

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
2 SENATE BILL 229

3 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

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10 AN ACT

11 RELATING TO CHILDREN; ENACTING THE SPECIAL IMMIGRANT JUVENILE  
12 CLASSIFICATION ACT; PROVIDING FOR JURISDICTION OF SPECIAL  
13 IMMIGRANT JUVENILE CLASSIFICATION; DECLARING AN EMERGENCY.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of Chapter 40 NMSA 1978 is  
17 enacted to read:

18 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the  
19 "Special Immigrant Juvenile Classification Act".

20 SECTION 2. A new section of Chapter 40 NMSA 1978 is  
21 enacted to read:

22 "[NEW MATERIAL] DEFINITIONS.--As used in the Special  
23 Immigrant Juvenile Classification Act:

24 A. "abandoned child" means a child who is left  
25 without provision for reasonable and necessary care or

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1 supervision;

2 B. "abused child" means a child:

3 (1) who has suffered or who is at risk of  
4 suffering serious harm because of the action or inaction of the  
5 child's parent, guardian or custodian;

6 (2) who has suffered physical abuse, emotional  
7 abuse or psychological abuse inflicted or caused by the child's  
8 parent, guardian or custodian;

9 (3) who has suffered sexual abuse or sexual  
10 exploitation inflicted by the child's parent, guardian or  
11 custodian;

12 (4) whose parent, guardian or custodian has  
13 knowingly, intentionally or negligently placed the child in a  
14 situation that may endanger the child's life or health; or

15 (5) whose parent, guardian or custodian has  
16 knowingly or intentionally tortured, cruelly confined or  
17 cruelly punished the child;

18 C. "child" means any unmarried, foreign-born person  
19 under the age of twenty-one;

20 D. "court" means any court in this state with  
21 jurisdiction to make decisions concerning the protection,  
22 well-being, care or custody of a child;

23 E. "dependent on the court" means subject to the  
24 jurisdiction of a court competent to make decisions concerning  
25 the protection, well-being, care and custody of a child, to

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1 make findings and issue orders or referrals to support the  
 2 health, safety and welfare of a child or to remedy the effects  
 3 on a child of abuse, neglect, abandonment or similar  
 4 circumstances;

5 F. "neglected child" means a child:

6 (1) who has been abandoned by the child's  
 7 parent, guardian or custodian;

8 (2) who is without proper parental care and  
 9 control or subsistence, education, medical or other care or  
 10 control necessary for the child's well-being because of the  
 11 faults or habits of the child's parent, guardian or custodian  
 12 or the failure or refusal of the parent, guardian or custodian,  
 13 when able to do so, to provide them;

14 (3) who has been physically or sexually  
 15 abused, when the child's parent, guardian or custodian knew or  
 16 should have known of the abuse and failed to take reasonable  
 17 steps to protect the child from further harm;

18 (4) whose parent, guardian or custodian is  
 19 unable to discharge that person's responsibilities to and for  
 20 the child because of incarceration, hospitalization or physical  
 21 or mental disorder or incapacity; or

22 (5) who has been placed for care or adoption  
 23 in violation of the law; provided that nothing in the Special  
 24 Immigrant Juvenile Classification Act shall be construed to  
 25 imply that a child who is being provided with treatment by

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1 spiritual means alone through prayer, in accordance with the  
2 tenets and practices of a recognized church or religious  
3 denomination, by a duly accredited practitioner thereof is for  
4 that reason alone a neglected child within the meaning of the  
5 Special Immigrant Juvenile Classification Act; and further  
6 provided that no child shall be denied the protection afforded  
7 to all children under any other provision of law; and

8 G. "similar circumstances" means a similar basis  
9 under state law that demonstrates similar harm or effects of  
10 those of an abused child, neglected child or abandoned child,  
11 including but not limited to the death of a parent, deportation  
12 of a parent or incarceration of a parent."

13 SECTION 3. A new section of Chapter 40 NMSA 1978 is  
14 enacted to read:

15 "[NEW MATERIAL] APPLICATIONS AND PETITIONS FOR  
16 CLASSIFICATION AS A SPECIAL IMMIGRANT JUVENILE.--

17 A. A request may be made by a petitioner pursuant  
18 to this section for classification as a special immigrant  
19 juvenile as provided in 8 U.S.C. Section 1101(a)(27)(J), in  
20 conjunction with a petition for any determination on the care  
21 and custody of a child.

22 B. The application or petition for classification  
23 as a special immigrant juvenile shall set forth the facts  
24 necessary to establish eligibility pursuant to this section."

25 SECTION 4. A new section of Chapter 40 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] JURISDICTION OF THE COURT--STANDARDS--  
3 PROCEDURES.--

4 A. The court has jurisdiction to make findings of  
5 fact and determinations of law in the best interests of the  
6 child for classification as a special immigrant juvenile  
7 pursuant to 8 U.S.C. Section 1101(a)(27)(J) in all matters and  
8 proceedings that involve an abused child, a neglected child or  
9 an abandoned child, including but not limited to child custody,  
10 guardianship and abuse and neglect proceedings.

11 B. A court acting pursuant to the Special Immigrant  
12 Juvenile Classification Act acts as a juvenile court as defined  
13 in 8 C.F.R. Section 204.11(a).

14 C. Upon review of an application or petition for  
15 classification as a special immigrant juvenile pursuant to 8  
16 U.S.C. Section 1101(a)(27)(J), supporting affidavits and any  
17 other evidence, the court shall issue findings of fact and  
18 rulings of law to determine whether:

- 19 (1) the child is dependent on the court;  
20 (2) the child is an abused child, neglected  
21 child or abandoned child or has suffered similar circumstances;  
22 (3) the child may not be viably reunified with  
23 one or both of the child's parents because the child is an  
24 abused child, neglected child or abandoned child or has  
25 suffered similar circumstances; and

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1 (4) it is not in the child's best interests to  
2 be returned to the child's or parent's country of nationality  
3 or country of last habitual residence.

4 D. A court shall hear and adjudicate an application  
5 or petition and issue findings of fact and rulings of law as  
6 soon as it is administratively feasible but before the child  
7 reaches the age of twenty-one.

8 E. Nothing in the Special Immigrant Juvenile  
9 Classification Act shall preclude the district court from  
10 issuing findings of fact and rulings of law similar to the  
11 provisions of Subsection C of this section in any other  
12 proceeding."

13 SECTION 5. A new section of Chapter 40 NMSA 1978 is  
14 enacted to read:

15 "[NEW MATERIAL] LIBERAL INTERPRETATION.--The Special  
16 Immigrant Juvenile Classification Act shall be liberally  
17 construed to carry out its purpose."

18 SECTION 6. APPLICABILITY.--The provisions of this act  
19 shall apply retroactively to any child deemed by a state court  
20 order to be an abused child, neglected child or abandoned child  
21 from the time the child received the order; provided that the  
22 petition is subject to denial or revocation by a federal  
23 immigration agency based on the child's dependency status or  
24 age when the special findings were issued.

25 SECTION 7. EMERGENCY.--It is necessary for the public

1 peace, health and safety that this act take effect immediately.

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