history of causing physical harm, injury, assault, or causing reasonable fear of physical harm, injury or assault to another person

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • other factors considered in custody/visitation cases (which don't appear to be clearly specified by statute) • safety and well-being of child and parent (if parent is domestic violence victim) as primary • rebuttable presumption that it is detrimental to the child and not in the best interest to be in the home of a perpetrator of family/domestic violence <p>A.S.C.A. 47.0302; 47.0301</p>
Arizona	Yes	<p>Arizona provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • all factors that are relevant to the child's physical and emotional well-being • child's adjustment to home, school, community • capacity of each parent to allow frequent, meaningful and continuing contact between the child and the other parent (absent good faith attempt of parent to protect child from domestic violence) • conviction of an act of false reporting of child abuse or neglect to one parent • existence of domestic violence or child abuse • interactions and interrelationships between any person who may significantly affect child's best interest, including relationship between parent and child (present, past, potential) • mental and physical health of all individuals involved • whether one parent intentionally misled court to cause an unnecessary delay, to increase costs, or to persuade court to give him/her preference • preference of the child (assuming sufficient age and capacity) • nature and extent of coercion or duress by one parent to come to agreement regarding parenting time or legal decision-making • whether one parent has complied with code regarding Domestic Relations Education on Children's Issues.

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> substantive abuse by a parent <p>Ariz. Rev. Stat. Ann. § 25-403; 25-403.04</p>
Arkansas	Yes	<p>Arkansas provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> placing the child with relative caregiver (in foster care or adoption cases) effect of domestic violence on child in domestic violence cases preference of the child (if child has reached sufficient age and capacity) presumption for joint custody rebuttable presumption against best interest of child to place with domestic abuser if pattern of domestic violence shown by preponderance of evidence rebuttable presumption a custodian’s decision denying or limiting visitation is in the best interest in determining visitation rights of grandparents sex offender status (rebuttable presumption that placing child in care or custody of sex offender, having unsupervised visitation with sex offender, or placing child in home with sex offender is not in his/her best interest) significant impact of a parent’s past or possible future deployment (if the parent is in military service) <p>Arkansas provides the following factors to determine the best interests of the child in terminating parental rights:</p> <ul style="list-style-type: none"> likelihood that child will be adopted if the termination petition is granted potential harm on the health and safety of the child child or sibling has been neglected child’s desire to live outside the home of the parent willful failure by a parent to provide significant material support

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • material support of financial contributions or food, shelter, clothing or other necessities • child’s welfare can best be served by terminating the parental rights of presumptive legal father who is not biological father • child abandonment • parent’s consent to termination of parental rights or adoption • child’s health, safety, or welfare • parent’s incapacity or indifference to remedy issues. • criminal sentence of a parent <p>Arkansas provides the following factors to determine the best interests of the child in terminating the relationship of parent and the child:</p> <ul style="list-style-type: none"> • abandonment • neglect or abuse <p>Arkansas provides the following factors to determine reinstatement of parental rights:</p> <ul style="list-style-type: none"> • likelihood of the child achieving permanency through adoption or another permanent placement • child’s age, maturity, and preference • parent's fitness and whether the parent has remedied the conditions that existed at the time of the termination of his or her parental rights • effect that the reinstatement of parental rights would have on the health, safety, and well-being of the child <p>Ark. Code. Ann. § 9-13-101; 9-28-105; 9-27-341; 9-9-220; 9-27-370</p>
California	Yes	<p>California provides the following factors to determine the best interests of the child in custody cases:</p> <ul style="list-style-type: none"> • any factors the court finds relevant • health, welfare, and safety of the child • history of abuse by parent or person seeking custody against child, person with whom has any caretaking affinity, regardless

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>of duration, other parent, cohabitant, or individual with dating relationship</p> <ul style="list-style-type: none"> • nature and amount of contact (unless there is domestic violence) • substance abuse <p>Cal. Fam. Code § 3011</p> <p>When determining whether child should be placed in custody of a relative other than parents, courts consider the following factors:</p> <ul style="list-style-type: none"> • special physical, psychological, educational, medical, or emotional needs • wishes of parent or relative • wishes of child, if appropriate • placement of siblings and half siblings in same home • character of relative and history of prior criminal act, child abuse or neglect • relationship with relative • capacity of relative to provide for physical and emotional needs of child <p>Cal. Wlf. & Inst. § 361.3</p>
Colorado	Yes	<p>Colorado provides the following factors to determine the best interests of the child in determining parenting time:</p> <ul style="list-style-type: none"> • all relevant factors determined by court • ability to place needs of child first • child’s adjustment to home, school, and community • capacity of each parent to encourage love, affection, and contact between the child and the other party (unless court determines actions are related to domestic abuse by other parent) • mental and physical health of all individuals involved • past practice demonstrating system of values, time commitment, and mutual support

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • proximity of parents as this relate to the practical considerations of parenting time • preferences of the child (if mature enough to express reasoned and independent preferences) • preferences of the child’s parents • relationship of the child with parents, siblings, and any other person who may significantly affect best interests • child abuse or neglect, domestic violence, sexual assault (shown by a preponderance of the evidence) <p>Colorado provides the following factors to determine the best interests of the child in allocating decision-making responsibilities;</p> <ul style="list-style-type: none"> • all factors set forth above • capacity of the parties to cooperate and to make decisions jointly • potential for more frequent or continuing contact between the child and parents • ability of parents as mutual decision makers to benefit relationships with the child <p>Colo. Rev. Stat. Ann. § 14-10-124</p>
Connecticut	Yes	<p>Connecticut provides the following factors to determine the best interests of the child in custody cases:</p> <ul style="list-style-type: none"> • ability of each parent to facilitate and encourage parent-child relationship with the other parent • coercive behavior of the parents in effort to involve child in parents’ dispute • ability of parent to be actively involved in child's life • past and current interaction and relationship of child with other family members • stability of child’s existing or proposed residences • length of time that child has lived in stable environment, provided that the court may look favorably upon a parent who

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>voluntarily leaves child’s family home to alleviate stress in household</p> <ul style="list-style-type: none"> • parents’ capacity to understand and meet needs of child • participation in a parenting education program established pursuant to state law • child’s adjustment to home, school and community environments • temperament and developmental needs of child • child’s cultural background • wishes of child’s parents as to custody • informed preferences of the child and any other relevant information obtained from child • mental and physical health of all individuals involved • effects on child of abuse, if domestic violence has occurred • whether child or sibling has been abused or neglected as defined under state law <p>Conn. Gen. Stat. Section 46b-56</p> <p>Note: Also see 46b-54 (counsel or a guardian ad litem for the minor child shall consider these factors when recommending the entry of order re custody)</p> <p>Connecticut provides the following factors to determine the best interests of the child in adoption cases:</p> <ul style="list-style-type: none"> • who manifests a deep concern for the child’s growth and development • whether a child has as many persons loving and caring for the child as possible • whether a child is part of a loving, supportive and stable family • type of family (nuclear, extended, split, blended, single parent, adoptive or foster family)

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>Conn. Gen. Stat. Section 45a-727a</p> <p>Connecticut provides the following factors to determine the best interests of the child in determining postadoption communication or contact with a sibling when terminating parental rights:</p> <ul style="list-style-type: none"> • age of the child and sibling • extent of the existing relationship between the child and sibling • physical, economical and psychological needs and stability • child’s and sibling’s opinion • opinion of the adoptive parent • opinions of experts • long-term plans • any relevant logistical concerns <p>Conn. Gen. Stat. Section 45a-715</p> <p>Connecticut provides the following factors to determine the best interests of the child in determining whether to open or set aside a judgement terminating parental rights:</p> <ul style="list-style-type: none"> • age of the child • nature of the relationship of the child with caretaker • length of time in the custody • nature of the relationship of the child with birth parent • relationship between the child and siblings or other children in the caretaker’s household • psychological and medical needs of the child <p>Conn. Gen. Stat. Section 45a-719</p>
Delaware	Yes	<p>Delaware provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • adjustment to home, school and community

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • criminal history of any party or any other resident of the household • evidence of domestic violence (as provided under state law) • interrelationship of child with parents, grandparents, siblings, and other household residents or other people who may significantly affect child’s best interests • mental and physical health of all individuals involved • past and present compliance by both parents with their rights and responsibilities to their child • wishes of child's parent or parents • wishes of child <p>13 Del. C. § 722</p> <p>Note: This provision is directly for the child custody and residential arrangements cases but also cited in the case of Guardianship of a Child (13 Del. C. § 2302), Third Party Visitation (13 Del. C. § 2402), Decry of Custody (13 Del. C. § 2502).</p>
District of Columbia	Yes	<p>The District of Columbia provides the following factors to determine the best interests of the child in custody cases:</p> <ul style="list-style-type: none"> • wishes of the child, where practicable • wishes of the parents • interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may affect the child’s best interest • adjustment to home, school, and community • mental and physical health of all individuals involved • evidence of an intra-family offense as defined under state law • capacity of the parents to communicate and reach shared decisions affecting the child’s welfare • willingness of the parents to share custody • prior involvement of each parent in the child’s life

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • potential disruption of the child’s social and school life • distance between the parental homes • demands of parents’ jobs • age and number of children • sincerity of each parent’s request • parent’s ability to financially support a joint custody arrangement • impact on assistance for needy families <p>D. C. Code Section 16-914</p> <p>The District of Columbia provides the following factors to determine the best interests of the child in custody with a third party cases:</p> <ul style="list-style-type: none"> • child’s need for continuity of care and caretakers and for timely integration into a stable and permanent home, considering the differences in the development • physical, mental, and emotional health of all individuals and physical, mental and emotional needs of the child • quality of interaction and interrelationship of the child with others • child’s opinion <p>D. C. Code Section 16-831.08</p>
Florida	Yes	<p>Florida provides the following factors to determine the best interests of the child in establishing or modifying parental responsibility and creating, developing, approving, or modifying a parental plan:</p> <ul style="list-style-type: none"> • capacity and disposition of each parent to facilitate a close and continuing parent-child relationship • demonstrated capacity of parent to communicate with the other parent • demonstrated capacity of parent to provide consistent routine for child, such as discipline, and daily schedules for homework, meals, and bedtime

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • demonstrated capacity and disposition of each parent to participate and be involved in the child’s school and extracurricular activities • developmental stages/needs of child and parent's ability to meet child’s developmental needs • disposition of parent to protect child from ongoing litigation (not discussing litigation in front of child, not sharing documents with the child, etc.) • division of parental duties, including the extent to which parenting responsibilities were/will be undertaken by third parties • evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect • evidence that either parent provided false information to court regarding any action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect • geographic viability of parenting plan • length of time child has lived in stable environment and desirability of maintaining continuity • mental and physical health of the parents • moral fitness of the parents • other factors that are relevant, including the time-sharing schedule • parental delegation of responsibilities to third parties • parent's capacity to act upon needs of child as opposed to needs of parent • knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child • capacity to maintain an environment free of substance abuse • records of the child: home, school and community

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • preference of child (if of sufficient intelligence, understanding and experience) <p>Fl. St. 61.13(3)</p> <p>Florida provides the following factors to determine the manifest best interests of the child in termination of parental rights:</p> <ul style="list-style-type: none"> • suitable permanent custody agreement with a relative of the child • ability and disposition of parents to provide the child with food, clothing etc. • capacity of parents to care the child • mental and physical health needs of the child • love, affection and other emotional ties • likelihood of an older child remaining in long-term foster care • the child’s ability to form relationship with a parental substitute • length of time that the child has lived in a stable environment • depth of the relationship between the child and the present custodian • reasonable preferences of the child • recommendation for the child provided by the child’s guardian ad litem <p>Fl. St. 39.810</p> <p>Florida provides the following factors to determine the best interests of the child in grandparent visitation cases:</p> <ul style="list-style-type: none"> • love, affection and other emotional ties • length and quality of the previous relationship • whether the grandparent established ongoing personal contact with the child • reasons cited by the respondent parent in ending contact or visitation

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • mental or emotional harm to the child • threat to the child of mental injury • mental, physical and emotional health of the child/grandparent • recommendation for the child provided by the child’s guardian ad litem • result of the psychological evaluation of the child • preference of the child • written testamentary statement by the deceased parent • Other factors that the court considers necessary to making its determination (Catch-all) <p>Fl. St. 752.011</p> <p>Florida provides the following factors to determine the best interests of the child in transferring the custody of the minor child to the prospective adoptive parent selected by the parent or adoption entity:</p> <ul style="list-style-type: none"> • permanency offered • established bonded relationship between the child and the current caregiver • stability of the potential adoptive home • sibling relationships • reasonable preferences of the child • whether a petition for termination of parental rights has been filed • what is the best for the child (Catch-all) • right of the parent to determine an appropriate placement for the child <p>Fl. St. 63.082</p>
Georgia	Yes	Georgia provides the following factors to determine the best interests of the child:

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • capacity and disposition of each parent to provide child with food, clothing, medical care, and day-to-day needs • capacity and disposition of each parent to give the child love, affection, and guidance, and to continue education of child • continuity and stability in the child's life and length of time child has lived in a stable, satisfactory environment • stability of the family unit of each parent and the strength of each parent's support system • evidence of family violence or abuse or criminal history of either parent • evidence of substance abuse by either parent • home environment of parent considering nurturance and safety of child rather than superficial or material factors • love and emotional ties between parent and child • love and emotional ties between child and his or her siblings • mental and physical health of each parent • parent's employment schedule and related flexibility or limitations of a parent to care for the child • parent's involvement, or lack thereof, in child's educational, social, and extracurricular activities • the child's home, school, and community record and history • any health or educational special needs of the child • parent's knowledge and familiarity of child and child's needs • parent's past performance and abilities for future performance of parenting responsibilities • parent's willingness and ability to facilitate close relationship with other parent • recommendation by court appointed custody evaluator or guardian ad litem • child's preferences (weight depends on child's age)

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>O.C.G.A. 19-9-3 (a) (3), (5)</p> <p>Additional factors that a judge may consider when the judge has made a finding of family violence:</p> <ul style="list-style-type: none"> • safety and well-being of child and parent/victim of family violence • perpetrator's history of causing physical harm or causing reasonable fear of same • parent's absence due to violence from other parent is not an abandonment of the child for the purposes of custody determination • family violence can't be refused for consideration merely because there has been no previous finding of family violence <p>O.C.G.A. 19-9-3 (a) (4)</p>
Guam	Yes	<p>Guam provides the following factors for determining the best interest of the child:</p> <ul style="list-style-type: none"> • child's wishes (if of sufficient age and capacity to reason) • physical, mental, moral and spiritual well-being of child • reports of public health department regarding child's welfare • parent with de facto custody in stable wholesome home who is fit and proper person • family violence <p>GU ST T. 19, § 8404</p>
Hawaii	Yes	<p>Hawaii provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • history of sexual or physical abuse by parent • history of neglect or emotional abuse by parent • overall quality of the parent-child relationship • history of caregiving or parenting by each parent prior and subsequent to a marital or other type of separation

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • parent's cooperation in developing and implementing plan to meet the child's needs, interests, and schedule • physical health needs of the child • emotional needs of the child • safety needs of the child • educational needs of the child • the child's need for relationships with siblings • parent's actions showing the child may maintain family connections through family events and activities • parent's actions showing the child's needs are separate from parent's needs • drug or alcohol abuse by parent • mental health of parent • conflict within the family • willful misuse of the protection from abuse process by parent to gain tactical advantage <p>Hawaii Revised Statutes Section 571-46(b)</p> <p>Hawaii also provides the following factors for consideration in making custody determinations:</p> <ul style="list-style-type: none"> • promotion of frequent, continuing, and meaningful contact of each parent with the child • the person (other than parents) who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person • child's wishes (if the child is of sufficient age and capacity to reason) • the results of an investigation and report concerning the care, welfare, and custody of the child (if ordered by the court)

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • testimony of expert or other person with skill, insight, knowledge, or experience to opine as to what is best for the physical, mental, moral, and spiritual well-being of the child • whether family violence has been committed by parent <p>Hawaii Revised Statutes Section 571-46(a)</p>
Idaho	Yes	<p>Idaho provides the following factors to determine the best interests of the child in determining custody, with the presumption being in favor of joint custody (unless parent is habitual perpetrator of domestic violence):</p> <ul style="list-style-type: none"> • adjustment of child to home, school, and community • character and circumstances of all individuals involved • disability of parent (parent has right to provide evidence regarding how adaptive equipment or supportive services will enable parenting responsibilities) • domestic violence, whether or not in child’s presence • interaction and interrelationship of child with parent(s) and siblings • promotion of continuity and stability in child’s life • wishes of the child • wishes of the child's parent or parents • whether relocation of child is in best interests of child (consider extent of child’s contact with parent(s), parent’s motives for relocating or opposing relocation, impact that the move would have on child’s relationship with noncustodial parent and extended family, and extent that the move would enhance the economic, emotional, and educational well-being of the custodial parent and the child). <p>Idaho Code 32-717; <i>Bartosz v. Jones</i>, 197 P.3d 310 (Idaho 2008) (relocation factors); <i>Hopper v. Hopper</i>, 167 P.3d 761 (Idaho 2007) (presumption in favor of joint custody)</p> <p>Idaho considers the following factors to determine the best interest of</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>the child in determining whether a parent’s parental rights should be terminated:</p> <ul style="list-style-type: none"> • child's need for stability and certainty • child's relationship with those currently caring for him or her and whether the child has improved under that care • parent's continuing problems with the law • parent's efforts to improve his or her situation • parent's history with substance abuse • parent's incarceration • parent's provision of financial support • stability and permanency of the home • unemployment of the parent <p><i>In re Doe</i>, 358 P.3d 77 (Idaho 2015); <i>Idaho Dep’t of Health & Welfare v. Doe</i>, 379 P.3d 1094 (Idaho 2016)</p>
Illinois	Yes	<p>Illinois provides the following factors to determine the best interests of the child when allocating parenting time:</p> <ul style="list-style-type: none"> • amount of time the parent spent performing caretaking functions within the 24 months prior to the petition (or since birth if less than 24 months old) • adjustment to home, school and the community • child’s needs • child’s relationships with parents and siblings and any other person who may affect child’s best interests • child’s wishes (taking into account child’s maturity and ability to express a reasoned and independent opinion) • distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • history of parent’s physical violence (or threat of physical violence) against the child or anyone else in the child’s household • child abuse or abuse of other member of the child’s household • parent’s conviction as sex offender or parent living with a convicted sex offender, and what if any treatment the offender has successfully participated in • parent’s ability and willingness to foster a relationship between the child and the other parent • parent’s wishes • parent’s willingness and ability to place the needs of the child ahead of his or her own needs • mental and physical health of the all individuals involved • prior agreements or course of conduct related to the caretaking functions • terms of parent’s military family care plan if parent is being deployed by US Armed Forces • whether a restriction on parenting time is appropriate as determined by the court because a parent engaged in conduct that seriously endangered the child • any other factor that the court expressly finds relevant <p>750 Ill. Comp. Stat. Ann. 5/602.7 (2016)</p> <p>Illinois provides the following factors to determine the best interests of the child when allocating decision-making authority:</p> <ul style="list-style-type: none"> • the child's wishes (considering maturity and reasoning ability) • adjustment to home, school and community • parents’ ability to cooperate in making decision , or level of conflict that may impact their ability to share decision-making • parents’ participation in past significant decision-making • prior agreement or course of conduct between the parents

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • wishes of the parents • child's needs • distance between the parents' residences, burdens of transporting child, child's schedule, and parents' ability to cooperate • parent's willingness to promote and encourage a relationship between the child and the other parent • physical violence or threat of physical violence directed against the child • child abuse or abuse of other member of the child's household • whether one of the parents is a sex offender, and if so, the nature of the offense and any successful treatment • any other factor the court finds relevant <p>750 Ill. Comp. Stat. Ann. 5/602.5 (2016)</p>
Indiana	Yes	<p>Indiana provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • age and sex of the child • child's adjustment to home, school, and community • domestic or family violence by either parent • evidence that the child has been cared for by a de facto custodian and, if evidence is sufficient: the wishes of the de facto custodian; the extent to which the child has been cared for, nurtured, and supported by the de facto custodian; the intent of the child's parent in placing the child with the de facto custodian; and the circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent to seek employment, work, or attend school • interaction and interrelationship of the child with his/her parents, siblings, and any other person who may significantly affect his/her best interest

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • mental and physical health of all individuals involved • wishes of the child, with more consideration given if the child is 14 years old or older • wishes of the parents <p>Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5</p> <p>Indiana considers the following factors in determining whether grandparent visitation rights are in the best interests of the child:</p> <ul style="list-style-type: none"> • whether the grandparent has had or has attempted to have meaningful contact with the child • child's perception of whether visitation by a grandparent is in the best interests of the child <p>Ind. Code § 31-17-5-2</p>
Iowa	Yes	<p>Iowa provides the following factors to determine the best interests of the child in making a custody determination:</p> <ul style="list-style-type: none"> • geographic proximity of the parents • history of domestic abuse (in which case relocation of other parent is not weighed against that parent in the awarding of custody or visitation) • parent's denial of child's opportunity for maximum continuing contact with the other party, without just cause • whether parent would be a suitable custodian for the child • whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents • whether the parents can communicate with each other regarding the child's needs • whether both parents have actively cared for the child before and since the separation • whether each parent can support the other parent's relationship with the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • whether the safety of the child, other children, or other parent will be jeopardized by awarding of joint custody or unsupervised or unrestricted visitation • whether a parent has allowed a person control over or unsupervised access to a child after knowing such person is required to register as a sex offender • whether parents agree or oppose joint custody • wishes of the child, considering the child’s age and maturity <p>Iowa Code Ann. § 598.41 (“Custody of children”); § 598.1 (“Definitions”)</p> <p>Iowa considers the following factors to determine the best interests of the child in deciding whether to award grandparent visitation rights:</p> <ul style="list-style-type: none"> • age of child • conviction or guilty plea of grandparent for criminal offense involving any act resulting in child being abused or neglected • geographical location of the grandparent’s residence and the distance between the grandparent’s residence and the child’s residence • health and safety of the child • mental and physical health of all parties • prior interaction and interrelationships of the child with the child’s parents, siblings, and other persons related by consanguinity or affinity, compared to the child’s relationship with the grandparent • time available to child and parent, considering the parent’s employment schedule, the child’s school schedule, the amount of time that will be available for the child to spend with siblings, and the child’s and the parent’s holiday and vacation schedules • wishes and concerns of the child • wishes and concerns of the child’s parents • any other factor in the best interest of the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>Iowa Code Ann. § 600C.1</p> <p>Iowa considers the following factors to determine the best interests of the child in deciding whether to terminate parental rights:</p> <ul style="list-style-type: none"> • abandonment • failure to act as parent • failure to pay child support • history of arrests • history of alcohol/substance abuse • incarceration of parent • sexual abuse of child • whether close relationship between parent and child exists <p><i>In Interest of J.L.W.</i>, 523 N.W.2d 622 (Iowa Ct. App. 1994); <i>In re A.M.</i>, 670 N.W.2d 430 (Iowa Ct. App. 2003); <i>In re G.A.</i>, 826 N.W.2d 125 (Iowa Ct. App. 2012); <i>In Interest of D.E.E., Jr.</i>, 472 N.W.2d 628 (Iowa Ct. App. 1991)</p>
Kansas	Yes	<p>Kansas provides the following factors to determine custody, residency and parenting time:</p> <ul style="list-style-type: none"> • ability of parties to communicate, cooperate, and manage parental duties • adjustment of child to his/her home, school, and community • age of child • desires of a child of sufficient age and maturity • desires of parents • domestic abuse • emotional and physical needs of the child • interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests • location of the child's school

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • location of the parties' residence and places of employment • parent's role and involvement with the child before and after separation • school activity schedule of the child • whether parents have entered into a parenting plan (which is presumed to be in best interests of the child) • whether parent is a registered sex offender or is residing with someone who is a registered sex offender • whether parent has been convicted of child abuse or is residing with someone who has been convicted of child abuse • willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent • work schedule of the parties <p>Kan. Stat. Ann. § 23-3203 ("Factors considered in determination of child custody, residency and parenting time"), Kan. Stat. Ann. § 23-3202</p>
Kentucky	Yes	<p>Kentucky provides the following factors to determine the best interests of the child in making a custody determination:</p> <ul style="list-style-type: none"> • adjustment of child to his/her home, school, and community • circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent was previously prevented from seeking custody due to domestic violence and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school • domestic violence evidence • extent to which the child has been cared for, nurtured, and supported by any de facto custodian • intent of parent(s) in placing the child with a de facto custodian

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • interaction and interrelationship of the child with his parent(s), siblings, and any other person who may significantly affect the child's best interests • mental and physical health of all individuals involved • wishes of the child • wishes of the parent(s) and any de facto custodian <p>Ky. Rev. Stat. Ann. § 403.270 (2)</p> <p>Kentucky provides the following factors to determine the best interests of the child in determining whether to terminate a parent's parental rights:</p> <ul style="list-style-type: none"> • abuse or neglect toward any child in the family • efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period, considering the child's age • if the child has been placed with the cabinet, whether the cabinet has made reasonable efforts to reunite the child with the parent • mental illness or intellectual disability of parent as certified by a qualified mental health professional, which renders the parent unable to care for the needs of the child for extended periods • Payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so. • physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered <p>Ky. Rev. Stat. Ann. § 625.090 (3)</p> <p>Kentucky provides the following factors to determine the best interests of the child in determining whether to award visitation rights to grandparents:</p> <ul style="list-style-type: none"> • amount of time the grandparent and the child spend together

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • effect granting visitation would have on the child's relationship with the parents • motivation of the adults participating in the grandparent visitation proceedings • nature and stability of the relationship between the child and the grandparent • physical and emotional health of all adults involved • potential detriments and benefits of the child from granting visitation • stability of the child's living and schooling arrangements • wishes and preferences of the child <p><i>Nein v. Columbia</i>, 517 S.W.3d 492 (Ky. Ct. App. 2017)</p>
Louisiana	Yes	<p>Louisiana provides the following factors to determine child custody:</p> <ul style="list-style-type: none"> • capacity of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child • capacity of each party to provide the child with food, clothing, medical care, and other material needs • child's preferences, if the court deems the child to be of sufficient age to express a preference • distance between the respective residences of the parties • home, school, and community history of the child • length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment • love, affection, and other emotional ties between each party and the child • mental and physical health of each party • moral fitness of each party

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • permanence, as a family unit, of the existing or proposed custodial home or homes • each person’s role in rearing the child • willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party <p>La. Civ. Code Ann. art. 134</p> <p>Louisiana provides the following factors to determine disputes regarding child relocation:</p> <ul style="list-style-type: none"> • nature of relationship of child with the person proposing relocation and with the non-relocating person, siblings, and others • age, developmental stage, needs of the child, and impact of relocation on child's physical, educational, and emotional development • feasibility of preserving relationship between non-relocating person and child • child's wishes, taking into consideration child's age and maturity • whether person opposing relocation has an established pattern of promoting or thwarting child's relationship with other party • effect on child's general quality of life • reasons for seeking or opposing the relocation • employment and economic circumstances of each person • extent to which the objecting person has fulfilled his financial obligations to the person seeking relocation. • feasibility of a relocation by objecting person • history of substance abuse, harassment, or violence • any other factors affecting the best interest of the child <p>La. Civ. Code Ann. art. 355.14</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>Louisiana provides the following factors to determine disputes regarding grandparent (or other relative) visitation rights:</p> <ul style="list-style-type: none"> • relationship between child and relative • needs of child which can best be provided by relative • wishes of child if of sufficient maturity • willingness of the relative to encourage a close relationship between the child and his parent or parents • mental and physical health of the child and the relative <p>La. Civ. Code Ann. art. 136</p>
Maine	Yes	<p>Maine provides the following factors to determine the best interests of the child in a custody dispute:</p> <ul style="list-style-type: none"> • adjustment to home, school, and community • child's age • capacity of each parent to allow frequent and continuing contact between the child and the other parent • capacity of each parent to cooperate in child care • all other factors bearing on the physical and psychological well-being of the child • co-inhabitants of parent and their criminal backgrounds • criminal history of parent (sex offense or sexually violent offense) • duration and adequacy of the child's current living arrangements • effect on child if one parent has sole authority • existence of domestic abuse and how that may affect the child • any history of child abuse by a parent • infants (under one year) - whether the child is being breast-fed • methods for assisting parental cooperation • motivation and capacity of the parties involved to care for the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • preference of the child (if old enough to express a meaningful preference) • relationship of the child with the child's parents or other caretakers • stability of the proposed living arrangements • one parent's prior misuse of the protection from abuse process to gain a tactical advantage in determining parental rights <p>ME ST T. 19-A § 1653</p> <p>Maine provides the following factors to determine the best interests of the child in deciding whether to terminate parental rights:</p> <ul style="list-style-type: none"> • child's age • child's attachments to relevant persons • periods of attachments and separation • child's ability to integrate into a substitute placement or back into the parent's home • child's physical and emotional needs • wishes of child <p>ME ST T. 22 § 4055</p> <p>Maine provides the following factors to determine whether it is in the best interest of the child to grant visitation rights to a grandparent:</p> <ul style="list-style-type: none"> • child's age • child's relationship with grandparents • child's wishes if old enough to express • child's current living arrangements and desirability of maintaining continuity • stability of any proposed living arrangements • motivation of the parties involved • capacity to give child love, affection and guidance

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • child's adjustment to home, school and community • capacity of parent and grandparent to cooperate in child care • methods of assisting cooperation and resolving disputes and each person's willingness to use those methods • Any other factor bearing on child's best interest • existence of a grandparent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203. <p>ME ST T. 19-A § 1803</p> <p>Maine provides the following factors to determine the best interests of child in adoption decision:</p> <ul style="list-style-type: none"> • love, affection and other emotional ties existing between child and adopting person or persons, biological parent or biological parents or putative father • capacity and disposition of adopting person or persons, biological parent or biological parents or putative father to educate and give child love, affection and guidance and to meet child's needs • capacity and disposition of adopting person or persons, biological parent or biological parents or putative father to provide child with food, clothing and other material needs, education, permanence and medical care or other remedial care <p>ME ST T. 18-A § 9-308</p>
Maryland	Yes	<p>Through case law, Maryland courts consider the following factors to determine the best interests of the child, among others:</p> <ul style="list-style-type: none"> • fitness of the parents • character and reputation of the parties • parents' wishes and any agreement between them • the potential for maintaining family relations • child's wishes (if of suitable age and discretion)

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • material opportunities affecting the future life of the child • age, health, and sex of the child • the residences of the parents and the opportunity for visitation • the length of separation of the parents • whether there was any prior voluntary abandonment or surrender of custody of the child <p><i>Montgomery County v. Sanders</i>, 38 Md. App. 406 (1977)</p> <p>The court's discretion to determine custody is limited if there is evidence of abuse or neglect.</p> <p>MD Family § 9-101</p> <p>Maryland provides the following factors to determine whether terminating a parent's rights is in child's best interests:</p> <ul style="list-style-type: none"> • nature and extent of services offered to the parent before the child's placement • parent's effort to adjust the parent's circumstances, condition, or conduct to make it in the child's best interests to be returned to parent's home • extent to which the parent has maintained regular contact with child and caregivers • parent's contribution to child's care and support, if the parent is financially able to do so • parental disability • whether additional services would be likely to bring about a lasting parental adjustment • abuse or neglect of the child or a minor • substance abuse • conviction of crime of violence against any child or other parent of child, or aiding or abetting same • involuntarily loss of parental rights to a sibling of child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • child's emotional ties with and feelings toward parents, siblings, and others who may affect the child's best interests • the child's adjustment to home, school, community, and placement • the child's feelings about severance of the parent-child relationship • likely impact of terminating parental rights on child's well-being <p>MD FAMILY § 5-323</p> <p>Through case law, Maryland courts consider the following factors to determine grandchild's best interests for purposes of determining whether to award grandparental visitation rights, among others:</p> <ul style="list-style-type: none"> • nature and stability of child's relationships with parents • nature and substantiality of relationship between child and grandparent, taking into account frequency of contact, regularity of contact and amount of time spent together • potential benefits and detriments to child of granting visitation order • any effect grandparental visitation would have on child's attachment to its nuclear family • physical and emotional health of adults involved; and stability of child's living and schooling arrangements <p><i>Fairbanks v. McCarter</i>, 330 Md. 39. (1993)</p> <p>Maryland provides the following factors to determine determining the permanency plan that is in the best interests of child in an out-of-home placement:</p> <ul style="list-style-type: none"> • child's ability to be safe and healthy in the home of child's parent • child's attachment and emotional ties to the child's natural parents and siblings • child's emotional attachment to the child's current caregiver and the caregiver's family

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • length of time the child has resided with the current caregiver • potential emotional, developmental, and educational harm to the child if moved from child's current placement • potential harm to the child by remaining in State custody for an excessive period of time. <p>MD FAMILY § 5-525</p> <p>Maryland provides the following factors to determine whether it is in the best interests of a prospective adoptee to terminate a parent's rights by nonconsensual adoption:</p> <ul style="list-style-type: none"> • primary consideration to the health and safety of child • the report required under § 5-3B-16, which includes summaries of child's emotional ties with and feelings toward parents, siblings, and others who may affect best interests significantly, and child's adjustment to home school and community <p>MD FAMILY § 5-3B-22, MD FAMILY § 5-3B-16</p>
Massachusetts	Yes	<p>Massachusetts provides the following factors when determining the child's best interests when determining custody if child is born out of wedlock:</p> <ul style="list-style-type: none"> • preference for primary caretaker • whether parents have established a personal and parental relationship and exercised parental responsibility in child's best interests • parent with whom child has resided within prior six months • abuse toward a parent or child (as defined under state law) • family drug or alcohol abuse • whether a parent has deserted the child • whether the parties have a history of being able and willing to cooperate in matters concerning the child • other relevant factors <p>MA ST 208 § 32 and 209C § 10</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
Michigan	Yes	<p>Michigan provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • capacity of parties to give child love, affection, and guidance, education and raising the child and his/her religion or creed • capacity of parties to provide child with food, clothing, and medical care • domestic violence • home, school, and community record of child • emotional ties between parents and child • length of time child has lived in a stable environment • mental and physical health of parties involved • moral fitness of parties involved • permanence, as a family unit, of the existing or proposed home • preference of child if court considers child to be of sufficient age • willingness of each party to facilitate a relationship between non-custodial parent(s) (excluding protecting child from sexual assault or domestic violence) • any other factor considered relevant by the court <p>MI ST 722.23, Sec. 3</p>
Minnesota	Yes	<p>Minnesota provides the following factors for determining the best interests of the child:</p> <ul style="list-style-type: none"> • capacity and disposition of parties to give child love, affection, and guidance • capacity and disposition of parties to continue raising child in the child's culture and religion or creed, if any • child's adjustment to home, school, and community • child's cultural background • child's primary caregiver • effect of domestic abuse on child as defined in state law

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • interaction and interrelationship of child with each party and others • intimacy of relationship between each party and the child • length of time child has lived in stable, satisfactory environment • mental and physical health of all individuals involved (disabilities defined in section 363A.03, subdivision 12 shall not be determinative) • permanence of the existing or proposed custodial home • preference of the child, if the court deems the child to be of sufficient age • wishes of the parties <p>Minnesota provides the following additional factors if joint custody is sought:</p> <ul style="list-style-type: none"> • ability of parties to cooperate in child rearing methods for resolving disputes of major decisions • whether domestic abuse has occurred • whether it would be detrimental to the child if one party were to have sole authority <p>MN ST § 257C.04(a)</p>
Mississippi	Yes	<p>Mississippi provides the following factors to determine the best interests of a child when awarding custody:</p> <ul style="list-style-type: none"> • rebuttable presumption against awarding sole or joint custody to parent with history of domestic violence • rebuttable presumption that joint custody is in child's best interest <p>Miss. Code. Ann. § 93-5-24 (9)(a) (ii) (iii); § 93-5-24 (4)</p> <p>Courts consider the following additional factors:</p> <ul style="list-style-type: none"> • age • health

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • sex • determination of the parent that has had the continuity of care prior to the separation • which potential custodian has the best parenting skills, and which has the willingness and capacity to provide primary child care • employment of parent and responsibilities of that employment • physical and mental health and age of parent • emotional ties of parent and child • moral fitness of parent • home, school and community record of the child • preference of the child (when age sufficient to express a preference) • stability of the home environment and employment of each parent • other factors relevant to the parent-child relationship <p><i>Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983)</i></p>
Missouri	Yes	<p>Missouri provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • wishes of the child's parents • proposed parenting plan submitted by both parties • needs of the child for a frequent, continuing and meaningful relationship with both parents • the interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests • ability and willingness of parents to actively perform their functions as mother and father for the needs of the child • which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • adjustment to home, school, and community • mental and physical health of all individuals involved, including any history of abuse • intention to relocate child's principal residence • wishes of the child • other relevant factors <p>Mo. Ann. Stat. § 452.375.2 (West 2017)</p>
Montana	Yes	<p>Montana provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • wishes of the parents • wishes of the child • interaction and relationships with parents, siblings, and any other party affecting best interests • adjustment to home, school, and community • mental and physical health of all involved • history or threat of physical abuse to the other parent or child • conviction of certain crimes, such as homicide, sexual assault, endangering child's welfare • chemical dependency or chemical abuse by a parent • continuity and stability of care • developmental needs of child • failure to pay birth-related costs • failure to provide financial support • frequent contact with both parents • vexatious parenting plan amendment actions • other relevant factors <p>Mont. Code Ann. § 40-4-212(1) (West 2017)</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
Nebraska	Yes	<p>Nebraska provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • general health, welfare and social behavior of child • history of abuse of child or domestic intimate partner • relationship with each parent • wishes of the child if of age of comprehension and wishes based on sound reasoning • other relevant factors <p>Neb. Rev. Stat. Ann. § 43-2923(6) (West 2017)</p> <p>Also, courts may consider other factors such as:</p> <ul style="list-style-type: none"> • age, sex, and health of parents and child • effect of continuing or disrupting existing relationship • environments offered by each parent • attitude and stability of parents' character • moral fitness of parents • parents' sexual conduct • parents' capacity to provide physical care and satisfy educational needs of the child • emotional relationship between child and parents <p><i>Schrag v. Spear</i>, 858 N.W.2d 865, 877 (Neb. Ct. App. 2015)</p> <p>In making child custody modification determination, courts may consider other factors such as:</p> <ul style="list-style-type: none"> • moral fitness of the child's parents, including the parents' sexual conduct • respective environments offered by each parent • emotional relationship between child and parents • age, sex, and health of child and parents

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • effect on the child as the result of continuing or disrupting an existing relationship • attitude and stability of each parent's character • parental capacity to provide physical care and satisfy the educational needs of child <p><i>Kenner v. Battershaw</i>, 879 N.W.2d 409 (Neb. Ct. App. 2016)</p> <p>In determining whether best interests of child are served by continued placement with prospective adoptive parents, courts may consider factors such as:</p> <ul style="list-style-type: none"> • prospective adoptive parents' ability to provide for the child's emotional and intellectual development • quality of the prospective adoptive parents' home environment • length of placement of the child • the financial ability of the prospective adoptive parents to provide for the child <p><i>Brett M. ex rel. Nebraska Children's Home Soc. v. Vesely</i>, 757 N.W.2d 360 (Neb. 2008)</p> <p>Nebraska provides the following factors to determine whether best interests of child are served by granting caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship:</p> <ul style="list-style-type: none"> • emotional, physical, and developmental needs of child • child's opinion or preference • level of involvement and the extent of predeployment parenting responsibility exercised by the nonparent • quality of the relationship between child and nonparent • strength of the minor child's ties to nonparent • extent to which the delegation would interfere or support child's existing school, sports, and extracurricular activities • age, maturity, and living conditions of nonparent

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> likelihood that allowing the delegation would increase or decrease the hostilities between the parties involved <p>NE ST § 43-4618</p>
Nevada	Yes	<p>Nevada provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> ability of child to maintain relationships with any siblings history of abuse or neglect or the child or sibling history of domestic violence history of abduction of child or of any other child level of conflict between parents and ability of parents to cooperate to meet child's needs mental and physical health of parents nomination of a guardian by a parent parent more likely to allow continued relationship with other parent physical, developmental, and emotional needs of child relationship of child with each parent wishes of the child if child is of sufficient age and capacity <p>Nev. Rev. Stat. Ann. § 125C.0035. (West 2017).</p> <p>See also: <i>Druckman v. Ruscitti</i>, Supreme Court of Nevada, June 26, 2014, 327 P.3d 511, 130 Nev. Adv. Op. 50; <i>Rennels v. Rennels</i>, Supreme Court of Nevada, August 4, 2011, 127 Nev. 564, 257 P.3d 396, 127 Nev. Adv. Op. 49.</p> <p>Nevada provides the following factors to determine whether best interests of child are served by granting caretaking authority of a child to a nonparent:</p> <ul style="list-style-type: none"> love, affection and other emotional ties existing between nonparent and child capacity and disposition of the nonparent to give child love, affection and guidance and serve as a role model; provide the

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>child with food, clothing and other material needs; provide health care or alternative health care</p> <ul style="list-style-type: none"> • prior relationship between nonparent and child • moral fitness of nonparent • mental and physical health of nonparent • child's wishes if of sufficient maturity • willingness and ability of nonparent to facilitate and encourage a close and substantial relationship between child and his or her deploying parent, other parent and family members • medical and other health needs of child which are affected by grant of caretaking authority • support provided by nonparent • objection by other parent to grant of caretaking authority to nonparent <p>Nev. Rev. Stat. Ann. § 125C.00667. (West 2017).</p>
New Hampshire	Yes	<p>New Hampshire provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • ability of each parent to provide nurture, love, affection, and guidance, and food, clothing, shelter, medical care and safety • ability, disposition and support of each parent to facilitate contact, communication and a relationship between parents and between child and other parent • adjustment to school and community • child's developmental needs and parents' ability to meet them • history of abuse • incarceration of parent • the relationship of the child with each parent • relationship of child with any other person significantly affecting child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • child’s wishes (if of sufficient maturity and not based on improper influences) • other factors court determines are relevant <p>N.H. Rev. Stat. Ann. § 461-A:6 (West 2017).</p>
New Jersey	Yes	<p>New Jersey provides the following factors to determine the best interests of the child in a custody dispute:</p> <ul style="list-style-type: none"> • age and number of the children • geographical proximity of the parents’ homes • history of domestic violence • interaction and relationship of the child with parents and siblings • needs of the child • parental fitness • parents’ ability to agree, communicate and cooperate in matters relating to the child • parents’ employment responsibilities • parents’ willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse • preference of the child when of sufficient age • quality and continuity of child’s education • safety of the child and the safety of either parent from physical abuse by the other parent • stability of the home environment offered • time spent with the child • preference against person convicted of sexual assault or endangering the welfare of a child, gross immorality or unfitness, neglect to provide the child with proper protection, maintenance and education, vicious, careless or dissolute habits as to endanger the welfare of the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>N.J.S.A. §§ 9:2-4; 9:2-4.1; 9:2-9</p> <p>New Jersey provides the following factors to determine the best interests of the child in an adoption dispute:</p> <ul style="list-style-type: none"> • parent's willingness and assumption of parenting duties • parent's fulfilment of financial obligations for care of child • parent's interest in child • parent's effort to maintain communication with child • parent's maintenance of place of importance in child's life <p>N.J.S.A. §§ 9:3-46</p>
New Mexico	Yes	<p>New Mexico provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • ability of each parent to provide adequate care • adjustments to home, school, and community • child's ability to maintain relationships with both parents and benefits of doing so • geographic distance between parents • history of domestic abuse • mental and physical health of all individuals involved • relationship with parents, siblings, and any other person significantly affecting best interests • parents' willingness to accept parenting responsibilities • parents' ability to allow each other to provide care without intrusion, and to cooperate regarding child's needs • suitability of parenting plan to allow joint custody • wishes of the child • wishes of the parents • presumption of joint custody <p>N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017)</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
New York	Yes	<p>New York provides the following factors to determine the best interests of the child in a custody dispute:</p> <ul style="list-style-type: none"> • effect of domestic violence • conviction of one or more of sexual offenses, including rape in the first or second degree, course of sexual conduct against a child in the first degree, or predatory sexual assault • conviction of murder (unless victim of domestic violence, or murder related to domestic violence) • child’s or guardian’s consent to custody • military service by parent • other facts and circumstances as the court deems relevant <p>N.Y. Domestic Relations Law § 240 (McKinney 2016)</p> <p>Courts have also considered the following relevant factors:</p> <ul style="list-style-type: none"> • “what will best promote [the child’s] welfare and happiness” - <i>Eschbach v. Eschbach</i>, 56 N.Y.2d 167, 171, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982) (citations and internal quotation marks omitted) • prior agreement of the parties - <i>Eschbach v. Eschbach</i>, 56 N.Y.2d 167, 171-72, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982) parental employment and availability to care for child - <i>Jacobs v. Jacobs</i>, 117 A.D.2d 709, 498 N.Y.S.2d 852 (2nd Dept. 1986); <i>Matter of FF v. FF</i>, 37 A.D.2d 893, 325 N.Y.S.2d 291 (3rd Dept. 1971) • ability to provide for the child's emotional and intellectual development, the quality of the home environment, and the parental guidance to be provided - <i>Matter of Louise E.S. v. W. Stephen S.</i>, 64 N.Y.2d 946, 488 N.Y.S.2d 637, 477 N.E.2d 1091 (1985); <i>Eschbach v. Eschbach</i>, 56 N.Y.2d 167, 172, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982) • parent’s mental and physical health - <i>King v. King</i>, 243 A.D. 780, 277 N.Y.S. 653 (2nd Dept. 1935); <i>Janus v. Janus</i>, 239 A.D.2d 712, 657 N.Y.S.2d 256 (3rd Dept. 1997) • child’s individual needs and desires/preference, considering the age and maturity of the child and the potential for influence

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>having been exerted on the child - <i>Eschbach v. Eschbach</i>, 56 N.Y.2d 167, 172-73, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982)</p> <ul style="list-style-type: none"> • keeping siblings together - <i>Eschbach v. Eschbach</i>, 56 N.Y.2d 167, 173, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982) • each parent's credibility, conduct/performance, stability, lifestyle, morality, financial status, professional achievements, and personal associations. See, e.g., <i>Church v. Church</i>, 238 A.D.2d 677, 656 N.Y.S.2d 416 (3rd Dept. 1997), <i>Wallinger v. Wallinger</i>, 96 A.D.2d 988, 466 N.Y.S.2d 826 (3rd Dept. 1983); <i>McIntosh v. McIntosh</i>, 87 A.D.2d 968, 451 N.Y.S.2d 200 (3rd Dept. 1982); <i>Salk v. Salk</i>, 89 Misc.2d 883, 393 N.Y.S.2d 841 (Sup.Ct. N.Y. County 1975), affirmed, 53 A.D.2d 558, 385 N.Y.S.2d 1015 (1st Dept. 1976)
North Carolina	Yes	<p>North Carolina provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • acts of domestic violence between the parties • safety of the child • safety of either party from domestic violence by the other party • joint custody considered on parents' request • impact on child of a military service parent's past or possible future <p>N.C.G.S.A. § 50-13.2</p> <p>Courts have provided the following factors for determining the child's best interest when deciding whether to terminate parental rights:</p> <ul style="list-style-type: none"> • child's age • likelihood of adoption • ability to establish a permanent plan for the child • bond between child and parent • relationship between child and proposed adoptive parent, guardian, custodian, or other permanent placement • any other consideration

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p><i>In the Matter of J.M., No. COA09-1285 (N.C. App. 2010), citing In re S.C.R. ___ N.C. App. ___, 679 S.E.2d 905, 911-912 (2009).</i></p>
North Dakota	Yes	<p>North Dakota provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment • child's developmental needs and the ability of each parent to meet those needs • evidence of domestic violence (as defined in state law) or sexual abuse • existing ties between parent and child and ability to provide the child with nurture, -love, affection, and guidance • home, school, and community records of the child and the potential effect of any change • the making of false allegations not made in good faith, by one parent against the other, of harm to a child • mental and physical health of the parents, as that health impacts the child • moral fitness of the parents, as that fitness impacts the child • preference of the mature child • stability of home environment including child's interaction with other individuals in the home • willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child • military service parent's past or possible future deployment • any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute <p>N.D.C.C. § 14-09-06.2, 14-09-29, 14-09-31</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
Northern Mariana Islands	Yes	<p>Northern Mariana Islands provides the following factors in determining custody of a child:</p> <ul style="list-style-type: none"> • domestic or family violence • safety and well-being of child • history of causing harm or fear to another • absence or relocation of a parent due to an act of violence of the other parent is not a factor in determining custody or visitation for absent parent • other factors superior court deems relevant <p>8 N. Mar. I Code §§ 1931, 1932, 1933</p>
Ohio	Yes	<p>Ohio provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • all relevant factors • child's adjustment to the child's home, school, and community • child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest • geographic location of the parents and whether out-of-state • mental and physical health of all the parties • history of making child support payments • history of child abuse, child neglect, spouse abuse, or other domestic violence (or parental kidnapping) • parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights and history of honoring same • wishes of the parents • wishes of the child • ability of the parents to cooperate and make decisions jointly • ability of parent to encourage the sharing of love, affection, and contact between child and parent

Jurisdiction	Governed by Statute	Regulatory Requirement
		31 Ohio Rev. Code Ann. § 3109.04(C), (F)
Oklahoma	Yes	<p>Oklahoma provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • domestic violence, stalking, or harassment by parent (or by person living with parent) • safety and well-being of the child and of the parent who is the victim of domestic violence or stalking behavior • which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent • sex offender registration (or registration of someone living with parent) • criminal conviction of certain specified crimes or recent domestic abuse conviction (or conviction of person living with parent) • alcohol and drug dependency • other relevant facts <p>Okla. Stat. tit. 43, §§ 109, 112, 112.5</p>
Oregon	Yes	<p>Oregon provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • abuse of one parent by the other • desirability of continuing an existing relationship • emotional ties between the child and other family members • interest of the parties in, and attitude toward, the child • preference for the primary caregiver of the child, if the caregiver is deemed fit by the court • willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child (except in cases of sexual assault or abuse) <p>ORS § 107.137</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
Pennsylvania	Yes	<p>Pennsylvania provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • party more likely to encourage and permit frequent and continuing contact between the child and another party • level of conflict between the parties and the willingness and ability of the parties to cooperate with one another, including any attempts by a parent to turn the child against the other parent (except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm) • availability to care for the child or ability to make appropriate child-care arrangements • availability of extended family • history of drug or alcohol abuse of a party or member of a party's household • mental and physical condition of a party or member of a party's household • history of child abuse or involvement with protective services • need for stability and continuity in the child's education, family life and community life • parental duties performed by each party on behalf of the child • party more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child and to maintain a loving, stable, consistent and nurturing relationship with the child • proximity of the residences of the parties • sibling relationships • well-reasoned preference of the child, based on the child's maturity and judgment • any other relevant factors may also be considered <p>23 Pa.C.S. § 5328</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>Pennsylvania provides the following factors for determining whether an agreement for continuing contact is in the best interest of the child:</p> <ul style="list-style-type: none"> • length of time that the child has been under actual care, custody and control of a person other than a birth parent and related circumstances • interaction and interrelationship of the child with birth relatives and other persons who routinely interact with the birth relatives and may significantly affect the child's best interests • any other relevant factor <p>23 Pa. Stat. and Cons. Stat. Ann. § 2735 (West)</p>
Puerto Rico	Yes	<p>Puerto Rico provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • mental health of all involved • level of responsibility or moral integrity shown by each parent • history of domestic abuse • capability of each parent to satisfy emotional, financial, and moral needs of child • background of each parent with respect to their children before the divorce, dissolution, or separation of an unmarried couple • specific needs of each child whose custody is in dispute • relationship of child with parents, siblings, and other family members • capability and will of parents to assume responsibility of raising children jointly • if the location and distance between both parents' homes would affect the education of minor • ability of parents to communicate directly or by using alternative mechanisms • any other valid or pertinent criteria • acts and omissions of a parent that could potentially corrupt the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • addiction to drugs or alcohol • history of child abuse, sexual abuse, or domestic violence • imprisonment • parent's lack of interest in custody of the child • parent's suffering of a physical or intellectual disability that prevents adequate care of child <p>P.R. Leyes An. tit. 32, § 3185; 3187 (2017)</p>
Rhode Island	No	<p>Under Rhode Island case law, the factors the court must consider are the following:</p> <ul style="list-style-type: none"> • the child's adjustment to the child's home, school, and community • the interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest • the mental and physical health of all individuals involved • the moral fitness of the child's parents • the reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference • the stability of the child's home environment • the willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent • the wishes of the child's parent or parents regarding the child's custody <p><i>Pettinato v. Pettinato</i>, 582 A.2d 909, 913-14 (R.I. 1990)</p> <p>Rhode Island considers the following when determining whether grandparents' visitation rights are in the child's best interests:</p> <ul style="list-style-type: none"> • relationship between the child and the grandparent

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • amount of time the grandparent and child spent together • potential detriments and benefits to the child from granting visitation • potential effect of granting visitation on the parent-child relationship • preferences of the grandchild who is of sufficient intelligence, understanding, and experience • reasons that the parent(s) believe that it is not in their child's best interests to have visitation with the grandparent(s) <p>15 R.I. Gen. Laws Ann. § 15-5-24.3 (West)</p>
South Carolina	Yes	<p>South Carolina provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • ability of each parent to be actively involved in the life of the child • actions of each parent to encourage the continuing parent-child relationship between the child and the other parent, including compliance with court orders • manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute • capacity and the disposition of the parents to understand and meet the needs of the child • adjustment to home, school, and community environments • child's cultural and spiritual background • effort by one parent to disparage the other parent in front of the child • mental and physical health of all individuals involved (except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child) • past and current interaction and relationship of the child with each parent, the child's siblings, and any other person, including

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>a grandparent who may significantly affect the best interest of the child</p> <ul style="list-style-type: none"> • preferences of each child • stability of the child’s existing and proposed residences • temperament and developmental needs of the child • whether the child or a sibling of the child has been abused or neglected • whether one parent has perpetrated domestic violence or child abuse and the effect on the child • whether one parent has relocated more than one hundred miles from the child’s primary residence in the past year (unless the parent relocated for safety reasons) • wishes of the parents as to custody • other factors as the court considers necessary <p>S.C. Code Ann. § 63-15-240(B)</p>
South Dakota	No	<p>According to South Dakota case law, courts may consider the following factors:</p> <ul style="list-style-type: none"> • which parent is better equipped to provide for the child's temporal, mental and moral • who can provide a stable and consistent home environment • who is more committed and involved in parenting the child • if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in deciding custody • where there is no evidence that a parent's marital misconduct has a harmful effect on a child, it should not be taken into account in awarding custody • siblings should not be separated absent compelling circumstances <p><i>Fuerstenberg v. Fuerstenberg</i>, 1999 SD 35, N.W.2d 798, 1999 S.D. Lexis 43 (S.D. 1999)</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
Tennessee	Yes	<p>Tennessee provides the following factors to determine the best interests of the child in a custody dispute:</p> <ul style="list-style-type: none"> • character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child • continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment • degree to which a parent has been the primary caregiver • disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care • each parent's employment schedule • emotional and developmental needs of the child • physical or emotional abuse of the child, other parent or any other person • child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities • love, affection, and emotional ties existing between each parent and the child • moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child • performance of parenting responsibilities, including the willingness and ability to facilitate and encourage a close and continuing parent-child relationship with both parents • preference (if 12 years of age or older; the court may hear the preference of a younger child upon request) • refusal to attend a court ordered parent education seminar • strength, nature, and stability of the child's relationship with each parent (including whether one parent has performed the majority of parenting responsibilities relating to the daily needs of the child)

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • any other factors deemed relevant may also be considered <p>Tenn. Code Ann. § 36-6-106(a)</p> <p>Tennessee provides the following factors to determine the best interests of the child in a dispute regarding grandparent visitation:</p> <ul style="list-style-type: none"> • relationship between child and grandparent • existing emotional ties of child to grandparent • wishes of child if of sufficient maturity • effect of hostility between grandparent and parent and the willingness of the grandparent, except in case of abuse, to encourage a close relationship between child and parent • good faith of grandparent in filing the petition • time-sharing arrangement that exists between the parents with respect to the child • fact that grandparents requesting visitation are the parents of a deceased or missing parent • any unreasonable deprivation of the grandparent's opportunity to visit • whether grandparent is seeking to maintain existing relationship with child • whether awarding grandparent visitation would interfere with the parent-child relationship • a court finding that the child's parent or guardian is unfit <p>Tenn. Code Ann. § 36-6-307</p>
Texas	Yes	<p>Texas provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • child's age and physical and mental vulnerabilities • frequency and nature of out-of-home placements • history of abusive or assaultive conduct by the child's family or others who have access to the child's home

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • history of substance abuse by the child’s family or others who have access to the child’s home • magnitude, frequency, and circumstances of the harm to the child • results of psychiatric, psychological, or developmental evaluations of the child, the child’s parents, other family members, or others who have access to the child’s home • whether the child has been the victim of repeated harm after the initial report and intervention by the department • whether the child is fearful of living in or returning to the child’s home • whether an adequate social support system consisting of an extended family and friends is available to the child • whether the child’s family demonstrates adequate parenting skills, including providing the child and other children under the family’s care with (A) minimally adequate health and nutritional care; (B) care, nurturance, and appropriate discipline consistent with the child’s physical and psychological development; (C) guidance and supervision consistent with the child’s safety; (D) a safe physical home environment; (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and (F) an understanding of the child’s needs and capabilities • willingness and ability of the child’s family to effect positive environmental and personal changes within a reasonable period of time • willingness and ability of the child’s family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency’s close supervision <p>V.T.C.A., Family Code § 263.307</p> <p>Texas provides the following factors for determining whether joint conservatorship is in a child's best interest:</p> <ul style="list-style-type: none"> • physical, psychological, or emotional needs of child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • ability of parent to prioritize child's welfare and reach shared parental decisions • ability of each parent to encourage positive relationship with other parent • whether both parents participated in child rearing • geographical proximity of parents' residences • child's preference if 12 years or older • any other relevant factor <p>V.T.C.A., Family Code § 153.134</p>
U.S. Virgin Islands	Yes	<p>The U.S. Virgin Islands describes the following factors relevant to determining the best interests of the child in cases of domestic violence:</p> <ul style="list-style-type: none"> • age and sex of the child • needs and welfare of the child • domestic violence • safety and well-being of the child and of the parent who is the victim of domestic violence <p>16 V.I.C. § 109 (2017)</p> <p>While there is no statute mandating the factors to consider in determining the best interests of the child absent family violence, the Virgin Islands Supreme Court formally adopted the following factors in a 2016 opinion:</p> <ul style="list-style-type: none"> • respective home environments, including possible impact of relocation • ability of each parent to nurture the child, including the degree to which each parent has acted as primary caretaker • any evidence of domestic violence, sexual violence, child abuse, or child neglect

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • interaction and interrelationship of the child with the parents, siblings and other persons who may significantly affect his or her best interests • any recommendation by a court-appointed guardian <i>ad litem</i> • other factors the court finds relevant <p><i>James v. Faust</i>, 65 V.I. 349 (V.I. 2016).</p>
Utah	Yes	<p>Utah provides the following factors in determining the best interests of a child in custody/divorce cases:</p> <ul style="list-style-type: none"> • ability of parents to cooperate • capability of each parent of encouraging and accepting a positive relationship between the child and the other parent • child preference • geographical proximity of parents' homes • history of/potential for abuse (including spousal) or kidnapping • maturity of parents and their willingness to protect the child • parents prioritizing child's welfare and reaching shared decisions • physical, psychological, and emotional needs and development of a child <p>Utah Code ANN. §§ 30-3-10 2017; 30-3-10.2 (2017)</p>
Vermont	Yes	<p>Vermont provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs, and a safe environment • ability and disposition of the parents to communicate, cooperate with each other, and make joint decisions concerning the children • ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • ability and disposition of each parent to meet the child's present and future developmental needs • evidence of abuse (as defined under state law) and the impact of the abuse on the child and on his or her relationship with the abusing parent • quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change • quality of the child's relationship with the primary care provider, if appropriate given the child's age and development • relationship of the child with any other person who may significantly affect the child • relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance <p>Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017)</p>
Virginia	Yes	<p>Virginia provides the following factors to determine the best interests of the child in a custody dispute:</p> <ul style="list-style-type: none"> • age and physical and mental condition of each parent • age and physical and mental condition of the child • history of family abuse or sexual abuse • needs of the child, including relationships with siblings, peers and extended family members • parent's active support of the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child • reasonable preference of the child (if of reasonable intelligence, understanding, age and experience) • relationship existing between each parent and each child, including positive involvement with the child's life, and ability to accurately assess and meet the emotional, intellectual and physical needs of the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • ability and willingness to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child • role that each parent has played and will play in the future, in the upbringing and care of the child • other relevant factors <p>Va. Code Ann. 20.124-3 (2017)</p> <p>Virginia provides the following factors to determine the best interests of the child in an adoption dispute:</p> <ul style="list-style-type: none"> • parent's efforts to obtain or maintain custody of child • whether parent's are willing and able to assume full custody of child • whether parent's efforts to assert parental rights were thwarted by others • parent's ability to care for the child • age of child • quality of relationship between parent and child and any other minor children • suitability of child's present custodial environment • effect of a change of physical custody on the child <p>Va. Code Ann. 63.2-1205 (2017)</p>
Washington	Yes	<p>Washington provides the following factors in determining the best interests of the child:</p> <ul style="list-style-type: none"> • maintain child's emotional growth, health and stability, and physical care • protect child from physical, mental or emotional harm <p>Wash. Rev. Code § 26.09.002 (2017)</p> <p>With respect to the court's ability to restrict a parenting plan,</p>

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>Washington provides the following factors in regard to the best interests of the child:</p> <ul style="list-style-type: none"> • long-term emotional or physical impairment which interferes with the parent's performance of parenting functions • long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions • parent has withheld from the other parent access to the child for a protracted period without good cause • parent's neglect or substantial nonperformance of parenting functions • absence or substantial impairment of emotional ties between the parent and the child • abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development • such other factors or conduct as the court expressly finds adverse to the best interests of the child <p>Wash. Rev. Code § 26.09.191 (2017)</p> <p>In determining whether to deny a motion to seek an order for genetic testing, Washington courts consider the best interest of the child, including the following factors:</p> <ul style="list-style-type: none"> • age of child • facts surrounding presumed or acknowledged parent's discovery of his or her possible non-parentage • extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child • harm that may result to the child if parentage is successfully disproved • length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged parent was placed on notice that he or she might not be the genetic parent

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • length of time during which the presumed or acknowledged parent has assumed the role of parent of the child • nature of the relationship between the child and any alleged parent • the nature of the relationship between the child and the presumed or acknowledged parent • other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed or acknowledged parent or the chance of other harm to the child <p>Wash. Rev. Code § 26.26.535(2) (2017)</p> <p>In determining the best interests of the child when awarding visitation rights, Washington courts consider, but are not limited to, the following factors:</p> <ul style="list-style-type: none"> • any criminal convictions or founded history of abuse or neglect of a child by the relative • any other factor relevant to the child's best interest • the child's reasonable preference, if the court considers the child to be of sufficient age to express a preference • the length and quality of the prior relationship between the child and the relative • the love, affection, and strength of the relationship between the child and the relative • whether the visitation will present a risk to the child's health, welfare, or safety <p>Wash. Rev. Code § 13.34.385(3) (2017)</p>
West Virginia	Yes	<p>West Virginia provides the following factors to determine the best interests of the child:</p> <ul style="list-style-type: none"> • caretaking relationships by adults who love the child, know how to provide a child's needs and who place a high priority on doing so

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • continuity of existing parent-child relationships • expeditious, predictable decision-making and avoidance of a prolonged uncertainty respecting arrangements for a child's care and control • meaningful contact between child and parent • parental planning and agreement about the child's custodial arrangements and upbringing • security from exposure to physical or emotional harm • stability of a child <p>W.Va. Code § 48-9-102(a) (2017)</p> <p>In determining whether to grant visitation to a grandparent, West Virginia courts shall consider the following factors:</p> <ul style="list-style-type: none"> • any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent • any other factor relevant to the best interests of the child • if the parents are divorced or separated, the custody and visitation arrangement which exists between the parents with regard to the child • age of child • effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing • good faith of the grandparent in filing the motion or petition • preference of the parents with regard to the requested visitation • relationship between each of the child's parents or the person with whom the child is residing and the grandparent • relationship between the child and the grandparent • time available to the child and his or her parents, giving consideration to such matters as each parent's employment schedule, the child's schedule for home, school and community

Jurisdiction	Governed by Statute	Regulatory Requirement
		<p>activities, and the child's and parents' holiday and vacation schedule</p> <ul style="list-style-type: none"> • time which has elapsed since the child last had contact with the grandparent • whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child's parent or parents • whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent's residence <p>W.Va. Code § 48-10-502 (2017)</p>
Wisconsin	Yes	<p>Wisconsin provides the following factors in determining the best interests of the child:</p> <ul style="list-style-type: none"> • adjustment of a child to community, home, religion and school • age of a child and the child's developmental and educational needs at different ages • availability of public or private child care services • cooperation and communication between parties • interaction and interrelation of a child with family members or any other person significantly affecting the child's best interest • predictability and stability for the child • such other factors as the court may determine to be relevant • time amount and quality each parent has spent with the child in the past and necessary changes to the parents' custodial roles and reasonable lifestyle changes suggested by a parent so parent can spend time with the child • whether a person who the parent is dating or a person who may reside in the home has a criminal record and whether there is evidence that he or she engaged in abuse or neglect of the child or any other child • whether each party can support the other party's relationship with the child

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • whether either party has or had a significant problem with alcohol or drug abuse • whether the mental or physical health of a party, minor child or other person living in a proposed custodial household regularly affects the child • whether there is evidence either party engaged in abuse of the child • whether there is evidence of spousal battery or domestic abuse • wishes of the child • wishes of the parent or parents <p>Wis. Stat. § 767.41(5)(am) (2017)</p> <p>In evaluating whether to give joint or sole legal custody, Wisconsin courts consider the same best-interest-of-the-child factors as outlined above. However, except in cases where the court has found by a preponderance of the evidence that one parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, courts presume that joint legal custody is in the best interest of the child.</p> <p>Wis. Stat. § 767.41(2) (2017)</p> <p>In connection with evaluating whether to terminate parental rights, Wisconsin courts consider but are not limited to the following factors in determining best interests of the child:</p> <ul style="list-style-type: none"> • age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home • duration of the separation of the parent from the child • likelihood of the child's adoption after termination • wishes of the child • whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements <p>Wis. Stat. § 48.426(3) (2017)</p> <p>Upon request by a parent, the court may modify the amount of child support payments determined under this section, if after considering certain factors including the best interest of the child, the court finds that the use of the percentage standard is unfair to the child or to either of the parents. In considering the best interests of the child, the court will consider, but is not limited to considering, the following factors:</p> <ul style="list-style-type: none"> impact on the child of expenditures by the family for improvement of any conditions in the home that would facilitate the reunification of the child with the child's family, if appropriate importance of a placement that is the least restrictive of the rights of the child and the parents and the most appropriate for meeting the needs of the child and the family <p>Wis. Stat. § 49.345(c)(10) (2017)</p>
Wyoming	Yes	<p>Wyoming provides the following factors in determining the best interests of the child:</p> <ul style="list-style-type: none"> ability and willingness of each parent to allow the other to provide care without intrusion, respect the other parent's right and responsibilities, including the right to privacy ability and willingness of each parent to provide adequate care for each child, including arranging for each child's care by others as needed evidence of spousal abuse or child abuse geographic distance between the parents' residences how the parents and each child can best maintain and strengthen a relationship with each other

Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • how the parents and each child interact and communicate with each other and how such interaction and communication may be improved • physical and mental ability of each parent to care for each child • quality of the relationship each child has with each parent • relative competency and fitness of each parent • any other factors the court deems necessary and relevant <p>Wyo. Stat. Ann. § 20-2-201 (2017)</p> <p>In cases concerning an adjudication of paternity where the court is deemed to have made an adjudication of the child's parentage in a proceeding to dissolve a marriage, Wyoming provides the following factors in determining the best interests of the child:</p> <ul style="list-style-type: none"> • age of child • extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child • facts surrounding the adjudicated father's discovery of his possible nonpaternity • harm that may result to the child if adjudicated paternity is successfully disproved • length of time between the proceeding to adjudicate parentage and the time that the adjudicated father was placed on notice that he might not be the genetic father • length of time during which the adjudicated father has assumed the role of the father of the child • nature of the relationship between the child and any alleged father • nature of the relationship between the child and the adjudicated father

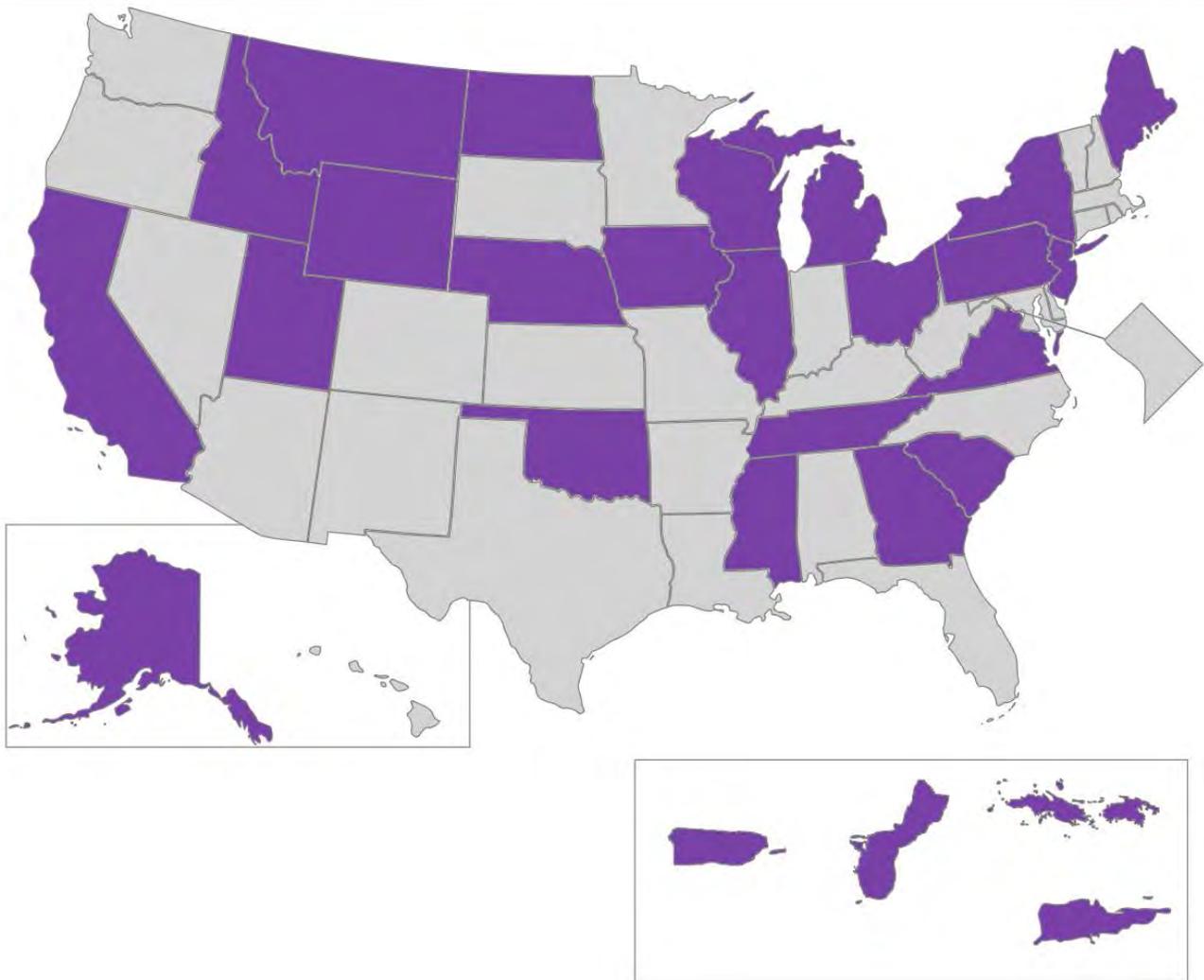
Jurisdiction	Governed by Statute	Regulatory Requirement
		<ul style="list-style-type: none"> • other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the adjudicated father or the chance of other harm to the child <p>Wyo. Stat. Ann. § 14-2-823(g) (2017)</p> <p>In determining whether to deny a motion seeking an order for genetic testing, the court shall consider the best interest of the child, including the following factors:</p> <ul style="list-style-type: none"> • age of the child • extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child • facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity • harm that may result to the child if presumed or acknowledged paternity is successfully disproved • length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father • length of time during which the presumed or acknowledged father has assumed the role of father of the child • nature of the relationship between the child and any alleged father • nature of the relationship between the child and the presumed or acknowledged father • other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child <p>Wyo. Stat. Ann. § 14-2-808(b) (2017)</p>

Best Interests of the Child - Catch-all Factor¹

By Morgan Lewis and Bockius LLP² – December 29, 2017

Disclaimer: The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at knowledgemanagement@morganlewis.com.

