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AMERICAN UNIVERSITY
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WEBINAR

**STATE COURT FINDINGS FOR ABUSED
YOUTH SEEKING SPECIAL IMMIGRANT
JUVENILE STATUS**

WE WILL START SOON

NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

9/23/2015

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Learning Objectives:

By the end of this training, you will be better able to:

- Identify SIJS eligible minors
- Understand the different kinds of qualifying abuse for SIJS eligibility
- Address family court jurisdiction issues
- Issue SIJS findings from state family courts

Power Point and Materials Available at:

- Webinar materials are available at: <http://niwap.org/go/sijs>
- Please visit our Federal Materials section for USCIS publication or visit <http://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status>
- Recording and materials will also be available on the Judicial Department intranet

The screenshot displays the NIWAP website interface. At the top, there are logos for NIWAP, American University, Washington College of Law, and Legal Momentum. A navigation menu includes links for Home, Immigration, Family Law for Immigrants, Public Benefits, VAWA Confidentiality, Language Access, and Cultural Competency. The main content area shows a reference page for a webinar titled "JULY 13, 2015: STATE COURT FINDINGS FOR ABUSED YOUTH SEEKING SPECIAL IMMIGRANT JUVENILE STATUS". The page includes a description of the webinar, a section for federal materials, and a search bar.

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Reference

- * Research and Data
- Manuals
- Statutes and Regulations
- National Directory of Programs With Experience Serving Immigrant Victims
- * NIWAP: Additional Resources
- * Webinars

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JULY 13, 2015: "STATE COURT FINDINGS FOR ABUSED YOUTH SEEKING SPECIAL IMMIGRANT JUVENILE STATUS"

Special Immigrant Juvenile Status (SIJS) allows certain youth immigrant survivors of abuse, abandonment, and/or neglect by a parent to obtain legal immigration status in the United States. This webinar will review elements required for a successful SIJS application focused particularly on special findings in state court orders. Faculty will provide information and resources on screening for SIJS eligibility, types of qualifying abuse, which SIJS cases OYW and LSC funded organizations may represent, jurisdictional concerns of judges, and clarification on the requirement that only one parent abused the petitioning youth.

FEDERAL MATERIALS

Details...

History

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U.S. Immigration System

Agency

- Department of Homeland Security (DHS)
- Department of Justice (DOJ)
- Department of State (DOS)
- Department of Health and Human Services (HHS)

Role

- Enforces immigration laws and administers immigration benefits
- Conducts immigration court proceedings
- Issues visas
- Provides care and custody to unaccompanied alien children

Department of Homeland Security

- United States Citizen and Immigration Services
 - Adjudicates applications for immigration relief
 - Issues policy and regulations pertaining to victim and humanitarian based immigration relief
- Immigration Customs Enforcement
 - Uses prosecutorial discretion to enforce immigration laws
 - Oversees detention and removal
- Customs and Border Patrol
 - Uniformed agents along the border and ports of the United States
 - Uses prosecutorial discretion in deciding to question, investigate or detain arriving and recently arriving individuals

DHS Priorities for Enforcement and Victim Protection: DHS Memos – Guidance

- DHS victim witness memo
- Humanitarian release
- 384 DHS computer system (VAWA, T visas, U visas)
- Memorandum on DHS detention priorities
- See Web library for –
 - Bench Card: DHS Enforcement Priorities Information for State Court Judges
 - DHS Victim Protection Resources and Guidance

Immigrant Children in Family Court

- May have options for legal immigration status
 - Child's own application
 - Child included in parent's application
- Immigrant children's best interests are promoted when state courts:
 - Issue detailed findings required for children to apply for Special Immigrant Juvenile Status
 - Sign U visa certifications
 - Do not inadvertently cut children off from legal immigration options
 - Award custody to non-abusive parents, family members, guardians
 - Without regard to the custodian's immigration status

Access to Legal Immigration Status:

