

1 S.163

2 Introduced by Senator Balint

3 Referred to Committee on Judiciary

4 Date: January 4, 2022

5 Subject: Judiciary; guardianship; juveniles; immigration status

6 Statement of purpose of bill as introduced: This bill proposes to: (1) clarify
7 the jurisdiction and procedure for State courts to make special findings for at-
8 risk noncitizen children petitioning for Special Immigrant Juvenile Status from
9 the federal government, and (2) extend jurisdiction to State courts to make
10 special findings for at-risk noncitizen to allow a person who has not yet
11 attained 21 years of age to apply for special immigrant status.

12 ~~An act relating to State court jurisdiction for special immigrant juvenile~~
13 ~~status.~~

An act relating to State court petitions for vulnerable noncitizen youth

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

15 ~~Chapter 14 of 14 V.S.A. chapter 111, subchapter 14 is amended to read:~~

16 ~~Subchapter 14. Special Immigration Status~~

17 § 3098. SPECIAL IMMIGRATION JUVENILE STATUS; JURISDICTION

18 ~~AND FINDINGS AT-RISK NONCITIZEN CHILDREN~~

19 ~~(a) Definitions. As used in this subchapter:~~

1 ~~(1) "At risk" means there is reasonable cause to suspect that a child's~~
2 ~~health, safety, or welfare is in jeopardy due to abuse, neglect, abandonment,~~
3 ~~or similar circumstances and that return to the child's or the child's parent's~~
4 ~~county of origin or country of last habitual residence would not be in the~~
5 ~~best interests of the child.~~

6 (2) "Child" or "children" means an unmarried individual or
7 individuals who have not yet attained 21 years of age.

8 (3) "Court" means the Probate Division and the Family Division of
9 the Superior Court.

10 (4) "Dependent on the court" means subject to the jurisdiction of the
11 Probate Division or the Family Division of the Superior Court.

12 (5) "Noncitizen" means any person who is not a U.S. citizen.

13 (6) "Similar circumstances" means a condition that has an effect on a
14 child comparable to abuse, neglect, or abandonment, including the death of
15 a parent.

16 (b) Jurisdiction.

17 (1) The court has jurisdiction under Vermont law to make judicial
18 determinations regarding the custody and care of children within the meaning
19 of the federal Immigration and Nationality Act (8 U.S.C. § 1101(a)(27)(J) and
20 8 C.F.R. § 204.11). The court is authorized to make the findings necessary to
21 ~~enable a child to petition the U.S. Citizenship and Immigration Service for~~

1 classification as a special immigrant juvenile pursuant to 8 U.S.C.

2 § 1101(a)(27)(J).

3 (2) An at-risk noncitizen child against whom charges have been filed in
4 the Criminal Division may file a petition for special immigration status in the
5 court.

6 (b)(c) Procedure for petition.

7 (1) If an order is requested from the court making the necessary findings
8 regarding special immigrant juvenile status as described in subsection (a) of
9 this section, the court shall issue an order if there is evidence to support those
10 findings, which may include a declaration by the child who is the subject of
11 the petition. The order issued by the court shall include all of the following
12 findings If an at-risk noncitizen child petitions the court for special findings in
13 order to seek special immigrant juvenile status pursuant to 8 U.S.C. §
14 1101(a)(27)(J), the court shall review the petition, including any supporting
15 affidavits and other evidence presented, and issue findings of fact that
16 determine whether the at-risk noncitizen child:

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

18 (i) ~~Declared a~~ Is dependent of on the court.

19 (ii) ~~Legally or legally~~ committed to or placed under the custody of

20 ~~a State agency or department or an individual or entity appointed by the court.~~

1 ~~The court shall indicate the date on which the dependency, commitment, or~~
2 ~~custody 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 Has suffered from abuse,~~
5 ~~neglect, abandonment, or a similar basis pursuant to Vermont law~~
6 ~~circumstances. The court shall indicate the date on which reunification was~~
7 ~~determined not to be viable.~~

8 (C) May not be viably reunified with one or both parents due to
9 abuse, neglect, abandonment, or a similar circumstance pursuant to Vermont
10 law; and

11 (D) That it is not in the best interests of the child to be returned to the
12 child's or his or her parent's previous country of nationality or country of last
13 habitual residence.

14 (2) Additional Findings. If requested by a party, the court may make
15 additional findings that are supported by evidence.

16 (3) Health, safety, and welfare considerations. When considering an at-
17 risk noncitizen child's health, safety, or welfare, the court shall consider
18 whether present or past living conditions will adversely affect the child's
19 physical, mental, or emotional health.

20 (4) Extension of guardianship. At the request or consent of the at-risk
21 noncitizen child presently under guardianship, or with the consent of the

1 ~~person under guardianship, the court may extend an existing guardianship of~~
2 ~~the person for a ward past 18 years of age for purposes of allowing the ward to~~
3 ~~complete the application process with the United States Citizenship and~~
4 ~~Immigration Services for classification as a special immigrant juvenile~~
5 ~~pursuant to 8 U.S.C. § 1101(a)(27)(J).~~

6 (5) Requesting an initial guardianship. With the consent of an at-risk
7 noncitizen child under guardianship, the court may appoint a guardian of the
8 person for an unmarried individual who is 18 years of age or older, but who
9 has not yet attained 21 years of age, in connection with a petition to make
10 findings under this section.

