

Senate Bill 857

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Defines "child" for purposes of vulnerable youth guardianships to be person under 21 years of age. Creates vulnerable youth guardianship procedure for children between 18 and 21 years of age who are not citizens or lawful permanent residents of United States, who are unable to be reunified with parent and for whom returning to country of origin is not in child's best interests. Grants juvenile court jurisdiction over vulnerable youth guardianships and custody of child for whom vulnerable youth guardianship is established. Designates venue for vulnerable youth guardianship proceedings.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to guardianships for vulnerable youth; creating new provisions; amending ORS 419B.118;
3 and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. Definitions. As used in sections 1 to 10 of this 2019 Act:

5 (1) "Child" has the meaning given that term in ORS 418.001.

6 (2)(a) "Guardian" means a person who has been appointed by the juvenile court as the
7 guardian of a vulnerable youth in a legal proceeding under this section.

8 (b) "Guardian" does not include a guardian appointed for a ward under ORS 419B.365 or
9 419B.366 or a guardian appointed for a protected person under ORS chapter 125.

10 (3) "Vulnerable youth" means an individual for whom a vulnerable youth guardianship
11 has been established under sections 1 to 10 of this 2019 Act.

12 **SECTION 2. Petition and appointment. (1) An unmarried child may, with the child's**
13 **proposed guardian, jointly petition the juvenile court to establish a vulnerable youth**
14 **guardianship for the child under this section.**

15 (2) A petition under this section must establish by a preponderance of the evidence that:

16 (a) The child:

17 (A) Is at least 18 years of age but less than 21 years of age;

18 (B) Is not a citizen or lawful permanent resident of the United States;

19 (C) Is unable to be reunified with one or more of the child's parents due to abuse, neglect
20 or abandonment that occurred before the child attained the age of 18 years;

21 (D) Requests the support of a responsible adult to:

22 (i) Help the child overcome the effects of parental abuse, neglect or abandonment;

23 (ii) Protect the child from exploitation and further harm; and

24 (iii) Assist the child as needed with successfully transitioning into adulthood and ac-
25 cessing appropriate educational, legal, health care and other services; and

26 (E) Joins in the petition for the appointment of a guardian under this section.

27 (b) The proposed guardian:
28

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (A) Joins in the petition for the appointment of a guardian under this section;
- 2 (B) Is at least 21 years of age; and
- 3 (C) Is capable of performing the duties of a guardian under subsection (5) of this section.

4 (c) It would not be in the child’s best interest to be returned to the child’s country of
5 origin.

6 (3)(a) No later than 14 days after a petition under this section is filed, the juvenile court
7 shall issue an order approving or denying the petition or notify the parties that a hearing is
8 required.

9 (b) If a hearing on the petition is required, the court shall rule on the petition within 14
10 days after the hearing is held.

11 (4) On the court’s own motion or on request of the child or the proposed guardian, the
12 court may hold a hearing on a petition filed under this section. If the juvenile court requires
13 a hearing:

- 14 (a) The parties may appear remotely;
- 15 (b) The parties have the right to present evidence and cross-examine witnesses, if any;
- 16 and
- 17 (c) The rules of evidence apply.

18 (5) If the juvenile court determines that the requirements of subsection (2) of this section
19 are met, the court shall issue an order establishing a vulnerable youth guardianship for the
20 child. The order shall:

- 21 (a) Appoint the proposed guardian to be the guardian for the vulnerable youth;
- 22 (b) Provide that the guardian shall protect the legal rights of the vulnerable youth;
- 23 (c) Specify that the guardian may not have possession of any identity documents be-
24 longing to the vulnerable youth;
- 25 (d) Specify any need for and scope of continued oversight by the juvenile court; and
- 26 (e) Specify any additional rights and responsibilities of the guardian concerning the care,
27 custody, support and nurturing of the vulnerable youth.

28 (6) The juvenile court shall provide a certified copy of the order appointing the guardian
29 to the vulnerable youth and to the guardian, together with letters of guardianship in the
30 form provided in section 5 of this 2019 Act.

