

ASSEMBLY BILL NO. 517—ASSEMBLYMEN FREEMAN, GIBBONS,
ARBERRY, GIUNCHIGLIANI, WILLIAMS AND PARKS

MARCH 12, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions for guardianship of adults and provides for recovery if fiduciary abuses authority. (BDR 13-1359)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to adult persons; revising provisions for their guardianship; providing civil penalties for exploitation of older persons; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 159 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2, 3 and 4 of this act.
- 3 **Sec. 2.** *An adult ward is entitled, insofar as his condition permits:*
4 1. *To an annual review of any report or plan for his guardianship.*
5 2. *To review, upon application to the court, of the need for restriction*
6 *of his independent action.*
7 3. *To restoration of his capacity for independent action as soon as*
8 *possible.*
9 4. *To humane treatment, with dignity and respect, and protection*
10 *from abuse, neglect and exploitation.*
11 5. *To remain as independent as possible, including a reasonable*
12 *choice of place and standard of living, whether expressed before or after*
13 *his incompetence or limited capacity was determined. A guardian shall*
14 *give effect to any estate planning done by the ward while competent,*
15 *insofar as possible.*
16 6. *To prudent financial management of his property and to be*
17 *informed upon request how his property is managed.*
18 7. *To appropriate services and rehabilitation.*

1 **8. To access to the court and legal counsel.**

2 **9. To receive visitors and communicate with others.**

3 **10. To privacy.**

4 **11. To notice of any proceeding to determine his capacity or the kind**
5 **of guardianship, unless the court finds that he is unable to comprehend**
6 **the notice.**

7 **Sec. 3. If an adult ward or proposed adult ward is unable to retain**
8 **legal counsel and requests the appointment of counsel, at any stage of a**
9 **proceeding for guardianship and whether or not he lacks or appears to**
10 **lack capacity, the court shall, at or before the time of the next hearing,**
11 **appoint a public or private attorney to represent him. The attorney's fees**
12 **must be paid from the estate of the ward or proposed ward to the extent**
13 **possible, and otherwise by the county.**

14 **Sec. 4. 1. If a ward has attained the age of 60 years, the guardian**
15 **shall retain assets not exceeding \$1,500 in value for the anticipated**
16 **expense of the ward's funeral and the disposal of his remains. The**
17 **amount so retained is exempt from all claims, including those of this**
18 **state.**

19 **2. The guardian may place assets so retained in a pooled account or**
20 **trust. If the assets are invested in a savings account or other financial**
21 **account, they are not subject to disposition as unclaimed property during**
22 **the lifetime of the ward.**

23 **3. Assets so retained may be disbursed for the ward's funeral or the**
24 **disposal of his remains without prior authorization of the court. An**
25 **amount not so disbursed becomes part of the ward's estate.**

26 **Sec. 5. NRS 159.019 is hereby amended to read as follows:**

27 159.019 "Incompetent" ~~includes any~~ **means an adult** person who, by
28 reason of mental illness, mental deficiency, advanced age, disease,
29 weakness of mind or any other cause, is unable, without assistance,
30 properly to manage and take care of himself or his property.

31 **Sec. 6. NRS 159.022 is hereby amended to read as follows:**

32 159.022 A person is of "limited capacity" if he is able to make
33 independently some but not all of the decisions necessary for his own care
34 and the management of his property ~~and~~ **and has attained the age of**
35 **majority.**

36 **Sec. 7. NRS 159.044 is hereby amended to read as follows:**

37 159.044 1. Except as otherwise provided in NRS 127.045, a
38 proposed ward, a governmental agency, a nonprofit corporation or any
39 concerned person may petition the court for the appointment of a guardian.

