

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR15-

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<b>Title</b> Family, Juvenile, and Probate Guardianship Law: Special Immigrant Juvenile Findings	<b>Action Requested</b> Review and submit comments by June 17, 2015
<b>Proposed Rules, Forms, Standards, or Statutes</b> Adopt Cal. Rules of Court, rule 7.1020; adopt Judicial Council forms FL-317, FL-357/GC- 224/JV-357, GC-220, and JV-317; revoke forms GC-224 and JV-224	<b>Proposed Effective Date</b> January 1, 2016
<b>Proposed by</b> Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair  Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	<b>Contact</b> Corby Sturges, 415-865-4507 <a href="mailto:corby.sturges@jud.ca.gov">corby.sturges@jud.ca.gov</a>  Douglas C. Miller, 818-558-4178 <a href="mailto:douglas.c.miller@jud.ca.gov">douglas.c.miller@jud.ca.gov</a>

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee and the Probate and Mental Health Advisory Committee recommend adopting a California Rule of Court, adopting four Judicial Council forms, including a joint findings form, and revoking two existing standalone findings forms. The rule and forms are needed to implement Senate Bill 873 (Stats. 2014, ch. 685), which clarified the superior court's authority to make predicate findings to enable an undocumented child to petition the federal government for classification as a Special Immigrant Juvenile and incorporated relevant elements of the federal Immigration and Nationality Act into California law. The proposed rule and forms are intended to specify the process for requesting Special Immigrant Juvenile predicate findings from a court in a family law, probate guardianship, juvenile dependency, or juvenile delinquency proceeding, and to supply the court with a sufficient factual basis to make accurate, just, and effective findings if warranted under California law.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## Background

### Federal Law

Special Immigrant Juvenile (SIJ) status was created by federal law in 1990 in response to concerns raised at the national level by the Santa Clara County Department of Family and Children's Services and Board of Supervisors that state court child custody and child welfare determinations—especially permanent placements in juvenile dependency proceedings—were being undermined, and that the health, safety, and welfare of undocumented children were being placed in jeopardy by the risk of these children's deportation. To mitigate that risk by permitting abused, neglected, or abandoned immigrant children to remain in safe, stable, court-ordered placements in the United States, Congress amended the Immigration and Nationality Act (INA)<sup>1</sup> to include specified immigrant children within the class of "special immigrants," eligible for admission to the United States and authorized to apply for adjustment to lawful permanent resident (LPR) status.<sup>2</sup>

The INA defines an SIJ as an immigrant child,<sup>3</sup> present in the United States, (1) "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 located in the United States"; (2) whose reunification with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law; and (3) for whom it has been determined by a juvenile court or authorized administrative agency that it would not be in his or her best interest to be returned to his or her country of nationality or last habitual residence.<sup>4</sup>

To be eligible to apply for SIJ classification, a child must first obtain and attach to his or her application a "juvenile court order" finding that the applicant satisfies each of the three elements of the statutory SIJ definition.<sup>5</sup> The INA relies on predicate findings regarding these elements by state courts, made in proceedings under state law, in recognition of the fact that the federal immigration agencies are neither authorized to make child custody and child welfare decisions nor competent to resolve issues of abuse, neglect, abandonment, or a child's best interest.

The SIJ implementing regulations have, from their initial adoption, broadly defined a "juvenile court" as "a court located in the United States having jurisdiction to make judicial determinations about the custody and care of" children.<sup>6</sup> A straightforward application of this definition to California courts would include not only superior court divisions with jurisdiction over dependency and delinquency proceedings under the Juvenile Court Law (Welf. & Inst. Code, §§

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<sup>1</sup> Pub.L. No. 82-414 (June 27, 1952) 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 et seq.

<sup>2</sup> Immigration Act of 1990 (Pub.L. No. 101-649 (Nov. 29, 1990) 104 Stat. 4978), § 153.

<sup>3</sup> For purposes of the INA, a child is an unmarried person under 21 years old.

<sup>4</sup> INA, 8 U.S.C. § 1101(a)(27)(J).

<sup>5</sup> See 8 C.F.R. § 204.11(d)(2).

<sup>6</sup> *Id.*, at § 204.11(a); 58 Fed.Reg. 42843, 42850 (Aug. 12, 1993).

200–987), but also court divisions with jurisdiction over proceedings brought under the Family Code<sup>7</sup> and under the guardianship provisions of the Probate Code.<sup>8</sup> The original statutory definition of an SIJ, however, required the child to have been declared a dependent of the state court and deemed eligible for long-term foster care.<sup>9</sup> These provisions restricted requests for SIJ findings in California to juvenile dependency proceedings. Amendments to the INA by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 expanded the SIJ definition so that all California courts fitting the broad definition of “juvenile court” in the regulations now have jurisdiction to make determinations that could serve as predicates for an SIJ petition.<sup>10</sup>

To help protect immigrant child victims of human trafficking, the TVPRA expanded the INA’s definition of an SIJ in two significant ways. First, it expanded the types of state court order that a child could use to satisfy the first SIJ criterion to include (1) an order committing a child to the custody of a state agency or department and (2) an order placing the child under the custody of an individual or entity appointed by the court.<sup>11</sup> The addition of an order of commitment opened the possibility that a ward of the juvenile court under section 602 of the Welfare and Institutions Code would qualify for the findings.<sup>12</sup> And the inclusion of an order placing the child in or under the custody of an individual or entity opened the possibility that a child placed in the custody of a legal guardian or in the sole custody of one parent would also qualify.<sup>13</sup>

Second, the TVPRA eliminated the requirement that the child be eligible for long-term foster care, with its implication that the child not be able to reunify with any parent. In its place, the TVPRA inserted the requirement that the child not be able to reunify with “1 or both” parents because of “abuse, neglect, abandonment, or a similar basis” under state law.<sup>14</sup> The United States Citizenship and Immigration Services (USCIS) consistently adjudicates SIJ petitions of children placed in the custody of one parent, but unable to reunify with another parent because of abuse, neglect, abandonment, or similar conduct by the latter parent.<sup>15</sup>

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<sup>7</sup> See Fam. Code, §§ 200, 3020–3048.