31 **SECTION 3. Modification.** (1) A vulnerable youth may move the juvenile court to modify
32 the provisions of a vulnerable youth guardianship order under sections 1 to 10 of this 2019
33 Act at any time by:

- 34 (a) Filing with the juvenile court a motion for modification and an affidavit setting forth
35 the facts supporting the requested modification; and
- 36 (b) Providing notice and a copy of the motion and affidavit to the guardian.

37 (2) The vulnerable youth may move the court to appoint a new guardian at any time by:

- 38 (a) Filing with the court a motion for appointment of a new guardian and an affidavit
39 setting forth the facts supporting the requested appointment; and
- 40 (b) Providing notice and a copy of the motion and affidavit to the guardian and proposed
41 new guardian.

42 (3)(a) The vulnerable youth may move the court to appoint a new guardian, provided that
43 the proposed new guardian is a suitable adult 21 years of age or older who is capable of
44 performing the duties of a guardian under section 2 (5) of this 2019 Act.

- 45 (b) To appoint a new guardian, the juvenile court may not require the termination of the

1 vulnerable youth guardianship or the filing of a new vulnerable youth guardianship petition.

2 (4) If a guardian moves the juvenile court to modify the provisions of a vulnerable youth
3 guardianship order, the modification is subject to the vulnerable youth's consent.

4 (5) If a guardian or vulnerable youth objects to a motion to modify the provisions of a
5 vulnerable youth guardianship or to appoint a new guardian, the guardian or vulnerable
6 youth may file an objection in writing with the juvenile court within 15 days after notice of
7 the motion under subsection (1)(b) or (2)(b) of this section is served or mailed. The juvenile
8 court shall schedule a hearing on any objections filed under this subsection. The person
9 making the motion shall give notice to the other party of the date, time and place of the
10 scheduled hearing at least 15 days before the date set for hearing. The juvenile court for good
11 cause shown may provide for a different method or time of giving notice under this sub-
12 section.

13 (6) Upon a juvenile court granting a motion to appoint a new guardian under this section,
14 the juvenile court shall provide a certified copy of the order appointing the new guardian to
15 the vulnerable youth and to the new guardian, together with letters of guardianship using
16 the form provided in section 5 of this 2019 Act.

17 **SECTION 4. Termination.** (1) A vulnerable youth guardianship under sections 1 to 10 of
18 this 2019 Act terminates on the earlier of:

19 (a) The vulnerable youth attaining the age of 21 years;

20 (b) The juvenile court granting a vulnerable youth's motion to terminate the
21 guardianship;

22 (c) The juvenile court granting a guardian's motion to terminate the guardianship; or

23 (d) The juvenile court issuing a final order confirming the transfer of the vulnerable
24 youth guardianship to another state under section 6 of this 2019 Act.

25 (2) The termination of a vulnerable youth guardianship under subsection (1)(a) of this
26 section shall be at the juvenile court's own motion and shall be effective on the date the
27 vulnerable youth attains the age of 21 years.

28 (3) A vulnerable youth may move the court to terminate the vulnerable youth
29 guardianship at any time and for any reason.

30 (4)(a) A guardian may move the juvenile court to terminate the vulnerable youth
31 guardianship if the guardian can establish that there has been a substantial change of cir-
32 cumstances and that termination of the guardianship is necessary to serve the best interests
33 of the vulnerable youth.

34 (b) The guardian shall provide notice of the motion under this subsection to the vuln-
35 erable youth.

36 (c) The juvenile court may not terminate a vulnerable youth guardianship under this
37 subsection unless the juvenile court finds, by a preponderance of evidence, that:

38 (A) Facts have arisen since the vulnerable youth guardianship was established or that
39 were unknown to the juvenile court at the time the vulnerable youth guardianship was es-
40 tablished; and

41 (B) That a substantial change has occurred in the circumstances of the vulnerable youth
42 or the guardian and that termination of the vulnerable youth guardianship is necessary to
43 serve the best interests of the vulnerable youth.

