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**SENATE BILL 5559**

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**State of Washington                      65th Legislature                      2017 Regular Session**

**By** Senators Darneille, Saldaña, Hasegawa, Wellman, Cleveland, Palumbo, Keiser, McCoy, Chase, and Kuderer

Read first time 01/27/17. Referred to Committee on Human Services, Mental Health & Housing.

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.

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

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

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

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

27 (a) Both the petitioner and the proposed guardian agree to the  
28 establishment of a guardianship;

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

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

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

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

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

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

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

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

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

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

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

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

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

20       (b) Specify the guardian's rights and responsibilities concerning  
21 the care, custody, control, and nurturing of the vulnerable youth;  
22 and

23       (c) Specify the need for and scope of continued oversight by the  
24 court, if any.

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

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

30       NEW SECTION.    **Sec. 7.**    (1) The youth may move the court to modify  
31 the provisions of a vulnerable youth guardianship order at any time  
32 by: (a) Filing with the court a motion for modification and an  
33 affidavit setting forth facts supporting the requested modification;  
34 and (b) providing notice and a copy of the motion and affidavit to  
35 the other party. The nonmoving party may file and serve opposing  
36 affidavits.

37       (2) The youth may move the court to appoint a new guardian at any  
38 time by: (a) Filing with the court a motion for appointment of a new

1 guardian and an affidavit setting forth facts supporting the  
2 requested appointment; and (b) providing notice and a copy of the  
3 motion and affidavit to the other party.

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

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

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

16 (2) The vulnerable youth may request the termination of the  
17 vulnerable youth guardianship at any time. The court shall terminate  
18 the vulnerable youth guardianship upon the request of the vulnerable  
19 youth. The vulnerable youth may also withdraw consent to the  
20 vulnerable youth guardianship at any time.

21 (3) The guardian may request termination of the vulnerable youth  
22 guardianship by filing a petition and supporting affidavit alleging a  
23 substantial change has occurred in the circumstances of the  
24 vulnerable youth or the guardian and that the termination is  
25 necessary to serve the best interests of the vulnerable youth. The  
26 petition and affidavit must be served on both parties to the  
27 vulnerable youth guardianship.

28 (4) Except as provided in subsection (2) of this section, the  
29 court shall not terminate a vulnerable youth guardianship unless it  
30 finds, upon the basis of facts that have arisen since the vulnerable  
31 youth guardianship was established or that were unknown to the court  
32 at the time the vulnerable youth guardianship was established, that a  
33 substantial change has occurred in the circumstances of the  
34 vulnerable youth or the guardian and that termination of the  
35 vulnerable youth guardianship is necessary to serve the best  
36 interests of the vulnerable youth. The effect of a guardian's duties  
37 while serving in the military potentially impacting vulnerable youth  
38 guardianship functions is not, by itself, a substantial change of

1 circumstances justifying termination of a vulnerable youth  
2 guardianship.

3 NEW SECTION. **Sec. 9.** In all proceedings under this chapter to  
4 establish, modify, or terminate a vulnerable youth guardianship  
5 order, the vulnerable youth and the guardian or prospective guardian  
6 have the right to be represented by counsel of their choosing and at  
7 their own expense.

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

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