

FINAL BILL REPORT

SHB 1988

C 279 L 17
Synopsis as Enacted

Brief Description: Implementing a vulnerable youth guardianship program.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Ortiz-Self, Santos, McBride and Frame).

House Committee on Judiciary
Senate Committee on Human Services, Mental Health & Housing
Senate Committee on Ways & Means

Background:

Federal Special Immigrant Juvenile Status.

The federal Special Immigrant Juvenile (SIJ) status provides a pathway for children living in the United States (U.S.) who are not U.S. citizens, do not have permanent residence, and have been abused, neglected, or abandoned by one or both parents, to obtain lawful, permanent residence.

To petition for SIJ status, a child must file a Form I-360 with the U.S. Citizenship and Immigration Services (USCIS). The SIJ status allows a child to apply for a green card (lawful permanent residence) while remaining in the United States. A child who receives a green card through the SIJ program can never petition for a green card for his or her parents.

To be eligible for SIJ status, a child must:

- be under 21 years old;
- have an order from a state court making certain dependency findings and other factual findings;
- be unmarried; and
- be inside the U.S. at the time he or she petitions for SIJ status.

The state court order necessary for a child to be eligible to petition for SIJ status must:

- be issued by a state juvenile court (or a court having jurisdiction under state law to make judicial determinations about the custody and care of juveniles);
- declare that the child is dependent on the court or place the child under the legal custody of a state agency or other individual appointed by the state;

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- declare that the child cannot be reunited with one or both of his or her parents due to abuse, abandonment, or neglect; and
- declare that it is not in the best interests of the child to be returned to his or her country of citizenship.

The issuance of a state court order making the required findings is a prerequisite for a child to apply for SIJ status; however, the decision about whether to grant the child's petition for SIJ status is ultimately up to the USCIS.

Washington State Courts. Federal law allows a person under 21 years of age to qualify for SIJ status. However, Washington's juvenile courts are generally unable to take jurisdiction of persons age 18 and older.

Summary:

Vulnerable Youth Guardianship Petition Requirements.

The juvenile divisions of the superior courts are authorized to appoint a guardian for a consenting vulnerable youth between 18 and 21 years of age who files a petition with the court showing each of the following:

- both the vulnerable youth and the proposed guardian agree to the establishment of a guardianship;
- the youth is between 18 and 21 years of age;
- the youth is prima facie eligible to apply for federal Special Immigrant Juvenile status;
- the youth requests the support of a responsible adult; and
- the proposed guardian agrees to serve as a guardian and is a suitable adult over 21 years old who is capable of performing the specified duties of a guardian.

Proposed guardians may include, but are not limited to, parents, licensed foster parents, relatives, and suitable persons. "Suitable person" means a nonrelative who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the youth. The required criminal history background checks are those applicable in nonparental actions for child custody, but apply only to the potential guardian and not to other adult members of the household.

Filing Fee. There may be no fee associated with the filing of a vulnerable youth guardianship petition.

Vulnerable Youth Guardianship Hearings.

Procedure and Evidence. Both the vulnerable youth and the proposed guardian have the right to present evidence and cross-examine witnesses at the hearing on a vulnerable youth guardianship petition.

A vulnerable youth guardianship must be established if the court finds by a preponderance of the evidence that:

- the allegations in the petition are true;
- it is in the vulnerable youth's best interest to establish the guardianship; and
- the vulnerable youth consents in writing to the appointment of a guardian.

Vulnerable Youth Guardianship Orders.

If the necessary findings are made at the hearing, the court is required to issue an order establishing a vulnerable youth guardianship that:

- appoints a person to be the guardian for the vulnerable youth;
- provides that the guardian must ensure that the legal rights of the vulnerable youth are not violated;
- may specify the guardian's other rights and responsibilities concerning the care, custody, and nurturing of the vulnerable youth;
- specifies that the guardian may not have possession of any identity documents belonging to the vulnerable youth; and
- specifies the need for and scope of continued oversight by the court, if any.

The court must provide an unrepresented vulnerable youth whose appointed guardian is a nonrelative suitable person with a list of service providers and available resources for survivors of human trafficking.

The standards and requirements for relocation in dissolution proceedings and legal separation do not apply to vulnerable youth guardianships, unless specifically ordered by the court.

The court is required to provide a certified copy of the vulnerable youth guardianship order to the vulnerable youth and the guardian.

Modification of Vulnerable Youth Guardianships.

The youth may request, at any time, that the court:

- modify the provisions of a vulnerable youth guardianship order by: (1) filing a motion and affidavit setting forth supporting facts; and (2) providing notice to the other party, who may file and serve opposing affidavits;
- appoint a new guardian by: (1) filing a motion and affidavit setting forth supporting facts; and (2) providing notice to the other party; or
- substitute a new guardian, if the proposed new guardian is a suitable adult over 21 years of age who is capable of performing the duties of a guardian; the youth is not required to file a new vulnerable youth guardianship petition to substitute a guardian, and substitution must be permitted without termination of the vulnerable youth guardianship.

If a party other than the youth requests that the court modify the guardianship provisions, the youth must agree to the modifications.

Termination of Vulnerable Youth Guardianships.

There are several ways that a vulnerable youth guardianship may terminate:

- automatically on the vulnerable youth's twenty-first birthday;
- by request of the vulnerable youth at any time; or
- by request of the guardian, when the court makes certain findings, including that a substantial change in circumstances has occurred and that termination is in the best interests of the youth.

A court may not terminate a vulnerable youth guardianship unless it makes certain findings on facts that arose or became known after the guardianship was established. The vulnerable youth and the guardian or prospective guardian have the right to be represented by counsel of their choosing and at their own expense.

Evaluation by the Washington State Task Force Against the Trafficking of Persons.

Subject to the availability of amounts appropriated for this specific purpose, the Washington State Task Force Against the Trafficking of Persons (Task Force) is required to: (1) evaluate whether vulnerable youth guardianships where the guardian is a nonrelative suitable person have the unintended impact of placing youth at greater risk of being trafficked, and if so, research and identify ways to reduce this risk; and (2) compile a list of service providers and available resources for survivors of human trafficking that a court issuing a vulnerable youth guardianship order can provide to a vulnerable youth applying for a guardian who is a nonrelative suitable person.

The Task Force is required to deliver this evaluation to the Legislature by January 1, 2019.

Votes on Final Passage:

House	92	6	
Senate	45	2	(Senate amended)
House	91	5	(House concurred)

Effective: July 23, 2017