

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 163
3 entitled “An act relating to State court jurisdiction for special immigrant
4 juvenile status” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 14 V.S.A. chapter 111, subchapter 14 is amended to read:

8 Subchapter 14: ~~Special Immigration Status~~ Vulnerable Noncitizen Children

9 § 3098. ~~SPECIAL IMMIGRATION JUVENILE STATUS; JURISDICTION~~

10 ~~AND FINDINGS-VULNERABLE NONCITIZEN CHILDREN~~

11 (a) Definitions. As used in this subchapter:

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

17 (2) “Child” or “children” means an unmarried individual or
18 individuals who have not yet attained 21 years of age and who are not a
19 United States citizen or citizens.

20 (3) “Court” means any court that has jurisdiction over an unmarried
21 individual or individuals who have not yet attained 21 years of age and who

1 are not a United States citizen or citizens, including the Probate Division
2 and the Family Division of the Superior Court.

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

8 (5) “Noncitizen” means any person who is not a United States
9 citizen.

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

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

20 ~~(b)(c)(1) If an order is requested from the court making the necessary~~
21 ~~findings regarding special immigrant juvenile status as described in subsection~~

1 ~~(a) of this section, the court shall issue an order if there is evidence to support~~
2 ~~those findings, which may include a declaration by the child who is the subject~~
3 ~~of the petition. The order issued by the court shall include all of the following~~
4 ~~findings:~~ Procedure for petition. A vulnerable noncitizen child, or a person
5 interested in the welfare of a vulnerable noncitizen child, may petition the
6 court for special findings to protect the child and obtain relief from the
7 underlying abandonment, abuse, neglect, or similar circumstances. The court
8 shall review the petition, including any supporting affidavits and other
9 evidence presented, and issue findings of fact that determine whether the
10 vulnerable noncitizen child:

11 (A) ~~The child was either of the following:~~

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

13 (ii) ~~Legally~~ or legally committed to or placed under the custody of
14 a State agency or department or an individual or entity appointed by the court.
15 The court shall indicate the date on which the dependency, commitment, or
16 custody was ordered.

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

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

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

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

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

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

19 (d) Notice. If the identity or location of the vulnerable noncitizen child's
20 parents is unknown or if the parents reside outside the United States, the court

1 may serve notice using any alternative method of service the court determines
2 is appropriate or waive service.

3 (e) Expeditious adjudication. When it is in the best interests of the
4 vulnerable noncitizen child, a court shall hear, adjudicate, and issue findings of
5 fact on any petition for special findings under this section as soon as it is
6 administratively feasible and prior to the vulnerable noncitizen child attaining
7 21 years of age.

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

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

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

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

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

6 ~~(e)~~(i) In any judicial proceedings in response to a request that the court
7 make the findings necessary to support a petition for classification as a special
8 immigrant juvenile, information regarding the child’s immigration status,
9 nationality, or place of birth that is not otherwise protected by State laws shall
10 remain confidential. This information shall also be exempt from public
11 inspection and copying under the Public Records Act and shall be kept
12 confidential, except that the information shall be available for inspection by the
13 court, the child who is the subject of the proceeding, the parties, the attorneys
14 for the parties, the child’s counsel, and the child’s guardian.

15 ~~(d) As used in this section, “court” means the Probate Division and the~~
16 ~~Family Division of the Superior Court.~~

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

18 § 5126. RETENTION OF JURISDICTION OVER CERTAIN

19 VULNERABLE NONCITIZEN CHILDREN

20 (a) Definitions. As used in this section:

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

6 (2) “Child” means an unmarried individual who has not yet attained 21
7 years of age and who is not a United States citizen.

8 (3) “Noncitizen” means any person who is not a United States citizen.

9 (b) Jurisdiction. The Family Division of the Superior Court may retain
10 jurisdiction over a noncitizen child who has not yet attained 21 years of age for
11 the sole purpose of adjudicating a petition for special findings and making
12 judicial determinations regarding the custody and care of the child consistent
13 with this section. Nothing in this section is intended to expand the scope of the
14 court’s jurisdiction to order a youth into the custody of the Commissioner for
15 Children and Families pursuant to this chapter.

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

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

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

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

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

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

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

19 (f) In any judicial proceedings in response to a request that the court make
20 the findings necessary to support a petition under this section, information
21 regarding the child’s immigration status, nationality, or place of birth that is

1 not otherwise protected by State laws shall remain confidential. This
2 information shall also be exempt from public inspection and copying under the
3 Public Records Act and shall be kept confidential, except that the information
4 shall be available for inspection by the court, the child who is the subject of the
5 proceeding, the parties, the attorneys for the parties, the child’s counsel, and
6 the child’s guardian.

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2022.

9 and that after passage the title of the bill be amended to read: “An act relating
10 to State court petitions for vulnerable noncitizen youth”

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE