
SUBSTITUTE SENATE BILL 5559

State of Washington 65th Legislature 2017 Regular Session

By Senate Human Services, Mental Health & Housing (originally sponsored by Senators Darneille, Saldaña, Hasegawa, Wellman, Cleveland, Palumbo, Keiser, McCoy, Chase, and Kuderer)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to implementing a vulnerable youth guardianship
2 program; and adding a new chapter to Title 13 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Existing federal law, 8 U.S.C. Sec.
5 1101(a)(27)(J), establishes a procedure for classification of
6 abandoned, abused, or neglected youth as special immigrants who have
7 been declared dependent on a juvenile court or legally committed to
8 or placed in the custody of a state agency or department, or placed
9 under the custody of an individual or entity appointed by a state or
10 juvenile court, and authorizes those youth to apply for an adjustment
11 of status to that of a lawful permanent resident within the United
12 States. A youth is age-eligible if the youth is under twenty-one
13 years old. Existing state law already provides that superior courts
14 have jurisdiction to make judicial determinations regarding the
15 custody and care of juveniles.

16 This chapter authorizes a court to appoint a guardian for a
17 vulnerable youth from eighteen to twenty-one years old, who is not
18 participating in extended foster care services authorized under RCW
19 74.13.031, and who is eligible for classification under 8 U.S.C. Sec.
20 1101(a)(27)(J) with the consent of the proposed ward. This chapter
21 also provides that a vulnerable youth guardianship of the person

1 terminates on the youth's twenty-first birthday unless the youth
2 requests termination prior to that date. Opening court doors for the
3 provision of a vulnerable youth guardianship serves the state's
4 interest in eliminating human trafficking, preventing further
5 victimization of youth, decreasing reliance on public resources,
6 reducing youth homelessness, and offering protection for youth who
7 may otherwise be targets for traffickers.

8 NEW SECTION. **Sec. 2.** (1) The legislature finds and declares the
9 following:

10 (a) Washington law grants the superior courts jurisdiction to
11 make judicial determinations regarding the custody and care of youth
12 within the meaning of the federal immigration and nationality act.
13 Pursuant to 8 U.S.C. Sec. 1101(b), the term "child" means an
14 unmarried person under twenty-one years of age. Superior courts are
15 empowered to make the findings necessary for a youth to petition the
16 United States citizenship and immigration services for classification
17 under 8 U.S.C. Sec. 1101(a)(27)(J).

18 (b) 8 U.S.C. Sec. 1101(a)(27)(J) offers interim relief from
19 deportation to undocumented, unmarried immigrant youth under twenty-
20 one years old, if a state court with jurisdiction over juveniles has
21 made specific findings.

22 (c) The findings necessary for a youth to petition for
23 classification under 8 U.S.C. Sec. 1101(a)(27)(J) include, among
24 others, a finding that reunification with one or both parents is not
25 viable due to abuse, neglect, abandonment, or a similar basis under
26 state law, and a finding that it is not in the youth's best interest
27 to be returned to the youth's country of origin.

28 (d) Misalignment between state and federal law continues to
29 exist. Federal law allows a person under twenty-one years old, who
30 otherwise meets the requirements for eligibility under 8 U.S.C. Sec.
31 1101(a)(27)(J), to file for relief. In Washington, however,
32 vulnerable youth who are between eighteen and twenty-one years old
33 have largely been unable to obtain the findings from the superior
34 court necessary to seek classification under 8 U.S.C. Sec.
35 1101(a)(27)(J) and the relief that it was intended to afford them,
36 solely because superior courts cannot take jurisdiction of these
37 vulnerable youth under current law. This is true despite the fact
38 that many vulnerable youth between eighteen and twenty-one years old

1 face circumstances identical to those faced by their younger
2 counterparts.

3 (e) Given the recent influx of vulnerable youth arriving to the
4 United States, many of whom have been released to family members and
5 other adults in Washington, and who have experienced parental abuse,
6 neglect, or abandonment, it is necessary to provide an avenue for
7 these vulnerable youth to petition the superior courts to appoint a
8 guardian of the person, even if the youth is over eighteen years old.
9 This is particularly necessary in light of the vulnerability of this
10 class of youth, and their need for a custodial relationship with a
11 responsible adult as they adjust to a new cultural context, language,
12 and education system, and recover from the trauma of abuse, neglect,
13 or abandonment. These custodial arrangements promote the long-term
14 well-being and stability of vulnerable youth present in the United
15 States who have experienced abuse, neglect, or abandonment by one or
16 both parents.

17 (f) The legislature has an interest in combating human
18 trafficking throughout Washington state. In 2003, Washington became
19 the first state to enact a law making human trafficking a crime and
20 has since continued its efforts to provide support services for
21 victims of human trafficking while also raising awareness of human
22 trafficking. Vulnerable youth who have been subject to parental
23 abuse, neglect, or abandonment are particularly susceptible to
24 becoming victims of human trafficking. By creating an avenue for a
25 vulnerable youth guardianship for certain eligible individuals
26 between eighteen and twenty-one years old, the legislature will
27 provide such youth with the possibility for additional support and
28 protection that a guardian can offer, which will make these youth
29 less likely to become targets for human traffickers. Guardians can
30 support vulnerable youth by providing them stable housing and caring
31 for their basic necessities, which may help alleviate many of the
32 risk factors that make such youth prime targets for trafficking and
33 exploitation.

34 (g) Vulnerable youth guardianships of the person may be necessary
35 and appropriate for these individuals, even between eighteen and
36 twenty-one years old, although a vulnerable youth for whom a guardian
37 has been appointed retains the rights of an adult under Washington
38 law.

39 (2) It is the intent of the legislature to give the juvenile
40 division of superior courts jurisdiction to appoint a guardian for a

1 consenting vulnerable youth between eighteen, up to the age of
2 twenty-one who has been abandoned, neglected, or abused by one or
3 both parents, or for whom the court determines that a guardian is
4 otherwise necessary as one or both parents cannot adequately provide
5 for the youth such that the youth risks physical or psychological
6 harm if returned to the youth's home. The juvenile court will have
7 jurisdiction to make the findings necessary for a vulnerable youth to
8 petition for classification under 8 U.S.C. Sec. 1101(a)(27)(J). It is
9 further the intent of the legislature to provide an avenue for a
10 person between eighteen and twenty-one years old to have a guardian
11 of the person appointed beyond eighteen years old if the youth so
12 requests or consents to the appointment of a guardian as provided in
13 section 5 of this act.

14 NEW SECTION. **Sec. 3.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires
16 otherwise.

17 (1) "Department" means the department of social and health
18 services.

19 (2) "Guardian" means a person who has been appointed by the court
20 as the guardian of a vulnerable youth in a legal proceeding under
21 this chapter. The term "guardian" does not include a "dependency
22 guardian" appointed pursuant to a proceeding under chapter 13.34 RCW
23 for the purpose of assisting the court in supervising the dependency.
24 The term "guardian" does not include a "guardian" appointed pursuant
25 to a proceeding under chapter 13.36 RCW or a "dependency guardian"
26 appointed pursuant to a proceeding under chapter 13.34 RCW.

27 (3) "Juvenile court" or "court" means the juvenile division of
28 the superior court.

29 (4) "Relative" means a person related to the child in the
30 following ways:

31 (a) Any parent, or blood relative, including those of half-blood,
32 and including first cousins, second cousins, nephews or nieces, and
33 persons of preceding generations as denoted by prefixes of grand,
34 great, or great-great;

35 (b) A stepfather, stepmother, stepbrother, and stepsister;

36 (c) A person who legally adopts a child or the child's parent as
37 well as the natural and other legally adopted children of such
38 persons, and other relatives of the adoptive parents in accordance
39 with state law;

1 (d) Spouses of any persons named in (a) through (c) of this
2 subsection (4), even after the marriage is terminated;

3 (e) Relatives, as described in (a) through (d) of this subsection
4 (4), of any half-sibling of the child.

