

SPECIAL PROVISIONS FOR IMMIGRANT YOUTH: A MODEL STATE STATUTE

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American Friends
Service Committee



FORDHAM UNIVERSITY
THE SCHOOL OF LAW



RUTGERS
School of Law | Newark

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INTRODUCTION

In 1990, Congress created Special Immigrant Juvenile Status (“SIJS”), which provides an opportunity for immigrant youth who have been abandoned, abused, neglected or mistreated by one or both parents to obtain lawful immigration status. SIJS is the only path to immigration status grounded in child welfare principles and seeks to protect a population of youth who have faced significant struggles from returning to situations where they will not be safe. Before petitioning the U.S. Citizenship and Immigration Service for SIJS, an immigrant youth must first seek an order from a state court declaring that the youth is in need of protection.

Seeking to explore the intersection of immigration and family law, the Maurice A. Deane School of Law at Hofstra University hosted a conference in November 2012 entitled, *Immigrants and the Family Court: Policies, Practice and Systemic Change*. A panel at that conference explored the disparate treatment of SIJS-eligible immigrant children in state court systems depending on how the child entered the United States, whether the child was detained by federal authorities, whether a state or local child welfare agency became involved, and the particularities of a given state or local court system. Inspired by ideas generated at the conference, a working group of four organizations formed to develop model statutory language, aimed at promoting uniformity across jurisdictions as well as the right of all SIJS-eligible immigrant children to access their respective state court systems. The working group consists of experts in immigration and family law from American Friends Service Committee, Fordham Law School’s Feerick Center for Social Justice, the Immigrant Legal Resource Center, and the Child Advocacy Clinic at Rutgers University School of Law – Newark, with pro bono support from Orrick, Herrington & Sutcliffe LLP.

With students from the two law schools – Fordham and Rutgers – at the heart of this effort, the working group established a methodology to develop the model statute. First, we identified the ten states in the country with the highest populations of immigrants, assuming that courts in these areas would have had contact with immigrant youth seeking the factual findings necessary to petition for SIJS. Next, we identified immigration legal practitioners working in those areas and interviewed them to learn about context, challenges, and good practices. We outlined the key issues and identified areas that required further legal research. After completing our information gathering and legal research, we drafted, revised, and then shared the model statute with nationally-recognized experts in immigration and family law – Professor Theo Liebmann (Hofstra Law School), Angie Junck (Immigrant Legal Resource Center), and Kris Jackson (Public Counsel) – to whom we are very grateful for their feedback.

The document that follows is a result of these efforts and we hope it will serve as a useful tool for advocates, legislators, and any other individuals or organizations interested in promoting the rights of immigrant youth.

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MODEL STATE STATUTE—SPECIAL PROVISIONS FOR IMMIGRANT YOUTH

COMMENT: In 1990, Congress amended the Immigration and Nationality Act (“INA”) to create Special Immigrant Juvenile Status (SIJS) for certain immigrant youth. SIJS provides a pathway for immigrant youth to obtain lawful permanent residence and thus the opportunity for legal employment, stability, and increased options to pursue higher education.

In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), which further amended the INA to expand eligibility for SIJS in several respects. First, the TVPRA replaced the requirement of eligibility for long-term foster care with a requirement that a juvenile’s reunification with one or both parents not be viable due to abuse, abandonment, neglect or a similar basis under State law. 8 U.S.C. § 1101(a)(27)(J)(i). Second, the TVPRA expanded the group of eligible youth to include those placed by a juvenile court with an individual, agency, Department, or entity, in addition to those placed by a child welfare type agency.

As amended, the SIJS provision sets forth a two-step procedure for obtaining status. See 8 U.S.C. § 1101(a)(27)(J). First, a state “juvenile court” must make certain factual findings regarding the circumstances of the child. Second, U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security reviews the state court findings and makes a determination regarding the child’s immigration status.

In creating the statutory scheme, Congress deferred to state juvenile courts’ expertise on making SIJS findings, including best interests determinations. However, state court SIJS findings, standing alone, do not bestow lawful permanent residence or any other immigration benefit. The ultimate determination as to an immigrant youth’s immigration status is made by USCIS and not the juvenile court. No consideration is needed by the juvenile court in terms of federal immigration policy or its implementation.