- Provides a path to economic security
 - Work authorization
 - Drivers licenses
 - Financial aid to attend university
 - Varies by state and immigration status
- Removes fear of deportation, promotes stability and facilitates access to:
 - Nurturing family relationships
 - Stable school environment
 - Mentors, role models and community support

Overview Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection for immigrant children who cannot be reunited with one or both of their parents due to abuse, abandonment or neglect
- Children who are granted SIJS are immediately eligible to apply for lawful permanent residency, if eligible

Unaccompanied Minor Process

- Apprehension
- Screening within 48 hours
- Transfer to HHS Office of Refugee Resettlement (ORR)
- ORR seeks safe placement for child who will
 - Provide care for the child
 - Bring the child to immigration court
- If no safe placement identified, child remains in federal HHS custody

Special Immigrant Juvenile Status Eligibility Requirements

- Under 21 (or state law age of majority) & unmarried
- Abused, abandoned, or neglected (as defined by state law) by one or both parents
 - In the U.S. or abroad
 - Must be present in the U.S. when filing for SIJS
- State court findings required as evidence

Special Immigrant Juvenile Status Eligibility Requirements

- State court findings required as evidence
- Have a family/juvenile court order addressing custody, care, dependency of a child and finding
 - That the child was abused, abandoned, or neglected by one or both parents;
 - That reunification with the abusive one parent is not viable; and
 - That it is not in the child's best interest to be returned to the child's home country
- All as defined under state law

All of the Following are Potentially Eligible for SIJS

- A minor who is:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent
 - Guardian
 - Adopted parent
 - State foster care
 - Federal foster care (ORR)

SIJS: Congressional Goals

- Draw upon expertise of state courts to assist DHS in adjudications that offer protection to vulnerable immigrant children
- State court expertise:
 - Adjudicating facts of child abuse, neglect and abandonment
 - Issuing orders regarding child care, custody and placements that further the best interests of children

SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

- Issue orders providing evidence to help DHS adjudicate a child's SIJS application
- Make findings of fact under state law on
 - Custody, dependency, placement, care of a child
 - Parental reunification
 - Child's best interests

DHS Adjudicators

- Adjudicate SIJS reviewing full SIJS application filed by child including the state court's order
- Determine if state court order was sought primarily
 - To provide the child relief from harm caused by abuse, abandonment or neglect; OR
 - For immigration purposes

Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Paternity
- Child support
- Criminal cases
- Custody
- Custody Modification
- Divorce
- Legal Separation
- Motions for a declaratory judgment

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care of children = *juvenile courts* for SIJS immigration purposes

State Courts Regularly Make Custody & Care Determinations

- Who will be the custodian of the minor;
- Who the minor will live with;
- Who will receive child support for the child
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation;
- Issue orders directing the child's care
 - Child support, health care, applying for benefits or services for the child

Court Order: Custody, Dependency, Placement

- Declaring the minor is dependent on the court*; *OR*
- Placing the child in the care, custody or guardianship of:
 - An individual person;
 - Order should include in the name of the person and their relationship to the child
 - Parent, family member, friend, next friend, other
 - A state agency or department; *OR*
 - A private agency

**Statutory Amendment 2008, no longer requires the child is dependent on the state, the child may be placed with an individual including relatives.*

“One *or* Both Parent” Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

Finding: Reunification Not Viable

- Must include findings by the state court that reunification with a least one of the child's parents is not viable due to
 - Abuse
 - Abandonment
 - Neglect
 - Or similar basis under state law

Best Practice for Findings

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Each parent (1) or parents (2) involved
- Cite the state statute(s) on
 - Abuse, abandonment and/or neglect
- If “similar basis” explain in court order how it is similar to
 - Abuse, abandonment and/or neglect

Viability of Reunification

- Reunification with the parent(s) who perpetrated the abuse, abandonment or neglect is no longer a viable option
 - While the child is still a minor
- Standard not termination of parental rights
- Child “normally expected to remain” in the placement through the age of majority