- 1 2. The petition must state:
- 2 (a) The name and address of the petitioner.
- 3 (b) The name, age and address of the proposed ward. *If he is a minor,*
- 4 *the date on which he will attain the age of majority and whether he will*
- 5 *need guardianship after attaining the age of majority.*
- 6 (c) Whether the proposed ward is a resident or nonresident of this state.
- 7 (d) The names and addresses, so far as they are known to the petitioner,
- 8 of the relatives of the proposed ward within the second degree.
- 9 (e) The name and address of the proposed guardian.
- 10 (f) That the proposed guardian has never been convicted of a felony.
- 11 (g) A summary of the reasons why a guardian is needed.
- 12 (h) Whether the appointment of a general or a special guardian is
- 13 sought.
- 14 (i) A general description and the probable value of the property of the
- 15 proposed ward and any income to which he is entitled, if the petition is for
- 16 the appointment of a guardian of the estate or a special guardian. If any
- 17 money is paid or is payable to the proposed ward by the United States
- 18 through the Department of Veterans Affairs, the petition must so state.
- 19 (j) The name and address of any person or institution having the care,
- 20 custody or control of the proposed ward.
- 21 (k) The relationship, if any, of the petitioner to the proposed ward and
- 22 the interest, if any, of the petitioner in the appointment.
- 23 (l) Requests for any of the specific powers set forth in NRS 159.117 to
- 24 159.175, inclusive, necessary to enable the guardian to carry out the duties
- 25 of the guardianship.
- 26 (m) Whether the guardianship is sought as the result of an investigation
- 27 of a report of abuse or neglect that is conducted pursuant to chapter 432B
- 28 of NRS by an agency which provides protective services. As used in this
- 29 paragraph, "agency which provides protective services" has the meaning
- 30 ascribed to it in NRS 432B.030.
- 31 **Sec. 8.** NRS 159.047 is hereby amended to read as follows:
- 32 159.047 1. Except as otherwise provided in NRS 159.0475, 159.049
- 33 and 159.052, the court, upon the filing of a petition under NRS 159.044,
- 34 shall direct the clerk to issue a citation setting forth a time and place for the
- 35 hearing and directing the persons or institutions referred to in subsection 2
- 36 to appear and show cause why a guardian should not be appointed for the
- 37 proposed ward.
- 38 2. A citation issued under subsection 1 must be served:
- 39 (a) If the proposed ward is an incompetent ~~or~~ *or a person of limited*
- 40 *capacity:*
- 41 (1) Upon the spouse and adult children of the incompetent or person
- 42 of limited capacity who are known to exist, or, if there are none, upon any
- 43 parent, brother or sister of the incompetent or person of limited capacity;

(2) Upon any person or officer of an institution having the care, custody or control of the incompetent or person of limited capacity; and

(3) Upon the incompetent or person of limited capacity.

(b) If the proposed ward is a minor:

(1) Upon the parents of the minor;

(2) Upon any person or officer of an institution having care, custody or control of the minor; and

(3) If the minor is 14 years of age or older, upon the minor.

Sec. 9. NRS 159.052 is hereby amended to read as follows:

159.052 1. A petitioner may request the court to appoint a temporary guardian. To support the request, the petitioner must set forth in a petition and present to the court under oath:

(a) Facts which show that the proposed ward:

(1) Faces a substantial and immediate risk of financial loss or physical harm or needs immediate medical attention; and

(2) Lacks capacity to respond to the risk of loss or harm or to obtain the necessary medical attention; and

(b) Facts which show that:

(1) The petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047; ~~for~~

(2) The proposed ward would be exposed to an immediate risk of financial loss or physical harm if the petitioner were to provide notice to the persons entitled to notice pursuant to NRS 159.047 before the court determines whether to appoint a temporary guardian ~~for~~; or

(3) Giving notice to the persons entitled to notice pursuant to NRS 159.047 is not feasible under the circumstances.

2. If the court:

(a) Finds reasonable cause to believe that the proposed ward is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a need for immediate medical attention; and

(b) Is satisfied that the petitioner has tried in good faith to notify the persons entitled to notice pursuant to NRS 159.047 ***or that giving notice to those persons is not feasible under the circumstances,*** or determines that such notice is not required pursuant to subparagraph (2) of paragraph (b) of subsection 1,

the court may appoint a temporary guardian to serve for 10 days. The court shall limit the temporary guardian's powers to those necessary to assist in the emergency.

3. Except as otherwise provided in subsection 4, after the appointment of a temporary guardian, the petitioner shall ~~make a good faith effort~~

attempt in good faith to notify the persons entitled to notice pursuant to NRS 159.047. If the petitioner fails to make such an effort, the court may

terminate the temporary guardianship.

4. If, before the appointment of a temporary guardian, the court determined that advance notice was not required pursuant to subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons entitled to notice pursuant to NRS 159.047 not later than ~~[24]~~ 48 hours after the appointment of the temporary guardian ~~[.]~~ *or not later than 48 hours after he discovers the existence, identity and location of the persons entitled to notice pursuant to that section.* If the petitioner fails to provide such notice, the court may terminate the temporary guardianship.

