

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Children and Families Committee

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BILL: SB 498

SPONSOR: Senator Margolis

SUBJECT: Immigrant Children/Residency Status

DATE: February 2, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Bill 498 clarifies the requirements for seeking Special Immigrant Juvenile Status (SIJS) and lawful permanent residency for undocumented alien children who have been abused, neglected, or abandoned and who are under the jurisdiction of the court. It directs the Department of Children and Families (DCF) or a community-based care provider (CBC) to determine whether a child is a citizen of this country by the time of the first judicial review for the child. It provides guidance to DCF, community-based care provider, and the courts as to the findings necessary to support a petition for SIJS and an application for lawful permanent residency. It requires DCF or the community based care provider to seek SIJS status and permanent residency within 60 days after the entry of a court order determining that such action is in the best interest of the child. It allows the jurisdiction of the court to be extended for the sole purpose of permitting the continued consideration of the application and petition of the child, when the application and petition have been submitted prior to the child's 18<sup>th</sup> birthday.

This bill substantially creates section 39.5025, Florida Statutes:

## II. Present Situation:

Most issues relating to immigrants to this country are controlled by federal law. Under federal immigration law, a person who is not a citizen of this country is termed an "alien." Aliens may either be lawful permanent residents or may be undocumented. Lawful permanent residents are identified by "green cards." Without a green card, aliens are subject to deportation, are unable to work in recognized occupations, and are ineligible for other benefits.<sup>1</sup>

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<sup>1</sup> *Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction*, Immigrant Legal Resource Center, May 2001, p. 1.

The Special Immigrant Juvenile Status (SIJS) law is a federal statute which allows undocumented aliens who are children under the jurisdiction of the state juvenile court to become lawful permanent residents. It is only available to a child who is under the jurisdiction of a state juvenile court and who has been deemed eligible for long-term foster care by that state juvenile court. Federal regulations have defined “deemed eligible for long term foster care” to mean that the court has found that family reunification is not a viable option for the child.<sup>2</sup> Finally, the juvenile court must make a finding that it is not in the child’s best interest to be returned to his or her home country.

Unlike most immigration matters, the determination as to whether a dependent child qualifies for SIJS and permanent residency is a joint one, reflecting the recognition of Congress that states retain primary responsibility and administrative competency to protect child welfare.<sup>3</sup> As stated by a national expert in this area, “As a matter of federal and state power, the SIJS statute strikes a balance that relies upon existing state systems to handle child welfare matters while at the same time requiring the (federal authorities) to perform (their) function of regulating immigration.”<sup>4</sup>

After an order is entered by the court with the required findings, the child may apply for special immigrant status and may petition for permanent resident status. In order for the petition to be granted, the child must fulfill other requirements that apply to all persons who become lawful permanent residents of the United States.<sup>5</sup> Thus, even if a child qualified for special immigrant status, lawful permanent residency might be denied if other barriers existed. Such barriers include a criminal record, previous deportation, and some chronic illnesses.

If the petition for lawful permanent residency is granted, the child retains the benefits of the status into adulthood in the same manner as any other person with permanent residency. However, if the order is not entered while the state juvenile court has jurisdiction, the status cannot be granted and the petition for lawful residency on the basis of this status must be denied.

Florida dependency law does not specifically address dependent children who may be undocumented aliens. The Florida Administrative Code requires that dependent children who are undocumented aliens must receive the same services as U.S. citizens.<sup>6</sup> However, these services are for the most part provided through the use of general revenue dollars, since the federal funding for this population is generally prohibited. Currently, juvenile court jurisdiction over all dependent children ends when the child reaches 18 years of age. Child advocates report that the inability of the courts to retain jurisdiction in appropriate cases is one of the primary barriers to obtaining permanent residency for children who might otherwise qualify for it.

Although DCF is currently required by administrative rule to “promptly seek a special interest order from the Circuit Court on the child’s behalf” whenever DCF determines that the basis for

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<sup>2</sup> See 8 CFR section 204.11(a)(1993).

<sup>3</sup> Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children under the Special Immigrant Juvenile Statute*, Hastings Constitutional Law Quarterly Volume 27, Number 4, Summer 2000, 186.

