

ASSEMBLY BILL NO. 577—COMMITTEE ON JUDICIARY

MARCH 26, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning permanent guardianship of certain abused or neglected children. (BDR 13-1333)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: 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 guardianships; establishing procedures for permanently placing an abused or neglected child with a guardian under certain circumstances; authorizing a court to appoint an attorney for certain persons involved in a proceeding for the establishment of such a guardianship; establishing procedures for permanently placing an Indian child with a guardian under certain circumstances; 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 to 9, inclusive, of this act.

3 **Sec. 2.** *“Indian child” has the meaning ascribed to it in 25 U.S.C. §*
4 *1903.*

5 **Sec. 3.** *“Indian Child Welfare Act” means the Indian Child Welfare*
6 *Act of 1978, 25 U.S.C. §§ 1901 et seq.*

7 **Sec. 4.** *1. In establishing a plan for the permanent placement of a*
8 *minor pursuant to NRS 432B.590, the court may appoint a person as a*
9 *guardian for the minor if:*

10 *(a) The court finds:*

11 *(1) By clear and convincing evidence that the abuse or neglect of*
12 *the minor by a person responsible for the welfare of the minor is of such*
13 *a serious nature that the abuse or neglect demonstrates the permanent*
14 *inability of the parent or other person who has legal or physical custody*
15 *of the minor to provide for the minor;*

16 *(2) That adoption of the minor is not appropriate or is not likely to*
17 *occur;*

18 *(3) That the proposed guardian is suitable and is not disqualified*
19 *from guardianship pursuant to NRS 159.059;*



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1 (4) That it is in the best interest of the minor to appoint the
2 proposed guardian as the guardian of the minor; and

3 (5) That the proposed guardian has complied with the requirements
4 of this chapter; and

5 (b) The minor consents to the guardianship, if the minor is at least 12
6 years of age.

7 2. A guardianship established pursuant to this section:

8 (a) Provides the guardian with the powers and duties provided in NRS
9 159.079;

10 (b) Provides the guardian with sole legal and physical custody of the
11 minor and terminates the rights of all other persons to legal or physical
12 custody of the minor;

13 (c) Does not result in the termination of parental rights of a parent of
14 the minor for whom the guardianship was established; and

15 (d) Does not affect any rights of the minor to inheritance, a
16 succession or any services or benefits provided by the Federal
17 Government, this state or an agency or political subdivision of this state.

18 3. As used in this section:

19 (a) "Abuse or neglect of the minor" has the meaning ascribed to the
20 term "abuse or neglect of a child" in NRS 432B.020; and

21 (b) A person is responsible for the welfare of a minor if the person is
22 listed in NRS 432B.130.

23 Sec. 5. 1. If a court appoints a guardian for a minor pursuant to
24 section 4 of this act, the court may:

25 (a) Order a reasonable right of visitation to the person whose right to
26 custody of the minor was terminated as a result of the appointment of the
27 guardianship if the court finds that the visitation is in the best interest of
28 the minor; and

29 (b) Order a parent of the minor to pay to the guardian an amount
30 sufficient to support the minor while the minor is in the care of the
31 guardian. Payments for the obligation of support must be determined in
32 accordance with NRS 125B.070 and 125B.080 and must not exceed the
33 reasonable cost of the care for the minor, including, without limitation,
34 food, shelter, clothing, medical care and education.

35 2. An order for support made pursuant to subsection 1 must:

36 (a) Require that payments be made to the guardian;

37 (b) Provide that the guardian is entitled to a lien on the property of the
38 obligor in the event of nonpayment of support; and

39 (c) Provide for the immediate withholding of income for the payment
40 of support unless:

41 (1) All parties enter into an alternative written agreement; or

42 (2) One party demonstrates and the court finds good cause to
43 postpone the withholding.

44 3. A court that enters an order for support pursuant to this section
45 shall ensure that the social security number of the parent who is the
46 subject of the order is:

47 (a) Provided to the welfare division of the department of human
48 resources; and



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1 (b) Placed in the records relating to the matter and, except as
2 otherwise required to carry out a specific statute, maintained in a
3 confidential manner.

