

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1261 (Bonta)
Version: April 23, 2025
Hearing Date: July 1, 2025
Fiscal: Yes
Urgency: No
ME

SUBJECT

Immigration: unaccompanied undocumented minors: right to legal counsel

DIGEST

This bill requires the state to provide legal counsel to each unaccompanied undocumented minor in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a family member or other sponsor in California, as specified. The bill additionally requires the Department of Social Services (DSS) to contract with qualified nonprofit legal services organizations that meet specified requirements or an office of public defender that meets specified requirements, including that the office has an immigration unit or contracts with an immigration attorney with at least 3 years of experience and expertise in providing legal representation to clients in civil immigration matters before the United States Department of Homeland Security, to fulfill those requirements.

EXECUTIVE SUMMARY

Special Immigrant Juvenile Status (SIJS), found in the Federal Immigration and Nationality Act, is a statutory tool enacted nearly three decades ago to benefit immigrant children and youth. SIJS involves both federal and state law. The federal statute and regulations provide the framework, and the state courts provide the details for each individual situation. Since 2014, the State of California has funded legal services for unaccompanied minors and the Legislature has passed several bills to ensure that the unaccompanied minors and youth are able to receive the predicate orders in state court that the minors and youth require to enable them to apply for SIJS. The federal government has also funded legal services for unaccompanied minors for a number of years. However, the funding has cruelly been pulled by the federal Administration. Therefore fewer children and youth in California are provided legal immigration services at a time when the Trump Administration is pushing an inhumane anti-immigrant agenda.

This bill seeks to ensure that these children and youth are provided legal representation to help them navigate the complex state court and immigration system so that they may

obtain the immigration relief to which they are entitled under federal immigration law. According to the Immigrant Legal Resource Center, a supporter of this bill, “[w]ithout legal assistance, these children cannot successfully navigate the immigration system even if their cases are strong, leading to their near-certain deportation. According to data collected by the Vera Institute of Justice, unaccompanied children with legal representation were more than seven times more likely than unrepresented unaccompanied children to receive an outcome that allowed them to remain in the United States. In that same study, Vera found that more than 90% of unrepresented unaccompanied children were issued an order of removal regardless of the strength of their immigration claims.”¹

AB 1261 requires the state to provide legal counsel to each unaccompanied undocumented minor in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a family member or other sponsor in California, as specified. The bill additionally requires DSS to contract with qualified nonprofit legal services organizations that meet specified requirements or an office of public defender that meets specified requirements.

The bill is a priority bill of the California Latino Legislative Caucus and is supported by numerous children rights organizations and organizations that support immigrant children and youth. The Committee has received no timely opposition to this bill. Should this bill pass out of this Committee it will then be referred to the Senate Committee on Human Services.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Directs DSS, subject to the availability of funding from the annual Budget Act, to contract 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, 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. (Welf. and Inst. Code § 13300 (a) & (b).)
- 2) Defines “legal services” to include 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. (Welf. and Inst. Code § 13300 (d).)

¹ Vera Institute of Justice, Representation Matters (December 2021) available at: <https://www.vera.org/publications/representation-matters> [as of June 22, 2025].

- 3) Requires that contracts awarded pursuant to 1) fulfill each of the following, among additional requirements, and may be executed only with nonprofit legal services organizations that meet all of the following requirements:
 - i) 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;
 - ii) Have experience in representing individuals in removal proceedings and asylum applications;
 - iii) Have conducted trainings on these issues for practitioners beyond their staff;
 - iv) Have experience guiding and supervising the work of attorneys who themselves do not regularly participate in this area of the law but nevertheless work pro bono on the types of cases described in i).
 - v) 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. (Welf. and Inst. Code § 13301 (a).)
- 4) Provides immigration relief that relies on a state's interest in the welfare of children by providing for Special Immigrant Juvenile Status where a state determines that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or similar basis found under state law and that it would not be in the child's best interest to return to their home country. (8 U.S.C. § 1101 (a)(27)(J).)
- 5) Establishes that the care and custody of unaccompanied minors is the responsibility of the Office of Refugee Resettlement in the Department of Health and Human Services instead of the Department of Homeland Security. (Homeland Security Act of 2002; P.L. 107-296, § 462.)
- 6) Defines a "special immigrant juvenile" as a person under 21 who is declared a dependent by a juvenile court or committed to the custody of a state agency or a court-appointed individual, whose reunification with one or both of their parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and whose return to their country of nationality or last habitual residence is not in their best interest. (8 U.S.C. § 1101(a)(27)(J).)
- 7) Allows such a person to obtain Special Immigrant Juvenile Status (SIJS) and, based on that, apply for a visa for lawful permanent residency. (8 U.S.C. § 1153(b)(4).)
- 8) Provides that the superior court, including a juvenile, probate, or family court department or 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, and requires the superior court to make an order containing the necessary findings regarding SIJS pursuant to federal law, if there is evidence to support those findings. (Code Civ. Proc. § 155.)