5. Within 10 days after the appointment of a temporary guardian pursuant to subsection 2, the court shall hold a hearing to determine the need to extend the temporary guardianship. Except as otherwise provided in subsection 6, if the court finds by clear and convincing evidence that the proposed ward is unable to respond to a substantial and immediate risk of financial loss or physical harm or to a need for immediate medical attention, the court may extend the temporary guardianship until a general or special guardian is appointed, but not for more than 30 days. The court shall limit the temporary guardian's powers to those necessary to assist in the emergency.

6. The court may not extend a temporary guardianship pursuant to subsection 5 beyond the initial period of 10 days unless the petitioner demonstrates that:

(a) The provisions of NRS 159.0475 have been satisfied; or

(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being undertaken.

Sec. 10. NRS 159.059 is hereby amended to read as follows:

159.059 Any qualified person or entity that the court finds suitable may serve as a guardian. A person is not qualified to serve as a guardian who ~~is:~~

~~1. An] :~~

1. *Is an* incompetent.

2. ~~[A]~~ *Is a* minor.

3. ~~[A person who has]~~ *Has* been convicted of a felony.

4. ~~[A person]~~ *Has been* suspended for misconduct or disbarred from the practice of law during the period of the suspension or disbarment.

5. ~~[A]~~ *Is a* nonresident of this state ~~[who]~~ *and* has not:

(a) Associated as a coguardian, a resident of this state or a banking corporation whose principal place of business is in this state; and

(b) Caused the appointment to be filed in the guardianship proceeding.

6. *Has been judicially determined to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult.*

1 **Sec. 11.** NRS 159.073 is hereby amended to read as follows:

2 159.073 Every guardian shall, before entering upon his duties as
3 guardian and before letters of guardianship may issue, take and subscribe
4 the official oath and file in the ~~{guardianship}~~ proceeding his name,
5 residence and post office address. ~~{Such}~~ **The** oath, to be endorsed on the
6 letters of guardianship, ~~{shall state that:~~

7 ~~—1.—The guardian} must state that he~~ will well and faithfully perform
8 the duties of guardian according to law . ~~};~~

9 ~~—2.—All matters stated in any petition or paper filed with the court are~~
10 ~~true of his own knowledge, except as to matters stated on information and~~
11 ~~belief; and~~

12 ~~—3.—As to matters stated on information and belief, he believes them to~~
13 ~~be true.}~~

14 **Sec. 12.** NRS 159.079 is hereby amended to read as follows:

15 159.079 1. Except as otherwise ordered by the court, a guardian of
16 the person has the care, custody and control of the person of the ward, and
17 has the authority and, subject to subsection 2, shall perform the duties
18 necessary for the proper care, maintenance, education and support of the
19 ward, including ~~{but not limited to}~~ the following:

20 (a) Supplying the ward with food, clothing, shelter and all incidental
21 necessities.

22 (b) Authorizing medical, surgical, dental, psychiatric, psychological,
23 hygienic or other remedial care and treatment for the ward.

24 (c) ~~{Seeing}~~ **If the ward is a minor or a person of limited capacity of**
25 **working age, seeing** that the ward is properly trained and educated and that
26 he has the opportunity to learn a trade, occupation or profession.

27 2. In the performance of the duties enumerated in subsection 1 by a
28 guardian of the person, due regard ~~{shall}~~ **must** be given to the extent of
29 the estate of the ward. A guardian of the person is not required to incur
30 expenses on behalf of the ward except to the extent that the estate of the
31 ward is sufficient to reimburse the guardian. ~~{Nothing contained in this~~
32 ~~section shall be deemed to}~~ **This section does not** relieve a parent or other
33 person of any duty required by law to provide for the care, support and
34 maintenance of any dependent.