Finding: Best Interests of the Child

- Not in the child's best interests to be returned to the child's or the child's parent's home country
- Best practice
 - Identify potential placement for the child
 - In the U.S. and the home country
 - Make findings as to the role of each who was involved in the abuse, abandonment or neglect
 - Apply state best interest factors to potential placements – include in findings
 - Country conditions only come into play when two potential placements compared US vs. home country

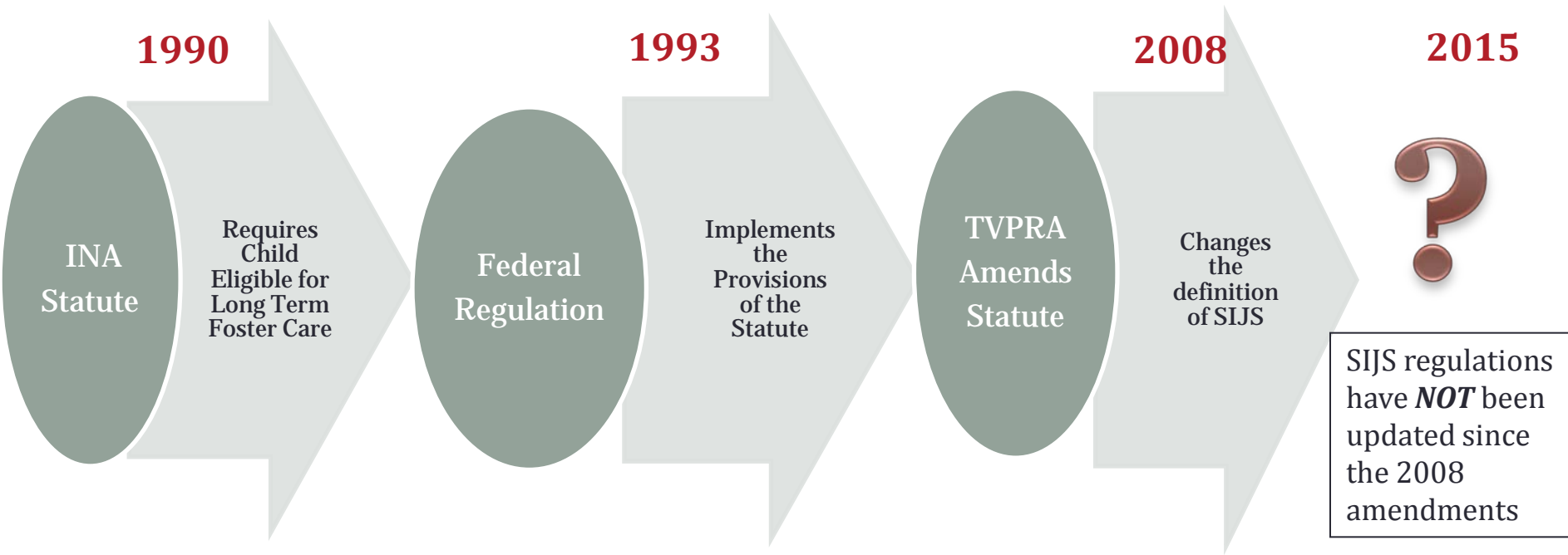
Best Interest Finding

- This best interest finding may be made by the court or by another administrative or judicial official
- The court must authorize or recognize the finding made by another agency as part of the court's SIJS findings

2005 & 2008 SIJS Amendments

- Any state court with jurisdiction to address care, custody, placement, dependency of a child
 - Long term foster care not required
- State courts adjudicate “abuse, abandonment, or neglect”
 - Apply state law without regard to where abuse occurred
 - DHS may not inquire about details of the abuse from youth applicant or contact abusive parents

Statute vs. Regulation



State Law in SIJS Cases Governs:

- Age of majority (often 18 –not 21) by which a minor must receive SIJS orders
 - Court must have jurisdiction to issue orders addressing care, custody or dependency of a minor
- Definition of abuse, abandonment, neglect
 - Both for events occurring in the U.S. and abroad
- Best interests of the child factors
- Service of process rules
- Family court jurisdiction

