

1 SENATE BILL 229

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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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; AMENDING AND ENACTING  
14 SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

17 SECTION 1. Section 32A-1-8 NMSA 1978 (being Laws 1993,  
18 Chapter 77, Section 17, as amended) is amended to read:

19 "32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT  
20 JURISDICTION--EXCEPTION.--

21 A. The court has exclusive original jurisdiction of  
22 all proceedings under the Children's Code in which a person is  
23 eighteen years of age or older and was a child at the time the  
24 alleged act in question was committed or is a child alleged to  
25 be:

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- 1 (1) a delinquent child;  
2 (2) a child of a family in need of court-  
3 ordered services or a child in need of services pursuant to the  
4 Family in Need of Court-Ordered Services Act;  
5 (3) a neglected child;  
6 (4) an abused child;  
7 (5) a child subject to adoption; or  
8 (6) a child subject to placement for a  
9 developmental disability or a mental disorder.

10 B. The court has exclusive original jurisdiction to  
11 emancipate a minor.

12 C. The provisions of the Indian Family Protection  
13 Act govern child custody proceedings involving Indian children.  
14 To the extent the provisions of the Indian Family Protection  
15 Act conflict with the Children's Code, the provisions of the  
16 Indian Family Protection Act shall apply.

17 D. During abuse or neglect proceedings in which New  
18 Mexico is the home state, pursuant to the provisions of the  
19 Uniform Child-Custody Jurisdiction and Enforcement Act, the  
20 court shall have jurisdiction over both parents to determine  
21 the best interest of the child and to decide all matters  
22 incident to the court proceedings.

23 E. The court may acquire jurisdiction over a Motor  
24 Vehicle Code or municipal traffic code violation as set forth  
25 in Section 32A-2-29 NMSA 1978.

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1                   F. The court has jurisdiction pursuant to the  
2 provisions of the Special Immigrant Juvenile Classification Act  
3 to establish a child's eligibility for classification as a  
4 special immigrant juvenile pursuant to 8 U.S.C. Section  
5 1101(a)(27)(J) in all matters and proceedings that involve  
6 abused, neglected or abandoned children, not to be limited to  
7 child custody and abuse and neglect proceedings."

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

10                   "[NEW MATERIAL] SHORT TITLE.--Sections 2 through 6 of this  
11 act may be cited as the "Special Immigrant Juvenile  
12 Classification Act"."

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

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

17                   A. "abandoned" means left without provision for  
18 reasonable and necessary care or supervision;

19                   B. "abused child" means a child:

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

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

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

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

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

10 C. "child" means any unmarried person under the age  
11 of twenty-one;

12 D. "court" includes the children's court and family  
13 court of the district court;

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

21 F. "neglected child" means a child:

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

24 (2) who is without proper parental care and  
25 control or subsistence, education, medical or other care or

1 control necessary for the child's well-being because of the  
2 faults or habits of the child's parent, guardian or custodian  
3 or the failure or refusal of the parent, guardian or custodian,  
4 when able to do so, to provide them;

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

9 (4) whose parent, guardian or custodian is  
10 unable to discharge that person's responsibilities to and for  
11 the child because of incarceration, hospitalization or physical  
12 or mental disorder or incapacity; or

13 (5) who has been placed for care or adoption  
14 in violation of the law; provided that nothing in the Special  
15 Immigrant Juvenile Classification Act shall be construed to  
16 imply that a child who is being provided with treatment by  
17 spiritual means alone through prayer, in accordance with the  
18 tenets and practices of a recognized church or religious  
19 denomination, by a duly accredited practitioner thereof is for  
20 that reason alone a neglected child within the meaning of the  
21 Special Immigrant Juvenile Classification Act; and further  
22 provided that no child shall be denied the protection afforded  
23 to all children under any other provision of law; and

24 G. "similar circumstances" means circumstances that  
25 affect a child similar to those circumstances that affect an

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1 abused child, neglected child or abandoned child, including the  
2 death of a parent."

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

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

7 A. A child who alleges that returning to the  
8 child's country of origin is not in the child's best interest  
9 may apply to or petition the court for classification as a  
10 special immigrant juvenile pursuant to 8 U.S.C. Section  
11 1101(a)(27)(J).

12 B. A child who applies to or petitions the court  
13 pursuant to this section is not required to name as a  
14 respondent a parent with whom reunification may be viable."

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

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

19 A. The court has jurisdiction to establish a  
20 child's eligibility for classification as a special immigrant  
21 juvenile pursuant to 8 U.S.C. Section 1101(a)(27)(J) in all  
22 matters and proceedings that involve abused, neglected or  
23 abandoned children, not to be limited to child custody and  
24 abuse and neglect proceedings.

25 B. A court acting pursuant to the Special Immigrant

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1 Juvenile Classification Act acts as a juvenile court as defined  
2 in 8 C.F.R. Section 204.11(a).

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

8 (1) the child is dependent on the court;

9 (2) the child is an abused child, neglected  
10 child or abandoned child or has suffered similar circumstances;

11 (3) the child may not be viably reunified with  
12 one or both of the child's parents because the child is an  
13 abused child, neglected child or abandoned child or has  
14 suffered similar circumstances; and

15 (4) it is not in the child's best interest to  
16 be returned to the child's or parent's country of nationality  
17 or country of last habitual residence.

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

22 E. If an application or petition has been filed but  
23 neither granted nor denied before the child reaches the age of  
24 twenty-one, the court may retain jurisdiction to ensure that  
25 the requirements for classification as a special immigrant

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1 juvenile continue to be satisfied.

2 F. Nothing in the Special Immigrant Juvenile  
3 Classification Act shall preclude the children's court or  
4 family court of the district court from issuing findings of  
5 fact and rulings of law similar to the provisions of Subsection  
6 C of this section in any other proceeding."

7 SECTION 6. A new section of Chapter 40 NMSA 1978 is  
8 enacted to read:

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

12 SECTION 7. APPLICABILITY.--The provisions of this act  
13 apply retroactively to any child deemed by a state court order  
14 to be an abused child, neglected child or abandoned child from  
15 the time the child received the order.

16 SECTION 8. EMERGENCY.--It is necessary for the public  
17 peace, health and safety that this act take effect immediately.