



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-2224 Special immigrant juvenile status: court orders and guardianship. (2023-2024)

SHARE THIS:  

Date Published: 09/30/2024 09:00 PM

Assembly Bill No. 2224

CHAPTER 955

An act to amend Section 155 of the Code of Civil Procedure, and to amend Sections 1510.1 and 1514 of the Probate Code, relating to special immigrant juveniles.

[Approved by Governor September 29, 2024. Filed with Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2224, Santiago. Special immigrant juvenile status: court orders and guardianship.

Existing federal law establishes a procedure for providing certain immigrants with the classification of special immigrant juvenile status (SIJS) and authorizes those persons to apply for an adjustment of status to that of a lawful permanent resident within the United States. Under federal law, SIJS criteria include, among other things, that the immigrant's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and for whom it would not be in their best interest to be returned to their or their parent's previous country of nationality or country of last habitual residence. Under existing state law, a superior court has jurisdiction to make the factual findings necessary to enable a child to petition the United States Citizenship and Immigration Services for classification as a special immigrant juvenile under those federal provisions.

If a court grants an order that includes the determinations regarding SIJS, and the person who requested the determinations has submitted a request for expedited processing accompanied by a properly conformed proposed order, the bill would require the court to provide the person who requested the determinations with a certified copy of the order within 3 court days of the date of the hearing at which the determinations were made, or the date the proposed order was submitted, whichever is later.

Existing law authorizes the probate court to appoint a guardian of the person of an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding SIJS, as specified, if the proposed ward consents. Existing law authorizes the petition for guardianship to be filed by a parent, relative, or any other person on behalf of the proposed ward, or by the proposed ward.

This bill would authorize a court to appoint a parent as the guardian of the person of their unmarried child who is 18 years of age or older, but who has not yet attained 21 years of age, under those provisions. The bill would also make technical and conforming changes to related provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 155 of the Code of Civil Procedure, as added by Section 2 of Chapter 851 of the Statutes of 2023, is amended to read:

155. (a) (1) A superior court has jurisdiction under California law to make judicial determinations regarding the dependency or custody, or both, and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101 et seq. 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 have jurisdiction to make the judicial determinations necessary to enable a child to petition the United States Citizenship and Immigration Services for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

(2) The judicial determinations set forth in paragraph (1) of subdivision (b) may be made for a child up to 21 years of age at any point in a proceeding regardless of the division of the superior court or type of proceeding if the prerequisites of that subdivision are met. A nunc pro tunc entry is permissible and shall not require proof of any clerical or other error, as long as the determinations could have been made as of the nunc pro tunc date.

(b) (1) If an order is requested from the superior court making the necessary determinations 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 determinations, which may consist solely 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 determinations, each of which shall be supported by reference to the relevant provisions of California law:

(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 and the factual basis for making the order.

(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, and the factual basis for making the determination.

(C) That it is not in the best interest of the child to be returned to the child's, or the child's parent's, previous country of nationality or country of last habitual residence. The court shall indicate the factual basis for making the determination.

(2) The superior court may make additional determinations pursuant to this section that are supported by evidence only if requested by a party. The asserted, purported, or perceived motivation of the child seeking classification as a special immigrant juvenile shall not be admissible in making the findings under this section. The court shall not include nor reference the asserted, purported, or perceived motivation of the child seeking classification as a special immigrant juvenile in the court's findings under this section.

(3) If a court grants an order that includes the determinations described in paragraph (1), and the person who requested the determinations has submitted a request for expedited processing accompanied by a properly conformed proposed order, the court shall provide the person who requested the determinations with a certified copy of the order within three court days of the date of the hearing at which the determinations were made, or the date the proposed order was submitted, whichever is later.

(c) In any judicial proceedings in response to a request that the superior court make the determinations 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) This section shall be operative on January 1, 2025.

SEC. 2. Section 1510.1 of the Probate Code is amended to read:

1510.1. (a) (1) With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure. The court may appoint a parent as the guardian of the person of their unmarried child who is 18 years of age or older, but who has not yet attained 21 years of age.

(2) A petition for guardianship of the person of a proposed ward who is 18 years of age or older, but who has not yet attained 21 years of age, may be filed by a parent, relative, or any other person on behalf of the proposed ward, or the proposed ward.

(b) (1) At the request of, or with the consent of, the ward, the court may extend an existing guardianship of the person for a ward past 18 years of age, for purposes of allowing the ward to complete the application process with the United States Citizenship and Immigration Services for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

(2) A relative or any other person on behalf of a ward, or the ward, may file a petition to extend the guardianship of the person for a period of time not to extend beyond the ward reaching 21 years of age.

(c) This section does not authorize the guardian to abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent.

(d) For purposes of this division, the terms "child," "minor," and "ward" include an unmarried individual who is younger than 21 years of age and who, pursuant to this section, consents to the appointment of a guardian or extension of a guardianship after they attain 18 years of age.

(e) The Judicial Council shall, by July 1, 2016, adopt any rules and forms needed to implement this section.

SEC. 3. Section 1514 of the Probate Code is amended to read:

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) (1) In appointing a guardian of the person, the court is governed by Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor.

(2) Except as provided in Section 1510.1 or 2105, a minor's parent may not be appointed as a guardian of the person of the minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable. If the nominee is a relative, the nominee's immigration status alone shall not constitute unsuitability.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.