<sup>8</sup> See Prob. Code, §§ 800, 1510–1516.

<sup>9</sup> Immigration Act of 1990, *supra* note 2, at §153. To curb perceived abuses, the definition was further restricted in 1997 to children deemed eligible for long-term foster care “due to abuse, neglect, or abandonment.” Pub.L. No. 105-119, § 113 (Nov. 26, 1997) 111 Stat. 2440, 2460–2461.

<sup>10</sup> Pub.L. No. 110-457 (Dec. 23, 2008), 122 Stat. 5044; see *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340, 349 (*Leslie H.*).

<sup>11</sup> *Id.*, at § 235(d)(1)(A).

<sup>12</sup> See *Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622. (The INA no longer requires a child to be a dependent of the court; commitment to a state agency or department is sufficient to satisfy the first SIJ criterion.)

<sup>13</sup> See *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621, 627–629 (*B.F.*). (The order appointing a guardian under the Probate Code was a “juvenile court” custody determination placing the children in the custody of an individual appointed by the court.)

<sup>14</sup> TVPRA, *supra* note 10, at § 235(d)(1)(A).

<sup>15</sup> See *In re Israel O.* (Jan. 16, 2015, A142080), at pp. 10–11, \_\_ Cal.App.4th \_\_ (*Israel O.*) (citing United States Citizenship and Immigration Services, *Immigration Relief for Abused Children: Information for Juvenile Court Judges, Child Welfare Workers, and Others Working With Abused Children* (April 2014)).

The TVPRA also added protection against “aging out” of the jurisdiction of the state court and eligibility for SIJ classification.<sup>16</sup> Today, USCIS will not, based on age or custody status, deny an SIJ petition if, *at the time of filing*, the petitioner was under 21 years of age and was the subject of a valid state court order that was later terminated based on age.<sup>17</sup>

### **California Law**

In response to the increase in unaccompanied, undocumented children entering the southwestern United States and released to sponsors around the country,<sup>18</sup> as well as perceived uncertainty regarding the authority of the superior courts to make SIJ predicate findings, California enacted a new law regarding immigrant children, effective September 27, 2014.<sup>19</sup> New section 155 of the Code of Civil Procedure incorporates many of the provisions of the federal SIJ statute as interpreted by the California Court of Appeal. Subdivision (a) codifies the holding in *B.F.*, *supra* note 13, that the superior court has jurisdiction to make the SIJ predicate findings in appropriate proceedings. Subdivision (b) requires the superior court to make those findings when requested if there is sufficient evidence to support them and provides that the evidence may consist of, but is not limited to, a credible declaration by the child who is the subject of the requested findings. Subdivision (b) also incorporates, almost verbatim, the elements of the federal SIJ definition that require documentation by state court findings. Subdivision (e) of section 155 specifically requires the Judicial Council to adopt any rules of court and forms needed to implement the new section.

### **The Proposal**

The rule and forms in this proposal are intended to fulfill the Judicial Council’s statutory mandate under Code of Civil Procedure section 155.

As discussed more fully below, the committees propose adopting rule 7.1020 of the California Rules of Court<sup>20</sup> to specify procedural requirements for seeking SIJ predicate findings in probate guardianship proceedings. The committees believe that procedures for seeking SIJ predicate findings in juvenile and family court proceedings are adequately specified by the proposed Judicial Council forms in the context of current statutes and rules of court. The committees also propose three new forms for requesting the SIJ predicate findings in different types of superior

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<sup>16</sup> TVPRA, *supra* note 10, at § 235(d)(6).

<sup>17</sup> See Donald Neufeld & Pearl Chang, USCIS, *Memorandum: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009; HQOPS 70/8.5), at pp. 2–3; United States Immigration and Citizenship Services, *Policy Memorandum: Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* (Apr. 4, 2011; PM 602-0034), at p. 2.

<sup>18</sup> Of the 68,541 unaccompanied children detained entering the U.S. in federal fiscal year 2014, 53,550 of those children were released from custody to private sponsors. A sponsor may be an adult relative (parent, aunt or uncle, sibling, cousin), family friend, or volunteer. 5,842 unaccompanied children were released to sponsors in California, more than half of those in Los Angeles County.

<sup>19</sup> Stats. 2014, ch. 685 (Sen. Bill 873), §§ 1–2, 12–13, 15–16, 20. A copy of these sections of SB 873 is attached to this Invitation to Comment, at pages 24–30.

<sup>20</sup> All subsequent rule references are to the California Rules of Court unless otherwise specified.

court proceedings: *Petition for Special Immigrant Juvenile Predicate Findings* (form GC-220), *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-317), and *Request for Special Immigrant Juvenile Predicate Findings—Juvenile* (form JV-317). The committees further propose the adoption of a mandatory joint form for courts to use to make SIJ predicate findings in all types of custody proceedings: *Special Immigrant Juvenile Predicate Findings* (form FL-357/GC-224/JV-357).

Finally, the committees propose revoking the existing standalone SIJ findings forms for probate guardianship proceedings, form GC-224; and for juvenile proceedings, form JV-224.

### **Rule 7.1020**

Other than form GC-224, adopted last year, no statewide guidance has been developed for requesting or making SIJ findings in guardianship proceedings. The Probate and Mental Health Advisory Committee has developed proposed rule 7.1020 to provide that guidance.

The rule would require a request for SIJ predicate findings to be made by verified petition, not as a motion supported by declarations (rule 7.1020(b)(2)(A)). Whether filed concurrently with a petition for the appointment of a guardian or later in the guardianship proceeding, the SIJ petition must be filed separately, not as an attachment to the guardianship petition (rule 7.1020(b)(2)(B)).