Purple states have a relevant factor for determining a child’s best interests in a custody dispute. Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes.



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² Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law.

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • other factors the court deems pertinent
American Samoa	Yes	A.S.C.A. 47.0302: <ul style="list-style-type: none"> • other factors considered in custody/visitation cases
Arizona	No	N/A
Arkansas	No	N/A
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> • any factors the court finds relevant
Colorado	Yes	Colo. Rev. Stat. Ann Section 14-10-124: <ul style="list-style-type: none"> • all relevant factors determined by court
Connecticut	No	N/A
Delaware	No	N/A
District of Columbia	No	N/A
Florida	No	N/A
Georgia	No	N/A
Guam	No	N/A
Hawaii	No	N/A
Idaho	No	N/A
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> • any other factor the court expressly finds relevant
Indiana	No	N/A
Iowa	No	N/A
Kansas	No	N/A
Kentucky	No	N/A
Louisiana	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
Maine	No	N/A
Maryland	No	N/A
Massachusetts	No	N/A
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> any other factor considered relevant by the court
Minnesota	No	N/A
Mississippi	Yes	MS ST § 93-5-24(1)(e): <ul style="list-style-type: none"> other factors relevant to parent child relationship
Missouri	No	N/A
Montana	Yes	Mont. Code. Ann. § 40-4-212: <ul style="list-style-type: none"> other relevant factors
Nebraska	Yes	Neb. Rev. Stat. Ann. § 43-2923: <ul style="list-style-type: none"> other relevant factors
Nevada	No	N/A
New Hampshire	No	N.H. Rev. Stat. Ann. § 461-A:6: <ul style="list-style-type: none"> other additional factors the court deems relevant
New Jersey	No	N/A
New Mexico	No	N/A
New York	Yes	N.Y. Domestic Relations Law § 240 : <ul style="list-style-type: none"> other facts and circumstances the court deems relevant
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute
Northern Mariana Islands	Yes	8 N. Mar. I Code §§ 1931, 1932, 1933: <ul style="list-style-type: none"> other factors the superior court deems relevant

Jurisdiction	Governed by Statute	Factors a court will consider:
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> all relevant factors
Oklahoma	Yes	Okla. Stat. tit. 43 §§ 109, 112, 112.5: <ul style="list-style-type: none"> other relevant factors, as determined by a court
Oregon	No	N/A
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> any other relevant factor may also be considered
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185: <ul style="list-style-type: none"> other criteria that should be considered
Rhode Island	No	N/A
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> other factors as the court considers necessary
South Dakota	No	N/A
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> any other factors deemed relevant may also be considered
Texas	No	N/A
U.S. Virgin Islands	Yes	<i>Madir v. Daniel</i> , 53 V.I. 623 (V.I. 2010); <i>James v. Faust</i> , 65 V.I. 349 (V.I. 2016): <ul style="list-style-type: none"> Other factors the court finds relevant
Utah	Yes	Utah Code 30-3-10(2): <ul style="list-style-type: none"> any other relevant factor
Vermont	No	N/A
Virginia	Yes	Va. Code Ann. 20.124-3: <ul style="list-style-type: none"> such other factors as the court deems necessary and proper to the determination
Washington	Yes	Wash. Rev. Code Section 26.09.002 (2017):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • other factors
West Virginia	No	N/A
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am): <ul style="list-style-type: none"> • such other factors as the court may determine are relevant
Wyoming	Yes	Wyo. Stat. Ann. 20-2-201 (2017): <ul style="list-style-type: none"> • any other factors the court deems necessary and relevant

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Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • love and affection between child and parent • time spent with each parent
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • interactions and interrelationships between any person affecting child's best interest • relationship between parent and child (past, present, potential)
Arkansas	No	N/A
California	No	N/A
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • relationship of the child with parents, siblings, and any other person who may significantly affect best interests
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> • past and current interaction and relationship of child with other family
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • interrelationship of child with parents, grandparents, siblings, and other house residents
District of Columbia	Yes	D. C. Code Section 16-831.08: <ul style="list-style-type: none"> • interaction and interrelationship of child with parent, siblings, relatives • prior involvement of each parent in the child's life
Florida	No	N/A
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • capacity and disposition of each parent to give the child love and affection and guidance and the continued education of child • love and emotional ties between parent and child • love and emotional ties between child and his or her siblings
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> • child's need for relationships with siblings • quality of the parent-child relationship
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> • interaction and interrelationship of the child with parent or parents, and siblings
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7 (West 2016): <ul style="list-style-type: none"> • amount of time the parent spent performing caretaking functions within the 24 months prior to the petition (or since birth if less than 24 months old) • child's relationship with his or her parents, siblings, and any other person who may affect the child's best interests • parent's ability and willingness to foster a relationship between the child and the other parent • whether a restriction on parenting time is appropriate
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> • child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> • whether each parent can support the other parent's relationship with the child
Kansas	Yes	Kan. Stat. Ann. § 23-3203:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> love, affection, and other emotional ties between each party and the child willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> relationship of the child with the child's parents or other caretakers
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> potential for maintaining natural family relationship length of separation of the parents
Massachusetts	Yes	MA ST 208 § 32 and 209C § 10: <ul style="list-style-type: none"> whether one or both of the parents has established parental responsibility in the best interest of the child
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> emotional ties between parents and child willingness of each party to facilitate a relationship between non-custodial parent(s)
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> interaction and interrelationship of child with others intimacy of relationship with child

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> when seeking joint custody, whether it would be detrimental to the child if one party were to have sole authority
Mississippi	Yes	<i>Albright v. Albright</i> , 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> emotional ties of parent and child
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017): <ul style="list-style-type: none"> needs of child for a relationship with both parents relationship of child with parents, siblings, and any other person affecting the child's best interests
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> frequent contact with both parents relationships with parents, siblings, and any other party affecting best interests
Nebraska	Yes	Neb. Rev. Stat. Ann. § 43-2923: <ul style="list-style-type: none"> relationship with each parent <i>Schrag v. Spear</i> , 858 NW2d 865, 877 (Neb. Ct. App. 2015): <ul style="list-style-type: none"> effect of continuing or disrupting existing relationship emotional relationship with each parent
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035 (West 2017): <ul style="list-style-type: none"> ability of child to maintain relationships with siblings relationship of child with each parent
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6 (West 2017): <ul style="list-style-type: none"> relationship of child with each parent relationship of child with any other person significantly affecting child
New Jersey	Yes	N.J.S.A. § 9.2-4: <ul style="list-style-type: none"> interaction and relationship of the child with its parents and siblings
New Mexico	Yes	N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> child's ability to maintain relationship with both parents relationship with parents, siblings, and any other person significantly affecting best interests
New York	Yes	N.Y. Domestic Relations Law § 240 (McKinney 2016): <ul style="list-style-type: none"> keeping siblings together
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> existing ties between parent and child
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest
Oklahoma	No	N/A
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> desirability of continuing an existing relationship emotional ties between the child and other family members
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> availability of extended family sibling relationships
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> relationship of each minor with parents, siblings, and other family members
Rhode Island	Yes	Pettinato v. Pettinato, 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> the interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> past and current interaction and relationship of the child with each parent, the child’s siblings, and any other person, including a grandparent
South Dakota	Yes	<p><i>Fuerstenberg v. Fuerstenberg</i>, 1999 SD 35, N.W.2d 798, 1999 S.D. Lexis 43 (S.D. 1999):</p> <ul style="list-style-type: none"> siblings should not be separated absent compelling circumstances
Tennessee	Yes	<p>Tenn. Code Ann. § 36-6-106(a):</p> <ul style="list-style-type: none"> character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child love, affection, and emotional ties existing between each parent and the child interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child’s involvement with the child’s physical surroundings, school, or other significant activities strength, nature, and stability of child’s relationship with each parent
Texas	Yes	<p>V.T.C.A., Family Code § 263.307:</p> <ul style="list-style-type: none"> whether an adequate social support system consisting of an extended family and friends is available to the child
U.S. Virgin Islands	Yes	<p><i>Madir v. Daniel</i>, 53V.I.623 (V.I. 2010); <i>James v. Faust</i>, 65 V.I. 349 (V.I. 2016):</p> <ul style="list-style-type: none"> interrelationship of the child to the parents and other individuals who were present in the home
Utah	Yes	<p>Utah Code 30-3-10(2) (2017), Utah Code 62A-4a-201(1)(c) (2017) and Utah Code 78A-6-503(8) (2017):</p> <ul style="list-style-type: none"> extent of bonding between parent and child, meaning the depth, quality and nature of relationship between parent and child
Vermont	Yes	<p>Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017):</p>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • quality of the child's relationship with the primary care provider, if appropriate given the child's age and development • relationship of the child with any other person who may significantly affect the child • relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> • relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child • needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members
Washington	Yes	WASH. REV. CODE § 26.09.002 (2017): <ul style="list-style-type: none"> • absence of substantial impairment and emotional ties between parent and child
West Virginia	Yes	W.V. Code Section 48-9-102 (2017): <ul style="list-style-type: none"> • existing parent-child relationships • meaningful contact between child and parent
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017): <ul style="list-style-type: none"> • interaction and interrelation of a child with family members or any other person significantly affecting the child's best interest
Wyoming	Yes	Wyo. Stat. Ann. 20-2-201 (2017): <ul style="list-style-type: none"> • how the parents and each child can best maintain and strengthen a relationship with each other • how the parents and each child interact and communicate with each other and how such interaction and communication may be improved

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none">• quality of the relationship each child has with each parent

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Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • physical, emotional, mental, religious, and social needs of the child and capability and desire of parent to meet needs • education of child • needs of the child
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
Arkansas	No	N/A
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> • health, welfare, and safety of the child
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • mental and physical health
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> • child's cultural background • mental and physical health of all individuals involved • temperament and developmental needs of child
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
District of Columbia	Yes	D.C. Code Section 16-831.08: <ul style="list-style-type: none"> • physical and mental health of all individuals involved • age and number of children
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> • developmental stages/needs of child and parent's ability to meet child's developmental needs
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> child's home, school, community record and history health or educational special needs of child
Guam	Yes	GU ST T. 19, § 9108: <ul style="list-style-type: none"> physical, mental, moral, and spiritual well-being of child
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> educational needs of child emotional needs of child physical health needs of child safety needs of child
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> character and circumstances of all individuals
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> child's needs child's adjustment to his or her home, school and community physical and mental health of the child, the parents, and any other person who may be involved
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> age and sex of child child's adjustment to his or her home, school and community mental and physical health of all individuals involved
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents
Kansas	No	N/A
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • mental and physical health of all individuals involved
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> • mental and physical health of each party
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> • adjustment to the child's present home, school, and community • age of the child • physical and psychological well-being of the child • effect on child if one parent has sole authority • infants (under one year) - whether the child is being breast-fed
Maryland	Yes	<i>Montgomery County v. Sanders</i> , 38 Md. App. 406 (1977): <ul style="list-style-type: none"> • age, health and sex of child • material opportunities affecting the future life of child
Massachusetts	No	N/A
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> • capacity of parties to raise child in his/her religion or creed • mental and physical health of parties involved • home, school and community record of child
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> • whether detrimental to child to award sole custody • capacity and disposition of parties to continue raising child in the child's culture and religion or creed, if any • child's cultural background • mental and physical health of all individuals involved
Mississippi	Yes	<i>Albright v. Albright</i> , 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> • age

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • health • sex • home, school, and community record of child
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017): <ul style="list-style-type: none"> • mental and physical health of all involved
Montana	Yes	Mont. Code Ann. §40-4-212(1): <ul style="list-style-type: none"> • developmental needs of child • mental and physical health of all involved
Nebraska	Yes	Neb. Rev. Stat. Ann. § 43-2923 (West 2017): <ul style="list-style-type: none"> • general health, welfare, and social behavior of child <i>Schrag v. Spear</i> , 858 N.W.2d 865, 877 (Neb. Ct. App. 2015): <ul style="list-style-type: none"> • age, sex, and health of parents and child
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035 (West 2017): <ul style="list-style-type: none"> • physical, developmental, and emotional needs of child
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6: <ul style="list-style-type: none"> • the child’s developmental needs, and the ability of the parents to meet them
New Jersey	Yes	N.J.S.A. § 9.2-4: <ul style="list-style-type: none"> • age and number of the children • needs and safety of the child • quality and continuity child’s education
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9 (West 2017): <ul style="list-style-type: none"> • mental and physical health of all individuals involved
New York	Yes	<i>Eschbach v. Eschbach</i> , 56 N.Y. 2d 167, 171 (1982) (citations and internal quotation marks omitted): <ul style="list-style-type: none"> • what will best promote the child’s welfare and happiness
North Carolina	Yes	N.C.G.S.A. § 50-13.2:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • safety of the child
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> • home, school and community records of child • child's developmental needs and the ability of each parent to meet those needs
Northern Mariana Islands	Yes	8 N. Mar. I Code §§ 1931, 1932, 1933: <ul style="list-style-type: none"> • safety and well-being of child
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4: <ul style="list-style-type: none"> • health of the parties
Oklahoma	Yes	Okla. Stat. tit. 43, §§ 109, 112, 112.5 <ul style="list-style-type: none"> • safety and well-being of child
Oregon	No	N/A
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> • mental and physical condition of a party or member of a party's household • need for stability and continuity in the child's education, family life and community life
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> • mental health of everyone involved • the specific needs of each of the minors whose custody is in dispute
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> • the mental and physical health of all individuals involved
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> • mental and physical health of all individuals involved (except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child)

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> child's cultural and spiritual background temperament and developmental needs of the child
South Dakota	No	N/A
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> emotional needs and developmental level of the child
Texas	Yes	V.T.C.A., Family Code § 263.307: <ul style="list-style-type: none"> child's age and physical and mental vulnerabilities frequency and nature of out-of-home placements results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home whether the child is fearful of living in or returning to the child's home
U.S. Virgin Islands	Yes	16 V.I.C. § 109 (2017): <ul style="list-style-type: none"> age and sex of child needs and welfare of child safety and wellbeing of child
Utah	Yes	Utah Code 30-3-10(2) 2017: <ul style="list-style-type: none"> physical, psychological, and emotional needs and development of a child
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017): <ul style="list-style-type: none"> quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members
Washington	Yes	Wash. Rev. Code Section 26.09.002 (2017): <ul style="list-style-type: none"> maintains a child's emotional growth, health and stability, and physical care
West Virginia	No	N/A
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017): <ul style="list-style-type: none"> adjustment of child to community, home, religion and school age of a child and the child's developmental and educational needs at different ages availability of public or private child care services whether the mental or physical health of a party, minor child or other person living in a proposed custodial household regularly affects the child
Wyoming	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • preference of child (if of suitable age and capacity)
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • preference of child (assuming age and capacity)
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> • preference of child if child has reached sufficient age and capacity
California	No	N/A
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • preference of child (if reasoned and able to express)
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> • informed preferences of child and relevant information obtained from child
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • wishes of child as to custody and residential arrangements
District of Columbia	Yes	D. C. Code Section 16-831.08: <ul style="list-style-type: none"> • wishes of the child
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> • wishes of child (if reasonable)
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> • consideration of child's wishes varies depending on age
Guam	Yes	GU ST T. 19, §8404: <ul style="list-style-type: none"> • child's wishes (if of sufficient age and capacity to reason)
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> • child's wishes (if of sufficient age and capacity)

Jurisdiction	Governed by Statute	Factors a court will consider:
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> wishes of child as to his or her custodian
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> child's wishes (taking into account the child's maturity and ability to express a reasoned and independent opinion)
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> wishes of child, with more consideration given to the child's wishes if the child is at least 14 years old
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> desires of child
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> wishes of child as to his custodian
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> wishes of child, if the court deems the child to be of sufficient age to express a preference
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> preference of child (if of sufficient age and capacity)
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> preference of child (if of sufficient age and capacity)
Massachusetts	No	N/A
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> preference of child if court considers child to be of sufficient age
Minnesota	Yes	MN ST § 257C.04:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • preference of child, if the court deems the child to be of sufficient age
Mississippi	Yes	<i>Albright v. Albright</i> , 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> • preference of child (if of sufficient age and capacity)
Missouri	Yes	Mo. Stat. Ann. § 452.375.2: <ul style="list-style-type: none"> • wishes of child
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> • wishes of child
Nebraska	Yes	Neb. Rev. Stat. Ann. § 43-2923: <ul style="list-style-type: none"> • wishes of child if of age of comprehension and wishes based on sound reasoning
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035: <ul style="list-style-type: none"> • wishes of child, if child is of sufficient age and capacity
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6: <ul style="list-style-type: none"> • preference of child when child is of sufficient age
New Jersey	Yes	N.J.S.A. § 9.2-4: <ul style="list-style-type: none"> • preference of child when of sufficient age
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9: <ul style="list-style-type: none"> • wishes of child
New York	Yes	N.Y. Domestic Relations Law § 240: <ul style="list-style-type: none"> • wishes of child
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> • preference of mature child
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> wishes of child
Oklahoma	No	N/A
Oregon	No	N/A
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> well-reasoned preference of child, based on the child's maturity and judgment
Puerto Rico	No	N/A
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> the reasonable preference of child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> preferences of each child
South Dakota	Yes	<i>Fuerstenberg v. Fuerstenberg</i> , 1999 SD 35, N.W.2d 798, 1999 S.D. Lexis 43 (S.D. 1999): <ul style="list-style-type: none"> if child is of a sufficient age to form an intelligent preference, the court may consider that preference in deciding custody
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> reasonable preference of child if 12 years of age or older (the court may hear the preference of a younger child upon request)
Texas	No	N/A
U.S. Virgin Islands	No	N/A
Utah	Yes	Utah Code 30-3-10(2): <ul style="list-style-type: none"> preference of child
Vermont	No	N/A
Virginia	Yes	Va. Code Ann. 20.124-3:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> reasonable preference of child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference
Washington	No	N/A
West Virginia	No	N/A
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am): <ul style="list-style-type: none"> wishes of child
Wyoming	No	N/A

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Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	Yes	Ala. Code § 30-3-152: <ul style="list-style-type: none"> location of parents
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> advantages of keeping current home (for joint custody determinations) proximity of home to school, other parent length of time the child has lived in a stable, satisfactory environment and feasibility of maintaining continuity stability of proposed home environment
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> adjustment to home, school, community
Arkansas	No	N/A
California	No	N/A
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> adjustment to home, school, and community proximity of parents
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> child's adjustment to home, school and community environments length of time that child has lived in stable environment, provided court may consider favorably a parent who voluntarily leaves child's family home pendent lite to alleviate stress in household stability of child's existing or proposed residences
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> adjustment to his or her home, school and community distance between the parental homes

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> potential disruption of child’s social and school life
District of Columbia	Yes	D.C. Code Section 16-831.08: <ul style="list-style-type: none"> continuity of care and caretakers, and for timely integration into a stable and permanent home child’s adjustment to his or her home, school and community
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> demonstrated capacity of parent to provide consistent routine for child, such as discipline, and daily schedules for homework, meals, and bedtime geographic viability of parenting plan length of time child has lived in stable environment and desirability of maintaining continuity time-sharing schedule records of the child: home, school and community
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> continuity and stability in the child's life and length of time child has lived in a stable, satisfactory environment parent's employment schedule and related flexibility of a parent to care for the child stability of family unit and strength of each parent’s support system
Guam	No	N/A
Hawaii	No	N/A
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> maintain frequent and continuing contact with both parents child’s adjustment to his or her home, school, and community

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • need to promote continuity and stability in the life of the child
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7 (West 2016): <ul style="list-style-type: none"> • child's adjustment to his or her home, school and the community • distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> • child's adjustment to home, school, and community
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> • geographic proximity of the parents • whether the parent has actively cared for the child
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> • child's adjustment to the child's home, school and community • length of time that the child has been under the actual care and control of any person other than a parent
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> • child's adjustment to his home, school, and community • extent to which child has been cared for, nurtured, and supported by any de facto custodian
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> • distance between the respective residences of the parties • home, school, and community history of the child • length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • permanence, as a family unit, of the existing or proposed custodial home or homes
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> • adjustment to the child's present home, school, and community • duration and adequacy of the child's current living arrangements • stability of the proposed living arrangements
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> • residences of parents and opportunity for visitation
Massachusetts	No	MA ST § 32 and 209C § 10: <ul style="list-style-type: none"> • where and with whom child has resided within last six month
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> • home, school, and community record of child • length of time child has lived in a stable environment • permanence as a family unit of the existing or proposed home
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> • child's adjustment to home, school, and community • length of time child has lived in stable, satisfactory environment • permanence as a family unit of the existing or proposed custodial home
Mississippi	Yes	<i>Albright v. Albright</i> , 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> • preference for parent that has had continuity of care prior the separation • home school and community record of the child

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> stability of the home environment and employment of the parent
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017): <ul style="list-style-type: none"> intention to relocate child's principal residence adjustment to child's home, school, and community
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> adjustment to home, school, and community continuity and stability of care
Nebraska	Yes	<i>Schrag v. Spear</i> , 858 N.W. 2d 865, 877 (2015): <ul style="list-style-type: none"> effect of continuing or disrupting existing relationship
Nevada	No	N/A
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6 (West 2017): <ul style="list-style-type: none"> adjustment to school and community
New Jersey	Yes	N.J.S.A. § 9.2-4.: <ul style="list-style-type: none"> geographical proximity of the parents' homes stability of the home environment offered quality and continuity of child's education
New Mexico	Yes	N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017): <ul style="list-style-type: none"> adjustment to home, school, and community geographic distance between parents
New York	No	N/A
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> home, school, and community records of the child and the potential effect of any change stability of home environment including child's interaction with other individuals in the home

Jurisdiction	Governed by Statute	Factors a court will consider:
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> child's adjustment to the child's home, school, and community geographic location of the parents and whether out-of-state
Oklahoma	No	N/A
Oregon	No	ORS § 107.137: <ul style="list-style-type: none"> desirability of continuing an existing relationship
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> proximity of the residences of the parties need for stability and continuity in the child's education, family life, and community life
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> if the location and distance between parents' homes would affect the education of the child
Rhode Island	No	<i>Pettinato v. Pettinato</i> , 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> the child's adjustment to the child's home, school, and community the stability of the child's home environment
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> stability of the child's existing and proposed residences whether one parent has relocated more than one hundred miles from the child's primary residence in the past year (unless the parent relocated for safety reasons) the child's adjustment to the child's home, school, and community environments
South Dakota	Yes	<i>Fuerstenberg v. Fuerstenberg</i> , 1999 SD 35, N.W.2d 798, 1999 S.D. Lexis 43 (S.D. 1999):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> who can provide a stable and consistent home environment
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> continuity in the child’s life and the length of time the child has lived in a stable, satisfactory environment degree to which parent has been primary caregiver (defined as the parent who has taken the greater responsibility for performing parental responsibilities)
Texas	No	N/A
U.S. Virgin Islands	Yes	<i>James v. Faust</i> , 65 V.I. 349 (V.I. 2016): <ul style="list-style-type: none"> respective home environments; including possible impact of relocation
Utah	Yes	Utah Code 30-3-10(2) 2017; 621A-4a-201(1)(c); 78A-6-503(8) (2017): <ul style="list-style-type: none"> geographical proximity of parents’ homes whether both parents participated in raising of child
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017): <ul style="list-style-type: none"> quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change
Virginia	No	N/A
Washington	Yes	Wash. Rev. Code § 26.09.191 (2017): <ul style="list-style-type: none"> maintain a child’s emotional growth, health, stability and physical care
West Virginia	Yes	W.V. Code Section 48-9-102 (2017): <ul style="list-style-type: none"> stability of a child predictable decision-making and avoidance of prolonged uncertainty regarding child’s care and control continuity of existing parent-child relationships
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • adjustment of a child to community, home, religion and school • predictability and stability for the child
Wyoming	Yes	Wyo. Stat. Ann. 20-2-201 (2017): <ul style="list-style-type: none"> • geographic distance between the parents' residences

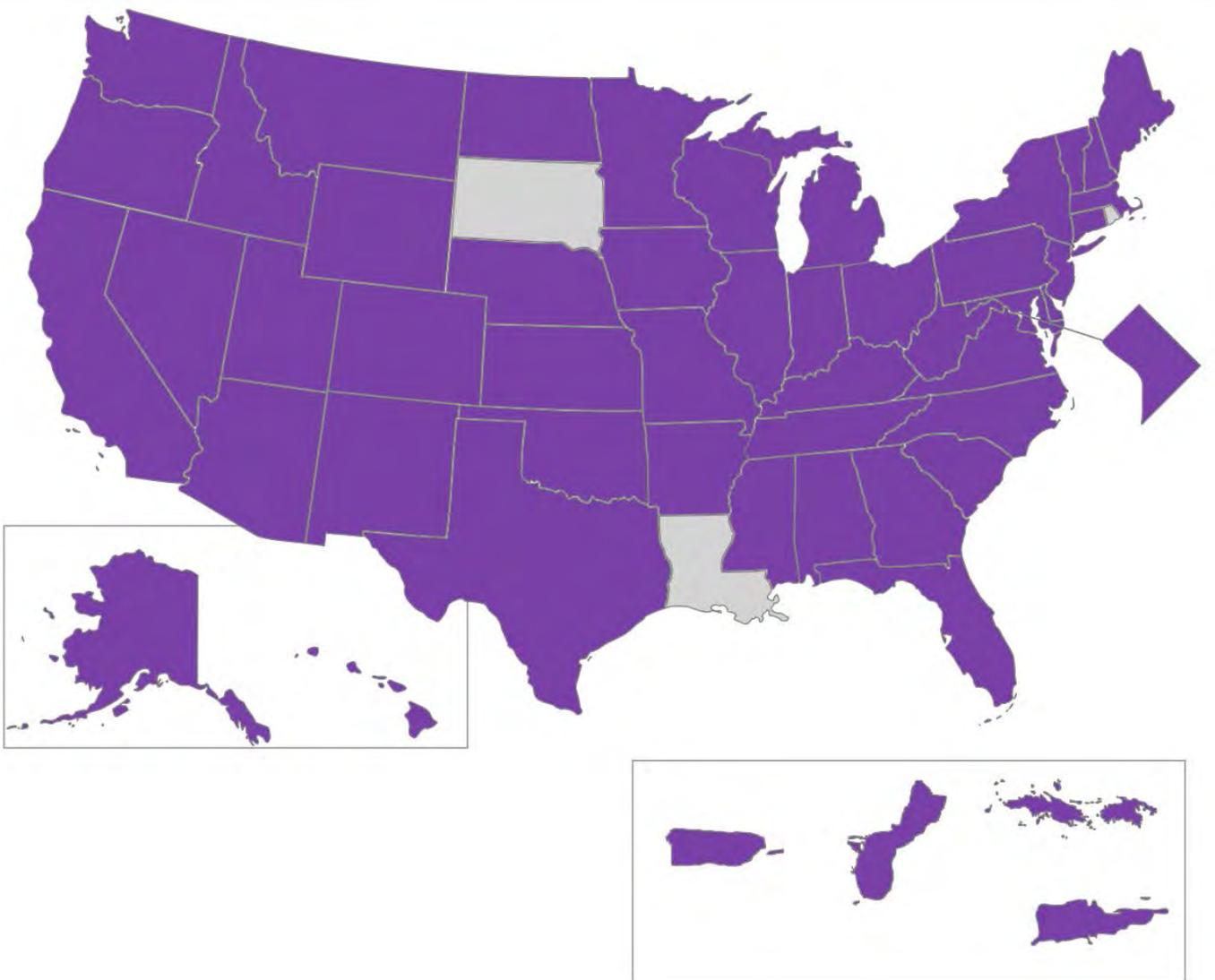
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Best Interests of the Child - Family Violence¹

By Morgan Lewis and Bockius LLP² – December 29, 2017

Disclaimer: The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at knowledgemanagement@morganlewis.com.

Purple states have a relevant factor for determining a child’s best interests in a custody dispute. Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes.



¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. National Immigrant Women’s Advocacy Project (NIWAP, pronounced new-app) American University, Washington College of Law 4300 Nebraska Avenue NW · Washington, D.C. 20016 (o) 202.274.4457 · info@niwap.org · wcl.american.edu/niwap · <http://niwaplibrary.wcl.american.edu/>

² Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law.

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	Yes	Ala. Code § 30-3-152: <ul style="list-style-type: none"> • history of or potential, for child/spousal abuse, or kidnapping
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • domestic violence, child abuse, or child neglect, history of violence between parents • criminal history of parent (sexual abuse, domestic violence, child neglect)
American Samoa	Yes	A.S.C.A. 47.0302: <ul style="list-style-type: none"> • history of causing physical harm, injury, assault, or causing reasonable fear of physical harm, injury or assault to another person • safety and well-being of child and parent (if parent is domestic violence victim) • court operates under the presumption that it is detrimental to the child to be in the home of a perpetrator of family/domestic violence
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • existence of domestic violence or child abuse
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> • domestic violence
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> • history of abuse by parent or person seeking custody against child, person with whom has any caretaking affinity, regardless of duration, other parent, cohabitant, or individual with dating relationship
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • child abuse or neglect, domestic violence, sexual assault (proved by a preponderance of the evidence)
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • effects of child abuse and if domestic violence has occurred • whether child or sibling has been abused or neglected as defined in state law
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • evidence of domestic violence
District of Columbia	Yes	D. C. Code Section 16-1001(8): <ul style="list-style-type: none"> • evidence of intrafamily offense as defined under state law
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> • evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> • evidence of family violence or abuse of either parent O.C.G.A. 19-9-3 (a) (4): <ul style="list-style-type: none"> • perpetrator's history of causing physical harm or causing reasonable fear of same • parent's absence due to violence from other parent is not an abandonment of the child for the purposes of custody determination • family violence can't be refused for consideration merely because there has been no previous finding of family violence
Guam	Yes	GU ST T. 19, § 8404: <ul style="list-style-type: none"> • family violence
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> • history of neglect or sexual, emotional, or physical abuse of a child by a parent
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> • domestic violence, whether or not in the presence of the child

Jurisdiction	Governed by Statute	Factors a court will consider:
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> • history of parent’s physical violence (or threat of violence) against the child or anyone else in the child’s household • abuse against the child or other member of the child’s household • whether a restriction on parenting is appropriate because a parent engaged in conduct that seriously endangered the child
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> • evidence of a pattern of domestic or family violence by the parent
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> • whether a history of domestic abuse exists
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> • whether a parent (or person residing with parent) has been convicted of abuse of a child • evidence of spousal abuse
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> • evidence of domestic violence
Louisiana	No	N/A
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> • existence of domestic abuse between the parents and how that may affect the child • any history of child abuse by a parent
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> • abuse or neglect
Massachusetts	Yes	MA ST 208 section 32; MA ST 209C section 10: <ul style="list-style-type: none"> • abuse toward a parent or child as defined in under state law
Michigan	Yes	MI ST 722.23, Sec. 3:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> domestic violence
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> effect of domestic abuse on child as defined in state law
Mississippi	Yes	MS ST § 93-5-24(9)(a)(I): <ul style="list-style-type: none"> presumption against placing child in custody of parent with history of family violence
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017) <ul style="list-style-type: none"> any history of abuse
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> history of physical abuse or threat of physical abuse
Nebraska	Yes	Neb. Rev. Stat. Ann. Section 43-2923 (West 2017): <ul style="list-style-type: none"> history of abuse of any family member or domestic intimate partner
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035: <ul style="list-style-type: none"> history of parental abuse or neglect of the child or a sibling of the child any act of domestic violence against the child, a parent of the child or any other person residing with the child any act of abduction against the child or any other child a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6 (West 2017): <ul style="list-style-type: none"> history of abuse
New Jersey	Yes	N.J.S.A. § 9.2-4:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • history of domestic violence
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9.1 (West 2017): <ul style="list-style-type: none"> • history of domestic abuse
New York	Yes	N.Y. Domestic Relations Law § 240 (McKinney 2016): <ul style="list-style-type: none"> • effect of domestic violence
North Carolina	Yes	N.C.G.S.A. § 50-13.2: <ul style="list-style-type: none"> • acts of domestic violence
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> • evidence of domestic violence or sexual abuse as defined in state law
Northern Mariana Islands	Yes	8 N. Mar. I Code §§ 1931, 1932, 1933: <ul style="list-style-type: none"> • domestic or family violence • history of causing harm or fear to another
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> • history of abuse, neglect, and domestic violence
Oklahoma	Yes	Okla. Stat. tit. 43, § 109: <ul style="list-style-type: none"> • domestic violence, stalking, or harassment by a parent (or person living with parent)
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> • abuse of one parent by the other • sexual assault or abuse against parent or child
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> • domestic violence • history of child abuse and involvement with protective services
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> • history of child abuse, domestic abuse, sexual abuse
Rhode Island	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
South Carolina	Yes	<p>S.C. Code Ann. § 63-15-240(B):</p> <ul style="list-style-type: none"> • whether the child or a sibling of the child has been abused or neglected • whether one parent has perpetrated domestic violence or child abuse or the effect on the child of the actions of an abuser if any domestic violence has occurred between the parents or between a parent and another individual or between the parent and the child
South Dakota	No	N/A
Tennessee	Yes	<p>Tenn. Code Ann. § 36-6-106(a):</p> <ul style="list-style-type: none"> • evidence of physical or emotional abuse to the child, to the other parent or to any other person
Texas	Yes	<p>V.T.C.A., Family Code § 263.307:</p> <ul style="list-style-type: none"> • history of abusive or assaultive conduct by the child’s family or others who have access to the child’s home • magnitude, frequency, and circumstances of the harm to the child • whether the child has been the victim of repeated harm after the initial report and intervention • whether the child is fearful of living in or returning to the child’s home • whether the child’s family demonstrates adequate parenting skills, including providing the child and other children under the family’s care with a safe physical home environment and protection from repeated exposure to violence even though the violence may not be directed at the child
U.S. Virgin Islands	Yes	<p><i>Madir v. Daniel</i>, 53 V.I. 623 (V.I. 2010); <i>James v. Faust</i>, 65 V.I. 349 (V.I. 2016):</p> <ul style="list-style-type: none"> • domestic violence, sexual violence, child abuse, child neglect
Utah	Yes	<p>Utah Code 30-3-10(2) 2017:</p> <ul style="list-style-type: none"> • history of/potential for abuse, includes spousal • whether parent has exposed child to pornography

Jurisdiction	Governed by Statute	Factors a court will consider:
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(9) (2017): <ul style="list-style-type: none"> • evidence of abuse and the impact of the abuse on the child and on the relationship between the child and the abusing parent
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> • history of family abuse or sexual abuse
Washington	Yes	WASH. REV. CODE § 26.09.002 (2017): <ul style="list-style-type: none"> • protect from exposure to physical or emotional harm • abusive use of conflict by the parent that which creates the danger of severe damage to the child’s psychological development
West Virginia	Yes	W.V. Code Section 48-9-102 (2017): <ul style="list-style-type: none"> • security from exposure to physical or emotional harm
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017): <ul style="list-style-type: none"> • whether there is evidence either party engaged in abuse of the child • whether there is evidence of interspousal battery or domestic abuse • whether there is evidence that a person who the parent is dating or a person who may reside in the home engaged in abuse or neglect of the child or any other child
Wyoming	Yes	Wyo. Stat. Ann. 20-2-201 (2017): <ul style="list-style-type: none"> • evidence of spousal abuse or child abuse

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	Yes	Ala. Code § 30-3-152: <ul style="list-style-type: none"> • presumption that joint custody is in child's best interest (absent specific findings) • agreement or lack of agreement of parents on joint custody
Alaska	No	N/A
American Samoa	No	N/A
Arizona	No	N/A
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> • presumption for joint custody
California	No	N/A
Colorado	No	N/A
Connecticut	No	N/A
Delaware	No	N/A
District of Columbia	Yes	D.C. Code Section 16-914: <ul style="list-style-type: none"> • willingness of parents to share custody • ability to financially support joint custody arrangement
Florida	No	N/A
Georgia	No	N/A
Guam	No	N/A
Hawaii	No	N/A
Idaho	Yes	Idaho Code 32-71: <ul style="list-style-type: none"> • presumption for joint custody
Illinois	No	N/A
Indiana	No	N/A
Iowa	Yes	Iowa Code Ann. § 598.41 <ul style="list-style-type: none"> • whether one or both the parents agree or are opposed to joint custody

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation
Kansas	No	N/A
Kentucky	No	N/A
Louisiana	No	N/A
Maine	Yes	ME ST T. 19-A § 1653 <ul style="list-style-type: none"> effect on child if one parent has sole custody
Maryland	No	N/A
Massachusetts	No	N/A
Michigan	No	N/A
Minnesota	Yes	MN ST § 257C.04(a): <ul style="list-style-type: none"> ability of parties to cooperate in child rearing methods for resolving disputes of major decisions whether domestic abuse has occurred whether it would be detrimental to the child if one party were to have sole authority
Mississippi	Yes	MS ST § 93-5-24(4): <ul style="list-style-type: none"> presumption that joint custody is in best interest if parents agree to joint custody
Missouri	No	N/A
Montana	No	N/A
Nebraska	No	N/A
Nevada	No	N/A
New Hampshire	No	N/A
New Jersey	No	N/A
New Mexico	Yes	N.M. Rev. Stat. Ann. § 40-4-9.1 <ul style="list-style-type: none"> there is a presumption that joint custody is in the best interest of the child in an initial custody determination

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> suitability of parenting plan to allow joint custody
New York	No	N/A
North Carolina	Yes	N.C.G.S.A. § 50-13.2: <ul style="list-style-type: none"> joint custody considered on parent's request
North Dakota	No	N/A
Northern Mariana Islands	Yes	N.D.C.C. §§ 14-09-06.2, 14-09-29, 14-09-31: <ul style="list-style-type: none"> presumption against placement of joint or sole custody with parent who is perpetrator of domestic violence or abuse
Ohio	No	N/A
Oklahoma	No	N/A
Oregon	No	N/A
Pennsylvania	No	N/A
Puerto Rico	Yes	P.R. Leyes An. Tit. 32 § 3185: <ul style="list-style-type: none"> capability and willingness of parents to assume responsibility of raising children jointly
Rhode Island	No	N/A
South Carolina	No	N/A
South Dakota	No	N/A
Tennessee	No	N/A
Texas	No	N/A
U.S. Virgin Islands	No	N/A
Utah	Yes	Utah Code 30-3-10(b): <ul style="list-style-type: none"> joint custody is in the best interest of a child as a rebuttable presumption
Vermont	No	N/A
Virginia	No	N/A
Washington	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
West Virginia	No	N/A
Wisconsin	No	N/A
Wyoming	No	N/A

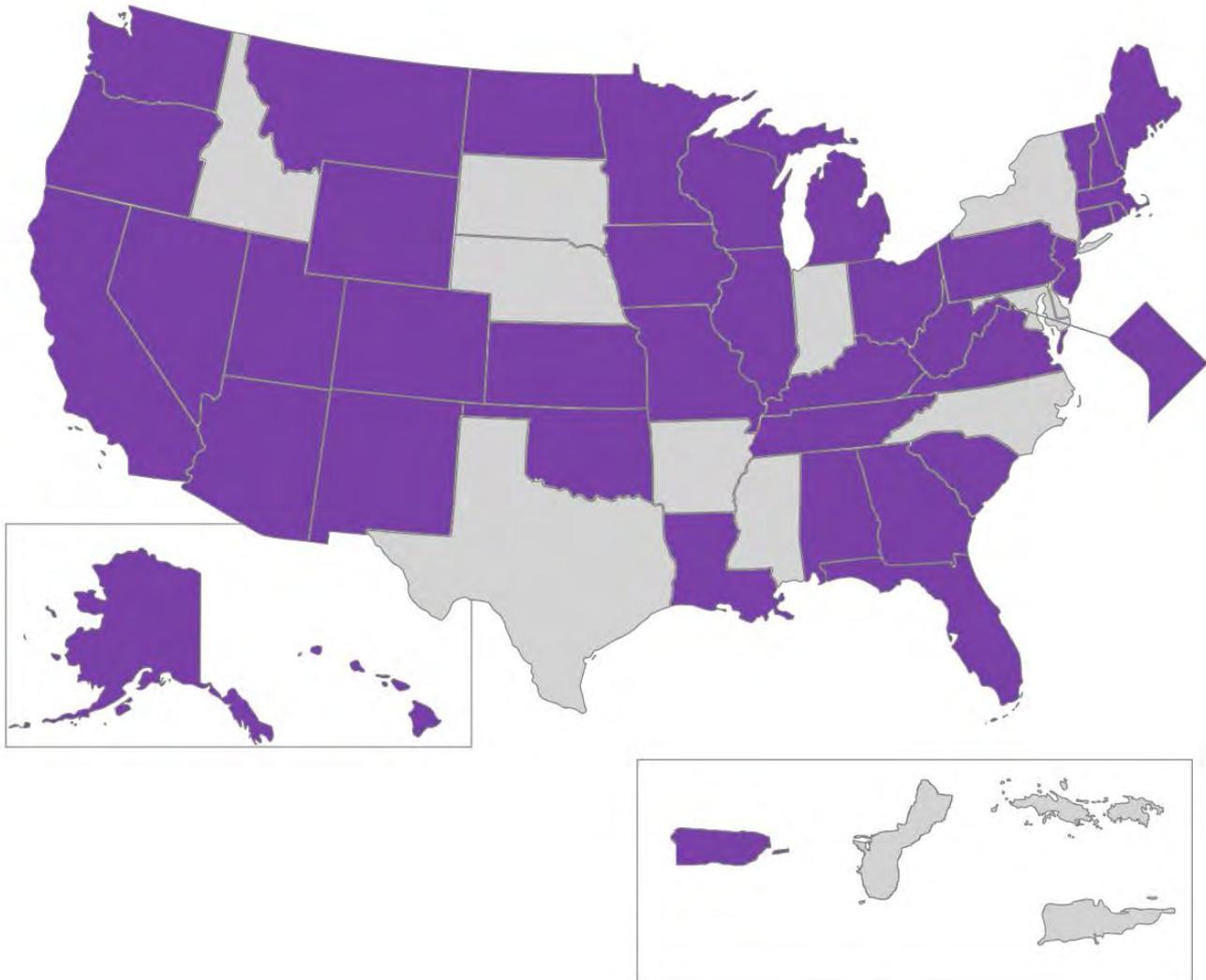
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Best Interests of the Child - Parental Cooperation & Conflict Factor¹

By Morgan Lewis and Bockius LLP² – December 29, 2017

Disclaimer: The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at knowledgemanagement@morganlewis.com.

Purple states have a relevant factor for determining a child’s best interests in a custody dispute. Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes.



¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. National Immigrant Women’s Advocacy Project (NIWAP, pronounced new-app) American University, Washington College of Law 4300 Nebraska Avenue NW · Washington, D.C. 20016 (o) 202.274.4457 · info@niwap.org · wcl.american.edu/niwap · <http://niwaplibrary.wcl.american.edu/>

² Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	Yes	Ala. Code § 30-3-152: <ul style="list-style-type: none"> • capacity of each parent to cooperate in child care and make decisions jointly • capacity of parents to encourage sharing of love, affection, and contact between the child and other parent • agreement or lack of agreement of parents on joint custody
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • capacity of each parent to allow and encourage close and continuing contact between the child and the other parent (unless there has been sexual assault or domestic abuse against parent or child)
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • capacity of each parent to allow frequent and continuing contact between the child and the other parent (absent good faith attempt of parent to protect child from domestic violence) • potential that parent will mislead court or increase costs to influence court to give him/her preference • use of coercion or duress to come to agreement
Arkansas	No	N/A
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> • nature and amount of contact (unless there is domestic violence)
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • ability to cooperate and make joint decisions
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> • ability of each parent to facilitate and encourage parent-child relationship with the other parent • coercive behavior of the parents in an effort to involve the child in parents' dispute
Delaware	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
District of Columbia	Yes	D. C. Code Section 16-914: <ul style="list-style-type: none"> • capacity of the parents to communicate and reach shared decisions affecting the child’s welfare • willingness of the parents to share custody
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> • capacity of each parent to facilitate close and continuing parent-child relationship • demonstrated capacity of parent to communicate with other parent • disposition of parent to protect child from ongoing litigation • division of parental duties • evidence that either parent provided false information to a court
Georgia	Yes	O.C.G.A. 19-9-3 (a) (3): <ul style="list-style-type: none"> • parent's willingness and ability to facilitate close relationship with other parent
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> • parent’s actions that allow child to maintain family connections; absent family violence • parent’s cooperation in developing/implementing plan to meet child’s ongoing needs; absent family violence • areas and levels of conflict present within the family • parent’s prior willful misuse of the protection from abuse process to gain a tactical advantage in any proceeding involving the custody determination of a minor • promotion of frequent, continuing and meaningful contact of each parent with the child
Idaho	No	N/A
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7: <ul style="list-style-type: none"> • parent’s ability and willingness to foster a relationship between the child and the other parent

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • parent’s ability to cooperate in the arrangement • prior agreements or course of conduct related to the caretaking functions
Indiana	No	N/A
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> • whether each parent can support the other parent’s relationship with the child • whether the parents can communicate with each other regarding the child's needs
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> • willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> • intent of the parent or parents in placing the child with a de facto custodian
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> • willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> • capacity of each parent to allow frequent and continuing contact between the child and the other parent • capacity of each parent to cooperate in child care • co-inhabitants of parent • methods for assisting parental cooperation and resolving disputes • motivation and capacity of the parties involved to care for the child

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> effect on child if one parent has sole authority one parent's prior misuse of the protection from abuse process to gain a tactical advantage in determining parental rights
Maryland	No	N/A
Massachusetts	Yes	MA ST 208 section 32 and 209C section 10: <ul style="list-style-type: none"> history of cooperation between the parties
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> willingness of each party to facilitate a relationship between non-custodial parent(s) (excluding protecting child from sexual assault or domestic violence)
Minnesota	Yes	MN ST § 257C.04(a): If joint custody is sought: <ul style="list-style-type: none"> ability of parties to cooperate in child rearing methods for resolving disputes of major decisions
Mississippi	No	N/A
Missouri	Yes	Mo. Ann. Stat. § 452.275.2: <ul style="list-style-type: none"> proposed parenting plan submitted by both parties which parent is more likely to allow the child frequent, continuing and meaningful contact with the other parent ability and willingness of parents to actively perform their functions as mother and father for the needs of child
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> vexatious parenting plan amendment actions
Nebraska	No	N/A
Nevada	Yes	Nev. Rev. Stat. Ann. § 125.0035: <ul style="list-style-type: none"> level of conflict between parents ability of parents to cooperate to meet child's needs

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> parent more likely to allow frequent association and continued relationship with other parent
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6: <ul style="list-style-type: none"> ability, disposition, and support of each parent to facilitate contact, communication and a relationship between parents and between child and other parent
New Jersey	Yes	N.J.S.A. § 9.2-4: <ul style="list-style-type: none"> parents' ability to agree, communicate and cooperate in matters relating to the child parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse
New Mexico	Yes	N.M. Stat. Ann. § 40-4-9.1 (West 2017): <ul style="list-style-type: none"> parents' ability to allow each other to provide care without intrusion, and to communicate and cooperate regarding child's needs suitability of parenting plan to allow joint custody
New York	No	<i>Eschbach v. Eschbach</i> , 56 N.Y.2d 167, 171-72, 451 N.Y.S.2d 658, 436 N.E.2d 1260 (1982): <ul style="list-style-type: none"> prior agreement of the parties
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> making of false allegations willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> ability of parents to cooperate and make decisions jointly

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights and history of honoring same
Oklahoma	Yes	Okla. Stat. tit. 43 §§ 109, 112, 112.5: <ul style="list-style-type: none"> which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> level of conflict between the parties and the willingness and ability of the parties to cooperate with one another (except in cases of domestic violence) party more likely to encourage and permit frequent and continuing contact between the child and another party
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185: <ul style="list-style-type: none"> capability and willingness of parents to assume responsibility of raising children jointly ability of parent to communicate directly or by using alternative mechanisms
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A.2d 909, 913-14 (R.I. 1990) <ul style="list-style-type: none"> the willingness and ability of each parent to facilitate a close and continuous parent-child relationship between the child and the other parent
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> actions of each parent to encourage the continuing parent-child relationship between the child and the other parent, as is appropriate, including compliance with court orders effort by one parent to disparage the other parent in front of the child

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute
South Dakota	No	N/A
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents.
Texas	No	N/A
U.S. Virgin Islands	No	N/A
Utah	Yes	Utah Code 30-3-10(2) 2017: <ul style="list-style-type: none"> ability of parents to cooperate parents prioritizing child's welfare and reaching shared decisions capability of each parent of encouraging and accepting a positive relationship between the child and the other parent Utah Code 30-3-10(1)(a)(ii) 2017: <ul style="list-style-type: none"> allowing frequent and continuing contact with the noncustodial parent
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017): <ul style="list-style-type: none"> ability and disposition of the parents to communicate, cooperate with each other, and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent
Virginia	Yes	Va. Code Ann. 20.124-3 : <ul style="list-style-type: none"> propensity of each parent to actively support the child's contact and relationship with the other parent, including

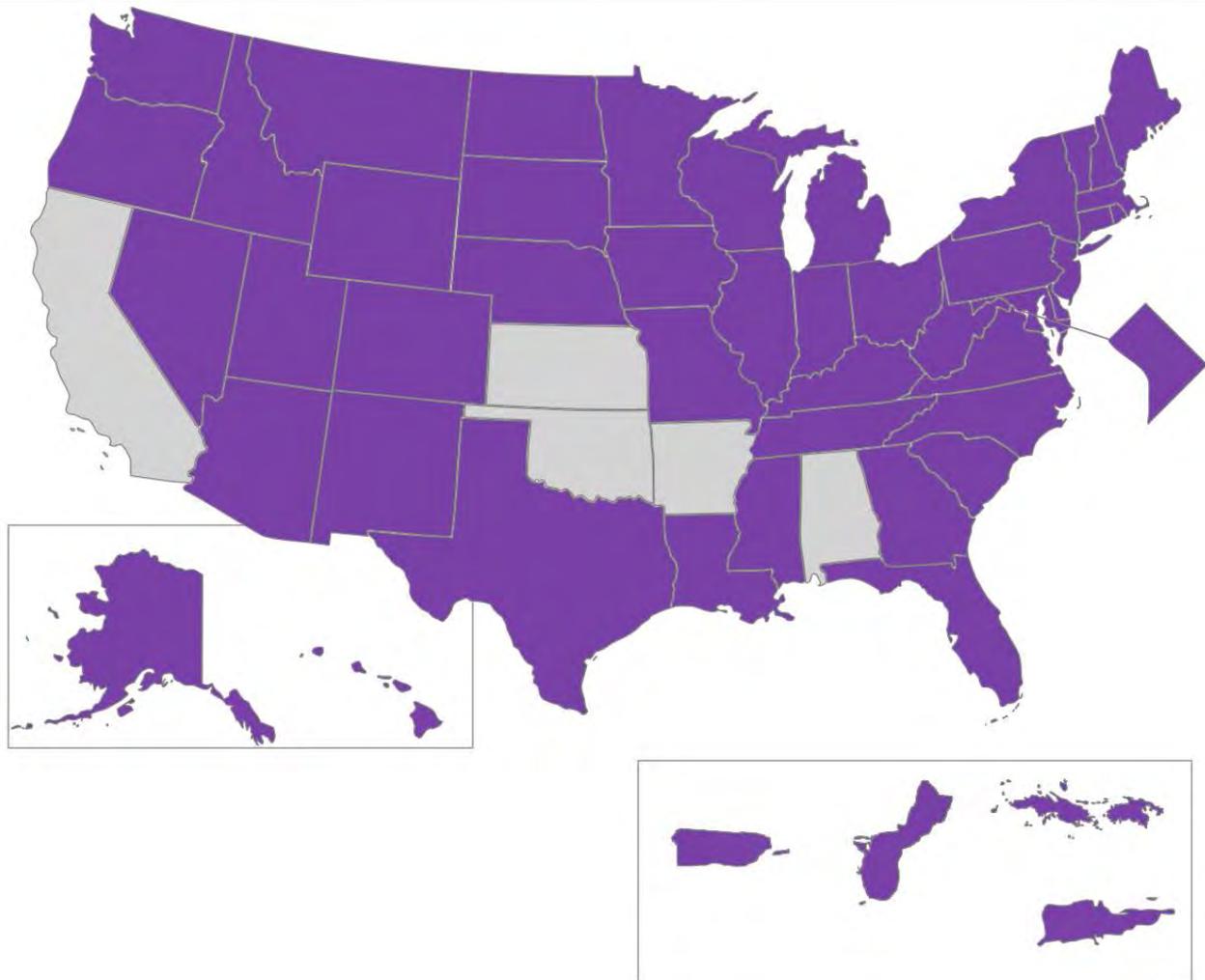
Jurisdiction	Governed by Statute	Factors a court will consider:
		<p>whether a parent has unreasonably denied the other parent access to or visitation with the child</p> <ul style="list-style-type: none"> relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child
Washington	Yes	<p>Wash. Rev. Code § 26.09.002:</p> <ul style="list-style-type: none"> a parent withheld from the other parent access to the child for a protracted period without good cause
West Virginia	Yes	<p>W.V. Code Section 48-9-102 (2017):</p> <ul style="list-style-type: none"> expeditious, predictable decision-making and avoidance of a prolonged uncertainty respecting arrangements for a child's care and control parental planning and agreement about the child's custodial arrangements and upbringing
Wisconsin	Yes	<p>Wis. Stat. Section 767.41(5)(am):</p> <ul style="list-style-type: none"> cooperation and communication between parties whether each party can support the other party's relationship with the child
Wyoming	Yes	<p>Wyo. Stat. Ann. 20-2-201:</p> <ul style="list-style-type: none"> ability and willingness of each parent to allow the other to provide care without intrusion, respect the other parent's right and responsibilities, including the right to privacy

Best Interests of the Child - Parental Fitness Factor¹

By Morgan Lewis and Bockius LLP² – December 29, 2017

Disclaimer: The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at knowledgemanagement@morganlewis.com.

Purple states have a relevant factor for determining a child’s best interests in a custody dispute. Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes.



¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.
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² Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> • capability and desire of parent to meet physical, emotional, mental, religious, and social needs of the child and the capability and desire of each parent to meet these needs
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> • mental and physical health of all individuals involved
Arkansas	No	N/A
California	No	N/A
Colorado	Yes	Colo. Rev. Stat. Ann. § 14-10-124: <ul style="list-style-type: none"> • ability to place needs of child first, including capacity of each parent to encourage love, affection, and contact • past practice demonstrating system of values, time commitment, and mutual support • mental and physical health
Connecticut	Yes	Conn. Gen. Stat. Section 46b-56: <ul style="list-style-type: none"> • ability of parent to be actively involved in child's life • mental and physical health of all individuals involved • parents' capacity to understand and meet needs of child • participation in a parenting education program established pursuant to state law
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> • mental and physical health of all individuals involved • past and present compliance by both parents with their rights and responsibilities to their child
District of Columbia	Yes	D.C. Code Section 16-831.08:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • physical, mental, and health of all individuals involved, particularly the child • impact on assistance for needy families • demands of parents' jobs • parent's ability to financially support a joint custody arrangement
Florida	Yes	<p>Fl. St. 61.13(3):</p> <ul style="list-style-type: none"> • developmental stages/needs of child and parent's ability to meet child's developmental needs • division of parental duties, including the extent to which parenting responsibilities were undertaken by third parties • mental and physical health of the parents • moral fitness of the parents • parental delegation of responsibilities to third parties • demonstrated capacity of parent to provide consistent routine for child, such as discipline, and daily schedules for homework, meals, and bedtime • demonstrated parental knowledge to be informed of the circumstances of the minor child • parent's efforts to participate and be involved in the child's school and extracurricular activities • parent's capacity to act upon needs of child as opposed to needs of parent
Georgia	Yes	<p>O.C.G.A. 19-9-3 (a) (3):</p> <ul style="list-style-type: none"> • capacity and disposition of each parent to give the child love, affection, guidance and to continue education of child • capacity and disposition of parent to provide child with food, clothing, medical care • home environment of parent considering nurturance and safety of child rather than superficial or material factors

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • mental and physical health of each parent • parent's involvement, or lack thereof, in child's educational, social, and extracurricular activities • parent's knowledge and familiarity of child and child's needs • parent's past performance and abilities for future performance of parenting responsibilities • stability of family unit of each parent and presence or absence of parent's support systems • parent's employment schedule and related flexibility of a parent to care for the child
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> • Parent with de facto custody in stable wholesome home who is fit and proper person • history of caregiving of each parent prior/subsequent to marital or other type of separation • mental health of each parent • parent's actions demonstrating that they separate the child's needs from the parent's needs
Idaho	Yes	ID Statutes 32-717: <ul style="list-style-type: none"> • character and circumstances of all individuals involved
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7 (West 2016): <ul style="list-style-type: none"> • parent's willingness and ability to place the needs of the child ahead of his or her own needs • mental and physical health of all individuals involved • amount of time the parent spent performing caretaking functions within the 24 months prior to the petition (or since the child's birth if less than 24 months old) • terms of parent's military care plan if parent is being deployed by US Armed forces

Jurisdiction	Governed by Statute	Factors a court will consider:
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> • evidence that the child has been cared for by a de facto custodian, the de fact custodian’s wishes, the extent to which the child has been cared for by that de facto custodian, the parent’s intent in placing the child with the de facto custodian, and the circumstances under which the child was allowed to remain in the custody of the de facto custodian • mental and physical health of all individuals involved
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> • whether a parent has allowed a person control over or unsupervised access to a child after knowing such person is required to register as a sex offender • whether the parent would be a suitable custodian for the child • whether the parent has actively cared for the child
Kansas	No	N/A
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> • extent to which the child has been cared for, nurtured, and supported by any de facto custodian • mental and physical health of all individuals involved
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> • capacity of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child • capacity of each party to provide the child with food, clothing, medical care, and other material needs • person’s role in rearing the child • mental and physical health of each party • moral fitness of each party
Maine	Yes	ME ST T. 19-A § 1653:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • capacity of each parent to allow frequent and continuing contact between the child and the other parent • capacity of each parent to cooperate in child care • co-inhabitants of parent • motivation and capacity of the parties involved to care for the child
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> • character reputation of the parties • fitness of the parents • whether there was any prior voluntary abandonment or surrender of custody of child
Massachusetts	Yes	MA ST 208 section 32 and 209C section 10: <ul style="list-style-type: none"> • exercise of parental responsibilities • desertion of the child
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> • capacity of parties to give child love, affection, and guidance, education and raising the child in his/her religion or creed • capacity of parties to provide child with food, clothing, and medical care • mental and physical health of parties involved • moral fitness of parties involved
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> • capacity and disposition of parties to give child love, affection, and guidance • capacity and disposition of parties to continue raising child in the child's culture and religion or creed, if any • mental and physical health of all individuals involved • child's primary caregiver

Jurisdiction	Governed by Statute	Factors a court will consider:
Mississippi	Yes	<p><i>Albright v. Albright</i>, 437 So.2d 1003, 1005 (Miss. 1983):</p> <ul style="list-style-type: none"> • factors relevant to the parent-child relationship, including a determination of which potential custodian has the best parenting skills, moral fitness of parent, emotional ties of parent and child • employment of parent • physical and mental health and age of parent
Missouri	Yes	<p>Mo. Ann. Stat. § 452.375.2 (West 2017):</p> <ul style="list-style-type: none"> • mental and physical health of all involved • ability and willingness of parents to actively perform their functions as mother and father for the needs of the child
Montana	Yes	<p>Mont. Code Ann. § 40-4-212(1) (West 2017):</p> <ul style="list-style-type: none"> • mental and physical health of all involved • failure to provide financial support including birth-related costs
Nebraska	Yes	<p><i>Schrag v. Spear</i>, 858 N.W.2d 865, 877 (2015):</p> <ul style="list-style-type: none"> • age, sex, and health of parents and child • environments offered by each parent • moral fitness and character of parents, including parents sexual conduct • parents' capacity to provide physical and educational care
Nevada	Yes	<p>Nev. Rev. Stat. Ann. § 125C.0035 (West 2017):</p> <ul style="list-style-type: none"> • mental and physical health of parents
New Hampshire	Yes	<p>N.H. Rev. Stat. Ann. § 461-A:6 (West 2017):</p> <ul style="list-style-type: none"> • parents' ability to meet child's developmental needs • ability of each parent to provide nurture, love, affection, and guidance, and food, clothing, shelter, medical care, and safety
New Jersey	Yes	<p>N.J.S.A. § 9.2-4:</p>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • the parents' employment responsibilities • gross immorality or unfitness to be entrusted with care and education of the child • neglect to provide the child with proper protection, maintenance and education • habits that endanger the welfare of the child such that the child may become a public charge • parental fitness • time spent with the child prior to or subsequent to the separation
New Mexico	Yes	<p>N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017):</p> <ul style="list-style-type: none"> • ability of each parent to provide adequate care • mental and physical health of all individuals involved • parents' willingness to accept parenting responsibilities
New York	Yes	<p><i>Jacobs v. Jacobs</i>, 117 A.D. 2d 709, 498 N.Y.S. 2d 852 (2nd Dept. 1986); <i>Matter of FF v. FF</i>, 37 A.D. 2d 893, 325 N.Y.S. 2d 291 (3rd Dept. 1971):</p> <ul style="list-style-type: none"> • military service • parental employment and availability to care for child <p><i>Matter of Louise E.W. v. W. Stephen S.</i>, 64 N.Y. 2d 946, 488 N.Y.S. 2d 637, 477 N.E. 2d 1091 (1985):</p> <ul style="list-style-type: none"> • ability to provide for the child's emotional and intellectual development, the quality of the home environment, and the parental guidance to be provided <p><i>King v. King</i>, 243 A.D. 780, 277 N.Y.S. 653 (2nd Dept. 1935); <i>Janus v. Janus</i>, 239 A.D. 2d 712, 657 N.Y.S. 2d 256 (3rd Dept. 1997):</p> <ul style="list-style-type: none"> • parent's mental and physical health <p>See, e.g., <i>Church v. Church</i>, 238 A.D. 2d 677, 656 N.Y.S. 2d 416 (3rd Dept. 1997); <i>Wallinger v. Wallinger</i>, 96 A.D. 2d 988, 466 N.Y.S. 2d 826 (3rd Dept. 1983); <i>McIntosh v. McIntosh</i>, 87 A.D. 2d 968, 451 N.Y.S. 2d 200 (3rd Dept. 1982); <i>Salk v. Salk</i>, 89 Misc. 2d 883, 393</p>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<p>N.Y.S. 2d 841 (Sup. Ct. N.Y. County 1975), affirmed, 53 A.D. 2d 558, 385 N.Y.S. 2d 1015 (1st Dept. 1976):</p> <ul style="list-style-type: none"> • each parent’s credibility, conduct, stability, lifestyle, morality, financial status, professional achievements, and personal associations
North Carolina	Yes	<p>N.C.G.S.A. § 50-13.2:</p> <ul style="list-style-type: none"> • impact on child of military service
North Dakota	Yes	<p>N.D.C.C. § 14-09-06.2:</p> <ul style="list-style-type: none"> • impact on child of a military service or parent’s possible future deployment • ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment • existing ties between parent and child and ability to provide the child with nurture, love, affection, and guidance • moral fitness of the parents, as that fitness impacts the child • mental and physical health of the parents, as that health impacts the child
Northern Mariana Islands	No	N/A
Ohio	Yes	<p>31 Ohio Rev. Code Ann. § 3109.4:</p> <ul style="list-style-type: none"> • ability of parent to encourage the sharing of love, affection, and contact between child and parent • whether the parent is required to be separated from the child due to military service • willful failure, refusal or neglect to contribute to support of child • physical custody left to non-parent • health of all the parties

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • history of child support payment
Oklahoma	No	N/A
Oregon	Yes	ORS § 107.137: <ul style="list-style-type: none"> • interest of the parties in and attitude toward the child • preference for the primary caregiver of the child, if the caregiver is deemed fit by the court
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> • availability to care for the child or ability to make appropriate child-care arrangements • mental and physical condition of a party or member of a party's household • parental duties performed by each party on behalf of the child • party more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child and to maintain a loving, consistent and nurturing relationship with child
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3185 (2017): <ul style="list-style-type: none"> • level of responsibility or moral integrity shown by each parent • capacity of each parent to satisfy emotional, financial, and moral needs of child • background of each parent with respect to their children before the divorce, dissolution, or separation of an unmarried couple • mental health of all involved P.R. Leyes An. tit. 32 § 3187 (2017): <ul style="list-style-type: none"> • acts and omissions of a parent that could potentially corrupt the child

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> parent's suffering of a physical or intellectual disability that prevents adequate care of child
Rhode Island	Yes	Pettinato v. Pettinato, 582 A.2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> mental and physical health of all individuals involved moral fitness of the child's parents
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> ability of each parent to be actively involved in the life of the child capacity and the disposition of the parents to understand and meet the needs of the child mental and physical health of all individuals involved (except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child)
South Dakota	Yes	<i>Fuerstenberg v. Fuerstenberg</i> , 1999 SD 35, N.W.2d 798, 1999 S.D. Lexis 43 (S.D. 1999): <ul style="list-style-type: none"> which parent is better equipped to provide for the child's temporal, mental and moral welfare commitment to and involvement in parenting the child
Tennessee	Yes	Tenn. Code Ann. § 36-6-106(a): <ul style="list-style-type: none"> each parent's employment schedule moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child refusal to attend a court ordered parent education seminar degree to which a parent has been the primary caregiver (defined as the parent who has taken the greater responsibility for performing parental responsibilities) parent's or caregiver's past and potential for future performance of parenting responsibilities

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • disposition of each parent to provide the child with food, clothing, medical care, education, and other necessary care
Texas	Yes	<p>V.T.C.A., Family Code § 263.307:</p> <ul style="list-style-type: none"> • whether the child’s family demonstrates adequate parenting skills, including providing the child and other children under the family's care with: <ul style="list-style-type: none"> ○ minimally adequate health and nutritional care ○ care, nurturance, and appropriate discipline consistent with the child’s physical and psychological development ○ willingness and ability of the child’s family to seek, accept and complete counseling services and to cooperate with and facilitate an appropriate agency’s close supervision ○ willingness and ability of the child’s family to effect positive environmental and personal changes within a reasonable period of time ○ results of psychiatric, psychological or developmental evaluations of the child, the child’s parents, other family members, or others who have access to the child’s home ○ guidance and supervision consistent with the child’s safety ○ a safe physical home environment ○ protection from repeated exposure to violence even though the violence may not be directed at the child ○ an understanding of the child’s needs and capabilities
U.S. Virgin Islands	Yes	<p><i>Madir v. Daniel</i>, 53 V.I.623 (V.I. 2010); <i>James v. Faust</i>, 65 V.I. 349 (V.I. 2016):</p> <ul style="list-style-type: none"> • ability of each parent to nurture the child, including the degree to which each parent has acted as primary caretaker

Jurisdiction	Governed by Statute	Factors a court will consider:
Utah	Yes	Utah Code 30-3-10(2) 2017: <ul style="list-style-type: none"> • parents prioritizing child’s welfare and reaching shared decision • past conduct and demonstrated moral standards of each of the parties • maturity of parents and their willingness to protect the child • which parent is most likely to act in best interest of child
Vermont	Yes	Vt. Stat. Ann. tit. 15 § 665(b)(1)-(9) (2017): <ul style="list-style-type: none"> • ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs, and a safe environment • ability and disposition of each parent to meet the child's present and future developmental needs • relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> • relative willingness and demonstrated ability of each parent to maintain a close and continuous relationship with the child • age and physical and mental condition of each parent • role that each parent has played and will play in the future, in the upbringing and care of the child
Washington	Yes	Wash. Rev. Code Section 26.09.002 (2017): <ul style="list-style-type: none"> • a parent’s neglect or substantial nonperformance of parenting functions • long term emotional or physical impairment which interferes with the performance of parenting functions • ability to protect the child from physical, mental or emotional harm

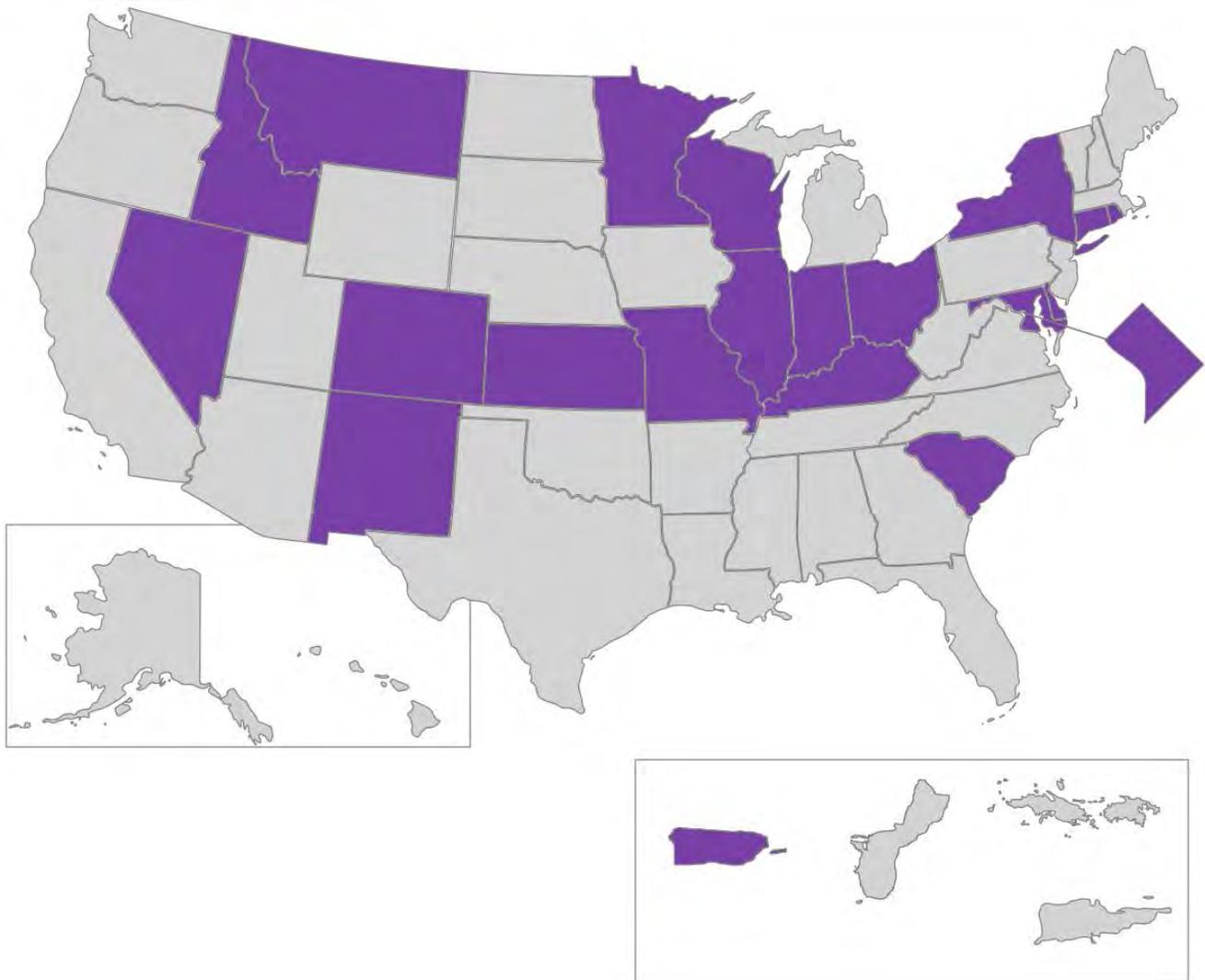
Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> ability to maintain a child’s emotional growth, health and stability and physical care
West Virginia	Yes	W.V. Code Section 48-9-102 (2017): <ul style="list-style-type: none"> caretaking relationship by adults who love the child, know how to provide a child's needs and who place a high priority on doing so
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017): <ul style="list-style-type: none"> amount and quality of time each parent has spent with the child in the past and necessary changes to the parents’ custodial roles and reasonable lifestyle changes suggested by a parent so parent can spend time with the child whether the mental or physical health of a party, minor child or other person living in a proposed custodial household regularly affects the child
Wyoming	Yes	Wyo. Stat. Ann. 20-2-201 (2017): <ul style="list-style-type: none"> ability and willingness of each parent to provide adequate care for each child throughout each period of responsibility, including arranging for each child's care by others as needed current physical and mental ability of each parent to care for each child relative competency and fitness of each parent

Best Interests of the Child - Parental Wishes Factor¹

By Morgan Lewis and Bockius LLP² – December 29, 2017

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¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute. National Immigrant Women’s Advocacy Project (NIWAP, pronounced new-app) American University, Washington College of Law 4300 Nebraska Avenue NW · Washington, D.C. 20016 (o) 202.274.4457 · info@niwap.org · wcl.american.edu/niwap · <http://niwaplibrary.wcl.american.edu/>

² Developed for the National Immigrant Women’s Advocacy Project, American University, Washington College of Law.

Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	No	N/A
American Samoa	No	N/A
Arizona	No	N/A
Arkansas	No	N/A
California	No	N/A
Colorado	Yes	<p>Colo. Rev. Stat. Ann. § 14-10-124:</p> <ul style="list-style-type: none"> wishes of parent or parents
Connecticut	Yes	<p>Conn. Ge. Stat. Section 46b-56:</p> <ul style="list-style-type: none"> wishes of child's parent or parents as to custody and residential arrangements
Delaware	Yes	<p>13 Del. C. § 722:</p> <ul style="list-style-type: none"> wishes of child's parent or parents as to custody and residential arrangements
District of Columbia	Yes	<p>D.C. Code Section 16-831.08:</p> <ul style="list-style-type: none"> wishes of parent or parents
Florida	No	N/A
Georgia	No	N/A
Guam	No	N/A
Hawaii	No	N/A
Idaho	Yes	<p>ID Statutes 32-717:</p> <ul style="list-style-type: none"> wishes of child's parent or parents
Illinois	Yes	<p>750 Ill. Comp. Stat. Ann. 5/602.7:</p> <ul style="list-style-type: none"> prior agreements or course of conduct related to caretaking functions parent's wishes
Indiana	Yes	<p>Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5:</p>

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • parents' wishes
Iowa	No	N/A
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> • desires of the child's parents
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> • intent of the parent or parents in placing the child with a de facto custodian • wishes of the child's parent or parents, and any de facto custodian, as to his custody
Louisiana	No	N/A
Maine	No	N/A
Maryland	Yes	MD Family § 5-323(d): <ul style="list-style-type: none"> • desires of parents and any agreement between them
Massachusetts	No	N/A
Michigan	No	N/A
Minnesota	Yes	MN ST § 257C.04: <ul style="list-style-type: none"> • wishes of the parties
Mississippi	No	N/A
Missouri	Yes	Mo. Stat. Ann. § 452.375.2 (West 2017): <ul style="list-style-type: none"> • wishes of parents
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> • wishes of parents
Nebraska	No	N/A
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035 (West 2017): <ul style="list-style-type: none"> • parent's nomination of a guardian for the child
New Hampshire	No	N/A
New Jersey	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
New Mexico	Yes	N.M. Stat. Ann. §40-4-9 (West 2017): <ul style="list-style-type: none"> wishes of parent
New York	Yes	N.Y. Domestic Relations Law § 240 (McKinney 2016): <ul style="list-style-type: none"> wishes of parents
North Carolina	No	N/A
North Dakota	No	N/A
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> wishes of parents
Oklahoma	No	N/A
Oregon	No	N/A
Pennsylvania	No	N/A
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3187 (2017): <ul style="list-style-type: none"> parent's lack of interest in custody of child
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A. 2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> wishes of the child's parent or parents regarding the child's custody
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> wishes of the parents as to custody
South Dakota	No	N/A
Tennessee	No	N/A
Texas	No	N/A
U.S. Virgin Islands	No	N/A
Utah	No	N/A
Vermont	No	N/A
Virginia	No	N/A

Jurisdiction	Governed by Statute	Factors a court will consider:
Washington	No	N/A
West Virginia	No	N/A
Wisconsin	Yes	Wis. Stat. Section 767.41(5)(am) (2017): <ul style="list-style-type: none"> • wishes of the parent or parents
Wyoming	No	N/A

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Jurisdiction	Governed by Statute	Factors a court will consider:
Alabama	No	N/A
Alaska	Yes	Alaska Stat. § 25.24.150, Alaska Stat. § 25.20.090: <ul style="list-style-type: none"> substance abuse affecting the child
American Samoa	No	N/A
Arizona	Yes	Ariz. Rev. Stat. Ann. § 25-403: <ul style="list-style-type: none"> mental and physical health of all individuals involved
Arkansas	Yes	Ark. Code. Ann. § 9-13-101: <ul style="list-style-type: none"> ex offender status
California	Yes	Cal. Fam. Code § 3011: <ul style="list-style-type: none"> substance abuse
Colorado	Yes	Colo. Rev. Stat. Ann § 14-10-124: <ul style="list-style-type: none"> mental and physical health of all individuals involved
Connecticut	Yes	Conn. Ge. Stat. Section 46b-56: <ul style="list-style-type: none"> mental and physical health of all individuals involved
Delaware	Yes	13 Del. C. § 722: <ul style="list-style-type: none"> criminal history of any party or any other member of household mental and physical health of all individuals in household
District of Columbia	Yes	D. C. Code Section 16-831.08: <ul style="list-style-type: none"> mental and physical health of all individuals involved
Florida	Yes	Fl. St. 61.13(3): <ul style="list-style-type: none"> parent's efforts to maintain a substance-abuse-free environment for child mental and physical health of the parents
Georgia	Yes	O.C.G.A. 19-9-3(a)(3): <ul style="list-style-type: none"> evidence of family violence or abuse or criminal history of either parent

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> evidence of substance abuse by either parent mental and physical health of the parents
Guam	No	N/A
Hawaii	Yes	HI. Rev. Statutes Section 571-46: <ul style="list-style-type: none"> mental health of each parent evidence of past or current drug or alcohol abuse by a parent
Idaho	No	N/A
Illinois	Yes	750 Ill. Comp. Stat. Ann. 5/602.7 (West 2016): <ul style="list-style-type: none"> mental health of all involved parent's conviction as a sex offender or parent living with a convicted sex offender, and what if any treatment the offender has successfully participated in
Indiana	Yes	Ind. Code Ann. § 31-14-13-2; 31-14-13-2.5: <ul style="list-style-type: none"> mental health of all individuals involved
Iowa	Yes	Iowa Code Ann. § 598.41: <ul style="list-style-type: none"> whether a history of domestic abuse exists
Kansas	Yes	Kan. Stat. Ann. § 23-3203: <ul style="list-style-type: none"> sex offender registration status of parent (or person residing with parent)
Kentucky	Yes	Ky. Rev. Stat. Ann. § 403.270 (2): <ul style="list-style-type: none"> mental health of all individuals involved
Louisiana	Yes	La. Civ. Code Ann. art. 134: <ul style="list-style-type: none"> mental and physical health of each party
Maine	Yes	ME ST T. 19-A § 1653: <ul style="list-style-type: none"> criminal history of parent and co-inhabitants of parent
Maryland	No	N/A
Massachusetts	Yes	MA ST 208 section 32 and 209C section 10:

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> family drug or alcohol abuse
Michigan	Yes	MI ST 722.23, Sec. 3: <ul style="list-style-type: none"> mental and physical health of parties involved
Minnesota	Yes	MN ST § 257C.04(a): <ul style="list-style-type: none"> mental health of all individuals involved
Mississippi	Yes	Albright v. Albright, 437 So.2d 1003, 1005 (Miss. 1983): <ul style="list-style-type: none"> physical and mental health of parent
Missouri	Yes	Mo. Ann. Stat. § 452.375.2 (West 2017): <ul style="list-style-type: none"> mental and physical health of all involved
Montana	Yes	Mont. Code Ann. § 40-4-212(1) (West 2017): <ul style="list-style-type: none"> chemical dependency or abuse mental and physical health of all involved conviction of certain crimes, such as homicide, sexual assault, endangering child's welfare
Nebraska	No	N/A
Nevada	Yes	Nev. Rev. Stat. Ann. § 125C.0035 (West 2017): <ul style="list-style-type: none"> mental and physical health of parents history of kidnapping history of abduction of child or any child
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 461-A:6 (West 2017): <ul style="list-style-type: none"> incarceration of parent and related issues
New Jersey	Yes	N.J.S.A. Section 9.2-4: <ul style="list-style-type: none"> person convicted of sexual assault or endangering the welfare of a child
New Mexico	Yes	N.M. Stat. Ann. §§ 40-4-9; 40-4-9.1 (West 2017): <ul style="list-style-type: none"> mental and physical health of all individuals involved
New York	Yes	N.Y. Domestic Relations Law § 240 (McKinney 2016):

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> conviction of one or more sexual offenses, including rape in the first or second degree, course of sexual conduct against a child in the first degree, or predatory sexual assault conviction of murder (unless victim of domestic violence, or murder related to domestic violence) <p><i>King v. King</i>, 243 A.D. 780, 277 N.Y.S. 653 (2nd Dept. 1935); <i>Janus v. Janus</i>, 239 A.D. 2d 712, 657 N.Y.S. 2d 256 (3rd Dept. 1997):</p> <ul style="list-style-type: none"> parent’s mental health
North Carolina	No	N/A
North Dakota	Yes	N.D.C.C. § 14-09-06.2: <ul style="list-style-type: none"> mental health of the parents, as that health impacts the child
Northern Mariana Islands	No	N/A
Ohio	Yes	31 Ohio Rev. Code Ann. § 3109.4(F): <ul style="list-style-type: none"> mental and physical health of all the parties
Oklahoma	Yes	Okla. Stat. Tit. 43, §§ 109, 112, 112.5: <ul style="list-style-type: none"> alcohol and drug dependency sex offender registration (or registration of someone living with parent) criminal conviction of certain specified crimes (or conviction of person living with parent)
Oregon	No	N/A
Pennsylvania	Yes	23 Pa.C.S. § 5328: <ul style="list-style-type: none"> history of drug or alcohol abuse of a party or member of a party’s household mental and physical condition of a party or member of a party’s household
Puerto Rico	Yes	P.R. Leyes An. tit. 32 § 3187 (2017): <ul style="list-style-type: none"> addiction to drugs or alcohol

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • mental health of all involved • parent’s suffering of an intellectual disability that prevents adequate care of child • imprisonment
Rhode Island	Yes	<i>Pettinato v. Pettinato</i> , 582 A. 2d 909, 913-14 (R.I. 1990): <ul style="list-style-type: none"> • mental and physical health of all involved
South Carolina	Yes	S.C. Code Ann. § 63-15-240(B): <ul style="list-style-type: none"> • mental health of all individuals involved (except that a disability of a proposed custodial parent or other party, in and of itself, must not be determinative of custody unless the proposed custodial arrangement is not in the best interest of the child)
South Dakota	No	N/A
Tennessee	Yes	Tenn. Code Ann. Section 36-6-106(a): <ul style="list-style-type: none"> • physical, mental and emotional fitness of each parent
Texas	Yes	V.T.C.A., Family Code § 263.307: <ul style="list-style-type: none"> • history of substance abuse by the child’s family or others who have access to the child’s home • results of psychiatric, psychological, or developmental evaluations of the child’s parents other family members, or others who have access to the child’s home
U.S. Virgin Islands	No	N/A
Utah	No	N/A
Vermont	No	N/A
Virginia	Yes	Va. Code Ann. 20.124-3 (2017): <ul style="list-style-type: none"> • physical and mental condition of each parent and child
Washington	Yes	Wash. Rev. Code Section 26.09.002 (2017): <ul style="list-style-type: none"> • long-term emotional or physical impairment

Jurisdiction	Governed by Statute	Factors a court will consider:
		<ul style="list-style-type: none"> • long term impairment resulting from drug, alcohol, or other substance abuse
West Virginia	No	N/A
Wisconsin	Yes	<p>Wis. Stat. Section 767.41(5)(am) (2017):</p> <ul style="list-style-type: none"> • whether either party has or had a significant problem with alcohol or drug abuse • whether the mental health of a party, minor child or other person living in a proposed custodial household regularly affects the child • whether a person who the parent is dating or a person who may reside in the home has a criminal record
Wyoming	Yes	<p>Wyo. Stat. Ann. 20-2-201 (2017):</p> <ul style="list-style-type: none"> • current physical and mental ability of each parent to care for each child

Appendix R Custody in Protection Orders Proceedings¹

By Rafaela Rodrigues and Leslye E. Orloff

November 9, 2017²

Custody awards are standard provisions included when the court issues protection orders to victim who have children. Addressing custody in a protection order proceedings strengthens the effectiveness of the protection order because it places court ordered controls and can place limitations on the extent to which the perpetrator can have discussions or contact with the victim regarding custody and visitation. The vast majority of state protection order statutes explicitly authorize courts to include child custody awards in civil protection orders issued by state courts. Only three state statutes, Arizona, Oklahoma and Wisconsin, fail to allow protection orders to include child custody awards.

In both protection orders brought on behalf of child abuse victims and protection orders brought by domestic violence victims best practices for protection of victims of domestic violence and child abuse is to include custody awards to the victim who is the non-abusive parent as a routine provisions in civil and criminal protection orders issued by state courts.³ It has long be recognized that placing children in the custody of domestic violence perpetrator parents is detrimental⁴ and have tragic consequences⁵ for children. Research into the neurobiology of child brain development and its effects on the physical and emotional development of children has identified how both child abuse and witnessing domestic violence perpetrated against a parent are each harmful to children’s growth and development.⁶ Including child custody awards in civil and criminal protection orders is a best

¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

³ Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 949-965 (1993); See National Council of Juvenile and Family Court Judges, *Custody and Visitation in Civil Protection Orders* (2017); National Council of Juvenile and Family Court Judges, *Civil Protection Orders: A Guide for Improving Practice* (2010); National Council of Juvenile and Family Court Judges, *Family Violence: A Model State Code* (1994); Leslye Orloff *et. al.* *Chapter 3: Battered Immigrants and Civil Protection Orders in*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT & LEGAL MOMENTUM, *BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS 1-37* (2013), <http://niwaplibrary.wcl.american.edu/manual/breaking-barriers/>

⁴“Expressing the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of an abusive parent.”; “Whereas joint custody guarantees the batterer continued access and control over the battered spouse’s life through their children; [] Whereas joint custody forced upon hostile parents can create a dangerous psychological environment for a child; Whereas the effects of spouse abuse on children include actual and potential emotional and physical harm, the negative effects of exposure to an inappropriate role model, and the potential for future harm where contact with the batterer continues [...] That it is the sense of the Congress that, for purposes of determining child custody, evidence of spousal abuse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent.” H.R. Con. Res. 172, 101st Cong., 2d Sess., 104 Stat. 5183 (1990)

⁵ National Council of Juvenile and Family Court Judges, *Family Violence: A Model State Code*, 9 (1994).

⁶*Appendix E: Understanding the Significance of a Minor’s Trauma History in Family Court Proceedings*, 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-e-effects-of-trauma-on-minors-fact-sheet/>; See Linda Chamberlain, Dr. Linda Chamberlain: *A Trauma-informed Approach to ACEs - Building Resilient Communities*, *Engaging Voices* (Nov 12, 2014), <https://www.youtube.com/watch?v=gRTwoJsNhGE>; Lynn Hecht Schafran, *Domestic Violence, Developing Brains, and the Lifespan: New Knowledge from Neuroscience*, 53 JUDGES J. 32, 37 (2014); <https://www.cdc.gov/violenceprevention/acestudy/index.html>

National Immigrant Women’s Advocacy Project (NIWAP, pronounced new-app)

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practice that protects children and their domestic violence victim parents from ongoing abuse in the context of child custody and visitation.⁷

Since custody awards to non-abusive victim parents is a standard part of civil protection orders issued by state courts across the country, civil protection orders containing custody awards provide an excellent opportunity for state courts to issue Special Immigrant Juvenile Status findings. When state protection order courts award custody of immigrant children who have experienced child abuse, abandonment or neglect by a parent and the child is not a citizen or lawful permanent resident, issuance of a protection order is an opportunity to include in the order SIJS findings that benefit and protect immigrant children. Some children may have also suffered from having witnessed domestic violence perpetrated by one parent against the other.

This document provides a state-by-state summary of the state laws that govern the inclusion of custody awards when state courts issue civil protection orders on behalf of domestic violence and child abuse⁸ victims. Civil protection orders are referred to by different titles under different state laws. In several states, civil protection orders are titled injunctions or restraining orders. State laws authorize protection order courts to award custody of children the parties share in common as an important provision of the protection order issued by the state court.

Custody provisions in state protection order statutes remain in place permanently for the duration of the protection order and any extensions of that protection even though in many state statutes label these custody provisions “temporary.” The custody award issued as part of a civil or criminal protection order remains in effect governing custody for the children and their parents unless and until one of the parents files a separate custody action and the state court issues a custody award in that state custody action. In most cases involving families experiencing domestic violence or child abuse the outcome applying state best interest factors in the custody case will be the same custody award to the non-abusive parent issued in the protection order proceeding. When the subsequent custody order is issued in a case where the previously issued protection order contained SIJS findings, courts should consider consolidating the cases or stating in the order in the custody case that the custody court is continuing or adopting the findings made by the protection order court and incorporating them into the final custody award. This will assist children pursuing SIJS immigration relief based on those court orders.

The state-by-state chart below tracks the provisions of each state’s protection order law that authorizes awards of custody to the parent who is receiving protection under the civil protection order issued by the court. The list below was developed to help courts identify when other states have statutory language similar to their state statute. When state statutes are similar, case law in one jurisdiction can provide persuasive authority interpreting the statute that may be useful to state courts in a wide range of family court proceedings.

The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status

⁷ Gabrielle Davis et al., Practice Guides For Family Court Decision-Making In Domestic Abuse Related Child Custody Matters, Battered Women’s Justice Project (2015), <http://www.bwjp.org/resource-center/resource-results/practice-guides-for-family-court-decision-making-in-domestic-abuse-related-child-custody-matters.html>

⁸ See *Appendix N: Domestic Violence Includes Child Abuse and Child Neglect*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS Bench Book, <http://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect/>.

(SIJS). Any immigrant child who is not a citizen or lawful permanent resident of the United States who come before the court in civil protection order proceedings could be eligible for SIJS. The child would be eligible for SIJS if the facts of the civil protection order case support factual findings that the child was abused, abandoned, neglected or similarly harmed under state law by at least one of the child’s parents. Many protection order cases involving immigrant that state court judges hear could be cases in which SIJS orders could be issued on the child’s behalf. In order to be considered an eligible juvenile for SIJS, each application with USCIS for SIJS must include a predicate state court order from a court with jurisdiction. The court must have jurisdiction under state law to make judicial determinations about the custody, care, or placement of the child or juvenile making specific findings about the welfare of the child. Thus, any custody award under state civil protection order laws could include the findings immigrant children need to obtain from a state court to be eligible for file for SIJS immigration law protection.

State Civil Protection Order Remedies Include Child Custody Awards

Jurisdiction	Can CPO address custody or possession of a child?	Text of the statute or case law
Alabama	Yes	Ala. Code § 30-5-7 (4) Award temporary custody of any children of the parties.
Alaska	Yes	Alaska Stat. Ann. § 18.66.100 (9) award temporary custody of a minor child to the petitioner and may arrange for visitation with a minor child if the safety of the child and the petitioner can be protected; if visitation is allowed, the court may order visitation under the conditions provided in AS 25.20.061.
Arizona	No	Comment: Arizona does not permit award custody in protection order cases. However, if it has a custody case pending in Family Court, upon request of a party, the officer must transfer the case from civil court to family court, where the custody case is being held. Nevertheless, no custody order can be made in the order of protection itself. CPO can allow contact consistent with an existing custody or parenting time order but cannot expand it.
Arkansas	Yes	A.C.A. § 9-15-205 (3)(A) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties.
California	Yes	Cal. Fam. Code § 6323 The court may issue an ex parte order determining the temporary custody and visitation of a minor child on the conditions the court determines to a party who has established a parent and child relationship pursuant to paragraph (2). The parties shall inform the court if any custody or visitation orders have already been issued in any other proceeding. Cal. Fam. Code § 6340 (a) Ex parte orders; Reason given for denial; Order excluding party from a dwelling The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make

California		<p>any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.</p> <p>Comment: Custody orders in CPO are temporary. However, they can remain in effect unless and until they are modified in the CPO case or in a parallel family law action (divorce or paternity).</p>
Colorado	Yes	<p>Colo. Rev. Stat. § 13-14-105 (2) Any order for temporary care and control issued pursuant to subsection (1) of this section is governed by the “Uniform Child-custody Jurisdiction and Enforcement Act”, article 13 of title 14, C.R.S.</p> <p>Colo. Rev. Stat. Ann. § 14-13-311 (2) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 14-13-308(2).</p> <p>Comment: Colorado is one of 49 states to adopt UCCJEA. Therefore, the procedures therein cover personal jurisdiction issues, including child custody orders. Usually, if there has been no previous custody determinations before the CPO hearing the judge makes custody findings as part of the CPO. However, if there is previous determinations of custody, the new request of custody would be handled in the Family Court that first determined the custody.</p>
Connecticut	Yes	<p>Conn. Gen. Stat. § 46b-15 “...Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant. Such order may include provisions necessary to protect any animal owned or kept by the applicant including, but not limited to, an order enjoining the respondent from injuring or threatening to injure such animal. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate....”</p>
Delaware	Yes	<p>Del. Code Ann. tit. 10, § 1045 (5) Grant temporary custody of the children of the parties to the petitioner or to another family member.</p>
District of Columbia	Yes	<p>D.C. Code Ann. § 16-1005 (6) Awards temporary custody of a minor child or children of the parties.</p>

Florida	Yes	<p>Fla. Stat. Ann. § 741.30 Providing a temporary parenting plan, including a temporary time-sharing schedule, with regard to the minor child or children of the parties which might involve prohibiting or limiting time-sharing or requiring that it be supervised by a third party.</p>
Georgia	Yes	<p>Ga. Code Ann. § 19-13-4 (4) Award temporary custody of minor children and establish temporary visitation rights.</p>
Hawaii	Yes	<p>Haw. Rev. Stat. Ann. § 586-5 The protective order may include all orders stated in the temporary restraining order and may provide further relief, as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention.</p> <p>Haw. Rev. Stat. Ann. § 586-5.5 Protective order; additional orders. If, after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for a further fixed reasonable period as the court deems appropriate. The protective order may include all orders stated in the temporary restraining order and may provide for further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in domestic violence intervention services. If the court finds that the party meets the requirements under section 334-59(a)(2), the court further may order that the party be taken to the nearest facility for emergency examination and treatment.</p>
Idaho	Yes	<p>Idaho Code Ann. § 39-6308 Ex parte temporary protection order (c) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court</p> <p>Idaho Code Ann. § 39-6306 Hearing on petition for protection order--Relief provided and realignment of designation of parties Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if exercise of such jurisdiction is consistent with the provisions of section 32-11-204, Idaho Code, and consistent with prior custody orders entered by a court of competent jurisdiction unless grounds exist pursuant to section 32-717, Idaho Code.</p>
Illinois	Yes	<p>750 Ill. Comp. Stat. Ann. 60/214 (b)(6) (6) Temporary allocation of parental responsibilities: significant decision-making. Award temporary decision-making responsibility to petitioner in accordance with this Section, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 2015, and this State's Uniform Child-Custody Jurisdiction and Enforcement Act.</p>

Indiana	Yes	<p>Ind. Code Ann. § 34-26-5-9 (c) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:</p> <ul style="list-style-type: none"> Specify arrangements for parenting time of a minor child by a respondent and: require supervision by a third party; or deny parenting time; if necessary to protect the safety of a petitioner or child.
Iowa	Yes	<p>Iowa Code Ann. § 236.5 (5) The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen.</p>
Kansas	Yes	<p>Kan. Stat. Ann. § 60-3107 (4) Awarding temporary custody and residency and establishing temporary parenting time with regard to minor children.</p>
Kentucky	Yes	<p>Ky. Rev. Stat. Ann. § 403.740 (West) 2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, grant temporary custody.</p>
Louisiana	Yes	<p>La. Stat. Ann. § 46:2135 § 2135. Temporary restraining order (5) Awarding temporary custody of minor children or persons alleged to be incompetent.</p> <p>La. Stat. Ann. § 46:2136 § 2136. Protective orders (3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor children or person alleged to be incompetent.</p>
Maine	Yes	<p>Me. Rev. Stat. tit. 19-A, § 4007 Relief granted under this section may include:</p> <p>G. Either awarding some or all temporary parental rights and responsibilities with regard to minor children or awarding temporary rights of contact with regard to minor children, or both, under such conditions that the court finds appropriate as determined in accordance with the best interest of the child pursuant to section 1653, subsections 3 to 6-B. The court's award of parental rights and responsibilities or rights of contact is not binding in any separate action involving an award of parental rights and responsibilities pursuant to chapter 551 or in a similar action brought in another jurisdiction exercising child custody jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act.</p>
Maryland	Yes	<p>Md. Code Ann., Fam. Law § 4-506 (West) (7) award temporary custody of a minor child of the respondent and a person eligible for relief.</p>

Massachusetts	Yes	<p>Mass. Gen. Laws Ann. ch. 209A, § 3 (West) (d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an “abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse; (...)</p>
Michigan	Yes	<p>“Moreover, the trial court had statutory authority to restrict respondent's contact with his children. MCL 600.2950, the statute pertaining to personal protection orders, allows a court to restrain an individual from doing various acts. MCL 600.2950(1)(j) is directly applicable to the instant case and provided the trial court with authority to issue the PPO prohibiting respondent's contact with the children. This “catchall” provision clearly provides the trial court with authority to restrain respondent from any other action that “interferes with personal liberty” or might cause “a reasonable apprehension of violence.” <u>Brandt v. Brandt</u>, 250 Mich. App. 68, 70, 645 N.W.2d 327, 329 (2002)</p> <p>Comment: In Michigan CPO can address temporary custody. The Court of Appeals in 2002 held that the statute MCL 600.2950 allowed a court to restrain an individual from doing several acts. The statute, therefore, provide the trial court with the authority to restrain a perpetrator from any parenting time or contact with a child, justified by reasonable apprehension of violence.</p>
Minnesota	Yes	<p>Minn. Stat. Ann. § 518B.01 (4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. Findings under section 257.025, 518.17, or 518.175 are not required with respect to the particular best interest factors not considered by the court. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan under section 518.1705 as part of an action for an order for protection.</p>
Mississippi	Yes	<p>Miss. Code. Ann. § 93-21-15 (iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both.</p>

Missouri	Yes	Mo. Ann. Stat. § 455.050 Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued.
Montana	Yes	Mont. Code Ann. § 40-15-201 - Temporary order of protection (2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders: (j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member. Comment: Montana can award temporary custody in CPO. Individuals seeking and order of protection can file in either a lower municipal/city/Justice Court, which has limited jurisdiction, or in District Court. However, if a custody and/or dissolution case is already pending in District Court, a CPO between the same parties must be filed in District Court. Parents may include their minor children as protected persons on their Petitions for Temporary Orders of Protection, whether the children are those of the respondent or not.
Nebraska	Yes	Neb. Rev. Stat. Ann. § 42-924 (f) Awarding the petitioner temporary custody of any minor children not to exceed ninety days.
Nevada	Yes	Nev. Rev. Stat. Ann. § 33.030 (d) If it has jurisdiction under chapter 125A of NRS, grant temporary custody of the minor child to the applicant.
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 173-B:4 (4) Awarding custody of minor children to either party or, upon actual notice, to the department when it is in the best interest of a child.
New Jersey	Yes	N.J. Stat. Ann. § 2C:25-29 (5) In determining custody and parenting time the protection of the victim's safety.
New Mexico	Yes	N.M. Stat. Ann. § 40-13-3.2 Ex parte emergency orders of protection (3) grant temporary custody of any minor child in common with the parties to the protected party, if necessary. N.M. Stat. Ann. § 40-13-5 Permanent Order of protection (2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the protected party and the children.

New York	Yes	N.Y. Fam. Ct. Act § 842 The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.
North Carolina	Yes	N.C. Gen. Stat. Ann. § 50B-3 In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.
North Dakota	Yes	N.D. Cent. Code Ann. § 14-07.1-02 c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
Ohio	Yes	Ohio Rev. Code Ann. § 3113.31 (d) Temporarily allocate parental rights and responsibilities for the care of, or establish temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights.
Oklahoma	No	Okla. Stat. Ann. tit. 22, § 60.4 1. A protective order issued under the Protection from Domestic Abuse Act shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody , visitation or visitation schedules, child support or division of property or any other like relief obtainable pursuant to Title 43 of the Oklahoma Statutes, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household. Comment: Although the law forbids from awarding custody or visitation in a protective order case, Judges are able to modify pre-existing visitation orders within the protective order context. E.g., the judge could modify the pre-existing visitation by allowing the father only professionally supervised visitation under the protective order. The judge is still prohibited by this statute from modifying the joint custody provision.
Oregon	Yes	Or. Rev. Stat. Ann. § 107.718 Except as provided in subsection (2) of this section, that temporary custody of the children of the parties be awarded to the petitioner or, at the request of the petitioner, to the respondent, subject to reasonable parenting time rights of the noncustodial parent, which the court shall order, unless such parenting time is not in the best interest of the child.

<p>Pennsylvania</p>	<p>Yes</p>	<p>23 Pa. Stat. and Cons. Stat. Ann. § 6108</p> <p>(4) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children. In determining whether to award temporary custody or establish temporary visitation rights pursuant to this paragraph, the court shall consider any risk posed by the defendant to the children as well as risk to the plaintiff. The following shall apply:</p> <p>(i) A defendant shall not be granted custody, partial custody or unsupervised visitation where it is alleged in the petition, and the court finds after a hearing under this chapter, that the defendant:</p> <p>(A) abused the minor children of the parties or poses a risk of abuse toward the minor children of the parties; or</p> <p>(B) has been convicted of violating 18 Pa.C.S. § 2904 (relating to interference with custody of children) within two calendar years prior to the filing of the petition for protection order or that the defendant poses a risk of violating 18 Pa.C.S. § 2904.</p> <p>(ii) Where the court finds after a hearing under this chapter that the defendant has inflicted abuse upon the plaintiff or a child, the court may require supervised custodial access by a third party. The third party must agree to be accountable to the court for supervision and execute an affidavit of accountability.</p> <p>(iii) Where the court finds after a hearing under this chapter that the defendant has inflicted serious abuse upon the plaintiff or a child or poses a risk of abuse toward the plaintiff or a child, the court may:</p> <p>(A) award supervised visitation in a secure visitation facility; or</p> <p>(B) deny the defendant custodial access to a child.</p> <p>(iv) If a plaintiff petitions for a temporary order under section 6107(b) (relating to hearings) and the defendant has partial, shared or full custody of the minor children of the parties by order of court or written agreement of the parties, the custody shall not be disturbed or changed unless the court finds that the defendant is likely to inflict abuse upon the children or to remove the children from the jurisdiction of the court prior to the hearing under section 6107(a). Where the defendant has forcibly or fraudulently removed any minor child from the care and custody of a plaintiff, the court shall order the return of the child to the plaintiff unless the child would be endangered by restoration to the plaintiff.</p> <p>(v) Nothing in this paragraph shall bar either party from filing a petition for custody under Chapter 53 (relating to custody) or under the Pennsylvania Rules of Civil Procedure.</p> <p>(vi) In order to prevent further abuse during periods of access to the plaintiff and child during the exercise of custodial rights, the court shall consider, and may impose on a custody award, conditions necessary to assure the safety of the plaintiff and minor children from abuse.</p>
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Rhode Island	Yes	15 R.I. Gen. Laws Ann. § 15-15-3 (3) Awarding the plaintiff custody of the minor children of the parties, if any
South Carolina	Yes	S.C. Code Ann. § 20-4-60 Award temporary custody and temporary visitation rights with regard to minor children living in the home over whom the parties have custody.
South Dakota	Yes	S.D. Codified Laws § 25-10-5 (3) Award temporary custody or establish temporary visitation with regards to minor children of the parties.
Tennessee	Yes	Tenn. Code Ann. § 36-3-606 (6) Awarding temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties.
Texas	Yes	Tex. Fam. Code Ann. § 85.021 In a protective order, the court may: prohibit a party from: removing a child who is a member of the family or household from: the possession of a person named in the order; or the jurisdiction of the court; Comment: The Texas Family Code does not refer to custody, otherwise, authorize courts to define the possession of the child and access orders in the CPO. A permanent custody proceeding would need to comply with Chapters 152 and 153 of Tex. Fam. Code.
Utah	Yes	Utah Code Ann. § 78B-7-106 (f) grant to the petitioner temporary custody of any minor children of the parties.
Vermont	Yes	Vt. Stat. Ann. tit. 15, § 1104 (3) Upon a finding that there is immediate danger of physical or emotional harm to minor children, the Court may award temporary custody of these minor children to the plaintiff or to other persons.
Virginia	Yes	Va. Code Ann. § 16.1-279.1 9. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.
Washington	Yes	Wash. Rev. Code Ann. § 26.50.060 (l) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent and may prohibit the respondent from interfering with the petitioner's efforts to remove the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found. Wash. Rev. Code Ann. § 26.50.060 (1) d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However,

Washington		parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter; (h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household.
West Virginia	Yes	W. Va. Code § 48-27-503 (3) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order; (4) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children.
Wisconsin	No	Comment: Wisconsin does not allow custodial orders in protection orders proceedings, except for Child Abuse CPO (Wisconsin statute call them Injunctions). Under Wis. Stat. Sec. 813.122(5) (b), the court shall award the parent/defendant reasonable visitation rights if the victim/petitioner is that person's child.
Wyoming	Yes	Wyo. Stat. Ann. § 35-21-105 When the court finds it to be in the best interests of the children, award temporary custody of any children involved to the petitioner. The court shall in this instance provide for visitation with the respondent only if adequate provision can be made for the safety of the children and the petitioner. To provide for the safety of the children and the petitioner, the court may: (A) Order an exchange of children to occur in a protected setting; (B) Order that visitation be arranged and supervised by another person or agency, and if the other person is a family or household member, establish conditions to be followed during the visitation; (C) Order the respondent to attend and complete to the court's satisfaction a program of intervention or other designated counseling as a condition of visitation; (D) Order the respondent to abstain from the consumption of alcohol or controlled substances for up to twenty-four (24) hours before the visitation and during the visitation; (E) Order the respondent to pay a fee through the court to defray the costs of supervised visitation; (F) Prohibit overnight visitation; (G) Require the respondent to post a bond to secure the return and safety of any children; or (H) Impose any other condition it deems necessary for the safety of the petitioner, the children, or other family or household member.

Appendix S Use of Declaratory Judgments in Family Law Matters¹

By: Isabel Laluna, Meaghan Fitzpatrick and Leslye E. Orloff
November 16, 2017

Courts across the United States have used declaratory judgments in a variety of family cases. State law authorizes the issuance of declaratory judgments in family law matters the majority of states.² The following list provides a summary of cases in which state courts issued declaratory judgments in family law related matters.³

Matters Related to Children

- **Child Custody**, such as the parents' and grandparents' right to have custody of the child⁴, the Department of Social Services' right to admit children to mental health facilities⁵, native tribes' concurrent jurisdiction to initiate Indian Child Welfare Act (ICWA) child custody proceedings⁶, the Department of Social Services' duty not to remove children from their mother's home without a timely petition⁷, the right of the state department of children to seize children from their parents⁸, and voiding of a divorce agreement which changed child custody.⁹
- **Rights of Parents and Grandparents**, in relation to the parents' constitutional rights during a child abuse investigation¹⁰, putative father's right to have his paternity and corresponding rights and duties determined¹¹, determination of a child's home state as the convenient forum to hear a petition to terminate parental rights¹², grandparents' and parents' visitation rights¹³, nullity of the

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² In California, declaratory judgments apply only to property rights. In Missouri, declaratory judgments are only applicable to persons with interests in deeds, wills and contracts. In New Hampshire, declaratory judgments apply to people claiming legal or equitable rights or title. Two states (Hawaii and Virginia) declaratory judgments are only available when the matter is contested.

³ This publication provides an overview of family law matters addressed in declaratory judgment cases. It can be useful to use this tool together with Appendix U: *SIJS and Declaratory Judgement Statutes State By-State 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-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/>; *Appendix T: Declaratory Judgment Case Law by Topic and State, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-27 (2017)*, <http://niwaplibrary.wcl.american.edu/pubs/appendix-t-declaratory-judgments-cases-bytopic-state/>.

⁴ *C.L. v. C.*, 1990 WL 34699 (Del.Fam.Ct. 1990); *Carter v. Nance*, 304 Ky. 256 (Ky.Ct.App. 1947); *In Re Marriage of McEvoy*, 414 N.W.2d 855 (Iowa Ct.App. 1987); *Smith v. Smith*, 140 W.Va. 298 (W.Va. 1954)

⁵ *D.L. v. Comm'r of Soc. Serv.*, 412 Mass. 558 (Mass. 1992)

⁶ *State of Alaska v. Native Vill. of Tanana*, 249 P.3d 734 (Alaska 2011)

⁷ *In Re Claudia E. v. J.E.*, 163 Cal.App.4th 627 (Cal.Ct.App. 2008)

⁸ *B. v. Ment*, 244 Conn. 296 (Conn. 1998)

⁹ *McManus v. Howard*, 569 So.2d 1213 (Miss. 1990)

¹⁰ *Morris v. Dearborne*, 69 F.Supp.2d 868 (E.D. Tex. 1999)

¹¹ *Kendrick v. Everheart*, 390 So.2d 53 (Fla. 1980); *Slawek v. Stroh*, 62 Wis.2d 295 (Wis. 1974); *Johannesen v. Pfeiffer*, 387 A.2d 1113 (Me. 1978)

¹² *Monk v. Pomberg*, 263 S.W.3d 199 (Tex.App. 2007)

¹³ *Mirto v. Bodine*, 29 Conn.Supp. 510 (Conn.Super.Ct. 1972); *Gardner v. Rothman*, 370 Mass. 79 (Mass. 1976)

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paternity judgment¹⁴, grandparents' right to notice and hearing in Child in Need of Aid (CINA) proceedings¹⁵, and rights of biological parents vis-à-vis the surrogate mother.¹⁶

- **Rights of an Illegitimate Child**, specifically his right to inherit from his putative father.¹⁷
- **Child Support**, specifically the obligation/right to pay for child support¹⁸ upon change of custody¹⁹, duty to pay for child's school tuition²⁰, determination of the amount of monthly child support obligation under a divorce decree²¹, a father's non-entitlement to discharge his child-support arrears²², nullity of a judgment which modified a child support order²³, a mother's entitlement to welfare assistance for her unborn child²⁴, deduction of child care costs from the claimant's income²⁵, modifiable nature of a child support award²⁶, father's obligation to reimburse child birth medical expenses²⁷, and entitlement to child support enforcement services.²⁸
- **Foster Care**, where the courts were asked to determine a county's liability to pay for foster care in case of placement in existing county program or in state-approved private institution²⁹, and a foster child's constitutional right to be safe and not be removed from his foster parents' home.³⁰
- **Child Adoption**, pertaining to the prohibition of the biological parents' adoption of their own children,³¹ and the obligation of adopted child's parent to reimburse county for the cost of care for the child in an out-of-home placement.³²
- **Juvenile Delinquency**, enforcing the state law prohibition on housing dependent children in a juvenile detention facility with delinquent children³³.
- **Immigrant Child/Parent**, such as the determination of an orphaned immigrant juvenile's dependent status for having no parent or legal custodian while living within the state borders³⁴, child immigrant's right to petition for status as a special immigrant juvenile (SIJ),³⁵

¹⁴ *Schaff v. Schaff*, 446 N.W.2d 28 (N.D. 1989)

¹⁵ *Jacob v. State of Alaska*, 177 P.3d 1181 (Alaska 2008)

¹⁶ *Doe v. Doe*, 15 Va.App. 242 (Va.Ct.App. 1992)

¹⁷ *In Re Estate of Glover*, 470 A.2d 743 (D.C. 1983)

¹⁸ *Garcia v. Garcia*, 789 N.E.2d 993 (Ind.Ct.App. 2003), *Wornkey v. Wornkey*, 12 Kan.App.2d 506 (Kan.Ct.App. 1988); *C.L. v. C.*, 1990 WL 34699 (Del.Fam.Ct. 1990)

¹⁹ *Weaver v. Jones*, 260 Ga. 493 (Ga. 1990)

²⁰ *Hardman v. Hardman*, 295 Ga. 732 (Ga. 2014)

²¹ *Acevedo v. Kim*, 284 Ga. 629 (Ga. 2008)

²² *Grays v. Arkansas Office of Child Support Enforcement*, 375 Ark. 38 (Ark. 2008)

²³ *Spicer v. Spicer*, 62 So.3d 798 (La.Ct.App. 2011)

²⁴ *Filipo v. Chang*, 62 Haw. 626 (Haw. 1980)

²⁵ *D'Ewart v. Neibauer*, 228 Mont. 335 (Mont. 1987)

²⁶ *Schaff v. Schaff*, 446 N.W.2d 28 (N.D. 1989)

²⁷ *K.D.R. v. D.E.S.*, 637 S.W.2d 691 (Mo. 1982)

²⁸ *Howe v. Ellenbecker*, 774 F.Supp. 1224 (D.S.D. 1991)

²⁹ *Wayne Cnty. v. State of Mich.*, 202 Mich.App. 530 (Mich.Ct.App. 1993)

³⁰ *Orsi v. Senatore*, 31 Conn.App. 400 (Conn.App.Ct. 1993)

³¹ *Peregood v. Cosmides*, 663 So.2d 665 (Fla.Dist.Ct.App. 1995); *Green v. Sollenberger*, 338 Md. 118 (Md. 1995)

³² *Cnty. of Ramsey v. Wilson*, 526 N.W.2d 384 (Minn.Ct.App. 1995)

³³ *Coal. To Save Our Kids v. Dep't of Pub. Welfare*, 745 A.2d 82 (Pa.Comm. Ct. 2000)

³⁴ *F.L.M. v. Dep't of Children and Families*, 912 So.2d 1264 (Fla.Dist.Ct.App. 2005)

³⁵ *Gao v. Jenifer*, 185 F.3d 548 (6th Cir. 1999)

determination of citizenship of a child of an immigrant and a U.S. citizen,³⁶ and prior to 1996 immigration law amendments that ended this practice staying of a deportation order issued against the child's immigrant parents.³⁷

Matters Related to Marriage and Divorce

- **Premarital Agreement**, regarding issues of its validity³⁸, scope, and application.³⁹
- **Marriage**, particularly its nullification⁴⁰ and existence⁴¹, one's marital status⁴², and a ward's competence to marry his girlfriend.⁴³
- **Divorce**, involving issues that include: voiding a divorce judgment⁴⁴, assigning liability for community debts⁴⁵, the husband's obligation to pay alimony⁴⁶, and ex-husband's presumptive paternity despite a contrary finding under a divorce decree.⁴⁷
- **Property**, including: courts determining the amount of mortgage due on a marital home⁴⁸, allowing marital debts to be satisfied by marital assets granted through arbitration⁴⁹, declaring stock options as marital property⁵⁰, declaring one's property rights in his former marital residence⁵¹, barring support and health insurance coverage⁵², including account receivables in the guardian's inventory,⁵³ and declaring other marital or partnership property rights.⁵⁴

³⁶ *Rios v. Civiletti*, 571 F.Supp. 218 (D.P.R. 1983)

³⁷ *On the Petition of Amoury for Declaratory Judgment*, 307 F.Supp. 213 (S.D.N.Y. 1969) (The role state courts played in issuing Judicial Recommendations Against Deportation (JRAD) that had the effect of stopping federal immigration authorities from deporting an individual was statutorily eliminated by Congress from federal immigration laws as part of the Immigration Act of 1990 104 Stat. 5050. See also *Padilla v. Kentucky*, 559 U.S. 356 (2010).

³⁸ *Schwartz v. Schwartz*, 183 P.3d 552 (Colo. 2008)

³⁹ *In re Marriage of Best*, 228 Ill.2d 107 (Ill. 2008)

⁴⁰ *McCombs v. Haley*, 13 Neb.App. 729 (Neb.Ct.App. 2005)

⁴¹ *Ellehaf v. Tarraf*, 2006 WL 736561 (Mich.Ct.App. 2006)

⁴² *Cardosanto v. Cardosanto*, 14 Misc.2d 498 (N.Y.Sup.Ct. 1957)

⁴³ *In the Matter of the Guardianship of O'Brien*, 847 N.W.2d 710 (Minn.Ct.App. 2014)

⁴⁴ *Waite v. Waite*, 891 So.2d 341 (Ala.Civ.App. 2004)

⁴⁵ *Srock, Jr. v. Srock*, 11 Ariz.App. 483 (Ariz.Ct.App. 1970)

⁴⁶ *Randlett v. Randlett*, 401 A.2d 1008 (Me. 1979)

⁴⁷ *Clark v. Edens*, 254 P.3d 672 (Okla. 2011)

⁴⁸ *Wilmore v. Wilmore*, 91 So.3d 701 (Ala.Civ.App. 2012)

⁴⁹ *Russell Piccoli P.L.C. v. O'Donnell*, 237 Ariz. 43 (Ariz.Ct.App. 2015)

⁵⁰ *Pianalto v. Pianalto*, 2010 Ark. App. 80 (Ark.Ct.App. 2010)

⁵¹ *Foster v. Schorr*, 139 Idaho 563 (Idaho 2003)

⁵² *In re Marriage of Best*, 228 Ill.2d 107 (Ill. 2008)

⁵³ *In Re Guardianship of Maurer*, 108 Ohio App.3d 354 (Ohio Ct.App. 1995)

⁵⁴ *Warren v. Warren*, 94 Nev. 309 (Nev. 1978)

Appendix T

Declaratory Judgment Case Law Chart by Topic and State¹

By: Isabel LaLuna, Meaghan Fitzpatrick, and Leslye E. Orloff

November 25, 2017

This document collects case law from states across the country illustrating the wide range of circumstances in which state courts apply state declaratory judgment statutes² to issue declaratory judgements on family law matters. Declaratory judgements³ are issued by state courts and are binding judgements defining the legal relationships between parties and/or their legal rights of the individuals in the matter before the court and expressing the legal opinion of the court on a question of law. Through the issuance of declaratory judgements, the court issues an authoritative opinion regarding the nature of the legal matter before the court. Declaratory judgements do not include orders requiring the parties to take or desist from any action and to not provide for enforcement of the legal rights declared in the order.