11 (e)(d) Notice. If the identity or location of the at-risk noncitizen child's
12 parents is unknown or if the parents reside outside of the United States, the
13 court may serve notice using any alternative method of service the court
14 determines is appropriate or waive service when the child is described in
15 8 U.S.C. § 1101(a)(27)(J) and 8 U.S.C. § 1357(h).

16 (e) Expeditious adjudication. In order to serve the best interests of the at-
17 risk noncitizen child, a court shall hear, adjudicate, and issue findings of fact
18 on any petition for special findings under this section as soon as it is
19 administratively feasible and prior to the at-risk noncitizen child attaining
20 21 years of age.

1 ~~(f) Referral for services or protection. An at-risk noncitizen child who is~~
2 ~~the subject of a petition for special findings under this section may be referred~~
3 ~~for psychiatric, psychological, educational, occupational, medical, dental,~~
4 ~~social services, or for protection against human trafficking or domestic~~
5 ~~violence; provided, however, that a child's participation in any referred service~~
6 ~~is voluntary.~~

7 (g) Additional available remedies; similar findings of fact.

8 (1) This section shall not limit an at-risk noncitizen child from
9 petitioning for special findings for a petition under any other provision of law
10 or from any other rights and remedies available to the child under any other
11 provision of law.

12 (2) This section shall not limit the court from issuing similar findings of
13 fact to those described in this section in any other proceeding concerning the
14 at-risk noncitizen child.

15 (h) Abrogation of child's rights. A guardian of an at-risk noncitizen child
16 is not authorized under this section to abrogate any of the rights that an at-risk
17 noncitizen child who has attained 18 years of age may have as an adult under
18 State law.

19 (i) Construction. This section shall be liberally construed to promote the
20 best interests of the child.

1 ~~(j) In any judicial proceedings in response to a request that the court make~~
2 the findings necessary to support a petition for classification as a special
3 immigrant juvenile, information regarding the child's immigration status that
4 is not otherwise protected by State laws shall remain confidential. This
5 information shall also be exempt from public inspection and copying under the
6 Public Records Act and shall be kept confidential, except that the information
7 shall be available for inspection by the court, the child who is the subject of
8 the proceeding, the parties, the attorneys for the parties, the child's counsel,
9 and the child's guardian.

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

12 Sec. 2. EFFECTIVE DATE

13 ~~This act shall take effect on July 1, 2022.~~

Sec. 1. 14 V.S.A. chapter III, subchapter 14 is amended to read:

Subchapter 14. ~~Special Immigration Status~~ Vulnerable Noncitizen Children

*§ 3098. ~~SPECIAL IMMIGRATION JUVENILE STATUS; JURISDICTION~~
~~AND FINDINGS-VULNERABLE NONCITIZEN CHILDREN~~*

(a) Definitions. As used in this subchapter:

(1) "Child" or "children" means an unmarried individual or individuals who have not yet attained 21 years of age and who are not a U.S. citizen or citizens.

(2) "Court" means any court that has jurisdiction over an unmarried individual or individuals who have not yet attained 21 years of age and who are not a U.S. citizen or citizens, including the Probate Division and the Family Division of the Superior Court.

(3) “Dependent on the court” means subject to the jurisdiction of a court competent to make decisions concerning the protection, well-being, care and custody of a child for findings, orders, or referrals to support the health, safety, and welfare of a child or to remedy the effects on a child of abuse, abandonment, or other similar circumstances.

(4) “Noncitizen” means any person who is not a U.S. citizen.

(5) “Similar circumstances” means a condition or conditions that have an effect on a child comparable to abuse, neglect, or abandonment, including the death of a parent.

(6) “Vulnerable” means there is reasonable cause to suspect that a child’s health, safety, or welfare is in jeopardy due to abuse, neglect, abandonment, or similar circumstances and that return to the child’s or the child’s parent’s country of origin or country of last habitual residence would not be in the best interests of the child.

(b) Jurisdiction. The A court has reviewing a petition under this section shall have jurisdiction under Vermont law to make judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11). The court is authorized to make the findings necessary to enable a child to petition the U.S. Citizenship and Immigration Service for classification as a special immigrant juvenile pursuant to 8 U.S.C. § 1101(a)(27)(J).

(b)(c)(1) If an order is requested from the court making the necessary findings regarding special immigrant juvenile status as described in subsection (a) of this section, the court shall issue an order if there is evidence to support those findings, which may include a declaration by the child who is the subject of the petition. The order issued by the court shall include all of the following findings: Procedure for petition. A vulnerable noncitizen child, or a person interested in the welfare of a vulnerable noncitizen child, may petition the court for special findings to protect the child and obtain relief from the underlying abandonment, abuse, neglect, or similar circumstances. The court shall review the petition, including any supporting affidavits and other evidence presented, and issue findings of fact that determine whether the vulnerable noncitizen child:

(A) The child was either of the following:

(i) Declared Is a dependent of the court.