The majority of requests for SIJ findings come before the probate court in uncontested guardianship proceedings. In that context, the probate court would receive the verified petition in evidence (Prob. Code, § 1022, and rule 7.1020(e)(5)) and decide whether to make the requested findings based on the facts and circumstances alleged in the petition. However, the committee believes that if evidence is taken in a contested matter in support of or opposition to the requested findings of the court, it should be heard and weighed in open court subject to cross-examination, and not simply in declarations (see rule 7.1020(e)(4)).

Any person eligible to petition for the appointment of a guardian under Probate Code section 1510, including the minor if over the age of 12 years, may file the request for SIJ findings (rule 7.1020(b)(1)). In a case with multiple minors, each minor could file a petition only for him- or herself; however, his or her petition could be heard and determined with the SIJ petitions of other qualified wards in the same guardianship proceeding (rule 7.1020(b)(1)(A), (e)(2)). The rule would also confirm the court's authority under Probate Code section 1003 to appoint a guardian ad litem to file a request for SIJ findings for a minor in a guardianship proceeding or to represent the interest of such a minor concerning a petition filed on his or her behalf by another (rule 7.1020(b)(1)(B)).

The rule would require notice of a hearing on the petition to be served by mail, with a copy of the petition, on the minor's parents and the persons listed in Probate Code section 1460(b) (rule 7.1020(c)). Any person entitled to notice of the petition may object or file an opposition to it (rule 7.1020(d)). The court would have authority under Probate Code section 1470 to appoint counsel for the minor in connection with a request under the rule (rule 7.1020(b)(1)(B)).

In cases involving more than one (proposed) ward seeking SIJ findings, the court would need to issue separate findings for each qualified minor in the case (rule 7.1020(f)). Separate findings are advisable because the immigration court proceedings for all qualified minors in the same state court guardianship case may not necessarily be similarly combined.

### **Forms for Requesting SIJ Predicate Findings**

Proposed new *Petition for Special Immigrant Juvenile Predicate Findings* (form GC-220), *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-317), and *Request for Special Immigrant Juvenile Predicate Findings—Juvenile* (form JV-317) provide separate, but similar, formats for requesting SIJ predicate findings. All of these forms elicit the information necessary for the superior court to make the SIJ findings if supported by sufficient evidence.

#### ***Format***

The probate guardianship petition form follows the text of rule 7.1020 and is somewhat more formal in tone and structure than the family and juvenile forms in keeping with the procedural requirements of the Probate Code and title 7 of the California Rules of Court. The form must be filed as a separate, verified petition. Item 1 on the form tracks the requirements of Probate Code section 1510 and proposed rule 7.1020(a)(2) as to the identity of the petitioner or petitioners.

The family law request form is styled as an attachment to a *Request for Order* (form FL-300) or related forms. It enumerates in item 3 the range of Family Code actions that may underlie a request for SIJ findings. The common denominator of these actions is that all may support a request for child custody under Division 8 (beginning with section 3000) of the Family Code.

On the other hand, the juvenile law request form is intended to stand alone. A child or person on behalf of the child may request SIJ findings at any point in the proceedings after the court has made the necessary underlying order. In family law and probate guardianship proceedings, on the other hand, the request for findings may be filed concurrently with or after the initial petition.

#### ***First finding***

The first required finding—that the child has been declared a dependent of the court *or* committed to or placed under the custody of a state agency or department or an individual or entity appointed by the court—depends on the court’s decision in the underlying state law proceeding. The forms, therefore, ask the person requesting the findings to document that the necessary relief has been requested and to state whether that request is pending or has been granted. If the court has granted the underlying relief at the time the request is filed, the forms also require the requesting person to document the underlying court order. The forms specify the nature of the relief that would warrant the court making the first finding.

The family and juvenile law request forms go on to request expressly that the court make the first finding. The probate guardianship form leaves that request implicit in the statement in item 4.

### ***Second finding***

The forms next provide the opportunity to request the second finding of fact needed to enable a child to file a federal petition for SIJ classification: that reunification of the child with one or both of his or her parents is not viable because of abuse, neglect, abandonment, or a similar basis under California law.<sup>21</sup> The forms provide space for detailed statements of facts in support of this finding to allow the court to make an accurate and just decision.

The finding that family reunification is not viable includes two parts: (a) that reunification is not viable; and (b) that abuse, neglect, abandonment, or conduct fitting a similar description under California law is the basis for that finding. With respect to reunification, an order denying or terminating reunification services in a juvenile dependency or delinquency foster care case would almost certainly be sufficient. Other juvenile dispositional orders, such as placement with a previously noncustodial parent or appointment of a guardian, with or without declaring dependency, might also suffice. The juvenile request form requires the attachment of any orders relevant to the viability of the child’s reunification with one or both parents.

In family and probate guardianship law, the precise meaning of reunification is less firmly established than in juvenile law. Because orders may be modified on a showing that the circumstances requiring the initial order have changed and that modification would be in the child’s best interest, no family court custody order or guardianship is ever truly final or permanent.<sup>22</sup> Reunification—in the sense of the child’s return to the physical custody of the noncustodial parent—is never completely foreclosed. However, part 2 of Division 8 of the Family Code (beginning with section 3020), which governs both family law custody and probate guardianship determinations, provides a clue to the effect of a guardianship or custody order on the prospects of family reunification. Specifically, Family Code section 3026 expressly prohibits the court from ordering reunification services in the context of a child custody or visitation proceeding.<sup>23</sup> The court must base its custody determination not on the child’s short-term best interest, but on his or her overall, long-term best interest. Thus, a reunification, even under a plan agreed on by the parties, is outside the scope of the family or probate court’s authority and, therefore, arguably not viable with a parent who is not awarded custody or guardianship of the child as long as that order remains in effect.<sup>24</sup>

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<sup>21</sup> Until this year, it was uncertain whether a child, placed with one parent but unable to reunify with the other parent because of abuse, neglect, or abandonment by that parent, qualified for this finding under California law. Two recent appellate cases, *Israel O.*, *supra* note 14, in the First Appellate District, and *Eddie E. v. Superior Court* (Feb. 11, 2015, G049637) \_\_ Cal.App.4th \_\_ (*Eddie E. 2*), in the Fourth Appellate District, have made clear that a child in those circumstances does qualify for this finding.