As illustrated by the case law below courts across the country use state declaratory judgement laws to declare the rights of parents and children and settle questions of family law addressing a wide range of family law issues including:

- Child custody
- The legal rights of parents and grandparents
- The rights of a child born out of wedlock
- Child support
- Foster care payments and the rights of foster parents
- Adoption
- Juvenile detention
- The rights of immigrant children and immigrant parents
- Premarital Agreements
- Marriage
- Divorce
- Property

This chart provide helpful illustrative information for courts and attorneys in cases of immigrant children seeking Special Immigrant Juvenile Status (SIJS) findings. Declaratory judgement cases can be filed by the child with the assistance of counsel and can be particularly useful for in several scenarios involving cases of immigrant children seeking SIJS findings. Two illustrative examples of these types of cases include:

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² In California, declaratory judgements apply only to property rights. In Missouri, declaratory judgements are only applicable to persons with interests in deeds, wills and contracts. In New Hampshire, declaratory judgements apply to people claiming legal or equitable rights or title. Two states (Hawaii and Virginia) declaratory judgments are only available when the matter is contested. For an overview of how declaratory judgements are used in family law matters *see Appendix S: Use of Declaratory Judgments in Family Law Matters*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-3 (2018),

<http://niwaplibrary.wcl.american.edu/pubs/appendix-s-using-declaratory-judgment-in-family-law-matters/>. For information on state-specific rules based on case law regarding the way in which declaratory judgements may be used, *See Appendix U: SIJS and State Declaratory Judgement Statutes – State by State*, 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),

<http://niwaplibrary.wcl.american.edu/pubs/appendix-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/>

³ See Wex Legal Dictionary https://www.law.cornell.edu/wex/declaratory_judgment and Blacks Law Dictionary <https://thelawdictionary.org/declaratory-judgment/>

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State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
	<ul style="list-style-type: none">• Immigrant children in federal foster care placements• Immigrant children who at the time the child learns they are eligible for SIJS has already been the subject of a court ruling addressing the child’s placement or awarding custody			

Child Custody

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Delaware	<p><i>C.L. v. C.</i>, 1990 WL 34699 (Del.Fam.Ct. 1990)</p> <p>Note: Only the Westlaw citation is currently available. UNPUBLISHED OPINION.</p>	<p>Father alleges in his <u>petition that he owes a duty to the child for support and that mother has refused to negotiate a reasonable settlement</u>. Child support litigation has been commenced both in Delaware and in California.</p>	<p>Mother's motion to dismiss is denied and father has leave to amend the pleadings. Both support and custody proceedings will be scheduled for hearing before the assigned judge.</p> <p>→ The <u>father has the right to seek a declaratory judgment regarding the parties' respective child support obligations</u></p> <p>→ The <u>Court has jurisdiction</u> to hear and determine the support and custody petitions filed by father.</p>	<p><u>Child Support and Custody:</u> Father's right to support and have custody of the child.</p>
Kentucky	<p><i>Carter v. Nance</i>, 304 Ky. 256 (Ky.Ct.App. 1947)</p>	<p><u>Declaratory judgment action by Dewey Nance and wife against Wesley Carter and wife to obtain custody of named plaintiff's daughter from child's maternal grandparents. From a judgment awarding custody of the child to named plaintiff, defendants appeal and plaintiffs move to dismiss the appeal.</u></p>	<p>→ xxx the question of whether the surviving father or the maternal grandparents be entitled to the custody of this child is <u>a controversy which may be properly decided in a declaratory judgment action</u>. 16 Am.Jur. § 17, p. 291; <i>Johnson v. Cook</i>, 274 Ky. 841, 120 S.W.2d 675.</p> <p>→ Appeal dismissed. → Declaratory Judgment appealed from:</p> <p>"The court * * * doth adjudge that the plaintiff, Dewey Nance, is entitled to and he is hereby awarded the immediate and permanent care, custody, control, nurture and education of his child, Wanda Joyce Nance, free from any molestation, hindrance or interference upon the part of the defendants, or any of them, and it is further ordered and adjudged that the defendants, Wesley Carter and Dicie Carter, in whose custody the child, Wanda Joyce Nance, now is, forthwith deliver the possession and custody of said Wanda Joyce Nance to the plaintiff, Dewey Nance. It is further adjudged that the plaintiff, Dewey Nance, shall permit said child to visit her grandparents, Wesley Carter and Dicie Carter, at reasonable intervals at such times so as not to interfere with the education, control and training of said child."</p>	<p><u>Child Custody:</u> Right to child custody given to either father or maternal grandparents</p>
Iowa	<p><i>In Re Marriage of McEvoy</i>, 414 N.W.2d 855</p>	<p>→ Ex-husband brought postdecretal proceeding in dissolution action,</p>	<p>→ Reversed and remanded.</p>	<p><u>Child Custody:</u> Ex-husband's child custody</p>

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	(Iowa Ct.App. 1987)	seeking declaratory judgment, specific performance and modification of decree as to <u>child custody and visitation provisions</u> . The District Court, Polk County, Rod Ryan, J., determined that it lacked subject matter jurisdiction under Uniform Child Custody Jurisdiction Act and sustained ex-wife's special appearance. Ex-husband appealed.	→ Iowa is <u>not an inconvenient forum</u> . <u>The district court erred when it sustained Caryl's special appearance and dismissed James' application</u> for declaratory judgment, specific performance, and modification of decree. → Iowa court, representing decretal state, had <u>“significant connection” jurisdiction, under Uniform Child Custody Jurisdiction Act, over ex-husband's postdecretal action seeking declaratory judgment</u>	and visitation rights
West Virginia	<i>Smith v. Smith</i> , 140 W.Va. 298 (W.Va. 1954)	Divorced husband <u>brought a proceeding under Uniform Declaratory Judgments Act</u> , Code, 55-13-1 et seq., <u>against divorced wife, who was a nonresident, to adjudicate rights as to custody of minor children.</u>	Since proceeding by divorced husband against divorced wife under the <u>Uniform Declaratory Judgments Act</u> for purpose of adjudicating rights to <u>custody of minor children</u> was a <u>proceeding in personam, service of process outside the state on non-resident divorced wife was insufficient to give court jurisdiction</u> over the person of the divorced wife. Code, 55-13-1 et seq., 56-3-25; Trial Court Rules, rule 18.	<u>Child Custody</u> : Divorced wife's child custody rights
Massachusetts	<i>D.L. v. Comm'r of Soc. Serv.</i> , 412 Mass. 558 (Mass. 1992)	Argued Feb. 6, 1992. Decided May 5, 1992. <u>Children brought action against Commissioner of Social Services and others, seeking declaratory and injunctive relief in connection with their challenge to their placements</u> in inpatient mental health facility. → The plaintiffs are thirteen children, <u>each of whom was placed in the custody of DSS</u> after a judge found pursuant to G.L. c. 119, §§ 24–26, that the child was in need of care and protection because <u>his or her parents were unfit, or that the child was in need of services</u> pursuant to c. 119, § 39E. At the time the action was filed, the plaintiffs were between the ages of six and fifteen. While in DSS custody, each plaintiff was admitted to the Gaebler Children's Center (Gaebler), a unit of the Metropolitan State Hospital, which is administered by the	The Supreme Judicial Court, Greaney, J., held that: (1) <u>Department, as party with full custody of children, had authority to voluntarily admit children to mental health facilities</u> or seek emergency ten-day admissions, and (2) <u>district courts and juvenile courts had authority to approve requests by Department for continued placement exceeding 90 days in mental health facility.</u> → <u>Action challenging regulation authorizing Department of Social Services to consent to admission of children in its custody to in-patient mental health facilities was appropriate for declaratory relief</u> ; thus, <u>each child was not required to bring action in individual district or juvenile court</u> which had adjudicated underlying case which had placed child in Department's custody, but Mental Health <u>Legal Advisors Committee could bring one action on behalf of children</u> that Department had placed in mental health facility. M.G.L.A. c. 221, § 34E; c. 231A, §§ 1, 2.	<u>Child Custody</u> : The Department of Social Services' right to admit children to mental health facilities

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		<p>Department of Mental Health (DMH). Gaebler is an inpatient mental health facility operated exclusively for the treatment of children and is the only public facility in the Commonwealth offering such treatment solely to children.</p>		
Alaska	<p><i>State of Alaska v. Native Vill. of Tanana</i>, 249 P.3d 734 (Alaska 2011)</p>	<p><u>Native tribes brought declaratory judgment action against State, seeking declaration that tribes possessed inherent and concurrent jurisdiction to adjudicate children's proceedings</u> and issue tribal court decrees. The Superior Court, Third Judicial District, Anchorage, <u>John Suddock</u> and <u>Sen K. Tan, JJ.</u>, granted summary judgment in favor of tribes. State appealed.</p>	<p>The Supreme Court, Winfree, J., held that: 1 <u>issue of native tribal inherent sovereign jurisdiction, concurrent with State, to initiate Indian Child Welfare Act (ICWA) child custody proceedings was ripe for adjudication;</u> 2 federally recognized Alaska Native tribes that have not reassumed exclusive jurisdiction under the ICWA still have concurrent jurisdiction to initiate ICWA-defined child custody proceedings, both inside and outside of Indian country; and 3 federally recognized Alaska Native tribes are entitled, under the ICWA, to full faith and credit with respect to ICWA-defined child custody orders.</p>	<p><u>Indian Child Welfare Act (ICWA) Jurisdiction:</u> Native tribes' concurrent jurisdiction to initiate child custody proceedings</p>
California	<p><i>In Re Claudia E. v. J.E.</i>, 163 Cal.App.4th 627 (Cal.Ct.App. 2008)</p>	<p>Children <u>filed petition for declaratory relief after County Department of Social Services twice removed them from the home of their mother</u> without timely filing a supplemental petition. The Superior Court, Imperial County, No. JJP1339, <u>Poli Flores</u>, Juvenile Court Commissioner, denied relief, and children appealed.</p>	<p>→ The order denying the motion for declaratory relief is reversed, and the matter is remanded to the juvenile court for further proceedings.</p> <p>→ The Court of Appeal, Huffman, Acting P.J., held that:</p> <p>1 counsel's failure to exhaust any other possible remedies, including writ of habeas corpus, did not allow trial court to reject declaratory relief;</p> <p>2 declaratory relief was available;</p> <p>3 whether petitions were untimely was not an actual controversy as required for declaratory relief; and</p> <p>4 whether department had a policy of filing supplemental petitions in a tardy fashion in juvenile dependency cases was an actual controversy as required for declaratory relief.</p> <p>→ <u>Failure of children's counsel to exhaust any other possible remedies, including writ of habeas corpus, did not allow trial court to reject motion for declaratory</u></p>	<p><u>Juvenile Dependency:</u> The Department of Social Services' duty not to remove children from their mother's home without a timely petition</p>

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			<p>relief after Department of Social Services twice removed children from the home of their mother without timely filing a supplemental petition</p> <p>→ <u>Juvenile court had the authority to grant declaratory relief</u> in connection with children's allegation that county Department of Social Services had a policy of untimely filing supplemental petitions in contravention of statutory requirements</p>	
Connecticut	<i>B. v. Ment</i> , 244 Conn. 296 (Conn. 1998)	<p><u>Mother, on behalf of self and potential class of parents whose children had been or might be seized by state department of children and families</u>, brought action against chief court administrator and commissioner of children and families, <u>seeking declaratory judgment and injunctive relief with respect to temporary custody order hearings concerning children subject to neglect petitions.</u></p>	<p>Mother's <u>declaratory judgment action</u> on behalf of self and other parents was <u>appropriate method of challenging temporary custody order hearings concerning children subject to neglect petitions, despite claim that individual respondents subject to temporary custody orders should raise claims in their underlying juvenile court cases</u> xxx</p> <p>→ The Supreme Court, Katz, J., held that: (1) action was justiciable; (2) declaratory judgment action was appropriate; (3) trial court had authority to grant mother's request for order directing administrator to establish procedures for cases in which temporary custody orders were issued ex parte; and (4) order directing administrator to allocate sufficient resources to juvenile courts to eliminate alleged unlawful practices concerning temporary custody orders would not violate sovereign immunity. [See Negative Treatment: Abrogation Recognized by Markley v. Department of Public Utility Control, Conn., May 24, 201; 23 A.3d 668]</p>	<p><u>Child Custody:</u> The right of the state department of children to seize children from their parents</p>
Mississippi	<i>McManus v. Howard</i> , 569 So.2d 1213 (Miss. 1990)	<p><u>Former wife filed complaint for declaratory judgment and other relief against former husband, challenging provisions of divorce agreement which changed custody of children from former wife to former husband upon relocation of former wife.</u> The complaint stated that if the plaintiff moved to another county, no change in custody should be allowed. The <u>Chancery Court, Lowndes County, Woodrow W.</u></p>	<p>Reversed.</p> <p>This case is <u>appropriate for declaratory judgment</u> pursuant to Miss.R.Civ.P. Rule 57's purpose of adjudicating actual controversies when the case is not yet ripe for a coercive remedy.</p> <p>The Supreme Court, Blass, J., held that <u>divorce agreement</u> which provided for change of custody of children from one parent to another upon the happening of</p>	<p><u>Child Custody:</u> Voiding a divorce agreement which changed child custody</p>

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		Brand, Jr., Chancellor, <u>denied</u> former wife's motion for declaratory judgment, and for modification of divorce decree and custody agreement, and <u>she appealed</u> .	certain events was <u>void as contrary to public policy</u> , since agreement attempted to divest court of its jurisdiction over matters of custody. Reversed and rendered.	

Rights of Parents and Grandparents

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Texas	<i>Morris v. Dearborne</i> , 69 F.Supp.2d 868 (E.D. Tex. 1999)	Parents, individually and on behalf of minor daughter, sued Texas Department of Protective and Regulatory Services (TDPRS), its caseworkers and employees, teacher, and others for separating family during investigation of possible child abuse, alleging, pursuant to § 1983, deprivations of procedural and substantive due process, sexual harassment under Title IX, violations of Individuals with Disabilities Education Act (IDEA), and negligence and intentional torts under state law. <u>They also sought declaratory and injunctive relief and monetary damages</u> . Teacher moved for summary judgment.	→ <u>Jurisdiction under the Declaratory Judgment Act is proper.</u> → Alleged actions of defendants <u>violated parents'</u> clearly established constitutional right to <u>family integrity</u> . → <u>Parents subjected to child abuse investigation satisfied actual controversy requirement of Declaratory Judgment Act.</u> → <u>Jurisdiction under Declaratory Judgment Act over parents' action</u> against Texas Department of Protective and Regulatory Services (TDPRS) and its employees, based on TDPRS' <u>conduct of child abuse investigation, was proper</u> , and action was not rendered moot by non-suiting of TDPRS' state court action against parents, <u>where parents demonstrated violation of clearly established constitutional right to family integrity</u> and alleged facts which, if proven to be true, met standard for obtaining permanent injunction. <u>28 U.S.C.A. § 2201.</u>	<u>Parental Rights:</u> Parents' constitutional rights during a child abuse investigation
Florida	<i>Kendrick v. Everheart</i> , 390 So.2d 53 (Fla. 1980)	Putative father filed action alleging that he was the father of five children born out of wedlock, <u>seeking an adjudication of paternity and alternative and declaratory relief</u> .	Reversed the portion of the trial court's final order denying appellant the right to bring a declaratory judgment suit to determine his paternity insofar as it is incident to the claims asserted against the defendants. The Supreme Court, Sundberg, C. J., held that: xxx (2) section providing that chapter on determination of paternity shall be in lieu of any other proceeding provided by law for the determination of paternity and	<u>Paternity:</u> Putative father's right to have his paternity determined

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			<p>support of children born out of wedlock <u>does not preclude a putative father from bringing a declaratory judgment action to adjudicate paternity</u> where such adjudication is necessary to the determination of the existing rights or duties between parties to an actual controversy or dispute;</p> <p>(3) the <u>Declaratory Judgment Act does not preclude an action by a putative father seeking to determine paternity</u> of illegitimate children; and (4) where the putative father had established a familial relationship with his illegitimate children by raising and supporting them, and in doing so, manifested a substantial and continuing concern for the welfare of the children, <u>the putative father had standing to maintain a declaratory judgment action seeking a determination of paternity.</u></p>	
Wisconsin	<i>Slawek v. Stroh</i> , 62 Wis.2d 295 (Wis. 1974)	<p>Father of illegitimate child brought action against mother and child <u>seeking judicial declaration that he was father of child and declaration of his rights and duties</u> with respect to <u>custody, care, visitation, support and maintenance</u> of child; mother counterclaimed for assault and battery, breach of promise, seduction and invasion of privacy; and child, through guardian, counterclaimed for damages.</p>	<p>Judgment affirmed in part and reversed in part and remanded.</p> <p>The order sustaining the minor-defendant's demurrer to the complaint and the judgment dismissing the complaint are reversed; the order overruling the plaintiff's demurrer to the adult defendant's affirmative defense is affirmed; the order overruling the plaintiff's demurrer to the adult-defendant's first and second counterclaims is affirmed; the order overruling the plaintiff's demurrer to minor-defendant's first counterclaim is reversed; judgment should be entered dismissing the minor's counterclaims; and the case is remanded for further proceedings. No costs to be taxed.</p> <p>The Supreme Court, Beilfuss, J., held that <u>declaratory judgment was best remedy for determining father's rights</u>, that allegations that mother was capable of caring for herself and child stated a defense to father's action, that mother stated cause of action for seduction, that cause of action for seduction was not barred by statute of limitations, that mother stated cause of action for assault and battery and for invasion of privacy, and that minor child did not state cause of</p>	<u>Paternity:</u> Plaintiff's paternity and his corresponding rights and duties

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Maine	<i>Johannesen v. Pfeiffer</i> , 387 A.2d 1113 (Me. 1978)	Plaintiff brought <u>action to establish that he was father of a child</u> born to defendant out of wedlock and that he had a <u>right to see child and share in its parenting</u> . The Superior Court, Cumberland County, <u>dismissed complaint</u> on motion of defendant, and <u>plaintiff appealed</u> .	<p>action for damages on theory of ‘wrongful birth.’</p> <p><u>Appeal sustained</u>, and case remanded.</p> <p>The <u>Supreme Judicial Court</u>, Godfrey, J., held that: (1) <u>father of a child born out of wedlock</u> has right to inherit from child if he acknowledges paternity before a justice of the peace or notary and, to protect that right, <u>may seek a present declaration of his status as father of the child</u> while evidence is available to support that conclusion, and (2) a putative father should be permitted to have his status as parent established while evidence of his paternity is still available even though mother has not yet begun adoption proceedings.</p> <p>Courts of other jurisdictions have recognized that while some paternity statutes have been construed to deny standing to a putative father under the statutes themselves, the <u>putative father may still obtain a declaratory judgment on the issue of paternity</u>. O.F.L. v. M.R.R., 518 S.W.2d 113 (Mo.App.1974); A.B. v. C.D., 150 Ind.App. 535, 277 N.E.2d 599 (1971). See also M. v. B., 49 A.D.2d 1035, 374 N.Y.S.2d 506 (1975). Appellant's complaint is sufficient to constitute a petition for judgment declaring appellant's status under Rule 57 M.R.Civ.P., and 14 M.R.S.A. ss 5951-5963.</p>	<u>Paternity</u> : Plaintiff's right to know his status as father of the child and his paternity rights
Texas	<i>Monk v. Pomberg</i> , 263 S.W.3d 199 (Tex.App. 2007)	After the parties <u>divorced</u> and former husband filed for bankruptcy, <u>former wife obtained a stay and filed a petition to terminate former husband's parental rights, seeking declaratory judgment that Iowa was the home state of child</u> and that Iowa was the proper jurisdiction to hear the termination petition. The 245th District Court, Harris County, <u>Annette Galik, J.</u> , entered judgment in favor of former wife, declined jurisdiction on matters addressing conservatorship of child, deferred jurisdiction to Iowa, and awarded former wife \$5,989.13 in	<p>Judgment affirmed with modification.</p> <p>The Court of Appeals, Elsa Alcalá, J., held that:</p> <p>1 former wife <u>could raise the issue of inconvenient forum through a declaratory judgment action</u>;</p> <p>2 former wife's claim <u>that Texas courts were an inconvenient forum to hear her petition to terminate former husband's parental rights</u> manifested a ripe controversy;</p> <p>3 modification of trial court order to reflect that it declined jurisdiction “in matters addressing conservatorship of the</p>	<u>Ex-Husband's Parental Rights</u> : Determination of a child's home state as the convenient forum to hear a petition to terminate parental rights

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		attorney fees and expenses. Former husband appealed.	<p>child, including but not limited to a suit to terminate the parent-child relationship,” was required; and</p> <p>4 <u>evidence supported finding that Texas was an inconvenient forum</u> to address former wife's petition to terminate former husband's parental rights to child.</p> <p>→ <u>Former wife could raise the issue of inconvenient forum through a declaratory judgment action</u>, and she was not required to follow the Family Code motion requirements to raise the issue, in proceeding to terminate former husband's parental rights</p> <p>→ Former wife's claim that Texas courts were an inconvenient forum to hear her petition to terminate former husband's parental rights manifested a <u>ripe controversy</u>, and thus <u>action for a declaratory judgment that Iowa was the proper jurisdiction for the termination proceedings was appropriate</u>, where, after custody of child was initially determined, three lawsuits were filed to attempt to change that custody arrangement.</p>	
Connecticut	<i>Mirto v. Bodine</i> , 29 Conn.Supp. 510 (Conn.Super.Ct. 1972)	<p><u>Action seeking a declaratory judgment determining the grandparents' rights of visitation with their deceased daughter's child, presently in the custody of defendant father.</u></p> <p><u>The defendant demurred to the plaintiffs' complaint on the ground that it is legally insufficient since it does not state that there was or is a complaint for divorce pending, in accordance with Public Acts 1971, No. 50 (General Statutes s 46-23).</u> That act provides for a court in its discretion to grant reasonable visitation rights to any person having an interest in the welfare of the child on any complaint for a divorce.</p>	<p>→ <u>Demurrer was overruled.</u></p> <p>→ While the defendant's argument is correct that a judgment such as is sought here requires a divorce action pending or past, the <u>plaintiffs do not allege their cause of action under Public Acts 1971, No. 50, but rather under the general law.</u></p> <p>→ It has never been denied that <u>this court may grant custody of children to grandparents</u> under certain circumstances, i.e. if it is best for the child's interests, and from that it may follow that the court has the right to grant a grandparent visitation rights if it is for the best interests of the child.</p>	<u>Grandparents' Visitation Rights:</u> Grandparents' right to visit grandchild
Massachusetts	<i>Gardner v. Rothman</i> , 370 Mass. 79 (Mass. 1976)	<u>Natural father of illegitimate child brought action seeking judgment declaring his visitation rights, and mother moved to dismiss complaint.</u>	<p>Remanded to the Probate Court for further proceedings.</p> <p>The Supreme Judicial Court, Braucher, J., held that probate court had jurisdiction to</p>	<u>Visitation Rights:</u> Natural father's right to visit his

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			hear natural father's complaint, that <u>issuance of declaratory judgment</u> would be <u>proper</u> , and that prior adjudication of paternity was not essential where father's paternity was conceded.	illegitimate child
North Dakota	<i>Schaff v. Schaff</i> , 446 N.W.2d 28 (N.D. 1989)	Loree <u>commenced a declaratory judgment action, alleging that the non-modifiable support provisions of the paternity judgment were nullified</u> by operation of law because of the <u>parties' subsequent marriage</u> and that the <u>child support award</u> was therefore <u>modifiable</u> .	→The Supreme Court, Levine, J., held that marriage of parents nullified provisions of <u>paternity judgment</u> and child custody and future support provisions <u>could be modified</u> . →Former wife's <u>declaratory judgment action was a permissible direct attack on paternity judgment</u> , where she sought a <u>determination of her rights, status, and other legal relations</u> , as well as those of her former husband's under paternity judgment, in a manner provided for by law.NDCC 32-23-01.	<u>Paternity and Child Support</u> : Nullity of the paternity judgment, and the modifiable nature of the child support award
Alaska	<i>Jacob v. State of Alaska</i> , 177 P.3d 1181 (Alaska 2008)	Grandparents sought <u>declaratory and injunctive relief against Office of Children's Services (OCS)</u> , alleging their <u>right to notice and opportunity to be heard</u> in child in need of aid (CINA) proceedings and permanency hearings for three grandchildren.	→The Supreme Court <u>vacated the order of dismissal with respect to the declaratory judgment</u> and remanded the case for entry of declaratory judgment. → <u>Grandparents' appeal was not moot, as to trial court's denial of their claim for declaratory judgment</u> that Office of Children's Services (OCS) had violated their right to notice and opportunity to be heard in child in need of aid (CINA) proceedings for three grandchildren, <u>though during pendency of appeal the grandparents had intervened in CINA proceedings</u> , as trial court had instructed them to do. →The Jacobs <u>are entitled to judicial declaration that they have a right to notice of any CINA proceedings involving their grandchildren</u> . The Jacobs are <u>also entitled to a declaration that their right to notice was violated by OCS when they did not receive notice</u> after the September 2001 effective date of the amendments requiring such notice.	<u>Grandparents' Rights in Child in Need of Aid (CINA) Proceedings</u> : Grandparents' right to notice and hearing in relation to CINA proceedings
Virginia	<i>Doe v. Doe</i> , 15 Va.App. 242 (Va.Ct.App. 1992)	Infant's purported biological parents brought action against infant's birth mother and her husband, <u>seeking declaratory judgment as to respective parental rights of all</u>	Reversed and remanded. → <u>Trial court's denial of continuance requested</u> by guardian ad litem for infant born of surrogate mother	<u>Rights of Biological Parents and Surrogate Mother</u> :

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		<u>parties in interest</u> . The Circuit Court, Fairfax County, Thomas A. Fortkort, J., terminated infant's relationship with birth mother, declared biological parents to be infant's genetic parents, and directed issuance of original birth certificate consistent with ruling. Infant's guardian ad litem appealed.	<u>in declaratory judgment suit</u> seeking determination of respective parental rights of all parties in interest so prejudiced <u>and impaired infant's due process rights</u> as to require reversal. → <u>Trial court had subject matter jurisdiction</u> necessary to terminate infant's parental relationship with her birth mother in favor of infant's purported biological parents <u>in declaratory judgment suit</u> . Code 1950, § 20–49.2.	Termination of infant's relationship with her birth mother and declaration of her genetic parents as her biological parents

Rights of a Child Born Out of Wedlock

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
D.C.	<i>In Re Estate of Glover</i> , 470 A.2d 743 (D.C. 1983)	A child born out of wedlock sought a <u>declaratory judgment as to his rights</u> as a person born out of wedlock to inherit from his putative father. The Superior Court of the District of Columbia, Margaret A. Haywood, J., <u>dismissed for want of jurisdiction</u> , and appeal was taken.	Reversed and remanded. The Court of Appeals, Pair, Associate Judge Retired, held that: xxx (3) <u>Probate Division had jurisdiction</u> to resolve case. The interest in orderly judicial procedure requires the Probate Division to resolve issues that affect determinations of heirs. The probate division of the superior court <u>had jurisdiction to resolve complaint for declaratory judgment</u> as to rights of plaintiff as a person born out of wedlock to inherit from putative father. D.C.Code 1981, § 19–316.	<u>Child's Rights to Inherit</u> : Rights of a child born out of wedlock to inherit from putative father

Child Support

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Indiana	<i>Garcia v. Garcia</i> , 789 N.E.2d 993 (Ind.Ct.App. 2003)	<u>Mother brought complaint against father</u> for contempt and <u>for declaratory judgment alleging failure to pay child support</u> . The Circuit Court, Posey County, James M. Redwine, J., ordered father to <u>pay \$194,541 in past support and accrued interest</u> . Father appealed.	Affirmed in part, reversed in part, and remanded. The Court of Appeals, Kirsch, J., held that: (1) <u>trial court erred when it included in its arrearage calculation delinquent child support</u> for which the applicable 10–year statute of limitations in effect at time delinquent support was due had expired; (2) evidence was sufficient to support finding that <u>receipt for child support paid by father and purportedly signed by mother was invalid</u> ; and	<u>Child Support</u> : The father's liability to pay child support

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			<p>(3) awarding prejudgment <u>interest on child support arrearages</u> at rate of <u>1 ½% per month</u> would have been an <u>abuse of discretion</u>.</p> <p>The Court of Appeals reversed and remanded with instructions to properly determine the amount of arrearage owed following the holding of <i>Connell</i> and for an entry awarding prejudgment interest to this amount at a rate of 8% per annum. <u>In all other respects, the Court of Appeals affirmed the trial court's decree.</u></p>	
Kansas	<p><i>Wornkey v. Wornkey</i>, 12 Kan.App.2d 506 (Kan.Ct.App. 1988)</p>	<p><u>Mother brought action against father to recover past due child support and to obtain declaratory judgment.</u></p> <p>She requested the trial court to determine that a 1975 Geary County order entered pursuant to the Uniform Reciprocal Enforcement of Support Act (URESA) <u>did not nullify a prior Pawnee County support order</u> from the parties' divorce. The <u>trial court</u> held that the <u>Geary County URESA order did not nullify the Pawnee County support order</u> and ordered the defendant, Steven Wornkey, to <u>pay past due support</u> totalling \$11,158.08.</p>	<p>Affirmed in part, reversed in part, and remanded with instructions.</p> <p>The Court of Appeals, Six, J., held that: (1) <u>Uniform Reciprocal Enforcement of Support Act order</u> entered after court's support order <u>did not nullify support order</u>, and (2) <u>court erred in adopting mother's calculations</u> in determining back child support and interest due from father. It <u>remanded with instructions to determine the proper amount of arrearages.</u></p>	<p><u>Child Support:</u> The father's liability to pay child support</p>
Delaware	<p><i>C.L. v. C.</i>, 1990 WL 34699 (Del.Fam.Ct. 1990)</p> <p>Note: Only the Westlaw citation is currently available. UNPUBLISHED OPINION.</p>	<p>Father alleges in his <u>petition that he owes a duty to the child for support and that mother has refused to negotiate a reasonable settlement.</u> Child support litigation has been commenced both in Delaware and in California.</p>	<p>Mother's motion to dismiss is denied and father has leave to amend the pleadings. Both support and custody proceedings will be scheduled for hearing before the assigned judge.</p> <p>→ The <u>father has the right to seek a declaratory judgment regarding the parties' respective child support obligations</u></p> <p>→ The <u>Court has jurisdiction</u> to hear and determine the support and custody petitions filed by father.</p>	<p><u>Child Support and Custody:</u> Father's right to support and have custody of the child.</p>
Georgia	<p><i>Weaver v. Jones</i>, 260 Ga. 493 (Ga. 1990)</p>	<p><u>Former wife filed action for declaratory judgment to ascertain her duties under divorce decree</u>, which provided that wife would pay <u>child support</u> if son</p>	<p>Reversed and remanded for consideration of all remaining issues.</p> <p>The Supreme Court, Benham, J., held that divorce decree was intended to be self-executing change of legal custody and</p>	<p><u>Child Support:</u> Ex-wife has to pay child support upon change of custody</p>

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
		elected to live with husband when he attained age 14.	modification of <u>child support</u> obligations, and former husband was not required to file action to modify divorce decree in order to obtain child support when son moved in with him at age 14. → The trial court erred in ruling that child custody had never changed from Jones to Weaver and that Jones, therefore, never had any obligation for child support.	
Georgia	<i>Hardman v. Hardman</i> , 295 Ga. 732 (Ga. 2014)	Former husband brought <u>action against former wife seeking reimbursement and a declaratory judgment</u> as to <u>whether wife</u> was required to <u>pay private school tuition</u> for parties' children out of her monthly alimony payments, injunction preventing wife from removing children from the school, and he asked that wife be held in contempt.	The Supreme Court, Nahmias, J., held that: 1 <u>husband's declaratory complaint was not barred</u> under doctrine of res judicata; 2 divorce decree precluded wife from unilaterally changing children's school; 3 <u>wife</u> , as the custodial parent, was <u>responsible for paying private school tuition for the children</u> ; and 4 wife's threat to change schools did not constitute contempt.	<u>Child Support</u> : Wife's obligation to pay children's school tuition and lack of right to change their school
Georgia	<i>Acevedo v. Kim</i> , 284 Ga. 629 (Ga. 2008)	Father brought <u>declaratory judgment action against mother to determine amount of his monthly child support obligation under divorce decree</u> . Mother counterclaimed, seeking back child support. The Superior Court, Muscogee County, E. Tracy Moulton, Jr., Senior Judge, entered declaratory judgment ordering father to pay a specified amount to mother in monthly installments until debt was paid in full.	Judgment affirmed. The Supreme Court, Sears, C.J., held that <u>complaint for declaratory judgment</u> seeking a determination of the amount due for past child support payments <u>stated a claim upon which relief could be granted</u> .	<u>Child Support</u> : The amount of monthly child support obligation under a divorce decree
Arkansas	<i>Grays v. Arkansas Office of Child Support Enforcement</i> , 375 Ark. 38 (Ark. 2008)	The Arkansas Office of <u>Child Support Enforcement (OCSE)</u> filed a <u>motion for declaratory relief</u> that sought a determination of whether father was entitled to <u>credit against child support arrears</u> for a lump-sum <u>payment child received</u> from the Social Security Administration. The Circuit Court, Drew County, Samuel B. Pope, J., decline to award father an offset. Father appealed.	Affirmed. The Supreme Court, Annabelle Clinton Imber, J., held that <u>father was not entitled to credit against his child support arrearages</u> for lump-sum payment child received from the Social Security Administration after father qualified to received disability payments. Grays was <u>not entitled to discharge his child-support arrears</u> with the payment of Social Security disability benefits to his son.	<u>Child Support</u> : A father's non-entitlement to discharge his child-support arrears
Louisiana	<i>Spicer v. Spicer</i> , 62 So.3d 798 (La.Ct.App. 2011)	After the parties divorced, <u>former husband</u> filed a petition for <u>declaratory judgment</u> that sought to have <u>Illinois judgment, which modified child support, to be</u>	Affirmed. The Court of Appeal, Parro, J., held that the <u>Illinois courts lacked subject matter jurisdiction to modify Louisiana child</u>	<u>Child Support</u> : Nullity of a judgment which modified a child support order

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
		<p>declared a <u>nullity</u>. The 23rd Judicial District Court, Parish of Ascension, No. 63,022, Division B, Thomas J. Kliebert, Jr., J., entered <u>judgment in favor of former husband</u>. Former wife appealed.</p>	<p><u>support order</u>, pursuant to the Uniform Interstate Family Support Act (UIFSA).</p> <p>The judgment of the district court,</p> <p>(1) <u>granting Spicer's petition for declaratory judgment</u>, (2) decreeing that the registration of the Illinois order is vacated and unenforceable in this state, and</p> <p>(3) decreeing that <u>Spicer's child support obligation is terminated because all of his children have attained the age of majority</u>,</p> <p>is affirmed.</p> <p>All costs of this appeal are assessed against Gayle Frey.</p>	
Hawaii	<p><i>Filipo v. Chang</i>, 62 Haw. 626 (Haw. 1980)</p>	<p>Pregnant woman, individually and as guardian ad litem for her unborn child, <u>filed action for declaratory and injunctive relief to obtain welfare assistance for her unborn child</u> and sought class certification. The Circuit Court, City and County of Honolulu, Norito Kawakami, J., <u>ordered Department of Social Services and Housing to pay plaintiff additional welfare assistance for her unborn child</u> and denied class certification and the Department appealed and the plaintiff cross appealed.</p>	<p>Affirmed.</p> <p>The Supreme Court, Lum, J., held that: (1) where for over 23 years a regulation of the Department of Social Services and Housing had been relied on to grant AFDC assistance to pregnant women, <u>government was estopped from asserting invalidity of that regulation</u> because of noncompliance with Hawaii Administrative Procedure Act when government's misfeasance and nonfeasance was responsible for the noncompliance, and (2) trial court did not abuse its discretion in denying class certification or intervention.</p> <p>The <u>clear and unequivocal language</u> of PWM 3241 <u>entitles an unborn child to a separate AFDC payment</u>, and the government is estopped to deny the validity of PWM 3241.</p>	<p><u>Welfare Assistance</u>: The plaintiff's entitlement to <u>welfare assistance</u> for her unborn child</p>
Montana	<p><i>D'Ewart v. Neibauer</i>, 228 Mont. 335 (Mont. 1987)</p>	<p><u>Recipient of benefits under the aid to families with dependent children program filed petition for declaratory judgment</u>, seeking <u>determination that child care costs incurred but not paid in budget month could be deducted from claimant's income</u>, for AFDC eligibility purposes.</p>	<p>Reversed and remanded.</p> <p>The Supreme Court, Weber, J., held that administrative rule providing that day care costs incurred but not paid in the budget month <u>could not be deducted from claimant's income was valid and consistent with congressional intent</u> in enacting the AFDC program.</p>	<p><u>Child Care Costs</u>: Prohibition on deducting child care costs from the claimant's income</p>

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
		The District Court, Twelfth Judicial District, Hill County, Chan Ettien, J., determined that <u>day care costs incurred but not paid could be deducted from claimant's income</u> . The Department of Social and Rehabilitation Services and the county welfare department <u>appealed</u> .		
North Dakota	<i>Schaff v. Schaff</i> , 446 N.W.2d 28 (N.D. 1989)	Loree <u>commenced a declaratory judgment action, alleging that the non-modifiable support provisions of the paternity judgment were nullified</u> by operation of law because of the <u>parties' subsequent marriage</u> and that the <u>child support award</u> was therefore <u>modifiable</u> .	→The Supreme Court, Levine, J., held that marriage of parents nullified provisions of <u>paternity judgment</u> and child custody and future support provisions <u>could be modified</u> . →Former wife's <u>declaratory judgment action was a permissible direct attack on paternity judgment</u> , where she sought a <u>determination of her rights, status, and other legal relations</u> , as well as those of her former husband's under paternity judgment, in a manner provided for by law. <u>NDCC 32-23-01</u> .	<u>Paternity and Child Support</u> : Nullity of the paternity judgment, and the modifiable nature of the child support award
Missouri	<i>K.D.R. v. D.E.S.</i> , 637 S.W.2d 691 (Mo. 1982)	Natural mother of minor child filed a petition against alleged father to obtain <u>a declaration of paternity and reimbursement for necessary medical expenses</u> incident to birth of child.	→The court erred in overruling appellant's request for jury trial on the paternity issue and for that reason the judgment must be reversed and the cause remanded for a new trial. The Supreme Court, Bardgett, J., held that: (1) <u>proceeding was cognizable under the Declaratory Judgment Act</u> and was not subject to being treated as an equitable action independent of the Declaratory Judgment Act to enforce the duty of child support of alleged father so as to obtain the remedies available to an illegitimate child, and (2) <u>provisions of a Declaratory Judgment Act afforded the right to a jury trial</u> to either party on a purely fact issue and, hence, applied to alleged father's request for a jury trial on the paternity issue.	<u>Paternity and Child Support</u> : Father's obligation to reimburse child birth medical expenses
South Dakota	<i>Howe v. Ellenbecker</i> , 774 F.Supp. 1224 (D.S.D. 1991)	Aid to Families with Dependent Children (<u>AFDC</u>) <u>recipients whose children had absent parents residing on Indian reservation brought class action</u> against state officials and the Secretary of the Department of	The District Court, Donald J. Porter, J., held that <u>Title IV-D of the Social Security Act</u> , dealing with child support enforcement, <u>created enforceable right in AFDC recipients, and recipients had standing to bring § 1983 action to enforce</u>	<u>Child Support</u> : Entitlement to child support enforcement services

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
		Health and Human Services (HHS), <u>claiming they had been denied child support collection services to which they were entitled under the Social Security Act.</u>	<u>claims for child support enforcement services.</u> Evidence presented at trial established that reasonable avenues exist for the provision of Title IV–D services. Where these reasonable avenues exist, defendants must provide plaintiffs the services they are entitled to receive. <u>Plaintiffs are granted declaratory judgment.</u>	

Foster Care

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Michigan	<i>Wayne Cnty. V. State of Mich.</i> , 202 Mich.App. 530 (Mich.Ct.App. 1993)	<u>County brought declaratory judgment action against state to determine obligations for providing and paying for foster care services for abused and neglected children when ordered by probate court.</u>	The Court of Appeals held that <u>counties are responsible to pay</u> for court-ordered foster care <u>if probate court orders placement in existing county program or in state-approved private institution or agency.</u>	<u>Foster Care:</u> County's liability to pay for foster care in case of placement in existing county program or in state-approved private institution
Connecticut	<i>Orsi v. Senatore</i> , 31 Conn.App. 400 (Conn.App.Ct. 1993)	Foster parent brought suit seeking, inter alia, <u>declaratory ruling on constitutionality of regulation which forecloses foster parents from an administrative hearing when foster child is removed from their home and returned to a family member.</u>	The Appellate Court, Foti, J., held that <u>foster parent could raise foster child's constitutional rights in claim for declaratory judgment.</u> → <u>Orsi should have been permitted to bring the third count of the complaint on Christopher's behalf, as his next friend.</u> Because that count is brought on the child's behalf, <u>the declaratory judgment action belongs to Christopher [child], not to Orsi, his prochein ami.</u> (Note: <u>This case may be excluded</u> in view of reversal and remand to trial court. See ORSI v. SENATORE, Aug. 2, 1994; 230 Conn. 459; Supreme Court of Connecticut. Case was remanded to the trial court for its determination of whether, under the facts and circumstances of this case, the plaintiff had standing to file the declaratory judgment action on Christopher's behalf as his next friend.)	<u>Foster Child:</u> Foster child's constitutional right to be safe and not removed from his foster parents' home

Adoption

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Florida	<i>Peregood v. Cosmides</i> , 663 So.2d 665 (Fla. Dist. Ct. App. p. 1995)	Child brought <u>declaratory judgment action to challenge his adoption by his biological mother</u> , which adoption was undertaken for purposes of abrogating father's visitation rights and child support obligation.	The judgment dismissing Michael's complaint is reversed and the case remanded for further proceedings, which may include the setting and assessment of child support for Michael by Cosmides. The District Court of Appeal, W. Sharp, J., held that child <u>had standing to challenge adoption which had placed him in economic jeopardy and deprived him of substantial source of financial support.</u>	<u>Child Adoption:</u> Invalidity of a child's adoption by his biological mother
Maryland	<i>Green v. Sollenberger</i> , 338 Md. 118 (Md. 1995)	Executive director of <u>Child Support Enforcement Administration</u> brought <u>declaratory judgment action for annulment of adoption decree</u> that permitted mother to adopt three minor children that had been born to her and her first husband during their marriage. The Executive Director <u>sought to have the adoption</u> of the children <u>vacated</u> on the ground that its entry was <u>contrary to both the law and public policy of Maryland.</u> The Circuit Court for Carroll County, Raymond E. Beck, Sr., J., granted summary judgment for director, and mother appealed. The <u>Court of Special Appeals</u> , 100 Md.App. 686, 642 A.2d 324, held <u>mother was not permitted to adopt her own legitimate children.</u>	Affirmed. The Court of Appeals, Murphy, C.J., granted certiorari and held that: (1) <u>natural parents may not adopt their own legitimate children</u> , and (2) <u>final decree of adoption was voidable</u> and could be vacated more than one year after its entry.	<u>Child Adoption:</u> Prohibition on natural parents adopting their own legitimate children
Minnesota	<i>Cnty. of Ramsey v. Wilson</i> , 526 N.W.2d 384 (Minn. Ct. App. 1995)	County <u>sought declaratory judgment that parent of child who had been adopted under state's adoption subsidy program owed county reimbursement</u> for portion of out-of-home placement costs of child.	→ The adoption subsidy was a resource attributable to T.(F.)W. that must be used to reimburse the county for the cost of the care it provided to the child in out-of-home placement. → The order requiring Wilson to use the adoption subsidy to reimburse the county did not modify the adoption subsidy agreement. → Therefore, the county followed the proper procedures to bring this action and the district court had jurisdiction over the matter.	<u>Child Adoption:</u> Obligation of adopted child's parent to reimburse county for the cost of care for the child in an out-of-home placement

Juvenile Detention

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Pennsylvania	<i>Coal. To Save Our Kids v. Dep't of Pub. Welfare</i> , 745 A.2d 82 (Pa.Comm. Ct. 2000)	Citizens groups and citizen brought action seeking a declaratory judgment that dependent children should not be housed at a proposed juvenile detention facility.	<p>→The Commonwealth Court, No. 301 M.D. 1999, <u>McGinley, J.</u>, held that the proposed detention facility violated the Juvenile Act's prohibition against housing delinquent and dependent children together, even if the children would be segregated.</p> <p>→The motion for summary judgment of the Coalition to Save our Kids, Sunnyside Up Corporation and Kathryn Longer was granted insofar as the Court declared that dependent children shall not be housed in the same facility with delinquent children and that the County of Lancaster be and is hereby permanently enjoined from housing dependent children in a juvenile detention facility.</p>	<u>Juvenile Detention Facility</u> : Prohibiting dependent children from being housed in a juvenile detention facility with delinquent children

Rights of an Immigrant Child or Parent

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Florida	<i>F.L.M. v. Dep't of Children and Families</i> , 912 So.2d 1264 (Fla. Dist. Ct. App. p. 2005)	<u>Orphaned immigrant juvenile who was living in the state without any legal custodian petitioned to adjudicate him dependent.</u>	<p>The District Court of Appeal held that <u>juvenile was dependent.</u></p> <p>→ The judge in question having since retired, the case was returned to a successor judge with instructions to enter an order <i>nunc pro tunc</i> declaring the child dependent under Florida law and further providing that the Department's responsibility over him necessarily terminated when he attained the age of 18.</p> <p>→ <u>Orphaned immigrant juvenile's claim for a declaratory judgment that he was dependent was not moot, even though juvenile reached his majority while case was pending in court</u>, where a clear statutory basis existed for a finding of dependency, and the denial of the declaration had the effect of continuing to deprive juvenile of a legal basis for regularizing his immigration status. Immigration and Nationality Act, § 101(a)(27)(J)(i-iii), 8 U.S.C.A. § 1101(a)(27)(J)(i-iii); West's F.S.A. § 39.01(14)(e).</p>	<u>Orphaned Immigrant</u> : Orphaned immigrant juvenile's dependent status for having no parent or legal custodian while living within the state borders

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
U.S. Court of Appeals 6 th Circuit	<i>Gao v. Jenifer</i> , 185 F.3d 548 (6 th Cir. 1999)	Child immigrant, having been found <u>dependent by county probate court, brought declaratory judgment action challenging denial by Immigration and Naturalization Service (INS) of his petition for status as special immigrant juvenile (SIJ).</u>	<p>→ The US Court of Appeals reversed the judgment of the district court and remanded the case with instructions to <u>direct the INS to grant Gao's petition for SIJ status</u> retroactively and to give full and proper consideration to his application, as a person with such status, to have his status adjusted to that of an immigrant lawfully admitted for permanent residence.</p> <p>→ <u>The state juvenile court had jurisdiction to declare Gao dependent</u> and to determine that sending him back to China would not be in his best interest.</p> <p>→ <u>Immigrant's action</u> challenging denial by Immigration and Naturalization Service (INS) of his petition for special immigrant juvenile (SIJ) status <u>was not rendered moot by fact that immigrant was no longer a juvenile, inasmuch as obtaining SIJ status would provide him with meaningful legal benefit of opportunity to apply to INS to have his status adjusted to that of immigrant lawfully admitted to permanent residence.</u> Immigration and Nationality Act, § 101(a)(27)(J), as amended, 8 U.S.C.A. § 1101(a)(27)(J).</p>	<u>Child Immigrant's Status:</u> The child immigrant's right to petition for status as a special immigrant juvenile (SIJ)
Puerto Rico	<i>Rios v. Civiletti</i> , 571 F.Supp. 218 (D.P.R. 1983)	Child of United States citizen and immigrant <u>brought action for declaratory judgment that the child had been legitimated and was entitled to citizenship.</u>	<p>The District Court, Pieras, J., held that: (1) law of Puerto Rico applied to question whether child had been legitimated within her minority for purposes of Immigration and Nationality Act section, and (2) under law of Puerto Rico, child had been legitimated, and thus was entitled to citizenship.</p> <p>→ <u>The Court declared that María Guadalupe Villa Ríos is a citizen of the United States</u> since April 13, 1952, her birthdate, and is to be accorded all rights and privileges attending to that condition.</p> <p>→ The Court ordered the Immigration and Naturalization Service to issue her a certificate of citizenship.</p>	<u>Citizenship:</u> U.S. citizenship of a child of an immigrant and a U.S. citizen
New York	<i>On the Petition of Amoury for</i>	<u>Declaratory judgment action by infant, a citizen of the United States,</u>	Motion to dismiss petition granted; temporary restraining order vacated.	<u>Deportation:</u>

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
	<i>Declaratory Judgment</i> , 307 F.Supp. 213 (S.D.N.Y. 1969)	with respect to an order by <u>the immigration service for deportation of his immigrant parents</u> . In substance the infant sought a stay of the deportation order.	The District Court, Edward Weinfeld, J., on motion to dismiss, held that the court had subject matter jurisdiction but that the infant had not been denied due process or equal protection of the laws, even if his parents took him with them when they were deported.	Staying a deportation order issued against the child's immigrant parents

Premarital Agreement

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Colorado	<i>Schwartz v. Schwartz</i> , 183 P.3d 552 (Colo. 2008)	In context of divorce proceedings, wife filed <u>petition for declaratory judgment regarding validity of antenuptial agreement</u> . The District Court, El Paso County, Rebecca S. Bromley, J., declared that agreement was invalid, and wife appealed. Wife died while appeal was pending, and as result, the Court of Appeals dismissed appeal as moot.	The Supreme Court held that <u>wife's death did not moot appeal from declaratory judgment that antenuptial agreement was invalid</u> . The case was reversed and remanded to the court of appeals for it to consider the merits of the Estate's appeal of the trial court's declaratory judgment setting aside the antenuptial agreement.	<u>Premarital Agreement</u> : Validity of the antenuptial agreement
Illinois	<i>In re Marriage of Best</i> , 228 Ill.2d 107 (Ill. 2008)	Husband petitioned for dissolution of marriage and <u>moved for declaratory judgment that premarital agreement was valid and barred support and health insurance coverage</u> for wife. The Circuit Court, Lake County, Sarah Lessman and Jorge Ortiz, JJ., rule the agreement valid and enforceable and required husband to reinstate wife as a beneficiary of his policy. Husband appealed prior to entry of final dissolution decree. The Appellate Court, O'Malley, J., 369 Ill.App.3d 254, 307 Ill.Dec. 173, 859 N.E.2d 173, affirmed in part and reversed in part. Husband's petition for leave to appeal was allowed.	Affirmed in part, reversed in part, and remanded. The Supreme Court, <u>Kilbride, J.</u> , held that: <u>1 the declaratory ruling was reviewable prior to final dissolution decree</u> , and <u>2 "separate" in premarital agreement waiving spousal support and insurance coverage</u> in the "event the parties separate or the marriage" was dissolved required legal separation. A declaratory judgment of the <u>spouses' rights under premarital agreement</u> is proper if: (1) there is an actual controversy; and (2) entry of a declaratory judgment would terminate some part of that controversy. S.H.A. 735 ILCS 5/2-701(a). <u>Declaratory ruling on the validity, scope, and application of premarital agreement would end some part of controversy prior to dissolution decree, satisfied requirements of declaratory judgment statute</u> , and, therefore, was reviewable prior to final dissolution decree. S.H.A. <u>735 ILCS 5/2-701(a); 750 ILCS 10/4.</u>	<u>Premarital Agreement</u> : Validity, scope, and application of a premarital agreement <u>Property</u> : Barring support and health insurance coverage

Marriage

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Nebraska	<i>McCombs v. Haley</i> , 13 Neb.App. 729 (Neb.Ct.App. 2005)	Putative wife, who alleged that she agreed to marry prison inmate so that parole board would believe inmate had a wife and son to come home to when he was released and who got a friend to represent to clerk's office that he was inmate, filed a <u>declaratory judgment action, asking the court to declare the purported marriage null and void.</u> The District Court declared that the purported marriage was null and void. Putative husband filed a motion for new trial or to set aside the judgment, alleging that he had standing to bring such motion as a real party in interest because action was pending in Florida court concerning validity of marriage between himself and putative wife. The District Court, Douglas County, J. Michael Coffey, J., overruled putative husband's motion and found that he was not a necessary party to the declaratory judgment action. Putative husband appealed.	The Court of Appeals, Carlson, J., held that: <u>1 Nebraska had sufficient interest and concern in the status of the purported marriage between putative wife and inmate to allow Nebraska trial court to entertain putative wife's declaratory judgment action;</u> and <u>2 putative husband was not a "necessary party" to putative wife's declaratory judgment action.</u> The <u>decision whether to entertain an action for declaratory judgment</u> is within the <u>discretion of the trial court.</u> The <u>marital status of parties is a proper subject for declaratory relief.</u>	<u>Marriage:</u> Nullifying and voiding a marriage
Michigan	<i>Ellehaf v. Tarraf</i> , 2006 WL 736561 (Mich.Ct.App. 2006) Only the Westlaw citation is currently available. UNPUBLISHED OPINION.	Father filed <u>complaint for custody and declaratory judgment that parties were never married.</u> Mother counter-claimed for divorce. The Circuit Court, Wayne County, declared that parties were never legally married. Mother appealed.	The Court of Appeals held that: <u>1 parties were never legally married, and</u> <u>2 Circuit Court did not lack subject matter jurisdiction to determine that parties were never legally married.</u>	<u>Marriage:</u> Lack of legal marriage between father and mother
New York	<i>Cardosanto v. Cardosanto</i> , 14 Misc.2d 498 (N.Y.Sup.Ct. 1957)	Motion to dismiss complaint in action for a <u>declaratory judgment by plaintiff against her former husband and his present wife.</u>	Denied the motion to dismiss the complaint. The Supreme Court, Special Term, Eilperin, J., held that in view of fact that there was no adequate remedy at law for plaintiff, court, in the exercise of its discretion, would <u>allow her to maintain</u>	<u>Marriage:</u> Former wife's marital status

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
			<u>her action for a declaratory judgment as to her marital status.</u>	
Minnesota	<i>In the Matter of the Guardianship of O'Brien</i> , 847 N.W.2d 710 (Minn.Ct.App. 2014)	<u>Ward petitioned for a declaration that he had the right to marry his girlfriend.</u>	→ Evidence was insufficient to establish that ward lacked the competency to marry. → The Court <u>reversed the district court's declaratory judgment that Michael lacks the competence to marry</u> , and remanded the case for further proceedings consistent with its opinion.	<u>Ward:</u> A ward's competence to marry his girlfriend

Divorce

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Alabama	<i>Waite v. Waite</i> , 891 So.2d 341 (Ala.Civ.App. 2004)	.Husband filed a <u>declaratory judgment</u> action against his wife and her former husband, in which he <u>sought</u> to have <u>divorce judgment</u> between wife and former husband <u>declared void</u> . The Russell Circuit Court, No. CV-03-339, Albert L. Johnson, J., on its own motion, entered a judgment in favor of wife and former husband. Husband appealed.	Reversed. The Court of Civil Appeals, <u>Thompson, J.</u> , held that <u>trial court erred in dismissing declaratory judgment action</u> based upon affirmative defenses of res judicata and collateral estoppel which were not asserted by the defendants.	<u>Divorce:</u> Voiding a divorce judgment
Arizona	<i>Srock, Jr. v. Srock</i> , 11 Ariz.App. 483 (Ariz.Ct.App. 1970)	Action by former wife, who had paid community debt, <u>against former husband for repayment</u> . From decree of the Superior Court of Pima County, Cause No. 110218, Lawrence Howard, J., ordering repayment, the husband appealed. The Court of Appeals, Krucker, J., held that trial court had jurisdiction to obligate one of parties to divorce action to pay community debts and to enforce the obligation by means of a money judgment.	Affirmed. The trial court was correct in granting the wife her money judgment as requested as supplemental to her divorce decree and in avoidance of a multiplicity of actions. Those aspects of a divorce decree which merely fix the <u>rights and legal relationship of the parties</u> take on the character of a <u>declaratory judgment</u> . And, under our declaratory judgment statutes, <u>A.R.S. s 12-1838</u> provides that <u>supplemental relief</u> such as in the instant case <u>can be sought</u> .	<u>Divorce:</u> Assigning liability for community debts
Maine	<i>Randlett v. Randlett</i> , 401 A.2d 1008 (Me. 1979)	<u>Ex-husband</u> filed suit against his ex-wife, <u>seeking a judgment declaring that</u> , under the divorce decree, <u>his obligation to pay alimony would cease at the time of his death</u> . The <u>Superior Court</u> of Waldo County affirmed the District Court's determination that <u>no justiciable controversy</u> existed, and plaintiff <u>appealed</u> .	<u>Appeal sustained</u> ; remanded with instructions. The Supreme Judicial Court, Delahanty, J., held that a <u>declaratory judgment was available to determine</u> , during the lives of the spouses, <u>whether the separation agreement</u> negotiated by them and incorporated into their divorce decree <u>would obligate the defendant husband's</u>	<u>Alimony:</u> Husband's obligation to pay alimony

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
			<p>estate <u>to continue making alimony payments</u> to plaintiff wife in the event she survived him.</p> <p>Under <u>14 M.R.S.A. s 5951</u> the courts are directed to interpret and construe the Uniform Declaratory Judgments Act (the Act) “(so) as to effectuate (its) general purpose to make uniform the law of those states (enacting the Act).” In that connection, it is significant that the majority of cases that have considered the justiciability of this type of claim have held the <u>granting of declaratory relief proper</u>.</p>	
Oklahoma	<i>Clark v. Edens</i> , 254 P.3d 672 (Okla. 2011)	Former husband <u>sought</u> declaratory judgment <u>that his presumptive paternity</u> of a child born during the parties' marriage <u>was not rebutted by a finding in the divorce decree</u> that there were no children born of the marriage.	<p>On certiorari review, the Supreme Court, Reif, J., held that:</p> <p>1 former husband's presumptive paternity of a child born during parties' marriage was not rebutted by a finding in divorce decree that there were no children born of the marriage;</p> <p>2 former husband did not waive his claim of presumptive paternity of child born during parties' marriage by filing a divorce petition, which was later dismissed, that stated that there were no children born of the marriage;</p> <p>3 former wife was estopped from asserting that genetic test excluding former husband as the biological father of child born during parties' marriage was a ground for rebutting statutory presumption that former husband was child's father; and</p> <p>4 former husband was entitled to exercise parental rights to child.</p>	<u>Divorce:</u> Ex-husband is still presumed to be the father despite divorce decree stating otherwise.