There is a need for both uniformity and flexibility across state systems to fully implement the intent of the federal law as well as the spirit of state and federal laws seeking to protect vulnerable young people. State laws that protect children and youth who have been abused, abandoned, neglected, or similarly harmed were not created with the particular needs and circumstances of immigrant youth in mind. Over time, as more youth have been identified as eligible for SIJS, it has become clear that gaps and inconsistencies in state laws may hinder an individual youth’s ability to obtain the state court findings that are necessary to apply for the immigration benefit. The result is that access to SIJS protection is largely dependent on arbitrary factors, such as whether youth are detained by immigration authorities, whether their circumstances trigger the attention of local child welfare authorities, and the particularities of a given state or local court system. Thus, despite statutory expansions enacted by Congress, inconsistencies in practice and procedure at the state and local level prevent many eligible youth from accessing SIJS benefits.

This model statute draws upon case law, authoritative commentary from law professors and practitioners, and additional input from experts. Specific comments are set forth below on a section-by-section basis.

CHAPTER I. DEFINITIONS

SECTION 101.

For the purposes of this statute, the following words shall have the following meanings:

- a. “Not in the Best Interest Finding” means the finding required by 8 U.S.C. § 1101(a)(27)(J)(ii) that it is not in the Immigrant Youth’s best interest to be returned to his or his parent’s previous country of nationality or country of last habitual residence.
- b. “Dependency Finding” means the finding required by 8 U.S.C. § 1101(a)(27)(j)(i) that an immigrant child be “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.”
- c. “Federal Immigration Custody” connotes a situation where an Immigrant Youth is detained at the behest of the U.S. Department of Homeland Security, the U.S. Department of Health and Human Services, and/or the U.S. Department of Justice. An Immigrant Youth who has been released to a sponsor, adult caregiver, or approved institution or agency is no longer considered to be in “Immigration Custody.” Being in removal proceedings does or having an existing removal order does not automatically mean that an Immigrant Youth is in “Immigration Custody.”
- d. “Immigrant Youth” means any noncitizen present in the United States under the age of 21.
- e. “Juvenile Court” means any court having jurisdiction under State law to make judicial determinations about the custody and care of children. 8 C.F.R. § 204.11. Juvenile Courts include, but are not limited to, family courts, probate courts, surrogate courts, criminal courts, courts of equity, and county courts. Juvenile Courts include courts that handle the following kinds of cases among others: adoption, child protection (or dependency), child support, custody, delinquency, criminal, divorce, domestic violence, guardianship, paternity, termination of parental rights, and any other issue involving children. The name of the court is not controlling.
- f. “Non-Reunification Finding” means the finding, as required by 8 U.S.C. § 1101(a)(27)(J)(i), that “reunification [of the Immigrant Youth] with 1 or both of the [Immigrant Youth]’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.”
- g. “Special Immigrant Juvenile Status (SIJS) Findings” means the findings that a Juvenile Court makes pursuant to 8 U.S.C. § 1101(a)(27)(J) as a predicate to apply for SIJS.

CHAPTER II. JURISDICTION

SECTION 201. JURISDICTION

- a. All Juvenile Courts shall have the authority to make SIJS Findings based on a motion filed at any time prior to the Immigrant Youth's 21st birthday, even if jurisdiction over such cases otherwise extends only up to the age of 18.
- b. Any Juvenile Court that asserts jurisdiction over an Immigrant Youth shall retain such jurisdiction at least until the youth reaches age 21 or until a final administrative decision on Special Immigrant Juvenile Status has been made by USCIS, whichever comes first.
- c. In any matter where the jurisdiction of the Juvenile Court has otherwise terminated, the Juvenile Court shall have jurisdiction to exercise discretion to render the SIJS Findings nunc pro tunc.
- d. A Juvenile Court can make SIJS Findings without granting care and/or custody of the Immigrant Youth to a state or local agency.
- e. Apart from jurisdictional concerns pursuant to the Uniform Child Custody Juvenile Enforcement Act or other comparable statutes, a Juvenile Court cannot decline to make SIJS Findings solely because another court or agency might be better suited to make the findings.
- f. In any proceeding before a Juvenile Court involving an Immigrant Youth, the Court may sua sponte enter SIJS Findings regarding the Immigrant Youth.
- g. With respect to an Immigrant Youth in the physical custody of the U.S. Department of Health and Human Services or the U.S. Department of Homeland Security, a Juvenile Court does not need the consent of the federal government to make SIJS Findings provided it does not change the Immigrant Youth's federal immigration custody.

