

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

S.B. 34

SENATE BILL NO. 34—COMMITTEE ON JUDICIARY

PREFILED JANUARY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to appointment of temporary guardians.
(BDR 13-1070)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to guardianship; revising the provisions relating to the appointment of temporary guardians; 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 and 3 of this act.
- 3 **Sec. 2. 1. *A petitioner may request the court to appoint a***
4 ***temporary guardian for a ward who is an adult and who is unable to***
5 ***respond to a substantial and immediate risk of physical harm or to a need***
6 ***for immediate medical attention. To support the request, the petitioner***
7 ***must set forth in a petition and present to the court under oath:***
8 ***(a) Facts which show that the proposed ward:***
9 ***(1) Faces a substantial and immediate risk of physical harm or***
10 ***needs immediate medical attention; and***
11 ***(2) Lacks capacity to respond to the risk of harm or to obtain the***
12 ***necessary medical attention; and***
13 ***(b) Facts which show that:***
14 ***(1) The petitioner has tried in good faith to notify the persons***
15 ***entitled to notice pursuant to NRS 159.047;***
16 ***(2) The proposed ward would be exposed to an immediate risk of***
17 ***physical harm if the petitioner were to provide notice to the persons***
18 ***entitled to notice pursuant to NRS 159.047 before the court determines***
19 ***whether to appoint a temporary guardian; or***
20 ***(3) Giving notice to the persons entitled to notice pursuant to NRS***
21 ***159.047 is not feasible under the circumstances.***



* S B 3 4 R 1 *

1 2. The court may appoint a temporary guardian to serve for 10 days
2 if the court:
3 (a) Finds reasonable cause to believe that the proposed ward is unable
4 to respond to a substantial and immediate risk of physical harm or to a
5 need for immediate medical attention;
6 (b) Is satisfied that the petitioner has tried in good faith to notify the
7 persons entitled to notice pursuant to NRS 159.047 or that giving notice
8 to those persons is not feasible under the circumstances, or determines
9 that such notice is not required pursuant to subparagraph (2) of
10 paragraph (b) of subsection 1; and
11 (c) Finds that the petition required pursuant to subsection 1 is
12 accompanied by:
13 (1) A certificate signed by a physician or psychologist who is
14 licensed to practice in this state which states that the proposed ward is
15 unable to respond to a substantial and immediate risk of physical harm
16 or to a need for immediate medical attention; or
17 (2) The affidavit of the petitioner which explains the reasons why
18 the certificate described in subparagraph (1) is not immediately
19 obtainable.
20 3. Except as otherwise provided in subsection 4, after the
21 appointment of a temporary guardian, the petitioner shall attempt in
22 good faith to notify the persons entitled to notice pursuant to NRS
23 159.047. If the petitioner fails to make such an effort, the court may
24 terminate the temporary guardianship.
25 4. If, before the appointment of a temporary guardian, the court
26 determined that advance notice was not required pursuant to
27 subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall
28 notify the persons entitled to notice pursuant to NRS 159.047 without
29 undue delay, but not later than 48 hours after the appointment of the
30 temporary guardian or not later than 48 hours after he discovers the
31 existence, identity and location of the persons entitled to notice pursuant
32 to that section. If the petitioner fails to provide such notice, the court may
33 terminate the temporary guardianship.
34 5. Within 10 days after the appointment of a temporary guardian
35 pursuant to subsection 2, the court shall hold a hearing to determine the
36 need to extend the temporary guardianship. Except as otherwise provided
37 in subsection 7, the court may extend the temporary guardianship until a
38 general or special guardian is appointed, but not for more than 30 days,
39 if:
40 (a) The certificate required by subsection 2 has been filed and the
41 court finds by clear and convincing evidence that the proposed ward is
42 unable to respond to a substantial and immediate risk of physical harm
43 or to a need for immediate medical attention; or
44 (b) The certificate required by subsection 2 has not been filed and the
45 court finds by clear and convincing evidence that:
46 (1) The proposed ward is unable to respond to a substantial and
47 immediate risk of physical harm or to a need for immediate medical
48 attention;