<sup>22</sup> This is also true in juvenile proceedings unless parental rights have been terminated. See Welf. & Inst. Code, §§ 366.26, 366.3, 388.

<sup>23</sup> See *In re Kaylee J.* (1997) 55 Cal.App.4th 1425, 1430–1433 (“Once a ... guardianship is established and a nonparent guardian is appointed ..., the court has no authority to take steps to return custody to a parent” while the guardianship is in effect.)

<sup>24</sup> *Id.*

If facts constituting abuse, neglect, abandonment, or a similar basis for denying custody to one or more parents have not been shown to the court's satisfaction in the underlying guardianship, custody, dependency, or delinquency proceeding, the requesting party will need to show that reunification is not viable on one of those grounds. Under California law, many different definitions of abuse, neglect, or abandonment exist.<sup>25</sup> For purposes of supporting the SIJ finding, parental conduct falling within any of those definitions would seem to suffice. In addition, other grounds under California law, such as a finding that placement with a parent would be detrimental to the child's health, safety, or welfare under Family Code section 3041, may supply a sufficiently similar basis for the finding. Persons requesting findings should be prepared to include detailed statements of facts supporting the reasons that reunification is not viable.

### ***Third finding***

The third predicate finding, as indicated above, is that it is not in the child's best interest to be returned to his or her, or his or her parents', country of nationality or last habitual residence. Under California law, all determinations affecting child custody, whether in family, juvenile, or probate court, are guided by the standard of the best interest of the child. An award of custody under California law to an individual or entity located in the United States could be understood to imply that the child's best interest will not be served by removing the child from that custodial placement and returning him or her to his or her country of nationality. Nevertheless, the person requesting this finding should be prepared to introduce evidence of conditions in the child's country of nationality or last habitual residence in the event that the court has occasion to question the basis for this finding.

### **Form for Making SIJ Predicate Findings**

The committees propose adopting a joint form for the superior court in a family law custody proceeding, a probate guardianship proceeding, a juvenile dependency proceeding, or a juvenile delinquency proceeding to make the SIJ predicate findings when requested, warranted under California law, and supported by sufficient evidence. This joint form, *Special Immigrant Juvenile Predicate Findings* (form FL-357/GC-224/JV-357), would replace the existing standalone SIJ findings forms *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) and *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224), which would be revoked.

In addition to combining the guardianship and juvenile SIJ findings forms into a single multipurpose form, the new form would give the family court a platform for making the SIJ findings. The use of a joint form would ensure that California forms submitted to USCIS in support of a federal SIJ petition would share a common format and would articulate a reasonable factual basis for the judicial findings.

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<sup>25</sup> See, e.g., Fam. Code, §§ 6203, 6211, 7822–7823; Pen. Code §§ 270 et seq., 11165.1–11165.6; Welf. & Inst. Code, §§ 300, 361, 361.5.

The joint findings form would give the court room to make detailed findings and to specify the grounds for each of its findings. In addition, the trial court, if it has “reason to doubt the petitioner’s good faith,” may seize the opportunity urged on it by the Fourth Appellate District in *Eddie E. 2, supra* note 22, to “include findings of any relevant facts that the court deems pertinent to the federal government’s inquiry.” (*Id.*, at p. 16.)

### **Alternatives Considered**

The committees considered whether existing rules and forms were adequate to address the mandates of SB 873, and determined that a new rule and new and modified forms are needed. The current “order” forms, GC-224 and JV-224, elicit only conclusions from the court without providing sufficient opportunities for the court to specify the factual bases for its conclusions. Furthermore, the absence of forms for requesting SIJ findings leads to great variation in the structure and content of the requests. The proposed standard request forms would encourage parties to frame their requests to bring material issues to the court’s attention by tying relevant supporting evidence and information to the specific findings requested.

The Family and Juvenile Law Advisory Committee considered proposing the adoption of rules of court to specify procedures for requesting SIJ predicate findings in family and juvenile court proceedings. The committee determined that the proposed request and findings forms elicit the information required for the court to make determinations necessary for the findings, and that requests may be filed under existing request for order procedures in family and juvenile law proceedings. The committees have requested specific comment on whether rules of procedure in these proceedings would nevertheless be useful.

In 2012, the Probate and Mental Health Advisory Committee considered proposing forms to request SIJ predicate findings in the form of a motion, as an attachment to a petition for appointment of a guardian. The application would have been accompanied by supporting declarations and a memo of points and authorities. The general unsuitability of Judicial Council forms for motion practice, including forms for points and authorities and for declarations that would be largely generic skeleton forms with no significant content, resulted in a decision by the committee not to proceed with that approach.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation of this proposal should require only modest implementation and training costs. The adoption of standard forms for requesting SIJ findings that elicit the required information, in formats familiar to the divisions receiving the requests, should reduce overall court costs by narrowing the issues, ensuring that relevant evidence is linked to those issues, and reducing the need for contested hearings. Implementing the requirements of Code of Civil Procedure section 155 without the structural guidance of the proposed forms, in the face of an anticipated increase in requests for SIJ findings, would almost certainly be less efficient and effective.

The forms will require some training of family, juvenile, and probate court staff. Family law and probate divisions will require training on processing requests and proposed SIJ findings in any

event. Juvenile court staff familiar with SIJ findings will need training only in processing the forms. The joint findings form will promote uniformity in the content of the findings in the trial courts and should enhance the effectiveness of the underlying state court order by preventing its vitiation by inconsistent federal immigration rulings.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would rules of procedure for requesting SIJ findings in juvenile and family court proceedings, analogous to proposed rule 7.1020, be useful to courts, counsel, and litigants? If so, what ambiguities should those rules attempt to clarify?
- Would an informational form to accompany form FL-317 or any other of the forms in this proposal be useful, for example, to explain the process for requesting SIJ findings?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- Would this proposal have different effects on courts of different sizes? How so?