COMMENT: The intent of this section is to align State law with federal law, which makes SIJS available to immigrant youth up to age 21. In the past, some family and juvenile courts have limited jurisdiction to individuals under age eighteen, thus denying youth ages 18 to 21 the opportunity to apply for relief for which they are otherwise eligible. While this section may differ or even conflict with other state laws, this section is necessary to fulfill and to protect immigrant youth up to age 21.

Some states have already adopted similar provisions. For example, in 2014, Maryland passed a law extending jurisdiction for custody and guardianship cases up to age 21 when the case is brought in conjunction with a motion for SIJS Findings, provided the alleged abuse, neglect or abandonment occurred before the youth's 18th birthday. See Equity Jurisdiction – Immigrant Children – Custody or Guardianship, Md. H.B. 315, 2014 Leg., 434th Sess. (Md. 2014).

CHAPTER III. STANDING AND NOTICE

SECTION 301. STANDING

- a. Any person with an interest in the welfare of an Immigrant Youth, including the Immigrant Youth himself or herself, can petition a Juvenile Court directly to have the Immigrant Youth be declared a child in need of assistance or a ward of the court.
- b. Any Immigrant Youth before a Juvenile Court in any context can move the Juvenile Court for SIJS Findings.

COMMENT: Currently, many Immigrant Youth lack the ability to access a Juvenile Court in order to request SIJS Findings and thus have no means of petitioning for SIJS with the federal authorities. The intent of this section is to ensure maximum access to Juvenile Courts in order to obtain the requisite SIJS Findings, and is purposefully left broad, trusting state Juvenile Courts to act in the best interest of children and with full knowledge of its jurisdictional limitations.

SECTION 302. NOTICE

- a. In interpreting notice requirements, a Juvenile Court shall use its discretion and be as flexible as possible, consistent with existing notice requirements in state and/or other laws. Wherever possible, a Juvenile Court shall presume that notice by mail to a parent's last known address shall be adequate notice.

COMMENT: As the Supreme Court held in Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950), the nature and extent of constitutionally required notice turns upon "the practicalities and peculiarities of the case," and will vary with circumstances and conditions. The intention of this statute is to encourage courts to exercise their discretion in a flexible and practical manner so as not to frustrate Congress's intent to give Immigrant Youth the opportunity for SIJS.

CHAPTER IV. EVIDENCE AND HEARINGS

SECTION 401. EVIDENTIARY STANDARDS APPLICABLE TO SIJS FINDINGS

- a. Traditional evidence may not be available to Immigrant Youth. Juvenile Court judges shall have broad discretion in admitting evidence and shall give special consideration to pro se petitioners.
- b. A Juvenile Court can make SIJS Findings based exclusively on circumstantial evidence and the Immigrant Youth's credible testimony.
- c. If an Immigrant Youth does not have a birth certificate, the Juvenile Court can make a finding as to the Immigrant Youth's age, assuming other evidence of age is provided.
- d. In making SIJS Findings, the Juvenile Court must consider what is best for the individual Immigrant Youth, and must not consider policy issues related to immigration or public welfare in making SIJS Findings on behalf of an Immigrant Youth.

COMMENT: A Juvenile Court should take into consideration the particular circumstances of each Immigrant Youth who appears before it. The youth might not have access to witnesses, certified documentation, or contemporaneous evidence. Given these circumstances, traditional forms of evidence may not be available, and thus, state court judges may have to be flexible in permitting other forms of evidence.

A number of state courts have explicitly recognized that the role of the Juvenile Court is not to make immigration determinations on behalf of an Immigrant Youth, but rather to make the factual findings, which are within their expertise. See Leslie H. v. Superior Court, 224 Cal. App. 4th 340 (Cal. App. 2014) (“[a] state court’s role in the [SIJS] process is not to determine worthy candidates for citizenship, but simply to identify abused, neglected, or abandoned alien children under its jurisdiction who cannot reunify with a parent or be safely returned in their best interests to their home country.”); In re Mario S., 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012) (in which the judge declared that the federal SIJS provisions provide that all issues other than granting or denying SIJS Findings are beyond the scope of the Juvenile Court).