* S B 3 4 R 1 *

1 (2) *Circumstances have prevented the petitioner or temporary*
2 *guardian from obtaining the certificate required pursuant to subsection*
3 *2; and*
4 (3) *The extension of the temporary guardianship is necessary and*
5 *in the best interests of the proposed ward.*
6 6. *If the court appoints a temporary guardian or extends the*
7 *temporary guardianship pursuant to this section, the court shall limit the*
8 *powers of the temporary guardian to those necessary to respond to the*
9 *substantial and immediate risk of physical harm or to a need for*
10 *immediate medical attention.*
11 7. *The court may not extend a temporary guardianship pursuant to*
12 *subsection 5 beyond the initial period of 10 days unless the petitioner*
13 *demonstrates that:*
14 (a) *The provisions of NRS 159.0475 have been satisfied; or*
15 (b) *Notice by publication pursuant to N.R.C.P. 4(e) is currently being*
16 *undertaken.*
17 **Sec. 3.** *1. A petitioner may request the court to appoint a*
18 *temporary guardian for a ward who is unable to respond to a substantial*
19 *and immediate risk of financial loss. To support the request, the*
20 *petitioner must set forth in a petition and present to the court under oath:*
21 (a) *Facts which show that the proposed ward:*
22 (1) *Faces a substantial and immediate risk of financial loss; and*
23 (2) *Lacks capacity to respond to the risk of loss; and*
24 (b) *Facts which show that:*
25 (1) *The petitioner has tried in good faith to notify the persons*
26 *entitled to notice pursuant to NRS 159.047;*
27 (2) *The proposed ward would be exposed to an immediate risk of*
28 *financial loss if the petitioner were to provide notice to the persons*
29 *entitled to notice pursuant to NRS 159.047 before the court determines*
30 *whether to appoint a temporary guardian; or*
31 (3) *Giving notice to the persons entitled to notice pursuant to NRS*
32 *159.047 is not feasible under the circumstances.*
33 2. *The court may appoint a temporary guardian to serve for 10 days*
34 *if the court:*
35 (a) *Finds reasonable cause to believe that the proposed ward is unable*
36 *to respond to a substantial and immediate risk of financial loss; and*
37 (b) *Is satisfied that the petitioner has tried in good faith to notify the*
38 *persons entitled to notice pursuant to NRS 159.047 or that giving notice*
39 *to those persons is not feasible under the circumstances, or determines*
40 *that such notice is not required pursuant to subparagraph (2) of*
41 *paragraph (b) of subsection 1.*
42 3. *Except as otherwise provided in subsection 4, after the*
43 *appointment of a temporary guardian, the petitioner shall attempt in*
44 *good faith to notify the persons entitled to notice pursuant to NRS*
45 *159.047. If the petitioner fails to make such an effort, the court may*
46 *terminate the temporary guardianship.*
47 4. *If, before the appointment of a temporary guardian, the court*
48 *determined that advance notice was not required pursuant to*
49 *subparagraph (2) of paragraph (b) of subsection 1, the petitioner shall*



1 *notify the persons entitled to notice pursuant to NRS 159.047 without*
2 *undue delay, but not later than 48 hours after the appointment of the*
3 *temporary guardian or not later than 48 hours after he discovers the*
4 *existence, identity and location of the persons entitled to notice pursuant*
5 *to that section. If the petitioner fails to provide such notice, the court may*
6 *terminate the temporary guardianship.*

7 *5. Within 10 days after the appointment of a temporary guardian*
8 *pursuant to subsection 2, the court shall hold a hearing to determine the*
9 *need to extend the temporary guardianship. Except as otherwise provided*
10 *in subsection 7, if the court finds by clear and convincing evidence that*
11 *the proposed ward is unable to respond to a substantial and immediate*
12 *risk of financial loss, the court may extend the temporary guardianship*
13 *until a general or special guardian is appointed, but not for more than 30*
14 *days.*

15 *6. If the court appoints a temporary guardian or extends the*
16 *temporary guardianship pursuant to this section, the court shall limit the*
17 *powers of the temporary guardian to those necessary to respond to the*
18 *substantial and immediate risk of financial loss.*

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

- 22 *(a) The provisions of NRS 159.0475 have been satisfied; or*
23 *(b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being*
24 *undertaken.*

25 **Sec. 4.** NRS 159.047 is hereby amended to read as follows:

26 159.047 1. Except as otherwise provided in NRS 159.0475, 159.049
27 and 159.052, *and sections 2 and 3 of this act*, the court, upon the filing of
28 a petition under NRS 159.044, shall direct the clerk to issue a citation
29 setting forth a time and place for the hearing and directing the persons or
30 institutions referred to in subsection 2 to appear and show cause why a
31 guardian should not be appointed for the proposed ward.

