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MAR 10 2003



**WILLIAM S. BOYD SCHOOL OF LAW
THOMAS & MACK LEGAL CLINIC--JUVENILE JUSTICE CLINIC**

M E M O R A N D U M

DATE: March 6, 2003

TO: Senate Judiciary Committee

FROM: Katherine Kruse, Associate Professor of Law and Co-Director of the Juvenile Justice Clinic

SUBJECT: Senate Bill 197: Reorganization of the Juvenile Justice Code

As Co-Director of the Juvenile Justice Clinic at the Thomas & Mack Legal Clinic, William S. Boyd School of Law, I am pleased to lend my support to this important reorganization of the juvenile justice code in Nevada. I recognize the considerable work that has gone into this massive effort, and applaud all of those who have worked so hard to bring about these much-needed changes.

I testify to address concerns about specific language in **Section 15** of the bill. **Section 15** defines "guardian" as "a person, other than a parent or state or local agency, who is responsible for the care and custody of a child." It further clarifies that "[t]he term includes, but is not limited to, a legal guardian or custodian of a child. This definitional section is new, and is designed to bring clarity and coherence to the references in Chapter 62 to parents and others with parent-like relationships with subject-minors, who are sometimes referred to as "parents and guardians" and sometimes referred to as "parents, guardians or custodians." With this single definition of "guardian" in place, the references to "custodians" are removed from the juvenile justice code.

Although the clarification of these previously undefined terms is an important measure, the definition offered in **Section 15** may have some unintended and undesirable consequences. I propose that instead of combining the status of guardian and custodian into one broad definition, the committee leave the language referring to "custodians" in the juvenile justice code, and provide separate definitions of "guardian" and "custodian," drawing on already-existing definitions in the Nevada Revised Statutes.

Current distinctions in Chapter 62 between “guardians” and “custodians”

As currently drafted, Chapter 62 uses the phrase “parents, guardians and custodians” to refer broadly to persons who are caring for the child whether or not they have a legally established custodial or guardian relationship with the child, but over whom the court needs to exercise jurisdiction for purposes of effectuating its orders. *See* **NRS 62.043** (“The court has such jurisdiction over adults that is incidental to its jurisdiction over children, including jurisdiction over the *parents, guardians and custodians* of children adjudicated delinquent or in need of supervision”) This broad phrase would presumably apply to grandparents, aunts, live-in boyfriends or girlfriends, or others who live with and take care of a child under the court’s jurisdiction without having a legal parent or guardian relationship with the child—persons whose compliance with court orders might be crucial to a child’s ability to benefit from their involvement in the juvenile justice system *See* **NRS 62.211** (court may “order the *parent guardian or custodian* or any other person to refrain from continuing the conduct which, in the opinion of the court, has caused or tended to cause the child to come within or remain under the provisions of this chapter.”) It also allows the court to punish those persons with contempt sanctions for failing to take the steps necessary to ensure the child’s success. *See* **NRS 62.281**. It is used to refer to persons whose names and addresses must be set forth in a juvenile court petition. *See* **NRS 62.130(5)(c)** (“The petition must set forth specifically . . . the names and addresses of the residence of his parents, guardian or custodian, and spouse if any.”) It also defines the persons who must be notified when a child is taken into custody, **NRS 62.170(2) (a)**, persons for whom the court may issue a summons, **NRS 62.140** (“the court shall direct the clerk to issue a summons requiring the person who has custody or control of the child to appear personally”), or a writ of attachment **NRS 62.160**.

In other places, as currently drafted, Chapter 62 seems to use the phrase “parents or guardians” to refer in a more limited way to persons who have a legal relationship, and specifically who have the responsibility to provide financial support for children under the court’s jurisdiction. For example, if the child is in the custody or care of someone else, “parents or guardians” must be notified with a summons that a petition has been filed. **NRS 62.140**. The court may order the “parent or guardian” to pay court costs or reasonable attorney’s fees. **NRS 62.211(g)**. When a child is committed to the custody of DCFS, the court may order support to be paid “in whole or in part by his parents, guardian or other person liable for his support and maintenance.” **NRS 6/213(2)**. If the child is unable to pay court-ordered restitution, the court must order the “parent or guardian” to pay it. **NRS 62.2183(2)**. In numerous other places, if the court orders a child to participate in a rehabilitative program, the court has the authority to order the “parent or guardian” to pay costs associated with the program, to the extent of his financial ability. **NRS 62.219(4)(a)** (informal probation); **NRS 62.211(1)(m)(2)** (arts, sports or physical fitness program); **NRS 62.2195(2)(a)** (program of cognitive training or human development); **NRS 62.2198(4)** (fee for county coroner’s program); **NRS 62.2275(3)(c)** (drug or alcohol treatment program); **NRS 62.2295(2)** (counseling or psychiatric treatment). Similarly, the county may seek

reimbursement from the “parents or guardian” for services provided to children. **NRS 62.800 – 830.**

Problems with Section 15 definition of guardian

By providing a single definition of “guardian” that encompasses both legal responsibility and informal caretaking relationships, **Senate Bill 197, Section 15** combines two types of parental roles that are maintained, for good reason, as distinct under Chapter 62. As a result, the proposed changes would impose potential financial burdens on persons who, through no legal compulsion, are helping to raise a child. While it may make sense to notify these informal caregivers of juvenile court proceedings, and bring them within the jurisdiction of the juvenile court for purposes of helping to improve the environment in which the child is living, it doesn’t make sense to hold them financially responsible for restitution, reimbursement of expenses, and child support payments when the child is in state custody. To the contrary, the threat of being held financially responsible for a child, particularly a child with behavioral problems, may deter otherwise willing individuals from offering assistance and care to children desperately in need of care, mentoring and support.

Proposed alternative language

In place of the definition currently offered in **Section 15**, I would propose that the committee consider the following definitions:

1. “Guardian” means a person, other than a parent or a state or local agency, who is legally responsible for the care, custody or support of a child, including a legally appointed guardian or a person otherwise awarded legal custody of a child.
2. “Custodian” means an adult person continually or regularly found in the same household as the child.

This change would define “guardian” by incorporating language used to define legal guardians and legal custodians in Chapters 432B and 159. Such people, who have been granted the legal responsibilities of a parent, can properly be held to be financially responsible for the actions of their children when those children come under the juvenile court’s jurisdiction.

The definition of “custodians,” incorporates language from 432B defining persons who are considered responsible for children, and thus subject to abuse and neglect proceedings for failing to provide care for children. If a person would be subject to neglect proceedings for failing to provide care for a child, it would make sense to bring him or her into the jurisdiction of the juvenile court for the purposes of subjecting him or her to court orders pursuant to the juvenile court’s rehabilitative mission, even if he or she isn’t legally obligated to provide support for a child.

The committee would then need to restore the word “custodian” to the sections of the new bill that correspond to the Chapter 62 provisions that use the phrase “parents, guardians or custodians.”

NRS 432B.060 "Custodian" defined. "Custodian" means a person or a governmental organization, other than a parent or legal guardian, who has been awarded legal custody of a child.

NRS 432B.130 Persons responsible for child's welfare. A person is responsible for a child's welfare under the provisions of this chapter if he is the child's parent, guardian, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, or a person directly responsible or serving as a volunteer for or employed in a public or private home, institution or facility where the child actually resides or is receiving child care outside of his home for a portion of the day.