Property

States	Case Citations	Procedural History	Holdings/Reliefs	DJ Used For
Alabama	<i>Wilmore v. Wilmore</i> , 91 So.3d 701 (Ala.Civ.App. 2012)	Former wife brought <u>declaratory-judgment action</u> against former husband's parents, seeking a <u>judicial determination</u> as to the <u>proper amount</u> necessary <u>to pay off the note</u> secured by the mortgage on the	<p>Affirmed in part; appeal dismissed in part.</p> <p>The Court of Civil Appeals, <u>Pittman, J.</u>, held that:</p>	<u>Property:</u> Determining the amount of mortgage due on a marital home

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
		<p>former marital residence, which note was held by the parents. The Circuit Court, Etowah County, No. CV-06-1406, William A. Millican, J., found former husband's father in contempt and entered judgment against parents. Parents appealed.</p>	<p>1 former husband was <u>not an indispensable party</u> to <u>former wife's declaratory-judgment action</u> against former husband's parents; 2 trial court was <u>not divested of jurisdiction</u> over former marital residence; 3 parents lacked standing to challenge trial court's reforming of the title to the former marital residence; and 4 trial court did not abuse its discretion in holding former husband's father <u>in contempt</u> for failing to appear and produce the required documents.</p> <p>Declaring the proper amount necessary to pay off the note secured by the mortgage on the <u>former marital residence</u></p>	
Arizona	<p><i>Russell Piccoli P.L.C. v. O'Donnell</i>, 237 Ariz. 43 (Ariz.Ct.App. 2015)</p>	<p>During pendency of marriage dissolution proceeding in Missouri, wife's former law firm brought action against wife seeking <u>declaratory judgment</u> that its <u>arbitration award</u> against wife concerning fee dispute could be <u>satisfied from marital trust assets</u>.</p> <p>The Superior Court, Maricopa County, No. CV2012-013260, Katherine Cooper, J., issued <u>declaratory judgment that the amounts awarded</u> to law firm at arbitration were marital debts that <u>could be satisfied out of marital assets</u>. Husband and trustee appealed.</p>	<p>Affirmed.</p> <p>The Court of Appeals, <u>Thompson, J.</u>, held that:</p> <p>1 law firm's action involved a justiciable controversy; 2 <u>declaratory judgment</u> was <u>not an improper collateral attack on prior ruling of probate court</u> regarding wife's interest in marital trusts or on the judgments of the Missouri family court; 3 amounts awarded to law firm at arbitration were marital debts that <u>could be satisfied out of marital assets</u>; and 4 arbitration award was not the product of collusion and did not violate due process rights of husband and trustee.</p> <p>- For there to be a justiciable controversy in a declaratory judgment action, "there must be an assertion of a right, status or legal relation in which the plaintiff has a definite interest and a denial of it by the opposing party." <i>Samaritan Health Svcs. v. City of Glendale</i>, 148 Ariz. 394, 395, 714 P.2d 887, 888 (App.1986) (citation omitted). We interpret <u>the declaratory judgment act liberally</u>. <i>Keggi v. Northbrook Prop. & Cas. Ins. Co.</i>, 199 Ariz. 43, 45, ¶ 10, 13 P.3d 785, 787 (App.2000) (citation omitted). Here, the trial court correctly found that a <u>justiciable controversy</u></p>	<p><u>Property:</u> Allowing marital debts to be satisfied by marital assets granted through arbitration</p>

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
			existed as to Law Firm's interest in the trust assets.	
Arkansas	<i>Pianalto v. Pianalto</i> , 2010 Ark. App. 80 (Ark.Ct.App. 2010)	Following parties divorce, wife sought a <u>declaratory judgment stating that unexercised stock options</u> awarded husband during the marriage <u>were marital property</u> to be divided equally. Following a bench trial, the Circuit Court, Washington County, Mary Ann Gunn, J., entered judgment, finding that certain percentages of the stock options should be considered marital property and divided equally between the parties. Husband appealed, and wife cross-appealed.	Affirmed. The Court of Appeals, Robert J. Gladwin, J., held that stock options granted husband during marriage <u>were marital property, subject to division upon parties' divorce, to extent options had become exercisable and vested.</u>	<u>Property:</u> Stock options are marital property
Idaho	<i>Foster v. Schorr</i> , 139 Idaho 563 (Idaho 2003)	Former husband filed complaint seeking to terminate his maintenance obligation to former wife upon her remarriage, and <u>seeking declaratory judgment as to his property rights in former marital residence</u> , and former wife counterclaimed for breach of underlying property settlement agreement (PSA), which did not provide for termination of spousal maintenance upon remarriage, and which, among other things, allowed former husband to stay in marital residence until certain date or until encumbrance on residence was paid in full, whichever event occurred first. The District Court, Bonner County, James R. Michaud, J., granted partial summary judgment to wife on issue of maintenance and ultimately ruled in her favor on all remaining issues. Former husband appealed.	Affirmed. The Supreme Court, Trout, C.J., held that: <u>1</u> remarriage of former wife did not terminate former husband's spousal maintenance obligation; <u>2</u> <u>former husband's alleged unilateral mistake</u> as to encumbrance payoff date on former marital residence <u>was not basis for reformation of PSA, such as to allow former husband to stay in residence without paying rent</u> after date envisioned in PSA; <u>3</u> <u>former wife</u> , during parties' negotiations of terms of PSA, had <u>no fiduciary duty to inform former husband of payoff date on former marital residence</u> ; <u>4</u> oral agreement between former spouses, that former husband would pay \$1,000 per month in rent for staying in former marital residence past certain date agreed to in PSA was sufficient grounds to order <u>former husband to pay rent</u> in such amount for period he overstayed; <u>5</u> provision in PSA requiring former husband to maintain former wife as beneficiary of cancer medical insurance policy obliged former husband to pay for premiums of such policy obtained by former wife; and <u>6</u> former wife was entitled to award of attorney fees.	<u>Property:</u> Property rights in former marital residence
Illinois	<i>In re Marriage of Best</i> , 228 Ill.2d 107 (Ill. 2008)	Husband petitioned for dissolution of marriage and <u>moved for declaratory judgment that premarital agreement was valid and barred</u>	Affirmed in part, reversed in part, and remanded.	<u>Premarital Agreement:</u> Validity, scope, and application

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
		<p><u>support and health insurance coverage</u> for wife. The Circuit Court, Lake County, Sarah Lessman and Jorge Ortiz, JJ., rule the agreement valid and enforceable and required husband to reinstate wife as a beneficiary of his policy. Husband appealed prior to entry of final dissolution decree. The Appellate Court, O'Malley, J., 369 Ill.App.3d 254, 307 Ill.Dec. 173, 859 N.E.2d 173, affirmed in part and reversed in part. Husband's petition for leave to appeal was allowed.</p>	<p>The Supreme Court, <u>Kilbride, J.</u>, held that: <u>1 the declaratory ruling was reviewable prior to final dissolution decree</u>, and <u>2 “separate” in premarital agreement waiving spousal support and insurance coverage</u> in the “event the parties separate or the marriage” was dissolved required legal separation.</p> <p>A declaratory judgment of the <u>spouses' rights under premarital agreement</u> is proper if: (1) there is an actual controversy; and (2) entry of a declaratory judgment would terminate some part of that controversy. S.H.A. 735 ILCS 5/2–701(a).</p> <p><u>Declaratory ruling on the validity, scope, and application of premarital agreement would end some part of controversy prior to dissolution decree, satisfied requirements of declaratory judgment statute</u>, and, therefore, was reviewable prior to final dissolution decree. S.H.A. <u>735 ILCS 5/2–701(a); 750 ILCS 10/4.</u></p>	<p>of a premarital agreement</p> <p><u>Property:</u> Barring support and health insurance coverage separation</p>
Ohio	<p><i>In Re Guardianship of Maurer</i>, 108 Ohio App.3d 354 (Ohio Ct.App. 1995)</p>	<p><u>Guardian</u> of the person of the ward <u>filed exceptions to inventory</u> that was prepared by the guardian of the estate of the ward. The Wood County Court of Common Pleas overruled the exceptions.</p>	<p>The Court of Appeals held that: (1) second judge was not bound by prior judge's order scheduling an evidentiary hearing; (2) lower court did not abuse its discretion by proceeding to final judgment on the exceptions to the inventory at the time that it did and in the manner that it did; (3) court <u>erred by approving the inclusion in the guardian's inventory of an account receivable</u> from the guardian of the person; and (4) court did not abuse its discretion by <u>approving the inventory</u> without requiring the guardian of the estate to prove his calculations.</p>	<p><u>Property:</u> Account receivable's inclusion in the guardian's inventory</p>
Nevada	<p><i>Warren v. Warren</i>, 94 Nev. 309 (Nev. 1978)</p>	<p>Action was brought for divorce or, in alternative, for dissolution of partnership and <u>declaratory relief</u> based on theories that there was a constructive or resulting trust, <u>that plaintiff had property rights as a meretricious, common-law or putative spouse, that there had been a partnership or joint venture and that plaintiff had contractual or quasi-contractual rights</u> to share</p>	<p>The Supreme Court held that: (1) evidence warranted finding that <u>parties had not engaged in express or implied contract to pool funds or to form a partnership</u>, and (2) granting defendant leave, after one witness testified, to answer requests for admission, which had been unanswered due to withdrawal of his attorney, did not prejudice plaintiff.</p>	<p><u>Property:</u> Marital or partnership property rights</p>

State	Case Citations	Procedural History	Holdings/Relief	DJ Used For
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		<p>with defendant in proceeds acquired by parties. The Eighth <u>Judicial District Court</u>, Clark County, John F. Mendoza, J., entered judgment <u>refusing to recognize that plaintiff had any marital or partnership rights</u> to defendant's property, and plaintiff appealed.</p>	<p>Appellant made no attempt at trial to prove the foreign law of any country, and <u>failed to present sufficient evidence to support her claim of putative or common law marriage.</u></p>	
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Appendix U - SJS 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 SJS?
Alabama	Ala. Code § 6-6-223	X				<i>Waite v. Waite</i> , 891 So.2d 341 (Ala.Civ.App. 2004) (Divorce); <i>Wilmore v. Wilmore</i> , 91 So.3d 701 (Ala.Civ.App. 2012) (Divorce)	Yes
Alaska	AS § 22.10.020		X		X	<i>Jacob v. State of Alaska</i> , 177 P.3d 1181 (Alaska 2008) (Grandparents' Right to Notice and Hearing); <i>State of Alaska v. Native Vill. of Tanana</i> , 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				<i>Russell Piccoli P.L.C. v. O'Donnell</i> , 237 Ariz. 43 (Ariz.Ct.App. 2015) (Divorce); <i>Srock, Jr. v. Srock</i> , 11 Ariz.App. 483 (Ariz.Ct.App. 1970) (Divorce)	Yes
Arkansas	A.C.A. § 16-111-103 & 104	X				<i>Grays v. Arkansas Office of Child Support Enforcement</i> , 375 Ark. 38 (Ark. 2008) (Child Support); <i>Pianalto v. Pianalto</i> , 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.		<i>In Re Claudia E. v. J.E.</i> , 163 Cal.App.4th 627 (Cal.Ct.App. 2008) (Custody)	No
Colorado	C.R.S.A. § 13-51-106	X				<i>Schwartz v. Schwartz</i> , 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.		<i>Mirto v. Bodine</i> , 29 Conn.Supp. 510 (Conn.Super.Ct. 1972) (Grandparents' Visitation Rights); <i>B. v. Ment</i> , 244 Conn. 296 (Conn. 1998) (Custody)	Yes
Delaware	10 Del. § 6501	X				<i>C.L. v. C.</i> , 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	<i>In Re Estate of Glover</i> , 470 A.2d 743 (D.C. 1983) (Illegitimate Child)	Yes
Florida	West's F.S.A. § 86.021	X		Court extends jurisdiction over juveniles for SJS adjudication purposes. See Fla. Stat. § 39.013(2).		<i>Kendrick v. Everheart</i> , 390 So.2d 53 (Fla. 1980) (Paternity); <i>F.L.M. v. Dep't of Children and Families</i> , 912 So.2d 1264 (Fla.Dist.Ct. App. 2005) (Status of Immigrant Juvenile); <i>Peregood v. Cosmides</i> , 663 So.2d 665 (Fla.Dist.Ct.App. 1995) (Adoption)	Yes
Georgia	Ga. Code Ann. § 9-4-2		X		X	<i>Weaver v. Jones</i> , 260 Ga. 493 (Ga. 1990) (Child Custody/Support under Divorce Decree); <i>Hardman v. Hardman</i> , 295 Ga. 732 (Ga. 2014) (Child Support; Rights/Duties under Divorce Decree); <i>Acevedo v. Kim</i> , 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	<i>Filipo v. Chang</i> , 62 Haw. 626 (Haw. 1980) (Support for Unborn Child)	Only in contested cases
Idaho	I.C. § 10-1202	X				<i>Foster v. Schorr</i> , 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. <i>Barrington Community Unit School Dist. No. 220 v. Special Educ. Dist. of Lake County</i> , 615 N.E.2d 1153 (Ill. App. Ct. 1993)		<i>In re Marriage of Best</i> , 228 Ill.2d 107 (Ill. 2008) (Dissolution of Marriage/Premarital Agreement)	Yes
Indiana	Ind. Code § 34-14-1-2	X				<i>Garcia v. Garcia</i> , 789 N.E.2d 993 (Ind.Ct.App. 2003) (Child Support)	Yes
Iowa	I.C.A. Rule 1.1101	X				<i>In Re Marriage of McEnvoy</i> , 414 N.W.2d 855 (Iowa Ct.App. 1987) (Child Custody and Visitation)	Yes
Kansas	K.S.A. 60-1701	X				<i>Wornkey v. Wornkey</i> , 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. <i>See</i> § 38:4.Statutory provisions in Kentucky, 5 Ky. Prac. Methods of Prac. § 38:4 (emphasis added)		<i>Carter v. Nance</i> , 304 Ky. 256 (Ky.Ct.App. 1947) (Custody)	Yes
Louisiana	LSA-C.C.P. Art. 1872	X				<i>Spicer v. Spicer</i> , 62 So.3d 798 (La.Ct.App. 2011) (Child Support)	Yes
Maine	14 M.R.S.A. § 5954	X				<i>Johannesen v. Pfeiffer</i> , 387 A.2d 1113 (Me. 1978) (Paternity); <i>Randlett v. Randlett</i> , 401 A.2d 1008 (Me. 1979) (Divorce)	Yes
Maryland	MD Code Ann. § 3-406	X				<i>Green v. Sollenberger</i> , 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		<i>Gardner v. Rothman</i> , 370 Mass. 79 (Mass. 1976) (Visitation Rights); <i>D.L. v. Comm'r of Soc. Serv.</i> , 412 Mass. 558 (Mass. 1992) (Placement/Custody)	No
Michigan	MI Rules MCR 2.605		X		X	<i>Ellehaf v. Tarraf</i> , 2006 WL 736561 (Mich.Ct.App. 2006) - Westlaw/Unpublished Opinion (Marriage); <i>Wayne Cnty. v. State of Mich.</i> , 202 Mich.App. 530 (Mich.Ct. App. 1993)(Foster Care for Abused/Neglected Children)	Yes
Minnesota	M.S.A. § 555.01	X				<i>Cnty. of Ramsey v. Wilson</i> , 526 N.W.2d 384 (Minn.Ct.App. 1995) (Child Placement/Adoption Subsidy); <i>In the Matter of the Guardianship of O'Brien</i> , 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				<i>McManus v. Howard</i> , 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		<i>K.D.R. v. D.E.S.</i> , 637 S.W.2d 691 (Mo. 1982) (Paternity)	No
Montana	MCA 27-8-202	X				<i>D'Ewart, v. Neibauer</i> , 228 Mont. 335 (Mont. 1987) (Child Care)	Yes
Nevada	Neb. Rev. St. § 25-21, 149	X				<i>Warren v. Warren</i> , 94 Nev. 309 (Nev. 1978) (Divorce)	Yes
Nebraska	N.R.S. 30.030	X				<i>McCombs v. Haley</i> , 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	<i>Cardosanto v. Cardosanto</i> , 14 Misc.2d 498 (N.Y.Sup.Ct. 1957) (Marital Status); <i>On the Petition of Amoury for Declaratory Judgment</i> , 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				<i>Schaff v. Schaff</i> , 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. <i>Ohio Assn. of Life Underwriters, Inc. v. Duryee</i> , 642 N.E.2d 1145(Oh. App. 1994). Ohio Rev. Code Ann. § 2721.07 (West)	X	<i>In Re Guardianship of Maurer</i> , 108 Ohio App.3d 354 (Ohio Ct.App. 1995) (Guardianship)	Yes
Oklahoma	12 Okl. St. Ann. § 1651		X		X	<i>Clark v. Edens</i> , 254 P.3d 672 (Okla. 2011) (Paternity)	Yes

Oregon	O.R.S. § 28.010	X					Yes
Pennsylvania	42 Pa. C.S.A. § 7532	X				<i>Coal. To Save Our Kids v. Dep't of Pub. Welfare</i> , 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				<i>Howe v. Ellenbecker</i> , 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				<i>Monk v. Pomberg</i> , 263 S.W.3d 199 (Tex.App.2007) (Parental Right); <i>Morris v. Dearborne</i> , 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	<i>Doe v. Doe</i> , 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				<i>Smith v. Smith</i> , 140 W.Va. 298 (W.Va. 1954) (Custody)	Yes
Wisconsin	Wis. Stat. § 806.04 (1)&(2)	X				<i>Slavick v. Stroh</i> , 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."

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	

Appendix V

Appointment of Guardianship: State Statutes¹

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This document summarizes the common themes in state definitions regarding appointment of a guardian. Some states define appointment of a guardian in more than one statute. The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status (SIJS). Any state law definition of guardianship can apply in any state court proceeding for purposes of the court applying state law to issue the required SIJS findings.

States that specifically allow a minor over the age of fourteen to appoint his/her own guardian: Arizona, Hawaii, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, West Virginia

States with guardianship provisions specifically pertaining to SIJS: California

States	Appointment of Guardian Statutes
Alabama	<p>Court appointment of guardian– Ala. Code § 26-2A-76</p> <ul style="list-style-type: none"> The court may appoint as guardian any person whose appointment would be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 or more years of age, unless the court finds the appointment contrary to the best interest of the minor.
Alaska	<p>Court appointment of guardian– Alaska Stat. Ann. §13.26.147(b)</p> <ul style="list-style-type: none"> Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of AS 13.26.132 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.
Arizona	<p>Court appointment of guardian– Ariz. Rev. Stat. Ann. § 14-5206</p> <ul style="list-style-type: none"> The court shall appoint as guardian a person whose appointment would be in the best interests of the minor. The court may appoint a person nominated by the minor, if the

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

Arizona	minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
Arkansas	<p>Matters considered by court- Ark. Code Ann. § 28-65-210</p> <ul style="list-style-type: none"> • Before appointing a guardian, the court must be satisfied that: <ul style="list-style-type: none"> ○ The person for whom a guardian is prayed is either a minor or otherwise incapacitated; ○ A guardianship is desirable to protect the interests of the incapacitated person; and ○ The person to be appointed guardian is qualified and suitable to act as such.
California	<p>Appointment of guardian- Cal. Prov. Code § 1514(b)(1)</p> <ul style="list-style-type: none"> • In appointing a guardian of the person, the court is governed by Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor. <p>Health, Safety, and Welfare of Children- Cal. Fam. Code § 3020</p> <ul style="list-style-type: none"> • The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child. <p>Order of Preference- Cal. Fam. Code § 3040</p> <ul style="list-style-type: none"> • Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020: <ul style="list-style-type: none"> ○ To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order. ○ If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment. ○ To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child. • The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a). <p>Appointment of guardian for individual 18-21 years; SIJS- Cal. Prob. Code §1510.1(a)(1)</p> <ul style="list-style-type: none"> • With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure.

<p>Colorado</p>	<p>Judicial appointment of guardian- Colo. Rev. Stat. Ann. § 15-14-204</p> <ul style="list-style-type: none"> • A minor or a person interested in the welfare of a minor may petition for appointment of a guardian. • The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: <ul style="list-style-type: none"> ○ The parents consent; ○ All parental rights have been terminated; ○ The parents are unwilling or unable to exercise their parental rights; or ○ Guardianship of a child has previously been granted to a third party and the third party has subsequently died or become incapacitated and the guardian has not made an appointment of a guardian either by will or written instrument; however, the court shall not presume it is in the best interests of a child to be in the care of a parent in circumstances where a court has previously granted custody of a child to a third party.
<p>Connecticut</p>	<p>Appointment of guardian for minor- Conn. Gen. Stat. Ann. § 45a-616</p> <ul style="list-style-type: none"> • If any minor has no parent or guardian of his or her person, the court of probate for the district in which the minor resides may, on its own motion, appoint a guardian or coguardians of the person of the minor, taking into consideration the standards provided in section 45a-617... • If any minor has a parent or guardian, who is the sole guardian of the person of the child, the court of probate for the district in which the minor resides may, on the application of the parent or guardian of such child or of the Commissioner of Children and Families with the consent of such parent or guardian and with regard to a child within the care of the commissioner, appoint one or more persons to serve as coguardians of the child. When appointing a guardian or guardians under this subsection, the court shall take into consideration the standards provided in section 45a-617... <p>Appointment of guardian- Conn. Gen. Stat. Ann. § 45a-617</p> <ul style="list-style-type: none"> • When appointing a guardian, coguardians or permanent guardian of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian, coguardians or permanent guardian to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian, coguardians or permanent guardian; and (4) the best interests of the child. There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a guardian, coguardian or permanent guardian is in the best interests of the minor child
<p>Delaware</p>	<p>Grounds for guardianship of child- Del. Code Ann. tit. 13, § 2330</p> <ul style="list-style-type: none"> • Prior to granting an order for guardianship under this chapter, the Court shall find for each parent the following: <ul style="list-style-type: none"> ○ The parent voluntarily consents to the guardianship; notwithstanding the consent, if the child is in DSCYF custody, the Court shall also determine whether guardianship is the appropriate permanency plan for the child and whether it is in the best interest of the child for the guardianship to be granted; or

<p>Delaware</p>	<ul style="list-style-type: none"> ○ After a hearing on the merits, by a preponderance of the evidence that petitioner has established: <ul style="list-style-type: none"> ▪ The child is dependent, neglected or abused and the reasons therefor; and ▪ It is in the best interests of the child for the guardianship to be granted.
<p>District of Columbia</p>	<p>Appointment of guardians- D.C. Code § 21-103</p> <ul style="list-style-type: none"> • When an infant has neither a natural nor testamentary guardian, a guardian of the person may be appointed by the Probate Court in its own discretion or on the application of a next friend of the infant. • Only trust companies may act as guardian of the person for more than five infants at one time, unless the infants are members of one family. <p>Selection of guardian by infant- D.C. Code § 21-108</p> <ul style="list-style-type: none"> • When a guardian, either of the person or the estate, of an infant is appointed, the infant shall, if practicable, be brought before the court, and, if over 14 years of age, shall be entitled to select and nominate his or her guardian. • When a guardian has been appointed before the infant has attained the age of 14 years, the infant, upon arriving at that age, may select a new guardian, notwithstanding the appointment before made...
<p>Florida</p>	<p>Guardians of minors- Fla. Stat. Ann. § 744.3021</p> <ul style="list-style-type: none"> • Except as provided in subsection (4), upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication pursuant to s. 744.331.³ A guardian appointed for a minor, whether of the person or property, has the authority of a plenary guardian. <p>Considerations in appointment of guardian- Fla. Stat. Ann. § 744.312</p> <ul style="list-style-type: none"> • If the person designated is qualified to serve pursuant to s. 744.309⁴, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward. • If a guardian cannot be appointed under subsection (1), the court may appoint any person who is fit and proper and qualified to act as guardian, whether related to the ward or not. The court shall give preference to the appointment of a person who: <ul style="list-style-type: none"> ○ Is related by blood or marriage to the ward; ○ Has educational, professional, or business experience relevant to the nature of the services sought to be provided; ○ Has the capacity to manage the financial resources involved; or ○ Has the ability to meet the requirements of the law and the unique needs of the individual case. • The court shall also: <ul style="list-style-type: none"> ○ Consider the wishes expressed by an incapacitated person as to who shall be appointed guardian. ○ Consider the preference of a minor who is age 14 or over as to who should be appointed guardian. ○ Consider any person designated as guardian in any will in which the ward is a beneficiary.

³ This statute pertains to procedures to determine incapacity

⁴ This statute pertains to who may be appointed guardian of a resident ward

	<ul style="list-style-type: none"> ○ Consider the wishes of the ward's next of kin, when the ward cannot express a preference.
Georgia	<p>Qualifications of guardians- Ga. Code Ann. §29-2-2</p> <ul style="list-style-type: none"> • Only an individual may serve as guardian of a minor. • No individual may be appointed as guardian of a minor who: <ul style="list-style-type: none"> ○ Is a minor, a ward, or a protected person; or ○ Has a conflict of interest with the minor unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the minor's best interest.
Hawaii	<p>Judicial appointment of guardian- Haw. Rev. Stat. §560:5-204</p> <ul style="list-style-type: none"> • A minor or a person interested in the welfare of a minor may petition for appointment of a guardian. • The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: <ul style="list-style-type: none"> ○ The parents consent; ○ All parental rights have been terminated; or ○ The parents are unwilling or unable to exercise their parental rights... <p>Judicial appointment of guardian; priority of minor's nominee- Haw. Rev. Stat. § 560:5-206(a)</p> <ul style="list-style-type: none"> • The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained fourteen years of age, unless the court finds the appointment will be contrary to the best interest of the minor.
Idaho	<p>Court appointment of guardian of minor; conditions for appointment- Idaho Code Ann. § 15-5-204</p> <ul style="list-style-type: none"> • The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated by prior court order or upon a finding that the child has been neglected, abused, abandoned, or whose parents are unable to provide a stable home environment... In all cases, the court shall consider the best interests of the child as the primary factor in the determination whether to appoint, and whom to appoint, as a guardian for such child. In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used as a criterion of the suitability of the potential guardian so long as the potential guardian is otherwise suitable. <p>Court appointment of guardian of minor; priority of minor's nominee- Idaho Code Ann. § 15-5-206</p> <ul style="list-style-type: none"> • The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor. <p>Court appointment of guardian of minor- Idaho Code Ann. § 15-5-207</p> <ul style="list-style-type: none"> • Proceedings for the appointment of a guardian or co-guardians may be initiated by the following persons: <ul style="list-style-type: none"> ○ Any relative of the minor; ○ The minor if he is fourteen (14) or more years of age;

<p>Idaho</p>	<ul style="list-style-type: none"> ○ Any person who comes within section 15-5-213(1), Idaho Code; or ○ Any person interested in the welfare of the minor... ● As an alternative to appointing one (1) guardian for a minor, the court may appoint no more than two (2) persons as co-guardians for a minor if the court finds: <ul style="list-style-type: none"> ○ The appointment of co-guardians will best serve the interests of the minor; and ○ The persons to be appointed as co-guardians will work together cooperatively to serve the best interests of the minor. ● If the court appoints co-guardians, the court shall also determine whether the guardians: <ul style="list-style-type: none"> ○ May act independently; ○ May act independently but must act jointly in specified matters; or ○ Must act jointly. ● This determination by the court must be stated in the order of appointment and in the letters of guardianship. ● If the court finds, upon hearing, that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204, Idaho Code, have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor...
<p>Illinois</p>	<p>Who may act as guardian- 755 Ill. Comp. Stat. 5/11-3</p> <ul style="list-style-type: none"> ● A person is qualified to act as guardian of the person and as guardian of the estate if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the minor and that the proposed guardian: <ul style="list-style-type: none"> ○ has attained the age of 18 years; ○ is a resident of the United States; ○ is not of unsound mind; ○ is not an adjudged person with a disability as defined in this Act; and ○ has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the minor's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a child, including a felony sexual offense. <p>Appointment of guardian- 755 Ill. Comp. Stat. 5/11-5</p> <ul style="list-style-type: none"> ● Upon the filing of a petition for the appointment of a guardian or on its own motion, the court may appoint a guardian of the estate or of both the person and estate, of a minor, or may appoint a guardian of the person only of a minor or minors, as the court finds to be in the best interest of the minor or minors... ● If the minor is 14 years of age or more, the minor may nominate the guardian of the minor's person and estate, subject to approval of the court. If the minor's nominee is not approved by the court or if, after notice to the minor, the minor fails to nominate a guardian of the minor's person or estate, the court may appoint the guardian without nomination. ● The court shall not appoint as guardian of the person of the minor any person whom the court has determined had caused or substantially contributed to the minor becoming a neglected or abused minor as defined in the Juvenile Court Act of 1987,¹ unless 2 years have elapsed since the last proven incident of abuse or neglect and the court determines that appointment of such person as guardian is in the best interests of the minor.

<p>Indiana</p>	<p>Filing of petition- Ind. Code Ann. § 29-3-5-1(a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter...</p> <p>Considerations for appointment of guardian- Ind. Code Ann. § 29-3-5-4 The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:</p> <ul style="list-style-type: none"> • Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a). • Any request made for a minor by: <ul style="list-style-type: none"> ○ a parent of the minor; or ○ a de facto custodian of the minor, including a designation in a power of attorney under IC 30-5-3-4(b) or IC 30-5-3-4(c). • Any request contained in a will or other written instrument. • A designation of a standby guardian under IC 29-3-3-7. • Any request made by a minor who is at least fourteen (14) years of age. • Any request made by the spouse of the alleged incapacitated person. • The relationship of the proposed guardian to the individual for whom guardianship is sought. • Any person acting for the incapacitated person under a durable power of attorney. • The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.
<p>Iowa</p>	<p>Preference as to appointment of guardian- Iowa Code Ann. § 633.559</p> <ul style="list-style-type: none"> • Except for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.104, the parents of a minor child, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity
<p>Kansas</p>	<p>Appointment of guardian- Kan. Stat. Ann. § 59-3068</p> <ul style="list-style-type: none"> • The court in appointing a guardian or conservator shall give priority in the following order to: <ul style="list-style-type: none"> ○ The nominee of the proposed ward or proposed conservatee, if such nomination is made within any durable power of attorney; ○ the nominee of a natural guardian; ○ the nominee of a minor who is the proposed ward or proposed conservatee, if the minor is over 14 years of age; ○ the nominee of the spouse, adult child or other close family member of the proposed ward or proposed conservatee; or ○ the nominee of the petitioner. • The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator, or both, before making such appointment, and the court shall give particular attention in

<p>Kansas</p>	<p>making such appointment to the number of other cases in which the proposed guardian or conservator, other than a corporation, is currently serving as guardian or conservator, or both, particularly if that number is more than 15 or more wards or conservatees, or both.</p>
<p>Kentucky</p>	<p>Application for appointment of guardian- Ky. Rev. Stat. Ann. § 387.025</p> <ul style="list-style-type: none"> • Any interested person or entity may petition the District Court for the appointment of a guardian or limited guardian for an unmarried minor. <p>Matters to be considered by court when making appointment- Ky. Rev. Stat. Ann. § 387.032</p> <ul style="list-style-type: none"> • In appointing a guardian, limited guardian, or conservator, the District Court shall appoint any person or entity whose appointment would be in the best interest of the minor, taking into consideration the ability of the person or entity to manage and preserve the minor's estate, and taking into consideration the person or entity nominated pursuant to KRS 387.040 or 387.050. <p>Nomination by minor 14 years or older- Ky. Rev. Stat. Ann. § 387.050</p> <ul style="list-style-type: none"> • If the minor is fourteen (14) years of age or older, the minor may, in the presence of the District Court, or by a writing signed in the presence of the judge, after privy examination, nominate his own guardian, limited guardian, or conservator, or if the minor be absent from the county, the minor may after privy examination, in the presence of the District Judge of the county where the minor is, or if the minor be in the military or naval services of the United States, after privy examination, in the presence of a superior commanding officer, by a writing signed in the presence of the judge or superior officer nominate his own guardian, limited guardian, or conservator, provided that the judge or the commanding officer certify to the District Judge of the county having jurisdiction to appoint a guardian, limited guardian, or conservator for the minor that the writing was signed by the minor after privy examination in the presence of the judge or officer.
<p>Louisiana</p>	<p>Purpose of guardianship- La. Child. Code Ann. art. 718</p> <ul style="list-style-type: none"> • The purpose of guardianship is to provide a permanent placement for children when neither reunification with a parent nor adoption has been found to be in their best interest; to encourage stability and permanence in the lives of children who have been adjudicated to be in need of care and have been removed from the custody of their parent; and to increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing supervision by the department. <p>Grounds; hearing; order- La. Child. Code Ann. art. 722</p> <ul style="list-style-type: none"> • The mover shall have the burden of proving all of the following by clear and convincing evidence: <ul style="list-style-type: none"> ○ The child has been adjudicated to be in need of care. ○ Neither adoption nor reunification with a parent is in the best interest of the child. ○ The child has resided for at least six months with the proposed guardian, unless the court waives the residence requirement for good cause. ○ The proposed guardian is able to provide a safe, stable, and wholesome home for the child for the duration of minority. • If the child is twelve years of age or older, the court shall solicit and consider his wishes in the matter.

<p>Maine</p>	<p>Court appointment of guardian- Me. Rev. Stat. Ann. tit. 18, § 5-204 The court may appoint a guardian or coguardians for an unmarried minor if:</p> <ul style="list-style-type: none"> • All parental rights of custody have been terminated or suspended by circumstance or prior court order; • Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child; • The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or • The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child. <p>Court appointment of guardian; qualifications- Me. Rev. Stat. Ann. tit. 18, § 5-206</p> <ul style="list-style-type: none"> • The court may appoint as guardian any person, or as co-guardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption
<p>Maryland</p>	<p>Authority to grant guardianship- Md. Code Ann., Fam. Law § 5-320</p> <ul style="list-style-type: none"> • A juvenile court may grant guardianship of a child only if: • the child does not object; • the local department: <ul style="list-style-type: none"> ○ filed the petition; or ○ did not object to another party filing the petition; and • each of the child's living parents consents: <ul style="list-style-type: none"> ○ in writing; ○ knowingly and voluntarily, on the record before the juvenile court; or ○ by failure to file a timely notice of objection after being served with a show-cause order in accordance with this subtitle; ○ an administrative, executive, or judicial body of a state or other jurisdiction has granted a governmental unit or person other than a parent the power to consent to adoption, and the unit or person consents; or ○ parental rights have been terminated in compliance with the laws of a state or other jurisdiction, as described in § 5-305 of this subtitle; or • in accordance with § 5-323 of this subtitle, the juvenile court finds termination of parental rights to be in the child's best interests without consent otherwise required under this section or over the child's objection.

<p>Maryland</p>	<p>Grant of guardianship- consensual- Md. Code Ann., Fam. Law § 5-322</p> <ul style="list-style-type: none"> • If all consents for guardianship of a child have been given in accordance with this subtitle and the child has not objected, a juvenile court may enter an order for guardianship. <p>Grant of guardianship- nonconsensual- Md. Code Ann., Fam. Law § 5-323(b)</p> <ul style="list-style-type: none"> • If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.
<p>Massachusetts</p>	<p>Court appointment of guardian of minor- Mass. Gen. Laws Ann. ch. 190B, § 5-204(a)</p> <ul style="list-style-type: none"> • The court may appoint a guardian for a minor if (i) the minor's parents are deceased or incapacitated, (ii) the parents consent, (iii) the parents' parental rights have been terminated, (iv) the parents have signed a voluntary surrender, or (v) the court finds the parents, jointly, or the surviving parent, to be unavailable or unfit to have custody. A guardian appointed pursuant to section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding. <p>Objection by minor fourteen or older- Mass. Gen Laws Ann. ch. 190B, § 5-203</p> <ul style="list-style-type: none"> • Except where the court has previously confirmed a nominee under section 5-202(c), <ul style="list-style-type: none"> ○ a minor 14 or more years of age who is the subject of a parental appointment, ○ the other parent, if that parent's parental rights have not been terminated, or ○ (iii) a person other than a parent having care or custody of the minor or with whom the minor has resided during the 60 preceding days, excluding a foster parent may prevent the appointment or cause it to terminate by filing in the court in which the appointing instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn...
<p>Michigan</p>	<p>Petition for appointment of guardian⁵- Mich. Comp. Laws Ann. § 700.5204</p> <ul style="list-style-type: none"> • A person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian for the minor. The court may order the family independence agency or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation. • The court may appoint a guardian for an unmarried minor if any of the following circumstances exist: <ul style="list-style-type: none"> ○ The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.

⁵ The court may also review guardianship as it considers necessary, using the factors in Mich. Comp. Laws Ann. § 700.5207.

<p>Michigan</p>	<ul style="list-style-type: none"> ○ The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed. ○ All of the following: <ul style="list-style-type: none"> ▪ The minor's biological parents have never been married to one another. ▪ The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order. ▪ The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption. <p>Appointment of guardian, choice by minor- Mich. Comp. Laws Ann. § 700.5212</p> <ul style="list-style-type: none"> • The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.
<p>Minnesota</p>	<p>Appointment and status of guardian- Minn. Stat. Ann. § 524.5-201</p> <ul style="list-style-type: none"> • A person becomes a guardian of a minor by parental appointment, by designation of a standby guardian pursuant to chapter 257B, or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward. <p>Judicial appointment of guardian; conditions- Minn. Stat. Ann. § 524.5-204</p> <ul style="list-style-type: none"> • The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: <ul style="list-style-type: none"> ○ both parents are deceased; or ○ all parental rights have been terminated by court order. <p>Judicial appointment of guardian; priority of minor's nominee- Minn. Stat. Ann. § 524.5-206</p> <ul style="list-style-type: none"> • The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained 14 years of age, unless the court finds the appointment will be contrary to the best interest of the minor...
<p>Mississippi</p>	<p>Appointment by court- Miss. Code Ann. § 93-13-13</p> <ul style="list-style-type: none"> • When a testamentary guardian has not been appointed by the parent, or if appointed, has not qualified, the chancery court of the county of the residence of a ward who has an estate, real or personal, shall appoint a general guardian of his estate for him or may appoint a general guardian of his person and estate for him. If a ward have no estate the chancery court of the county of the residence of such ward may appoint a general guardian of his person only for him, giving preference in all cases to the natural guardian, or next of kin, if any apply, unless the applicant be manifestly unsuitable for the discharge of the duties. The court may allow a minor who is over the age of fourteen (14) years and under no legal disability except minority to select a general guardian, by petition to the court, signed and acknowledged before the clerk or a justice of the peace, and duly filed, but if the general guardian so selected by the minor be guardian of the person and estate of the minor or the person only of the minor then such general guardian so selected by said minor shall be a suitable and qualified person who is a resident of this state and the county in which the guardianship proceedings are

<p>Mississippi</p>	<p>pending... f said minor select a person other than the natural guardian to be either the general guardian of his estate or general guardian of his person and estate or general guardian of his person only the court shall, notwithstanding, have power to appoint the natural guardian, if deemed suitable. And if any such minor over the age of fourteen (14) years fail to appear and select a general guardian of his estate only or of his estate and person or of his person only when summoned, or if the general guardian chosen fail to qualify, and no other be chosen in his stead, the court shall appoint a general guardian to the minor as if he were under fourteen (14) years.</p>
<p>Missouri</p>	<p>Who may be appointed guardian of minor- Mo. Ann. Stat. § 475.045</p> <ul style="list-style-type: none"> • Except in cases where they fail or refuse to give required security or are adjudged unfit for the duties of guardianship or conservatorship, or waive their rights to be appointed, the following persons, if otherwise qualified, shall be appointed as guardians or conservators of minors: <ul style="list-style-type: none"> ○ The parent or parents of the minor, except as provided in section 475.030; ○ If any minor over the age of fourteen years has no qualified parent living, a person nominated by the minor, unless the court finds appointment contrary to the best interests of the minor ○ Where both parents of a minor are dead, any person appointed under this section or section 475.046 by the will of the last surviving parent, who has not been adjudged unfit or incompetent for the duties of guardian or conservator. <p>Qualifications of guardians- Mo. Ann. Stat. § 475.055</p> <ul style="list-style-type: none"> • Except as herein otherwise provided: <ul style="list-style-type: none"> ○ Any adult person may be appointed guardian of the person or conservator of the estate, or both, of a minor or incapacitated or disabled person, except that a parent shall not be denied appointment as guardian of the person of a minor for the reason that the parent is a minor.
<p>Montana</p>	<p>Court appointment of guardian of minor- when allowed- Mont. Code Ann. § 72-5-222(1)</p> <ul style="list-style-type: none"> • The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order. <p>Guardian of minor by court appointment- Mont. Code Ann. § 72-5-223</p> <ul style="list-style-type: none"> • The court may appoint as guardian any person whose appointment would be in the best interests of the minor, including the minor's interest in continuity of care. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.
<p>Nebraska</p>	<p>Court appointment of guardian of minor- Neb. Rev. Stat. § 30-2610</p> <ul style="list-style-type: none"> • The court may appoint as a guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
<p>Nevada</p>	<p>Preference for qualified and suitable parent as guardian of proposed protected minor- 13 Nev. Rev. Stat. Ann. § 46</p>

<p>Nevada</p>	<ul style="list-style-type: none"> • ... Subject to the preference set forth in subsection 1 and except as otherwise provided in subsection 7, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve. • In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsections 2, 3 and 4, give consideration, among other factors, to: <ul style="list-style-type: none"> ○ Any nomination of a guardian for the proposed protected minor contained in a will or other written instrument executed by a parent of the proposed protected minor. ○ Any request made by the proposed protected minor, if he or she is 14 years of age or older, for the appointment of a person as guardian for the proposed protected minor. ○ The relationship by blood or adoption of the proposed guardian to the proposed protected minor. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference: <ul style="list-style-type: none"> ▪ Parent. ▪ Adult sibling. ▪ Grandparent. ▪ Uncle or aunt. ○ Any recommendation made by a master of the court or special master pursuant to section 47 of this act. ○ Any recommendation made by: <ul style="list-style-type: none"> ▪ An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or ▪ A guardian ad litem or court appointed special advocate who represents the proposed protected minor. • Any request for the appointment of any other interested person that the court deems appropriate.
<p>New Hampshire</p>	<p>Who may be appointed guardian- N.H. Rev. Stat. Ann. § 463:10</p> <ul style="list-style-type: none"> • The court may appoint as guardian of the person of the minor any person or authorized agency whose appointment is appropriate.
<p>New Jersey</p>	<p>Persons entitled to appointment- N.J. Stat. Ann. § 3B:12-21</p> <ul style="list-style-type: none"> • In an action for the appointment a guardian of the person, guardian of the estate, or a guardian of the person and estate of a minor, the surrogate's court of the county wherein he resides or, if he is a nonresident, where his real or personal estate may be, or the Superior Court, upon inquiry into the circumstances, may appoint the parents or either of them or the survivor of them as the guardian of the person, guardian of the estate or guardian of the person and estate of the minor. If neither parent or the survivor of them will accept the guardianship, then the heirs, or some of them, may be appointed as guardian. If none of the heirs will accept the guardianship, then some other person shall be appointed as the guardian of the person, guardian of the estate or as guardian of the person and estate of the minor. This section shall not be construed to restrict the power of the court to appoint a substitute guardian on the application of the minor or otherwise

<p>New Mexico</p>	<p>Petition; who may file- N.M. Stat. Ann. § 40-10B-5</p> <ul style="list-style-type: none"> • A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by: <ul style="list-style-type: none"> ○ a kinship caregiver; ○ a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists, who has been nominated to be guardian of the child by the child, and the child has reached the age of fourteen; or ○ a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands: <ul style="list-style-type: none"> ▪ the purpose and effect of the guardianship; ▪ that the parent has the right to be served with the petition and notices of hearings in the action; and ▪ that the parent may appear in court to contest the guardianship. <p>Hearing; elements of proof- N.M. Stat. Ann. § 40-10B-8</p> <ul style="list-style-type: none"> • Upon hearing, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of Subsection B of this section have been proved and the best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the minor. • A guardian may be appointed pursuant to the Kinship Guardianship Act only if: <ul style="list-style-type: none"> ○ a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn; ○ a parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or ○ the child has resided with the petitioner without the parent for a period of ninety days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and • no guardian of the child is currently appointed pursuant to a provision of the Uniform Probate Code. • The burden of proof shall be by clear and convincing evidence. <p>Nomination objection by child- N.M. Stat. Ann. § 40-10B-11</p> <ul style="list-style-type: none"> • In a proceeding for appointment of a guardian pursuant to the Kinship Guardianship Act: <ul style="list-style-type: none"> ○ the court shall appoint a person nominated by a child who has reached his fourteenth birthday unless the court finds the nomination contrary to the best interests of the child; and ○ the court shall not appoint a person as guardian if a child who has reached his fourteenth birthday files a written objection in the proceeding before the person accepts appointment as guardian.
<p>New York</p>	<p>N.Y. Soc. Serv. Law § 384-b</p> <ul style="list-style-type: none"> • The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section one thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody

<p>New York</p>	<p>is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency...</p> <ul style="list-style-type: none"> • An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds: <ul style="list-style-type: none"> ○ Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or ○ The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or ○ The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or intellectual disability, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or ○ The child is a permanently neglected child; or ○ The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination...
<p>North Carolina</p>	<p>Criteria for appointment of guardians- N.C. Gen. Stat. Ann. § 35A-1224</p> <ul style="list-style-type: none"> • The clerk may appoint a guardian of the estate for any minor. The clerk may appoint a guardian of the person or a general guardian only for a minor who has no natural guardian. • The clerk may appoint as guardian of the person or general guardian only an adult individual whether or not that individual is a resident of the State of North Carolina. • The clerk may appoint as guardian of the estate an adult individual whether or not that individual is a resident of the State of North Carolina or a corporation that is authorized by its charter to serve as a guardian or in similar fiduciary capacities. • If the minor's parent or parents have made a testamentary recommendation pursuant to G.S. 35A-1225 for the appointment of a guardian, the clerk shall give substantial weight to such recommendation; provided, such recommendation may not affect the rights of a surviving parent who has not willfully abandoned the minor, and the clerk

North Carolina	shall in every instance base the appointment of a guardian or guardians on the minor's best interest.
North Dakota	<p>Court appointment of guardian of minor- conditions for appointment- N.D. Cent. Code Ann. § 30.1-27-04</p> <ul style="list-style-type: none"> The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 30.1-27-02 whose appointment has not been prevented or nullified under section 30.1-27-03 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding. <p>Court appointment of guardian of minor- qualifications- N.D. Cent. Code Ann. § 30.1-27-06</p> <ul style="list-style-type: none"> The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
Ohio	<p>Appointment of guardian- Ohio Rev. Code Ann. § 2111.02</p> <ul style="list-style-type: none"> If found necessary, a probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county... <p>Guardian of minor- Ohio Rev. Code Ann. § 2111.12</p> <ul style="list-style-type: none"> A minor over the age of fourteen years may select a guardian who shall be appointed if a suitable person. If a minor over the age of fourteen years fails to select a suitable person, an appointment may be made without reference to the minor's wishes. The minor shall not select one person to be the guardian of the minor's estate only and another to be the guardian of the person only, unless the court that appoints the guardian is of the opinion that the interests of that minor will be promoted by that selection. A surviving parent by a will in writing may appoint a guardian for any of the surviving parent's children, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time...
Oklahoma	<p>Guardian of minor to be appointed- Okla. Stat. Ann. tit. 30, § 2-101(a)</p> <ul style="list-style-type: none"> The court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or both of them, of minors. <p>Nomination and appointment of guardian- age of minor- Okla. Stat. Ann. tit. 30, § 2-103</p> <ul style="list-style-type: none"> If the minor is under the age of fourteen (14) years, the court may name and appoint his guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian, who, if approved by the court, must be appointed accordingly.
Oregon	<p>Petition for permanent guardianship- Or. Rev. Stat. Ann. § 419B.365</p> <ul style="list-style-type: none"> At any time following establishment of jurisdiction and wardship under ORS 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed

<p>Oregon</p>	<p>under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state is not foreclosed from filing a subsequent action should the intervenor's petition be denied.</p> <ul style="list-style-type: none"> • The grounds for granting a permanent guardianship are the same as those for termination of parental rights. • The court shall grant a permanent guardianship if it finds by clear and convincing evidence that: <ul style="list-style-type: none"> ○ The grounds cited in the petition are true; and ○ It is in the best interest of the ward that the parent never have physical custody of the ward but that other parental rights and duties should not be terminated...
<p>Pennsylvania</p>	<p>Persons not qualified to be appointed by the court- 20 Pa. Stat. and Cons. Stat. Ann. § 5112</p> <ul style="list-style-type: none"> • The court shall not appoint as guardian of the estate of a minor any person who is: <ul style="list-style-type: none"> ○ Under 18 years of age. ○ A corporation not authorized to act as fiduciary in the Commonwealth. ○ A parent of the minor, except that a parent may be appointed a co-guardian with another fiduciary or fiduciaries. <p>Persons preferred in appointment- 20 Pa. Stat. and Cons. Stat. Ann. § 5113</p> <ul style="list-style-type: none"> • A person of the same religious persuasion as the parents of the minor shall be preferred as guardian of his person. A person nominated by a minor over the age of 14, if found by the court to be qualified and suitable, shall be preferred as guardian of his person or estate.
<p>Rhode Island</p>	<p>Appointment of guardians for minors- 33 R.I. Gen Laws § 33-15.1-5</p> <ul style="list-style-type: none"> • A probate court may appoint a guardian of a minor under the age of fourteen (14) years. A minor of the age of fourteen (14) years or over may nominate his or her own guardian, who, if approved by the probate court, shall be appointed accordingly. <p>Appointment in lieu of guardian nominated by minor- 33 R.I. Gen Laws § 33-15.1-6</p> <ul style="list-style-type: none"> • If a minor of the age of fourteen (14) years shall neglect to choose a guardian when cited by the court to do so, or shall choose one whom the court does not approve, or one who shall neglect to give bond as required by the court or by law, the court may appoint a guardian in the same manner as if the minor were under the age of fourteen (14) years.
<p>South Carolina</p>	<p>There is no statutory law addressing guardians of minors in South Carolina</p>
<p>South Dakota</p>	<p>Nomination of guardian or conservator by minor or parent- S.D. Codified Law § 29A-5-202</p> <ul style="list-style-type: none"> • A minor, age fourteen or older, may nominate any individual or entity to act as his guardian or conservator. The nomination may be made in writing or by an oral request to the court. The court may appoint the individual or entity so nominated if the nominee is otherwise eligible to act and would serve in the minor's best interests. However, no nomination by a minor may supersede a previous appointment by the court. • A parent of an unmarried minor may nominate a guardian or conservator of the minor by will or other signed writing. Absent an effective nomination by the minor, the court may appoint a parental nominee if both parents are dead and the nominee is otherwise eligible to act and would serve in the minor's best interests. In the event that both parents have made nominations, the court shall select the nominee which it believes best qualified. A parental nomination shall be effective whether or not the minor was living

<p>South Dakota</p>	<p>at the time of the making of the will or other signed writing. However, no parental nomination may supersede a previous appointment by the court.</p> <ul style="list-style-type: none"> • Absent an effective nomination by a minor, age fourteen or older, or deceased parent, the court shall appoint as guardian or conservator the individual or entity that will act in the minor's best interests. In making that appointment, the court shall consider the proposed guardian's or conservator's geographic location, familial or other relationship with the minor, ability to carry out the powers and duties of the office, commitment to promoting the minor's welfare, any potential conflicts of interest, the recommendations of the parents or other interested relatives, and the wishes of the minor if the minor is of sufficient age to form an intelligent preference. The court may appoint more than one guardian or conservator and need not appoint the same individual or entity to serve as both guardian and conservator. <p>Who may file petition for appointment- S.D. Codified Law § 29A-5- 203</p> <ul style="list-style-type: none"> • A petition for the appointment of a guardian, a conservator, or both, may be filed by the minor, by an interested relative, by the individual or facility that is responsible for or has assumed responsibility for the minor's care or custody, by the individual or entity that the minor has nominated as guardian or conservator, or by any other interested person, including the department of human services or the department of social services...
<p>Tennessee</p>	<p>Petition for appointment- Tenn. Code Ann. § 34-2-102</p> <ul style="list-style-type: none"> • A petition for the appointment of a guardian may be filed by any person having knowledge of the circumstances necessitating the appointment of a guardian. <p>Priorities and preferences; appointments- Tenn. Code Ann. § 34-2-103</p> <ul style="list-style-type: none"> • Subject to the court's determination of what is in the best interests of the minor, the court shall consider the following persons in the order listed for appointment of the guardian: <ul style="list-style-type: none"> ○ The parent or parents of the minor; ○ The person or persons designated by the parent or parents in a will or other written document; ○ Adult siblings of the minor; ○ Closest relative or relatives of the minor; and ○ Other person or persons.
<p>Texas</p>	<p>Application for appointment of guardian- Tex. Est. Code Ann. § 1101.001(a)</p> <ul style="list-style-type: none"> • Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue. <p>Findings and proof required- Tex. Est. Code Ann. § 1101.101</p> <ul style="list-style-type: none"> • Before appointing a guardian for a proposed ward, the court must: <ul style="list-style-type: none"> ○ find by clear and convincing evidence that: <ul style="list-style-type: none"> ▪ the proposed ward is an incapacitated person; ▪ it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; ▪ the proposed ward's rights or property will be protected by the appointment of a guardian; ▪ alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

<p>Texas</p>	<ul style="list-style-type: none"> ▪ supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and ○ find by a preponderance of the evidence that: <ul style="list-style-type: none"> ▪ the court has venue of the case; ▪ the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian; ▪ if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and ▪ the proposed ward: <ul style="list-style-type: none"> • is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or • lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property. <p>Selection of guardian by minor- Tex. Est. Code Ann. § 1104.054</p> <ul style="list-style-type: none"> • Notwithstanding any other provision of this subchapter, if an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor may select the guardian by a writing filed with the clerk, if the court finds that the selection is in the minor's best interest and approves the selection. • Notwithstanding any other provision of this subchapter, a minor at least 12 years of age may select another guardian of the minor's person or estate, or both, if the minor has a guardian appointed by the court, by will of the minor's parent, or by written declaration of the minor's parent, and that guardian dies, resigns, or is removed from guardianship. The minor must make the selection by filing an application in open court in person or by an attorney. The court shall make the appointment and revoke the letters of guardianship of the former guardian if the court is satisfied that: <ul style="list-style-type: none"> ○ the person selected is suitable and competent; and ○ the appointment of the person is in the minor's best interest.
<p>Utah</p>	<p>Court appointment of guardian of minor- conditions for appointment- Utah Code Ann. § 75-5-204</p> <ul style="list-style-type: none"> • The court may appoint a guardian for an unemancipated minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will under Section 75-5-202, or by written instrument under Section 75-5-202.5, whose appointment has not been prevented or nullified under Section 75-5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. <p>Court appointment of guardian of minor- qualifications- Utah Code Ann. § 75-5-206</p> <ul style="list-style-type: none"> • The court may appoint as guardian any person whose appointment would be in the best interests of the minor. • In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.

Utah	<ul style="list-style-type: none"> • Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.
Vermont	<p>Petition for guardianship of minor- Vt. Stat. Ann. tit. 14, § 2623</p> <ul style="list-style-type: none"> • A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child.... <p>Guardians; individuals who may serve- Vt. Stat. Ann. tit. 14, § 3072</p> <ul style="list-style-type: none"> • Competent individuals of at least 18 years of age may serve as guardians... • In appointing an individual to serve as guardian, the court shall take into consideration: <ul style="list-style-type: none"> ○ the nomination of a guardian in an advance directive or in a will; ○ any current or past expressed preferences of the respondent; ○ the geographic location of the proposed guardian; ○ the relationship of the proposed guardian and the respondent; ○ the ability of the proposed guardian to carry out the powers and duties of the guardianship; ○ the willingness and ability of the proposed guardian to communicate with the respondent and to respect the respondent's choices and preferences.
Virginia	<p>Appointment of guardians- Va. Code Ann. § 64.2-1702</p> <ul style="list-style-type: none"> • The circuit court or the circuit court clerk of any county or city in which a minor resides or, if the minor is an out-of-state resident, in which the minor has any estate may appoint a guardian for the estate of the minor and may appoint a guardian for the person of the minor unless a guardian has been appointed for the minor pursuant to § 64.2-1701.
Washington	<p>Authority to appoint guardians- Wash. Rev. Code Ann. § 11.88.010</p> <ul style="list-style-type: none"> • The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention <p>Qualifications- Wash. Rev. Code Ann. § 11.88.020</p> <ul style="list-style-type: none"> • Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is <ul style="list-style-type: none"> ○ under eighteen years of age except as otherwise provided herein; ○ of unsound mind; ○ convicted of a felony or of a misdemeanor involving moral turpitude; ○ a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court; ○ a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

Washington	<ul style="list-style-type: none"> ○ a person whom the court finds unsuitable.
West Virginia	<p>Appointment and termination of guardian for a minor- W. Va. Code Ann. § 44-10-3</p> <ul style="list-style-type: none"> • ...Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent... • The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor's best interest and: <ul style="list-style-type: none"> ○ The parents consent; ○ The parents' rights have been previously terminated; ○ The parents are unwilling or unable to exercise their parental rights; ○ The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or ○ There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied... <p>Right of minor to nominate guardian- W. Va. Code Ann. § 44-10-4</p> <ul style="list-style-type: none"> • If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, shall be appointed accordingly. • If the guardian nominated by the minor is not appointed by the court, or if the minor resides outside the state, or if, after being summoned, the minor neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.
Wisconsin	<p>Appointment of guardian- Wis. Stat. Ann. § 54.10(1)</p> <ul style="list-style-type: none"> • A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual if the court determines that the individual is a minor. <p>Selection of guardian; nominations; preferences- Wis. Stat. Ann. § 54.15</p> <ul style="list-style-type: none"> • The court shall consider all of the following in determining who is appointed as guardian: <ul style="list-style-type: none"> ○ Opinions of proposed ward and family. The court shall take into consideration the opinions of the proposed ward and of the members of his or her family as to what is in the best interests of the proposed ward. However, the best interests of the proposed ward shall control in making the determination when the opinions of the family are in conflict with those best interests. ○ Potential conflicts of interest. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. ○ Agent under durable power of attorney. The court shall appoint as guardian of the estate an agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of an agent is not in the best interests of the proposed ward. ○ Agent under a power of attorney for health care. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for

<p>Wisconsin</p>	<p>health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.</p> <ul style="list-style-type: none"> ○ Person nominated by proposed ward. <ul style="list-style-type: none"> ▪ Any individual other than a minor aged 14 years or younger may, if the individual does not have incapacity to such an extent that he or she is unable to form a reasonable and informed preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating another to be appointed as guardian of his or her person or estate or both if a guardian is in the future appointed for the individual. The court shall appoint this nominee as guardian unless the court finds that the appointment is not in the best interests of the proposed ward. ▪ A minor who is 14 years or older may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is outside of the state, or if other good reason exists, the court may dispense with the minor's right of nomination. ▪ If neither parent of a minor who is 14 years or older is suitable and willing to be appointed guardian, the court may appoint the nominee of the minor. ○ Parent of a proposed ward. If one or both of the parents of a minor or an individual with developmental disability or with serious and persistent mental illness are suitable and willing, the court shall appoint one or both as guardian unless the court finds that the appointment is not in the proposed ward's best interest. The court shall consider a proposed ward's objection to the appointment of his or her parent. ○ Testamentary nomination by proposed ward's parents. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate for any of his or her minor children who is in need of guardianship, unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interests. For an individual who is aged 18 or older and is found to be in need of guardianship by reason of a developmental disability or serious and persistent mental illness, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through a will.
<p>Wyoming</p>	<p>Petition for appointment of guardian- Wyo. Stat. Ann. § 3-2-101</p> <ul style="list-style-type: none"> • Any person may file with the clerk a petition for the appointment of a guardian. <p>Who may be appointed as guardian- Wyo. Stat. Ann. § 3-2-107</p> <ul style="list-style-type: none"> • The court may appoint any qualified person as guardian of an incompetent person or a minor. The court may not appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian: <ul style="list-style-type: none"> ○ Provides, or is likely to provide during the guardianship period, substantial services to the ward in a professional or business capacity unrelated to the person's authority as a guardian; ○ Is, or is likely to become during the guardianship period, a creditor of the ward, other than in the capacity as guardian; ○ Has, or is likely to have during the guardianship period, interests that may conflict with those of the ward; or ○ Is employed by a person who would be disqualified under paragraphs (i) through (iii) of this subsection.

Wyoming

- A person may be appointed as guardian of a respondent, notwithstanding the provisions of subsection (a) of this section that would otherwise disqualify the person, if the person is the spouse, adult child, parent or sibling of the respondent and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the respondent.

Appendix W

State Law Definitions of Termination of Guardianship¹

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The purpose of the chart is to assist judges in identifying the state law definitions of termination of guardianship. For SIJS proceedings, the petitioner must be the subject of a juvenile court order that declares him or her dependent on a juvenile court.² The child must remain under the jurisdiction of the juvenile court at the time of the filing and adjudication of the SIJ petition.³ One of the exceptions to this requirement is if the juvenile court jurisdiction ended solely because the petitioner was placed under a permanent guardianship.⁴

The chart will help Judges to identify when a guardianship is permanent and what are the reasons under state law to terminate a guardianship. The causes that terminates a guardian's authority and responsibility accordingly to state laws are frequently:

- Death
- Resignation, or
- Removal of the guardian
- Minor's death
- Adoption
- Marriage
- Attainment of Majority

Jurisdiction	Text of statute	Permanent until changed – Yes or No?
Alabama	<p>§ 26-2A – 79 Termination of appointment of Guardian A guardian's authority and responsibility terminate upon:</p> <ul style="list-style-type: none"> • Death • Resignation, or • Removal of the guardian • Minor's death • Adoption, • Marriage • Attainment of majority <p>But termination does not affect the guardian's liability for prior acts or the obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.</p>	Yes

¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, 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/>

³ *See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>

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

	<p>NOTE:</p> <p>Ala. Code 1975 § 26-2A-81 § 26-2A-81. Resignation, removal In the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for any other order that is in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian</p>	
Alaska	<p>§ 13.26.171. Termination of appointment of guardian; general A guardian’s authority and responsibility terminate upon the:</p> <ul style="list-style-type: none"> • Death, • Resignation, • Minor’s death, • Attainment of majority • Adoption or marriage, <p>But termination does not affect the guardian's liability for prior acts, nor the obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.</p>	Yes
Arizona	<p>§ 14-5210 - Termination of appointment of Guardian A guardian’s authority and responsibility terminates on the:</p> <ul style="list-style-type: none"> • Death, • Resignation or removal, • Minor’s death • Adoption • Marriage or attainment of majority. <p>Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for the ward's monies and assets. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.</p> <p>NOTE:</p> <p>A.R.S. § 14-5212 - Resignation or removal proceedings Any person interested in the welfare of a ward or the ward, if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward, or for any other order that is in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian</p>	Yes
Arkansas	<p>A.C.A. § 28-65-706 - Termination of guardianships The court having jurisdiction of the ward shall not terminate the guardianship of a living ward of the Public Guardian for Adults unless the court declares that the ward is restored to capacity or a successor guardian is appointed</p>	Yes
California	<p>West's Ann.Cal.Prob.Code § 1600 - Majority, death, adoption, or emancipation of ward (a) A guardianship of the person or estate or both terminates when the ward</p> <ul style="list-style-type: none"> • attains majority unless, pursuant to <u>Section 1510.1</u>, the ward requests the extension of, or consents to the extension of, the guardianship of the person until the ward attains 21 years of age. <p>(b) A guardianship of the person terminates</p> <ul style="list-style-type: none"> • upon the death of the ward, • the adoption of the ward, or upon • the emancipation of the ward under <u>Section 7002 of the Family Code.</u> <p>NOTE:</p>	Yes

	<p>West's Ann.Cal.Prob.Code § 1510.1 - Appointment of guardian for unmarried individual between 18 and 21 years of age; findings regarding special immigrant juvenile status; rights as an adult; adoption of rules and forms for implementation</p> <p>(a)(1) With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to <u>subdivision (b) of Section 155 of the Code of Civil Procedure</u>.</p> <p>(2) A petition for guardianship of the person of a proposed ward who is 18 years of age or older, but who has not yet attained 21 years of age, may be filed by a relative or any other person on behalf of the proposed ward, or the proposed ward.</p> <p>(b)(1) At the request of, or with the consent of, the ward, the court may extend an existing guardianship of the person for a ward past 18 years of age, for purposes of allowing the ward to complete the application process with the United States Citizenship and Immigration Services for classification as a special immigrant juvenile pursuant to <u>Section 1101(a)(27) (J) of Title 8 of the United States Code</u>.</p> <p>(2) A relative or any other person on behalf of a ward, or the ward, may file a petition to extend the guardianship of the person for a period of time not to extend beyond the ward reaching 21 years of age.</p> <p>(c) This section does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent.</p> <p>(d) For purposes of this division, the terms "child," "minor," and "ward" include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after he or she attains 18 years of age.</p> <p>(e) The Judicial Council shall, by July 1, 2016, adopt any rules and forms needed to implement this section.</p>	
<p>Colorado</p>	<p>C.R.S.A. § 15-14-210 - Termination of guardianship</p> <p>(1) A guardianship may terminate upon the:</p> <ul style="list-style-type: none"> • minor's death, • adoption, • emancipation or attainment of majority • as ordered by court <p>(2) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained twelve years of age and is not the petitioner, the guardian, and any other person as ordered by the court.</p> <p>C.R.S.A. § 15-14-318 - Termination or modification – resignation or removal of guardian</p> <p>(1) A guardianship terminates upon the death of the ward or upon order of the court.</p> <p>(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court shall terminate a guardianship if the ward no longer meets the standard for establishing the guardianship. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.</p> <p>C.R.S.A. § 15-14-112 - Termination of or change in guardian's or conservator's appointment</p> <p>(1) The appointment of a guardian or conservator terminates upon</p> <ul style="list-style-type: none"> • the death, resignation, or removal of the guardian or conservator or • upon termination of the guardianship or conservatorship. • A resignation of a guardian or conservator is effective when approved by the court. • A parental appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. <p>Termination of the appointment of a guardian or conservator without a decree of discharge does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.</p> <p>(2) A guardian or conservator may petition for permission to resign. A petition for removal of a guardian or conservator shall be governed by the provisions of <u>section 15-10-503</u>. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.</p>	<p>Yes</p>
<p>Connecticut</p>	<p><u>PROBATE COURT USER GUIDE: GUARDIANS OF MINORS- CONNECTICUT PROBATE COURTS (Published by Office of the Probate Court Administrator, State of Connecticut) – page 2</u></p> <p>Temporary Guardian:</p>	<p>Yes</p>

	<p>If a parent of a minor is unable to care for the minor for a period of time due to illness, absence from the area or for some other reason, the parent may file a petition for appointment of a temporary guardian of the person in the Probate Court for the district in which the minor resides.</p> <p>The temporary guardian serves with, but does not replace, the parent as natural guardian, so that either the parent or the temporary guardian may make important decisions affecting the minor. The appointment expires in 12 months, but the parent may file a new petition for temporary guardianship when it expires. The parent has the right to terminate the temporary guardianship at any time.</p> <p><u>CHAPTER Sec. 45a-622. (Formerly Sec. 45-45g). Appointment of temporary guardian.</u> Application. Rights and obligations.</p> <p>(a) Any parent or guardian of the person of a minor may apply to the court of probate for the district in which the minor lives for the appointment of a temporary guardian of the person to serve for no longer than one year if the appointing parent or guardian is unable to care for the minor for any reason including, but not limited to, illness and absence from the jurisdiction. The temporary guardian will cease to serve when the appointing parent or guardian notifies the probate court and the temporary guardian to that effect.</p> <p><u>PROBATE COURTS AND PROCEDURE- CHAPTER 802h- Protected Persons and their Property:</u> <u>Sec. 45a-613. (Formerly Sec. 45-45a). Removal of guardian, coguardian or permanent guardian of the person of a minor.</u></p> <p>(a) Any guardian, coguardians or permanent guardian of the person of a minor appointed under section 45a-616 or section 45a-616a, or appointed by a court of comparable jurisdiction in another state, may be removed by the court of probate which made the appointment, and another guardian, coguardian or permanent guardian appointed, in the same manner as that provided in sections 45a-603 to 45a-622, inclusive, for removal of a parent as guardian:</p> <p>Sec. 45a-610. (Formerly Sec. 45-44c). Removal of parent as guardian. If the Court of Probate finds that notice has been given or a waiver has been filed, as provided in section 45a-609, it may remove a parent as guardian, if the court finds by clear and convincing evidence one of the following:</p> <ol style="list-style-type: none"> (1) The parent consents to his or her removal as guardian; or (2) the minor child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility for the minor child's welfare; or (3) the minor child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being, as a result of acts of parental commission or omission, whether the acts are the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interests of the minor child be permitted to exercise, parental rights and duties at the time; or (4) the minor child has had physical injury or injuries inflicted upon the minor child by a person responsible for such child's health, welfare or care, or by a person given access to such child by such responsible person, other than by accidental means, or has injuries which are at variance with the history given of them or is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment; or (5) the minor child has been found to be neglected or uncared for, as defined in section 46b-120. <p>If, after removal of a parent as guardian under this section, the minor child has no guardian of his or her person, such a guardian may be appointed under the provisions of section 45a-616.</p>	
<p>Delaware</p>	<p>13 Del.C. § 2332 - Termination, modification or rescission of guardianship order</p> <p>(1) Termination. --Except as otherwise specified in this chapter, guardianship of a child terminates:</p> <ul style="list-style-type: none"> • Upon the guardian's death; • Upon adoption of the child; • When the child reaches the age of majority; or • As otherwise ordered by the Court. <p>(2) Modification. --Except as otherwise specified in this chapter, an order of guardianship may be modified regarding contact, visitation or sharing of information at any time if it is in the best interests of the child.</p> <p>(3) Rescission. --Except as otherwise specified in this chapter, an order of guardianship may be rescinded upon a judicial determination that petitioner has made a preliminary showing the guardianship is no longer necessary for the reason(s) it was established, unless:</p>	<p>Yes</p>

	<ul style="list-style-type: none"> • The Court finds that the guardian has established, by a preponderance of the evidence, that the child will be dependent, neglected, and/or abused in the care of the parent or parents seeking rescission; or • The Court finds that the guardian has established, by clear and convincing evidence, that the child will suffer physical or emotional harm if the guardianship is terminated. <p>NOTE: 13 Del.C. § 2359 - Termination, modification or rescission of permanent guardianship order (b) Modification. --Except as otherwise specified in this chapter, an order of permanent guardianship may be modified regarding contact, visitation or sharing of information only upon a finding:</p> <ul style="list-style-type: none"> • That there has been a substantial change in material circumstances; and • That modification is in the best interests of the child. <p>(c) Rescission. --</p> <p>(1) An order of permanent guardianship may be rescinded only upon a finding:</p> <ul style="list-style-type: none"> • That there has been a substantial change in material circumstances; and • That rescission is in the best interests of the child. <p>(2) A parent may not petition the Court to rescind a permanent guardianship once granted under this chapter.</p> <p>(3) Where the permanent guardianship is rescinded by the Court, custody of the child shall not automatically revert to the parent. At any subsequent hearing, the parent shall be considered with no greater priority than any other person or agency, and in entering any further order regarding the child the Court shall apply the best interests of the child standard.</p> <p>(4) If the permanent guardianship is rescinded, and DSCYF held custody immediately prior to the entry of the order, custody shall revert to DSCYF.</p> <p>(d) Upon a showing by affidavit of immediate harm to a child, the Court may temporarily:</p> <p>(1) Stay a permanent guardianship order on an ex parte basis pending a hearing and grant temporary custody of the child to DSCYF or temporary guardianship to petitioner; and/or</p> <p>(2) Stay the visitation, contact or information provisions of a permanent guardianship order on an ex parte basis pending a hearing.</p>	
<p>District of Columbia</p>	<p>DC ST § 21-104 - Termination of guardianship of the person A natural guardianship or an appointive guardianship of the person of an infant cease when said infant becomes 18 years of age, or marries.</p> <p>NOTE: DC ST § 21-2049 - Removal or resignation of guardian; termination of incapacity. (a)(1) On petition of the guardian, the court, after a hearing, may accept a resignation of a guardian. (2) The court may remove a temporary guardian at any time. (3) On petition of the ward or any interested person, or on the court's own motion, the court, after a hearing, may remove a limited guardian or a general guardian for any of the following reasons: (A) Failure to discharge his or her duties, including failure to conform as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, to make a decision on the basis of the ward's best interests, pursuant to <u>section 21-2047(a)(6) or 21-2047.02(b)(2)</u>; (B) Abuse of his or her powers; (C) Failure to comply with any order of the court; (D) Failure to educate or provide for the ward as liberally as the ward's financial situation permits, if education and financial management fall within the scope of the guardianship; (E) Interference with the ward's progress or participation in programs in the community; or (F) For any other good cause. (b) The ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court and any individual who knowingly interferes with transmission of the request may be adjudged guilty of contempt of court. A ward seeking termination is entitled to the same rights and procedures as in an original proceeding for appointment of a guardian. (c) Upon removal, resignation, or death of the guardian, or if the guardian is determined to be incapacitated, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a ward's incapacity has terminated, the court shall</p>	<p>Yes</p>

	follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.	
Florida	Fla. Stat. § 39.6221. Permanent guardianship of a dependent child. (5) The court shall retain jurisdiction over the case and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve the department of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child.	Yes
Georgia	Ga. Code Ann., § 29-2-8 - Termination (1) A temporary guardianship shall terminate on the date upon the earliest of the following occurs: the minor reaches age 18, the minor is adopted, the minor is emancipated, the minor dies, the temporary guardian dies, letters of guardianship are issued to a permanent or testamentary guardian, or a court order terminating the temporary guardianship is entered. Proof of adoption, death, or emancipation shall be filed with the court and the court may order a hearing in an appropriate case. (2) Either natural guardian of the minor may at any time petition the court to terminate a temporary guardianship ; provided, however, that notice of such petition shall be provided to the temporary guardian. If no objection to the termination is filed by the temporary guardian within ten days of the notice, the court shall order the termination of the temporary guardianship . If the temporary guardian objects to the termination of the temporary guardianship within ten days of the notice, the court shall have the option to hear the objection or transfer the records relating to the temporary guardianship to the juvenile court, which shall determine, after notice and hearing, whether a continuation or termination of the temporary guardianship is in the best interest of the minor.	Yes
Hawaii	HRS § 560:5-210 - Termination of guardianship ; other proceedings after appointment (1) A guardianship of a minor terminates upon <ul style="list-style-type: none"> • the minor's death, • adoption, • emancipation or attainment of majority, or • as ordered by the court. (2) A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained fourteen years of age and is not the petitioner, the guardian, and any other person as ordered by the court	Yes
Idaho	I.C. § 15-5-210 - Termination of appointment of guardian--General A guardian's authority and responsibility terminates <ul style="list-style-type: none"> • upon the death, • resignation or removal of the guardian, • upon the minor's death, • adoption, • marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. NB: Resignation of a guardian without the appointment of a successor guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. I.C. § 15-5-318 - Termination or modification of guardianship (1) A guardianship terminates <ul style="list-style-type: none"> • upon the death of the ward or • upon order of the court. (2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the court may terminate a guardianship <ul style="list-style-type: none"> • if the ward no longer needs the assistance or protection of a guardian. • The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action 	Yes

