



How California's New Law SB 873 Benefits Unaccompanied Minors

On September 27, 2014, California Governor Jerry Brown signed into law Senate Bill 873.¹ This new law provides \$3 million in legal aid to unaccompanied minors in removal proceedings, and clarifies state court roles in considering Special Immigrant Juvenile Status petitions filed by immigrant children.²

What does SB 873 do to help protect unaccompanied minors?

Specifically, appropriates \$3 million to provide legal representation for Unaccompanied Minors in removal proceedings. This funding will be administered to qualifying³ non-profit organizations through the California Department of Social Services.

The law also includes several provisions specific to the consideration of Special Immigrant Juvenile Status (SIJS) petitions by state courts.

Special Immigrant Juvenile Status is an avenue for undocumented children to obtain legal status when they cannot be reunified with one or both parents due to abuse, neglect, or abandonment and it is not in their best interests to return to their home country. The federal government tasks state courts with making three findings: 1) that the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency or department or an individual or entity appointed by a state or juvenile court; 2) that 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; and 3) that it is not in the child's best interest to be returned to their country of nationality or last habitual residence. These three findings must be made before a child can even apply for SIJS before the federal agency, U.S. Citizenship and Immigration Services. Some state courts have been concerned about their proper role in considering SIJS petitions for these findings.

SB 873 eliminates any ambiguity that California Superior Courts, including family courts, have jurisdiction to make the findings necessary for SIJS. The law also does the following:

- Creates an affirmative responsibility of Superior Courts to make the SIJS findings when there is evidence to support those findings;
- Clarifies that the evidence to support the SIJS findings may consist of (but is not limited to) a declaration by the child;
- Lists the SIJS findings that a court order shall include and makes clear that when requested, the court may make additional findings if supported by evidence;
- States that records of proceedings in which SIJS findings are requested that are not otherwise protected by state confidentiality laws may be sealed using the procedure set forth in California Rules of Court 2.550 and 2.551. Similarly, information regarding a child's immigration status that arises in a judicial proceeding in response to a request for SIJS findings that is not otherwise protected by state confidentiality laws must remain confidential;
- Clarifies that existing authority to provide interpreters in civil court includes the authority to provide an interpreter in a proceeding requesting SIJS findings.

¹ Senate Bill 873 is available in full at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873.

² The law charges the Judicial Council with creating new rules and forms to implement the law.

³ The requirements for such nonprofit legal services organizations are set forth in Section 13300 et seq. of the California Welfare & Institutions Code.

PRACTICE TIPS: How advocates can leverage SB 873 to improve practice in state court for SIJS petitions

- 1. SIJS Findings in Family Courts:** In many cases, family courts have been reluctant to issue SIJS findings, but because the new law now squarely identifies these courts as being one type of court that has jurisdiction to make such findings, practitioners can cite to this statutory language rather than making extensive arguments in support of the family court having jurisdiction to make SIJS findings.
- 2. Affirmative Duty by State Courts to Enter SIJS Findings If They Exist:** Superior courts of any division, which previously may have been hesitant to issue SIJS findings because of discomfort with federal immigration laws, now have an affirmative duty to make SIJS findings if presented with evidence that a child qualifies. Practitioners can leverage this language to argue that courts must make these findings when evidence has been presented in support of all three findings.
- 3. A Child Declaration May Support an SIJS Request:** Often times, it can be difficult to provide the court with extensive evidence of abandonment, abuse or neglect when the child has fled those conditions in another country. SB 873 clarifies that the evidence in support of a request for SIJS may be in the form of a declaration from the child. When judges are demanding additional evidence that is not available, practitioners can cite to the language of SB 873 to argue that a declaration from a child should be sufficient if other evidence is not available.
- 4. Information About a Child's Immigration Status Is Protected by Confidentiality:** Information regarding a child's immigration status that arises in a judicial proceeding in response to a request for SIJS findings that is not otherwise protected by state confidentiality laws⁴ must remain confidential. Practitioners can rely on SB 873 to object to the release of confidential information in their SIJS petitions. Moreover, records relating to a child's immigration status or SIJS petition that are not otherwise confidential under state law may be sealed. When concerned about confidentiality, practitioners can use the procedure set forth in California Rules of Court 2.550 and 2.551 to seal the records of their clients' proceedings in state court.⁵
- 5. New Form for Requesting SIJS Findings in Family Court:** The Judicial Council has already created two SIJS Order Form Templates – the GC-224 (for use in guardianship proceedings) and the JV-224 (for use in dependency and delinquency proceedings). Practitioners can likely expect Form FL-224 Proposed Order for SIJS findings in family court proceedings, and possibly additional standardized forms for use in requesting SIJS findings in Superior Courts.
- 6. Implementing Memo to State Courts on SB 873.** On September 30, 2014, the Judicial Council of California published a Memorandum on "Senate Bill 873 and the Special Immigrant Juvenile Process in the Superior Court," which was sent to all presiding judges, court executives, and appellate courts to provide additional information on current law and SB 873. This Memo is crucial as it informs judges and court officials' approach to SIJS petitions.

⁴ For example, guardianship proceedings and certain family court proceedings, such as dissolution of marriage, are not confidential in California.

⁵ The process for sealing records pursuant to California Rules of Court 2.550 and 2.551 entails filing a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing. The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest. Once sealed, court records are no longer open to inspection by the public.

The Memo includes very helpful language for SIJS petitioners. In particular, it:

- Provides general background on the SIJS process, details the role of the state court in the SIJS process, walks through the different findings necessary for SIJS, and provides additional resources to state courts in this area of the law.
- Cites to four important California appellate decisions, all of which treat state court SIJS petitions positively.⁶
- States that family law custody, visitation, parentage, and adoption proceedings are all among the appropriate proceedings in which judges can make SIJS findings.
- Provides various helpful examples of state court proceedings in which SIJS findings can be made, including a custody proceeding in which one parent is awarded sole custody based on another parent's conduct. This language essentially validates one-parent SIJS claims (claims where a child is residing safely with one parent but experienced abandonment, abuse or neglect from the other parent).
- Notes that it is USCIS's role (not the state court's) to decide whether to consent to the SIJS classification, which includes ensuring that the court order "was sought primarily to obtain relief from abuse, neglect, abandonment or a similar basis under [s]tate law." States that in practice, this means that the USCIS adjudicator must determine that there was a reasonable factual basis for the state court's determination, typically satisfied by court orders that include or are supplemented by specific findings of fact.
- Acknowledges the limited role of the state court in the SIJS process, quoting *Leslie H.* for the proposition that "[s]tate courts play no role in the final determination of SIJ [classification] or, ultimately, permanent residency or citizenship, which are federal questions."⁷
- Notes that in making a best interests determination, the court can focus on circumstances shown by the evidence presented regarding the child's life and relationships in the U.S. and in his or her country of origin and need not become an expert on conditions in foreign countries.
- Includes a copy of the USCIS publication, "Special Immigrant Juvenile Status: Information for Juvenile Courts," which details the role of both the state court and USCIS in the SIJS process and lists juvenile, family, probate and delinquency courts as examples of courts which may issue the predicate order.

The Immigrant Legal Resource Center, founded in 1979 and based in San Francisco, California is a national resource center that provides training, technical assistance, and publications on immigration law.

www.ilrc.org

⁶ *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340 (juvenile delinquency); *Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622 (delinquency); *In re Y.M.* (2012) 207 Cal.App.4th 892 (juvenile dependency and child trafficking); *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621 (probate guardianship).

⁷ *Leslie H.*, *supra* note 6, 224 Cal.App.4th at 351.