

Amendment No. 304

Senate Amendment to Senate Bill No. 157 (BDR 20-272)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

SJA/EGO



Date: 4/19/2007

S.B. No. 157—Revises provisions governing the appointment of a public guardian and the management of the office and cases of a public guardian.
(BDR 20-272)



SENATE BILL NO. 157—SENATORS MATHEWS, WIENER,
HECK, AMODEI, HORSFORD, RAGGIO AND TOWNSEND

FEBRUARY 26, 2007

JOINT SPONSOR: ASSEMBLYWOMAN MCCLAIN

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the appointment of a public guardian and the management of the office and cases of a public guardian. (BDR 20-272)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 public guardians; allowing a board of county commissioners to pay the necessary expenses incurred by a public guardian during a guardianship; allowing a board of county commissioners to establish a revolving fund to pay for the necessary expenses incurred by a public guardian during a guardianship; requiring a public guardian to reimburse the county from the assets of the ward for any expenses paid by the county; requiring boards of county commissioners to establish the office of public guardian; revising provisions governing the appointment or designation of a public guardian; revising the requirements governing eligibility to utilize a public guardian; revising provisions concerning attorneys retained by a public guardian; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 9 of this bill changes existing law, which currently allows a board of county commissioners to establish the office of public guardian, by requiring the board of county commissioners of each county to establish the office of public guardian. (NRS 253.150) ~~Also under section 9,~~ **Section 9 provides** a board of county commissioners ~~shall~~ **with four alternative methods to meet this requirement:** (1) appoint a public guardian for a term of 4 years ~~to~~; (2) designate a county officer to serve as ex officio public guardian ~~to~~; (3) **except in a county whose population is 100,000 or more (currently Clark and Washoe Counties),** contract with a private professional guardian to act as public guardian; or (4) contract with the board of county commissioners of a neighboring county which is in the same judicial district to use the neighboring county's public guardian as the public guardian of the county. After the board of county commissioners has designated or appointed a public guardian, **section 3** of this bill allows the board to establish regulations for the form of reports and budgets made by the public guardian and to review reports and budgets submitted to the board by the public guardian. **Section 10 of this bill requires the public guardian of a**

county to appoint one or more deputies to perform the duties of his office in his absence. (NRS 253.175)

Existing law provides that a resident of the State is eligible to have the public guardian appointed as his guardian if there is no individual able and willing to serve as his guardian or if the resident does not have assets sufficient to pay for a private guardian. (NRS 253.200)

Section 11 of this bill eliminates ~~the provision which makes a person eligible to have the public guardian appointed as his guardian if the person lacks the ability~~ inability to pay for a private guardian ~~and allows~~ as a condition for eligibility for having the public guardian appointed as guardian. Under section 11, an individual ~~to~~ may have the public guardian appointed as his temporary, permanent or general guardian if the individual is a resident of the county in which guardianship proceedings are filed. Section 11 also requires that the public guardian or deputy public guardian receive a copy of any petition for the appointment of the public guardian as a guardian before such a petition is filed.

Section 2 of this bill allows a county to advance to the public guardian the necessary expenses incurred or to be incurred by the public guardian during a guardianship. However, if a county provides such an advance, the public guardian must reimburse the county from the assets of the estate of the ward as soon as, and to the extent that, those assets become available. The board of county commissioners may establish a revolving fund to be used to pay for advances to the public guardian of necessary expenses ~~to~~ or must pay such advances from the county general fund.

Existing law allows a public guardian to retain an attorney to assist him when necessary for the proper administration of a guardianship ~~to~~ (NRS 253.215) Section 12 of this bill allows the public guardian to retain an attorney to assist him if the attorney practices in the county and is qualified by experience and willing to accept the employment. However, section 12 eliminates the requirement that the public guardian rotate but requires that such employment be rotated among the attorneys practicing in the county who are qualified and willing to accept such employment. (NRS 253.215) In addition ~~to~~ to such rotation of employment, section 12 of this bill allows the public guardian to retain one attorney to assist him or to obtain the assistance of the district attorney's office if the board of county commissioners approves such assistance.

Section 13 of this bill clarifies that a public guardian is not required to hire or be licensed as a private investigator to investigate the financial status, assets and personal history of a person for whom he has been appointed as guardian. (NRS 253.220)

Under existing law, the reasonable value of the services rendered by the public guardian without cost to a ward must be allowed as a claim against the estate of the ward upon the death of the ward. (NRS 253.240) Section 14 of this bill allows claims for such services against a ward's estate before the death of the ward upon approval of a court.