	<p>NOTE:</p> <p>§ 15-5-212. Resignation, removal, modification or termination proceedings</p> <p>(1) Any person interested in the welfare of a ward, or the ward if fourteen (14) or more years of age, may petition for removal of a guardian, or for modification or termination of the guardianship, on the ground that such removal, modification or termination would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.</p> <p>(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.</p> <p>(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.</p>	
Illinois	<p>755 ILCS 5/24-12 - Termination of office of a representative of a ward</p> <p>The office of a representative of a ward terminates when the ward</p> <ul style="list-style-type: none"> • if a minor attains his majority, • when the letters of a representative are revoked, • when the representative dies or, subject to Section 24-19, when the ward dies. • The marriage of a minor ward terminates the right of the minor's guardian to the ward's custody and education but not to the minor's estate. 	Yes
Indiana	<p>IC 29-3-12-1 - Conditions for termination of guardianship; effect of termination on guardianship powers</p> <p>Sec. 1. (a) Except as provided in section 6 or 7 of this chapter, the court shall terminate the guardianship of a minor upon:</p> <ul style="list-style-type: none"> • the minor's attaining eighteen (18) years of age; or • the minor's death. • The court may terminate the guardianship of a minor upon the minor's adoption or marriage. <p>NOTE:</p> <p>IC 29-3-12-6 - Guardianship extends beyond age 18 if minor is incapacitated or receives certain DCS assistance</p> <p>Sec. 6.</p> <p>(a) If a protected person:</p> <ol style="list-style-type: none"> (1) is a minor; and (2) has been adjudicated (3) an incapacitated person; <p>The court may not terminate the guardianship of the protected person when the protected person attains eighteen (18) years of age.</p> <p>(b) If a protected person is:</p> <ol style="list-style-type: none"> (1) a minor; and (2) a recipient or beneficiary of financial assistance provided by the department of child services through a guardianship described in IC 31-9-2-17.8(1)(E); <p>The court may not terminate the guardianship of the protected person when the protected person attains eighteen (18) years of age.</p>	Yes

<p>Iowa</p>	<p>I.C.A. § 633.675- Cause for termination</p> <p>(1) A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances:</p> <ul style="list-style-type: none"> • If the ward is a minor, when the ward reaches full age. • The death of the ward. • A determination by the court that the ward is no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph “a”, or section 633.566, subsection 2, paragraph “a”. <p>In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in section 633.552, subsection 2, paragraph “a”, or section 633.566, subsection 2, paragraph “a”, that the guardianship or conservatorship should not be terminated.</p> <p>d. Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason.</p> <p>(2) Notwithstanding subsection 1, paragraphs “a” through “d”, if the court appointed a guardian for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.101A or 232.104, the court shall not enter an order terminating the guardianship before the child becomes age eighteen unless the court finds by clear and convincing evidence that the best interests of the child warrant a return of custody to the child's parent.</p>	<p>Yes</p>
<p>Kansas</p>	<p>K.S.A. 59-3092 - Termination of guardianship or conservatorship</p> <p>The court at any time may enter an order summarily terminating the guardianship in any of the following circumstances:</p> <ul style="list-style-type: none"> • the ward is deceased; • the ward, who was a minor and not adjudicated to be a minor with an impairment which would otherwise make that minor an adult with an impairment in need of a guardian, has become 18 years of age, has had the rights of majority conferred upon them pursuant to K.S.A. 38-108, and amendments thereto, or is now considered to be of the age of majority pursuant to K.S.A. 38-101, and amendments thereto; or • no further need for the guardianship exists 	<p>Yes</p>
<p>Kentucky</p>	<p>KRS § 388.340</p> <p>388.340 Termination of guardianship or conservatorship</p> <p>Upon filing a petition, or certificate, showing that a minor ward has attained majority, or that a mentally disabled ward has been rated competent upon examination in accordance with the law, the court may order the guardian or conservator to file a final account; and, upon hearing, after notice to the former minor or mentally disabled person and to the Veterans Affairs in the manner and within the time provided by KRS 388.280, and upon approval of the final account, the court may so adjudge and discharge the guardian or conservator and release the sureties from liability upon delivery to the former ward of the assets due him by the former guardian or conservator, and may make such further order as may be lawful.</p>	<p>Yes</p>
<p>Louisiana</p>	<p>La. Child. Code Ann. § art.7Art. 724. Motion for modification of guardianship; termination of guardianship.</p> <p>D. A guardianship order may be modified or terminated if the court finds by clear and convincing evidence that there has been a substantial and material change in the circumstances of the guardian or child because of any of the following:</p> <ul style="list-style-type: none"> • The guardian no longer wishes to serve or can no longer serve as guardian of the child. • (2) Continuation of the guardianship is so deleterious to the child as to justify a modification or termination of the relationship or the harm likely to be caused from a change in the guardianship is substantially outweighed by the advantages to the child of the modification. <p>E. The court shall hold a hearing before modifying or terminating a guardianship and shall, at the conclusion of the hearing, enter a written order that includes the findings upon which the order is based.</p>	

<p>Maine</p>	<p>18-A M.R.S.A. § 5-212 § 5-212. Resignation or removal proceedings</p> <p>(a) Any person interested in the welfare of a ward, or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.</p> <p>(b) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.</p> <p>(c) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is 14 or more years of age.</p> <p>(d) The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.</p> <p>(e) In a contested action, the court may appoint counsel for any indigent guardian or petitioner.</p>	<p>Yes</p>
<p>Maryland</p>	<p>MD Code, Estates and Trusts, § 13-221 § 13-221. Termination of guardianship proceedings Petitions to terminate guardianship</p> <p>(a) The minor or disabled person, his personal representative, the guardian, or any other interested person may petition the court to terminate the guardianship proceedings.</p> <p>Grounds for termination</p> <p>(b) A guardianship proceeding shall terminate upon:</p> <ol style="list-style-type: none"> (1) The cessation of the minority or disability; (2) The death or presumptive death of the minor or disabled person; (3) Transfer of all the assets of the estate to a foreign fiduciary; or (4) Other good cause for termination as may be shown to the satisfaction of the court. 	<p>Yes</p>
<p>Massachusetts</p>	<p>M.G.L.A. 190B § 5-212 § 5-212. Resignation, removal, and other post-appointment proceedings [Resignation, Removal, and Other Post-appointment Proceedings.]</p> <p>(a) Any person interested in the welfare of a ward or the ward, if 14 or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward or for any other order that is in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.</p> <p>(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian shall be given to the ward, the guardian, the parents of the ward, provided that the parental rights have not been terminated or a voluntary surrender has not been signed, and any other person as ordered by the court.</p> <p>(c) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate, including appointment of a successor guardian.</p>	<p>Yes</p>
<p>Michigan</p>	<p>MCLS § 700.5207. Review of guardianship of minor. Sec. 5207.</p> <p>(1) The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if the minor is under 6 years of age. In conducting the review, the court shall consider all of the following factors:</p> <ul style="list-style-type: none"> • (a) The parent's and guardian's compliance with either of the following, as applicable: <ul style="list-style-type: none"> ▪ (i) A limited guardianship placement plan. ▪ (ii) A court-structured plan under subsection (3)(b)(ii)(B) or section 5209(2)(b)(ii). • (b) Whether the guardian has adequately provided for the minor's welfare. • (c) The necessity of continuing the guardianship. • (d) The guardian's willingness and ability to continue to provide for the minor's welfare. • (e) The effect upon the minor's welfare if the guardianship is continued. • (f) Any other factor that the court considers relevant to the minor's welfare. • (2) The court may order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the factors listed in subsection (1). 	<p>Yes</p>

	<ul style="list-style-type: none"> • (3) Upon completion of a guardianship review, the court may do either of the following: <ul style="list-style-type: none"> ▪ (a) Continue the guardianship. ▪ (b) Schedule and conduct a hearing on the guardianship’s status and do any of the following: <ul style="list-style-type: none"> ○ (i) If the guardianship is a limited guardianship, do either of the following: <ul style="list-style-type: none"> • (A) Continue the limited guardianship. • (B) Order the parties to modify the limited guardianship placement plan as a condition to continuing the limited guardianship. ○ (ii) If the guardianship was established under section 5204, do either of the following: <ul style="list-style-type: none"> • (A) Continue the guardianship. • (B) Order the parties to follow a court-structured plan designed to resolve the conditions identified at the review hearing. ○ (iii) Take an action described in section 5209(2). 	
Minnesota	<p>Minn. Stat. § 524. 5-210 TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS AFTER APPOINTMENT</p> <p>(a) A guardianship of a minor terminates upon the minor’s death, adoption, emancipation, attainment of majority, or as ordered by the court.</p> <p>(b) A ward or an interested person may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to interested persons pursuant to section 524.5-113 and to any other person as ordered by the court, except notice is not required for the ward if the ward has not attained 14 years of age and is not the petitioner.</p>	Yes
Mississippi	<p>Miss. Code Ann. § 93-13-75</p> <p>§ 93-13-75. Termination of guardianship</p> <p>The powers and duties of every guardian of a minor over the person and estate of the ward shall cease and determine when the ward shall arrive at the age of twenty-one (21) years, or, in the discretion of the chancellor, may cease and determine when the ward shall arrive at the age of eighteen (18) years. And the powers and duties of every guardian of the estate of a minor, person of unsound mind, or convict of felony, may also cease and determine on the approval of the chancery court or of the chancellor in vacation, when the funds and personal property, either or both, of the ward do not exceed the sum or value of Two Thousand Dollars (\$ 2,000.00) and there is no prospect of further receipts to come into the hands of the guardian; provided that the court or chancellor, on the approval of the final account of such guardian, shall have power to require the property of such minor or adult incompetent, to be delivered to him or to some person, or bank for him, under such conditions and restrictions as the court or chancellor may impose; and compliance by the guardian with such order shall acquit him and his sureties. Any person or bank who under such an order or decree shall receive the money or property of a person under such disability shall thereby become amenable to the court for the proper disposition of it for the use and benefit of such incompetent; but shall not be required to give security therefor unless the court or chancellor shall so order. In either event the guardian shall forthwith deliver to the ward, or to such person or bank as the court or chancellor may designate, as the case may be, all the property of every description of the ward in his hands, and on failure, shall be liable to an action on his bond.</p>	Yes
Missouri	<p>§ 475.083. Termination of guardianship or conservatorship, when</p> <p>(1) The authority of a guardian or conservator terminates:</p> <ul style="list-style-type: none"> • When a minor ward becomes eighteen years of age; • Upon an adjudication that an incapacitated or disabled person has been restored to his capacity or ability; • Upon revocation of the letters of the guardian or conservator; • Upon the acceptance by the court of the resignation of the guardian or conservator; • Upon the death of the ward or protectee except that if there is no person other than the estate of the ward or protectee liable for the funeral and burial expenses of the ward or protectee the guardian or conservator may, with the approval of the court, contract for the funeral and burial of the deceased ward or protectee; • Upon the expiration of an order appointing a guardian or conservator ad litem unless the court orders extension of the appointment; • Upon an order of court terminating the guardianship or conservatorship. <p>(2) A guardianship or conservatorship may be terminated by court order after such notice as the court may require:</p> <ul style="list-style-type: none"> • If the conservatorship estate is exhausted; 	Yes

	<ul style="list-style-type: none"> • If the conservatorship is no longer necessary for any other reason; • If the court finds that a parent is fit, suitable and able to assume the duties of guardianship and it is in the best interest of the minor that the guardianship be terminated 	
Montana	<p>72-5-224 Temporary guardian of minor. If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.</p> <p>NOTE:</p> <p>72-5-233 Termination of appointment — how effected — certain liabilities and obligations not affected.</p> <p>(1) A guardian’s authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor’s death, except as provided in subsection (2), adoption, marriage, or attainment of majority, but termination does not affect a guardian’s liability for prior acts or a guardian’s obligation to account for funds and assets of the guardian’s ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.</p> <p>(2) The guardian’s authority and responsibility for a minor who dies while the minor is a ward of the guardian terminates when the guardian has completed arrangements for the final disposition of the ward’s physical remains and personal effects as provided in 72-5-231(5).</p>	No
Nebraska	<p>§ 43-1312.01. Placement of child; order granting guardianship; court retain jurisdiction over child; termination of guardianship; when; effect of guardianship.</p> <p>(5) Guardianships established under this section shall terminate on the child’s nineteenth birthday unless the child is eligible for continued guardianship assistance payments under section 43-4511 and an agreement is signed by the Department of Health and Human Services, the guardian, and the young adult, as defined in section 43-4503, to continue the guardianship assistance. The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian for the purpose of an extended guardianship shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.</p> <p>(6) Upon the child’s nineteenth birthday regardless of the existence of an agreement to extend the guardianship until the child’s twenty-first birthday, the guardian shall no longer have the legal authority to make decisions on behalf of the child and shall have no more authority over the person or property of the child than a biological or adoptive parent would have over his or her child, absent consent from the child.</p>	Yes
Nevada	<p>Effective: October 1, 2017 N.R.S. 159.191 159.191. Termination of guardianship of person, estate or person and estate; procedure upon death of ward</p> <p>1. Except as otherwise provided in subsection 2, a guardianship of the person is terminated:</p> <ol style="list-style-type: none"> (a) By the death of the ward; (b) Upon the ward's change of domicile to a place outside this state and the transfer of jurisdiction to the court having jurisdiction in the new domicile; or (c) Upon order of the court, if the court determines that the guardianship no longer is necessary. <p>2. If a court appoints or extends the appointment of a guardian of the person pursuant to section 2 of this act, the guardianship is terminated on the date on which the ward reaches 21 years of age, unless the ward petitions the court to terminate the guardianship before he or she reaches 21 years of age pursuant to NRS 159.1905 and the court grants the petition.</p> <p>3. A guardianship of the estate is terminated:</p> <ol style="list-style-type: none"> (a) If the court removes the guardian or accepts the resignation of the guardian and does not appoint a successor guardian; (b) If the court determines that the guardianship is not necessary and orders the guardianship terminated; or (c) By the death of the ward, subject to the provisions of NRS 159.193. 	Yes

	<p>4. If the guardianship is of the person and estate, the court may order the guardianship terminated as to the person, the estate, or the person and estate.</p> <p>5. The guardian shall notify the court, all interested parties, the trustee, and the named executor or appointed personal representative of the estate of the ward of the death of the ward within 30 days after the death.</p> <p>6. Immediately upon the death of the ward:</p> <p>(a) The guardian of the estate shall have no authority to act for the ward except to wind up the affairs of the guardianship pursuant to NRS 159.193, and to distribute the property of the ward as provided in NRS 159.195 and 159.197; and</p> <p>(b) No person has standing to file a petition pursuant to NRS 159.078.</p> <p>N.R.S. 159.192 159.192. Termination of temporary guardianship</p> <p>1. If a temporary guardianship is terminated and a petition for a general or special guardianship has not been filed:</p> <p>(a) The temporary guardian shall immediately turn over all of the ward's property to the ward; or</p> <p>(b) If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate, the temporary guardian shall seek approval from the court to maintain possession of all or a portion of the ward's property.</p> <p>2. If a temporary guardianship is terminated and a petition for general or special guardianship has been filed, the temporary guardian of the estate may:</p> <p>(a) Continue possessing the ward's property; and</p> <p>(b) Perform the duties of guardian for not more than 90 days after the temporary guardianship is terminated or until the court appoints another temporary, general or special guardian.</p> <p>3. If the death of a ward causes the termination of a temporary guardianship before the hearing on a general or special guardianship:</p> <p>(a) The temporary guardian of the estate may:</p> <p>(1) Continue possessing the ward's property; and</p> <p>(2) Except as otherwise provided in this paragraph, perform the duties of guardian for not more than 90 days after the date of the termination of the temporary guardianship or until the court appoints a personal representative of the estate, if any. If the temporary guardian is awaiting certification from the appropriate authority acknowledging that the guardian has no further liability for taxes on the estate and it will take longer than 90 days after the date of the termination of the temporary guardianship to receive such certification, the temporary guardian must seek approval from the court to maintain possession of all or a portion of the ward's property until certification is received.</p> <p>(b) If no personal representative has been appointed pursuant to chapter 138 or 139 of NRS, the temporary guardian shall pay all of the final expenses and outstanding debts of the ward to the extent possible using the assets in the possession of the temporary guardian.</p>	
New Hampshire	<p>463:15. Termination of Guardianship.</p> <p>(1) A guardianship of the person or of the estate of a minor shall terminate upon order of the court, the death of the minor, the minor's eighteenth birthday, a finding by the court that the minor has been emancipated under relevant state law, or upon the issuance of a final decree of adoption. The guardian shall provide written notice to the court of termination resulting from the death of the minor, or the minor's eighteenth birthday, within 30 days of the event giving rise to termination. Failure to provide timely notice does not imply consent to the extension of jurisdiction pursuant to paragraph (2)</p>	Yes
New Jersey	<p>The burden of proof is upon the one bringing the petition (if it is the parent) to terminate the guardianship to demonstrate by clear and convincing evidence</p> <p>(1) a change in his/her life that would support a finding that she has regained the ability to care for her child, and</p> <p>(2) that termination of the kinship legal guardianship is in the best interests of the child.</p>	Yes
New Mexico	<p>§ 11:14. Termination of guardianship</p> <p>References</p> <p>Guardianship of a minor who is not otherwise incapacitated ordinarily terminates upon the child's adoption, death, or majority.¹ In addition, the child's marriage typically terminates guardianship of the person.² When the circumstances underlying the guardianship end, the guardianship may also end. Therefore, for example, when an incapacitated parent regains capacity, he or she may petition to terminate the guardianship and is entitled to a constitutional presumption the parent should have custody.</p>	Yes
New York	McKinney's SCPA § 1707	Yes

	(2) The term of office of a guardian of the person or property so appointed expires when the infant attains majority, unless the infant consents to the continuation of or appointment of a guardian after his or her eighteenth birthday, in which case such term of office expires on his or her twenty-first birthday, or after such other shorter period as the court establishes upon good cause shown; except that the term of office of a guardian of the person of an infant expires upon the infant's marriage prior to attaining majority. The appointment of a guardian of a child shall expire when the infant or child reaches the age of eighteen years, unless the infant or child consents to the continuation of a guardian after his or her eighteenth birthday, in which case such term of office expires on his or her twenty-first birthday, or unless vacated by the court prior to the infant or child's eighteenth or twenty-first birthday if the court finds that, based upon clear and convincing evidence, the guardian failed to or is unable, unavailable or unwilling to provide proper care and custody of the infant or child, or that the guardianship is no longer in the best interests of the infant or child.	
North Carolina	N.C.G.S.A. § 35A-1295 - Termination of guardianship (a) Every guardianship shall be terminated and all powers and duties of the guardian provided in Article 9 of this Chapter shall cease when the ward: (1) Ceases to be a minor as defined in G.S. 35A-1202(12), (2) Is adjudicated to be restored to competency pursuant to the provisions of G.S. 35A-1130 , or (3) Dies. (b) Notwithstanding subsection (a), a guardian of the estate or a general guardian is responsible for all accountings required by Article 10 of this Chapter until the guardian is discharged by the clerk.	Yes
North Dakota	NDCC, § 30.1-27-10. (5-210) Termination of appointment of guardian--General A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the minor's death, adoption, marriage, or attainment of majority , but termination does not affect the guardian's liability for prior acts, nor the guardian's obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. NOTE: NDCC, 30.1-27-12 - Resignation or removal proceedings (1) Any person interested in the welfare of a ward, or the ward, if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian. (2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate. (3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age.	Yes
Ohio	Lake County Common Pleas Probate Rule 66.14 Rule 66.14 Terminations Except for the termination of a guardianship of a minor attaining the age of majority or upon death of the ward, a termination of guardianship shall require notice to all persons designated in R.C. 2111.04, and to any other individual who received actual notice of the original appointment of the guardian. It is the responsibility of the applicant for termination to perfect service pursuant to Civ.R. 73 when termination is requested. A Certificate of Service with supporting documentation satisfactory to the Court must be filed prior to the consideration of the application.	Yes
Oklahoma	Suspension, Removal or <u>Termination</u> of Guardian 30 Okl.St. Ann. § 4-801 Removal of guardians A guardian may be removed by the district court for any of the following causes: <ul style="list-style-type: none"> • For abuse of his fiduciary responsibility. • For continued failure to perform his duties. • For incapacity to perform his duties. • For gross immorality. 	Yes

	<ul style="list-style-type: none"> • For having an interest adverse to the faithful performance of his duties. • If the instrument in which the person was nominated as guardian is judicially determined to be invalid. • In the case of guardian of the property, for insolvency. • When it is no longer proper that the ward should be under <p>NOTE:</p> <p>30 Okl.St. Ann. § 4-804</p> <p>§ 4-804. Termination of guardianship when unnecessary</p> <p>The guardian of an incapacitated or partially incapacitated person or minor may be discharged by the court when it appears to the court, on the application of the ward or otherwise, that the guardianship is no longer necessary.</p>	
<p>Oregon</p>	<p>HANDBOOK FOR CLE Seminars- Guardianships and Conservatorships (Sponsored by the Elder Law Section): Chapter 1(E) —Guardianship for Adults and Alternatives E. Termination of the Guardian’s Authority. (Termination of the Guardian’s authority)</p> <p>The authority of the guardian ends upon the death, resignation or removal of the fiduciary. Upon termination of the guardian’s authority, if the need for a guardian still exists, a petition to appoint a successor guardian must be filed and served in the same manner as the original petition. Under ORS 125.090(2), the court has authority to terminate the guardianship if the protected person has died, if the need for a guardianship no longer exists due to restoration of capacity, or the best interest of the protected person would be served by the termination of the guardianship</p>	<p>Yes</p>
<p>Pennsylvania</p>	<p>Title 23 - DOMESTIC RELATIONS - Chapter 56 - Standby Guardianship - Section 5602 - Definitions</p> <p>"Standby guardian." Is defined here as “a person named by a designator to assume the duties of coguardian or guardian of a minor and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the minor's parent.”</p> <p>23 PA Cons Stat § 5602 (2016)</p> <p>Section 5614 - Revocation</p> <p>§ 5614. Revocation.</p> <p>(a) Prepetition.--Prior to a petition being filed under section 5612 (relating to petition for approval of a designation), the designator may revoke a standby guardianship by simple destruction of the designation and notification of the revocation to the standby guardian.</p> <p>(b) Postpetition.--After a petition has been filed, the designator may revoke a standby guardianship by:</p> <ol style="list-style-type: none"> (1) executing a written revocation; (2) filing the revocation with the court; and (3) notifying the persons named in the designation of the revocation in writing. <p>(c) Unwritten revocation.--Regardless of whether a petition has been filed, an unwritten revocation may be considered by the court if it can be proven by clear and convincing evidence.</p> <p>23 PA Cons Stat § 5614 (2016)</p> <p>Section 5614 - Revocation</p> <p>§ 5614. Revocation.</p> <p>(a) Prepetition.--Prior to a petition being filed under section 5612 (relating to petition for approval of a designation), the designator may revoke a standby guardianship by simple destruction of the designation and notification of the revocation to the standby guardian.</p> <p>(b) Postpetition.--After a petition has been filed, the designator may revoke a standby guardianship by:</p> <ol style="list-style-type: none"> (1) executing a written revocation; (2) filing the revocation with the court; and (3) notifying the persons named in the designation of the revocation in writing. <p>(b) Unwritten revocation.--Regardless of whether a petition has been filed, an unwritten revocation may be considered by the court if it can be proven by clear and convincing evidence.</p>	<p>Yes</p>

	23 PA Cons Stat § 5614 (2016)	
Rhode Island	<p>Gen.Laws 1956, § 33-15-18 - Removal of limited guardian or guardian or conservator-- Resignation</p> <p>(a) Removal may be requested by the ward or anyone acting on behalf of the ward, including the limited guardian, guardian or conservator. The ward may retain counsel for this purpose.</p> <ul style="list-style-type: none"> • The court shall remove any limited guardians, guardian or conservator appointed or approved by it upon finding that the limited guardian, guardian or conservator has not fulfilled, or is no longer able to fulfill, the duties of the appointment as set forth by the order itself and/or the limited guardianship and guardianship law. • The court shall remove any limited guardian or guardian or conservator upon finding that the ward, based on a decision making assessment tool, has the capacity to make decisions regarding his or her health care, finances, residence, and/or relationships. <p>(b) A limited guardian or guardian or conservator may resign. The court shall accept the resignation of any limited guardian or guardian or conservator after he or she has accounted with the court for the estate of his or her ward in his or her possession and filed a report regarding the status of the ward including the ward's current residence and condition.</p>	Yes
South Carolina	No Case Law specifying duration of or termination of guardianship found currently	–
South Dakota	<p>SDCL § 29A-5-501 Termination of guardian's or conservator's appointment A guardian's or conservator's appointment terminates upon the death, resignation or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship. A termination of an appointment does not affect the liability of a guardian or conservator for prior acts or the responsibility of a conservator to account for the minor's or protected person's estate.</p> <p>DCL § 29A-5-505 29A-5-505. Termination of guardianship or conservatorship upon minor's death or majority-- Adoption or emancipation of minor A guardianship or conservatorship of a minor shall terminate upon the minor's death or attainment of majority, if jurisdiction is transferred to another state, or if ordered by the court following a hearing thereon. A guardianship, but not a conservatorship, shall also terminate upon the minor's adoption or emancipation, and the court may elect to continue a guardianship until the minor's attainment of age twenty-one if the guardian was appointed pursuant to the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C.</p>	Yes
Tennessee	<p>34-2-106. Minor attaining eighteen (18) years of age -- Termination or continuation of guardianship.</p> <p>(a) Except as provided in subsection (c), when the minor for whom a guardian of the person is serving reaches the age of eighteen (18) years of age, the guardianship of the person of the minor shall terminate.</p> <p>(c) If a minor for whom a guardian of the person or estate is serving has previously been determined to be a disabled person, when the minor reaches eighteen (18) years of age, the guardian shall automatically continue as conservator. If the guardian is the department of children's services, this subsection (c) shall not apply.</p>	Yes
Texas	<p>ESTATES CODE TITLE 3 - GUARDIANSHIP AND RELATED PROCEDURES CHAPTER 1202 - MODIFICATION OR TERMINATION OF GUARDIANSHIP Sec. 1202.001. TERM OF GUARDIAN OR GUARDIANSHIP.</p> <p>(a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.</p> <p>(b) A guardianship shall be settled and closed when the ward:</p> <ol style="list-style-type: none"> (1) dies and, if the ward was married, the ward's spouse qualifies as survivor in community; (2) is found by the court to have full capacity to care for himself or herself and to manage the ward's property; (3) is no longer a minor; or (4) no longer must have a guardian appointed to receive funds due the ward from any governmental source. <p>(c) An order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.</p>	Yes

	<p>(d) A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.</p> <p>(e) If a nonresident guardian of a nonresident ward qualifies as guardian under this title, any resident guardian's guardianship may be terminated.</p>	
Utah	<p>U.C.A. 1953 § 75-5-210</p> <p>§ 75-5-210. Termination of appointment of guardian--General</p> <p>A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.</p>	Yes
Vermont	<p>14 V.S.A. § 3077</p> <p>§ 3077. Termination and modification of guardianship</p> <p>(1) A person under guardianship or any person interested in the welfare of the person under guardianship may file a motion for termination or modification of the guardianship. Grounds for the termination or modification of the guardianship shall include:</p> <ul style="list-style-type: none"> • the death of the guardian; • the failure of the guardian to file an annual report, or the failure to file such report in a timely manner; • the failure of the guardian to act in accord with an order of the court; • a change in the ability of the person under guardianship to manage his or her personal care or financial affairs; • a change in the capacity or suitability of the guardian for carrying out his or her powers and duties, including but not limited to any current or past expressed preferences of the person under guardianship to have an alternative person appointed as guardian. 	Yes
Virgin Islands	<p>15 V.I.C. § 5-318</p> <p>§ 5-318 Termination or modification of guardianship</p> <p>(1) A guardianship terminates upon the death of the ward or upon order of the Court.</p> <p>(2) On petition of a ward, a guardian, or another person interested in the ward's welfare, the Court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The Court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.</p> <p>(3) Except as otherwise ordered by the Court for good cause, the Court, before terminating a guardianship, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for guardianship. Upon presentation by the petitioner of evidence establishing a prima facie case for termination, the Court shall order the termination unless it is proven that continuation of the guardianship is in the best interest of the ward.</p> <p>15 V.I.C. § 5-112</p> <p>§ 5-112 Termination of, or change in guardian's or conservator's appointment</p> <p>(1) The appointment of a guardian or conservator terminates upon the death, resignation, or removal of the guardian or conservator or upon termination of the guardianship or conservatorship. A resignation of a guardian or conservator is effective when approved by the Court.</p> <p>A parental or spousal appointment as guardian under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination of the appointment of a guardian or conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the ward or protected person.</p> <p>(2) A ward, protected person, or person interested in the welfare of a ward or protected person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.</p> <p>(3) The Court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment in contemplation of a vacancy, to serve if a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but not later than 30 days after the occurrence of the vacancy or other designated</p>	Yes

	<p>event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever last occurs. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.</p>	
Virginia	<p>VA Code Ann§ 64.2-1803. Termination of guardianship Unless the guardian of a minor's estate dies, is removed, or resigns the guardianship, the guardian shall continue in office until the minor attains the age of majority or, in the case of testamentary guardianship, until the termination of the period set forth in the testator's will. At the expiration of the guardianship, the guardian shall deliver and pay all the estate and money in his possession, or with which he is chargeable, to the person entitled to receive such estate and money.</p>	Yes
Washington	<p>West's RCWA 13.36.070 13.36.070. Guardianship termination--Petition, affidavit (1) Any party to a guardianship proceeding may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the child or the guardian and that the termination is necessary to serve the best interests of the child. The petition and affidavit must be served on the department or supervising agency and all parties to the guardianship. (2) Except as provided in subsection (3) of this section, the court shall not terminate a guardianship unless it finds, upon the basis of facts that have arisen since the guardianship was established or that were unknown to the court at the time the guardianship was established, that a substantial change has occurred in the circumstances of the child or the guardian and that termination of the guardianship is necessary to serve the best interests of the child. The effect of a guardian's duties while serving in the military potentially impacting guardianship functions shall not, by itself, be a substantial change of circumstances justifying termination of a guardianship. (3) The court may terminate a guardianship on the agreement of the guardian, the child, if the child is age twelve years or older, and a parent seeking to regain custody of the child if the court finds by a preponderance of the evidence and on the basis of facts that have arisen since the guardianship was established that: (a) The parent has successfully corrected the parenting deficiencies identified by the court in the dependency action, and the circumstances of the parent have changed to such a degree that returning the child to the custody of the parent no longer creates a risk of harm to the child's health, welfare, and safety; (b) The child, if age twelve years or older, agrees to termination of the guardianship and the return of custody to the parent; and (c) Termination of the guardianship and return of custody of the child to the parent is in the child's best interests. (4) Upon the entry of an order terminating a guardianship, the court shall enter an order: (a) Granting the child's parent with legal and physical custody of the child; (b) Granting a substitute guardian with legal and physical custody of the child; or (c) Directing the child to be temporarily placed in the custody of the department for placement with a relative or other suitable person as defined in RCW 13.34.130(1)(b), if available, or in an appropriate licensed out-of-home placement, and directing that the department file a dependency petition on behalf of the child.</p>	Yes
West Virginia	<p>W. Va. Code, § 44-10-3 § 44-10-3. Appointment and termination of guardian for a minor The court, the guardian or the minor may revoke or terminate the guardianship appointment when:</p> <ul style="list-style-type: none"> • The minor reaches the age of eighteen and executes a release stating that the guardian's estate was properly administered and that the minor has received the assets of the estate from the guardian; • The guardian or the minor dies; • The guardian petitions the court to resign and the court enters an order approving the resignation; or • A petition is filed by the guardian, the minor, a parent or an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian due to changed circumstances and the termination of the guardianship would be in the minor's best interest. <p>For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child's best interest.</p>	Yes

<p>Wisconsin</p>	<p>Wis. Stat. § 54.64. Review of incompetency and termination of guardianship.</p> <p>(1) Duration. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the ward, until terminated by the court, or as provided under sub. (3) or (4).</p> <p>(3) Termination of guardianship of the person. A guardianship of the person shall terminate if any of the following occurs:</p> <ul style="list-style-type: none"> (a) The court adjudicates a ward who was formerly found to be incompetent to be no longer incompetent or terminates the guardianship under sub. (2) (d). (b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence. (c) A formerly minor ward attains age 18, unless the guardianship was ordered on the grounds of incompetency. (d) A minor ward whose guardianship was not ordered on the grounds of incompetency marries. (e) The ward dies. <p>(4) Termination of guardianship of the estate. A guardianship of the estate shall terminate if any of the following occurs:</p> <ul style="list-style-type: none"> (a) The court adjudicates a ward who was formerly found to be incompetent to be no longer incompetent or a ward who was formerly found to be a spendthrift to be capable of handling his or her income and assets. (b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence. (c) A formerly minor ward attains age 18. (d) A minor ward whose guardianship was not ordered on the grounds of incompetency marries and the court approves the termination. (e) A ward dies, except when the estate can be settled as provided by s. 54.66 (4). 	<p>Yes</p>
<p>Wyoming</p>	<p>W.S.1977 § 3-3-1101</p> <p>§ 3-3-1101. Cause for termination</p> <ul style="list-style-type: none"> (a) A guardianship shall cease, and a conservatorship shall terminate, upon the occurrence of any of the following circumstances: <ul style="list-style-type: none"> (i) If upon attaining the age of majority when the ward is a minor who has not been adjudged an incompetent person or a mentally incompetent person; (ii) The death of the ward, subject to W.S. 3-2-109(a)(iii) and 3-2-201(a)(x); (iii) A determination by the court that the ward is competent and capable of managing his property and affairs, and that the continuance of the guardianship or conservatorship is not in his best interest; (iv) A determination by the court that the guardian or conservator is not acting in the best interest of the ward. <p>In such case, the court shall appoint another guardian or conservator;</p> <ul style="list-style-type: none"> (v) Upon determination by the court that the conservatorship or guardianship is no longer necessary for any other reason. 	<p>Yes</p>

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Special Immigrant Juvenile Status - Case Law Chart (February 2, 2018)

By: Sheerin Tehrani, Rafaela Rodrigues, Tolulupe Adetayo, Chloe Canetti, Monica Bates and Leslye E. Orloff

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This chart is labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to info@niwap.org.

<u>CASE NAME/ CITATION</u>	<u>STATE</u>	<u>TYPE OF CASE (PROCEEDING)</u>	<u>FACT OF THE CASE</u>	<u>HOLDING</u>	<u>COURT GRANTED OR WAS ORDERED TO MAKE FINDINGS?</u>	<u>APPLICANT'S RELATIONSHIP TO THE CHILD</u>
In re Emma M., 74 A.D.3d 968 (2010)	NY	Adoption	REUNIFICATION WITH ONE OR BOTH PARENTS NOT VIABLE - The petitioner, a native of Grenada, is unmarried and has lived in the U.S. since 2003. Her mother is deceased for many years and her father who resides in Grenada, neglected and largely ignored her throughout her life. Petitioner with the consent of her father was adopted and later petitioned for the issuance of an order making the declaration and findings necessary to allow her to apply for SIJS.	The court reversed the decision of the lower court and granted the petitioner's relief that he is unmarried and under 21. Also, reunification with one or both parents is not viable due to parental neglect and abandonment and it would not be in the best interest of the child to be returned to Granada, her previous country	Yes	Child, Herself
In re L. F. O. C., 139 Mich. App. 476, 901 N.W.2d 906 (2017)	MI	Adoption	A COURT THAT HAS THE JURISDICTION TO MAKE JUDICIAL DETERMINATIONS ABOUT THE CUSTODY AND CARE OF JUVENILES QUALIFIES AS A JUVENILE COURT - The mother of an undocumented immigrant child from Honduras who now lives in Michigan with a new man filed a petition for stepparent adoption of the child by her new husband. Subsequently, the petitioners filed a motion for special findings of the child's SIJS.	The court reversed the trial court's decision for denying the petitioner's motion for special findings on the issue of SIJS for minor child and remand for consideration of petitioners' motion on the merits	Yes	Stepparent
Matter of Jason K., 41 Misc.3D 885 (2013)	NY	Adoption	WHEN THE CHILD IS PRESENT ON A NONIMMIGRANT VISA AN ADOPTION PETITION MUST INDICATE IF IT IS PERMISSIBLE UNDER FEDERAL IMMIGRATION LAW - Child (15 yo) entered US on F-1 visa and stayed with his great-uncle, who sought to adopt him as a single person. Applicant, child, and both of child's biological parents who were back in Korea consented to the adoption, due to the child's expressed desire to remain in the US and go to college. A court had previously appointed the applicant as child's guardian	Court would not grant adoption without a finding from USCIS that a child in the US on an F-1 visa can be legally adopted before adjusting status case dismissed	No	Great-Uncle
In re C.G.H.	D.C.	Adoption . Custody	AN ADOPTED CHILD IS LEGALLY COMMITTED TO OR PLACED UNDER THE CUSTODY OF AN INDIVIDUAL APPOINTED BY A JUVENILE COURT - Minor born in Guatemala and lived with his parents. His mother fled to the U.S. because of abusive treatment by his father who is alcoholic. The minor child illegally entered the U.S. through Texas and detained by Office of Refugee Resettlement but was released to his mother. Her step-father filed his adoption petition and request for findings of SIJS eligibility on the ground for reunification with his father is not viable because of his death and has constructively abandoned him.	The court held that upon adoption of a child in the District of Columbia, and within the meaning of 8 U.S.C. § 1101(a)(27)(J)(i), a child is legally committed to an adoptive parent, and that parent has been appointed (that is, named as a parent), by the Family Court by virtue of the adoption decree. Therefore, granted the SIJS findings on the ground that reunification with the father was not viable due to death and has constructively abandoned him.	Yes	Mother
Matter of Hei Ting C., 109 A.D.3d 100 (2013)	NY	Child Support	CHILD SUPPORT ORDER MAY NOT SUPPORT DETERMINATION THAT CHILD IS DEPENDENT ON A JUVENILE COURT - Hei Ting C. and Wai., born in Hong Kong. Father moved to the U.S. with Wai after divorce with their mother. Hei also relocated to the U.S. upon completion of her school due to her mother abusive ways. The father filed a petition to seek a support order on consent which was entered by the court. Hei Ting and Wai then filed a joint motion, within the support proceeding, for the issuance of special findings necessary for them to obtain SIJS, arguing that the existence of a support order made them dependent upon the Family Court. At the time the motion was filed, they were both under the age of 21 and contended that reunification with their mother was not viable, as she was physically and emotionally abusive toward them. They also argued that it would not be in their best interests to return to Hong Kong, since their father, who is their source of care and support, is in the United States, and their return would remove them from further educational opportunities.	Held that we that a child support order does not satisfy the requirement for special immigrant juvenile status that a child be "dependent on a juvenile court" (8 USC § 1101 [a] [27] [J] [i]).	No	Self
Matter of Johna M.S. v. Russell E.S., 10 N.Y.3D 364 (2008)	NY	Child Support	STATE COURTS CAN ONLY EXERCISE POWERS GRANTED BY STATUTE - Mother petitioned for an increase in child support and spousal support, citing a part of the separation agreement with her husband that provided that any application by the wife for increased support would be treated as a "de novo" application to the court	Family court lacked subject matter jurisdiction to address the issue.	No	Mother
Matter of Tung W.C. v. Sau Y.C., 34 Misc.3d 869 (2011)	NY	Child Support	CHILD MUST BE DEPENDENT UPON THE JUVENILE COURT FOR IT ISSUE ORDER OF SPECIAL FINDINGS FOR SJIS - Girl, born in Hong Kong. Parents divorced and father took full custody of the children. Child moved to the U.S. to live with her father and other siblings. The father filed for child support and subsequently, a petition to issue findings to enable the child apply to the USCIS for SIJS was filed.	The petition is denied and the order to show cause is dismissed.	No	Father

Argueta v. Ruiz, 128 A.D.3d 689 (2015)	NY	Custody	<p>RECORD MUST SUPPORT DETERMINATION THAT REUNIFICATION IS NOT VIABLE - Mother petitioned the family court for sole custody of her child for the purpose of petitioning for one or both of his parents was not SIJS on the ground that he is unmarried and under 21 years, that reunification with one or both his parents is not viable due to abandonment, neglect, or similar parental abandonment, neglect, or abuse and it would be in the best interest of the child not to return to El Salvador</p> <p>PARENTS MAY REQUEST THAT FAMILY COURT ISSUE AN ORDER MAKING SPECIAL FINDINGS FOR THE CHILD TO PETITION USCIS FOR SIJS - IN CUSTODY PROCEEDINGS CHILD'S BEST INTEREST SHOULD BE CONSIDERED - Court issue an order making special findings so that the child may petition USCIS for SIJS</p>	The court held that record did not support that child's reunification with one or both of his parents was not viable due to abandonment, neglect, or similar parental abandonment, neglect, or abuse and it would be in the best interest of the child not to return to El Salvador	No	Mother
Castellanos v. Recarte, 142 A.D.3d 552 (2016)	NY	Custody	<p>REUNIFICATION WITH ONE OR BOTH PARENTS - Child was born in Honduras, and at the time of proceeding, she was 17 years old and unmarried, and living with her Mother. The Mother filed for a petition for the custody and subsequently for the issuance of an order making special findings for SIJS of her 17 years old daughter born in Honduras. Her daughter prior to the proceedings lived in Honduras with her aunt and other family members and never met her father. The lower court denied her application because reunification with one of the child's parent (mother) was viable.</p> <p>ABSENCE OF SIJS FINDINGS IN JUVENILE COURT'S JUDGMENT: 16 years old, unaccompanied minor from Guatemala whose parents did not have means to provide him necessities such as food, clothing, or health care illegally entered the U.S. Upon entering the U.S., he was arrested by the USCIS and released to his half-brother. The half-brother petitioned the juvenile court to declare the child dependent and award him custody of the child. Custody was granted but court failed to make findings on SIJS</p>	The court held that the Family Court should not have dismissed the custody petition without conducting a hearing and considering the children's best interests. Instead, the court should have proceeded to conduct a hearing on the petition, which sought a custody order as well as an order making the requisite declaration and special findings so as to enable the children to petition for SIJS.	Yes	Mother
Diaz v. Munoz, 118 A.D.3d 989 (2014)	NY	Custody	<p>PERSONAL SERVICE NOT REQUIRED IF OTHER PARTY WAIVES SERVICE OF PROCESS - The subject child was born in Honduras, mother filed for the sole custody of the child upon the father's consent. On ground that reunification with father was not viable due to abandonment, she subsequently, moved for the issuance of an order to make special findings to enable the child to petition the USCIS for SIJS.</p>	The court made the required SIJS findings because it found that a record demonstrated that reunification with one parent was not viable because of abandonment by the father and that it would not be in the child's best interests to be returned to their native country of Honduras.	Yes	Mother
E.C.D. v. P.D.R.D., 114 So.3d 33 (2012)	AL	Custody	<p>STATE LAW AND NOT FOREIGN LAW SHOULD BE APPLIED IN MAKING FACTUAL FINDINGS FOR SIJS CASES - A child born in India, entered the U.S. without proper documentation. He was abandoned by his father at age 4 and while in India, he worked several hours and lived under severe conditions. Temporary custody was awarded to his brother and he subsequently moved to petition the USCIS for SIJS. Trial and Appellate court held that the child failed by evidence to sufficiently establish that his parents had abandoned him by using Indian Law.</p>	Court held that the juvenile court's failure to include SIJS findings in its judgment renders the judgment nonfinal. Accordingly, The court dismissed the appeal with instructions to the juvenile court to make the findings regarding the SIJ-status requirements set out in 8 U.S.C. § 1101(a)(27)(J).	No	half-brother
Gomez v. Sibrian, 133 A.D.3d 658 (2015)	NY	Custody	<p>CHILD MUST MEET STATE DEFINITION OF DEPENDENT FOR SIJ FINDINGS - The child left Mexico at age 15 to live with his sister in the United States. He was arrested in Virginia by ICE Agents and sent to a juvenile immigration facility in Florida. The child was released to the custody of his sister and brother-in-law. The child's brother-in-law filed for custody of the child when he was 17. The juvenile court granted custody of the child but denied the petition for special findings.</p> <p>NEGLECT PETITION MAY CONSIDER NATURAL PARENT'S CONDUCT AND PRESENT RELATIONSHIP WITH GUARDIANS - A boy, born in Cambodia with medical disabilities was abandoned by his biological parents. Entered the U.S. to receive medical care, the petitioners sought by petition an order of the court and requisite finding which would serve as a predicate for a filing with the USCIS for SIJS.</p>	The court reversed the prior holding and granted the findings necessary for the child to petition the USCIS for SIJS on the ground that reunification with his father is not viable due to abandonment and it would not be in the child's best interests to return to Honduras, his previous country of nationality and last habitual residence. The Supreme Court of NJ reversed the prior holding and held that in performing the task of making predicate factual finding, Family Court should apply NJ law and not that of foreign nation. Furthermore, the court reversed the decision that the child had been abandoned or neglected by the father. The court remanded the matter to the family part for a new hearing.	Yes	Mother
H.S.P. v. J.K. (2015)	NJ	Custody	<p>THE JUVENILE COURT SHOULD MAKE FINDINGS TO ENABLE THE CHILD TO PETITION FOR SIJS WHEN THE RECORD IS SUFFICIENT - Mother filed for the sole custody of the child for the purpose of obtaining an order making specific findings to enable him petition USCIS for SIJS.</p> <p>A NATURAL PARENT MAY SEEK LEGAL CUSTODY OF CHILD - The mother filed a petition pursuant to Family Court Act article 6 for sole custody of the subject child for obtaining an order, inter alia, making specific findings to enable the child to petition the United States Citizenship and Immigration Services for special immigrant</p>	The court could not make a finding that the child was "dependent" on a juvenile court in Virginia because the child turned 18.	Yes	Uncle
In re Hernandez, 2008 WL 8675285 (2008)	VA	Custody	<p>THE JUVENILE COURT SHOULD MAKE FINDINGS TO ENABLE THE CHILD TO PETITION FOR SIJS WHEN THE RECORD IS SUFFICIENT - Mother filed for the sole custody of the child for the purpose of obtaining an order making specific findings to enable him petition USCIS for SIJS.</p>	The court denied the respondent's motion to strike the neglect petition and to vacate the prior orders regarding the custody of the child	No	Brother-in-law
In re Srun R., Not Reported in A.2d (2005)	CT	Custody	<p>THE JUVENILE COURT SHOULD MAKE FINDINGS TO ENABLE THE CHILD TO PETITION FOR SIJS WHEN THE RECORD IS SUFFICIENT - Mother filed for the sole custody of the child for the purpose of obtaining an order making specific findings to enable him petition USCIS for SIJS.</p>	Court reversed the decision of the lower court. Granted the mother's motion for the issuance of an order to enable the child petition the USCIS for SIJS	Yes	Agency
In re Tommy E. H., 134 A.D.3d 840 (2015)	NY	Custody	<p>A NATURAL PARENT MAY SEEK LEGAL CUSTODY OF CHILD - The mother filed a petition pursuant to Family Court Act article 6 for sole custody of the subject child for obtaining an order, inter alia, making specific findings to enable the child to petition the United States Citizenship and Immigration Services for special immigrant</p>	Court reversed the order of family court that dismissed the custody petition. Thus, reinstated the petition and the matter remitted to family court for hearing for hearing of the petition for custody of the child and an order making findings to enable the subject child to petition the USCIS for SIJS	Yes	Mother
Jimenez v. Perez, 144 A.D.3d 1036 (2016)	NY	Custody	<p>A NATURAL PARENT MAY SEEK LEGAL CUSTODY OF CHILD - The mother filed a petition pursuant to Family Court Act article 6 for sole custody of the subject child for obtaining an order, inter alia, making specific findings to enable the child to petition the United States Citizenship and Immigration Services for special immigrant</p>	Court reversed the order of family court that dismissed the custody petition. Thus, reinstated the petition and the matter remitted to family court for hearing for hearing of the petition for custody of the child and an order making findings to enable the subject child to petition the USCIS for SIJS	Remitted to Family Court for a hearing on custody petition and if warranted special findings for SIJS	Mother

Matter of Castellanos v. Recarte, 142 A.D.3d 552 (2016)	NY	Custody	<p>NATURAL PARENT HAS STANDING TO SEEK LEGAL CUSTODY OF HIS OR HER CHILD - Mother and her children moved from Honduras to the U.S. upon her husband's death. Mother filed a petition seeking sole custody of her two children to enable the children to petition the USCIS for SIJS</p>	<p>Supreme court of NY family court and the matter was remitted to the Family Court, Nassau County, for a hearing and a new determination thereafter of the petition for custody of the subject children and, in effect, for an order making special findings so as to enable the subject children to petition the United States Citizenship and Immigration Services for special immigrant juvenile status pursuant to 8 USC § 1101(a)(27)(J).</p>	Yes	Mother
Matter of Del Cid Martinez v Martinez, 144 A.D.3d 905 (2016)	NY	Custody	<p>RECORD MUST SUPPORT DETERMINATION THAT REUNIFICATION WITH PARENT NOT VIABLE - Mother filed a petition for the sole custody of her son for obtaining an order to make specific findings that the child is unmarried and under 21 years of age, that reunification with his father is not viable due to parental neglect or abandonment, and that it would not be in his best interests to be returned to Honduras, to enable him to petition the United States Citizenship and Immigration Services for special immigrant juvenile status.</p>	<p>The court held that the mother failed to prove by preponderance of the evidence that child's reunification with the father is not viable due to abandonment</p>	No	Mother
Matter of Fatima J.A.J. (Ana A.J.S.—Carlos E.A.F.), 137 A.D.3d 912 (2016)	NY	Custody	<p>COURT SHOULD MAKE SPECIAL FINDINGS WHEN THE RECORD SUPPORTS ELIGIBILITY FOR SIJS - In September 2014, the mother filed a petition to be appointed guardian of her daughter who was born in El Salvador. Thereafter, the mother moved for the issuance of an order, inter alia, making special findings to enable the child to petition the United States Citizenship and Immigration for SIJS</p>	<p>The court reversed the family court's order and granted the motion for the issuance of an order making findings to enable the child to petition the USCIS for SIJS pursuant to 8 USC § 1101(a)(27)(J).</p>	Yes	Mother
Matter of Haide L.G.M. v Santo D.S.M., 130 A.D.3d 734 (2015)	NY	Custody	<p>LAW REQUIRES A FINDING THAT UNIFICATION WITH CHILD'S PARENTS IS NOT VIABLE DUE RO ABUSE, NEGLECT, ABANDONMENT OR SIMILAR BASIS UNDER STATE LAW - Minor, age 17, born in Honduras and unmarried. The minor's mother commenced custody proceeding, and the child subsequently moved for the issuance of an order, inter alia, making special findings so as to enable her to petition the United States Citizenship and Immigration Services for special immigrant juvenile status</p>	<p>The court reversed the family court's order and granted the motion for the issuance of an order making findings to enable the child to petition the USCIS for SIJS pursuant to 8 USC §.1101(a)(27)(J). Held that the child's reunification with her father was not a viable option due to abandonment</p>	Yes	Mother
Matter of Mira v Hernandez, 118 A.D.3d 1008 (2014)	NY	Custody	<p>FOR A JUVENILE TO QUALIFY FOR SPECIAL IMMIGRANT JUVENILE STATUS, A COURT MUST FIND THAT REUNIFICATION OF THE JUVENILE WITH ONE OR BOTH OF THEIR PARENTS IS NOT VIABLE DUE TO PARENTAL ABUSE, NEGLECT, ABANDONMENT OR SIMILAR BASIS UNDER STATE LAW - The petitioner (father) commenced this proceeding for custody of the subject child, who was born in El Salvador. Thereafter, the petitioner moved for the issuance of an order, inter alia, making special findings so as to enable the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J)</p>	<p>The New York Supreme Court affirmed the Family Court's ruling that the child did not qualify for SIJS.</p>	No	Father
Matter of Pineda v. Diaz	NY	Custody	<p>RECORD WAS INSUFFICIENT FOR THE APPELLATE COURT TO MAKE SPECIFIC FINDINGS AS TO WHETHER IT WOULD BE IN THE BEST INTEREST FOR CHILD TO BE RETURNED TO HOME COUNTRY - The petitioner (mother) commenced this proceeding for custody of the subject child, who was born in El Salvador. While the mother's custody petition was pending, the child moved for the issuance of an order making certain specific findings that would allow her to petition the United States Citizenship and Immigration Services (hereinafter USCIS) for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101(a)(27)(J).</p>	<p>The court held that the family court erred by denying a child's motion for the issuance of an order making specific findings to enable her to petition for special immigrant juvenile status. The outcome was that the order was reversed; case remitted to family court for further proceedings.</p>	No	Mother
Matter of Ramirez v Palacios, 136 A.D.3d 666 (2016)	NY	Custody	<p>AN ORDER WITHOUT A HEARING IN EFFECT DENIES MOTION FOR ISSUANCE OF THAT ORDER AND DOES NOT ENABLE CHILD TO PETITION FOR SIJS - The petitioner (mother) commenced this proceeding for custody of the subject child, who was born in El Salvador. Thereafter, the petitioner moved for the issuance of an order, inter alia, making special findings so as to enable the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J)</p>	<p>The Supreme court of New York, Appellate Division, ordered that the order is reversed. Based on the law and the facts, without costs or disbursements, the mother's motion for the issuance of an order making special findings so as to enable the subject child, Milagro G.P.R., to petition the USCIS for SIJS is granted.</p>	Yes	Mother
O.Y.P.C. v. J.C.P., 442 N.J.Super. 635 (2015)	NJ	Custody	<p>COURT MUST MAKE REQUIRED SIJ FINDINGS REGARDLESS OF WHETHER RELIEF CAN BE GRANTED -A boy, born in Guatemala, raised by his sister. The boy's father was not involved in his life and the mother handed him over to his sister at birth. The sister left for the U.S. and eventually arranged for the boy to travel and live with her in the U.S.</p>	<p>The Superior Court, Appellate Division, Reisner, P.J.A.D., held that judges are required to make federally-required findings so long as juvenile is under age 21. The previous holding was reversed and remanded.</p>	Yes	Sister

P.E.A. v. A.G.G., 111 A.D.3d 619 (2013)	NY	Custody	AN ORDER FOR SPECIAL FINDINGS CAN BE ISSUED DUE TO ABANDONMENT OR NEGLECT BY 1 PARENT - Brenda E.G.E., a native of El Salvador, 16 years old and unmarried. Her father, whose whereabouts are unknown, abandoned her when she was six years old. Leaving Brenda in the care of her maternal grandmother, Brenda's mother left El Salvador for the United States when Brenda was 12 years old, but continued to support Brenda financially. Brenda joined her mother in the United States in 2009 due to her grandmother's health and gang violence. Mother filed for custody of Brenda. Thereafter, Brenda moved for the issuance of an order making special findings that would allow her to apply to the United States Citizenship and Immigration Services for special immigrant juvenile status	The Family Court denied the motion and that Brenda was not entitled to such an order because her mother was available to care for her and had not abandoned her. The Appellate Court reversed the decision. Held that, their independent review and record supports Brenda contention that, because her father neglected and abandoned her, reunification with her father is not viable option. The fact that the mother did not neglect and abandon her does not preclude the issuance of the order requested. The record reflects that it would not be in Brenda's best interest to be returned to El Salvador.	Yes	Mother
Sanchez v. Bonilla, 115 A.D.3d 868 (2014)	NY	Custody	BEST INTEREST OF THE CHILD/MINOR/NATURAL PARENT HAS LEGAL STANDING TO SEEK LEGAL CUSTODY OF HIS OR HER CHILDREN - Mother sought order of custody for her two teenaged children because of abandonment by their father and it would be in their interest not to return to El Salvador where they have been abused by family members and threats by gang member. Also, the custody would enable the children to petition the USCIS for special immigrant juvenile status.	The family court dismissed the petition without conducting a hearing or considering the best interest of the children. The court held that a natural parent has a standing to seek a legal custody of his or her child and remitted the matter to the Family Court for a hearing and a new determination of the custody petition thereafter		Mother
Simbaina v. Bunay, 221 Md.App. 440 (2015)	MD	Custody	MAKING SIJ FINDINGS IS NOT VIOLATIVE OF THE SUPREMACY CLAUSE - Simbiana and Bunay are parents of the Nathaly. Nathaly is an undocumented alien from Ecuador; she is currently residing in the US with her mother being her sole caretaker. Her parents separated in 2012. In 2013, her father filed a Complaint for Custody. In response, mother filed an Answer and Counter-Complaint for Divorce and Custody or, in the Alternative, Limited Divorce. Mother then amended her complaint on November 7, 2013, and Bunay answered on January 7, 2014. In both mother original and amended complaints, she requested that the court "enter an Order finding that it is not in Nathaly's best interest to return to her home country and reunification with her father is not viable due to abuse, neglect, or abandonment."	The circuit court granted custody but failed to make findings regarding the SIJS. The appellate held that the circuit erroneously held that SIJ factual findings could only be entered after a separate guardianship hearing	Yes	Mother
A.C. v. In re E.C.N., 89 So.3d 777 (Ala. Civ. App. 2012)	AL	Custody	DEPENDENCY - JURISDICTION OVER A CHILD ABOVE THE AGE OF 18: Mother died, father and siblings abandoned him with no means of support. Lived with aunt but could not provide for his needs. Left Mexico and crossed into the U.S. border, detained by USCIS and released into the custody of his brother. However, the judgment did not contain the detailed findings of fact that were required for E.C.N. His brother filed his dependency case when the child was 17, however, he turned 18 before court entered judgement	The court held that the juvenile court lost jurisdiction to adjudicate the brother dependent once he turned 18 years old. Appeal dismissed with instructions	No	Older brother
In re Pedro J.C., 154 Conn.App. 517 (2014)	CT	Custody, Guardianship (uses both words)	STATE COURT MUST BASE ITS FINDINGS ON STATE LAW AND GIVE STATUTORY WORDS AND PHRASES ITS ORDINARY MEANING - Petitioner, 17, from Guatemala, illegally entered the U.S. states and was arrested by officers of the United States	The court reversed the motion for best interest finding and remanded with direction to grant the motion, and specifically to make findings that	Yes	Cousin
Budhathoki v. Dep't of Homeland Sec.	TX	Declaratory Judgement	AN AWARD FOR CHILD SUPPORT DOES NOT CONSTITUTE DEPENDENCY - Deepak Budhathoki, Clesmy E. Canales Gonzales, and Ramon Antonio Soto Carias are all children under the age of 21 who have obtained Texas state court orders pursuant to a Suit Affecting the Parent-Child Relationship ("SAPCR"). Following the entry of the SAPCR order, they filed a petition for Special Immigrant Juvenile ("SIJ") relief with the USCIS which was denied because of insufficient evidence to conclude that the SAPCR was issued by a juvenile court making a care and custody determination of a juvenile and the SAPCR orders were insufficient because they did not declare them dependent upon a juvenile court as required by 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(c)(3)	The Court agrees—the SAPCR orders do not contain a reasonable basis for the findings that the Texas courts were "juvenile court[s]" and Plaintiffs were dependent on those courts. Furthermore, the SAPCR orders do not identify any statutory or legal authority under Texas law that supports finding the child support awards established Plaintiffs' dependency.	No	Three juveniles on behalf of themselves and all similarly situated people
Recinos v. Escobar	MA	Declaratory Judgement	CHILDREN BETWEEN THE AGE OF 18 AND 21 - Plaintiff, 20, was born in El Salvador. Her father physically and emotionally abused her and her mother failed to protect her. Furthermore, she received countless of threats of gang violence. At 17, she fled El Salvador to the U.S. in a bid to escape threats and gang violence that overwhelmed the neighborhood. Before she turned 21, she filed a complaint in equity requesting equitable and declaratory relief in the form of a decree of special findings and rulings of law concerning the findings necessary to apply for SIJS. The issue is whether the Probate and Family Court has jurisdiction pursuant to its broad equity powers under G. L. c. 215, § 6, over immigrant youth between the ages of eighteen and twenty-one to entertain a request to make the necessary predicate special findings under 8 U.S.C. § 1101(a)(27)(J).	The appellate court reversed the decision of the probate court. The court held that probate court has jurisdiction, under its broad equity power over youth between the ages of 18 and 21 for the purposes of making special findings necessary to apply for SIJS.	Yes	Child