<sup>4</sup> *Id.*, 187.

<sup>5</sup> *Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction*, Immigrant Legal Resource Center, May 2001, 5.

<sup>6</sup> 65C-9 F.A.C.

such an order exists,<sup>7</sup> the rule language lacks the specific time requirements, the case plan requirements, and the extension of jurisdiction provision of the bill. Additionally, there is no statutory guidance to the courts regarding consideration of any petitions of this nature which might be brought by DCF or by private attorneys representing the child.

In the same rule, DCF is currently required to handle the applications for SIJS “visa” either directly, by contract, or through the use of volunteer attorneys.<sup>8</sup>

Benefits to children who are granted permanent residency include the rights to live and work permanently in the United States, to travel in and out of the country and, after five years, to apply for U.S. citizenship. In addition, Florida may be eligible for federal funds to support foster care for children who are permanent residents, while they cannot receive funds for them while they are undocumented.

### **III. Effect of Proposed Changes:**

The bill defines the terms “eligible for long-term foster care” and “may be eligible for special immigrant juvenile status under federal law” in order to eliminate confusion as to the required elements of the petition to the court regarding undocumented alien dependent children.

It requires DCF or community-based care providers to identify children who may be eligible for this status no later than the first judicial review and to keep the court apprised of efforts to address the citizenship status of the child. If the child is not a citizen, DCF or the community-based care provider is required to include in the case plan for the child a recommendation as to whether the permanency plan for the child will include remaining in this country.

The bill requires that, if the plan includes the child remaining in this country, DCF or the community-based care provider evaluate whether, under federal law, the child may be eligible for SIJS. However, the determination as to whether an order supporting an application for this status is granted remains in the discretion of the court, which must consider the best interests of the child, a component of which is the express wishes of the child if the child is able to express such wishes.

The bill directs DCF or the community-based care provider to file a petition requesting SIJS and an application for adjustment of status to lawful permanent residency within 60 days after an order supporting such a petition and application is granted, using either its own attorneys, contracted attorneys, or volunteer attorneys.

If the petition and application have been filed but have not been granted by the time the child reaches the 18<sup>th</sup> birthday, the court is authorized to retain jurisdiction solely for the purpose of allowing the continued consideration of the petition by federal authorities. This expansion of jurisdiction expires, at the maximum, at the child’s 22<sup>nd</sup> birthday.

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<sup>7</sup> 65C-9.003(7), F.A.C.

<sup>8</sup> 65C-9.003(8), F.A.C.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill will enhance the ability of currently undocumented alien children who have been abused, neglected, or abandoned to attain lawful permanent residency status in this country. Attaining this status is a necessary prerequisite to becoming U.S. citizens, to obtaining recognized work, and to becoming U.S. taxpayers.

## C. Government Sector Impact:

The Department of Children and Families projects no fiscal impact as a result of this bill.<sup>9</sup> The Office of State Court Administrator (OSCA) expects some additional need for court hearings, with associated costs, but is unable to project the number of hearings or the costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

National experts contacted for the purpose of this bill analysis are of the opinion that there are no international agreements or federal statutes which would adversely affect the provisions of this bill.<sup>10</sup> According to Howard Davidson, Executive Director of the American Bar Association

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<sup>9</sup> In fact, the bill may be slightly revenue-positive, as Florida cannot be federally reimbursed for foster care services to children who are non-documented aliens, but can be so reimbursed for those who achieve permanent residency status.

<sup>10</sup> Courts which have considered the application of provisions of the Vienna Convention to child foster care issues have uniformly determined that the requirements of the Convention are limited to notification of the consulate of the child's home

Center on Children and the Law (Center), neither the Vienna Convention nor the federal Adoption and Safe Families Act (ASFA) would appear to conflict with the bill. In fact, according to Mark Hardin, also of the Center, ASFA would not likely apply to these children at all, since the state cannot receive federal funding for them while they are in the status of undocumented alien.

Becky Sharpless, Executive Director of the Florida Immigrant Advocacy Center, estimates that approximately 25 children per year will be eligible to apply for SIJS through the provisions of this bill. The Department of Children and Families is unable to estimate the number of children likely to be served but characterized the number as a “small population.”

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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