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S.316

Introduced by Senators Balint, Hooker and Ingram

Referred to Committee on Judiciary

Date: January 17, 2020

Subject: Judiciary; guardianship; juveniles; immigration status

Statement of purpose of bill as introduced: This bill proposes to: (1) add immigration status to the protected categories for hate-motivated crimes and (2) extend jurisdiction to State courts to make special immigration juvenile status findings to allow a person to apply for special immigrant status.

~~An act relating to special immigration juvenile status~~

An act relating to execution of wills during an emergency

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 4 V.S.A. § 33 is amended to read:~~

§ 33. JURISDICTION; FAMILY DIVISION

(a) Notwithstanding any other provision of law to the contrary, the Family Division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

* * *

(18) Concurrent with the Probate Division, special immigration judicial determinations regarding the custody and care of children within the meaning of the Federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(C))

1 ~~and 8 C.F.R. Sec. 204.11) issued pursuant to 14 V.S.A. chapter 111, subchapter~~
2 14.

3 * * *

4 Sec. 2. 4 V.S.A. § 35 is amended to read:

5 § 35. JURISDICTION; PROBATE DIVISION

6 The Probate Division shall have jurisdiction of:

7 * * *

8 (25) grandparent visitation proceedings under 15 V.S.A. chapter 18; and

9 (26) other matters as provided by law; and

10 (27) concurrent with the Family Division, special immigration judicial
11 determinations regarding the custody and care of children within the meaning
12 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(27)(J)
13 and 8 C.F.R. Sec. 204.11) issued pursuant to 14 V.S.A. chapter 111, subchapter
14 14.

15 Sec. 3. 13 V.S.A. § 1458 is amended to read:

16 § 1458. DEFINITIONS

17 For purposes of this chapter only:

18 * * *

19 (6) “Protected category” includes race, color, religion, national origin,
20 sex, ancestry, age, service in the U.S. Armed Forces, disability as defined by
21 21 V.S.A. § 495d(5), sexual orientation, gender identity, immigration status,
22 and perceived membership in any such group.

1 ~~Sec. 4. 14 V.S.A., chapter 111, subchapter 14 is added to read:~~

2 Subchapter 14. Special Immigration Status

3 § 3098. SPECIAL IMMIGRATION JUVENILE STATUS; JURISDICTION
4 AND FINDINGS

5 (a) Jurisdiction and Findings. The court has jurisdiction under Vermont
6 law to make judicial determinations regarding the custody and care of children
7 within the meaning of the federal Immigration and Nationality Act (8 U.S.C.
8 Sec. 1101(a)(27)(J) and 8 C.F.R. Sec. 204.11). The court is authorized to
9 make the findings necessary to enable a child to petition the U.S. Citizenship
10 and Immigration Service for classification as a special immigrant juvenile
11 pursuant to 8 U.S.C. Sec. 1101(a)(27)(J).

12 (b)(1) If an order is requested from the court making the necessary findings
13 regarding special immigrant juvenile status as described in subsection (a) of
14 this section, the court shall issue an order if there is evidence to support those
15 findings, which may include a declaration by the child who is the subject of
16 the petition. The order issued by the court shall include all of the following
17 findings:

18 (A) The child was either of the following:

19 (i) declared a dependent of the court.

20 (ii) legally committed to or placed under the custody of a State

21 agency or department or an individual or entity appointed by the court. The

1 ~~court shall indicate the date on which the dependency, commitment, or custody~~
2 ~~was ordered.~~

3 (B) That reunification of the child with one or both of the child's
4 parents was determined not to be viable because of abuse, neglect,
5 abandonment, or a similar basis pursuant to Vermont law. The court shall
6 indicate the date on which reunification was determined not to be viable.

7 (C) That it is not in the best interests of the child to be returned to the
8 child's or his or her parent's previous country of nationality or country of last
9 habitual residence.

10 (2) If requested by a party, the court may make additional findings that
11 are supported by evidence.

12 (c) In any judicial proceedings in response to a request that the court make
13 the findings necessary to support a petition for classification as a special
14 immigrant juvenile, information regarding the child's immigration status that
15 is not otherwise protected by State laws shall remain confidential. This
16 information shall also be exempt from public inspection and copying under the
17 Public Records Act and shall be kept confidential, except that the information
18 shall be available for inspection by the court, the child who is the subject of
19 the proceeding, the parties, the attorneys for the parties, the child's counsel,
20 and the child's guardian.

1 ~~(d) As used in this section "court" means the Probate Division and the~~
2 ~~Family Division of the Superior Court.~~

3 § 3099. SPECIAL IMMIGRATION JUVENILE STATUS; INDIVIDUALS
4 BETWEEN 18 AND 21 YEARS OF AGE

5 (a) With the consent of the proposed person under guardianship, the
6 Probate Division may appoint a guardian of the person for an unmarried
7 individual who is 18 years of age or older, but who has not yet attained
8 21 years of age, in connection with a petition to make the necessary findings
9 regarding special immigrant juvenile status as described in section 3098 of this
10 title.

11 (b) A petition for guardianship of the person of a proposed ward who is
12 18 years of age or older, but who has not yet attained 21 years of age, may be
13 filed by a parent, relative, or any other person on behalf of the proposed
14 person under guardianship, or the proposed person under guardianship.

15 (c) At the request of, or with the consent of, the person under guardianship,
16 the court may extend an existing guardianship of the person for a ward past
17 18 years of age, for purposes of allowing the ward to complete the application
18 process with the United States Citizenship and Immigration Services for
19 classification as a special immigrant juvenile pursuant to 8 U.S.C.

20 § 1101(a)(27)(J). A relative or any other person on behalf of the person under
21 guardianship, or the person under guardianship, may file a petition to extend

1 ~~the guardianship of the person for a period of time not to extend beyond the~~
2 ~~person under guardianship reaching 21 years of age.~~

3 ~~(d) This section does not authorize the guardian to abrogate any of the~~
4 ~~rights that a person who has attained 18 years of age may have as an adult~~
5 ~~under State law, including decisions regarding the person under guardianship's~~
6 ~~medical treatment, education, or residence, without the person under~~
7 ~~guardianship's express consent.~~

8 Sec. 5. EFFECTIVE DATE

9 ~~This act shall take effect on July 1, 2020.~~

Sec. 1. 14 V.S.A. § 5 is amended to read:

§ 5. EXECUTION OF WILL; REQUISITES

(a) A will shall be:

(1) in writing;

(2) signed in the presence of two or more credible witnesses by the testator or in the testator's name by some other person in the testator's presence and by the testator's express direction; and

(3) attested and subscribed by the witnesses in the presence of the testator and each other.

(b) During the period that the Emergency Administrative Rules for Remote Notarial Acts adopted by the Vermont Secretary of State ("the Emergency Rules") are in effect, the witnesses to a will signed in conformity with the Emergency Rules and pursuant to the self-proving will provisions of section 108 of this title shall be considered to be in the presence of the testator and each other whether or not the witnesses are physically present with the testator or the notary.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.