44 (d) A guardian's change of military status is not, by itself, a substantial change of cir-
45 cumstances justifying termination of a vulnerable youth guardianship.

(5) Upon the juvenile court’s motion under subsection (2) of this section, receiving a vulnerable youth’s motion under subsection (3) of this section or finding that all of the requirements for termination under subsection (4)(c) of this section have been met, the juvenile court shall terminate the vulnerable youth guardianship by entry of a general judgment. The juvenile court shall notify the vulnerable youth and the guardian of the termination of the guardianship.

SECTION 5. Letters of guardianship. The juvenile court shall issue letters of guardianship in substantially the following form:

State of Oregon,)
) LETTERS OF
County of ____) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on ____ (month) ____ (day), 2____, the _____ Court, ____ County, State of Oregon, appointed _____ (name of guardian) guardian for _____ (name of vulnerable youth) and that the named guardian has qualified and has the authority and duties of guardian for the named vulnerable youth as provided in the order appointing the guardian, a copy of which is attached to these letters.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on ____ (month) ____ (day), 2____. (Seal)

_____, Clerk of the Court
By _____, Deputy

SECTION 6. Transfer to a different state. (1) A vulnerable youth and a guardian appointed under sections 1 to 10 of this 2019 Act may jointly petition the juvenile court to transfer the vulnerable youth guardianship to another state.

(2) On the juvenile court’s own motion or on request of the guardian or the vulnerable youth, the juvenile court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(3) The juvenile court shall issue an order granting a petition to transfer the vulnerable youth guardianship and shall direct the guardian to petition for a guardianship in the other state if the juvenile court is satisfied that the guardianship will be accepted by the court in the other state and the juvenile court finds that:

(a) The vulnerable youth is physically present in, or is reasonably expected to move permanently to, the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the vulnerable youth; and

(c) Plans for care and services for the vulnerable youth in the other state are reasonable and sufficient.

(4) The juvenile court shall issue a final order confirming the transfer and terminating the vulnerable youth guardianship upon its receipt of:

1 (a) An order accepting the proceeding from the court to which the proceeding is to be
2 transferred that is issued under provisions similar to the provisions in section 7 of this 2019
3 Act; and

4 (b) The documents required to terminate a vulnerable youth guardianship in this state.

5 **SECTION 7. Transfer from a different state.** (1) A guardian and a child meeting the re-
6 quirements under section 2 (2) of this 2019 Act may jointly petition the juvenile court to ac-
7 cept transfer of a guardianship to this state as a vulnerable youth guardianship under
8 sections 1 to 10 of this 2019 Act. The petition must include a certified copy of the other
9 state's order granting the petition to transfer.

10 (2) On the juvenile court's own motion or on request of the guardian or the vulnerable
11 youth, the juvenile court shall hold a hearing on a petition filed pursuant to subsection (1)
12 of this section.

13 (3) The juvenile court shall issue an order granting a petition filed under subsection (1)
14 of this section unless:

15 (a) The juvenile court determines that transfer of the guardianship would be contrary to
16 the interests of the child; or

17 (b) The guardian is ineligible for appointment in this state.

18 (4) The juvenile court shall modify a guardianship transferred to this state under this
19 section as necessary to conform to the laws of this state.

20 (5) In granting a petition under this section, the juvenile court shall recognize a
21 guardianship order from the other state, including the determination of the court of the
22 other state justifying the need for the guardianship.

23 (6) The denial by a juvenile court of this state of a petition to accept the transfer of a
24 guardianship from another state does not affect the ability of the child to seek appointment
25 of a guardian in this state under sections 1 to 10 of this 2019 Act if the juvenile court has
26 jurisdiction to make an appointment other than by reason of the order of transfer.

27 **SECTION 8. Miscellaneous.** (1) A vulnerable youth is not presumed to be incompetent.