32 2. A citation issued under subsection 1 must be served:

33 (a) If the proposed ward is an incompetent or a person of limited
34 capacity:

35 (1) Upon the spouse and adult children of the incompetent or person
36 of limited capacity who are known to exist, or, if there are none, upon any
37 parent, brother or sister of the incompetent or person of limited capacity;

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

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

41 (b) If the proposed ward is a minor:

42 (1) Upon the parents of the minor;

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

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

46 **Sec. 5.** NRS 159.052 is hereby amended to read as follows:

47 159.052 1. A petitioner may request the court to appoint a temporary
48 guardian ~~for~~ *for a ward who is a minor and who is unable to respond to a*
49 *substantial and immediate risk of physical harm or to a need for*



* S B 3 4 R 1 *

1 ***immediate medical attention.*** To support the request, the petitioner must
2 set forth in a petition and present to the court under oath:
3 (a) Facts which show that the proposed ward:
4 (1) Faces a substantial and immediate risk of ~~financial loss or~~
5 physical harm or needs immediate medical attention; and
6 (2) Lacks capacity to respond to the risk of ~~loss or~~ harm or to obtain
7 the necessary medical attention; and
8 (b) Facts which show that:
9 (1) The petitioner has tried in good faith to notify the persons entitled
10 to notice pursuant to NRS 159.047;
11 (2) The proposed ward would be exposed to an immediate risk of
12 ~~financial loss or~~ physical harm if the petitioner were to provide notice to
13 the persons entitled to notice pursuant to NRS 159.047 before the court
14 determines whether to appoint a temporary guardian; or
15 (3) Giving notice to the persons entitled to notice pursuant to NRS
16 159.047 is not feasible under the circumstances.
17 2. ~~HH~~ ***The court may appoint a temporary guardian to serve for 10***
18 ***days if*** the court:
19 (a) Finds reasonable cause to believe that the proposed ward is unable to
20 respond to a substantial and immediate risk of ~~financial loss or~~ physical
21 harm or to a need for immediate medical attention; and
22 (b) Is satisfied that the petitioner has tried in good faith to notify the
23 persons entitled to notice pursuant to NRS 159.047 or that giving notice to
24 those persons is not feasible under the circumstances, or determines that
25 such notice is not required pursuant to subparagraph (2) of paragraph (b) of
26 subsection 1. ~~1.~~
27 ~~the court may appoint a temporary guardian to serve for 10 days. The court~~
28 ~~shall limit the temporary guardian's powers to those necessary to assist in~~
29 ~~the emergency.~~
30 3. Except as otherwise provided in subsection 4, after the appointment
31 of a temporary guardian, the petitioner shall attempt in good faith to notify
32 the persons entitled to notice pursuant to NRS 159.047. If the petitioner
33 fails to make such an effort, the court may terminate the temporary
34 guardianship.
35 4. If, before the appointment of a temporary guardian, the court
36 determined that advance notice was not required pursuant to subparagraph
37 (2) of paragraph (b) of subsection 1, the petitioner shall notify the persons
38 entitled to notice pursuant to NRS 159.047 without undue delay, but not
39 later than 48 hours after the appointment of the temporary guardian or not
40 later than 48 hours after he discovers the existence, identity and location of
41 the persons entitled to notice pursuant to that section. If the petitioner fails
42 to provide such notice, the court may terminate the temporary
43 guardianship.
44 5. Within 10 days after the appointment of a temporary guardian
45 pursuant to subsection 2, the court shall hold a hearing to determine the
46 need to extend the temporary guardianship. Except as otherwise provided
47 in subsection ~~6,~~ 7, if the court finds by clear and convincing evidence that
48 the proposed ward is unable to respond to a substantial and immediate risk
49 of ~~financial loss or~~ physical harm or to a need for immediate medical



1 attention, the court may extend the temporary guardianship until a general
2 or special guardian is appointed, but not for more than 30 days. ~~The~~
3 *6. If the court appoints a temporary guardian or extends the*
4 *temporary guardianship pursuant to this section, the* court shall limit the
5 ~~temporary guardian's~~ powers of the *temporary guardian* to those
6 necessary to ~~assist in the emergency.~~
7 ~~6. respond to the substantial and immediate risk of physical harm or~~
8 ~~to a need for immediate medical attention.~~
9 7. The court may not extend a temporary guardianship pursuant to
10 subsection 5 beyond the initial period of 10 days unless the petitioner
11 demonstrates that:
12 (a) The provisions of NRS 159.0475 have been satisfied; or
13 (b) Notice by publication pursuant to N.R.C.P. 4(e) is currently being
14 undertaken.