SECTION 402. HEARING, TIMELY ADJUDICATION, AND SPECIFICITY OF SIJS FINDINGS

- a. A Juvenile Court shall hold an expeditious hearing and provide a factual basis for the SIJS Findings in a written order.
- b. Where resources permit, Juvenile Courts should consider creating a special docket to assure accelerated resolution of matters where SIJS Findings are requested.

CHAPTER V. SUBSTANTIVE SIJS FINDINGS

SECTION 501. DEPENDENCY FINDING

- a. An Immigrant Youth is “dependent on a juvenile court,” as that phrase is used in 8 U.S.C. § 1101(a)(27)(J)(i), when a Juvenile Court has jurisdiction over an Immigrant Youth in a matter involving any issue relating to the care, custody, protection, or aid of the Immigrant Youth. In making a Dependency Finding for SIJS purposes, the Juvenile Court shall not be bound by any other state law definition of “dependency.”
- b. A Dependency Finding for SIJS purposes does not require a decision to place the child in any particular form of care, custody, or protection, such as a foster care placement or other specific orders for state or local child welfare agency services.
- c. An Immigrant Youth who is dependent on a Juvenile Court at the time a petition for SIJS Findings is made shall remain dependent on the Juvenile Court at least until a final federal administrative decision on SIJS is issued.

*COMMENT: Dependency on the Juvenile Court exists in many situations and should be construed broadly. (U.S. Citizenship and Immigration Services, Special Immigrant Juvenile Status; Information for Juvenile Courts, http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information_for_Juvenile_Courts_-FINAL.pdf). Thus, for example, “[a] child becomes dependent upon a juvenile court when the court accepts jurisdiction over the custody of that child, irrespective of whether the child has been placed in foster care or a guardianship situation.” *In re Hei Ting C.*, 109 A.D.3d 100, 106 (N.Y. Super. Ct. 2013) (referencing *In re Jose J. Menjivar*, A70117167, 1995 WL 17876291 (INS, Jan. 3, 1995)). Similarly, the prerequisite for a Dependency Finding is met when a Juvenile Court issues an adoption decree concerning an Immigrant Youth. See *In re Emma M.*, 74 A.D.3d 968 (N.Y. App. Div. 2010). Moreover, a Juvenile Court can grant a petition for an order of custody and the motion for SIJS Findings, even when the child is already in a safe placement. See, e.g., *In re Marcelina M.-G.*, 112 A.D.3d 100 (N.Y. App. Div. 2013). A youth who has been adjudicated to be a juvenile delinquent and who has been placed in the custody of an authorized agency also meets the requirements for a Dependency Finding. See, e.g., *In re Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012). SIJS motions also have been granted in paternity, persons in need of supervision (PINS), and voluntary placement/destitute child situations.*

SECTION 502. NON-REUNIFICATION FINDING – “1 OR BOTH” PARENTS

- a. A Juvenile Court may make a Non-Reunification Finding without terminating any parental rights.
- b. A Juvenile Court shall make a Non-Reunification Finding when it determines that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law, even when the Immigrant Youth is under the care of or may be able to reunite with the other parent.
- c. A Non-Reunification Finding for SIJS purposes can be made based on the acts or omissions of only one parent even when other state laws and/or other proceedings require a finding against both parents.

*COMMENT: A number of courts have recognized that a Non-Reunification Finding can be made even when an Immigrant Youth is successfully living with one of his or her parents. In 2012, the Minnesota Court of Appeals reasoned that “even when reunification with one parent is viable, courts must determine the viability of reunification with the other parent.” In re Welfare of D.A.M., A12-0427, 2012 WL 6097225, at *3 (Minn. Ct. of App. Dec. 10, 2012). Later, in 2012, the New York Appellate Division of the Second Judicial Department held that the “one or both” language requires only a finding that reunification is not viable with one parent. In re Marcelina M.-G., 112 A.D.3d 100 (N.Y. App. Div. 2013). The court reasoned that the plain meaning of “one or both” permits SIJS eligibility even where the child remains in the care of one parent or the court actively seeks to reunite the child with that one parent: “Thus . . . the fact that [one parent] is available as a custodial resource for [the Immigrant Youth] does not, by itself, preclude the issuance of special findings under the SIJS statute.” *Id.* at 111. Indeed, the USCIS Administrative Appeals Office (AAO) has approved such “one parent” cases. For example, in a case involving an Immigrant Youth who was successfully living with her mother, but had been abandoned by her father, the AAO stated: “The juvenile court order in this case contains the requisite determinations: that the petitioner was adjudged, under the applicable state law, abused and abandoned by her father; that reunification with her father was not viable due to such abuse and abandonment, that it was not in the petitioner’s best interest to return to Honduras; and that custody was awarded to her mother.” AAO Decision on Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, (Newark, N.J. June 3, 2013).*