35 **Sec. 13.** NRS 159.0795 is hereby amended to read as follows:

36 159.0795 A special guardian shall exercise his supervisory authority
37 over the ward in a manner which is least restrictive of the ward's personal
38 freedom consistent with the need for supervision and protection. **The order**
39 **appointing a special guardian may delegate to him the right:**

40 **1. To apply for governmental benefits on behalf of the ward.**

41 **2. To contract on behalf of the ward.**

42 **3. To manage the ward's property and make gifts or dispositions of**
43 **it.**

- 1 **4. To determine the ward's residence.**
- 2 **5. To make decisions concerning the ward's social environment or**
- 3 **other social aspects of his life.**
- 4 **6. Except as otherwise provided in NRS 159.0805, to consent to**
- 5 **medical care and mental treatment.**

6 **Sec. 14.** NRS 159.0805 is hereby amended to read as follows:

7 159.0805 A guardian shall not consent to experimental medical ,

8 **biomedical or behavioral** treatment , or sterilization of a ward , **or to the**

9 **ward's participation in any biomedical or behavioral experiment**, unless

10 he is specifically empowered to do so by the court. **The court may**

11 **authorize experimental treatment or participation only if:**

- 12 **1. It is of direct benefit to, and intended to preserve the life or prevent**
- 13 **serious impairment to the mental or physical health of, the ward; or**
- 14 **2. It is intended to assist the ward to develop or regain his abilities.**

15 **Sec. 15.** NRS 159.085 is hereby amended to read as follows:

16 159.085 1. ~~Within~~ **Except as otherwise provided in subsection 2,**

17 **within** 60 days after the date of his appointment, or, if necessary, such

18 further time as the court may allow, a guardian of the estate shall make and

19 file in the guardianship proceeding a verified inventory of all the property

20 of the ward which comes to his possession or knowledge.

21 2. ~~Whenever~~ **If a complete inventory of the proposed ward's estate**

22 **is included in the petition for appointment of a permanent guardian, a**

23 **separate inventory need not be filed.**

24 **3. If** any property of the ward not mentioned in the inventory comes to

25 the possession or knowledge of a guardian of the estate, he shall make and

26 file in the ~~guardianship~~ proceeding a verified supplemental inventory

27 within 30 days after the property comes to his possession or knowledge or

28 include the property in his next accounting. The court may order which of

29 the two methods the guardian shall follow.

30 ~~3.~~ **4.** The court may order all or any part of the property of the ward

31 appraised as provided in NRS 144.020, **144.025**, 144.030, 144.070 and

32 144.090.

33 **Sec. 16.** NRS 159.185 is hereby amended to read as follows:

34 159.185 1. The court may remove a guardian if the court determines

35 that:

- 36 (a) The guardian has become disqualified, mentally incompetent,
- 37 unsuitable or otherwise incapable of exercising his authority and
- 38 performing his duties as provided by law;
- 39 (b) The guardian of the estate has mismanaged the estate of the ward;
- 40 (c) The guardian has failed to perform any duty as provided by law or
- 41 by any lawful order of the court; or

42 (d) The best interest of the ward will be served by the appointment of

43 another person as guardian.

2. Upon its own motion or upon a petition filed by a ward who is a minor 14 years of age or older, by any person for a ward who is an incompetent or a minor under 14 years of age, or by any other interested person, the court may make an order directing the issuance of a citation requiring the guardian to appear and show cause why he should not be removed. The citation shall require the guardian to appear and show cause within the applicable period of time required for appearance after service of summons, and shall be served and returned as summons is served and returned in a civil action.

3. If an agency which provides protective services has investigated or is investigating a complaint of abuse or neglect of the person or exploitation of the estate of a ward, the court, upon the filing of a report or letter by the agency and without citation or hearing, may appoint a temporary successor guardian to serve during the investigation and until the superseded guardian resigns or the court determines whether he should be retained or removed. The temporary successor guardian has those powers and duties of a guardian which are necessary to enable him to protect the assets of the ward and to provide for the ward's care, maintenance and support. As used in this subsection, "agency which provides protective services" has the meaning ascribed to it in NRS 432B.030.

Sec. 17. NRS 159.189 is hereby amended to read as follows:

159.189 ~~{Where,}~~ *If*, at the time of the appointment of the guardian or thereafter, the estate of a ward consists of personal property having a value not exceeding by more than ~~[\$1,000]~~ *\$5,000* the aggregate amount of unpaid expenses of administration of the guardianship estate and claims against the estate, the guardian of the estate, with prior approval of the court by order, may pay ~~{such}~~ *those* expenses and claims from the estate and deliver all the remaining personal property to such person as the court may designate in the order, to be held, invested or used as ordered by the court. The recipient of the property so delivered shall give a receipt therefor to the guardian. The receipt is a release and acquittance to the guardian as to the property so delivered. The guardian shall file in the ~~{guardianship}~~ proceeding proper receipts or other evidence satisfactory to the court showing ~~{such}~~ *the* delivery, and the guardian ~~{shall be}~~ *is* released from his trust and his bond exonerated.