In re J.L.E.O., Not Reported in S.W.3d (2011)	TX	Declaratory Judgment	JUVENILE COURT DOES NOT HAVE JURISDICTION WHEN APPLICANT NO LONGER MEETS STATE DEFINITION OF CHILD - The children center brought an action on behalf of a child from Honduras whose parents are deceased. The center asked the court to name it as the child sole conservator and declare that the child is dependent on the court and it is not in the child's best interest to be returned to Honduras, his country of nationality.	The court affirmed the decision of the trial court that the petitioner had not provided sufficient evidence to support the findings and express concern that the child would be 18 in two months.	No	Agency
Eddie E. v. Superior Court, 234 Cal.App.4th 319 (2015)	CA	Delinquency	ONE OR BOTH PARENTS REQUIREMENT IS NOT DISJUNCTIVE - Petitioner born in Mexico, at the age of five was brought to the U.S. illegally with his other two siblings by their mother to reunify with their father. The mother left but eventually died and the petitioner was left with his father without financial support and never returned. Petitioner lived with his father, but lived a hard life which consequently led to the filing of juvenile delinquency case against him. Subsequently, petitioner requested that the court make findings pursuant to section 1101(a)(27)(J) to file for SIJS.	Granted. held that "[One] or both" is not disjunctive, and petitioner was abandoned by his mother. the mother's death made the abandonment permanent and it was not in the petitioner's best interest to return to Mexico.	Yes	Child, Himself
In re D.A.T., Slip Copy (2015)	OH	Delinquency	SIJS IS NOT TO REWARD A JUVENILE WHO HAS COMMITTED FELONIOUS ACTIVITIES - Minor child entered the U.S. legally with her mother at age 11 but failed to return to Mexico when visa expired and subsequently became undocumented. At age 15, she shot a man, which led to delinquency charges filed against her; she was committed to the custody of Ohio Department of	The court affirmed the refusal of the juvenile to make findings because petitioner is not a dependent under the state law and the requested special findings are for purposes of addressing issues under immigration law, not	No	Child, Herself
In re Interest of Luis G., 17 Neb.App. 377 (2009)	NE	Delinquency	WHEN SUFFICIENT EVIDENCE OF ABUSE, ABANDONMENT OR NEGLECT COURT CANNOT SUMMARILY REVERS SIJS FINDINGS MADE - Two undocumented minors from Guatemala came to the U.S. with their mother. Their mother was later deported to Guatemala. The children were arrested for minor offences and committed to the custody of the Nebraska Department of Health and Human Services (DHHS). The DHHS moved an order for SIJS findings that the minors needs to apply for SIJS.	The court found that the lower court erred in vacating the order granting SIJS findings for children who had suffered abuse perpetrated by the children's parents that the children needed to file for special immigrant juvenile status. As such, the decision was reversed and remanded the cause to the county court with directions.	Yes	Foster Parent
In re Israel O., 233 Cal.App.4th 279 (2015)	CA	Delinquency	AN ELIGIBLE MINOR FOR SIJS INCLUDES A JUVENILE WHO HAS A SAFE HOME IN THE UNITED STATES - Minor was born in Mexico and is not a U.S. citizen. He was adjudged a ward of the juvenile court for misdemeanor. Subsequently, he requested the court to make factual findings that would qualify him for SIJS.	The court reversed juvenile court's order denying the child's request for SIJS findings and remanded for a hearing to determine whether it is in the child's best interest to be returned to Mexico	Yes	Child, Himself
In re Jose H., 54 Misc.3d 324 (2016)	NY	Delinquency	PETITIONER MUST MEET THE ELIGIBILITY REQUIREMENTS FOR A COURT TO MAKE SPECIAL FINDINGS - Petitioner was indicted for assault and other related crimes based on having inflicted physical injury on another by means of machete. Petitioner, therefore, seeks an order of court to make findings that would make him eligible for SIJS, if granted by USCIS, would permit him to stay in the U.S.	The court denied the petitioner's application for special finding because the petitioner is not dependent on a juvenile court within the meaning of the governing federal statute and he is not the type of vulnerable child in need of juvenile court intervention that SIJS was intended to aid.	No	Child, Himself
In re Mario S., 38 Misc.3d 444 (2012)	NY	Delinquency	ELIGIBILITY FOR SIJS HINGES ON A REUNIFICATION DETERMINATION - Respondent in juvenile delinquency proceeding requested the court to issue an order finding him eligible for SIJS.	The court granted the respondent's petition finding him eligible for SIJ because reunification with one or both of his parents is not viable due to parental abuse, neglect, or abandonment, or a similar basis found under state law	Yes	Agency
In re Welfare of A.S., 882 N.W.2d 633 (2016)	MN	Delinquency	DELINQUENCY, PROBATION AND SIJS - Petitioner was born in Veracruz, Mexico and his parents left to the U.S. leaving him to stay with his grandparents. Petitioner, unaccompanied entered the U.S. by crossing the border and moved to Minnesota. While in Minnesota, petitioner at 17 was cited for underage drinking and other related crimes and sought from the Delinquency court SIJS findings that would allow him to apply for SIJS.	Affirmed the decision of district courts that placement of the juvenile on probation with certain conditions does not satisfy the SIJS prerequisite of being declared dependent on a juvenile court	No	Child, Himself
Leslie H. v. Superior Court, 224 Cal.App.4th 340 (2014)	CA	Delinquency	STATE COURT ROLE IN SIJS PROCESS IS NOT TO DETERMINE WORTHY CANDIDATES FOR CITIZENSHIP - Petitioner, 16 was arrested for attempt to steal alcoholic beverage and cigars from a liquor store and for inflicting bodily injury on the clerk of the store. Juvenile court declared the petitioner a ward of the court, she subsequently moved the court to make findings to enable her to petition the USCIS for SIJS.	The court reversed the juvenile court decision and held that reunification with the child's parent is not viable and it was not in her best interest to be returned to Mexico	Yes	Child, Herself
Matter of Mario S., 38 Misc.3d 444 (2012)	NY	Delinquency	STATE JUVENILE COURTS MAKE PRELIMINARY DETERMINATION OF CHILD'S DEPENDENCY - Applicant petitioned for guardianship of the child and SIJ findings. The court denied both petitions.	The court found that the record did not support a determination that the child's reunification with one or both parents was not viable due to abuse/ abandonment/ neglect.	Yes	

B.R.C.M. v. Florida Department of Children and Families, --- So.3d --- - (2017) reversed the decision In re B.R.C.M., 182 So.3d 749 (2015)	FL	Dependency	<p>PRIVATE PETITION FOR DEPENDENCY REQUIRES INDIVIDUALIZED FACTUAL FINDINGS AND NOT SUMMARY DENIAL. 13 years old, abandoned by mother and father at birth and age 4 respectively to live with grandmother. He was never provided with food and other basic amenities by parents. He entered the U.S. illegally and unaccompanied from Guatemala, he was detained at the border but was released by the Office of Refugee Resettlement to his godmother as a sponsor. A Private petition was filed for adjudication of dependency to facilitate an application for SIJS.</p>	The court held that the Circuit Court erred and was required to make individualized factual findings and apply the law to the facts in order to make a proper adjudication of dependency for minor. The Court further said - If a child meets the statutory criteria for dependency, the child must be adjudicated accordingly, regardless of the child's motivations for seeking a dependency adjudication. Whether the petition seeks an adjudication to assist the child in applying for an immigration status under federal law is not a basis for summarily dismissing or denying the petition.	Yes	A private petition was filed on behalf of the child
F.L.M. v. Department of Children and Families, State of Fla., 912 So.2d 1264 (2005)	FL	Dependency	<p>AN ORPHAN WITHOUT A LEGAL CUSTODIAN IS DEPENDENT - The petitioner lost both parents at the age of 7 and 10 respectively, he lived with his aunt and uncle and other family members in Guatemala. He left Guatemala at 15 for the U.S. to live with his older brother. Petition was filed on his behalf to obtain a declaration by a State Court that he is a dependent child under the Florida law, to enable him apply to the USCIS</p> <p>A CHILD UNDER MOTHER'S SUPERVISION - Petitioner, 17, is a native of El Salvador and was abandoned by her father when she was eight months old. Her mother left for the U.S. when she was three years old and lived with her grandmother thereon. She later fled to the U.S. to live with her mother. Subsequently, she petitioned for dependency based on abandonment and neglect by her father and later for SIJS</p>	The court held that the case be returned to lower court with instructions to enter an order nunc pro tunc (latin phrase - "now for then") declaring that the child is declared dependent under the Florida law.	Yes	Local Attorney
In re B.Y.G.M., 176 So.3d 290 (2015)	FL	Dependency	<p>INELIGIBLE FOR SIJS IF REUNIFICATION IS FEASIBLE WITH 1 PARENT - Juvenile court adjudicated the petitioner and committed him to the care and custody Office of Juvenile Services (OJS) because of two charges of being a minor in possession of alcohol. While at the rehabilitation center, he continually disappeared, used drugs and alcohol and threatened staff. Petitioner later moved for an order to make findings necessary to allow him to apply for SIJS</p>	Court held that the evidence was insufficient to support a finding of abandonment or neglect. Furthermore, denied the petition, holding that the child was not dependent because she has a her mother, who was capable of providing her with supervision and care.	No	Child, Himself
In re Erick M., 284 Neb. 340 (2012)	NE	Dependency	<p>THE PURPOSE OF THE INA ACT IS NOT TO PROVIDE EXEMPTION FROM DEPORTATION OR REUNITED WITH A FAMILY MEMBER IN THE U.S. - Minor child, born in Honduras illegally entered the U.S. through the Texas border and subsequently released to his mother by the Office of Refugee Resettlement. Prior to his entrance to the U.S. his mother came the U.S. in a bid for a better future for her kids and left the minor child with her friend in Honduras. The mother filed a petition seeking an adjudication finding her minor son dependent and if adjudicated dependent, he will become eligible for SIJS.</p>	The court affirmed the decision of the juvenile court that the petitioner failed to show that reunification with his mother was not feasible	No	Child, Himself
In re F.J.G.M., 196 So.3d 534 (2016)	FL	Dependency	<p>WHEN TRIAL COURT FOUND A CHILD SUFFERED DEPRIVATION AND WAS DEPENDENT ON THE COURT THE COURT THEN REFUSED TO ISSUE OR ADDRESS IN THE COURT'S ORDER THE REQUESTED SIJS FINDINGS A minor child aged 15 entered the U.S. illegally, apprehended at the border by customs officials, and was eventually released into the care of his brother and brother's wife. Subsequently petitioned the court to make finding of deprivation and an order of custody in a bid to obtain SIJS.</p>	The court denied the mother's private dependency petition and held that the purpose of the Act is not to provide exemption from deportation to children who forgo legal immigration migration to the United States and illegally enter the United States in search of a better life or to be reunited with a family member who came to the United States legally or illegally. Furthermore, the abandonment by the father was too remote. Also, record did not support that child was abandoned, abused or neglected by his mother.	No	Mother
In re J.J.X.C., 318 Ga.App. 420 (2012)	GA	Dependency	<p>STATE COURT CAN ONLY ISSUE RELIEF TO PARTIES WHERE IT HAS STATUTORY AUTHORITY - Petitioner, two and a half months before she turned 18 filed for order to have herSelfadjudicated as neglected and as uncared for youth.</p>	The court affirmed the trial court's finding of deprivation but remanded the case to the juvenile court with instruction to consider the request for SIJ findings in light of the facts and relevant law and to make relevant findings.	Yes	Brother and Aunt
In re Jessica M., 303 Conn. 584 (2012)	CT	Dependency	<p>JUVENILE MUST MEET STATE DEFINITION OF DEPENDENCY FOR A COURT TO MAKE SIJS FINDINGS - A boy, 17, born in Honduras illegally crossed the border between Mexico and the U.S. Nine days before reaching the age of majority, he sought an order of dependency on the basis of abandonment by his father and neglect by his mother in order to become eligible for SIJS</p>	The court held that the trial court lacked jurisdiction to adjudicate the petitioner's motion for neglected and uncared for youth when she reached the age of 18	No	Child, Himself
In re S.A.R.D., 182 So.3d 897 (2016)	FL	Dependency	<p>A CHILD LIVING IN THE CARE OF AN AUNT CAN BE DECLARED DEPENDENT ON THE COURT AND COURT CANNOT DENY DEPENDENCY FINDING BECAUSE THE COURT DOES NOT WANT TO ENTER SIJS ORDERS - A minor child was born in Turks and Caicos came to Florida at the age of four months. She lived with her mother until her death and her father's whereabouts was unknown. She stayed with her aunt. Petitioner sought her declared dependent for the purpose of seeking SIJS.</p>	The court affirmed the refusal of the juvenile to make findings because petitioner is not a dependent under the state law and therefore the juvenile court was right in the denial of the findings.	No	Child, Himself
In re T.J., 59 So.3d 1187 (2011)	FL	Dependency		The court reversed the decision of the trial court. Held that the child is entitled to an adjudication of dependency and consideration of the child's request for SIJS findings	Yes	Aunt

In re Y.M., 207 Cal.App.4th 892 (2012)	CA	Dependency	AN INTERNATIONAL PROTOCOL OR INTERNAL DOCUMENT DOES NOT PREEMPT STATE LAW - Minor is a special needs child who was born and raised in Guatemala. At age 14, her father who lived in California, U.S. arranged for her abduction and illegal entry into the U.S. Father then sexually and physically abused her and made her available to other men for sex. She was declared dependent of the juvenile court after an agency in San Diego learned of her circumstances, she subsequently moved for finding that would allow her to apply for SIJS.	Held that the juvenile court erred when it denied the child's petition to terminate reunification services to Father and declined to make findings relevant to Y.M.'s potential eligibility for SIJS.	Remanded for a six-month review under and to consider the child's request for SIJ findings	Agency
In re Y.V., 160 So.3d 576 (2015)	FL	Dependency	A PETITIONER'S INTENT TO SEEK SIJS DOES NOT INVALIDATE A DEPENDENCY PETITION - An unaccompanied minor illegally entered the U.S through the Mexico-United States border and was picked up by authorities who contacted his uncle. Minor alleged that he experienced abuse and abandonment at the hands of his parents in Honduras. Petition was filed to obtain an adjudication of dependency based on abuse, abandonment, or neglect, as a predicate to requesting special immigrant juvenile ("SIJ") status for the minor.	The court reversed the decision of the trial court. Held that, the petition established a prima facie case of dependency irrespective of whether the events that gave rise to the dependency occurred outside of the state of Florida.	Yes	Uncle
L.T. v. Department of Children and Families, 48 So.3d 928 (2010)	FL	Dependency	IF AT THE TIME OF THE HEARING, THE CHILD IS AN ORPHAN WITH NO LEGAL CUSTODIAN, THE COURT SHOULD FIND THE CHILD DEPENDENT - Petitioner filed for dependency regarding his nephew (minor) who had lost both parents, as a result made him an orphan. The petition was filed to enable the minor petition as special immigrant juvenile.	The Appeal court held that the trial court erred in dismissing the dependency petition of the petitioner. Thus, the trial court was reversed and remanded	Reversed and Remanded	Uncle
S.F.A.C. v. Department of Children and Families, 182 So.3d 745 (2015)	FL	Dependency	BECOMING DEPENDENT POST DEPORTATION DOES NOT SUPPORT A FINDING OF DEPENDENCY UNDER STATE LAW -16 years old Boy, born in Honduras and left by both parents at the age of nine. The boy left Honduras after maltreatment by aunt and illegally entered the U.S. through Mexico border after two attempts. A private petition was filed on his behalf to seek adjudication of dependency pursuant to section 39.01(15). the issues was whether there is an imminent risk posed to the child if removed from the U.S. i.e. the risk of harm that will materialize in the foreign country.	The Appeal court reversed the order summarily denying S.F.A.C.'s amended petition for dependency, the court further remanded the case for further proceedings, including the presentation or proffer of testimony, and for the entry of specific adjudicatory findings on each claim (and separately as to each of S.F.A.C.'s parents).	No	
SelfPetitioner: (IDENTIFYING INFORMATION REDACTED..., 2015 WL 3545456...	TX	Dependency	STATE COURT ISSUING DEPENDENCY ORDER MUST HAVE JURISDICTION OVER THE CHILD - Petitioner was born in Mexico and entered the United States in 2008. At age 19, the petitioner was declared dependent upon the court. Petitioner filed Form I-360 and the director of USCIS issued a request for evidence (RFE). Petitioner responded to RFE and the director found that the evidence was not sufficient to establish the petitioner's eligibility for SIJS.	The record failed to establish that the petitioner was eligible for SIJS. When the state court entered the dependency order, the petitioner was over the age of majority and the record did not indicate that it exercised jurisdiction over the petitioner as a juvenile.	No	Child, Herself
State v. L.P.L.O. (In re L.P.L.O.)	OR	Dependency	DEPENDENCY JURISDICTION OVER THE AGE OF 18 - L. P. L. O. was born in El Salvador, mother died, lived with the father until he fled. Father used to hit the child with belt and ropes. The child had petitioned the juvenile court to take dependency jurisdiction over him when he was 17 years old. The juvenile court refused to take jurisdiction. Before filing his appeal, petitioner turned 18 years old. On appeal, petitioner argues that the juvenile court could not decline to take jurisdiction over him because, based on the court's findings, he was within the court's dependency jurisdiction as a matter of law.	The Court held that the juvenile court's exclusive jurisdiction attaches as soon as any case involving a person under 18 years old is initiated and continues until the case is disposed of as provided by statute. Once jurisdiction is established, the child becomes a ward of the court and the wardship may continue until the ward turns 21 years old.	Yes	Child himself
In Interest of P.M.T., Not Reported in S.W.3d (2015)	TX	Dependency (T.P.R.)	VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS AND ABANDONMENT -Petitioners filed suit. The trial court held a bench trial where the parental rights of the child's biological parents were terminated. Petitioners filed motion for special findings related to the child's status as a special immigrant.	The court found that the child did not qualify as abandoned under Texas law as the child had been with the grandparents since birth. The court affirmed the trial court's order on the petitioners' motion for special findings.	No	Grandparents
Alejandro V.P. v. Floyland V.D., --- NYS.3d ---- (2017)	NY	Guardianship	REUNIFICATION WITH FATHER NOT VIABLE DUE TO ABANDONMENT - Child fled Guatemala for the U.S. and petitioned to be declared dependent on the family court so as to enable him to petition the USCIS for SIJS on the ground that reunification with both parents is not viable due to parental abandonment, neglect or abuse and it would be in the best interest not to return to Guatemala.	The court reversed the prior holding and granted the findings necessary for SIJS, and found that reunification of the child with his father is not viable due to parental abandonment, and that it would not be in the child's best interests to return to Guatemala, his previous country of nationality and last habitual residence.	Yes	Child, Himself
B.F. v. Superior Court 207 Cal. App. 4th 621 (2012)	CA	Guardianship	LOWER COURTS CAN GRANT SIJS FINDINGS - Minors (16, 14 and 13 respectively) born in Honduras immigrated to the U.S. with their mother after their father's death. Mother died and they petitioned for guardianship to enable them to petition the USCIS for SIJS on the ground that reunification with one or both parents is not viable due to the abuse, neglect, abandonment or similar basis found under state law; it is not in the best interest of the Minors to be returned to Honduras; and it is in the Minors' best interest to remain in the United States. The lower court granted guardianship but denied the request for SIJS findings	The court granted the minors' petition for a peremptory writ of mandate and commanded the lower court to consider the request for SIJS findings and to conduct hearing on the merits of the abuse, neglect, abandonment or similar basis found under state law; it Minors' request and thereafter issue a new order. Also held that to hold that only a superior court sitting as juvenile court has the authority to make a requisite findings under S 1101 (a)(27)(J) would adversely impact juveniles.	Yes	Three children themselves

D.C. v. A.B.C., 417 N.J.Super. 41 (2010)	NJ	Guardianship	ABANDONMENT REQUIRES WILFUL FORSAKEN - Minor child entered the U.S. illegally after his mother paid smugglers \$3,000 to cross him through the border in a car at the age of 14 years. While in Guatemala, child claim that his mother was not able to provide him with adequate food, clothing and education and therefore was abused, neglected, abandoned by his mother. Upon arrival in the U.S. the minor child reunited with his father by living with him. Consequently, the stepmother filed for his custody because he was abused, neglected and abandoned by his mother.	The court held that because the plaintiff (child's stepmother) has not established that defendant (child's biological mother) abandoned, abused or neglected the child and it is not necessary to appoint plaintiff as the child's guardian as the child is thriving in the custody of his father. There is no need for this court to exercise jurisdiction and therefore the child is not dependent on a juvenile court within the meaning of 8 U.S.C.A. § 1101(a)(27)(J). plaintiff is also seeking a finding that it is not in Paul's best interests to be returned to Guatemala. As the court is declining to exercise jurisdiction, such a finding would amount to an advisory opinion. Courts are cautioned not to render such opinions or to exercise jurisdiction in the abstract. Therefore the court declines to address the best interests issue.	No	Stepmother
In re Antowa McD., 50 A.D.3d 507 (2008)	NY	Guardianship	FAMILY COURT'S APPOINTMENT OF A GUARDIAN CONSTITUTES THE NECESSARY DECLARATION OF DEPENDENCY ON A JUVENILE COURT - Petitioner, minor child at age 4, was sent by her Mother to the U.S. to live with her father. Shortly after, she was abandoned by her father and lived with her aunt afterwards. Her aunt was appointed as her guardian, consequently, she petitioned that court make findings to enable her to apply to the USCIS for SIJS.	The court reversed the prior holding and granted the findings necessary for SIJS, and found that she was eligible for long-term care due to abuse, neglect or abandonment, and that it would not be in the child's best interests to return to Jamaica, his previous country of nationality and last habitual residence.	Yes	Aunt
In re Ashley W., 85 A.D.3d 807 (2011)	NY	Guardianship	IN GUARDIANSHIP PROCEEDINGS, CHILD BEST INTEREST IS PARAMOUNT -Two undocumented minors who are the natives of Haiti and whose childhood home was destroyed by earthquake lived with their aunt and her husband in the U.S. Their parents remain in Haiti, where they have no means of support and are homeless. Their aunt filed petitions seeking appointment as guardian of both children with the consent of their parents. Subsequently, both children moved for the issuance of an order making the requisite declaration and specific findings to enable them to apply to the USCIS. Without hearing, the Family Court denied the petition.	Court held that in the appointment of a guardian, it is the best interest of the child that is paramount. Therefore, matter was remitted to the family court for a hearing and new determination thereafter on the petitions for guardianship, and, thereafter, a hearing and new determination for the issuance of an order making the requisite declaration and specific findings	Yes	Aunt
In re Cristal M.R.M., 118 A.D.3d 889 (2014)	NY	Guardianship	ABANDONMENT - WHEN FATHER WAS NEVER IN THE CHILD'S LIFE - Petitioner, born in Honduras entered the U.S. She petitioned for the appointment of a guardian and subsequently moved for the issuance of an order making specific findings that would allow her to apply to the United States Citizenship and Immigration Services for special immigrant juvenile status. The Family Court denied petition on the ground that reunification with her father was not viable due to abandonment.	The court reversed the decision of the lower court and granted the petitioner's relief that reunification was not viable due because her father was never in her life and never provided financial support, thus, it amounts to abandonment. Also, it would not be in the best interest of the child to be returned to Granada, her previous country	Yes	Mother
In re Dany G., 223 Md.App. 707 (2015)	MD	Guardianship	NEGLECT AND BEST INTEREST UNDER STATE LAW SHOULD BE CONSIDERED IN SIJS FINDINGS - Minor child, a native of Guatemala illegally entered the U.S at the age of seventeen with the hope of better future. While living at Guatemala, he lived under severe conditions where had to work 8 hours a day and help his parents who were disabled. On getting to the U.S. he was detained by the U.S. immigration authorities. His cousin was appointed as guardian and filed a motion for the award of SIJS. Trial court appointed Cousin as guardian but failed to apply the correct standard as to whether the Child's parent abused, neglected or abandoned him under MD law.	The court of appeals of MD held that the circuit court abused its discretion by not applying the correct legal standard as to neglectful conditions and the best interest of the child. Therefore, vacated and remanded the matter to the Circuit court for appropriate proceedings	Yes	Cousin
In re Estate of Nina L. ex rel. Howerton, 2015 IL App (1st) 152223 (2015)	IL	Guardianship	ABUSE, NEGLECT OR ABANDONMENT BY 1 PARENT SUFFICIENT FOR SIJS FINDINGS - A minor child, born in Taiwan entered the U.S. with her mother who came on a student visa. However, After the expiration of her visa, she remained in the U.S with her daughter and fled to California but left her daughter in their apartment without making any arrangement for her. Petitioners petition the court to be appointed as her guardian and later moved for an order to make findings to allow her to apply for SIJS.	The court reversed the decision of the trial court and held that reunification with one or both parents of the child is not viable due to abuse, neglect or abandonment and return to Taiwan is not in the best interest of the child	Yes	Family friend
In re Gabriel H.M., 116 A.D.3d 855 (2014)	NY	Guardianship	"1 or BOTH" LANGUAGE REQUIRES ONLY A FINDING THAT REUNIFICATION IS NOT VIABLE WITH ONE PARENT -The minor is a citizen of El Salvador, unmarried, under 21 years of age. Petitioner filed for guardianship and subsequently for findings to make the minor eligible for SIJS on the ground that reunification with his father was not viable due to abandonment and it would be in the best interest to remain in the U.S.	The court reversed the decision of the Family court and granted the petitioner's motion. The court emphasized that "1 or both" language requires only a finding that reunification is not viable with one parent, therefore the reunification with father was held not viable because the father left him at birth and thus amount to abandonment and would not be in the interest of the child to return to El Salvador	Yes	Unknown

In re Gabriela Y.U.M., 119 A.D.3d 581 (2014)	NY	Guardianship	<p>NON SUPPORT FROM FATHER -The subject child, 18 years old is a native of El Salvador, her mother died when she was six and subsequently lived with her relatives who abused her sexually but never supported by her father. She illegally entered the U.S. and was detained but later released to her uncle(petitioner). The petitioner was appointed as her guardian and further moved for an order making special findings that would allow her to apply to the USCIS for SIJS. The Family Court denied her petition because reunification with her father was viable.</p> <p>PROBATE COURT CAN MAKE SIJS FINDINGS IN A GUARDIANSHIP PROCEEDING - The immigrant child was born in Ecuador to a poor family who could barely provide for his need and was also abused by his mother. After 18 years, the child fled to the U.S. because her father was murdered by gangs who also threatened him. The petitioner petitioned to be appointed as his guardian and subsequently moved for an order containing for SIJS findings. The probate court denied the motion, finding that it was not for the court to make findings specifically for immigration purposes.</p> <p>FINDINGS OF SIJS MAY BE FOUND IN GUARDIANSHIP PROCEEDINGS - Child's parents died and she was sent to the United States from Haiti. Child was held by immigration authorities for 1 month before being released to her maternal aunt and her son. The aunt filed a petition for guardianship of the child for a finding by the Family Court for SIJS.</p> <p>COURT CAN REQUIRE A HOME STUDY PRIOR TO MAKING A GUARDIANSHIP DETERMINATION IN A CASE IN WHICH THE COURT IS BEING ASKED TO ISSUE SIJS FINDINGS - A boy moved to the U.S. with his parents on a tourist visa to NY. Father physically abused both the boy and mother; father left home and mother moved to Arizona. When the boy's brother was over 18, the brother filed a petition requesting that he be appointed as the boy's guardian for facilitating an application for SIJS.</p>	<p>The court reversed the order of the prior court and granted the appointment of guardian and also motion for findings that declared the child dependent on the family court, and that the child is under 21 years and unmarried and that reunification with one or both parents was not viable due to the abuse.</p> <p>The court reversed and remanded the case to the probate court holding that probate court is authorized to make SIJ findings in a guardianship proceeding.</p> <p>The court found that the child met the statutory requirements for SIJS and found no reason to oppose the child's motion for SIJS to the USCIS.</p> <p>The court affirmed that, the family court has the authority to conduct investigation or home study with respect to a prospective guardian for the purpose of establishing eligibility</p>	Yes	Uncle
In re Guardianship of Guaman	MN	Guardianship	<p>IF PETITIONER IS NATURAL PARENT OF CHILDREN IT DOES NOT PRECLUDE THE APPOINTMENT OF THE PETITIONER AS GUARDIAN - The petitioner filed a petition to be appointed guardian of her three (3) children which would enable her moved the court to make findings to enable her petition the USCIS for SIJS on the ground of abandonment by their father and it would not be in their best interest to be returned to El Salvador where gang members have threatened and extorted them in the past.</p>	<p>The court found that the child met the statutory requirements for SIJS and found no reason to oppose the child's motion for SIJS to the USCIS.</p>	Yes	Family friend
In re Jean, 2008 N.Y. Misc. 3265 (2008)	NY	Guardianship	<p>A TRIAL COURT HAS THE ABILITY TO JUDGE THE CREDIBILITY AND Demeanor OF WITNESSES - Mother filed for guardianship of her daughter and thereafter filed a motion for an order making findings to support an application for SIJS on the ground that reunification with father wasn't viable due to his abusive behavior.</p> <p>WHEN CONSIDERING GUARDIANSHIP THE BEST INTERESTS OF THE CHILD ARE PARAMOUNT AND SHOULD BE REFERED TO IN THE ORDER - A minor born in Bangladesh moved to the U.S. at age 12 to live with non-relatives. He alleged that his parents inflicted excessive corporal punishment upon him and failed to provide him with adequate provision and haven't communicated to them in more seven years. Guardianship proceeding was filed on his behalf and further moved for an order making findings that would enable him to apply to the United States Citizenship and Immigration Services for SIJS</p> <p>JUVENILE COURTS HAVE EXPERTISE THAT ALLOW THEM TO MAKE DETERMINATIONS ABOUT THE BEST INTERESTS OF THE CHILD - Minor illegally entered the U.S. through Mexico-U.S. border at Texas. Upon entrance, he lived with his father, who later asked him to leave his apartment after three months. He moved with the petitioner who petitioned to be appointed as his guardian and subsequently filed a motion for an order making findings to support an application for SIJS</p> <p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>The court held that the family court erred in dismissing the petitions in which mother sought to be appointed as guardian of her natural children and matters are remitted to the family court for a hearing and new determination of the application for the issuance of an order to make special findings</p> <p>The court held that the mother failed to prove by preponderance of the evidence that child's reunification with the father is not viable due to abandonment</p> <p>The decision of the lower court was reversed and remanded to family court. The found that the minor was dependent on the family and that reunification with one or both of his parents was not viable, and it would not be in the best interest of the child to be returned to Bangladesh.</p> <p>Family court granted the petition for guardianship and also granted the motion for the issuance of special findings that will allow the minor child to petition the USCIS for SIJS</p> <p>The supreme court of New York affirmed the decision of the lower court. The court denied the child's petition for the issuance of an order to enable him to petition the USCIS for</p>	Yes	Aunt
In re Sing W.C., 83 A.D.3d 84 (2011)	NY	Guardianship	<p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>Did not reach the SIJS findings issue in this case - authorized home study</p> <p>Remitted to Family Court for a hearing on guardianship petition and if warranted special findings for SIJS</p>	Yes	Brother
Maria G.G.U. v. Pedro H.P., 114 A.D.3d 691 (2014)	NY	Guardianship	<p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>Remitted to Family Court for a hearing on guardianship petition and if warranted special findings for SIJS</p>	Yes	Mother
Martha R. Y. v. Antonio S., 48 Misc.3d 1209(A) (2015)	NY	Guardianship	<p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>No</p>	No	Mother
Matter of Alamgir A., 81 A.D.3d 937 (2011)	NY	Guardianship	<p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>Yes</p>	Yes	Non-relative
Matter of Amandeep S. 44 Misc.3d 1201(A) 2014 WL 2808690	NY	Guardianship	<p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>Yes</p>	Yes	Uncle
Matter of Angel R.L.G. v Paula J.P.C., 147 A.D.3d 853 (2017)	NY	Guardianship	<p>IF ONE OF THE ELIGIBILITY REQUIREMENTS FOR SIJS IS NOT MET THEN A COURT DOES NOT HAVE TO CONSIDER THE REMAINING REQUIREMENTS - A minor sought to have his brother-in-law, appointed his guardian for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abuse, abandonment, or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p>	<p>Yes</p>	Yes	Brother-in-law

Matter of Anibal H. (Maria G.G.H.), 138 A.D.3d 841 (2016)	NY	Guardianship	<p>THE LAW DOES NOT REQUIRE THAT REUNIFICATION WITH 1 OR BOTH PARENTS IS VIABLE - The mother filed a petition to be appointed guardian of her son. The petition sought an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one of his parents is not viable due to parental abandonment, and that it would not be in his best interests to be returned to El Salvador, so as to enable the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status</p> <p>WHEN THE RECORD ESTABLISHES PARENTAL ABANDONMENT, IT IS ERROR TO REFUSE TO MAKE THE FINDINGS NEEDED FOR SJIS The petitioner was born in Jamaica, at age four, she was sent to live with her father in the U.S. After her arrival in the U.S, she was abandoned by her father, and was left with her aunt. Court issued letters of guardianship to her aunt, but it refused to make factual findings that would enable petitioner to apply for SJIS.</p> <p>WHEN THE CHILD MEETS THE QUALIFICATIONS FOR SJIS A STATE COURT SHOULD ISSUE THE ORDER WITH SPECIAL FINDINGS - The petitioner filed a petition to appoint Daniel J.K. as his guardian, for the purpose of obtaining an order, inter alia, making special findings that he is unmarried and under 21 years of age, that reunification with his father is not viable due to parental neglect, abandonment, or abuse, and that it would not be in his best interests to be returned to El Salvador, so as to enable him to petition the United States Citizenship and Immigration Services for SJIS.</p> <p>WHERE THE RECORD DOES NOT SUPPORT A DETERMINATION THAT REUNIFICATION IS NOT VIABLE A COURT MAY DENY A MOTION FOR AN ORDER FOR SPECIAL FINDINGS TO APPLY FOR SJIS - The petitioner filed a petition to be appointed guardian of her niece (the child), for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that she is unmarried and under 21 years of age, that reunification with one or both of her parents is not viable due to parental abuse, neglect, abandonment, or a similar basis found under state law, and that it would not be in her best interests to be returned to Ecuador, so as to enable her to petition the United States</p>	The Supreme court of NY reversed the decision of the family court. The court granted the mother's motion for the issuance of findings to make the child petition the USCIS for SJIS on the ground that he is unmarried and under 21 years and that reunification with one or both of his parents was not viable, and it would not be in the best interest of the child to be returned to El Salvador.	Yes	Mother
Matter of Antowa McD., 50 A.D.3D 507 (2008).	NY	Guardianship	<p>WHEN THE RECORD ESTABLISHES PARENTAL ABANDONMENT, IT IS ERROR TO REFUSE TO MAKE THE FINDINGS NEEDED FOR SJIS The petitioner was born in Jamaica, at age four, she was sent to live with her father in the U.S. After her arrival in the U.S, she was abandoned by her father, and was left with her aunt. Court issued letters of guardianship to her aunt, but it refused to make factual findings that would enable petitioner to apply for SJIS.</p> <p>WHEN THE CHILD MEETS THE QUALIFICATIONS FOR SJIS A STATE COURT SHOULD ISSUE THE ORDER WITH SPECIAL FINDINGS - The petitioner filed a petition to appoint Daniel J.K. as his guardian, for the purpose of obtaining an order, inter alia, making special findings that he is unmarried and under 21 years of age, that reunification with his father is not viable due to parental neglect, abandonment, or abuse, and that it would not be in his best interests to be returned to El Salvador, so as to enable him to petition the United States Citizenship and Immigration Services for SJIS.</p>	The Supreme court reversed the decision of the family court and granted aunt's motion for the issuance of factual finding to enable the child to apply for to USCIS for SJIS	Yes	Aunt
Matter of Axel S.D.C. v Elena A.C., 139 A.D.3d 1050 (2016)	NY	Guardianship	<p>WHERE THE RECORD DOES NOT SUPPORT A DETERMINATION THAT REUNIFICATION IS NOT VIABLE A COURT MAY DENY A MOTION FOR AN ORDER FOR SPECIAL FINDINGS TO APPLY FOR SJIS - The petitioner filed a petition to be appointed guardian of her niece (the child), for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that she is unmarried and under 21 years of age, that reunification with one or both of her parents is not viable due to parental abuse, neglect, abandonment, or a similar basis found under state law, and that it would not be in her best interests to be returned to Ecuador, so as to enable her to petition the United States</p>	Court denied the petitioner's motion for the issuance of an order to petition the USCIS for SJIS pursuant to 8 USC § 1101 (a) (27) (J) on the ground that the petitioner failed to show evidence	Yes	Non-relative
Matter of Blanca C.S.C. (Norma C.), 141 A.D.3d 580 (2016)	NY	Guardianship	<p>SJIS REQUIRES A FINDING THAT IT IS NOT IN THE CHILD'S BEST INTEREST TO BE RETURNED TO THE COUNTRY OF NATIONALITY OR COUNTRY OF LAST HABITUAL RESIDENCE - In May 2014, the petitioner filed a petition to be appointed guardian of Nelsy V.M.M. (the child), for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that she is unmarried and under 21 years of age, that reunification with one or both of her parents is not possible due to parental abuse, neglect, abandonment, or a similar basis found under state law, and that it would not be in her best interest to be returned to El Salvador, her previous country of nationality and last habitual residence</p>	The court held that that reunification of the child with her father is not possible due to parental abuse, neglect, abandonment, or a similar basis found under state law, and that it would not be in her best interest to be returned to El Salvador, her previous country of nationality and last habitual residence	No	Aunt
Matter of Carlos A.M. v Maria T.M., 141 A.D.3d 526 (2016)	NY	Guardianship	<p>RECORD MUST SUPPORT DETERMINATION THAT REUNIFICATION OF THE CHILD WITH 1 OR BOTH PARENTS NOT VIABLE - Minor born in Ecuador, lived with his both parents. At 9th grade, he exhibited behavioral problems and associated with gang members which affected his performance at school. His father brought him to the U.S. and subsequently, petitioned to be appointed as his guardian for the purpose of obtaining an order declaring that the child is dependent on the family court and make findings that he is unmarried and that reunification with one or both parent is not viable due to abandonment or neglect so as to enable him to petition the USCIS for SJIS</p> <p>RECORD MUST SUPPORT DETERMINATION THAT REUNIFICATION IS NOT VIABLE - The petitioner filed a petition to be appointed guardian of Lilibeth M.A. (the child). The purpose for seeking guardianship was to obtain an order declaring that the child is dependent on the Family Court and making specific findings that she is unmarried and under 21 years of age, that reunification with one or both of her parents is not viable due to parental neglect, and that it would not be in her best interests to be returned to Guatemala, to enable her to petition the United States Citizenship and Immigration Services for SJIS</p>	Court denied the father's motion for the issuance of an order, inter alia, making specific findings so as to enable the child to petition for SJIS. The record did not support a determination that reunification of the child with one or both of parents is not viable due to parental abuse, neglect, abandonment, or a similar basis found under state law	Yes	Non-relative
Matter of Christian P.S.-A. (Humberto R.S.-B.—Laura S.A.-C.), 148 A.D.3d 1032 (2017)	NY	Guardianship	<p>RECORD MUST SUPPORT DETERMINATION THAT REUNIFICATION IS NOT VIABLE - The petitioner filed a petition to be appointed guardian of Lilibeth M.A. (the child). The purpose for seeking guardianship was to obtain an order declaring that the child is dependent on the Family Court and making specific findings that she is unmarried and under 21 years of age, that reunification with one or both of her parents is not viable due to parental neglect, and that it would not be in her best interests to be returned to Guatemala, to enable her to petition the United States Citizenship and Immigration Services for SJIS</p>	Supreme Court affirmed the order of the family court. The court denied the motion for the issuance of an order, inter alia, making specific findings to enable the child to petition for SJIS. The record did not support a determination that reunification of the child with one or both of parents is not viable due to parental neglect.	No	Father
Matter of Dimas A. v Esmirma E.L., 142 A.D.3d 1164 (2016)	NY	Guardianship	<p>A COURT MAY DENY MOTION FOR AN ORDER FOR SPECIAL FINDINGS IF RECORD DOES NOT SUPPRT A DETERMINATION THAT REUNIFICATION IS NOT VIABLE - In January 2014, the petitioner filed a petition pursuant to be an appointed guardian of his brother(the child), for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SJIS</p>	Supreme Court of NY affirmed the order of the family court. The court denied the motion for the issuance of an order, inter alia, making specific findings to enable the child to petition for SJIS because the petitioner failed to establish that reunification of the child with one or both of his parents was not viable.	No	Non-relative
Matter of Edgar D.M.P. (Jeremias M.P.—Teresa P.I.), 139 A.D.3d 956 (2016)	NY	Guardianship	<p>A COURT MAY DENY MOTION FOR AN ORDER FOR SPECIAL FINDINGS IF RECORD DOES NOT SUPPRT A DETERMINATION THAT REUNIFICATION IS NOT VIABLE - In January 2014, the petitioner filed a petition pursuant to be an appointed guardian of his brother(the child), for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Guatemala, so as to enable him to petition the United States Citizenship and Immigration Services for SJIS</p>	Supreme Court of NY affirmed the order of the family court. The court denied the motion for the issuance of an order, inter alia, making specific findings to enable the child to petition for SJIS because the petitioner failed to establish that reunification of the child with one or both of his parents was not viable.	No	Non-relative

Matter of Ena S.Y. (Martha R.Y.—Antonio S.), 140 A.D.3d 778 (2016)	NY	Guardianship	<p>NEGLECT TO ESTABLISH THAT REUNIFICATION IS NOT VIABLE - Mother filed a petition to be appointed guardian of her daughter and moved for the issuance of an order declaring that the child is dependent on the Family Court and making specific findings that she was unmarried and under 21 years of age, that reunification with her father was not viable due to parental abandonment, abuse, or neglect, and that it would not be in her best interests to be returned to Honduras, so as to enable her to petition the United States Citizenship and Immigration Services for SIJS</p> <p>COURT WILL ISSUE ORDER IF CHILD MEETS ALL ELIGIBILITY REQUIREMENTS FOR SIJS - The petitioner filed a petition pursuant to be appointed guardian of her brother (the child), for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to parental abandonment or neglect, and that it would not be in his best interests to be returned to El Salvador, his previous country of nationality and last habitual residence, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS</p> <p>MOTION FOR SPECIAL FINDINGS WILL ONLY BE GRANTED WHERE THE RECORD SUPPORTS THE REQUIRED DETERMINATIONS FOR SIJS -The petitioner filed a petition pursuant to be appointed guardian of the child, for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abandonment, neglect, or abuse, and that it would not be in his best interests to be returned to India, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS.</p> <p>ONLY POVERTY WILL NOT SUPPORT DETERMINATION THAT REUNIFICATION WITH PARENTS IS NOT VIABLE - Child lived in Guatemala with his parents until age 17, when he moved to the US and lived with his cousin, the applicant. When child was 19 years old, applicant petitioned to be his guardian and to get SIJ findings. The child's affidavit said he did not want to return to Guatemala because his parents were impoverished and "did not have money to send him to college." The family court denied the part of his motion for a specific finding that reunification with one or both parents was not viable due to abuse, abandonment, or neglect.</p>	Supreme court of NY reversed order of the family court. Granted the mother's motion for findings that reunification with the child's father wasn't viable due to neglect.	Yes	Mother
Matter of Fredy L.M.M. (Concepcion M.M.), 138 A.D.3d 857 (2016)	NY	Guardianship	<p>MOTION FOR SPECIAL FINDINGS WILL ONLY BE GRANTED WHERE THE RECORD SUPPORTS THE REQUIRED DETERMINATIONS FOR SIJS -The petitioner filed a petition pursuant to be appointed guardian of the child, for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings that he is unmarried and under 21 years of age, that reunification with one or both of his parents is not viable due to abandonment, neglect, or abuse, and that it would not be in his best interests to be returned to India, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS.</p> <p>ONLY POVERTY WILL NOT SUPPORT DETERMINATION THAT REUNIFICATION WITH PARENTS IS NOT VIABLE - Child lived in Guatemala with his parents until age 17, when he moved to the US and lived with his cousin, the applicant. When child was 19 years old, applicant petitioned to be his guardian and to get SIJ findings. The child's affidavit said he did not want to return to Guatemala because his parents were impoverished and "did not have money to send him to college." The family court denied the part of his motion for a specific finding that reunification with one or both parents was not viable due to abuse, abandonment, or neglect.</p>	Court denied the petitioner's motion for the issuance of an order, inter alia, making specific findings so as to enable the child to petition for SIJS on the ground that the record did not support a determination that reunification of the child with one or both of his parents is not viable due to parental neglect or abandonment	No	Brother
Matter of Jasbir S. (Dayal S.—Gurdev S.), 138 A.D.3d 750 (2016)	NY	Guardianship	<p>WHERE THE RECORD IS SUFFICIENT THE COURT WILL MAKE SPECIAL FINDINGS TO ENABLE CHILD TO APPLY FOR SIJS - Child moved to the US and lived with his aunt. The aunt petitioned to become his guardian and the petition was granted. The lower court refused to make SIJ findings. The appellate court stated that its power to review the evidence was broad, and that the evidence on the record supported SIJ findings.</p> <p>GUARDIANSHIP AFTER AGE 18 AND SIJS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p> <p>WHERE RECORD SUPPORTS DETERMINATION COURT MAY ISSUE ORDER OF SPECIAL FINDINGS - Lower court denied that reunification was not viable with child's parents and that it was not in his best interests to return to India. However, appellate court found, based on its factual review, that reunification with child's mother was not viable due to parental neglect and it was not in child's best interests to return to India</p> <p>THE CHILD MAY QUALIFY FOR SIJS WHERE THE CHILD HAS BEEN NEGLECTED, ABUSED BY 1 OR BOTH PARENTS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p>	The Court found that the record did not support a determination that the child's reunification with one or both parents was not viable due to abuse/ abandonment/ neglect or a similar basis under State law.	No	Unknown
Matter of Jeison P.-C. (Concepcion P.), 132 A.D.3d 876 (2015)	NY	Guardianship	<p>WHERE THE RECORD IS SUFFICIENT THE COURT WILL MAKE SPECIAL FINDINGS TO ENABLE CHILD TO APPLY FOR SIJS - Child moved to the US and lived with his aunt. The aunt petitioned to become his guardian and the petition was granted. The lower court refused to make SIJ findings. The appellate court stated that its power to review the evidence was broad, and that the evidence on the record supported SIJ findings.</p> <p>GUARDIANSHIP AFTER AGE 18 AND SIJS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p> <p>WHERE RECORD SUPPORTS DETERMINATION COURT MAY ISSUE ORDER OF SPECIAL FINDINGS - Lower court denied that reunification was not viable with child's parents and that it was not in his best interests to return to India. However, appellate court found, based on its factual review, that reunification with child's mother was not viable due to parental neglect and it was not in child's best interests to return to India</p> <p>THE CHILD MAY QUALIFY FOR SIJS WHERE THE CHILD HAS BEEN NEGLECTED, ABUSED BY 1 OR BOTH PARENTS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p>	Based on the record, the court found child to be unmarried, under 21, unable to reunify with his parents due to abuse and neglect, and not in his best interest to return to South Korea, his country of nationality.	No	Cousin
Matter of Jisun L. v Young Sun P., 75 A.D.3d 510 (2010)	NY	Guardianship	<p>WHERE THE RECORD IS SUFFICIENT THE COURT WILL MAKE SPECIAL FINDINGS TO ENABLE CHILD TO APPLY FOR SIJS - Child moved to the US and lived with his aunt. The aunt petitioned to become his guardian and the petition was granted. The lower court refused to make SIJ findings. The appellate court stated that its power to review the evidence was broad, and that the evidence on the record supported SIJ findings.</p> <p>GUARDIANSHIP AFTER AGE 18 AND SIJS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p> <p>WHERE RECORD SUPPORTS DETERMINATION COURT MAY ISSUE ORDER OF SPECIAL FINDINGS - Lower court denied that reunification was not viable with child's parents and that it was not in his best interests to return to India. However, appellate court found, based on its factual review, that reunification with child's mother was not viable due to parental neglect and it was not in child's best interests to return to India</p> <p>THE CHILD MAY QUALIFY FOR SIJS WHERE THE CHILD HAS BEEN NEGLECTED, ABUSED BY 1 OR BOTH PARENTS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p>	Court found that since the lower court granted stepfather's guardianship petition, the child was dependent on the court. Also, there was plenty of evidence, including affidavits from child and her mother, that the father had abandoned child was reunification was not possible. Court found that child was dependent on family court, unmarried, under 21, reunification not viable due to abandonment, and not in child's best interests to return to home country.	Yes	Aunt
Matter of K.B., 20 Misc.3d 1130(A) (2008)	NY	Guardianship	<p>WHERE THE RECORD IS SUFFICIENT THE COURT WILL MAKE SPECIAL FINDINGS TO ENABLE CHILD TO APPLY FOR SIJS - Child moved to the US and lived with his aunt. The aunt petitioned to become his guardian and the petition was granted. The lower court refused to make SIJ findings. The appellate court stated that its power to review the evidence was broad, and that the evidence on the record supported SIJ findings.</p> <p>GUARDIANSHIP AFTER AGE 18 AND SIJS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p> <p>WHERE RECORD SUPPORTS DETERMINATION COURT MAY ISSUE ORDER OF SPECIAL FINDINGS - Lower court denied that reunification was not viable with child's parents and that it was not in his best interests to return to India. However, appellate court found, based on its factual review, that reunification with child's mother was not viable due to parental neglect and it was not in child's best interests to return to India</p> <p>THE CHILD MAY QUALIFY FOR SIJS WHERE THE CHILD HAS BEEN NEGLECTED, ABUSED BY 1 OR BOTH PARENTS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p>	Court found that since the lower court granted stepfather's guardianship petition, the child was dependent on the court. Also, there was plenty of evidence, including affidavits from child and her mother, that the father had abandoned child was reunification was not possible. Court found that child was dependent on family court, unmarried, under 21, reunification not viable due to abandonment, and not in child's best interests to return to home country.	Yes	Grandmother
Matter of Kamaljit S., 114 A.D.3d 949 (2014)	NY	Guardianship	<p>WHERE THE RECORD IS SUFFICIENT THE COURT WILL MAKE SPECIAL FINDINGS TO ENABLE CHILD TO APPLY FOR SIJS - Child moved to the US and lived with his aunt. The aunt petitioned to become his guardian and the petition was granted. The lower court refused to make SIJ findings. The appellate court stated that its power to review the evidence was broad, and that the evidence on the record supported SIJ findings.</p> <p>GUARDIANSHIP AFTER AGE 18 AND SIJS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p> <p>WHERE RECORD SUPPORTS DETERMINATION COURT MAY ISSUE ORDER OF SPECIAL FINDINGS - Lower court denied that reunification was not viable with child's parents and that it was not in his best interests to return to India. However, appellate court found, based on its factual review, that reunification with child's mother was not viable due to parental neglect and it was not in child's best interests to return to India</p> <p>THE CHILD MAY QUALIFY FOR SIJS WHERE THE CHILD HAS BEEN NEGLECTED, ABUSED BY 1 OR BOTH PARENTS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p>	Court found that child was dependent on family court, unmarried, under 21, reunification not viable due to neglect, and not in child's best interests to return to home country.	Yes	Unknown
Matter of Karen C., 111 A.D.3d 622 (2013)	NY	Guardianship	<p>WHERE THE RECORD IS SUFFICIENT THE COURT WILL MAKE SPECIAL FINDINGS TO ENABLE CHILD TO APPLY FOR SIJS - Child moved to the US and lived with his aunt. The aunt petitioned to become his guardian and the petition was granted. The lower court refused to make SIJ findings. The appellate court stated that its power to review the evidence was broad, and that the evidence on the record supported SIJ findings.</p> <p>GUARDIANSHIP AFTER AGE 18 AND SIJS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p> <p>WHERE RECORD SUPPORTS DETERMINATION COURT MAY ISSUE ORDER OF SPECIAL FINDINGS - Lower court denied that reunification was not viable with child's parents and that it was not in his best interests to return to India. However, appellate court found, based on its factual review, that reunification with child's mother was not viable due to parental neglect and it was not in child's best interests to return to India</p> <p>THE CHILD MAY QUALIFY FOR SIJS WHERE THE CHILD HAS BEEN NEGLECTED, ABUSED BY 1 OR BOTH PARENTS - Child's father abandoned her at birth. Child's mother left child's home country (El Salvador) when child was one year old, and lived in the US through child's life. When child was 14, she came to the US to live with her mother, step father, and three half siblings. Child filed a petition seeking to have stepfather appointed as coguardian with her mother, and requesting SIJ findings. Lower court denied her request for SIJ findings, saying she had not shown reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, and that it was not in her best interest to return to El Salvador.</p>	Court found that since the lower court granted stepfather's guardianship petition, the child was dependent on the court. Also, there was plenty of evidence, including affidavits from child and her mother, that the father had abandoned child was reunification was not possible. Court found that child was dependent on family court, unmarried, under 21, reunification not viable due to abandonment, and not in child's best interests to return to home country.	Yes	Stepfather

Matter of Lorena L.Z.-C. (Brian M.—Walter C.), 143 A.D.3d 733 (2016)	NY	Guardianship	<p>WHERE RECORD DOES NOT SUPPORT DETERMINATION THAT REUNIFICATION IS NOT VIABLE - Child grew up in Trinidad and Tobago. Her father abandoned the family when she was six, and when she was nine, her mother got cancer. The family moved to the US and stayed with the child's maternal grandmother. Then the child's mother died. Grandmother petitioned for guardianship when child was 18 years old.</p>	The court granted guardianship to child's grandmother, finding that it was in child's best interests even though child was above age 18. Child consented to the guardianship and gave compelling reasons (financial and emotional support) for why she needed a guardian. The court also granted SIJ findings, citing how child was dependent on the court due to the guardianship finding and how returning to Trinidad, where she had no real ties or known family, would be detrimental to her.	Yes	Maternal grandmother
Matter of Luis R. v Maria Elena G., 120 A.D.3d 581 (2014)	NY	Guardianship	<p>STATUTORY REQUIREMENT MAY BE SATISFIED UPON FINDING THAT REUNIFICATION IS NOT VIABLE WITH 1 PARENT - Child was from Ecuador. Petitioner filed for guardianship of child and SIJ findings.</p>	Court found that the record did not support a determination that the child's reunification with one or both parents was not viable due to neglect or abandonment, and the petition was denied.	No	Unknown
Matter of Malkeet S., 137 A.D.3d 799 (2016)	NY	Guardianship	<p>A COURT MUST FIND ALL STATUTORY REQUIREMENTS TO MAKE SJIS FINDINGS -Petitioner sought to be appointed guardian of the child and for issuance of an order that the child was dependent on the Family Court and make special findings. Lower court denied SIJ findings.</p>	Court found that child's father was deceased, so reunification with the father is automatically not viable. Also, the record showed that it would not be in the child's best interests to return to El Salvador	Yes	Uncle
Matter of Marcelina M.-G. v. Israel S., 112 A.D.3d 100 (2013)	NY	Guardianship	<p>SATISFYING REUNIFICATION COMPONENT - Child was born in Honduras and lived with her mom until age 6. Her mother left the child in the care of an aunt who was abusive. The child had never lived with her father and did not know his last name. The child arranged for herSelfand her brother to come to the United States. The child encountered border patrol and remained in a foster home until her uncle arrived. Lower court granted guardianship to child's relative but denied petition for SIJ findings.</p>	Court found that the record did not support a determination that reunification with one or both parents was not viable due to abuse/ abandonment/ neglect, not that it would be against the child's best interests to be returned to India.	No	Relative
Matter of Maria C.R. v. Rafael G., 142 a.d.3D 165 (2016)	NY	Guardianship	<p>AUTHORITY OF FAMILY COURT TO MAKE SPECIAL FINDINGS - Child was born in Honduras and lived alone with her mother. Child indicated that she had never lived with her father and that he never financially supported the family. Child's mother moved to the US, leaving child with abusive relatives. Child smuggled herself and her brother into the US, and they were eventually released to child's uncle, who filed for guardianship. In petition for SIJ findings, the child claimed both her parents had neglected and abandoned her. Child's mother later filed for custody, which the lower court granted.</p>	Court found that "1 or both" language of SIJ statute requires only a finding that reunification is not viable with one parent. Child was dependent on the court because the court determined that the mother should have custody. Reunification with her father was not viable due to abandonment, and it was not in her best interests to return to Honduras, where the only family she knew abused her. SIJ findings granted.	Yes	Mother
Matter of Maria S.Z. v Maria M.A., 115 A.D.3d 970 (2014)	NY	Guardianship	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - Petitioner was friend of 20-year-old child who turned 21 after the petition was filed but before the hearing. Child was from El Salvador. His mother died, and then his father abandoned the family. He moved to the US and then moved in with a friend after some time with several of his brothers. He testified that he was scared to live in El Salvador again due to gang violence. The lower court delayed the hearing several times, and then denied applicant's petition on the basis that it did not have jurisdiction over the child because he was 21.</p>	Court found that the lower court did not err in finding that it lacked jurisdiction over the child for purposes or guardianship. Furthermore, there is no federal statutory authority that can circumvent this issue, as a child needs to be found dependent on the court in order to get SIJ findings	No	Friend
Matter of Marisol N.H., 115 A.D.3D 185 (2014)	NY	Guardianship	<p>NATURAL PARENT MAY BE APPOINTED GUARDIAN - Child was adjudged to be a juvenile delinquent due to criminal mischief, defacement of property, and possession of graffiti instruments. Child was from Mexico and came to the US with his family as a baby. His father abandoned the family, and although the child went to live with the father for a few months at one point, the father was then deported on a domestic violence offense. The father only talked to the child 3-4 times a year and "did not seem to care" about being in the child's life.</p>	Child was dependent on the court due to his juvenile delinquency proceeding, was under 21, unmarried, and his father abandoned him, making reunification not viable. Furthermore, the fact that child's mother was in the US illegally made it possible that her reunification with the child could be tenuous if she was deported. Also, the child's lack of family in Mexico and inability to read Spanish meant it was not in his best interest to be returned to Mexico. Therefore, the court found Sij findings and decided to leave it to USCIS to determine whether the applicant's use of juvenile delinquency proceedings to meet such findings was an abuse of the system.	Yes	Child, Herself
Matter of Marvin E.M. de P. (Milagro C.C.—Mario Enrique M.G.), 121 A.D.3d 892 (2014)	NY	Guardianship	<p>WHETHER REUNIFICATION OF CHILD WITH PARENTS IS NOT VIABLE - Three children were born in El Salvador. Their father was abusive, the mother left the father when the children were young, and the children never had "meaningful" contact with their father again. The country became very dangerous and many friends and family were killed, so all the children eventually moved with their mother to the US. The lower court found that there was no need for a best interests hearing for the children and that it was unnecessary to appoint the mother as guardian of her own children.</p>	The court found the mother as guardian and made SIJ findings, saying that there is no limitation on a natural parent applying for guardianship of a child. The court cited the father's abandonment of the children and the dangerous conditions in El Salvador to find that reunification with the father was not viable and it was not in their best interests to return to their home country.	Yes	Mother

Matter of Maura A.R.-R. (Santos F.R.—Fidel R.), 114 A.D.3d 687 (2014)	NY	Guardianship	<p>THE RECORD FULLY SUPPORTS THE MOTHER'S CONTENTION THAT BECAUSE THE CHILD'S FATHER ABANDONED HER. REUNIFICATION WITH HER FATHER IS NOT A VIABLE OPTION -The petitioner (mother) petitioned for the guardianship of her daughter who was born in El Salvador. Thereafter, the petitioner moved for the issuance of an order, inter alia, making special findings so as to enable the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>THE APPOINTMENT OF A GUARDIAN CONSTITUTES THE NECESSARY DECLARATION OF DEPENDENCY ON A JUVENILE COURT FOR SIJS PURPOSES - The petitioner filed a petition to be appointed guardian of his brother for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings pursuant to pursuant to 8 USC § 1101 (a) (27). Thereafter, the petitioner moved for the issuance of an order making such special finding to enable he child to petition for SIJS.</p>	The Supreme court reversed the order of the lower court, the petition for SIJS was reinstated and granted and the mother was granted guardianship.	Yes	Mother
Matter of Miguel A.G.G. (Milton N.G.G.), 127 A.D.3d 858 (2015)	NY	Guardianship	<p>THE RECORD INCLUDING DETAILED INCLUDING DETAILED AFFIDAVITS FROM THE CHILD, FULLY SUPPORTS THE PETITIONER'S CONTENTION THAT BECAUSE HIS FATHER NEGLECTED AND ABANDONED HIM. REUNIFICATION IS NOT VIABLE - The petitioner filed a petition to be appointed guardian of his half-brother for the purpose of obtaining an order declaring that the child is dependent on the Family Court and making specific findings pursuant to pursuant to 8 USC § 1101 (a) (27). Thereafter, the petitioner moved for the issuance of an order making such special finding to enable he child to petition for SIJS.</p>	The court reversed the Family Court's ruling and granted the appeal to qualify for SIJS.	No	Brother
Matter of Miguel C.-N. (Hosman C.-N.—Cruz Ermelinda C.-N.), 119 A.D.3d 562 (2014)	NY	Guardianship	<p>FOR A JUVENILE TO QUALIFY FOR SIJS, MUST BE FOUND THAT REUNIFICATION WITH ONE OR BOTH PARENTS IS NOT VIABLE DUE TO NEGLECT, ABUSE OR ABANDONMENT OR SIMILAR UNDER STATE LAW - Boy, 19years old, native of Sierra Leone lived primarily with his grandmother and neglected by both parents. He won a scholarship competition organized by a Connecticut church to visit the U.S. but before his return to Sierra Leone, he became separated from his hosts while on trip to Manhattan. Following the separation, he lived with his natives of Sierra Leone whom he met in NY. The petitioner (Former teacher) petitioned to be appointed as the boy's guardian, thereafter, the boy moved for an order making findings that would enable him to apply to the USCIS for SIJS.</p>	The Supreme Court, Appellate Division of New York reversed the ruling of the Family Court and granted the appellant's appeal for SIJS.	Yes	Half - Brother
Matter of Mohamed B., 83 A.D.3d 829 (2011)	NY	Guardianship	<p>RECORD DOES NOT SUPPORT A DETERMINATION THAT HER REUNIFICATION WITH ONE OR BOTH PARENTS IS NOT VIABLE DUE TO PARENTAL NEGLECT OR ABANDONMENT - The petitioner filed a petition pursuant to SIJS is dismissed and the child does not qualify for SIJS.</p>	The Supreme Court, Appellate Division of New York held the Family Court's first ruling that the petition for SIJS is dismissed and the child does not qualify for SIJS.	Yes	Former teacher
Matter of Nelson R.N.C. v Maria G.V.P., 147 A.D.3d 824 (2017)	NY	Guardianship	<p>WHERE THE RECORD DOES NOT SUPPORT A DETERMINATION THAT REUNIFICATION IS NOT VIABLE A COURT MAY DENY A MOTION FOR AN ORDER FOR SPECIAL FINDINGS TO APPLY FOR SIJS- The guardian of the minor child moved for the issuance of an order making specific finding that would allow the child to apply to the USCIS for SIJS.</p>	The court affirmed the decision of the lower court and denied the motion for sepecific finding that reunification of the child with one or both of his parents was not viable	No	Unknown
Matter of Nirmal S. v Rajinder K., 101 A.D.3d 1130 (2012)	NY	Guardianship	<p>IT IS IMPROPER FOR FAMILY COURT TO DISMISS PETITION BASED ON FAILURE TO COMPLY WITH DIRECTIVE TO OBTAIN FINGERPRINTING - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, her previous country of nationality and country of last habitual residence, so as to enable the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27).</p>	The petition was reinstated and granted. The petitioner was appointed as the guardian of the child, and the order granting the child's motion for the issuance of an order declaring that he is unmarried and under 21 years he is dependent on the Family Court of age, that reunification with his mother is not viable due to and making the requisite specific findings so as to enable him to petition for SIJS, was reinstated.	No	Guardian
Matter of Silvia N.P.L. v. Jorge M.N.P., 141 A.D.3D 654 (2016)	NY	Guardianship	<p>A COURT SHOULD ISSUE ORDER WITH SPECIAL FINDINGS WHERE RECORD SUPPORTS SIJS - A child, 20 years and native of Jamaica. Her father abandoned her at birth, her mother neglected and abused her by not providing her with food and other necessities of her and inflicted corporal punishments on her. She moved to the U.S. to live with her Aunt, her Aunt petitioned to be appointed as her guardian and thereafter, filed for guardianship and thereafter moved for the issuance of an order making findings to enable petition the USCIS for SIJS</p>	The petition was reinstated and granted. The petitioner was appointed as the guardian of the child, and the order granting the child's motion for the issuance of an order declaring that she is dependent on the Family Court and making the requisite specific findings so as to enable him to petition for SIJS, was reinstated.	Yes	Father
Matter of Trudy-Ann W. v. Joan W., 73 A.D.3d 793 (2010)	NY	Guardianship	<p>enable petition the USCIS for SIJS</p>	findings to enable him to petition for SIJS, was reinstated.	Yes	Aunt

Matter of Vanessa D., 15 Misc.3d 819 (2007)	NY	Guardianship	<p>DECLARATION OF DEPENDENCY MUST BE SOUGHT IN PROPER PROCEEDING UNDER STATE LAW -Child born in Haiti, moved to the U.S. with her father and lived with her mother. Father and Mother returned to Haiti where both died. Child was left with the petitioner (a longtime friend of her mother). Nineteen days before Vanessa's 18th birthday, the petitioner filed for guardianship and thereafter moved for the issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>REUNIFICATION WITH PARENTS NOT VIABLE AND NOT IN CHILD'S BEST TO RETURN TO COUNTRY - A child abandoned by parent. The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with one or both parents was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p>	The motion was denied because the Family Court lacked jurisdiction in a guardianship proceeding to grant "special immigrant" juvenile status. The court ordered that the order is reversed, on the law and the child's motion for the issuance of an order, making specific findings so dependent on the court and that reunification with one or both parents as to enable him to petition the USCIS for SIJS is granted.	No	Family friend
Matter of Varinder S. v Satwinder S., 147 A.D.3d 854 (2017)	NY	Guardianship	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	The Supreme Court, Appellate Division, affirmed the Family Court's order on the ground that the petitioner failed to establish why it would not be in the best interest of the child to be returned to home country Guatemala. Ordered that the order is reversed and granted the petition for the issuance of an order making the findings to enable the child petition for SIJS	Yes	Child, Himself
Matter of Victor C.-G. v Santos C.-T., 140 A.D.3d 951 (2016)	NY	Guardianship	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	The Supreme Court, Appellate Division, affirmed the Family Court's order on the ground that the petitioner failed to establish why it would not be in the best interest of the child to be returned to home country Guatemala. Ordered that the order is reversed and granted the petition for the issuance of an order making the findings to enable the child petition for SIJS	No	Cousin
Matter of Wilson A.T.Z. (Jose M.T.G.—Manuela Z.M.), 147 A.D.3d 962 (2017)	NY	Guardianship	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	The Appellate Court held that, the Family Court should have granted the petitioner's motion for the issuance of an order making the requisite findings so as to enable the child to petition for SIJS. Since the record is sufficient for this Court to make its own findings of fact and conclusions of law, we find that reunification of the child with one or both of his parents is not viable due to parental neglect, and that it would not be in his best interests to return to India, his previous country of nationality and habitual residence. The Family Court denied the petitions and the Appellate Division, Second Department, upon appeal reverses and grants the petitions. Pursuant to 8 USC §1101(a)(27)(J), a "special immigrant" is a resident alien who is, inter alia, under 21 years of age, unmarried, and "declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States. The court determined that reunification with the children's father was not viable due to abandonment, and it was not in the best interest of the children to be returned to El Salvador	Yes	Father
Palwinder K. v. Kuldeep K., 148 A.D.3d 1149 (2017)	NY	Guardianship	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	The Appellate Court held that, the Family Court should have granted the petitioner's motion for the issuance of an order making the requisite findings so as to enable the child to petition for SIJS. Since the record is sufficient for this Court to make its own findings of fact and conclusions of law, we find that reunification of the child with one or both of his parents is not viable due to parental neglect, and that it would not be in his best interests to return to India, his previous country of nationality and habitual residence. The Family Court denied the petitions and the Appellate Division, Second Department, upon appeal reverses and grants the petitions. Pursuant to 8 USC §1101(a)(27)(J), a "special immigrant" is a resident alien who is, inter alia, under 21 years of age, unmarried, and "declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States. The court determined that reunification with the children's father was not viable due to abandonment, and it was not in the best interest of the children to be returned to El Salvador	Yes	Guardian
Saul A.F.H. v. Ivan L.M., 118 A.D.3d 878 (2014)	NY	Guardianship	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	Supreme court of NY reversed the order of the family court and the matter was remitted to the Family Court for a hearing and a new determination thereafter of the petition for custody of the subject children and, in effect, for an order making special findings so as to enable the subject children to petition the United States Citizenship and Immigration Services for special immigrant juvenile status pursuant to 8 USC § 1101(a)(27)(J).	Yes	Cousin
Matter of Fifo v. Fifo, 127 A.D.3d 748 (2015)	NY	Protection Order	<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	The court affirmed the decision of the lower court. Held that the Louisiana juvenile court did not have jurisdiction to determine petition for finding eligibility for children or minor who has attained the age of 18.	Remit to Family Court for making special findings	Mother
State in Interest of Jimenez, 199 So.3d 1218 (2016)	LA		<p>REUNIFICATION WITH 1 OR BOTH PARENTS NOT VIABLE - The petitioner filed a petition to be appointed a guardian of the child to obtain an order declaring that the child is dependent on the court and that reunification with his father was not viable due to death. Thereafter, the child moved for issuance of an order making findings to enable petition the USCIS for SIJS</p> <p>WHERE REUNIFICATION WITH 1 PARENT IS NOT VIABLE AND CHILD MEETS REQUIREMENTS FOR SJI - The petitioner (father) filed a petition to be appointed the guardian of his son for the purpose of obtaining an order declaring that the child is dependent on the court and making findings that he is unmarried and under 21 years of age, that reunification with his mother is not viable due to abandonment or neglect, and that it would not be in his best interests to be returned to Ecuador, so as to enable him to petition the United States Citizenship and Immigration Services for SIJS pursuant to 8 USC § 1101 (a) (27) (J)</p> <p>COURT SHOULD ISSUE ORDER WHERE REUNIFICATION IS NOT VIABLE AND IT IS NOT IN CHILD'S BEST INTEREST TO RETURN TO COUNTRY OF NATIONALITY - The petitioner filed a petition pursuant to Family Court Act article 6 to be appointed the guardian of Lovepreet S. (hereinafter the child), who was born in India. The petitioner subsequently moved for the issuance of an order making the findings necessary for the child to petition the United States Citizenship and Immigration Services for special immigrant juvenile status (hereinafter SIJS) pursuant to 8 USC § 1101 (a) (27) (J).</p>	The court affirmed the decision of the lower court. Held that the Louisiana juvenile court did not have jurisdiction to determine petition for finding eligibility for children or minor who has attained the age of 18.	No	Child

WRIT OF MANDAMUS UNREASONABLE DELAY: Yu, 21 year-old, filed application for SJS in 1996. First Judicial District of New Mexico decided that Yu was dependent on the juvenile court and found Yu eligible for long-term foster care and permanent guardianship. The court further found that it was in Yu's best interest that she be a dependent of the court, under the guardianship of a person, and that it was not in her best interest to be returned to China. Yu brought action requesting the Court to issue an affirmative injunction and/or writ of mandamus commanding INS to act on her pending application for SJS.