Ensure the State Court Order Satisfies USCIS Requirements By:

- Clearly articulating state law basis for jurisdiction over the minor in the case before the court
- Issuing rulings containing details of the court's factual findings regarding:
 - Abuse, abandonment, and/or neglect
 - Best interests
 - Include state law citations

Ensure the State Court Order Satisfies USCIS Requirements By:

- Articulating factually how the order furthers the court's role under state law of:
 - Protecting and ensuring the safety of minors
 - Furthering children's best interests
 - Issuing orders regarding the custody, placement, and care of minors

Examples

Likely Meets USCIS Standard

- Provide specific findings based on actual facts of the case
 - State the action the court took or name the person that was awarded custody
 - The child cannot be reunified with her biological father due to abuse caused by him under State Code (cite)
 - It is in the child's best interest to remain in State because her mother is the best care taker for her and she resides in State.

Inadequate for USCIS Standard

- Restating the statutory language found in the INA
 - The child is dependent on the court, or under the custody of state agency or department, or an individual or entity appointed by the court.
 - “Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law”
 - It is not in the child's best interest to return to home country.

SIJS in State Courts

- SIJS opportunities appear frequently in family court because the Court's primary role is protecting and ensuring the safety of children and families
- Most SIJS cases are 15-17 year old minors
- Courts should consider SIJS as an option any time a child is not a
 - Citizen or lawful permanent resident

Timing of SIJS Orders

- Should be issued before a minor turns age of majority under state law
- Under state law, some courts may have continued jurisdiction over youth between age of majority and 21
- If routinely considered in any case in which a non-citizen minor comes before a family court, fewer children will “age out” of SIJS

SIJS and State Court Jurisdiction

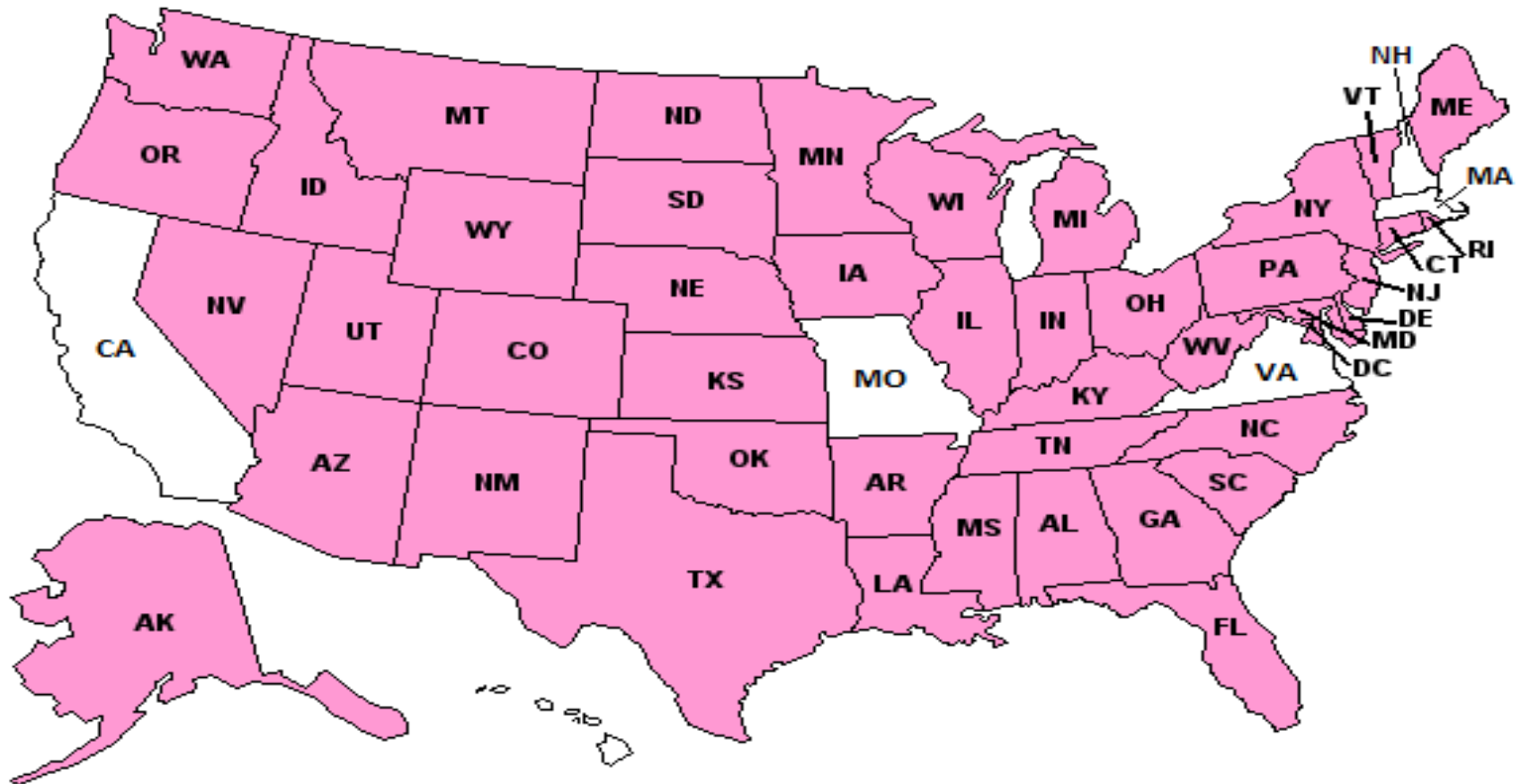
- Any state court with personal jurisdiction over a child *and*
- Subject matter jurisdiction to issue state court orders that affect the *care or custody* of a child
- Must follow state service of process requirements for type of proceeding
 - Consular notification may be required
- Age of majority set by state law
- Benefits for older teens of orders state courts have jurisdiction to issue