4 **Sec. 6.** 1. A parent or other person whose right to custody of a
5 minor will be terminated if a court appoints a guardian for the minor
6 pursuant to section 4 of this act may be represented by an attorney at all
7 stages of any proceeding concerning the appointment of the guardian.
8 Except as otherwise provided in section 7 of this act, if the parent or
9 other person is indigent, the court may appoint an attorney to represent
10 him. The court may, if it finds it appropriate, appoint an attorney to
11 represent the minor.

12 2. Each attorney appointed pursuant to this section is entitled to the
13 same compensation and payment for expenses from the county as
14 provided in NRS 7.125 and 7.135 for an attorney appointed to represent a
15 person charged with a crime.

16 **Sec. 7.** 1. If a proceeding held pursuant to this chapter involves the
17 appointment of a guardian for an Indian child and is subject to the
18 provisions of the Indian Child Welfare Act, the court shall:

19 (a) Cause the tribe of the Indian child to be notified in writing in the
20 manner provided in the Indian Child Welfare Act. If the Indian child is
21 eligible for membership in more than one tribe, each tribe must be
22 notified.

23 (b) Transfer the proceedings to the tribe of the Indian child in
24 accordance with the Indian Child Welfare Act.

25 (c) If a tribe declines jurisdiction, exercise its jurisdiction as provided
26 in the Indian Child Welfare Act.

27 2. If the court determines that the parent of the Indian child is
28 indigent, the court, as provided in the Indian Child Welfare Act:

29 (a) Shall appoint an attorney to represent the parent;

30 (b) May appoint an attorney to represent the Indian child; and

31 (c) May apply to the Secretary of the Interior for the payment of the
32 fees and expenses of such an attorney.

33 **Sec. 8.** Each court in this state that exercises jurisdiction pursuant
34 to this chapter in a case involving an Indian child shall give full faith
35 and credit to the judicial proceedings of an Indian tribe to the same
36 extent that the Indian tribe gives full faith and credit to the judicial
37 proceedings of the courts of this state.

38 **Sec. 9.** 1. A proceeding held pursuant to this chapter that involves
39 the appointment of a guardian for an Indian child and that is subject to
40 the provisions of the Indian Child Welfare Act must include the
41 testimony of at least one qualified expert witness as provided in the
42 Indian Child Welfare Act.

43 2. As used in this section, "qualified expert witness" includes,
44 without limitation:

45 (a) An Indian person who has personal knowledge about the tribe of
46 the Indian child and its customs related to raising a child and the
47 organization of the family; and

48 (b) A person who has:



1 (1) *Substantial experience and training regarding the customs of*
2 *Indian tribes related to raising a child; and*

3 (2) *Extensive knowledge of the social values and cultural*
4 *influences of Indian tribes.*

5 **Sec. 10.** NRS 159.013 is hereby amended to read as follows:

6 159.013 As used in this chapter, unless the context otherwise requires,
7 the words and terms defined in NRS 159.015 to 159.027, inclusive, *and*
8 *sections 2 and 3 of this act*, have the meanings ascribed to them in those
9 sections.

10 **Sec. 11.** NRS 159.044 is hereby amended to read as follows:

11 159.044 1. Except as otherwise provided in *subsection 2 and* NRS
12 127.045, a proposed ward, a governmental agency, a nonprofit corporation
13 or any concerned person may petition the court for the appointment of a
14 guardian.

15 2. *Only a proposed ward, a concerned person or a governmental*
16 *agency on behalf of a proposed ward or concerned person may petition*
17 *the court for the appointment of a guardian pursuant to section 4 of this*
18 *act.*

19 3. The petition must state:

20 (a) The name and address of the petitioner.

21 (b) The name, age and address of the proposed ward. If he is a minor,
22 the petition must state the date on which he will attain the age of majority
23 and whether he will need guardianship after attaining the age of majority.

24 (c) Whether the proposed ward is a resident or nonresident of this state.

25 (d) The names and addresses, so far as they are known to the petitioner,
26 of the relatives of the proposed ward within the second degree.

