

HOUSE BILL REPORT

SHB 1988

As Passed Legislature

Title: An act relating to implementing a vulnerable youth guardianship program.

Brief Description: Implementing a vulnerable youth guardianship program.

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

Brief History:

Committee Activity:

Judiciary: 2/14/17, 2/16/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 92-6.

Senate Amended.

Passed Senate: 4/7/17, 45-2.

House Concurred.

Passed House: 4/13/17, 91-5.

Passed Legislature.

Brief Summary of Substitute Bill

- Creates a new legal proceeding, known as a Vulnerable Youth Guardianship, authorizing a court to appoint a guardian for certain immigrant youth between the ages of 18 and 21 who have been abandoned, abused, or neglected.
- Requires the Washington State Task Force Against the Trafficking of Persons to 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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Hansen, Kirby and Orwall.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Haler, Klippert and Shea.

Staff: Audrey Frey (786-7289).

Background:

Federal Special Immigrant Juvenile Status.

The federal Special Immigrant Juvenile (SIJ) status, created in 1990 and modified in 2008 by the Trafficking Victims Protection and Reauthorization Act, is designed as 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;
- 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 a federal agency, the USCIS.

Washington State Courts. The federal SIJ 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, making it difficult for youth between the ages of 18 and 21, who may otherwise qualify for SIJ status, to obtain the necessary court order from a Washington state court.

Summary of Substitute Bill:

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 described in the law regarding nonparental actions for child custody, but apply only to the potential guardian and not to other adult members of the household.

Filing Fee. No filing fee can be associated with 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.

Standard and Burden of Proof. 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 shall 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 shall 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 under the laws regarding 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, which 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 any 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.

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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill aligns state law with federal law. In order for a youth that has been abandoned to apply for federal Special Immigrant Juvenile (SIJ) status, they have to go through a state court. This bill gives Washington what many states already have and what our federal laws allow. It's really about showing compassion for a population of youth that have been abandoned and are unaccompanied here in our country.

Immigration organizations stand with the Washington State Task Force Against the Trafficking of Persons in recommending the extension of eligibility for the appointment of a guardian for youth that have been abandoned or neglected up to the age of 21. Under state law, youth are only eligible up to age 18. This bill would align state law with federal protections.

This bill provides an important protection for immigrant youth who have been abused or abandoned by their parents. By granting these youth access to courts until the age of 21, these youth will be able to qualify for SIJ status and work toward obtaining a green card, which signifies legal permanent residence. Currently, the discrepancy between state and federal law inadvertently bars youth between the ages of 18 and 21 in Washington who would otherwise qualify for the status from accessing the courts.

The success of programs like the SIJ program is core to a humanitarian immigration system. Neglected immigrant youth are extremely vulnerable to human trafficking and further abuse without the protections afforded by the promise of status if returning to their home country is too dangerous. The security and stability afforded by a pathway to legal status protects immigrants, particularly young immigrants, from exploitation at the hands of sex traffickers, pimps, and even abusive partners who threaten to report them to immigration authorities. This bill will not solve all of these problems, but it will provide a critical tool for many abused and neglected immigrant youth.

With the additional language added by the proposed substitute bill, survivors of human trafficking support the bill. There were specific aspects in the original bill that needed to be addressed to make sure that youth between the ages of 18 and 21 didn't become victims of human trafficking by seeking a vulnerable youth guardianship. The bill states that the youth and the potential guardian have to come to an agreement and then petition the court for this guardianship. To protect these vulnerable youth, the substitute bill adds language to make sure that the vulnerable youth's rights are not violated by the guardian and make sure that the youth is in possession of their identification documents and paperwork at all times. If the guardian is a suitable person who is not someone the youth knows or is related to, the guardian must go through the background check provided by the statute cited in the substitute bill. These measures need to be in place to make sure that this bill doesn't unintentionally enable the very thing it is trying to prevent.

In Washington state, youth over 18 are not able to access the state courts in order to obtain this protection. This bill offers a simple, cost-effective fix to this misalignment. Youth under

18 can access state courts to obtain this federal protection. Unfortunately, there are many youth who are disqualified from this protection. For example, a youth from Gambia who was forced by her family to marry a much older man who physically and sexually abused her is unable to obtain this federal protection because she is over 18 and happens to live in Washington. She and many other vulnerable youth need access to this federal protection. This bill will make a real difference in the lives of these abused, abandoned, and neglected youth.

Washington state, unlike many other states, doesn't have a vehicle in state law that allows for the state court findings that are necessary to make an application for SIJ status, which is a federal visa, for kids who are ages 18 to 21. Washington has kids under 18 covered through a variety of different state court proceedings, such as family law custody proceedings, third-party nonparental custody proceedings, dependency court, and other forms of guardianship, but Washington doesn't have something that enables kids who are 18 to 21 to apply for this federal visa. This bill helps align state law with the federal immigration requirements. There are several other states—California, Maryland, New York—that also have this same kind of vulnerable youth guardianship and have found that it works as a procedure for helping kids in this situation.

(Opposed) None.

Persons Testifying: Representative Ortiz-Self, prime sponsor; Ellicott Dandy, OneAmerica; Julia Anderson, Survivor Operative Solutions; Lindsay Lennox, Northwest Immigrant Rights Project; and Mary van Cleve, Columbia Legal Services.

Persons Signed In To Testify But Not Testifying: None.