5 (5) "Suitable person" means a nonrelative who has completed all
6 required criminal history background checks and otherwise appears to
7 be suitable and competent to provide care for the youth. The required
8 criminal history background checks are those set out in RCW 26.10.135
9 (1) and (2)(b), but apply only to the proposed guardian and not to
10 other adult members of the household.

11 (6) "Vulnerable youth" is an individual who has turned eighteen
12 years old, but who is not yet twenty-one years old and who is
13 eligible for classification under 8 U.S.C. Sec. 1101(a)(27)(J). A
14 youth who remains in a vulnerable youth guardianship under this
15 chapter shall not be considered a "child" under any other state
16 statute or for any other purpose. A vulnerable youth is one who is
17 not also a nonminor dependent who is participating in extended foster
18 care services authorized under RCW 74.13.031.

19 NEW SECTION. **Sec. 4.** (1) A vulnerable youth may petition the
20 court that a vulnerable youth guardianship be established for him or
21 her by filing a petition in juvenile court under this chapter. The
22 proposed guardian must agree to join in the petition, and must
23 receive notice of the petition.

24 (2) To be designated as a proposed guardian in a petition under
25 this chapter, a person must be age twenty-one or over, suitable, and
26 capable of performing the duties of guardian under section 6 of this
27 act, including but not limited to parents, licensed foster parents,
28 relatives, and suitable persons.

29 (3) The petition must allege and show that:

30 (a) Both the petitioner and the proposed guardian agree to the
31 establishment of a guardianship;

32 (b) The youth is between the ages of eighteen and twenty-one
33 years;

34 (c) The youth is prima facie eligible to apply for classification
35 under 8 U.S.C. Sec. 1101(a)(27)(J);

36 (d) The youth requests the support of a responsible adult; and

37 (e) The proposed guardian agrees to serve as guardian, and is a
38 suitable adult over twenty-one years old who is capable of performing
39 the duties of a guardian as stated in section 6 of this act.

1 (4) There must be no fee associated with the filing of a
2 vulnerable youth guardianship petition by or for a vulnerable youth
3 under this section.

4 (5) On or before December 31, 2018, the Washington state task
5 force against the trafficking of persons established in RCW 7.68.350,
6 must deliver an evaluation of the vulnerable youth guardianship
7 program to the legislature. In its evaluation, the task force must
8 determine whether a vulnerable youth advocate interview is necessary
9 before a vulnerable youth guardianship is granted, when the proposed
10 guardian is a suitable person as defined in section 3 of this act. If
11 the task force favorably recommends a vulnerable youth advocate
12 interview prior to appointment of a "suitable person" guardian, the
13 task force must also recommend a scope and minimum requirements for
14 the interview, and training recommendations for any organizations
15 whose members would qualify to serve on a vulnerable youth advocate
16 interviewer roster.

17 NEW SECTION. **Sec. 5.** (1) At the hearing on a vulnerable youth
18 guardianship petition, both parties, the vulnerable youth and the
19 proposed guardian, have the right to present evidence and cross-
20 examine witnesses. The rules of evidence apply to the conduct of the
21 hearing.

22 (2) A vulnerable youth guardianship must be established if the
23 court finds by a preponderance of the evidence that:

24 (a) The allegations in the petition are true;

25 (b) It is in the vulnerable youth's best interest to establish a
26 vulnerable youth guardianship; and

27 (c) The vulnerable youth consents in writing to the appointment
28 of a guardian.

29 (3) A guardianship established under subsection (2) of this
30 section remains in effect as provided in section 8 of this act.

31 NEW SECTION. **Sec. 6.** (1) If the court has made the findings
32 required under section 5 of this act, the court shall issue an order
33 establishing a vulnerable youth guardianship for the vulnerable
34 youth. The order shall:

35 (a) Appoint a person to be the guardian for the vulnerable youth;

36 (b) Provide that the guardian must ensure the legal rights of the
37 vulnerable youth are not violated, and may specify the guardian's

1 additional rights and responsibilities concerning the care, custody,
2 and nurturing of the vulnerable youth;

3 (c) Specify the need for and scope of continued oversight by the
4 court, if any; and

5 (d) Prohibit the guardian from taking possession or retaining
6 possession of any identity documents belonging to the vulnerable
7 youth.