- 9) Allows the court to appoint a guardian of the person, the estate, or both for a child under 18 years of age, taking into consideration the best interest of the proposed ward. Allows the court to appoint a guardian of the person for an unmarried individual who is 18 years or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding SIJS pursuant to Code of Civil Procedure section 155 (b) if the proposed ward consents. (Prob. Code §§ 1501 et seq.)

This bill:

- 1) Provides that the state shall provide legal counsel to each unaccompanied undocumented minor in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a family member or other sponsor in California.
- 2) Provides that the right to counsel conferred pursuant to this bill begins at the time an unaccompanied undocumented minor is issued a notice to appear and has been placed in immigration removal proceedings.
- 3) Provides that the right to counsel conferred pursuant to this bill applies in state court proceedings for purposes of obtaining any order necessary for or relevant to immigration remedies, federal immigration proceedings, any related appearances or matters before the United States Department of Homeland Security, and any appeals arising from those proceedings.
- 4) Provides that the right to counsel conferred pursuant to this bill applies unless the unaccompanied undocumented minor has retained counsel independently.
- 5) Provides that the right to counsel conferred pursuant to this bill applies to a child who has been designated an unaccompanied undocumented minor at any time throughout the pendency of any of the proceedings identified in 3), above.
- 6) Provides that DSS shall contract to fulfill the obligation imposed pursuant to 1), above, with a qualified nonprofit legal services organization, as described in Section 13301 of the Welfare and Institutions Code, or an office of public defender for the county, as established pursuant to Section 27700 of the Government Code, if the public defender meets all of the following requirements:
 - a) the office has an immigration unit or contracts with an immigration attorney with at least three years of experience and expertise in providing legal representation to clients in civil immigration matters before the United States Department of Homeland Security;
 - b) the immigration unit or immigration attorney on contract supervises work completed pursuant to the contract to provide counsel for unaccompanied undocumented minors; and

- c) the attorneys within the office performing work pursuant to the contract to provide counsel for unaccompanied undocumented minors receive at least two trainings of two hours each on matters relating to asylum, T-visas, U-visas, or special immigrant juvenile status.
- 7) Defines an “unaccompanied undocumented minor” for purposes of this bill as any person who meets all of the following requirements:
 - a) the person has no lawful immigration status in the United States;
 - b) the person has not attained 18 years of age; and
 - c) the person has no parent or legal guardian in the United States, or no parent or legal guardian in the United States is available to provide care and physical custody.
- 8) Provides that DSS shall require contractors pursuant to this bill to maintain adequate legal malpractice insurance as necessary and to indemnify and hold the state harmless from any claims that arise from the legal services provided pursuant to this bill.

COMMENTS

1. Stated need for the bill

According to the author:

Unaccompanied immigrant children in the U.S. currently have no right to legal counsel in immigration court, leaving them vulnerable to deportation and unable to access critical protections like Special Immigrant Juvenile Status (SIJS) and asylum. The legal processes for these protections are complex, and without an attorney, these children are at a severe disadvantage. In 2023, only 56% of unaccompanied children had legal representation, and the difference in outcomes is stark. A 2021 report revealed that 90% of unrepresented minors were ordered removed. Additionally, many children never even get the chance to present their case. In fiscal year 2023, 86% of removal orders were issued in absentia, often because children couldn’t make it to court. Represented children, however, appeared in 95% of hearings. Recent actions by the federal administration, such as canceling a contract that provided legal services to 26,000 children and an ICE memo prioritizing unaccompanied children for detention, have heightened the need for children to have access to representation. California alone received over 10,800 unaccompanied minors in fiscal year 2024, underscoring the urgent need for a right to counsel. It is critical to provide legal representation to ensure these children have a fair chance at justice. Access to counsel is not just a matter of legal fairness – it’s a matter of basic human rights.

2. Special Immigrant Juvenile Status is a form of immigration relief available to minors and juveniles

Special Immigrant Juvenile Status (SIJS), found in the Federal Immigration and Nationality Act, is a statutory tool enacted nearly three decades ago to benefit immigrant children and youth. SIJS involves both federal and state law. The federal statute and regulations provide the framework, and the state courts provide the details for each individual situation. The Los Angeles County Bar Association described the interplay between state and federal law as follows:

First, a juvenile court must establish the child's eligibility for immigration relief. Without the court's findings, the child cannot apply for SIJS. A "juvenile court," for SIJS purposes, is "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." This broad definition encompasses many California courts--those that handle dependency and delinquency proceedings as well as those that hear guardianships, adoptions, and even family law cases. What matters is the jurisdiction of California courts, not the labels they use for themselves.