28 (2) A vulnerable youth retains all legal and civil rights provided by law except those that
29 have been expressly limited by court order or specifically granted to the guardian by the ju-
30 venile court. Rights retained by the vulnerable youth include, but are not limited to, the
31 right to contact and retain counsel and to have access to personal records.

32 (3) A guardian or proposed guardian has the right to contact and retain counsel at the
33 expense of the guardian or proposed guardian.

34 (4) The juvenile court may not:

35 (a) Impose any fees for establishing, modifying, transferring or terminating a vulnerable
36 youth guardianship under sections 1 to 10 of this 2019 Act;

37 (b) Require the disclosure of a guardian or proposed guardian's immigration status;

38 (c) Impose any residence or domicile requirement on a vulnerable youth or guardian ap-
39 pointed under sections 1 to 10 of this 2019 Act; or

40 (d) Require the guardian to file an acceptance of appointment or to post any bond.

41 **SECTION 9. Jurisdiction.** Notwithstanding ORS 419B.100, the juvenile court has exclusive
42 original jurisdiction:

43 (1) In any case involving a child who:

44 (a) Is at least 18 years of age but less than 21 years of age;

45 (b) Is not a citizen or lawful permanent resident of the United States; and

1 (c) Has filed a petition to establish a vulnerable youth guardianship under sections 1 to
 2 10 of this 2019 Act.

3 (2) Over custody of a child described in subsection (1) of this section for whom a vul-
 4 nerable youth guardianship has been established.

5 **SECTION 10. Manner of giving notice.** (1) Notices required under sections 1 to 10 of this
 6 2019 Act may be delivered by personal service or mailed to the last-known address of the
 7 person being given notice. If the address or identity of any person is not known and cannot
 8 be ascertained with reasonable diligence, notice of the filing of a petition may be given by
 9 publishing at least once a week for three consecutive weeks a copy of the notice in a news-
 10 paper having general circulation in the county where the proceeding is to be held. The last
 11 publication of the notice must be at least 15 days before the final date for the filing of ob-
 12 jections.

13 (2) The court for good cause shown may provide for a different method of giving notice
 14 under this section.

15 (3) Proof of giving notice must be filed in the proceeding before the court enters any
 16 order on a motion.

17 **SECTION 11.** ORS 419B.118 is amended to read:

18 419B.118. (1) Subject to the provisions of subsections (2), (3) and (4) of this section, a juvenile
 19 court proceeding shall commence in the county of wardship if, at the commencement of the pro-
 20 ceeding, wardship exists as a result of proceedings under this chapter, or, in the absence of such
 21 wardship, in the county where the child resides.

22 (2) If the proceeding is based on allegations of jurisdiction under ORS 419B.100 (1)(a), (b) or (c),
 23 the proceeding may also commence in the county in which the alleged act or behavior took place.

24 (3) If the proceeding is based on allegations of jurisdiction under ORS 419B.100 (1)(b), (c), (d),
 25 (e) or (f), the proceedings may also commence in the county where the child is present when the
 26 proceeding begins.

27 (4) A termination of parent-child relationship proceeding may be commenced in the county of
 28 wardship or where the child or ward resides or is found unless the child is an Indian child subject
 29 to the Indian Child Welfare Act and the tribal court has assumed jurisdiction.

30 (5) **A vulnerable youth guardianship proceeding under sections 1 to 10 of this 2019 Act**
 31 **may be commenced in the juvenile court of any county in this state.**

32 **SECTION 12. Sections 1 to 10 of this 2019 Act and the amendments to ORS 419B.118 by**
 33 **section 11 of this 2019 Act apply to children, as defined in section 1 of this 2019 Act, attaining**
 34 **18 years of age on or after the effective date of this 2019 Act.**

35 **SECTION 13. The section captions used in this 2019 Act are provided only for the con-**
 36 **venience of the reader and do not become part of the statutory law of this state or express**
 37 **any legislative intent in the enactment of this 2019 Act.**

38 **SECTION 14. This 2019 Act takes effect on the 91st day after the date on which the 2019**
 39 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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