Nevertheless, adoption of this section is necessary because other courts have struggled with the Non-Reunification Finding. For example, in 2013, the Supreme Court of Nebraska found that the phrase “one or both” was ambiguous and therefore subject to interpretation. In re Erick M., 820 N.W.2d 639, 644 345 (Neb. 2013). In that case, since the Immigrant Youth was living with his mother at the time that the juvenile court adjudicated him as a dependent, the court did not explore whether or not reunification with his father was a viable option.

*This interpretation is clearly at odds with the plain meaning of the statute and Congress' intent. See Angie Junck, Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children, 63 *Juv. & Fam. Ct. J.* 48, 56 (2012) (“[A] possibility of reunification with one parent does not bar SIJS eligibility”); U.S. Citizenship & Immigration Servs., *Special Immigrant Juvenile Status: Information for Juvenile Courts*, http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information_for_Juvenile_Courts_-FINAL.pdf.*

SECTION 503. NON-REUNIFICATION FINDING – “ABUSE, NEGLECT, OR ABANDONMENT”

- a. “Abuse,” “neglect,” or “abandonment” for the purpose of a Non-Reunification Finding are defined according to the laws and definitions of those terms in the state in which the Immigrant Youth is residing at the time of the Juvenile Court proceeding, not in any other state of the United States, the Immigrant Youth’s country of origin, or any other country or state where the alleged abuse, neglect, or abandonment took place.
- b. For the purpose of a Non-Reunification Finding, “abuse, neglect, or abandonment” can be established by credible circumstantial evidence, including but not limited to visible scars or other credible evidence of pain, trauma, and abuse, as well as by the Immigrant Youth’s testimony.
- c. Formal criminal charges against a parent of abuse, neglect, or abandonment, or a separate petition in Juvenile Court alleging abuse, neglect or abandonment in a child protection proceeding, are not a prerequisite for making a Non-Reunification Finding.

SECTION 504. ON-REUNIFICATION FINDING – “SIMILAR BASIS FOUND UNDER STATE LAW.”

- a. The language “similar basis found under state law” should be construed broadly.

COMMENT: The words “similar basis found under state law” should be construed broadly and consistently with Congress’s intent to expand SIJS eligibility. If the Juvenile Court is concerned about the welfare of the child but the circumstances do not fit within the State’s definition of abuse, neglect, or abandonment, the court can rely on this provision. For example, Connecticut law provides that a child or youth may be found “uncared for” if the child or youth is “homeless or whose home cannot provide the specialized care that the physical, emotional, or mental condition of the child or youth requires.” Conn. Gen. Stat. Ann. Section 46b-120(8). Likewise, in New Jersey, state law permits a court to make orders with respect to a child, including placing the child in the custody of the State, whenever a child’s parent or guardian “is unfit to be entrusted with the care and education of such child, or shall fail to provide such child with proper protection, maintenance and education, or shall fail to ensure the health and safety of the child, or is endangering the welfare of such child.” N.J. Stat. Ann. § 30:4C-12

**SECTION 505. NOT IN THE BEST INTEREST FINDING –
“NOT IN THE ALIEN’S BEST INTEREST TO BE RETURNED”**

- a. In considering whether “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” a Juvenile Court shall look to its state laws, including state case law interpretations, concerning the determination of a child’s best interests.

COMMENT: State court SIJS Findings, standing alone, do not endow the Immigrant Youth with lawful permanent residence or any other immigration benefit. In creating the statutory scheme, Congress deferred to state Juvenile Court’s expertise on making SIJS Findings, including best interest determinations. Thus, Juvenile Courts should apply state laws and procedures customarily applied in making best interests determinations when deciding whether it would be in an Immigrant Youth’s best interests to return to the home country.