The Federal Court denies defendants motion to move for judgment on the pleadings or dismiss for lack of subject matter jurisdiction. Having concluded that the Court does have subject matter jurisdiction over this controversy and that it was otherwise properly before the Court, the Court then addressed Defendants' argument that they are entitled to judgment as a matter of law. The Court concluded that two and half years constitute an unreasonable delay in the context of immigration applications and that Defendants are not entitled to judgment in their favor on the pleadings.

Yu v. Brown, 36
F.Supp.2d 922
(1999)

NM

No

Child himself

Appendix Y:

States with Rules Identical to FRCP 4¹ - Draft

By: Tarja Cajudo and Leslye E. Orloff

February 8, 2018

Question: Which states have rules of civil procedure that use near the exact language of FRCP 4 (e)(2)(B)?

FRCP 4 – “leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there;” “or delivering a copy of each to an agent authorized by appointment or by law to receive service of process”

All states use near the exact language of FRCP 4(e)(2)(B) except the following: Kentucky, Mississippi, Montana, New Hampshire, and New York. Of these five states, all except one permit some kind of service by mail similar to that permitted in FRCP 4(E)(2)(B). Only New Hampshire lacks a similar provision.

Alabama – Alabama Rules of Civil Procedure with District Court Modification, Rule 4 Process

Yes – Rule 4(c)(1) permits service upon an individual by serving the individual or by leaving a copy of the summons and the complaint at the individual’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an authorized agent. . .”

Alaska – Alaska Court Rules, Rules of Civil Procedure, Rule 4 Process

Yes – Rule 4(d)(1) permits service by delivering a copy of the summons and of the complaint to the individual personally, or by **leaving copies** thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Arizona – Arizona Revised Statutes Annotated

Yes – Rule 4.1(d)(2) permits service by **leaving a copy** of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Arkansas – Arkansas Rules of Civil Procedure; Rule 4 Summons

Arkansas Code Annotated § 16-19-506 permits service by **Leaving a copy** of such summons at the usual place of abode of the defendant with some person who is a member of his family over the age of fifteen (15) years; or (3) Reading it to and in the presence of the defendant.

(8)(A)(i) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5), and (7) of this subdivision (d) may be made by the plaintiff or an attorney of record for the

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

plaintiff by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. The addressee must be a natural person specified by name, and the agent of the addressee must be authorized in accordance with U.S. Postal Service regulations. However, service on the registered agent of a corporation or other organization may be made by certified mail with a return receipt requested.

California Code of Civil Procedure § 4510.20.

Yes – § 4510.20 permits service by **leaving a copy** of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof.

(a) In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

§ 415.30

(a) A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.

Colorado – Colo. R. Civ. Proc. Rule 4 Process

Yes – Rule 4(e) permits service by **leaving a copy** thereof at the person's usual place of abode, with any person whose age is eighteen years or older and who is a member of the person's family, or at the person's usual workplace, with the person's supervisor, secretary, administrative assistant, bookkeeper, human resources representative or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process.

Connecticut – Civil Process, Service and Time for Return

Yes - § 52-54 permits service by **leaving** an attested **copy** thereof with him or at his usual place of abode. When service is made by **leaving** an attested **copy** at the defendant's usual place of abode, the officer making service shall note in his return the address at which such attested copy was left.

Washington D.C. – District of Columbia State Rules Superior Court Rules of Civil Procedure

Yes – Rule 4 permits service by **leaving a copy** of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Delaware – West's Delaware Code Annotated Delaware Rules of Court, Rule 4 Process

Yes – Rule 4(f)(1)(I) permits service by **leaving copies** thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.

Florida – West’s Florida Statutes Annotated, Civil Practice and Procedure § 48.031

Yes - § 48.031 permits service by **leaving** the **copies** at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided in this section.

Georgia – Civil Practice – Title 9, § 9-11-4 Process

Yes - § 9-11-4 permits service by **leaving copies** thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

Hawaii – Civil Remedies and Defenses and Special Proceedings

Yes – Rule 4(d)(1) permits service by **leaving copies** thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or (B) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

Idaho – Proceedings in Civil Actions in Courts of Record

Yes – Rule 4(d)(1)(B) permits service by **leaving a copy** of each at the individual's dwelling or usual place of abode with someone at least 18 years old who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Illinois – Civil Procedure, West’s Smith-Hurd Illinois Compiled Statutes Annotated, 5/2=203 Service on Individuals

Yes - §2-203 permits service by **leaving a copy** at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode

Indiana – West’s Annotated Indiana code, Court Rules (Civil), Rules of Trial Procedure

Yes – Rule 4.1 permits service by **leaving a copy** of the summons and complaint at his **dwelling** house or **usual place of abode**; or (4) serving his agent as provided by rule, statute or valid agreement.

Iowa – Civil Procedure – Subtitle 3 Commencement of Actions

Yes – Rule 1.305 permits service by serving, at the **individual’s dwelling** house or **usual place of abode**, any person residing therein who is at least 18 years old

Kansas – West’s Kansas Statutes Annotated, Ch 60 Procedure, Civil, Art 3 Process

Yes - § 60-303 permits service by **leaving a copy** of the process and petition or other document at the **individual's dwelling** or **usual place of abode** with someone of suitable age and discretion who resides there.

Kentucky – Baldwin’s Kentucky Revised Statutes Annotated, Rules of Civil Procedure

No – CR 4.01 permits service by [p]lac[ing] a copy of the summons and complaint (or other initiating document) to be served in an envelope, address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party, affix adequate postage, and place the sealed envelope in the United States mail as registered mail or certified

mail return receipt requested with instructions to the delivering postal employee to deliver to the addressee only and show the address where delivered and the date of delivery. . . . Service by registered mail or certified mail is complete only upon delivery of the envelope. The return receipt shall be proof of the time, place and manner of service.

Louisiana – West’s Louisiana Statutes Annotated, Louisiana Code of Civil Procedure, Citation and Service of Process, Service on Persons

Yes – Art. 1234 permits domiciliary service when a proper officer leaves the citation or other process at the **dwelling** house or **usual place of abode** of the person to be served with a person of **suitable age** and **discretion** residing in the domiciliary establishment.

Maine – Main Revised Statutes Annotated, Maine Rules of Court, Rules of Civil Procedure

Yes – Rule 4 permits process by by **leaving copiesthereof** at the **individual's dwelling** house or **usual place of abode** with some person of **suitable age** and **discretion** then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

Maryland – West’s Annotated Code of Maryland, Courts and Judicial Proceedings, Process

Yes - § 6-312 permits service by **leaving copies** of the summons and complaint at the defendant's **dwelling** house or **usual place of abode** with a person of **suitable age** and **discretion** residing at the **dwelling** house or **place of abode** or by delivering a copy of the summons and the complaint to an agent authorized by appointment or law to receive service of process.(2) Any service under this subsection is as effective as actual personal service. (3) The method of service provided in this subsection is in addition to and not exclusive of any other means of service that may be provided by statute or rule for obtaining jurisdiction of a defendant.

Massachusetts – Massachusetts Rules of Civil Procedure, Rule 4

Yes – Rule 4 permits service by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by statute to receive service of process, provided that any further notice required by such statute be given.

Michigan – Michigan Compiled Laws Annotated, Civil Procedure, Rule 2.105 Process; Manner of Service

Yes – but without using quite the same language. *See* Rule 2.105 stating (2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

Minnesota Rules of Civil Procedure 4.05 Service by Mail

Yes – Rule 4.03 permits service by **leaving a copy** at the individual's **usual place of abode** with some person of **suitable age** and **discretion** then residing therein.

Mississippi – Mississippi Rules of Civil Procedure

Yes – but without using quite the same language. *See* Rule 4 stating (A) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (4) of subdivision (d) of this rule by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the

person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 1-B and a return envelope, postage prepaid, addressed to the sender.

Missouri – Civil Procedure and Limitations

Yes – §506.150 permits service by **leaving a copy** of the summons and of the petition at his **dwelling** house or **usual place of abode** with some person of his family over the **age** of fifteen years, or by delivering a copy of the summons and of the petition to an agent authorized by appointment or required by law to receive service of process;

Montana – Civil Procedure

Yes – but without using quite the same language. *See* Rule 4(d)(3)(A) A summons and complaint may also be served by mailing via first class mail, postage prepaid, the following to the person to be served: (i) a copy of the summons and complaint; (ii) two copies of a notice and acknowledgment conforming **substantially** to [form 18-A](#); and (iii) a return envelope, postage prepaid, addressed to the sender.

Nebraska - Courts; Civil Procedure

Yes - § 25-505-01 permits service by **leaving the summons** at the **usual place of residence** of the individual to be served, with some person of suitable age and discretion residing therein;

Nevada – Justice Courts and Civil Procedure

Yes – Rule 4(d)(6) permits service by **leaving copies** thereof at the defendant's **dwelling** house or **usual place of abode** with some person of suitable **age** and **discretion** then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

New Hampshire – Proceedings in Court

No. *See* N.H. Rev. Stat. § 514.5 Personal Service, stating If it appears to the municipal court that personal service can be made upon the defendant in this state the justice may continue such action for at least twenty-eight days, and order personal service of such notice on the defendant fourteen days at least before the date to which such action is continued.

New Jersey – Administration of Civil and Criminal Justice

Yes – Rule 4:4-4 permits service by **leaving a copy** thereof at the individual's **dwelling place** or **usual place of abode** with a competent member of the household of the age of 14 or over then residing therein, or by delivering a copy thereof to a person authorized by appointment or by law to receive **service of process** on the individual's behalf;

New Mexico – West’s New Mexico Statutes Annotated, State Court Rules, Rules of Civil Procedure for the Dist. Cts.

Yes – Rule 1.004(F)(2) permits service by delivering a copy of the process to some person residing at the usual place of abode of the defendant who is over the age of fifteen (15) years and mailing by first class mail to the defendant at the defendant's last known mailing address a copy of the process;

New York – Civil Practice Law and Rules § 308 Personal Service Upon a National Person

Yes – but without quite the same language. *See* § 308, permitting service by delivering the summons within the state to a person of **suitable age** and discretion at the actual place of business, **dwelling** place or **usual place of abode** of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be

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served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other

North Carolina – Civil Procedure, Rules of Civil Procedure

Yes – Rule 4(J)(1)(a) permits service by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

North Dakota – North Dakota Rules of Civil Procedure

Yes – Rule 4(d)(2)(ii) permits service by **leaving a copy** of the summons at the individual's **dwelling** or **usual place** of residence in the presence of a person of **suitable age** and discretion who resides there;

Ohio – Baldwin’s Ohio Revised Code Annotated, Rules of Civil Procedure

Yes – Civ. R. 4.1(c) permits service by **leaving a copy** of the **process** and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of **suitable age** and discretion then residing therein.

Oklahoma – Civil Procedure

Yes – §2004(C)(1)(c) permits service by **leaving copies** thereof at the person's **dwelling** house or **usual place** of **abode** with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the petition to an agent authorized by appointment or by law to receive **service of process**

Oregon – Procedure in Civil Proceedings (Chs. 12-36)

Yes – ORCP 7(D)(1) permits service by **leaving true copies** of the summons and the complaint at a person's **dwelling** house or **usual place** of **abode**; office **service** by **leaving true copies** of the summons and the complaint with a person who is apparently in charge of an office; **service** by mail; or **service** by publication.

Pennsylvania – civil procedure

Yes – but without quite the same language. *See* Rule 402(2)(i) stating that process may be served by handing a copy (i) at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence;

Rhode Island – civil procedure

Yes – Rule 4(e)(1) permits service by **leaving copies** thereof at the individual's **dwelling** house or **usual place** of **abode** with some person of **suitable age** and discretion then residing therein

South Carolina – Civil Procedure

Yes – Rule 4(d)(1) permits service by **leaving copies** thereof at his **dwelling** house or **usual place** of **abode** with some person of **suitable age** and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive **service of process**.

South Dakota – Civil Procedure

Yes – SDCL §15-6-4(e) permits service by **leaving a copy** at the defendant's **dwelling** with someone over the age of fourteen years who resides there.

Tennessee – Civil procedure, civil procedure in general sessions courts

Yes – Rule 4.04(1) permits service by **leaving copies** thereof at the individual's **dwelling** house or **usual place of abode** with some person of **suitable age** and discretion then residing therein, whose name shall appear on the proof of **service**

Texas – civil procedure and remedies code

Yes – Rule 106(b)(1) permits service, Upon motion supported by affidavit stating the location of the defendant's **usual place** of business or **usual place of abode** or other **place** where the defendant can probably be found and stating specifically the facts showing that **service** has been attempted under either (a)(1) or (a)(2) at the location named in such affidavit but has not been successful, the court may authorize **service**, by **leaving** a true **copy** of the citation, with a copy of the petition attached, with anyone over sixteen years of **age** at the location specified in such affidavit,

Utah – civil procedure

Yes – Rule 4(d)(1)(A) permits service by leaving them [copy of the summons and complaint] at the individual's **dwelling** house or **usual place of abode** with a person of **suitable age** and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive **process**;

Vermont – court procedure

Yes – Rule 4(d)(1) permits service by **leaving copies** thereof at the individual's **dwelling** house or **usual place of abode** with some person of **suitable age** and discretion then residing therein

Virginia – Civil Remedies and Procedure

Yes - §8.01-296 permits service by delivering a copy of such **process** and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the **age** of 16 years or older

Washington – Civil Procedure

Yes - Rule 4.28.080(16) permits service by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

West Virginia – Actions, Suits and Arbitration, Pleading and Practice, Evidence and Witness

Yes – Rule 4(d)(1)(B) permits service by Delivering a copy of the summons and complaint at the individual's **dwelling** place or **usual place of abode** to a member of the individual's family who is above the **age** of sixteen (16) years and by advising such person of the purport of the summons and complaint

Wisconsin – Civil Procedure (Chs. 801-847)

Yes – Rule 801.11 permits service by **leaving a copy** of the summons at the defendant's **usual place of abode**: 1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof; 1m. In the presence of a competent adult, currently residing in the **abode** of the defendant, who shall be informed of the contents of the summons

Wyoming – Code of Civil Procedure

Yes – Rule 4(e)(2) permits service by **leaving copies** thereof at the individual's **dwelling** house or **usual place of abode** with some person over the **age** of 14 years then residing therein,

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Appendix Z

Glossary of Terms¹

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To understand immigration law, it is crucial for an attorney, victim advocate, judge, law enforcement officer and/or prosecutor to understand the most commonly used terminology. The following brief descriptions of terms are relevant to assisting adult and child immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, elder abuse, and immigrant children who have suffered child abuse, abandonment or neglect. The terms are organized alphabetically.

A# - Immigration case file number that is assigned to an individual that applies for an immigration benefit or when any form of immigration enforcement action has been initiated against them. This is a number made up of eight digits (beginning with A).

Adjustment of Status – An individual with an approved immigrant visa (family, employment, diversity lottery, special immigrant juvenile, special immigrant religious worker), or an approved self-petition under VAWA may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a “green card”*, see definition below) and will become a lawful permanent resident.

A-File – This is the immigration case file created by DHS. It contains the immigrant’s “Alien Registration Number,” which is the immigration case file number. This number always starts with the letter “A”. All foreign born persons who have attained legal immigration status, naturalized or ever been detained or placed in immigration court proceedings will have “A” numbers. Finding a safe way to attain or copy down this number can be very helpful when an immigrant victim is abused by an immigrant spouse, parent or family member.

Alien – This is a term that is offensive to some, but should be understood in the context of how the term is used in the Immigration and Nationality Act, other statutes, the code of federal regulations, and the Department of Homeland Security or other government policy memoranda. The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term

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covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Asylum – Asylum is humanitarian immigration relief given to individuals present in the United States who meet the requirements for “refugee” status. (*See “Refugee” definition below.*) In general, asylum seekers must file within one year of first entering the U.S. although an applicant may qualify for an exception to this rule. If an asylum seeker’s application is not approved by DHS, she will automatically be referred to immigration enforcement authorities and placed in removal proceedings where she will have the opportunity to renew her asylum application before an immigration judge. Denial of an asylum application by an immigration judge results in an order of removal from the United States. See Chapter ____ on Asylum.

Attorney General – A reference that may, in fact, actually mean the Secretary of Homeland Security. While the Homeland Security Act of 2002² transferred functions of the Immigration and Naturalization Service (INS) from the Department of Justice to the Department of Homeland Security, it did not change every authority-delegation reference in the Immigration and Nationality Act (INA) and other laws. Instead, it included a savings provision³ stating that statutory, regulatory, and other references relating to an agency that is transferred to DHS, or delegations of authority that precede such transfer shall be deemed to refer, as appropriate, to DHS (and its officers), or to its corresponding organizational units.

Battered Spouse Waiver – Conditional permanent residents who are victims of abuse may be able to get a waiver to exempt them from needing their spouse’s signature on their petition to remove the conditions on their status and become a lawful permanent resident. The applicant must also prove that their marriage to a United States citizen was entered into in good faith. They must submit an affidavit containing information about their relationship and a declaration regarding the abuse. They should also submit any other evidentiary support for the abuse that they may have.⁴ [See “Conditional Permanent Residence”].

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. “*Battery or extreme cruelty*” is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.⁵ These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.⁶

Bona Fide T-Visa⁷ -- The bona fide determination is a DHS determination that a T-visa application is complete and establishes prima facie eligibility for a T visa. DHS makes this determination early on in the adjudication. Receipt of a bona fide determination allows T visa applicants to obtain certification from HHS which allows them to access public benefits.

² Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002); *see* INA § 245; 8 USC §1255 (regarding the bases of eligibility and ineligibility).

³ Homeland Security Act at §1512(d).

⁴ *See* Cecilia Olavarria & Moria Fisher Preda, *Chapter 3.5 Additional Remedies Under VAWA: Battered Spouse Waiver*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, BREAKING BARRIERS (2015), <http://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver/>.

⁵ *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while “extreme cruelty” refers to “all other nonphysical manifestations of domestic abuse”).

⁶ *See* 8 C.F.R. § 204.2(c)(1)(vi) (CIS regulations defining “battery and extreme cruelty”). *See also* Cecilia Olavarria & Moria Fisher Preda, *Chapter 3.5 Additional Remedies Under VAWA: Battered Spouse Waiver*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, BREAKING BARRIERS (2015), <http://niwaplibrary.wcl.american.edu/pubs/ch3-5-battered-spouse-waiver/>.

⁷ 8 C.F.R. §214.11.

Cancellation of Removal – Cancellation of removal is a discretionary form of relief that certain non-citizens in removal proceedings may request.⁸ If granted, cancellation of removal accords the applicant permanent resident status. Under VAWA, certain abused spouses, children, and parents of abused children are eligible for a special form of cancellation of removal when the abuser is a U.S. citizen or a lawful permanent resident.

Child – Under immigration laws the definition of child is different than under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and
- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.⁹

Civil Protection Order (CPO) – A justice system family court remedy initiated by a victim to protect herself/himself from future abuse. All persons are entitled to this protection regardless of immigration status. It is a particularly valuable remedy for battered immigrant women because it can be crafted to uniquely address and counter abuse, power, and control in her relationship.¹⁰ Since the victim initiates the process, she need not rely on the criminal courts and may obtain a CPO regardless of whether there is a criminal prosecution of her abuser. Protection orders may contain a wide range of remedies aimed at reducing ongoing abuse, control, and harassment. These may include: granting the victim custody of children and ordering the abuser to pay child support, ordering that the abuser leave the family home, prohibiting the abuser from contacting or harassing the victim's other family members, directing him to hand over important documents, including immigration documents to the victim, and not interfering with her immigration application. A victim can obtain an emergency or temporary protection order (also called TPO) that typically lasts 14- 30 days, as well as a full protection order that usually lasts 1-3 years and is renewable. (Please note: law differs by state).

Conditional Permanent Residence – When immigrants who are spouses of U.S. citizens are married for less than two years at the time of their interview with DHS to receive permanent residency, DHS grants them conditional permanent residency instead of full, unrestricted lawful permanent residency. This requirement was created to prevent marriage fraud. While most conditional permanent residents immigrate to the U.S. through marriage to a U.S. citizen, some immigrant investors are also given conditional permanent residence and are also subject to the two-year filing requirement.

A conditional permanent resident has all the privileges of a lawful permanent resident, but has only a temporary status for two years. A conditional permanent resident must file a petition to remove conditions two years after becoming a conditional permanent resident. This petition is filed using Form I-751. Generally the petition to remove conditions must be filed jointly with both spouses signing the form. However, if a joint petition is not possible due to divorce, domestic violence, or extreme hardship, the conditional permanent resident may file a request for a waiver of the joint-petition filing requirement.¹¹ (See “battered spouse waiver”). Spouses of

⁸ ICE is the agency charged with the enforcement of immigration laws.

⁹ INA §101(b)(1), 8 U.S.C. §1101(b)(1) (Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories).

¹⁰ See Leslye E. Orloff, Laura Martinez, Soraya Fata, Rosemary Hartman & Angela Eastman, *Chapter 14: Protection Orders for Immigrant Victims of Sexual Assault*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), <http://niwaplibrary.wcl.american.edu/pubs/ch14-protectionorders-sa/>.

¹¹ INA § 216(c)(4); 8 U.S.C. § 1186(c)(4).

lawful permanent residents generally do not receive conditional permanent status because by the time their priority date comes up (see definition below), they usually have been married for more than two years, and thus receive full lawful permanent residency.

Continuous Physical Presence – This term refers to the requirement that an immigrant must show that they have continuously lived in the United States, without leaving the country, for a specified period of time in order to qualify for certain forms of relief. Continuous Physical Presence must be proven in order to establish eligibility for various forms of immigration relief, including adjustment of status to a lawful permanent resident based on a T visa, U visa, and cancellation of removal (including VAWA cancellation of removal).

Continued Presence – Continued Presence is a temporary form of protection provided to certain victims of a severe form of trafficking. Continued presence is technically not an immigration status, but rather refers to the government’s use of a variety of mechanisms, such as deferred action and parole, to protect a victim from removal in the short-term. Victims can not directly request Continued Presence, but rather it must be requested by federal law enforcement officials on behalf of the victim. Continued Presence allows the victim to receive work authorization as well as certification through HHS for access to public benefits and social services.

Cuban Adjustment Act of 1966 – The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth provided that they are residing with their spouse or parent who is a Cuban Adjustment Act applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.¹² (See VAWA section at end of this chapter).

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

Deferred Action Status – Deferred Action Status is an agreement by Department of Homeland Security personnel that they will not take action to remove (deport) an individual from the United States. It is an exercise of prosecutorial discretion making the immigrant’s case a lower priority for removal. Deferred action does not however, give the immigrant victim any form of legal immigration status.¹³ In VAWA self-petitioning cases this status is often granted along with approval of the VAWA self-petition. U visa victims receiving interim relief are also granted deferred action status. In trafficking cases deferred action is assessed as part of continued presence. Once a victim obtains their U visa, T visa or their lawful permanent residency based on their approved VAWA self-petition, they no longer need deferred action status to avoid deportation and remain legally in the United States. Deferred action status in cases of VAWA, T and U visa victims is granted by the VAWA unit at the Vermont Service Center. (See VAWA Unit).

¹² “An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or 2 years after the date of enactment of VAWA 2005, whichever is later), or for 2 years after the date of termination of the marriage (or 2 years after the date of enactment of VAWA of 2005, whichever is later) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien.” VAWA §823 2005.

¹³ “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

Deferred Action for Childhood Arrivals (DACA) – DACA provides temporary protection from deportation and work authorization for a period of two years for immigrants who meet the following criteria: Were under the age of 31 on June 15 2012;; arrived in the U.S. before their 16th birthday; are over 15 at the time of their application for DACA; entered the U.S. without inspection before or were without legal immigration status on June 15, 2012; have continuously resided in the United States since June 15, 2007; are currently attending high school or have graduated from high school, have a GED or honorably served in the armed forces; have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors; and do not pose a threat to public safety or national security.

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees adjudications of immigration benefits. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol (“CBP”) is the division that oversees borders and ports.

Derivative – The “derivative” is a term describing specified family members that an applicant for immigration relief can as a matter of law ask DHS to grant legal immigration status as part of the immigrant’s application. These family members are able to obtain lawful immigration status by virtue of the immigrant applicant’s qualification for immigration relief. Each type of immigration benefit specifies in the statute which family relationships, if any, can gain legal immigration status based on the immigration application being filed. Which family members can apply varies depending on the type of immigration benefit or benefits that a victim qualifies to receive. The family relationships that often qualify for immigration benefits as “derivatives” typically include the applicant’s spouse or child. If the applicant is under 21 years old, the family members they most often could include in their applications are their parent and/or their siblings who are under 21 years of age and unmarried. VAWA self-petitioners and T and U visa applicants can help certain family members attain legal immigration status through their immigration case. When victims qualify for multiple forms of immigration benefits, which family members can apply along with the victim can be a factor in the victim’s decision about which immigration benefit to apply for.

Department of Homeland Security (DHS) – This department administers and enforces the immigration laws. There are seventeen components to the department, including Immigration and Customs Enforcement (ICE), Citizen and Immigration Services, (CIS), and Customs and Border Protection (CBP).

Deportation – This term was used prior to 1996 to describe what is now called removal. (*See “removal” explanation below*).

Documented immigrants – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants¹⁴ include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

Emergency Medicaid – Emergency Medicaid is available in all cases where a person needs treatment for medical conditions with acute symptoms that could place a patient's health in serious jeopardy, result in serious impairment of bodily functions, or cause dysfunction of any bodily organ or part.¹⁵ This definition includes all

¹⁴ Immigration experts may refer to immigrants with these visas as “non-immigrants.”

¹⁵ Social Security Act, Title XIX § 103(v)(3), 42 U.S.C. § 1396b(v)(3).

labor and delivery during childbirth. Emergency medical assistance must be provided to all immigrants regardless of their immigrant status.

Employment Authorization – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U-visas allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a “stand alone” benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status. There is special employment authorization available for battered spouses of immigrants who come to the United States under specified work related visas – “A” visas (diplomats); “E(iii)” visas (Australian Investor); “G” visas (international organization); or “H” visas (temporary workers).¹⁶

Employment Based Petitions¹⁷ – The eligible categories based on employment, as described by USCIS,¹⁸ are:

EB-1 Priority workers

- Foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics
- Foreign national that are outstanding professors or researchers
- Foreign nationals that are managers and executives subject to international transfer to the United States

EB-2 Professionals with advanced degrees or persons with exceptional ability

- Foreign nationals of exceptional ability in the sciences, arts or business
- Foreign nationals that are advanced degree professionals
- Qualified alien physicians who will practice medicine in an area of the U.S. which is underserved.

EB-3 Skilled or professional workers

- Foreign national professionals with bachelor's degrees (not qualifying for a higher preference category)
- Foreign national skilled workers (minimum two years training and experience)
- Foreign national unskilled workers

EB-4 Special Immigrants

- Foreign national religious workers
- Employees and former employees of the U.S. Government abroad

From the USCIS website “Working in the United States”¹⁹

Only a limited number of employment visas can be issued each year. Applicants may therefore have to wait several years between filing the application and the issuance of an employment based visa.

Executive Office for Immigration Review (EOIR) – A branch of the Department of Justice that includes the Board of Immigration Appeals (BIA), Office of the Chief Immigration Judge (and all the immigration judges), and the Office of the Chief Administrative Hearing Office (OCAHO).

¹⁶ INA § 106, 8 U.S.C. § 1106.

¹⁷ INA § 101(a)(15)(E), 8 U.S.C. § 1101(a)(15)(E) (2008).

¹⁸ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Permanent Workers* (Jun. 2017) <https://www.uscis.gov/working-united-states/permanent-workers> (last visited Mar. 30, 2018)

¹⁹ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *Permanent Workers* (Jun. 2017) <https://www.uscis.gov/working-united-states/permanent-workers> (last visited Mar. 30, 2018)

Extreme Hardship – Suffering extreme hardship is a requirement to obtain several different types of immigration relief,²⁰ such as cancellation of removal under VAWA. These forms of relief require proof of hardship over and above the general economic and social disruptions in an immigrant’s home country. The applicant must show that they would suffer extreme hardship if removed from the United States.²¹ Victimization related factors can be used as proof of extreme hardship for immigrant victims.²² Proof of extreme hardship is needed before an immigration judge will grant cancellation of removal under VAWA.

Family-Based Petition – A U.S. citizen or lawful permanent resident files a family-based visa petition to start the process that will enable his or her family member (spouse, child, parent, adult son or daughter, sibling) to immigrate, or lawfully remain, in the United States and become a lawful permanent resident. Family and employment based immigration applications have long processing times. When an application is filed for an immigrant visa the applicants are assigned a priority date for the immigration case (usually the date they filed). They must wait for their priority date to become current before they can apply for lawful permanent residency.

Fiancé(e)s of U.S. Citizen (K-1 visa) – An immigrant granted a fiancé visa (K-1 visa) is allowed to come to the United States to conclude a valid marriage with a U.S. citizen within 90 days after entry.²³

Food Stamps – The Food Stamps program provides vouchers to low-income individuals so that they can use the benefits to buy food. Food Stamps eligibility for most non-citizens was eliminated by PRWORA as of August 22, 1996. Battered immigrants who entered after August 22, 1996 must be in “qualified immigrant” status for five years in order to receive food stamps. All “qualified immigrant” children under 18 are immediately eligible for food stamps regardless of date of entry. It is important to note that for immigrant victim self-petitioners this means that undocumented children included in their mother’s self-petition are eligible to receive food stamps once their mother’s VAWA self-petition has received a prima facie determination.

Freedom of Information Act – The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records. FOIA carries a presumption of disclosure. If the government refuses to disclose information, it has the burden of explaining why that information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court. As part of a protection order, a family court case, or a bond order, courts can order an abuser who has filed immigration papers for his spouse, child, or parent to complete a FOIA request that releases information in the immigration case that was filed on the victim’s behalf by the abuser to the victim, her representative or lawyer.

²⁰E.g. hardship waiver of the two-year joint filing requirement INA §216(c)(4), 8 U.S.C. § 1186a(c)(4); See also Rebecca Story, Cecilia Olavarria & Moria Fisher Preda, *Chapter 9: VAWA Cancellation of Removal*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), <http://niwaplibrary.wcl.american.edu/pubs/ch9-vawa-cancellation-of-removal/>

²¹ For more information including the factors that can prove extreme hardship non-VAWA immigration cases See Rebecca Story, Cecilia Olavarria & Moira Preda, *Chapter 9: VAWA Cancellation of Removal*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), <http://niwaplibrary.wcl.american.edu/pubs/ch9-vawa-cancellation-of-removal/>

²² The following list of abuse related factors is provided in the VAWA cancellation regulations. 8 C.F.R. §§ 1240.20(c) and 1240.58(c): The nature and extent of the physical and psychological consequences of abuse ; the impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, , maintenance, child custody, and visitation); The applicant's or applicant's child's need for social, medical, mental health, or other supportive services, which would not be available or reasonably accessible in the foreign country; The existence of laws and social practices in the home country that would penalize the applicant or applicant's child for having been victims of domestic violence or have taken steps to leave an abusive household; The abuser's ability to travel to the home country, and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's child from future abuse; The likelihood that the abuser's family, friends, or others acting on the abuser's behalf in the home country would physically or psychologically harm the applicant or the applicant's children. Other factors can also contribute to Extreme Hardship (See Cancellation of Removal Chapter) See also INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

²³ INA §101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i); 8 CFR §214.2(k).

Good Faith Marriage – A marriage that is entered into between a US citizen or lawful permanent resident and an immigrant for the primary purpose and intent of building a life together as husband and wife. A marriage is not considered in good faith when the marriage was only for the purpose of gaining immigration benefits, citizenship or circumventing immigration laws.

Good Moral Character (GMC) – For many immigration remedies, it is necessary to show that a person has “good moral character” and has not committed certain crimes or engaged in other activities such as prostitution or illegal gambling. Good moral character is not precisely defined in the immigration laws, but Section 101(f) of the Immigration and Nationality Act lists certain acts that preclude someone from establishing good moral character.

Green Card (Lawful Permanent Resident Card) – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may be permanent “10-years”. Although these cards on their face state that they end in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. The application for a new card needs to be filed before the old card expires. Some immigrant victims seeking help will have a lawful permanent residency card with an end date two years after the card was issued. These immigrant victims have “conditional permanent residency”, and may qualify for a “battered spouse waiver” and will not need to file a “VAWA self-petition.” See “adjustment of status,” “conditional permanent residency,” “Self-petition,” and “battered spouse waiver.”

Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) – HRIFA provides that Haitians (natives, citizens, and nationals) who were continuously physically present in the United States since before December 1, 1995, can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See “continuous presence”). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA. (See VAWA self-petitioning below).

The Hague Convention on the Civil Aspects of International Child Abduction Convention²⁴ - the “Hague Convention” is a treaty that was created to assist in the prevention of *international* child abduction and the return of abducted children. Currently, at least 54 member countries have signed the Convention.²⁵ The treaty only applies between countries when both countries are parties to the Convention. If a country has not formally joined the Hague convention, the treaty does not apply, and a parent must use alternate methods to have the child returned. Parents, rather than governments, must institute legal proceedings on their own to seek the safe return of their children. To invoke the convention, a child must be “wrongfully removed or retained” from his or her “habitual residence”, the abduction must be reported within one year of the abduction, and the child must be below the age of sixteen. The parent must then file an application seeking the return of the child with authorities

²⁴ Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89

²⁵ For an up-to-date list, see http://travel.state.gov/family/abduction/hague_issues_1487.html. Member States include: Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong and Macau only), Columbia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom (Bermuda, Cayman Islands), United States, Uruguay, Venezuela, and Zimbabwe.

of the foreign country and seek legal representation in the country where the child has been abducted to pursue legal action through that country's legal system.

Immediate Relative – For the purposes of a family-based visa petition and a self-petition under VAWA, this term means the children under 21 years, spouse and parent of a U.S. citizen, or the parents of an adult U.S. citizen (21 years and over). Because of their close relationship to U.S. citizens, they are allowed to immediately file for lawful permanent residence once they have an approved immigrant visa, and are exempt from the numerical limitations (that cause waiting lists) imposed on immigration to the United States.

Immigration and Customs Enforcement (ICE) – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. Composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by CUSTOMS AND BORDER PROTECTION (CBP), ICE is a subdivision of the Directorate of BORDER AND TRANSPORTATION SECURITY, the other two being CBP and the Transportation Security Administration. Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

Immigrant Visa – An individual born outside of the United States, who is eligible, may apply for an immigrant visa, allowing him or her to legally enter the U.S. and remain here indefinitely as a permanent resident. (See “non-immigrant visa” for legal immigration status to remain temporarily).

Immigration and Nationality Act (INA) – The primary federal statute that governs the process of immigration and the treatment of immigrants in the United States.

Immigration Judge (IJ) – The person responsible for presiding over immigration court proceedings.²⁶ Immigration judges are employed by the Executive Office for Immigration Review (EOIR); a division of the Department of Justice.

Inadmissibility (INA section 212(a)); Grounds of – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. The Attorney General, through an immigration judge, will make a ruling when admissibility/inadmissibility is a factor in a case that is in immigration court. An immigration officer deciding cases (e.g. visa applications, VAWA self-petitions) for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

Inspection – The process that all persons must go through when they arrive at the U.S. border, at airports, at seaports and at pre-flight inspection stations. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, PAROLED into the country, or allowed to withdraw their application for admission and depart voluntarily.

Intended Spouse- An intended spouse is a term that relates to Violence Against Women Act (VAWA) immigration cases and is an abused immigrant who believed in good faith at the time they married their abusive U.S. citizen or lawful permanent resident spouse that the abusive spouse was eligible to marry and was not in a previous marriage that had not been legally terminated. The intended spouse of a citizen or lawful permanent resident abuser who was a bigamist can qualify for VAWA immigration relief if they can prove they unknowingly married a bigamist, that a marriage ceremony was actually performed.

²⁶ INA §101(b)(4), 8 U.S.C. § 1101(b)(4); INA § 240, 8 U.S.C. §1229a.

Lawful Permanent Residency (LPR) – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. Naturalization protects against deportation and therefore victims should be encouraged to naturalize as soon as eligible. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See “adjustment of status.”

Legacy INS – A reference to the Immigration and Naturalization Service (*e.g.*, “a legacy INS memo”) that acknowledges its status as the predecessor to the DEPARTMENT OF HOMELAND SECURITY.²⁷

Medicaid and State Child Health Insurance Program (SCHIP)²⁸ – The Medicaid program provides health insurance to low-income individuals. The State Child Health Insurance Program (SCHIP) provides health care to low-income children. Under PRWORA, most individuals who entered the United States after August 22, 1996, are barred from receiving all non-emergency Medicaid for the first five years after they become qualified immigrants.²⁹

NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997³⁰

VAWA NACARA 202 creates self-petitioning for Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers who are unable to adjust their status to lawful permanent residency due to their abuser’s failure to file for lawful permanent residency for himself. The battered spouse or child must have been physically present in the United States on the date the application is filed (which must have been before July 5, 2007).

VAWA NACARA 203 self-petitioning offers protection from deportation and access to lawful permanent residence for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend or cancel the removal.

Naturalization – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in

²⁷ New Jargon Alert: “Legacy INS” ” posted on AILA Info-Net. Doc. No. 03060442 (June 4, 2003).

²⁸ See 8 U.S.C. § 1641 (2004) for the definition of Qualified Alien, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, A.G. Order No. 2353-2001. 66 Fed. Reg. 3,613 (Jan. 16, 2001) (specifying emergency Medicaid Eligibility)

²⁹ Whether an immigrant victim of sexual assault or domestic violence will qualify for Medicaid covered health care services will depend on the victim’s immigration status, when they attained any legal immigration status, their state of residence and date of first entry into the United States. Persons who attained “qualified alien” including legal permanent resident status before August 22, 1996 will have the most access to Medicaid funded health care services. VAWA self-petitioners are an example of persons who may qualify but may have to wait 5 years if they entered the U.S. after 1996. Some states have chosen to offer access to funded health care to “qualified immigrants” who otherwise would have to wait 5 years. Other states offer funded health care to persons “permanently residing in the United States under color of law” which would include immigrant victims of sexual assault who have received interim relief in U visa cases. For further information and state-by-state charts on health care options for immigrant victims, see chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”. For state-by state chart on access to a range of public benefits see NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

³⁰ See *Appendix B: Special Immigrant Juvenile Status Legislative History*, 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), <http://niwaplibrary.wcl.american.edu/pubs/appendix-b-sijs-legislative-history/>.

the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency. Other immigrants have to wait 5 years to file for naturalization. Immigrant victims who attain lawful permanent residency through VAWA can file to naturalize after 3 years (3 years only applies to petitioners who had USC abusers and LPR abusers).

Non-immigrant Visas – “Non-immigrant” visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an “immigrant” visa. (See “immigrant visa.”) Many different classes of non-immigrant visas are available to individuals intending to enter the United States temporarily. (*See examples and explanations below under “visa”*).

Notice to Appear (NTA) – A document issued by the Department of Homeland Security to commence immigration removal proceedings against an immigrant in immigration court.³¹ The Notice to Appear³² is usually issued by an immigration enforcement official and served on the immigrant who DHS believes is not legally present in the United States. If an immigrant victim has been arrested or detained by immigration officials, the NTA will often be issued and served on the immigrant before the immigrant victim is released from DHS custody. Once the NTA has been issued it has to be filed with the immigration court for removal proceedings to be opened against an immigrant.³³

ORR – Department of Health and Human Services Office of Refugee Resettlement (ORR). The Office of Refugee Resettlement oversees refugee resettlement assistance programs and programs for victims of trafficking. This assistance includes, among other things, cash and medical assistance, employment preparation and job placement, skills training, English language training, legal services, social adjustment and aid for victims of torture.³⁴

Parental Kidnapping Prevention Act (PKPA)³⁵ – The Parental Kidnapping Protection Act (PKPA) was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. As part of the Violence Against Women Act of 2000, the PKPA’s definition of “emergency jurisdiction” was broadened to cover domestic violence cases consistent with the UCCJEA, which is the Uniform Child Custody Jurisdiction and Enforcement Act³⁶ (see explanation below under this term). The PKPA tells courts when to honor and enforce custody determinations issued by courts in other states or Native American tribal jurisdictions. Unlike the UCCJEA, the PKPA does not instruct courts as to when they should exercise jurisdiction over a new custody matter. Instead, the court must follow the PKPA when 1) they are deciding whether to enforce a custody determination made by a court in another state or tribe; 2) they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction, and 3) they are asked to modify an existing custody or visitation order from another jurisdiction.

Parole – Parole is permission by the Department of Homeland Security that allows an immigrant to physically

³¹ INA §239, 8 U.S.C. § 1229.

³² The Notice to Appear replaced the Order to Show Cause previously used to initiate deportation cases.

³³ Notices to Appear that have been issued in violation of VAWA confidentiality statutory protections can be cancelled. See Leslye E. Orloff, *Chapter 3: VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT & LEGAL MOMENTUM, EMPOWERING SURVIVORS (2015), <http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>.

³⁴ For more information, please see <http://www.acf.hhs.gov/programs/orr/mission/functional.htm>.

³⁵ See 28 U.S.C. § 1738A (2000).

³⁶ The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is newer legislation enacted in many states to update the prior Uniform Child Custody Jurisdiction Act. As of June 2007, the UCCJEA has been enacted in 46 states, the District of Columbia, and U.S. Virgin Islands. As of June 2007, four states have not yet adopted the UCCJEA: Massachusetts, Missouri, New Hampshire and Vermont. Uniform Family Law Update, June 2007, <http://nccusl.org/Update/Docs/JEBUFL/Jun%2007%20JEB%20Newsletter.pdf>. These states instead continue to use their prior version of the Uniform Child Custody Jurisdiction Act.

enter the United States temporarily for urgent humanitarian reasons or for significant public benefit. The entry is not a formal admission to the United States.³⁷ VAWA victims applying from abroad can receive parole into the United States once their application has been approved. This provision can also be used to help bring their children or other family members who qualify for VAWA relief into the country.

Permanent Resident – See “Lawful Permanent Resident.”

Prima Facie Determination – Battered immigrants filing VAWA self-petitions who can establish a "prima facie" case are considered "qualified aliens" for the purpose of eligibility for public benefits. The VAWA Unit of the Vermont Service Center at the Department of Homeland Security reviews each petition initially to determine whether the self-petitioner has addressed each of the requirements necessary to receive a self-petition. If DHS officials believe she has set forth a valid case they issued an order that is called a prima facie determination. If DHS makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination. The notice provides evidence of immigration status that may be presented to state and federal agencies that provide public benefits.

Priority Date – The date that the application for an immigrant visa is filed becomes the priority date to establish an immigrant’s place in line to wait for a visa and to determine when the person can apply for lawful permanent residency. This means the date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person’s priority date is the date on which he or she filed the family-based visa petition.³⁸ If the immigrant relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the immigrant visa petition is filed.³⁹ In VAWA self-petitioning cases immigrant victims can use as their priority date the date that their abusive citizen or lawful permanent resident spouse or parent filed any prior family based visa petition for them, whether or not that case was ever decided and whether or not that case was withdrawn by the abuser. This allows the immigrant victim to resume the place in line they would have had if their abuser had not withdrawn or had followed through on the original family-based visa petition.

PRUCOL⁴⁰ – PRUCOL stands for "permanently residing in the United States under color of law." PRUCOL is a term that generally describes immigrants whom the Department of Homeland Security (DHS) knows are in the United States, but whom the DHS is not taking steps to deport or remove from the country. Some states extend access to health care and some other public benefits to PRUCOL immigrants.⁴¹

PRWORA and IIRAIRA – The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform Act)⁴² and the Illegal Immigration Reform and Immigration Responsibility Act

³⁷ INA §212(d)(5)(A); 8 USC §1182(d)(5)(A); 8 C.F.R. § 212.5.; New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

³⁸ 8 C.F.R. §204.1(c).

³⁹ 8 C.F.R. §204.5(d).

⁴⁰“Permanently Residing Under Color Of Law”-Prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.) those who were permanently residing in the United States under color of law (PRUCOL’s) were eligible to receive federal public benefits. This group consisted of immigrants whom CIS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state-funded Temporary Assistance for Needy Families (TANF) for PRUCOL’s. See NATIONAL IMMIGRATION LAW CENTER, *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws -- State Responses*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 2-1, 14 (1998).

⁴¹ See Leslye Orloff, Amanda Baran, & Phoebe Mounts, *Chapter 17: Access to Health Care for Immigrant Victims of Sexual Assault*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014) <http://niwaplibrary.wcl.american.edu/pubs/ch17-accesshealthcare/>.

⁴²PRWORA see supra note 95.

of 1996 (IIRAIRA)⁴³ substantially altered most immigrants' eligibility to receive many public benefits. These laws eliminated eligibility for most immigrants for Supplemental Security Income (SSI)⁴⁴ and Federal Food Stamps, limited access to certain other federal programs (including Medicaid funded health care), and gave states the discretion to determine whether immigrants can qualify for state and local public benefits programs.

Public Charge – This term describes immigrants who at the time of admission are likely to become primarily dependent on the U.S. government for financial support because of their health, education, assets, or family status.⁴⁵ If an immigrant is deemed likely to become a public charge they are thereby inadmissible.⁴⁶ Immigration officials and immigration judges are barred from considering any public benefits received by immigrant victims who attained immigration relief through VAWA or victims eligible for immigration benefits related to their having been victims of family violence in making public charge determinations.⁴⁷ Likewise, DHS does not consider public benefits received by trafficking victims when making public charge determinations.

Qualified Immigrant – Category created by PRWORA solely to assess eligibility for public benefits purposes. Inclusion in this category is determined by immigration status. Qualified immigrants have more access to federal public benefits than many other immigrants, but less access than citizens. Which federal or state funded public benefits they are eligible to receive depends on their: immigration status, state, date of first entry into the United States, and the specific benefit they are seeking. The most difficult benefits to access are federal means tested public benefits that not all qualified immigrants can access – Temporary Aid to Needy Families, Medicaid, State Child Health Insurance Program (SCHIP), Food Stamps and Supplemental Security Income (SSI). Under the statute qualified immigrants are called “qualified aliens.”

Refugee – An individual who is unable or unwilling to return to her country because of past persecution or a well-founded fear of future persecution on account of her race/ethnicity, religion, nationality, membership in a particular social group, or political opinion. An individual who is outside the U.S. and meets this definition can be admitted to the United States as a refugee. An individual already in the United States must apply for and be granted asylum to receive protection as a refugee. (*See “asylum” above*).

Removal – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Removal Proceedings – Formerly known as deportation proceedings, this is the process by which immigrants are required to appear before an immigration judge. The immigrant has an opportunity to request relief if eligible. The proceedings may result in an immigrant obtaining status or being ordered removed (deported). The judge can make other procedural orders as well.

Second Preference – This refers to the immigrant visa category for family-based petitions of spouses, children, and unmarried sons or daughters of lawful permanent residents.

Section 245(i) – Congress first enacted INA §245(i) in 1994 to allow non-citizens who were present in the United States without lawful immigration status and who were otherwise eligible for permanent residence (through a family or employment-based petition) to apply to adjust their status to that of a lawful permanent

⁴³Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended at 8 U.S.C. § 1101 et seq.)

⁴⁴SSI is a cash benefit program for low-income disabled, blind and elderly individuals.

⁴⁵INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(4)(B). *See also* 64 Fed. Reg. 28689-01 (May 26, 1999).

⁴⁶INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(15)(F). *See also* 64 Fed. Reg. 28689-01 (May 26, 1999).

⁴⁷INA §212 (p); *See also* field Guidance on Deportability and Inadmissibility on Public Charge Grounds, INS, 64 Fed. Reg. 28,689 (May 26, 1999).

resident without requiring them to physically leave the United States.⁴⁸ The section imposed a penalty fee (up to \$1,000) in addition to the normal fees for processing the applications from. The provision initially expired in January 1998, but was extended in 2000 and expired again on April 30, 2001. Upon expiration of this provision, most non-citizens who are out of legal immigration status are ineligible to adjust status and must leave the country, unless their immigrant visa petition or application for labor certification was filed prior to April 30, 2001. VAWA self-petitioners, however are eligible to adjust status to that of a lawful permanent resident even if they are undocumented.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, or parents or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent’s self-petition. Undocumented immigrant children included in their parent’s self-petition are called “derivatives” because they derive a benefit from their parent’s application for legal immigration status. (See *VAWA Immigration Relief* at end of chapter).

Special Immigrant Juvenile Status (SIJS)- Is a humanitarian immigration benefit available to unmarried immigrant children who suffered abuse, neglect, or abandonment perpetrated by one or both of the child’s parents either in the U.S. or abroad. . In order to file a child must obtain a court order from a state court with jurisdiction over the custody, care or placement of the child and must file for special immigrant juvenile status while the child is of an age that the state court still has jurisdiction over the child and before the child turns 21. The state court order must address the custody or placement of the child and must include findings that it is not in the child’s best interests to return to their home country and that the child cannot be reunified with parent or parents due to abuse, abandonment, neglect or similar basis under state law.

SSI – Supplemental Security Income (SSI) is a program that provides cash assistance to low-income individuals who are aged, blind, or disabled. After the enactment of PRWORA, an otherwise eligible person could be denied SSI cash assistance solely on the basis of his/her immigration status. The only battered immigrants who are currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996, or those who fit into one of the other categories of eligible immigrants.

State Child Health Insurance Program – See Medicaid

State Parental Kidnapping Statutes – Parental kidnapping statutes are generally designed to ensure parents equal access to their children by criminally sanctioning a parent who hides the child from the other parent. Currently almost every state makes custodial interference by parents or relatives of the child a crime. While these statutes may share similarities in name, purpose, and structure, statutory provisions concerning the definition of lawful custodian, the availability of statutory exceptions or defenses, and the severity of the criminal penalties vary greatly between states. In counseling, a survivor who has already left or wishes to leave that state with her children should carefully consult the state statutes in the client’s home state and the state to which the client is considering moving to best inform the client of the potential legal ramifications of her

⁴⁸Under immigration law, leaving and returning to the United States whether required as part of a visa application or not, often has harsh consequences. Leaving the United States after having been unlawfully in the United States can trigger application of multi-year bars to reentry (e.g. 3, 10 or more years). Immigrants who remain in the United States and have not left or are not required to leave can attain lawful permanent residency without risking separation from children and family members in the United States. For this reason, it is important to advise victims for VAWA immigration benefits against international travel.

decision to flee. For immigrant victims it is particularly important to avoid any criminal convictions that can complicate a victim's ability to attain VAWA or U visa related immigration relief.⁴⁹

Stay of Deportation/Stay of Removal – A stay of removal is an administrative decision by the government to stop temporarily the deportation or removal of an immigrant who has been ordered removed or deported from the United States.⁵⁰ Victims who were granted U-visa interim relief were granted stays of removal.⁵¹

Suspension of Deportation – Suspension of deportation is terminology that was used prior to 1996, to refer to what is now called “cancellation of removal” (see above). Some immigrant victims will have old deportation orders, in cases initiated prior to 1992 and will need to file motions to reopen those immigration cases. For this reason post 1996 VAWA related immigration laws continue to refer to, cite to, and make amendments to VAWA suspension of deportation. Citations to Immigration and Naturalization Act Section 244 (a)(3) (“as in effect on March 31, 1997” or “as in effect before the Title III-A effective date of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996”) are references in statute to VAWA suspension of deportation and NOT “temporary protected status.”⁵²

TANF – Temporary Assistance for Needy Families (TANF) provides cash payments, vouchers, social services, and other types of assistance to families in need. PRWORA gives states the option to grant TANF to immigrant families. Most states have decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996, and many are also providing access to TANF for those who entered after August 22, 1996, following the expiration of the five-year bar.⁵³ Other states have decided to offer state-funded TANF to certain categories of immigrants or battered immigrants who would otherwise have no access to benefits, regardless of immigration status. (See “PRUCOL”)

Undocumented immigrants– Undocumented immigrants are individuals that do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e. illegally crossed the border). Others entered the U.S. on valid immigration visas but they stayed beyond their period of authorized stay. Some forms of temporary legal immigration status (See “non-immigrant visas.”) also place restrictions on the holder's activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (i.e. working when they are not allowed or failing to attend school when they are required) become undocumented.

Unlawful Entrants – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry.⁵⁴

U.S. Citizen (USC) – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization

⁴⁹ See Chapter 6.6 of Breaking Barriers “Appendix” for further information and the state criminal parental kidnapping statutes charts.

⁵⁰ See 8 §CFR 241.6, 1241.6.

⁵¹ “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

⁵² Many codifications of the Immigration and Nationality Act are incorrect with regard to this section.

⁵³ NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

⁵⁴ INA § 212(a)(6)(A)(2013); 8 U.S.C. § 1182(a)(6)(A)(2018).

process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

United States Citizenship and Immigration Services (CIS) –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Uniform Child Custody Jurisdiction Act (UCCJA)⁵⁵ – Original state laws governing jurisdictional determinations in interstate custody cases. The UCCJA, or its successor statute the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), discussed next, must be considered anytime a victim is considering moving across state lines with her children.

The UCCJA was created to promote common practices among the states with regard to jurisdiction over, and enforcement of child custody determinations. The goal was to foster a uniform approach that would result in fewer conflicting court rulings regarding the same children; minimizing or preventing parental kidnapping, jurisdictional conflicts, and re-litigation of custody decisions issued by courts in other states. The UCCJA’s primary purpose is to help determine which court has appropriate jurisdiction over a custody matter by using the four following bases as a guide: home state, significant connection, emergency, and more appropriate forum. The UCCJA was not as effective in achieving these goals as expected and it contained few protections for battered women. As a result many jurisdictions began to replace the UCCJA with improved UCCJEA protections. The versions of the UCCJA or UCCJEA adopted in each state can vary slightly from the model code, but all state family laws include either a UCCJA or UCCJEA.

Uniform Child Custody Uniform and Enforcement Act (UCCJEA)⁵⁶ This is the successor statute to the UCCJA and is designed to be more helpful in preventing abductions of children. Like the UCCJA, the UCCJEA also utilizes the four jurisdictional bases of home state, significant connection, emergency, and more appropriate forum. However, unlike the UCCJA, the UCCJEA prioritizes home state jurisdiction. It also expands the basis for emergency jurisdiction to more fully include and protect a battered parent’s decision to escape from her abuser with her children. While a temporary emergency jurisdiction order that a battered woman receives is still subject to the actual “home” state’s issuance of a final custody order, the factors a “home” state must consider in declining jurisdiction offer greater protection for survivors of domestic violence. For example, a court may consider whether domestic violence had occurred, and is likely to continue, and which state could best protect the parties and the child.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system’s approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA’s dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g. immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and

⁵⁵ Drafted by the National Conference of Commissioners on Uniform State Laws, and by it approved and recommended for enactment in all the states at its conference meeting July 22-Aug. 1, 1968; *see also* 28 U.S.C. § 1738A(c)(2018).

⁵⁶ Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657 (1999); *See also* 28 U.S.C. § 1738A(c)(2)(C).

crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Unit of the Vermont Service Center – The Citizenship and Immigration Services (CIS) Vermont Service Center, houses the specially trained unit at the Department of Homeland Security that is responsible for adjudicating VAWA cases filed by immigrant victims of violence against women. The VAWA Unit adjudicates a wide range of violence against women related applications including: VAWA self-petitions, T-visas, U-visas, adjustments (lawful permanent residency applications), and employment authorizations related to VAWA cases (VAWA Cuban, VAWA NACARA, VAWA HRIFA petitions, battered spouse waivers, parole of VAWA petitioners and their children, children of victims who have received VAWA cancellation). Spouses who have been battered or subjected to extreme cruelty perpetrated by their non-immigrant A visa holder, E iii visa holder, or G visa holder, or H visa holder spouse, and children of the battered spouses can also receive employment authorization from the VAWA Unit.⁵⁷

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners' information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.⁵⁸

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a “visa” holder. A “visa” is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as a U-visa. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Nonimmigrant visas include, but are not limited to:

A Visa – This temporary visa is issued to diplomats, ambassadors, public ministers, employees or consular officers who have been accredited by a foreign government that is recognized by the United States and accepted by the President or the secretary of state. The A-visa includes the immigrant's immediate family. The immigrant's personal employees, such as nannies, also receive an A-visa.⁵⁹

B Visa – This temporary visa is issued to tourists (business or pleasure). Tourists are generally admitted to the U.S. for no longer than six months.⁶⁰

F Visa – This temporary visa is available to bona fide students who are coming to the United States temporarily and who are pursuing a full course of study at an established college, university, or other academic institution. The spouse and minor children of the student also receive F-visas.⁶¹

⁵⁷ INA § 106(a) (2013); 8 U.S.C. § 1105(a) (2018)

⁵⁸ For a full discussion of VAWA confidentiality protections See Leslye E. Orloff, *Chapter 3: VAWA Confidentiality: History, Purpose, DHS Implementation and Violations of VAWA Confidentiality Protections*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT & LEGAL MOMENTUM, EMPOWERING SURVIVORS (2015), <http://niwaplibrary.wcl.american.edu/pubs/ch3-avaa-confidentiality-history-purpose/>.

⁵⁹ INA § 101(a)(15)(A) (2013), 8 U.S.C. § 1101(a)(15)(A) (2018).

⁶⁰ INA § 101(a)(15)(B) (2013), 8 U.S.C. § 1101(a)(15)(B) (2018).

⁶¹ INA § 101(a)(15)(F) (2013), 8 U.S.C. § 1101(a)(15)(F) (2018).

G Visa – The G visa is available to representatives and employees of international organizations. The visa is also available to members of the individuals’ immediate family, personal employees of the individual, and the immediate families (e.g. spouses and children) of the personal employees.⁶²

H Visa – This is the temporary visa available to individuals who come to the United States temporarily to perform services or labor. This also includes a range of workers from technology industry workers to fashion models. The spouse and minor children of the immigrant also receive a specific type of H-Visa.⁶³

J Visa – This temporary visa is issued to exchange visitors and foreign physicians. J visa holders can include scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily. Some J visa holders are subject to a two-year foreign residency requirement. They are required to leave the United States for two years and are barred from seeking H-Visa status or lawful permanent residency before complying with this requirement. The visa holder’s spouse and minor children can also receive J-Visas.⁶⁴

T Visa – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. A T-visa applicant under 21 years of age can apply for T-visas for their spouse, children, parents, and unmarried siblings under 18. T Visa applicants 21 years of age or older can apply for T-visas for their spouse and children.⁶⁵ The T Visa lasts for four years. After three years, T visa recipients can apply for lawful permanent residency. If the Attorney General certifies that the investigation has concluded, T visa recipients can apply for lawful permanent residency sooner than three years.

U Visa – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, or judge establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U Visas based upon the immigrant crime victim’s receipt of U visa. U-Visa applicants 21 years or older can apply for U Visas for their spouse and children.⁶⁶

⁶² INA § 101(a)(15)(G) (2013), 8 U.S.C. § 1101(a)(15)(G) (2018).

⁶³ INA § 101(a)(15)(H) (2013), 8 U.S.C. § 1101(a)(15)(H) (2018).

⁶⁴ INA § 101(a)(15)(J) (2013), 8 U.S.C. § 1101(a)(15)(J) (2018).

⁶⁵ INA § 101(a)(15)(T) (2013), 8 U.S.C. § 1101(a)(15)(T) (2018).

⁶⁶ INA § 101(a)(15) (U)(2013), 8 U.S.C. § 1101(a)(15)(U) (2018).