(ii) Legally or 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.

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

~~(C) May not be viably reunified with one or both parents due to abuse, neglect, abandonment, or a similar circumstance.~~

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

~~(2) Additional findings. If requested by a party, the court may make additional findings that are supported by evidence and Vermont law.~~

~~(3) Health, safety, and welfare considerations. The health, safety, and welfare of the child must be of paramount concern when the court considers the best interests of the child. In making the determination whether it is in the best interests of the child to be returned to the child's or his or her child's parent's previous country of nationality or country of last habitual residence, the court shall consider whether present or past living conditions will adversely affect the child's physical, mental, or emotional health.~~

~~(4) Guardianships. For purposes of this section, the term child or minor shall include a person who is less than 21 years of age and who consents to the appointment or continuation of a guardian after 18 years of age.~~

~~(d) Notice. If the identity or location of the vulnerable noncitizen child's parents is unknown or if the parents reside outside the United States, the court may serve notice using any alternative method of service the court determines is appropriate or waive service.~~

~~(e) Expeditious adjudication. When it is in the best interests of the vulnerable noncitizen child, a court shall hear, adjudicate, and issue findings of fact on any petition for special findings under this section as soon as it is administratively feasible and prior to the vulnerable noncitizen child attaining 21 years of age.~~

~~(f) Referral for services or protection. A vulnerable noncitizen child who is the subject of a petition for special findings under this section may be referred for psychiatric, psychological, educational, occupational, medical, dental, or social services or for protection against human trafficking or domestic violence; provided, however, that a child's participation in any referred service is voluntary.~~

(g) Additional available remedies under Vermont law; similar findings of fact.

(1) This section shall not limit a vulnerable noncitizen child from petitioning for special findings for a petition under any other provision of law or from any other rights and remedies available to the child under any other provision of law.

(2) This section shall not limit the court from issuing similar findings of fact to those described in this section in any other proceeding concerning the vulnerable noncitizen child.

(h) Construction. This section shall be liberally construed to its legislative purpose.

(e)(i) In any judicial proceedings in response to a request that the court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child's immigration status, nationality, or place of birth that is not otherwise protected by State laws shall remain confidential. This information shall also be exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the information shall be available for inspection 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) As used in this section, "court" means the Probate Division and the Family Division of the Superior Court.

Sec. 2. 33 V.S.A. § 5126 is added to read:

§ 5126. RETENTION OF JURISDICTION OVER CERTAIN
VULNERABLE NONCITIZEN CHILDREN

(a) Definitions. As used in this section:

(1) "Child" means an unmarried individual who has not yet attained 21 years of age and who is not a U.S. citizen.

(2) "Noncitizen" means any person who is not a U.S. citizen.

(3) "Vulnerable" means there is reasonable cause to suspect that a child's health, safety, or welfare is in jeopardy due to abuse, neglect, abandonment, or similar circumstances and that return to the child's or the child's parent's country of origin or country of last habitual residence would not be in the best interests of the child.

(b) Jurisdiction. The Family Division of the Superior Court may retain jurisdiction over a noncitizen child who has not yet attained 21 years of age for the sole purpose of adjudicating a petition for special findings and making

judicial determinations regarding the custody and care of the child consistent with this section. Nothing in this section is intended to expand the scope of the court's jurisdiction to order a youth into the custody of the Commissioner for Children and Families pursuant to this chapter.

(c) Procedure for petition to make special findings for vulnerable noncitizen children.

(1) A vulnerable noncitizen child, or a person interested in the welfare of the vulnerable noncitizen child, may petition the court for special findings to protect the child and obtain relief from the underlying abandonment, abuse, neglect, or similar circumstance.

(2) In accordance with the procedure set forth in 14 V.S.A. § 3098, the court shall review the petition, including any supporting affidavits and other evidence presented; issue findings of fact; and make relevant conclusions of law consistent with section 5101 of this chapter.

(d) Expedient adjudication. When it is consistent with the purposes as set forth in section 5101 of this chapter, the court shall hear, adjudicate, and issue findings of fact and conclusions of law on any petition for special findings under this section as soon as it is administratively feasible and prior to the vulnerable noncitizen child attaining 21 years of age.

(e) Additional available remedies under Vermont law; similar findings of fact.

(1) This section shall not limit a child from petitioning for special findings for a petition under any other provision of law or from petitioning for any other rights and remedies available to the child under any other provision of law.

(2) This section shall not limit the court from issuing similar findings of fact or conclusions of law to those described in this section in any other proceeding concerning the vulnerable noncitizen child.

(f) In any judicial proceedings in response to a request that the court make the findings necessary to support a petition under this section, information regarding the child's immigration status, nationality, or place of birth that is not otherwise protected by State laws shall remain confidential. This information shall also be exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the information shall be available for inspection 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.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2022.