Second, the juvenile court must have either 1) declared the child dependent on the court, 2) legally committed the child to, or placed the child under the custody of, an agency or department of a state, or 3) legally committed the child to, or placed the child under the custody of, an individual or entity appointed by the court. Juvenile court dependents ... meet this requirement. So too do ... wards when the court vests their "care, custody and control" in the probation department. A child whose custody is placed with a guardian, including an institutional guardian, or with a prospective adoptive parent also meets this requirement. (Jackson, *Special Status Seekers: Through the underused SIJS process, immigrant juveniles may obtain legal status*, 34 (Feb. 2014) Los Angeles Lawyer 20, 22.)

The court must additionally determine that reunification with one or more of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. "Under California law, children have met this requirement when, for example, their parents are deceased; their parents' identities are unknown; their parents have sexually, physically, or emotionally harmed them; or their parents have not provided appropriate care, support, or protection. By definition, SIJS-eligible children have suffered the lack of a stable and safe two-parent household." (*Id.*) Additionally, the court must find that it is not in the child's best interest to return to the child to their parent's country of nationality.

In 2014, through SB 873 (Budget and Fiscal Review, Ch. 685, Stats. 2014), the Legislature clarified that superior courts can make the findings necessary for a child to be eligible for SIJS. That law states that the superior court (including a juvenile, probate, or family court) has jurisdiction to make judicial determinations regarding the custody and care of juveniles within the meaning of the federal Immigration and Nationality Act, and

requires the court to make an order containing the necessary findings for SIJS, if there is evidence to support them. (Code Civ. Proc. § 155.) Thus, a child in California today, who is under 18, may have the necessary SIJS findings made in a juvenile court as part of a dependency or delinquency proceeding, in family court as part of a custody proceeding, or in probate court, up to the age of 21, as part of a guardianship proceeding.

California law grants the superior courts jurisdiction to make judicial determinations regarding the custody and care of children, including the juvenile, probate, and family court divisions of the superior court. These courts are also empowered to make the findings necessary for a child to petition the United States Citizenship and Immigration Services for classification as a special immigrant juvenile under federal immigration law. Special immigrant juvenile status, under the federal Immigration and Nationality Act, offers relief from deportation and a path to permanent residence to undocumented immigrant children under 21 years of age, if a state juvenile court has made specific findings. The findings necessary for a child to petition for classification as a special immigrant juvenile include, among others, a finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and a finding that it is not in the child's best interest to be returned to their country of origin. Superior courts must make the findings necessary for the children and youth to petition for special immigrant juvenile status when specified criteria are met.

Children who enter the United States without a parent or legal guardian and without immigration documentation are placed in the custody of the federal Department of Health and Human Services, Office of Refugee Resettlement (ORR). While most unaccompanied immigrant children are released to family members or other adult caretakers with whom they can seek a legal guardianship, there are a small number of children who have no appropriate caregiver in the United States and therefore remain in ORR custody. Some of these children remain in the shelter system and some are transferred to a federal foster care program that is administered by ORR; in either case, the minor may need to seek a state court order regarding their eligibility for special immigrant juvenile status. Many of the unaccompanied immigrant children arriving in the United States have experienced parental abuse, neglect, or abandonment. They do not have the ability to represent themselves in state court or to petition the federal government for immigration relief. Until recently, both the state and federal governments had programs funding attorneys for unaccompanied minors and youth.

Until February of this year, the federal government had provided legal representation for unaccompanied minors in federal immigration proceedings. However, President Trump issued an executive order to suspend contracts for legal services for unaccompanied minors.² Although the Executive Order is being legally challenged,

² Rebecca Santana, Trump administration cuts legal help for migrant children traveling alone, AP News (March 21, 2025) available at: <https://apnews.com/article/trump-legal-aid-unaccompanied-children-immigration-court-127a69ce69573d2d16c72a74dacef3ab> [as of June 22, 2025].