CHAPTER VI. CONFIDENTIALITY

SECTION 601. CONFIDENTIALITY

- a. Proceedings involving Immigrant Youth in a Juvenile Court are subject to at least the same confidentiality protections as any state court proceeding involving a youth who is a U.S. citizen. State confidentiality laws must be followed to obtain authorization for any disclosure.
- b. Any pleading, submission, or evidence involved in a request for and decision on SIJS Findings, including any petition filed to invoke jurisdiction, any motion for SIJS Findings, and the hearings and findings, shall be confidential, regardless of the information about immigration history included or the immigration status of the Immigrant Youth. Disclosure of the materials described in this section shall be permitted solely to seek SIJS benefits before USCIS unless expressly authorized after complying with the state law's procedures for disclosure, or otherwise expressly compelled by federal or state law. Any disclosure shall keep in mind the sensitivity of the case and the best interests of the Immigrant Youth.

COMMENT: Confidentiality of SIJS proceedings is necessary to ensure that Immigrant Youth are not penalized for seeking SIJS. Immigrant Youth are vulnerable, not only because of the sensitivity of the information involved, but also because of the risk that any information they share will be used against them in deportation proceedings. If a participant in the proceedings shares information with federal immigration authorities without explicit authorization from the Juvenile Court, the Immigrant Youth may be locked up in an immigration detention center and deported instead of receiving necessary services for the abandonment, abuse, or neglect he or she suffered.

This confidentiality provision does not run afoul of federal law. Federal law, namely 8 U.S.C. § 1373, prohibits states from restricting the exchange of immigration information between state officers and federal immigration authorities. However, this confidentiality provision does not prohibit all information sharing with immigration authorities; rather, it merely dictates that state confidentiality laws must be followed to obtain authorization for any disclosure. Moreover, federal law itself recognizes that juvenile court proceedings deserve extensive protection from access by third-parties, including other federal agencies. See 18 U.S.C. § 5038. In its Standard Operating Procedures for Deferred Action for Childhood Arrivals, the U.S. Department of Homeland Security (DHS) restricts federal access to juvenile records when state law prohibits their disclosure. See U.S. Dep't of Homeland Security, National Standard Operating Procedures (SOP) Deferred Action for Childhood Arrivals (DACA) (Form I-821D and Form I-765), 84, 163 (2013).

CHAPTER VII. STATE SERVICES

SECTION 701. IDENTIFYING SIJS-ELIGIBLE YOUTH

- a. All state and local child welfare agencies shall develop procedures to identify all youths who are potentially eligible for SIJS. State and local child welfare agencies shall inform all children and youth who are potentially eligible for SIJS of the SIJS processes and shall promptly file such a motion in the appropriate Juvenile Court if the child wishes. State and local child welfare agencies shall make efforts to connect with competent immigration attorneys who may be available to assist Immigrant Youth with the immigration component of applying for SIJS, once the Juvenile Court has made the necessary SIJS Findings.
- b. In jurisdictions with child representation and juvenile defender programs, including court administered attorney assignment programs, such programs shall be encouraged to develop procedures to identify all youth for whom they provide legal representation who are potentially eligible for SIJS. These programs also shall be encouraged to provide training on immigration law to its attorneys so that these attorneys are competent to identify youth who may be eligible for SIJS and able to request the SIJS findings.

*COMMENT: SIJS is an under-utilized immigration benefit, and outreach is necessary to ensure that eligible Immigrant Youth have the opportunity that Congress created. In 2010 approximately one million people became lawful permanent residents, but fewer than 1,600 children gained lawful residency through SIJS. In 2013, the number of SIJS petitions approved by USCIS climbed to nearly 3,500. See USCIS, *Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year and Case Status 2010-2013*. However, experts believe that many more youth who are eligible miss the opportunity to apply and regularize their status in the United States. See Kristen Jackson, *Special Status Seekers*, L.A. Lawyer, Feb. 2012, at 20, 22. In many instances, a case worker, court staff member, or juvenile defense attorney may be the first person with an opportunity to identify potential SIJS eligibility. Without adequate training and knowledge about SIJS, the opportunity created by Congress may be lost.*

SECTION 702. ASSISTING SIJS-ELIGIBLE YOUTH

- a. To the greatest extent practical, the Juvenile Court shall ensure adequate resources and assistance to all Immigrant Youth, including language access, to ensure they are aware of the SIJS process and have an opportunity to file a petition for SIJS. In particular, Juvenile Courts are strongly encouraged to develop forms to assist in accessing Juvenile Court jurisdiction and requesting SIJS Findings.
- b. To the greatest extent practical, the Juvenile Court shall ensure that Immigrant Youth before the court have access to competent counsel to assist in the SIJS Findings, federal immigration proceedings, and federal immigration application process.
- c. All counsel that are appointed in Juvenile Court proceedings shall be provided training on immigration-related matters including, but not limited to, identifying and representing Immigrant Youth who may be eligible for SIJS.
- d. If the law provides for appointment of counsel in Juvenile Court proceedings, the Juvenile Court shall ensure that Immigrant Youth have maximum access to such appointed counsel.

