

SHB 1988 - S COMM AMD

By Committee on Human Services, Mental Health & Housing

ADOPTED 04/07/2017

1 Strike everything after the enacting clause and insert the
2 following:

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

15 This chapter authorizes a court to appoint a guardian for a
16 vulnerable youth from eighteen to twenty-one years old, who is not
17 participating in extended foster care services authorized under RCW
18 74.13.031, and who is eligible for classification under 8 U.S.C. Sec.
19 1101(a)(27)(J) with the consent of the proposed ward. This chapter
20 also provides that a vulnerable youth guardianship of the person
21 terminates on the youth's twenty-first birthday unless the youth
22 requests termination prior to that date. Opening court doors for the
23 provision of a vulnerable youth guardianship serves the state's
24 interest in eliminating human trafficking, preventing further
25 victimization of youth, decreasing reliance on public resources,
26 reducing youth homelessness, and offering protection for youth who
27 may otherwise be targets for traffickers.

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

30 (a) Washington law grants the superior courts jurisdiction to
31 make judicial determinations regarding the custody and care of youth

1 within the meaning of the federal immigration and nationality act.
2 Pursuant to 8 U.S.C. Sec. 1101(b), the term "child" means an
3 unmarried person under twenty-one years of age. Superior courts are
4 empowered to make the findings necessary for a youth to petition the
5 United States citizenship and immigration services for classification
6 under 8 U.S.C. Sec. 1101(a)(27)(J).

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

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

17 (d) Misalignment between state and federal law continues to
18 exist. Federal law allows a person under twenty-one years old, who
19 otherwise meets the requirements for eligibility under 8 U.S.C. Sec.
20 1101(a)(27)(J), to file for relief. In Washington, however,
21 vulnerable youth who are between eighteen and twenty-one years old
22 have largely been unable to obtain the findings from the superior
23 court necessary to seek classification under 8 U.S.C. Sec.
24 1101(a)(27)(J) and the relief that it was intended to afford them,
25 solely because superior courts cannot take jurisdiction of these
26 vulnerable youth under current law. This is true despite the fact
27 that many vulnerable youth between eighteen and twenty-one years old
28 face circumstances identical to those faced by their younger
29 counterparts.

30 (e) Given the recent influx of vulnerable youth arriving to the
31 United States, many of whom have been released to family members and
32 other adults in Washington, and who have experienced parental abuse,
33 neglect, or abandonment, it is necessary to provide an avenue for
34 these vulnerable youth to petition the superior courts to appoint a
35 guardian of the person, even if the youth is over eighteen years old.
36 This is particularly necessary in light of the vulnerability of this
37 class of youth, and their need for a custodial relationship with a
38 responsible adult as they adjust to a new cultural context, language,
39 and education system, and recover from the trauma of abuse, neglect,
40 or abandonment. These custodial arrangements promote the long-term

1 well-being and stability of vulnerable youth present in the United
2 States who have experienced abuse, neglect, or abandonment by one or
3 both parents.

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

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

26 (2) It is the intent of the legislature to give the juvenile
27 division of superior courts jurisdiction to appoint a guardian for a
28 consenting vulnerable youth between eighteen, up to the age of
29 twenty-one who has been abandoned, neglected, or abused by one or
30 both parents, or for whom the court determines that a guardian is
31 otherwise necessary as one or both parents cannot adequately provide
32 for the youth such that the youth risks physical or psychological
33 harm if returned to the youth's home. The juvenile court will have
34 jurisdiction to make the findings necessary for a vulnerable youth to
35 petition for classification under 8 U.S.C. Sec. 1101(a)(27)(J). It is
36 further the intent of the legislature to provide an avenue for a
37 person between eighteen and twenty-one years old to have a guardian
38 of the person appointed beyond eighteen years old if the youth so
39 requests or consents to the appointment of a guardian as provided in
40 section 5 of this act.

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

4 (1) "Department" means the department of social and health
5 services.

6 (2) "Guardian" means a person who has been appointed by the court
7 as the guardian of a vulnerable youth in a legal proceeding under
8 this chapter. The term "guardian" does not include a "dependency
9 guardian" appointed pursuant to a proceeding under chapter 13.34 RCW
10 for the purpose of assisting the court in supervising the dependency.
11 The term "guardian" does not include a "guardian" appointed pursuant
12 to a proceeding under chapter 13.36 RCW or a "dependency guardian"
13 appointed pursuant to a proceeding under chapter 13.34 RCW.