### Attachments and Links

1. Rule 7.1020 of the California Rules of Court, at pages 11–13
2. *Petition for Special Immigrant Juvenile Predicate Findings* (form GC-220), at pages 14–17
3. *Request for Special Immigrant Juvenile Findings—Family Law* (form FL-317), at pages 18–19
4. *Request for Special Immigrant Juvenile Predicate Findings—Juvenile* (form JV-317), at pages 20–21
5. *Special Immigrant Juvenile Predicate Findings* (form FL-357/GC-224/JV-357), at pages 22–23
6. SB 873 (Stats. 2014, ch. 685), material provisions, at pages 24–30 (for full text, see [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB873&search\\_keywords](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB873&search_keywords))

Rule 7.1020 of the California Rules of Court would be adopted, effective January 1, 2016, to read:

1 **Rule 7.1020. Special Immigrant Juvenile Predicate Findings in Guardianship**  
2 **Proceedings**

3  
4 **(a) Application**

5  
6 This rule applies to a request by or on behalf of a minor who is a ward or a  
7 proposed ward in a probate guardianship proceeding for judicial findings needed as  
8 a predicate to filing a petition for classification as a Special Immigrant Juvenile  
9 (SIJ) under federal immigration law. The term “request under this rule” as used in  
10 this rule refers exclusively to such a request. This rule also applies to any  
11 opposition to a request under this rule, any hearing on such a request and  
12 opposition, and any findings of the court in response to such a request.

13  
14 **(b) Request for findings**

15  
16 **(1) Who may file request**

17  
18 Any person or entity authorized under Probate Code section 1510 to petition  
19 for the appointment of a guardian of the person of a minor, including the  
20 ward or proposed ward if 12 years of age or older, may file a request for  
21 findings regarding the minor under this rule.

22  
23 **(A)** If there is more than one ward or proposed ward in the proceeding, a  
24 minor eligible to file a request for findings under this rule may do so  
25 only for himself or herself.

26  
27 **(B)** The court may appoint a guardian ad litem under Probate Code sections  
28 1003 and 1003.5 or an attorney under Probate Code section 1470 to file  
29 and present a request for findings under this rule for a minor or to  
30 represent the interests of a minor in a proceeding to decide a request  
31 filed on the minor’s behalf by another.

32  
33 **(2) Form of request**

34  
35 **(A)** A request for findings under this rule must be made by verified petition.  
36 A separate request must be filed for each minor seeking SIJ predicate  
37 findings.

1 (B) A request for findings under this rule by or on behalf of a minor filed  
2 concurrently with a petition for the appointment of a guardian of the  
3 person of the minor must be prepared and filed as a separate petition,  
4 not as an attachment to the petition for appointment.

5  
6 **(c) Notice of hearing**

7  
8 Notice of a hearing of a request for findings under this rule, and a copy of the  
9 request, must be sent to the minor’s parents and the persons listed in section  
10 1460(b) of the Probate Code, in the manner and within the time provided in that  
11 section, subject to the provisions of subdivision (e) of that section and sections  
12 1202 and 1460.1 of that code.

13  
14 **(d) Opposition to request**

15  
16 Any of the persons who must be given notice of hearing of a request for findings  
17 under this rule may file an objection or other opposition to the request.

18  
19 **(e) Hearing on request**

20  
21 (1) A request for findings under this rule by or on behalf of a minor filed  
22 concurrently with a petition for the appointment of a guardian of the person  
23 of the minor may be heard and determined together with the petition for  
24 appointment of a guardian of the person for the minor involved.

25  
26 (2) Hearings on separate requests for findings under this rule by or on behalf of  
27 more than one ward or proposed ward in the same guardianship proceeding  
28 may be consolidated on the motion of any party or on the court’s own  
29 motion.

30  
31 (3) Hearings on requests for findings under this rule by or on behalf of minors  
32 who are siblings or half-siblings and are wards or proposed wards in separate  
33 guardianship proceedings may be consolidated on the motion of any party in  
34 either proceeding or on the motion of the court in either proceeding. If  
35 multiple departments of a single court or courts in more than one county are  
36 involved, they may communicate with each other on consolidation issues in  
37 the manner provided for inter-court communications on venue issues in  
38 guardianship and family law matters under section 2204 of the Probate Code  
39 and rule 7.1014.

40  
41 (4) Hearings on contested requests for findings under this rule must be conducted  
42 in the same manner as hearings on other contested petitions under the Probate  
43 Code, not as law and motion matters.

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(5) Probate Code section 1022 applies to uncontested requests for findings under this rule.

**(f) Separate findings in multi-ward cases under this rule**

The court must issue separate predicate findings for each minor in a guardianship proceeding in which more than one minor is the subject of a request under this rule.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>   <b>Draft Not Approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF (Name):  <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS	
<b>PETITION FOR SPECIAL IMMIGRANT JUVENILE PREDICATE FINDINGS</b>	CASE NUMBER:

Petitioner (name each): \_\_\_\_\_ alleges:

1. Petitioner is (check all that apply to a single petitioner or to more than one petitioner):
  - a.  The proposed guardian of the person or the person and estate of the minor named in item 2. This petition is filed concurrently with the petition for my appointment as guardian.
  - b.  The guardian of the person or the person and estate of the minor named in item 2. The order appointing me was filed in this case on (date): \_\_\_\_\_ . Letters of Guardianship were issued on (date): \_\_\_\_\_
  - c.  The minor named in item 2. I am at least 12 years of age. I was born on (date): \_\_\_\_\_  
If there are two or more wards or proposed wards in this case, I am asking the court for an order only for myself.
  - d.  The guardian ad litem for the minor named in item 2. A certified or conformed copy of the Order Appointing Guardian Ad Litem—Probate is attached to this petition as Attachment 1d.
  - e.  An adult relative (specify relationship): \_\_\_\_\_ or other person on behalf of the minor named in item 2.
2. (Name of Minor):\*  
\_\_\_\_\_ was born in (country): \_\_\_\_\_ and is a national of that country.
3. This court has jurisdiction under California law “to make judicial determinations about the custody and care of juveniles” within the meaning of section 101(a)(27)(J) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a). The minor named in item 2 will be (or now is) under this court’s jurisdiction and will remain under that jurisdiction if the court appoints (or has appointed) a guardian of his or her person in this proceeding.
4. If a guardian of the person of the minor named in item 2 is (or has been) appointed and qualifies (or has qualified) in this proceeding, the minor will be (or is) placed under the custody of an individual or entity appointed by a California state or juvenile court located in the United States within the meaning of INA section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

\* (In a guardianship case involving more than one ward, prepare a separate petition for each ward for whom you are seeking predicate findings.)

GUARDIANSHIP OF <i>(Name)</i> :   <div style="text-align: center;"> <input type="checkbox"/> MINOR    <input type="checkbox"/> MINORS         </div>	CASE NUMBER:
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**Requested Findings**

5. Reunification of the minor named in item 2 with  one parent     both parents    is not viable because of
- Abuse
  - Neglect
  - Abandonment
  - A similar basis under California law *(specify)*:

Facts in support of this finding are stated below *(for each parent with whom reunification is not viable, state the reasons that apply to that parent)*:

Additional facts are stated on Attachment 5 to this petition. *(You may use Attachment to Judicial Council Form (form MC-25) for this purpose.)*

GUARDIANSHIP OF <i>(Name)</i> :  <input type="checkbox"/> MINOR <input type="checkbox"/> MINORS	CASE NUMBER:
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6. It is not in the best interest of the minor named in item 2 to be returned to his or her, or his or her parents', previous country of nationality or country or countries of last habitual residence. (*name of country or countries*):

Facts in support of this finding are stated below:

Additional facts are stated on next page.

GUARDIANSHIP OF <i>(Name)</i> :   <div style="text-align: right; margin-top: 10px;"> <input type="checkbox"/> MINOR    <input type="checkbox"/> MINORS         </div>	CASE NUMBER:   
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6. *(continued)*:

Additional facts are stated on Attachment 6 to this petition. *(You may use Attachment to Judicial Council Form (form MC-25) for this purpose.)*

7. All attachments to this form are incorporated by this reference as though placed here in this form. There are \_\_\_\_ pages attached.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)	▶	(SIGNATURE OF ATTORNEY*)
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\* All petitioners must also sign (Prob. Code, § 1020).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PETITIONER)
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PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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**REQUEST FOR SPECIAL IMMIGRANT JUVENILE FINDINGS—FAMILY LAW**  
**—This is not a court order—**

**Attachment to:**

- Petition**   
  **Response**   
  **Request for Order**   
  **Responsive Declaration to Request for Order**  
 **Other (specify):**

1. I am the  petitioner  respondent  other parent or party.
  
2. Child's name:\*  
 was born in (country): \_\_\_\_\_ on (date of birth): \_\_\_\_\_  
 and is a national of that country.
  
3. A petition has been filed  at the same time as this request  earlier in this proceeding  in a different family law case (specify court and case number):
  - a.  *Petition to Establish Parental Relationship* (form FL-200), asking for sole custody.
  - b.  *Petition—Marriage/Domestic Partnership* (form FL-100), asking for sole custody.
  - c.  *Petition for Custody and Support of Minor Children* (form FL-260), asking for sole custody.
  - d.  *Request for Domestic Violence Restraining Order* (form DV-100), asking for sole custody.
  - e.  *Adoption Request* (form ADOPT-200).
  - f.  Another request for sole custody of the child. (specify):
  
4.  The case in 3 is pending.  An order about sole child custody was made on (date):  
 (Attach a copy of the order.)
  
5. If the court grants (or has granted) the orders requested in 3, the child will be (or now is) placed under the custody of an individual appointed by this court. The child will be (or now is) under this court's jurisdiction. This court will have (or has) continuing jurisdiction to modify or terminate the orders on a sufficient showing until the child reaches 18 years of age.
  
6. I understand that section 3026 of the Family Code prohibits the court from ordering reunification services as part of a child custody proceeding. If the court has ordered (orders) sole custody, reunification of the child with (that is, return of the child to the custody of) any parent not awarded custody will not be viable (is not viable) while the order is in effect.

\* (Prepare a separate request for each child for whom you are seeking Special Immigrant Juvenile findings.)

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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**I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:**

7. The child has been placed in the custody of *(name of parent)*: \_\_\_\_\_, who is an individual appointed by the court as described in the order granting the request in 3.

8. Reunification of the child with  the petitioner  the respondent  the other parent is not viable because of

- Abuse
- Neglect
- Abandonment
- A similar basis under California law *(specify)*:

Facts and circumstances supporting this finding *(specify)*:

Continued on Attachment 7.

9. It is not in the best interest of the child to be returned to his or her, or his or her parents', country of nationality or country of last habitual residence. Name of country *(specify)*:

Facts and circumstances supporting this finding *(specify)*:

Continued on Attachment 8.

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Date:



\_\_\_\_\_

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name):	<b>FOR COURT USE ONLY</b>  <b>Draft Not Approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>REQUEST FOR SPECIAL IMMIGRANT JUVENILE PREDICATE FINDINGS—JUVENILE</b>	CASE NUMBER:

1. The child (name):\*  
 was born in (country): \_\_\_\_\_ on (date of birth): \_\_\_\_\_  
 and is a national of that country.
  
2. Parents (name each):  

<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Other parent
<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Other parent
<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Other parent
  
3. The court found that the child was described by section  300  602 and assumed jurisdiction over the child on (date): \_\_\_\_\_. The child remains under the court's jurisdiction.  
 (Attach a copy of the court's jurisdictional findings.)
  
