

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 15

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

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ENACTING THE SPECIAL IMMIGRANT JUVENILE CLASSIFICATION ACT;
PROVIDING FOR JURISDICTION OF SPECIAL IMMIGRANT JUVENILE
CLASSIFICATION; DECLARING AN EMERGENCY.

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

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

.225975.1AIC March 13, 2023 (10:17am)

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

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

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

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

B. "abused child" means a child:

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

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

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

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

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

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

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

E. "dependent on the court" means subject to the jurisdiction of a court competent to make decisions concerning the protection, well-being, care and custody of a child, to make findings and issue orders or referrals to support the health, safety and welfare of a child or to remedy the effects on a child of abuse, neglect, abandonment or similar circumstances;

F. "neglected child" means a child:

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

(2) 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;

(3) 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;

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(4) 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

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Special Immigrant Juvenile Classification Act 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 accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Special Immigrant Juvenile Classification Act; and further provided that no child shall be denied the protection afforded to all children under any other provision of law; and

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

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

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

A. A request may be made by a petitioner pursuant

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to this section for classification as a special immigrant juvenile as provided in 8 U.S.C. Section 1101(a)(27)(J), in conjunction with a petition for any determination on the care and custody of a child.

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

SECTION 4. A new section of Chapter 40 NMSA 1978 is enacted to read:

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

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

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

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

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rulings of law to determine whether:

- (1) the child is dependent on the court;
- (2) the child is an abused child, neglected child or abandoned child or has suffered similar circumstances;
- (3) the child may not be viably reunified with one or both of the child's parents because the child is an abused child, neglected child or abandoned child or has suffered similar circumstances; and
- (4) it is not in the child's best interests to be returned to the child's or parent's country of nationality or country of last habitual residence.

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

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

Hf11 → ~~SECTION 5. A new section of Chapter 40 NMSA 1978 is enacted to read:~~

~~"[NEW MATERIAL] LIBERAL INTERPRETATION.--The Special Immigrant Juvenile Classification Act shall be liberally construed to carry out its purpose."~~ ← Hf11

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SECTION Hf11→6.←Hf11 Hf11→5.←Hf11 APPLICABILITY.--The provisions of this act shall apply retroactively to any child deemed by a state court order to be an abused child, neglected child or abandoned child from the time the child received the order; provided that the petition is subject to denial or revocation by a federal immigration agency based on the child's dependency status or age when the special findings were issued.

SECTION Hf11→7.←Hf11 Hf11→6.←Hf11 EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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