27 (e) The name and address of the proposed guardian.

28 (f) That the proposed guardian has never been convicted of a felony.

29 (g) A summary of the reasons why a guardian is needed.

30 (h) Whether the appointment of a general or a special guardian is
31 sought.

32 (i) A general description and the probable value of the property of the
33 proposed ward and any income to which he is entitled, if the petition is for
34 the appointment of a guardian of the estate or a special guardian. If any
35 money is paid or is payable to the proposed ward by the United States
36 through the Department of Veterans Affairs, the petition must so state.

37 (j) The name and address of any person or institution having the care,
38 custody or control of the proposed ward.

39 (k) The relationship, if any, of the petitioner to the proposed ward and
40 the interest, if any, of the petitioner in the appointment.

41 (l) Requests for any of the specific powers set forth in NRS 159.117 to
42 159.175, inclusive, necessary to enable the guardian to carry out the duties
43 of the guardianship.

44 (m) Whether the guardianship is sought as the result of an investigation
45 of a report of abuse or neglect that is conducted pursuant to chapter 432B
46 of NRS by an agency which provides protective services. As used in this
47 paragraph, “agency which provides protective services” has the meaning
48 ascribed to it in NRS 432B.030.

49 (n) *Whether the proposed ward is known to be an Indian child.*



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1 **Sec. 12.** NRS 159.054 is hereby amended to read as follows:

2 159.054 1. If the court finds the proposed ward competent and not in
3 need of a guardian, it shall dismiss the petition.

4 2. If the court finds the proposed ward to be of limited capacity and in
5 need of a special guardian, it shall enter judgment accordingly and specify
6 the powers and duties of the special guardian.

7 3. ~~HH~~ *Except as otherwise provided in subsection 4, if* the court finds
8 that appointment of a general guardian is required, it shall appoint such a
9 guardian of the ward's person, estate, or person and estate.

10 4. *If the court finds that appointment of a general guardian is*
11 *required for the ward's person or person and estate and the ward is a*
12 *minor for whom the court is establishing a plan of permanent placement*
13 *pursuant to NRS 432B.590, the court shall establish the guardianship of*
14 *the ward's person pursuant to section 4 of this act.*

15 **Sec. 13.** NRS 159.061 is hereby amended to read as follows:

16 159.061 1. The parents of a minor, or either parent, if qualified and
17 suitable, are preferred over all others for appointment as guardian for the
18 minor. In determining whether the parents of a minor, or either parent, is
19 qualified and suitable, the court shall consider, without limitation:

20 (a) Which parent has physical custody of the minor;

21 (b) The ability of the parents or parent to provide for the basic needs of
22 the child, including, without limitation, food, shelter, clothing and medical
23 care;

24 (c) Whether the parents or parent has engaged in the habitual use of
25 alcohol or any controlled substance during the previous 6 months; and

26 (d) Whether the parents or parent has been convicted of a crime of
27 moral turpitude, a crime involving domestic violence or a crime involving
28 the exploitation of a child.

29 2. *In determining whether to appoint a guardian for a minor*
30 *pursuant to section 4 of this act, the court shall give preference to a*
31 *person who:*

32 (a) *Is related within the third degree of consanguinity to the minor; or*

33 (b) *Has had custody of the minor for at least 12 months during the 18*
34 *months immediately preceding the date on which the petition for*
35 *guardianship was filed.*

36 3. Subject to the ~~the preference~~ *preferences* set forth in ~~subsection 1,~~
37 ~~subsections 1 and 2,~~ the court shall appoint as guardian for an
38 incompetent, a person of limited capacity or minor the qualified person
39 who is most suitable and is willing to serve.

40 ~~13-1~~ 4. In determining who is most suitable, the court shall give
41 consideration, among other factors, to:

42 (a) Any request for the appointment as guardian for an incompetent
43 contained in a written instrument executed by the incompetent while
44 competent.

45 (b) Any nomination of a guardian for an incompetent, minor or person
46 of limited capacity contained in a will or other written instrument executed
47 by a parent or spouse of the proposed ward.

48 (c) Any request for the appointment as guardian for a minor 14 years of
49 age or older made by the minor.