Sec. 18. NRS 159.1905 is hereby amended to read as follows:

159.1905 A ward ~~{or other}~~, *the guardian or another* person may petition the court for the termination or modification of a guardianship. ~~{Upon the filing of the petition, the court may appoint an attorney to represent the ward if he is unable to retain one and the court determines that the appointment is necessary to protect his interests.}~~ *The petition must state or contain:*

- 1 1. *The name and address of the petitioner.*
- 2 2. *The name, age and address of the ward, if he is not the petitioner,*
- 3 *or the date of death if the ward is deceased.*
- 4 3. *The name and address of the guardian, if he is not the petitioner.*
- 5 4. *The reason for termination or modification.*
- 6 5. *A general description and the value of the ward's remaining*
- 7 *property and the proposed disposition of that property.*

8 **Sec. 19.** NRS 159.191 is hereby amended to read as follows:

9 159.191 A guardianship is terminated:

- 10 1. If for a minor, when ~~{the minor}~~ *he* reaches the age of majority
- 11 according to the law of ~~{such minor's}~~ *his* domicile;
- 12 2. By the death of the ward; ~~{or}~~
- 13 3. *Upon the ward's change of domicile to a place outside this state*
- 14 *and the transfer of jurisdiction to the court having jurisdiction in the new*
- 15 *domicile; or*
- 16 4. Upon order of the court, if the court determines that the
- 17 guardianship no longer is necessary. If the guardianship is of the person
- 18 and estate, the court may order the guardianship terminated as to the
- 19 person, the estate or the person and estate.

20 **Sec. 20.** NRS 159.201 is hereby amended to read as follows:

21 159.201 If at any time during the course of the ~~{guardianship}~~

22 proceedings it appears to the court that, after payment of all claims and

23 expenses of the guardianship the value of the ward's property does not

24 exceed ~~[\$3,000,]~~ *\$5,000*, the court may:

- 25 1. Authorize the guardian of the estate or special guardian who is
- 26 authorized to manage the ward's property to convert the property to cash
- 27 ~~{or marketable stocks and bonds}~~ and sell any of the property, with or
- 28 without notice, as the court may direct. After the payment of all claims and
- 29 the expenses of the guardianship, the guardian shall deposit ~~{such cash}~~ *the*
- 30 *money* in savings accounts or invest it as provided in NRS 159.117, and
- 31 hold the investment and all interest, issues, dividends and profits for the
- 32 benefit of the ward. The court may dispense with annual accountings and
- 33 all other proceedings required by this chapter . ~~{if the investment fund is~~
- 34 ~~held intact to be distributed to the ward upon removal of his legal~~
- 35 ~~disability.}~~

- 36 2. If the ward is a minor, terminate the guardianship of the estate and
- 37 direct the guardian to deliver the ward's property to the ~~{father or mother}~~
- 38 *parent, guardian or custodian* of the minor to hold, invest or use as the
- 39 court may order.

- 40 3. *If the ward is in the custody and control of a facility for skilled*
- 41 *nursing, terminate the guardianship of the estate and direct the guardian*
- 42 *to deliver the ward's money and property to the facility for the ward's*

1 *care and expenses. Upon the death of the ward, the guardian shall file a*
2 *petition to terminate the guardianship and the court, without a hearing,*
3 *shall release the guardian from his trust and his bond is exonerated.*

4 **Sec. 21.** Chapter 427A of NRS is hereby amended by adding thereto a
5 new section to read as follows:

6 *1. If a report made pursuant to NRS 200.5091 to 200.50995,*
7 *inclusive, is confirmed as showing exploitation of an older person or that*
8 *a person responsible for the management of the affairs of an older*
9 *person has failed to apply the assets of the older person properly for his*
10 *care, support or maintenance, the administrator may recover in the name*
11 *of the division a civil penalty:*

12 *(a) Of \$250 for the first occurrence;*

13 *(b) Of \$500 for the second occurrence; and*

14 *(c) Of \$1,000 for the third or any subsequent occurrence.*

15 *2. Any penalty recovered under this section must be applied by the*
16 *division to programs of protective services for older persons.*

17 *3. As used in this section, “exploitation” and “older person” have the*
18 *meanings ascribed to them NRS 200.5092.*

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