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

Section 1. Chapter 253 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. A public guardian may file with the board of county commissioners a request for an advance of money to pay necessary expenses incurred, or to be incurred, by the public guardian during a guardianship. The board may approve or deny the request. If the board approves the request, the board shall determine the amount to be advanced and advance that amount to the public guardian.

2. The board of county commissioners of any county may establish a revolving fund to be used to provide advances to the public guardian pursuant to subsection 1. If the board has established a revolving fund pursuant to this subsection, the board shall pay any advance approved pursuant to subsection 1 from the revolving fund to the extent that there is sufficient money in the

1 revolving fund to pay the advance. After the money in the revolving fund has
2 been exhausted, the board shall pay any advance, or any part of an advance,
3 approved by the board from the general fund of the county. If the board has not
4 established a revolving fund pursuant to this subsection, the board shall pay any
5 advance approved pursuant to subsection 1 from the general fund of the county.

6 3. The public guardian must reimburse the county for any advance
7 provided pursuant to subsection 1 from the assets of the estate of the ward as
8 soon as, and to the extent that, the assets become available. If the board of county
9 commissioners has established a revolving fund pursuant to subsection 2, the
10 board shall deposit in the revolving fund the money obtained from a
11 reimbursement provided pursuant to this subsection. If the board has not
12 established a revolving fund pursuant to subsection 2, the board shall deposit in
13 the general fund of the county the money obtained from a reimbursement
14 provided pursuant to this subsection.

15 Sec. 3. 1. The board of county commissioners may:

16 (a) Establish regulations for the form of any reports or budgets made by the
17 public guardian.

18 (b) Review reports or budgets submitted to the board by the public guardian.

19 2. The board of county commissioners may at any time investigate any
20 guardianship for which the public guardian has been appointed.

21 Sec. 4. NRS 253.0415 is hereby amended to read as follows:

22 253.0415 1. The public administrator shall:

23 (a) Investigate:

24 (1) ~~{The financial status of any proposed ward for whom he has been~~
25 ~~requested to serve as guardian to determine whether he is eligible to serve in that~~
26 ~~capacity.~~

27 ~~—(2)—~~ The financial status of any decedent for whom he has been requested
28 to serve as administrator to determine the assets and liabilities of the estate.

29 ~~{(3)}~~ (2) Whether there is any qualified person who is willing and able to
30 serve as ~~{guardian for a ward or}~~ administrator of the estate of an intestate decedent
31 to determine whether he is eligible to serve in that capacity.

32 (b) ~~{Petition the court for appointment as guardian of the person and estate of~~
33 ~~any ward if, after investigation, the public administrator finds that he is eligible to~~
34 ~~serve. Except as otherwise provided in subsection 2, this petition for appointment as~~
35 ~~guardian must be made by the public administrator regardless of the amount of~~
36 ~~assets in the guardianship estate if no other qualified person having a prior right is~~
37 ~~willing and able to serve.~~

38 ~~—(c)—~~ Except as otherwise provided in NRS 253.0403 and 253.0425, petition the
39 court for letters of administration of the estate of a person dying intestate if, after
40 investigation, the public administrator finds that there is no other qualified person
41 having a prior right who is willing and able to serve.

42 ~~{(d)}~~ (c) Upon court order, act as ~~{~~

43 ~~—(1) Guardian of the person and estate of an adult ward; or~~

44 ~~—(2) Administrator}~~ administrator of the estate of a person dying intestate,
45 ~~{→}~~ regardless of the amount of assets in the estate of the ~~{ward or}~~ decedent if no
46 other qualified person is willing and able to serve.

47 2. The public administrator is not eligible to serve as a guardian of the person
48 and estate of a ward ~~{if the board of county commissioners of his county has~~
49 ~~established the office of public guardian pursuant to NRS 253.150,}~~ unless the
50 board has designated the public administrator as ex officio public guardian.

51 Sec. 5. NRS 253.042 is hereby amended to read as follows:

52 253.042 In connection with an investigation conducted pursuant to subsection
53 1 of NRS 253.0415, a public administrator may:

1 1. Require ~~{any proposed ward or}~~ any spouse, parent, child or other kindred
2 of the ~~{proposed ward}~~ **decedent** to give any information and to execute any written
3 requests or authorizations necessary to provide the public administrator with access
4 to records, otherwise confidential, needed to evaluate the public administrator's
5 eligibility to serve.

6 2. Obtain information from the public records in any office of the State or any
7 of its agencies or subdivisions upon request and without payment of any fee.

