

D R A F T

SUMMARY

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;
3 amending ORS 419B.118; and prescribing an effective date.

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

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

6 (1) “Child” has the meaning given that term in ORS 418.001.

7 (2)(a) “Guardian” means a person who has been appointed by the
8 juvenile court as the guardian of a vulnerable youth in a legal pro-
9 ceeding under this section.

10 (b) “Guardian” does not include a guardian appointed for a ward
11 under ORS 419B.365 or 419B.366 or a guardian appointed for a protected
12 person under ORS chapter 125.

13 (3) “Vulnerable youth” means an individual for whom a vulnerable
14 youth guardianship has been established under sections 1 to 10 of this
15 2019 Act.

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

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

7 (a) The child:

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

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

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

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

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

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

18 (iii) Assist the child as needed with successfully transitioning into
19 adulthood and accessing appropriate educational, legal, health care
20 and other services; and

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

23 (b) The proposed guardian:

24 (A) Joins in the petition for the appointment of a guardian under
25 this section;

26 (B) Is at least 21 years of age; and

27 (C) Is capable of performing the duties of a guardian under sub-
28 section (5) of this section.

29 (c) It would not be in the child's best interest to be returned to the
30 child's country of origin.

31 (3)(a) No later than 14 days after a petition under this section is

1 filed, the juvenile court shall issue an order approving or denying the
2 petition or notify the parties that a hearing is required.

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

5 (4) On the court's own motion or on request of the child or the
6 proposed guardian, the court may hold a hearing on a petition filed
7 under this section. If the juvenile court requires a hearing:

8 (a) The parties may appear remotely;

9 (b) The parties have the right to present evidence and cross-
10 examine witnesses, if any; and

11 (c) The rules of evidence apply.

12 (5) If the juvenile court determines that the requirements of sub-
13 section (2) of this section are met, the court shall issue an order es-
14 tablishing a vulnerable youth guardianship for the child. The order
15 shall:

16 (a) Appoint the proposed guardian to be the guardian for the vul-
17 nerable youth;

18 (b) Provide that the guardian shall protect the legal rights of the
19 vulnerable youth;

20 (c) Specify that the guardian may not have possession of any iden-
21 tity documents belonging to the vulnerable youth;

22 (d) Specify any need for and scope of continued oversight by the
23 juvenile court; and

24 (e) Specify any additional rights and responsibilities of the guardian
25 concerning the care, custody, support and nurturing of the vulnerable
26 youth.

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

31 SECTION 3. Modification. (1) A vulnerable youth may move the

1 juvenile court to modify the provisions of a vulnerable youth
2 guardianship order under sections 1 to 10 of this 2019 Act at any time
3 by:

4 (a) Filing with the juvenile court a motion for modification and an
5 affidavit setting forth the facts supporting the requested modification;
6 and

7 (b) Providing notice and a copy of the motion and affidavit to the
8 guardian.

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

11 (a) Filing with the court a motion for appointment of a new
12 guardian and an affidavit setting forth the facts supporting the re-
13 quested appointment; and

14 (b) Providing notice and a copy of the motion and affidavit to the
15 guardian and proposed new guardian.

16 (3)(a) The vulnerable youth may move the court to appoint a new
17 guardian, provided that the proposed new guardian is a suitable adult
18 21 years of age or older who is capable of performing the duties of a
19 guardian under section 2 (5) of this 2019 Act.

20 (b) To appoint a new guardian, the juvenile court may not require
21 the termination of the vulnerable youth guardianship or the filing of
22 a new vulnerable youth guardianship petition.

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

26 (5) If a guardian or vulnerable youth objects to a motion to modify
27 the provisions of a vulnerable youth guardianship or to appoint a new
28 guardian, the guardian or vulnerable youth may file an objection in
29 writing with the juvenile court within 15 days after notice of the mo-
30 tion under subsection (1)(b) or (2)(b) of this section is served or mailed.
31 The juvenile court shall schedule a hearing on any objections filed

1 under this subsection. The person making the motion shall give notice
2 to the other party of the date, time and place of the scheduled hearing
3 at least 15 days before the date set for hearing. The juvenile court for
4 good cause shown may provide for a different method or time of giving
5 notice under this subsection.