Jurisdiction Under the UCCJEA

- Home state jurisdiction
 - 6 months in the state
 - Foreign country counts as a “home state”
- Temporary emergency jurisdiction
 - May vary by state
 - Generally may assert when the juvenile is present in the state and is abandoned or abused
 - In many states temporary emergency jurisdiction can become full continuing jurisdiction

States With Declaratory Judgment Statutes That Can be Used in SIJS Cases

When under state law the court can take jurisdiction over the care or custody of a child



Declaratory Judgments

- A declaratory judgment can be a useful tool for obtaining necessary state court findings
- 4 things you must consider based on your state's law and policies:
 - Availability of a declaratory judgment statute
 - Is the relief sought a valid state court function?
 - Is the child in federal or state custody?
 - Will a declaratory judgment further the child's benefits eligibility for public benefits in the state?

Best Interest of the Child to Remain in the U.S.

- Best interest includes comparison of factors in the U.S. and child's home country
- Helpful to courts to provide evidence of country conditions
- Best interests under state law including
 - Risk of danger to the child
 - Family support system
 - Emotional well being
 - Educational resources
 - State laws that preclude or discourage placement with abusive parent

Commissioner Young

- Judicial perspective on the range of court orders that benefit immigrant minors and affect their care, custody and/or delinquency
- That legitimate roles for state courts
- That are not *primarily for immigration benefits*
- Deportable offenses can cut off access to lawful permanent residency based on SIJS

SIJS Eligibility: Courts

- Courts should:
 - Recognize cases in which SIJS orders could be issued
 - Make available at courthouses DHS-produced information on immigration relief eligibility
 - Ask counsel for foreign born children to brief the court on whether SIJS orders would benefit the child

What Children with SIJ Status Receive

- While case is pending:
 - Protection from deportation and removal
 - As lawfully present children – health care exchanges (no subsidies), education benefits
 - Programs and services necessary to protect life and safety

What Children with SIJ Status Receive

- At approval:
 - Lawful Permanent Residency (separate but usually concurrent filing)
 - Legal work authorization
 - Brings access to state issued driver's licenses and identification cards
 - Eligible for citizenship after 5 years
 - Post secondary educational grants and loans, public and assisted housing
 - Food stamps (only until the immigrant child turns age 19)

SIJS' may NEVER file family petition for either of the child's natural parents



Technical Assistance and Materials

- Power Point presentations and materials for this webinar at niwap.org/go/sijs
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
 - Includes direct technical assistance to courts
- **State Justice Institute** Funded Materials for State Court Judges on Immigrant Children and Crime Victims
 - www.niwap.org/go/sji
- Web Library: www.niwaplibrary.wcl.american.edu

Thank you!

Understanding the Significance of a Minor's Trauma History in Family Court Rulings

By: Meaghan Fitzpatrick and Leslye Orloff

August 14, 2015

Many immigrant children involved in family court proceedings are survivors of traumatic events such as domestic violence, sexual assault, human trafficking, child abuse, abandonment, or neglect. Immigrant children may have experienced trauma in their home country, throughout their journey to the United States, or during the resettlement and adaptation to life in the United States. Understanding the history of traumatic events is a crucial component for state family court judges to decide the best placement, care plan, and services to be ordered for the child.

Experiencing or witnessing abuse as a minor affects the child's health and wellbeing,¹ and may affect their neurocognitive development, intellectual functioning and development, and physical actions. Minors who have witnessed or experienced abuse often also suffer from:

- Post-traumatic stress disorder;²
- Profound sense of helplessness;
- Hypervigilance;
- Low self-esteem; and
- Behavioral problems³
 - Self-medicating with street drugs
 - Aggression
 - Delinquency
 - Adult criminal acts⁴
 - Bullying⁵

¹ English, D. J., Marshall, D. B., & Stewart, A. J., *Effects of family violence on child behavior and health during early childhood*, *Journal of Family Violence*, 18(1) (2003); Huth-Bocks, A. C., Levendosky, A. A., & Semel, M. A., *The Direct and Indirect Effects of Domestic Violence on Young Children's Intellectual Functioning*, *Journal of Family Violence*, 16, 269–290 (2001); Osofsky, J., *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, *Clinical Child and Family Psychology Review* (2003).

² Kolbo, J.R., & Engelman, D., *Children Who Witness Domestic Violence: A Review of Empirical Literature*, *Journal of Interpersonal Violence*, Vol. 11.2, 281-293 (1996); Rossman BBR, Bingham RD, Emde RN: *Symptomatology and Adaptive Functioning for Children Exposed to Normative Stressors, Dog Attack, and Parental Violence*, *J Am Acad Child Adolesc Psychiatry*, 36:1089–1097 (1998); Dutton, M., Greene, B., Kaltman, S., Roesch, D., Zeffiro, T., & Krause, E., *Intimate Partner Violence, PTSD, and Adverse Health Outcomes*, *Journal of Interpersonal Violence*, 21, 955-968 (2006).

³ Moore, T.R & Pepler, D.J. *Correlates of Adjustment in Children at Risk*, In G. W. Holden, R. A. Geffner, & E. N. Jouriles (Eds.), *Children exposed to marital violence: Theory, research, and applied issues* American Psychological Association, 157–184 (1998); Cox, C. E., Kotch, J. B., & Everson, M. D. *A Longitudinal Study of Modifying Influences in the Relationship Between Domestic Violence and Child Maltreatment*, *Journal of Family Violence*, 18(1), 5-17(2003).

⁴ Widom 1989 CS Widom, C.S., *Child Abuse, Neglect, and Violent Criminal Behavior*, *Criminology*, 27, 251–272 (1989).

