

1 H.742

2 Introduced by Representative Dodge of Essex

3 Referred to Committee on

4 Date:

5 Subject: Immigration proceedings; legal representation

6 Statement of purpose of bill as introduced: This bill proposes to require the

7 State of Vermont to establish a program to provide legal assistance to persons

8 detained in Vermont in connection with federal immigration proceedings.

9 An act relating to providing legal representation in federal immigration
10 proceedings

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

12 Sec. 1. 13 V.S.A. chapter 163 is amended to read:

13 CHAPTER 163. PUBLIC DEFENDERS

14 * * *

15 Subchapter 5. Legal Representation in Immigration Proceedings

16 § 5281. LEGISLATIVE INTENT

17 It is the intent of the General Assembly to require the State of Vermont to
18 establish a program to provide legal assistance for persons detained in Vermont
19 in connection with federal immigration proceedings. The program established

1 pursuant to this subchapter shall be consistent with the following principles
2 and standards:

3 (1) The State is committed to fair and equal treatment of all individuals,
4 and, in particular, of individuals at risk of removal and separation from their
5 families through the federal immigration detention and deportation system.

6 (2) While an individual in removal proceedings has the right to legal
7 representation, the representation is at the individual's own expense and may
8 be beyond the financial capacity of low-income households.

9 (3) Nearly two-thirds of all individuals facing immigration removal
10 proceedings throughout the United States lack legal representation. Among the
11 individuals in immigration detention, only one in six individuals were
12 represented by counsel.

13 (4) Legal representation is essential to effective identification and
14 presentation of avenues for release from detention and relief from removal.
15 Individuals in immigration detention are four times more likely to win release
16 if represented by legal counsel than individuals without representation by legal
17 counsel. In removal proceedings, detained individuals are 11 times more likely
18 to succeed in claims for relief if represented by legal counsel than individuals
19 without representation by legal counsel.

1 (5) Although immigration detention and proceedings are civil in nature,
2 immigrants are subjected to adversarial legal proceedings and are often
3 detained throughout their legal cases.

4 (6) Many people in immigration court proceedings have valid legal
5 claims to remain in the United States but are unable to argue their cases
6 effectively absent legal expertise in complex U.S. immigration law.

7 (7) Deportations and immigration detentions are costly to Vermont
8 taxpayers, who must cover the cost of detention; costly to employers
9 experiencing labor shortages; and costly to communities who are called on to
10 provide support when individuals are not allowed to work and remain with
11 their families as they contest their immigration cases.

12 (8) Legal representation in removal proceedings has improved the
13 efficiency of the proceedings and the administration of justice as individuals
14 are better able to present their defenses and claims for relief.

15 (9) It is the public policy of this State that all covered individuals subject
16 to federal immigration proceedings should have the right to ongoing legal
17 representation. This right to counsel should include provisions of funds
18 sufficient to ensure that legal service providers are funded to:

19 (A) engage support staff, interpretation staff, and investigative staff;

20 (B) contract as reasonably necessary with independent experts,
21 including country conditions experts and forensic medical experts; and

1 (C) contract as reasonably necessary with social service providers
2 providing supportive and rehabilitative services to covered individuals during
3 the course of their removal proceedings.

4 (10) This State should establish a program and a dedicated fund to
5 provide the legal services described in this section.

6 § 5282. DEFINITIONS

7 As used in this chapter:

8 (1) “Covered individual” means a person who, regardless of age, is:

9 (A) subject to removal proceedings under:

10 (i) 8 U.S.C. §§ 1225, 1228, and 1229a; or

11 (ii) a final order of removal under 8 C.F.R. § 1241.1, including
12 any related covered proceeding; and

13 (B)(i) a domiciliary of this State; or

14 (ii) if not a domiciliary of this State, is in detention or incarcerated
15 in this State for purposes of immigration enforcement or is subject to a removal
16 proceeding.

17 (2) “Program” means the Legal Representation in Federal Immigration
18 Proceedings Program created in section 5283 of this title.

19 § 5283. LEGAL REPRESENTATION IN FEDERAL IMMIGRATION

20 PROCEEDINGS PROGRAM; DIRECTOR; STAFF ATTORNEYS

1 (a) The Legal Representation in Federal Immigration Proceedings Program
2 is created within the Office of Defender General. The Program shall provide
3 legal representation to covered individuals in federal immigration proceedings
4 as required by this subchapter.

5 (b) There is created the position of Director of the Legal Representation in
6 Federal Immigration Proceedings Program. The Director shall:

7 (1) supervise and manage the Legal Representation in Federal
8 Immigration Proceedings Program;

9 (2) provide legal representation to covered individuals pursuant to this
10 subchapter;

11 (3) contract, if and to the extent deemed necessary by the Director, with
12 the Vermont Asylum Assistance Project to provide the legal representation
13 required by this subchapter; and

14 (4) coordinate with the Office of the Defender General and the Vermont
15 Asylum Assistance Project as necessary to implement the intent of this
16 subchapter.

17 (c) Two staff attorney positions are created within the Legal Representation
18 in Federal Immigration Proceedings Program to provide legal representation to
19 covered individuals as determined by the Director.

1 § 5284. RIGHT TO REPRESENTATION, SERVICES, AND FACILITIES

2 (a) A covered individual who is being detained for an alleged violation of
3 federal immigration law is entitled:

4 (1) to be represented by an attorney to the same extent as a person
5 having the person's own counsel, including for purposes of any appeal; and

6 (2) to be provided with the necessary services and facilities of
7 representation.

8 (b) Legal representation under this subchapter shall begin not later than the
9 time of the covered individual's intake as part of the detention facility's intake
10 process.

11 (c) The attorney, services and facilities, and court costs shall be provided at
12 public expense to the extent that the covered individual is unable to provide
13 payment without undue hardship.

14 § 5285. LEGAL REPRESENTATION IN FEDERAL IMMIGRATION

15 PROCEEDINGS ADVISORY COUNCIL

16 (a) Creation. The Legal Representation in Federal Immigration
17 Proceedings Advisory Council is established within the Office of Defender
18 General to serve in an advisory capacity to the Legal Representation in Federal
19 Immigration Proceedings Program. The Council shall be organized and have
20 the duties and responsibilities as provided in this section.

21 (b) Membership.

- 1 (1) Appointments. The Council shall consist of seven members, as
2 follows:
- 3 (A) one member, appointed by the Vermont Asylum Assistance
4 Project;
- 5 (B) one member, appointed by the Defender General;
6 (C) one member, appointed by Migrant Justice;
7 (D) one member, appointed by the American Civil Liberties Union of
8 Vermont;
- 9 (E) one member, appointed by the Vermont Immigration Legal
10 Defense Fund;
- 11 (F) one member, appointed by the Commissioner of Corrections; and
12 (G) one member with lived experience as an immigration
13 proceedings detainee, appointed by the Vermont Asylum Assistance Project.
- 14 (2) Qualifications. Members shall be drawn from diverse backgrounds
15 throughout the State and, to the extent possible, have experience working in
16 matters related to immigration.
- 17 (3) Terms. The term of each member shall be four years. As terms of
18 currently serving members expire, appointments of successors shall be in
19 accord with the provisions of this section. Appointments of members to fill
20 vacancies or expired terms shall be made by the authority that made the initial
21 appointment to the vacated or expired term. Members shall serve until their

1 successors are appointed. Members shall serve not more than two consecutive
2 terms in any capacity.

3 (4) Chair and terms. Members of the Council shall elect by majority
4 vote the Chair of the Council.

5 (c) Duties. The Council shall have the following duties and
6 responsibilities:

7 (1) work with and assist the Director to implement the requirements of
8 this subchapter;

9 (2) advise and make recommendations to the Director to ensure ongoing
10 compliance with the purpose of this subchapter; and

11 (3) on or before January 15, 2027, and annually thereafter, report to the
12 House and Senate Committees on Judiciary on a status report on activities
13 conducted and progress made by the Legal Representation in Federal
14 Immigration Proceedings Program and recommendations for further action,
15 including legislative proposals, to address the need for legal representation in
16 immigration proceedings.

17 (d) Compensation. Each member of the Council shall be entitled to per
18 diem compensation and reimbursement of expenses pursuant to 32 V.S.A.
19 § 1010.

1 Sec. 2. LEGAL REPRESENTATION IN FEDERAL IMMIGRATION

2 PROCEEDINGS PROGRAM; POSITIONS CREATED;

3 APPROPRIATION

4 (a) One full-time, classified permanent Director of the Legal
5 Representation in Federal Immigration Proceedings Program position and two
6 full-time staff attorney positions are created in the Office of Defender General
7 for purposes of implementing the Legal Representation in Federal Immigration
8 Proceedings Program created in 13 V.S.A. § 5283.

9 (b) There is appropriated to the Office of Defender General from the
10 General Fund in fiscal year 2027 the sum of \$1,000,000.00 for the Legal
11 Representation in Federal Immigration Proceedings Program in the Office of
12 Defender General.

13 Sec. 3. EFFECTIVE DATE

14 This act shall take effect on passage.