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

11 **SECTION 4. Termination.** (1) A vulnerable youth guardianship un-
12 der sections 1 to 10 of this 2019 Act terminates on the earlier of:

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

14 (b) The juvenile court granting a vulnerable youth's motion to ter-
15 minate the guardianship;

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

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

21 (2) The termination of a vulnerable youth guardianship under sub-
22 section (1)(a) of this section shall be at the juvenile court's own mo-
23 tion and shall be effective on the date the vulnerable youth attains the
24 age of 21 years.

25 (3) A vulnerable youth may move the court to terminate the vul-
26 nerable youth guardianship at any time and for any reason.

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

1 (b) The guardian shall provide notice of the motion under this
2 subsection to the vulnerable youth.

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

6 (A) Facts have arisen since the vulnerable youth guardianship was
7 established or that were unknown to the juvenile court at the time the
8 vulnerable youth guardianship was established; and

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

13 (d) A guardian's change of military status is not, by itself, a sub-
14 stantial change of circumstances justifying termination of a vulner-
15 able youth guardianship.

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

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

25 _____
26 State of Oregon,)
27) LETTERS OF
28 County of ____) GUARDIANSHIP

29
30 BY THESE LETTERS OF GUARDIANSHIP be informed:

31 That on ____ (month) ____ (day), 2____, the _____ Court, ____

1 County, State of Oregon, appointed _____ (name of guardian) guard-
2 ian for _____ (name of vulnerable youth) and that the named guardian
3 has qualified and has the authority and duties of guardian for the
4 named vulnerable youth as provided in the order appointing the
5 guardian, a copy of which is attached to these letters.

6 IN TESTIMONY WHEREOF, I have subscribed my name and affixed
7 the seal of the court at my office on ____ (month) ____ (day),
8 2____. (Seal)

9 _____, Clerk of the Court
10 By _____, Deputy

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

16 (2) On the juvenile court's own motion or on request of the guard-
17 ian or the vulnerable youth, the juvenile court shall hold a hearing
18 on a petition filed pursuant to subsection (1) of this section.

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

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

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

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

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

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

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

9 SECTION 7. Transfer from a different state. (1) A guardian and a
10 child meeting the requirements under section 2 (2) of this 2019 Act
11 may jointly petition the juvenile court to accept transfer of a
12 guardianship to this state as a vulnerable youth guardianship under
13 sections 1 to 10 of this 2019 Act. The petition must include a certified
14 copy of the other state's order granting the petition to transfer.

15 (2) On the juvenile court's own motion or on request of the guard-
16 ian or the vulnerable youth, the juvenile court shall hold a hearing
17 on a petition filed pursuant to subsection (1) of this section.

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

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

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

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

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

30 (6) The denial by a juvenile court of this state of a petition to accept
31 the transfer of a guardianship from another state does not affect the

1 ability of the child to seek appointment of a guardian in this state
2 under sections 1 to 10 of this 2019 Act if the juvenile court has juris-
3 diction to make an appointment other than by reason of the order of
4 transfer.

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

7 (2) A vulnerable youth retains all legal and civil rights provided by
8 law except those that have been expressly limited by court order or
9 specifically granted to the guardian by the juvenile court. Rights re-
10 tained by the vulnerable youth include, but are not limited to, the
11 right to contact and retain counsel and to have access to personal re-
12 cords.

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

15 (4) The juvenile court may not:

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

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

21 (c) Impose any residence or domicile requirement on a vulnerable
22 youth or guardian appointed under sections 1 to 10 of this 2019 Act;
23 or

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

26 **SECTION 9. Jurisdiction.** Notwithstanding ORS 419B.100, the juve-
27 nile court has exclusive original jurisdiction:

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

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

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

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

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

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

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

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

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

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

25 (2) If the proceeding is based on allegations of jurisdiction under ORS
26 419B.100 (1)(a), (b) or (c), the proceeding may also commence in the county
27 in which the alleged act or behavior took place.

28 (3) If the proceeding is based on allegations of jurisdiction under ORS
29 419B.100 (1)(b), (c), (d), (e) or (f), the proceedings may also commence in the
30 county where the child is present when the proceeding begins.

31 (4) A termination of parent-child relationship proceeding may be com-

1 menced in the county of wardship or where the child or ward resides or is
2 found unless the child is an Indian child subject to the Indian Child Welfare
3 Act and the tribal court has assumed jurisdiction.

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

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

11 **SECTION 13. The section captions used in this 2019 Act are provided**
12 **only for the convenience of the reader and do not become part of the**
13 **statutory law of this state or express any legislative intent in the**
14 **enactment of this 2019 Act.**

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

18