8 **Sec. 6.** NRS 253.044 is hereby amended to read as follows:

9 253.044 In a county whose population is less than 100,000, the board of
10 county commissioners may, after reviewing each case, direct the public
11 administrator or any other suitable person to:

12 1. Investigate ~~{~~

13 ~~—(a) The financial status of any proposed ward for whom a request to serve as~~
14 ~~guardian has been received to determine whether there is a need for a guardian to~~
15 ~~be appointed and whether the public administrator or other suitable person~~
16 ~~designated by the board is able and eligible to serve in that capacity.~~

17 ~~—(b) Whether}~~ **whether** there is any qualified person who is willing and able to
18 serve as ~~{guardian for a ward or}~~ administrator of the estate of an intestate decedent,
19 and to determine whether there is a need for ~~{a guardian or}~~ an administrator and
20 whether the public administrator or other suitable person designated by the board is
21 eligible to serve in that capacity.

22 2. ~~{Petition the court for appointment as guardian of the person or as guardian~~
23 ~~of the person and estate of any ward if, after investigation, the public administrator~~
24 ~~or other suitable person designated by the board finds that there is a need for such~~
25 ~~an appointment and that he is able and eligible to serve. If no other qualified person~~
26 ~~having a prior right is willing and able to serve, the public administrator or other~~
27 ~~suitable person designated by the board shall petition for appointment as guardian~~
28 ~~regardless of the amount of assets in the estate of the proposed ward.~~

29 ~~—3.}~~ Petition the court for letters of administration of the estate of a person
30 dying intestate if, after investigation, the public administrator or other suitable
31 person designated by the board finds that there is no other qualified person having a
32 prior right who is willing and able to serve.

33 ~~{4.}~~ **3.** File an affidavit pursuant to NRS 253.0403 to administer the estate if,
34 after investigation, the public administrator or other suitable person designated by
35 the board finds that the gross value of the decedent's property situated in this State
36 does not exceed \$20,000.

37 ~~{5.}~~ **4.** Act, upon order of a court, as ~~{~~

38 ~~—(a) Guardian of the person and estate of an adult ward; or~~

39 ~~—(b) Administrator}~~ **administrator** of the estate of a person dying intestate,
40 ~~{or}~~ regardless of the amount of assets in the estate of the ward or decedent if no
41 other qualified person is willing and able to serve.

42 **Sec. 7.** NRS 253.0445 is hereby amended to read as follows:

43 253.0445 In an investigation conducted pursuant to subsection 1 of NRS
44 253.044, a public administrator or other suitable person designated by the board of
45 county commissioners may:

46 1. Require any ~~{proposed ward or any}~~ spouse, parent, child or other kindred
47 of the ~~{proposed ward}~~ **decedent** to give any information and to execute any written
48 requests or authorizations necessary to provide the public administrator or other
49 suitable person designated by the board with access to records, otherwise
50 confidential, needed to evaluate the public administrator's or other suitable person's
51 eligibility to serve.

52 2. Obtain information from the public records in any office of the State or any
53 of its agencies or subdivisions upon request and without payment of any fee.

1 **Sec. 8.** NRS 253.091 is hereby amended to read as follows:

2 253.091 1. The board of county commissioners shall:

3 (a) Establish regulations for the form of any reports made by the public
4 administrator.

5 (b) Review reports submitted to the board by the public administrator.

6 (c) Investigate any complaint received by the board against the public
7 administrator.

8 2. The board of county commissioners may at any time investigate any
9 ~~{guardianship or}~~ estate for which the public administrator is serving as ~~{guardian~~
10 ~~or}~~ administrator.

11 **Sec. 9.** NRS 253.150 is hereby amended to read as follows:

12 253.150 1. The board of county commissioners of ~~{any county may}~~ *each*
13 *county shall* establish the office of public guardian.

14 2. The board of county commissioners ~~{may}~~ *shall:*

15 (a) Appoint a public guardian, who serves at the pleasure of the board, for a
16 term of 4 years from the day of appointment; ~~{or}~~

17 (b) Designate an elected or appointed county officer as ex officio public
18 guardian ~~{;}~~;

19 (c) ~~{Contract}~~ *Except in a county whose population is 100,000 or more,*
20 *contract with a private professional guardian to act as public guardian; or*

21 (d) *Contract with the board of county commissioners of a neighboring*
22 *county in the same judicial district to designate as public guardian the public*
23 *guardian of the neighboring county.*

24 3. The compensation of a public guardian appointed or designated pursuant to
25 subsection 2 must be fixed by the board of county commissioners and paid out of
26 the county general fund.