8 (2) Unless specifically ordered by the court, the standards and
9 requirements for relocation in chapter 26.09 RCW do not apply to
10 vulnerable youth guardianships established under this chapter.

11 (3) The court shall provide a certified copy of the vulnerable
12 youth guardianship order to the vulnerable youth and the guardian.

13 (4) If a vulnerable youth guardian is determined by the court to
14 be a suitable person as defined in section 3 of this act for a
15 vulnerable youth who is not represented by counsel, the court must
16 provide the vulnerable youth with a list of human trafficking
17 survivor service providers together with the vulnerable youth
18 guardianship order.

19 NEW SECTION. **Sec. 7.** (1) The youth may move the court to modify
20 the provisions of a vulnerable youth guardianship order at any time
21 by: (a) Filing with the court a motion for modification and an
22 affidavit setting forth facts supporting the requested modification;
23 and (b) providing notice and a copy of the motion and affidavit to
24 the other party. The nonmoving party may file and serve opposing
25 affidavits.

26 (2) The youth may move the court to appoint a new guardian at any
27 time by: (a) Filing with the court a motion for appointment of a new
28 guardian and an affidavit setting forth facts supporting the
29 requested appointment; and (b) providing notice and a copy of the
30 motion and affidavit to the other party.

31 (3) The youth may move the court to substitute a new guardian,
32 provided that the proposed new guardian is a suitable adult over
33 twenty-one years old who is capable of performing the duties of a
34 guardian as stated in section 6 of this act. The substitution of a
35 new guardian must be permitted without termination of the vulnerable
36 youth guardianship and the youth is not required to file a new
37 vulnerable youth guardianship petition to substitute a guardian.

1 (4) If a party other than the youth moves the court to modify the
2 provisions of a vulnerable youth guardianship order, the modification
3 is subject to the youth's agreement.

4 NEW SECTION. **Sec. 8.** (1) The vulnerable youth guardianship
5 terminates on the vulnerable youth's twenty-first birthday.

6 (2) The vulnerable youth may request the termination of the
7 vulnerable youth guardianship at any time. The court shall terminate
8 the vulnerable youth guardianship upon the request of the vulnerable
9 youth. The vulnerable youth may also withdraw consent to the
10 vulnerable youth guardianship at any time.

11 (3) The guardian may request termination of the vulnerable youth
12 guardianship by filing a petition and supporting affidavit alleging a
13 substantial change has occurred in the circumstances of the
14 vulnerable youth or the guardian and that the termination is
15 necessary to serve the best interests of the vulnerable youth. The
16 petition and affidavit must be served on both parties to the
17 vulnerable youth guardianship.

18 (4) Except as provided in subsection (2) of this section, the
19 court shall not terminate a vulnerable youth guardianship unless it
20 finds, upon the basis of facts that have arisen since the vulnerable
21 youth guardianship was established or that were unknown to the court
22 at the time the vulnerable youth guardianship was established, that a
23 substantial change has occurred in the circumstances of the
24 vulnerable youth or the guardian and that termination of the
25 vulnerable youth guardianship is necessary to serve the best
26 interests of the vulnerable youth. The effect of a guardian's duties
27 while serving in the military potentially impacting vulnerable youth
28 guardianship functions is not, by itself, a substantial change of
29 circumstances justifying termination of a vulnerable youth
30 guardianship.

31 NEW SECTION. **Sec. 9.** In all proceedings under this chapter to
32 establish, modify, or terminate a vulnerable youth guardianship
33 order, the vulnerable youth and the guardian or prospective guardian
34 have the right to be represented by counsel of their choosing and at
35 their own expense.

1 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act
2 constitute a new chapter in Title 13 RCW.

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