4. The child was (check all that apply):  
 declared a dependent child of the court on (date): \_\_\_\_\_  
 ordered committed to the custody of (name of agency or department): \_\_\_\_\_  
 on (date): \_\_\_\_\_ for a term of \_\_\_\_\_ months. The commitment order remains in effect.  
 ordered placed under the custody of (name and relationship of individual or entity, unless confidential foster care placement): \_\_\_\_\_  
 on (date): \_\_\_\_\_. The placement or custody order remains in effect.  
 (Attach a copy of the underlying juvenile court order.)
  
5. The court (check all that apply):  
 ordered the child removed from the custody of (name(s) of parent(s)): \_\_\_\_\_ on (date): \_\_\_\_\_  
 declined to place the child in the custody of (name of parent): \_\_\_\_\_ on (date): \_\_\_\_\_  
 denied services to (name(s) of parent(s)): \_\_\_\_\_ on (date): \_\_\_\_\_  
 terminated services to (name(s) of parent(s)): \_\_\_\_\_ on (date): \_\_\_\_\_  
 appointed (name): \_\_\_\_\_ as the child's guardian on (date): \_\_\_\_\_  
 terminated parental rights and ordered a permanent plan of adoption on (date): \_\_\_\_\_  
 finalized the child's adoption on (date): \_\_\_\_\_  
 (Attach a copy of the underlying juvenile court order(s).)

\*(Prepare a separate request for each child for whom you are seeking Special Immigrant Juvenile predicate findings.) Page 1 of 2

CASE NAME:	CASE NUMBER:
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**I REQUEST THAT THE COURT MAKE THE FOLLOWING FINDINGS:**

6. The child has been *(check all that apply)*:

- declared a dependent of the court
- committed to the custody of *(name of state agency or department)*:
- placed in or under the custody of *(name and relationship of individual or entity, unless confidential)*:

by virtue of the court order referenced in 4, above.

7. Reunification of the child with *(name)*:

mother  father  other parent is not viable because of

- abuse
- neglect
- abandonment
- a similar basis under California law *(specify)*:

Facts and circumstances supporting this finding *(specify)*:

Continued on Attachment 7.

8. It is not in the best interest of the child to be returned to his or her, or his or her parents', country of nationality or country of last habitual residence. Name of country *(specify)*:

Facts and circumstances supporting this finding *(specify)*:

Continued on Attachment 8.

I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

Date:



(SIGNATURE)



CASE NAME:	CASE NUMBER:
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5. It is not in the child's best interest to be returned to the child's or parent's country of nationality or country of last habitual residence (specify country or countries):  
for the following reasons:

Continued on Attachment 5.

Date:

\_\_\_\_\_  
JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT

Provisions of Senate Bill 873 Impacting Undocumented Immigrant Children (SB 873; Stats. 2014, ch. 685, §§ 1–2, 12–13, 15–16, 20.)<sup>1</sup>

Enrolled September 3, 2014

An act to add Chapter 7 (commencing with Section 155) to Title 1 of Part 1 of the Code of Civil Procedure, to add Section 757 to the Evidence Code ..., and to add Chapter 5.6 (commencing with Section 13300) to Part 3 of Division 9 of, the Welfare and Institutions Code ..., to take effect immediately, [as a] bill related to the budget.

## LEGISLATIVE COUNSEL’S DIGEST

SB 873, Committee on Budget and Fiscal Review. Human services.

(1) Existing federal law, the Immigration and Nationality Act, establishes a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court, and authorizes those aliens who have been granted special immigrant juvenile status to apply for an adjustment of status to that of a lawful permanent resident within the United States. Under federal regulations, state juvenile courts are charged with making a preliminary determination of the child’s dependency, as specified. Existing federal regulations define juvenile court to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge a minor to be a dependent or ward of the court. Existing law also establishes the jurisdiction of the probate court. Existing law regulates the establishment and termination of guardianships in probate court, and specifies that a guardian has the care, custody, and control of a ward. Existing law establishes the jurisdiction of the family court, which may make determinations about the custody of children.

This bill would provide that the superior court, including the juvenile, probate, or family court division of the superior court, has jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act. The bill would require the superior court to make an order containing the necessary findings regarding special immigrant juvenile status pursuant to federal law, if there is evidence to support those findings. The bill would require records of these proceedings that are not otherwise protected by state confidentiality laws to remain confidential, and would also authorize the sealing of these records. The bill would require the Judicial Council to adopt any rules and forms needed to implement these provisions.

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<sup>1</sup> This abridged version of SB 873 includes all sections related to undocumented children in the legal process. Not all of these sections are discussed in the Invitation to Comment.

(2) Existing federal law, Title VI of the federal Civil Rights Act of 1964 and the Safe Streets Act of 1968, prohibit national origin discrimination by recipients of federal assistance.

The California Constitution provides that a person unable to understand English who is charged with a crime has the right to an interpreter throughout the proceedings. Existing law requires that court interpreters' fees or other compensation be paid by the court in criminal cases, and by the litigants in civil cases, as specified. Existing law requires, in any action or proceeding under specified provisions of the Family Code relating to domestic violence, an interpreter to be provided by the court for a party who does not proficiently speak or understand the English language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill would state that existing law and authority to provide interpreters in civil court includes providing an interpreter for a child in a proceeding in which a petitioner requests an order from the superior court to make the findings regarding special immigrant juvenile status.

(3)–(7) \* \* \*

(8) Existing federal law, the Homeland Security Act of 2002, empowers the Director of the Office of Refugee Resettlement of the federal Department of Health and Human Services with functions under the immigration laws of the United States with respect to the care of unaccompanied alien children, as defined, including, but not limited to, coordinating and implementing the care and placement of unaccompanied alien children who are in federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each child, as provided. Existing law designates the State Department of Social Services as the single agency with full power to supervise every phase of the administration of public social services, except health care services and medical assistance.

This bill would require the State Department of Social Services, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal services to unaccompanied undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in this state. The bill would require that the contracts awarded meet certain conditions.