27 4. *As used in this section, "private professional guardian" means a person*
28 *who receives compensation for services as a guardian to three or more wards who*
29 *are not related to the person by blood or marriage. The term does not include:*

30 (a) *A governmental agency.*

31 (b) *A banking corporation, as defined in NRS 657.016, or an organization*
32 *permitted to act as fiduciary pursuant to NRS 662.245 if it is appointed as*
33 *guardian of an estate only.*

34 (c) *A trust company, as defined in NRS 669.070.*

35 (d) *A court-appointed attorney licensed to practice law in this State.*

36 **Sec. 10.** *NRS 253.175 is hereby amended to read as follows:*

37 253.175 1. A public guardian ~~{may}~~ *shall* appoint one or more deputies to
38 perform the duties of his office ~~{;}~~ in his absence. A deputy so appointed may
39 transact all official business relating to the office of the public guardian to the same
40 extent as the public guardian, except that the deputy is not authorized to employ or
41 terminate the employment of subordinates in the office. Before entering upon the
42 discharge of his duties, each deputy must take and subscribe to the constitutional
43 oath of office. The appointment of a deputy must not be construed to confer upon
44 that deputy policymaking authority for the office of the county public guardian or
45 the county by which the deputy is employed.

46 2. Each appointment must be in writing and recorded, with the oath of office
47 of that deputy, in the office of the county recorder. Any revocation or resignation of
48 an appointment must be recorded in the office of the county recorder.

49 3. The public guardian is responsible on his official bond for any official
50 malfeasance or nonfeasance of his deputies and may require a bond for the faithful
51 performance of the official duties of his deputies.

52 4. The compensation of a deputy public guardian must be fixed by the board
53 of county commissioners and paid out of the county general fund.

~~[Sec. 10.]~~ *Sec. 11.* NRS 253.200 is hereby amended to read as follows:

253.200 1. *A resident of Nevada is eligible to have the public guardian of the county in which he resides appointed as his temporary individual guardian pursuant to NRS 159.0523 or 159.0525.*

2. A resident of Nevada is eligible to have the public guardian of a county appointed as his permanent or general individual guardian if he:

(a) Has no relative or friend able and willing to serve as his guardian; or

~~(b) Lacks sufficient assets to provide the requisite compensation to a private guardian.]~~ *Is a resident of the county pursuant to NRS 428.020.]*
that county.

~~[2.]~~ *3. A person [is] qualified [pursuant to subsection 1 or 2], or anyone on his behalf, may petition the district court of the county in which he resides to make the appointment.*

~~*[3. A person may not file a petition pursuant to subsection 2 unless the public guardian of the county in which the petition is filed approves and signs the petition before the petition is filed.]*~~

4. Before a petition for the appointment of the public guardian as a guardian may be filed pursuant to subsection 3, a copy of the petition and copies of all accompanying documents to be filed must be delivered to the public guardian or a deputy public guardian.

5. Any petition for the appointment of the public guardian as a guardian filed pursuant to subsection 3 must include a statement signed by the public guardian or deputy public guardian and in substantially the following form:

The undersigned is the Public Guardian or a Deputy Public Guardian ofCounty. The undersigned certifies that he has received a copy of this petition and all accompanying documents to be filed with the court.

~~[4.]~~ *6. A petition for the appointment of the public guardian as permanent or general guardian must be filed separately from a petition for the appointment of a temporary guardian.*

~~[5.]~~ *7. If a person other than the public guardian served as temporary guardian prior to the appointment of the public guardian as permanent or general guardian, the temporary guardian must file an accounting and report with the court in which the petition for the appointment of a public guardian was filed within 30 days of the appointment of the public guardian as permanent or general guardian.*

8. For the purposes of this section:

(a) Except as otherwise provided in paragraph (b), the county of residence of a person is the county to which the person moved with the intent to reside for an indefinite period.

(b) The county of residence of a person placed in institutional care is the county that was the county of residence of the person before the person was placed in institutional care by a guardian or agency or under power of attorney.

~~[Sec. 11.]~~ *Sec. 12.* NRS 253.215 is hereby amended to read as follows:

253.215 1. When necessary for the proper administration of a guardianship, a public guardian may ~~retain~~:

(a) Retain an attorney to assist him [rotating this employment in successive guardianships among the attorneys practicing] if the attorney practices law in the county [who are] and is qualified by experience and willing to serve [or rotate this employment among attorneys who practice law in the county and who are qualified by experience and willing to serve; or

1 (b) Upon approval of the board of county commissioners, obtain assistance
2 from the office of the district attorney of the county.