14 (3) "Juvenile court" or "court" means the juvenile division of
15 the superior court.

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

18 (a) Any parent, or blood relative, including those of half-blood,
19 and including first cousins, second cousins, nephews or nieces, and
20 persons of preceding generations as denoted by prefixes of grand,
21 great, or great-great;

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

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

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

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

31 (5)(a) "Suitable person" means a nonrelative who has completed
32 all required criminal history background checks as specified in (b)
33 of this subsection and otherwise appears to be suitable and competent
34 to provide care for the youth.

35 (b) The criminal background checks required in (a) of this
36 subsection are those set out in RCW 26.10.135 (1) and (2)(b), but
37 apply only to the guardian and not to other adult members of the
38 household.

39 (6) "Vulnerable youth" is an individual who has turned eighteen
40 years old, but who is not yet twenty-one years old and who is

1 eligible for classification under 8 U.S.C. Sec. 1101(a)(27)(J). A
2 youth who remains in a vulnerable youth guardianship under this
3 chapter shall not be considered a "child" under any other state
4 statute or for any other purpose. A vulnerable youth is one who is
5 not also a nonminor dependent who is participating in extended foster
6 care services authorized under RCW 74.13.031.

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

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

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

18 (a) Both the petitioner and the proposed guardian agree to the
19 establishment of a guardianship;

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (b) Provide that the guardian shall ensure that the legal rights
13 of the vulnerable youth are not violated, and may specify the
14 guardian's other rights and responsibilities concerning the care,
15 custody, and nurturing of the vulnerable youth;

16 (c) Specify that the guardian shall not have possession of any
17 identity documents belonging to the vulnerable youth; and

18 (d) Specify the need for and scope of continued oversight by the
19 court, if any.

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

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

25 (4) For an unrepresented vulnerable youth whose vulnerable youth
26 guardian is a suitable person, as defined in section 3 of this act,
27 the court shall provide a list of service providers and available
28 resources for survivors of human trafficking, such as any relevant
29 lists or materials created by the Washington state task force against
30 the trafficking of persons under RCW 7.68.350.

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

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

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

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

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

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

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

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

1 guardianship functions is not, by itself, a substantial change of
2 circumstances justifying termination of a vulnerable youth
3 guardianship.

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

9 NEW SECTION. **Sec. 10.** (1) Subject to the availability of
10 amounts appropriated for this specific purpose, the Washington state
11 task force against the trafficking of persons created in RCW 7.68.350
12 shall:

13 (a) Evaluate whether vulnerable youth guardianships established
14 under chapter 13.--- RCW (the new chapter created in section 11 of
15 this act) where the guardian is a suitable person, as defined in
16 section 3 of this act, have the unintended impact of placing youth at
17 greater risk of being trafficked; and

18 (b) Compile a list of service providers and available resources
19 for survivors of human trafficking that a court issuing a vulnerable
20 youth guardianship order under section 6 of this act can provide to a
21 vulnerable youth applying for a guardian who is a suitable person, as
22 defined in section 3 of this act.

23 (2) If findings are made that vulnerable youth guardianships
24 established under chapter 13.--- RCW (the new chapter created in
25 section 11 of this act) where the guardian is a suitable person, as
26 defined in section 3 of this act, have the unintended impact of
27 placing youth at greater risk of being trafficked, the task force
28 shall:

29 (a) Research and identify ways to reduce this risk, including
30 recommendations on legislation;

31 (b) Examine whether providing a vulnerable youth applying for a
32 guardian who is a suitable person, as defined in section 3 of this
33 act, with an advocate interview prior to granting a vulnerable youth
34 guardianship will help reduce this risk; and

35 (c) Identify best practices for an advocate interview and any
36 related recommendations on training or other requirements for
37 advocate organizations.

1 (3) The task force shall deliver the evaluation of vulnerable
2 youth guardianships specified by this section to the legislature by
3 January 1, 2019.

4 NEW SECTION. **Sec. 11.** Sections 1 through 9 of this act
5 constitute a new chapter in Title 13 RCW."

6 On page 1, line 2 of the title, after "program;" strike the
7 remainder of the title and insert "adding a new chapter to Title 13
8 RCW; and creating a new section."

EFFECT: Makes the Task Force's evaluation of the vulnerable youth
guardianship program subject to the availability of amounts
appropriated for the specific purpose.

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