- 1 (d) The relationship by blood or marriage of the proposed guardian to
2 the proposed ward.
- 3 (e) Any recommendation made by a special master pursuant to NRS
4 159.0615.
- 5 **Sec. 14.** NRS 159.081 is hereby amended to read as follows:
- 6 159.081 1. ~~1A~~ *Except as otherwise provided in subsection 2, a*
7 guardian of the person shall make and file in the guardianship proceeding a
8 written report on the condition of the ward and the exercise of authority
9 and performance of duties by the guardian:
- 10 (a) Annually within 60 days after the anniversary date of his
11 appointment; and
- 12 (b) At such other times as the court may order.
- 13 2. *A guardian of the person appointed pursuant to section 4 of this*
14 *act shall make and file a written report described in subsection 1 at such*
15 *times as the court may order.*
- 16 3. The guardian of the person shall give to the guardian of the estate, if
17 any, a copy of each report within 30 days after such report has been filed
18 with the court.
- 19 **Sec. 15.** NRS 159.176 is hereby amended to read as follows:
- 20 159.176 Every guardianship , *except a guardianship established*
21 *pursuant to section 4 of this act*, must be reviewed by the court annually.
- 22 **Sec. 16.** NRS 159.185 is hereby amended to read as follows:
- 23 159.185 1. The court may remove a guardian if the court determines
24 that:
- 25 (a) The guardian has become disqualified, mentally incompetent,
26 unsuitable or otherwise incapable of exercising his authority and
27 performing his duties as provided by law;
- 28 (b) The guardian of the estate has mismanaged the estate of the ward;
- 29 (c) The guardian has failed to perform any duty as provided by law or
30 by any lawful order of the court; or
- 31 (d) The best interest of the ward will be served by the appointment of
32 another person as guardian.
- 33 2. *If a court makes a determination pursuant to subsection 1 to*
34 *remove a guardian appointed pursuant to section 4 of this act, the*
35 *determination must be supported by clear and convincing evidence.*
- 36 3. Upon its own motion or upon a petition filed by a ward who is a
37 minor 14 years of age or older, by any person for a ward who is an
38 incompetent or a minor under 14 years of age, or by any other interested
39 person, the court may make an order directing the issuance of a citation
40 requiring the guardian to appear and show cause why he should not be
41 removed. The citation shall require the guardian to appear and show cause
42 within the applicable period of time required for appearance after service
43 of summons, and shall be served and returned as summons is served and
44 returned in a civil action.
- 45 **Sec. 17.** NRS 159.191 is hereby amended to read as follows:
- 46 159.191 A guardianship is terminated:
- 47 1. If for a minor, when he reaches the age of majority according to the
48 law of his domicile ~~1A~~ *unless otherwise ordered by a court;*
- 49 2. By the death of the ward;



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1 3. Upon the ward's change of domicile to a place outside this state and
2 the transfer of jurisdiction to the court having jurisdiction in the new
3 domicile; or

4 4. Upon order of the court, if the court determines that the
5 guardianship no longer is necessary. If the guardianship is of the person
6 and estate, the court may order the guardianship terminated as to the
7 person, the estate or the person and estate.

8 **Sec. 18.** NRS 432B.600 is hereby amended to read as follows:

9 432B.600 1. If the permanent placement of a child has been
10 approved by the court, the court may enter an order dispensing with the
11 annual hearings otherwise required by NRS 432B.590. The order must
12 indicate that the plan for the placement of the child provides for his
13 permanent placement in the home of a specific relative, *guardian*, foster
14 parent or adoptive parent, unless the court determines that identification of
15 that person would create a risk of harm to the child.

16 2. If the child is subsequently removed from his permanent placement
17 or the plan for his permanent placement is subsequently changed, the
18 agency acting as the custodian of the child shall notify the court within 30
19 days after the removal or change. The court shall, after receiving the
20 notification, resume the annual hearings required by NRS 432B.590. The
21 court shall review the permanent placement of the child not later than 6
22 months after the date of the removal of the child or the change in the plan,
23 whichever is earlier.