Immigrant children, especially immigrant girls, are at an increased risk of sexual assault. High school aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers.⁶ Immigrant girls are legally and socially vulnerable to recurring sexual assault due to factors associated with their immigration status such as increased isolation, language barriers to reporting, and the break-up and restructuring of families during the immigration process. The severe impact of sexual abuse of minors commonly manifests itself physically through:⁷

- Cognitive deficits, depression, dissociation, and/or persistent posttraumatic stress disorder;
- Severe anxiety known as hypothalamic–pituitary–adrenal attenuation;
- High rates of obesity;
- Chronic health complaints such as headaches or stomach aches. As victims mature problems can become chronic conditions disorders leading to gastrointestinal, cardiovascular, respiratory, muscular-skeletal, dermatological, and/or urological problems;⁸
- Early onsets of puberty, maladaptive sexual development, sexual re-victimization;
- Dropping out of high school;
- Drug and alcohol abuse;
- Experience dating and domestic violence in relationships;⁹ and
- Teen motherhood which is further complicated by premature deliveries, offspring who are at increased risk for child maltreatment and overall mal-development

These symptoms may surface in juvenile delinquency or dependency cases and can help state court judges identify victims of abuse and sexual assault. Family courts are often the first to encounter minors with unreported or untreated trauma. Awareness of signs that a minor has been a victim of child abuse and sexual assault provides the court with the opportunity to assist immigrant minors with

⁵ Steinberg, L., *Youth Violence: Do Caregivers and Families Make a Difference?* National Institute of Justice Journal, April, 30–38 (2000) (NCJ 181732); Farrington, D.P. *Understanding and Preventing Bullying*, Crime and Justice 17, 381-458 (1993); Baldry, A. C., *Bullying in Schools and Exposure to Domestic Violence*, Child Abuse and Neglect, 27, 713–732 (2003).

⁶ Michele R. Decker, Anita Raj, & Jay G. Silverman, *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, (2007)

⁷ Penelope K. Trickett, Jennie G. Noll, and Frank W. Putnam, *The Impact of Sexual Abuse on Female Development: Lessons From a Multigenerational, Longitudinal Research Study Development and Psychopathology* 23 (2011), 453–476

⁸ The National Child Traumatic Stress Network, *Effects of Complex Trauma*, available at <http://www.nctsn.org/trauma-types/complex-trauma/effects-of-complex-trauma#q2>; Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US). 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Available at <http://www.ncbi.nlm.nih.gov/books/NBK207201/>

⁹ Silvern, L., Karyl, J., Waelde, et al, *Retrospective Reports of Parental Partner Abuse: Relationships to Depression Trauma Symptoms and Self-Esteem Among College Students*, Journal of Family Violence, 10, 177-202, (1995); Langhinrichsen-Rohling, J., Schlee, K., Monson, C., Ehrensaft, M., & Heyman, R., *What's Love Got to Do With It? Perceptions of Marital Positivity in H-to-W Aggressive, Distressed, and Happy Marriages*, Journal of Family Violence, 13, 197-212, (1998).

history of trauma in accessing stability and relief from abuse. In state family court, the minor's trauma history may affect:

- Best interests of the child determination, including the best placement or custody arrangement for that child considering the importance of placing the minor with a non-abusive parent, family member, guardian, or other safe placement;
- Minor's immigration options including findings or certifications needed as part of the immigration application;
- Minor's communication with and demeanor in court; and
- Minor's need for therapy, treatment & health care needs including victims' services & public benefits to help the minor process the trauma and begin to heal.

Family courts have the opportunity to intervene and mitigate the harms of abuse against minors. Providing comprehensive orders and making formal records of abuse that are necessary or helpful to the immigration application and allow a minor to access immigration relief improves the minor's access to:¹⁰

- Economic opportunity;
- Healthcare;
- Mentors and role models;
- Organized community programs for youth and families;
- School environment that promotes prevention; and
- Adult family members who are nurturing and provide consistent, structured supervision

¹⁰Janet Carter, *Domestic Violence, Child Abuse, and Youth Violence: Strategies for Prevention and Early Intervention* (Family Violence Prevention Fund) (2000) available at <http://www.mincava.umn.edu/link/documents/fvpf2/fvpf2.shtml>