Trump's administration is not expected to renew contracts. According to the Associated Press, the "program is funded by a five-year contract, but the government can decide at the end of each year if it renews it or not." *Id.*

In an effort to ensure these vulnerable unaccompanied minors and youth are given a chance to obtain immigration relief and avert deportation, this bill requires the state to provide legal counsel to each unaccompanied undocumented minor in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a family member or other sponsor in California, as specified. The bill additionally requires DSS to contract with qualified nonprofit legal services organizations that meet specified requirements or an office of public defender that meets specified requirements, including that the office has an immigration unit or contracts with an immigration attorney with at least 3 years of experience and expertise in providing legal representation to clients in civil immigration matters before the United States Department of Homeland Security, to fulfill those requirements.

3. Support

AB 1261 is a priority bill for the California Latino Legislative Caucus. According to the California Latino Legislative Caucus:

Many Latino and immigrant communities and their families face challenges related to language barriers, limited access to legal resources, and fear of deportation. This bill protects the rights of some of our youngest Californians by ensuring they have access to legal representation and that they are not left to fend for themselves. AB 1261 mandates that the California Department of Social Services contract with qualified nonprofit legal services organizations or public defenders to appoint counsel for unaccompanied minors who are in the physical custody of the federal Office of Refugee Resettlement and present in California or residing with a sponsor within the state.

As we continue to see families torn apart, California must do more to protect immigrant children, who through no fault of their own, find themselves in immigration proceedings.

The Coalition to Abolish Slavery and Trafficking writes the following in support of the bill:

[. . .] Without legal counsel, these vulnerable youth are forced to navigate complex immigration proceedings alone, increasing their risk of re-trafficking, detention, and deportation to dangerous conditions. As an organization committed to ending human trafficking through survivor-centered advocacy, Cast believes every child deserves a fair chance at safety and justice.

According to the United States Department of Justice, in 2023, only 56% of unaccompanied migrant children defending their cases in U.S immigration court had attorneys representing them. The legal avenues most often available for children to remain safely in the United States, asylum and Special Immigrant Juvenile status (SIJS), are among the most complex in the immigration system. There is a high number of unaccompanied minors who are released in California. Out of the 99,381 unaccompanied children released from ORR custody during FY24, 11 percent (10,819) were released to sponsors throughout the state of California.

Recent federal actions targeting already vulnerable unaccompanied children, actions such as removing protection for sensitive areas such as schools and hospitals, and stripping away federal funding for legal representation, have exacerbated fear and panic in communities throughout California. These actions threaten children's access to care, safety, and stability. Currently, neither federal law nor California state law guarantees these vulnerable children the right to government-appointed legal representation. Expecting children, many of whom are fleeing from violence, abuse, and exploitation, to navigate a highly complex and quickly changing legal process without the help of experienced attorneys is a glaring gap in our laws that is harmful and unreasonable. Without representation, they may be unable to access protections like Special Immigrant Juvenile Status (SIJS), asylum, and protection for survivors of crime and trafficking.

SUPPORT

Alameda County Board of Supervisors
California Alliance of Child and Family Services
California Catholic Conference
California Latino Legislative Caucus
City of Alameda
Coalition to Abolish Slavery and Trafficking
First 5 California
Immigrant Legal Resource Center
Santa Barbara Women's Political Committee
Secure Justice
SEIU California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 495 (Celeste Rodriguez, 2025) enacts the Family Preparedness Plan Act of 2025. AB 495 is scheduled to be heard in this Committee on the same day as this bill.

Prior Legislation:

AB 1603 (Committee on Budget and Fiscal Review, Ch. 25, Stats. 2016) made statutory changes to clarify the intent of SB 873 (Committee on Budget and Fiscal Review, Ch. 685, Stats. 2014) and AB 900 (Levine, Ch. 694, Stats. 2015), relating to the Unaccompanied Undocumented Minors program, administered by DSS, which provides legal services funding for unaccompanied undocumented minors. Specifically, these changes clarified that SIJS findings can be made at any point in the court proceedings; prerequisites for SIJS findings are the same across superior court divisions; and perceived motivations of the child/juvenile in seeking classification as a special immigrant juvenile shall not be included or referred to in the findings.

AB 900 (Levine, Ch. 694, Stats. 2015) authorized, with the consent of the proposed ward, a probate court to establish or extend a guardianship of the person for an unmarried individual, who is at least 18 years of age, but not yet 21, in connection with a petition to make necessary findings for the youth to pursue SIJS immigration relief.

SB 873 (Committee on Budget and Fiscal Review, Ch. 685, Stats. 2014) strengthened protections for immigrant children by making it clear that all California courts have jurisdiction to make SIJS findings.

PRIOR VOTES:

Assembly Floor (Ayes 63, Noes 8)
Assembly Appropriations Committee (Ayes 11, Noes 2)
Assembly Judiciary Committee (Ayes 9, Noes 2)