(9) \* \* \*

(10) This bill would provide that its provisions are severable.

(11) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(12)–(14) \* \* \*

(15) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Chapter 7 (commencing with Section 155) is added to Title 1 of Part 1 of the Code of Civil Procedure, to read:

**CHAPTER 7. Special Immigrant Juvenile Findings**

**155.** (a) A superior court has jurisdiction under California law to make judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(J) and 8 C.F.R. Sec. 204.11), which includes, but is not limited to, the juvenile, probate, and family court divisions of the superior court. These courts may make the findings necessary to enable a child to petition the United States Citizenship and Immigration Service[s] for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

(b)(1) If an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those findings, which may consist of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order, which shall include all of the following findings:

- (A) The child was either of the following:
  - (i) Declared a dependent of the court.
  - (ii) Legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was ordered.
- (B) That reunification of the child with one or both of the child’s parents was determined not to be viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law. The court shall indicate the date on which reunification was determined not to be viable.

(C) That it is not in the best interest of the child to be returned to the child's, or his or her parent's, previous country of nationality or country of last habitual residence.

(2) If requested by a party, the court may make additional findings that are supported by evidence.

(c) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child's immigration status that is not otherwise protected by state confidentiality laws shall remain confidential and shall be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child's counsel, and the child's guardian.

(d) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, records of the proceedings 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.

(e) The Judicial Council shall adopt any rules and forms needed to implement this section.

**SEC. 2.** Section 757 is added to the Evidence Code, to read:

**757.** Pursuant to this chapter, other applicable law, and existing Judicial Council policy, including the policy adopted on January 23, 2014, existing authority to provide interpreters in civil court includes the authority to provide an interpreter in a proceeding in which a petitioner requests an order from the superior court to make the findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

**SECS. 3–11.** \* \* \*

**SEC. 12.** The Legislature finds and declares that the number of unaccompanied, undocumented minors in California has surged in recent months, often overwhelming the agencies and organizations that care for these minors and help to determine their immigration status. Legal representation for unaccompanied undocumented minors in California is important to assist these minors in navigating through federal immigration proceedings as well as related state court actions.

**SEC. 13.** Chapter 5.6 (commencing with Section 13300) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

## **CHAPTER 5.6. Legal Counsel for Unaccompanied Undocumented Minors**

**13300.** (a) Subject to the availability of funding in the act that added this chapter or the annual Budget Act, the department shall contract, as described in Section 13301, with qualified nonprofit legal services organizations to provide legal services to unaccompanied undocumented minors who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in this state.

(b) Legal services provided in accordance with subdivision (a) shall be for the sole purpose of providing legal representation to unaccompanied undocumented minors who are in the physical custody of the federal Office of Refugee Resettlement or who are residing with a family member or other sponsor.

(c) For purposes of this chapter, the term “unaccompanied undocumented minors” means unaccompanied alien children as defined in Section 279(g)(2) of Title 6 of the United States Code.

(d) For purposes of this chapter, the term “legal services” includes culturally and linguistically appropriate services provided by attorneys, paralegals, interpreters and other support staff for state court proceedings, federal immigration proceedings, and any appeals arising from those proceedings.

**13301.** Contracts awarded pursuant to Section 13300 shall fulfill all of the following:

(a) Be executed only with nonprofit legal services organizations that meet all of the following requirements:

- (1) Have at least three years of experience handling asylum, T-Visa, U-Visa, or special immigrant juvenile status cases and have represented at least 25 individuals in these matters.
- (2) Have experience in representing individuals in removal proceedings and asylum applications.
- (3) Have conducted trainings on these issues for practitioners beyond their staff.
- (4) Have experience guiding and supervising the work of attorneys whom themselves do not regularly participate in this area of the law but nevertheless work pro bono on the types of cases described in paragraph (1).

(5) Are accredited by the Board of Immigration Appeals under the United States Department of Justice's Executive Office for Immigration Review or meet the requirements to receive funding from the Trust Fund Program administered by the State Bar of California.

(b) Provide for legal services to unaccompanied undocumented minors on a fee-per-case basis, as determined by the department, which shall include all administrative and supervisory costs and court fees.

(c) Require reporting, monitoring, or audits of services provided, as determined by the department.

(d) Require contractors to coordinate efforts with the federal Office of Refugee Resettlement Legal Access Project in order to respond to and assist or represent unaccompanied undocumented minors who could benefit from the services provided under this chapter.

(e) Require contractors to maintain adequate legal malpractice insurance and to indemnify and hold the state harmless from any claims that arise from the legal services provided pursuant to this chapter.

**13302.** Notwithstanding any other law:

(a) Contracts awarded pursuant to this chapter shall be exempt from the personal services contracting requirements of Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code.

(b) Contracts awarded pursuant to this chapter shall be exempt from the Public Contract Code and the State Contracting Manual, and shall not be subject to the approval of the Department of General Services.

(c) The client information and records of legal services provided pursuant to this chapter shall be subject to the requirements of Section 10850 and shall be exempt from inspection under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Part 1 of the Government Code).

(d) The state shall be immune from any liability resulting from the implementation of this chapter.

**SEC. 14. \* \* \***

**SEC. 15.** The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 16.** The Legislature finds and declares that Section 1 of this act, which adds Chapter 7 (commencing with Section 155) to Part 1 of Title 1 to the Code of Civil Procedure, and Section 13 of this act, which adds Chapter 5.6 (commencing with Section 13300) to Part 3 of Division 9 of the Welfare and Institutions Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) In order to protect the privacy interests of those minors who are seeking special immigrant juvenile status, it is essential to maintain the confidentiality of the records described in Section 1 of this act.

(b) In order to protect the privacy interests of unaccompanied undocumented minors and to protect records covered by the attorney client privilege, it is essential to maintain the confidentiality of the records described in Section 13 of this act.

**SECS. 17–19.** \* \* \*

**SEC. 20.** This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.