COMMENT: Given the complexity and significance of securing SIJS for undocumented abused, abandoned, neglected or otherwise in-need youth, every effort should be made to provide competent legal assistance to Immigrant Youth. A Juvenile Court has the power to take actions such as (i) appointing counsel; (ii) scheduling and conducting status hearings to ensure a responsible party oversees the SIJS process through completion; and (iii) ensuring access to therapeutic services provided to other dependents of the court. If an individual or agency is in violation of its duties or fails to act when instructed to do so by the court, the court has the power to address the problem and compel performance on the youth's behalf.

CHAPTER VIII. MISCELLANEOUS

SECTION 801. TASK FORCE

- a. The State shall establish an interagency task force to aid in the implementation of this law. In particular, the task force shall perform the following tasks, among others:
 - i. Gathering data on the numbers and demographics of Immigrant Youth in the state.
 - ii. Compiling an updated list of national, state, and local programs that can provide competent SIJS services to Immigrant Youth.
 - iii. Working with State agencies, including child protective services and the courts, to ensure that there are effective protocols to screen and identify children who might be eligible for SIJS, and to refer the identified youth to the appropriate programs.
 - iv. Working with agencies to ensure that all state court judges, child welfare agency stakeholders, and government employees, including court-appointed attorneys, court-appointed special advocates (CASAs), and court personnel, have effective training programs on how to screen, identify, refer, and assist immigrant youth who may qualify for SIJS.
- b. All departments, officers, agencies, and employees of the State shall cooperate with the task force to the extent legally possible in fulfilling its duties and responsibilities including, but not limited to, providing any data or reports requested by the task force.
- c. None of the data described in sections (a) and (b) shall include any identifying information about individual Immigrant Youth or other individuals.

COMMENT: Members of the task force should include representatives from the many agencies involved in servicing or developing policies related to Immigrant Youth, as well as experts, including from the organized Bar, and community members who have invaluable insights into the needs of the youth and their families. Such agencies include those that deal directly with the immigration issues, such as through law enforcement, state departments of immigration, and the courts; those that have a direct interest in the wellbeing of youth or interact with them directly, such as social and child services and the department of health; and those that have indirect yet great interest in the issue of Immigrant Youth, such as the state department of labor. Experts in the fields of child health, mental health, and immigration law, who do not work for the government, should be appointed to the task force both for their knowledge and for their outside perspective on the how state laws, regulations, and policies affect youth. Likewise, representatives from independent, non-profit organizations who provide services to immigrant youth should be included. Finally, and importantly, youth should be appointed to the task force to ensure the task force's actions are relevant to the population concerned.

The first duty of the task force should be information gathering. The task force should be charged with collecting and organizing data on, for example, the number of youth in the state and other demographic information such as age, country of origin, family or household size and makeup, and employment; the services they have accessed while in the state; and the status of their immigration proceedings. Furthermore, the task force should be charged with maintaining an up-to-date list of service providers at the federal, state, and local levels which SIJS-eligible youth can access to receive help with legal services, school access, health services, translation services, housing, and in other areas that are vitally important for the safety, permanency, and wellbeing of immigrant youth.

The second duty of the task force should be coordinating the efforts of agencies and organizations involved in implementing this model law. Specifically, the task force should collaborate with agencies to ensure they have effective protocols for identifying SIJS-eligible youth and referring them to the appropriate programs or service providers, and working with the agencies to make sure that their staff members are properly trained in these protocols and in working with immigrant children.

SECTION 802. MAKING INFORMATION ABOUT SIJS AVAILABLE

- a. Juvenile Courts, state and local agencies, and other organizations that interact with Immigrant Youth shall make readily available, through the internet and other means, any available information regarding the SIJS application process, including any court forms that are developed.

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