3 2. ~~[The]~~ Any attorney's fee ~~[if any]~~ must be paid from the assets of the
4 ward.

5 ~~[Sec. 12.]~~ Sec. 13. NRS 253.220 is hereby amended to read as follows:

6 253.220 A public guardian ~~[shall]~~ may investigate the financial status, *assets*
7 *and personal and family history* of any person for whom ~~[the appointment of]~~ the
8 public guardian ~~[as his guardian is requested.]~~ *has been appointed as guardian,*
9 *without hiring or being licensed as a private investigator pursuant to chapter 648*
10 *of NRS.* In connection with the investigation, the public guardian may require ~~[that~~
11 ~~person]~~ *any proposed ward or any spouse, parent, child or other kindred of the*
12 *proposed ward to give any information and* to execute and deliver any written
13 requests or authorizations necessary to provide the public guardian with access to
14 records, otherwise confidential, ~~[needed to evaluate eligibility.]~~ *which are needed*
15 *by the public guardian.* The public guardian may obtain information from any
16 public record office of the State or any of its agencies or subdivisions upon request
17 and without payment of any fees.

18 ~~[Sec. 13.]~~ Sec. 14. NRS 253.240 is hereby amended to read as follows:

19 253.240 The reasonable value of a public guardian's services rendered
20 without cost to a ward shall be allowed as a claim against the estate *of the ward*
21 upon the ~~[death of the ward.]~~ *approval of the court.* Money received in payment of
22 a claim against the estate of the ward shall be deposited by the public guardian to
23 the credit of the county general fund ~~[.]~~ *or any other county fund, as determined*
24 *by the board of county commissioners.*

25 ~~[Sec. 14.]~~ Sec. 15. NRS 648.060 is hereby amended to read as follows:

26 648.060 1. ~~[No]~~ *Except as otherwise provided in NRS 253.220, no* person
27 may:

28 (a) Engage in the business of private investigator, private patrolman, process
29 server, reposessor, dog handler, security consultant, or polygraphic examiner or
30 intern; or

31 (b) Advertise his business as such, irrespective of the name or title actually
32 used,

33 *unless he is licensed pursuant to this chapter.*

34 2. No person may be employed by a licensee unless the person holds a work
35 card issued by the sheriff of the county in which the work is to be performed. The
36 provisions of this subsection do not apply to a person licensed pursuant to this
37 chapter.

38 3. A person licensed pursuant to this chapter may employ only another
39 licensee, or a nonlicensed person who:

40 (a) Is at least 18 years of age.

41 (b) Is a citizen of the United States or lawfully entitled to remain and work in
42 the United States.

43 (c) Is of good moral character and temperate habits.

44 (d) Has not been convicted of a felony or a crime involving moral turpitude or
45 the illegal use or possession of a dangerous weapon.

46 ~~[Sec. 15.]~~ Sec. 16. NRS 648.063 is hereby amended to read as follows:

47 648.063 An unlicensed person who performs a single act for which a license
48 is required has engaged in the business for which the license is required and, unless
49 exempt from licensing ~~[.]~~ *or performing an investigation pursuant to NRS*
50 *253.220,* has violated NRS 648.060.

51 ~~[Sec. 16.]~~ Sec. 17. NRS 648.203 is hereby amended to read as follows:

52 648.203 1. Except as otherwise provided in subsection 2 ~~[.]~~ *or NRS*
53 *253.220,* it is unlawful for a person to:

1 (a) Allow an employee, including an independent contractor, to perform any
2 work regulated pursuant to the provisions of this chapter unless the employee holds
3 a work card authorizing his work which is issued by the sheriff of the county in
4 which the work is performed. The provisions of this paragraph do not apply to a
5 person licensed pursuant to this chapter.

6 (b) Work as a security guard unless he holds a work card authorizing his work
7 as a security guard issued in accordance with applicable ordinances by the sheriff of
8 the county in which the work is performed.

9 2. The provisions of subsection 1 do not apply in any county whose
10 population is less than 100,000, but this subsection does not prohibit a board of
11 county commissioners from adopting similar restrictions by ordinance.

12 3. The sheriff of any county in which such restrictions apply shall require any
13 person applying for such a work card to submit a complete set of his fingerprints to
14 the sheriff who may forward the fingerprints to the Central Repository for Nevada
15 Records of Criminal History for submission to the Federal Bureau of Investigation
16 to determine the applicant's criminal history.