

## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

# ASSEMBLY COMMITTEE ON JUDICIARY



## WORK SESSION DOCUMENT MARCH 28, 2003

ASSEMBLY JUDICIARY  
DATE: 3-28-03 ROOM 3138 EXHIBIT C  
SUBMITTED BY: Allison Combs

WORK SESSION

ASSEMBLY COMMITTEE ON JUDICIARY

March 28, 2003

(Please note the list of speakers and summary of the discussion on each measure contained within this document do not represent an official record of the referenced meetings. For an official record, please see the minutes from the meetings of the Assembly Committee on Judiciary, which are available through the Legislative Counsel Bureau.)

The following measures will be considered for action during the work session:

- ASSEMBLY BILL 92 (BDR 8-271 was requested by the Assembly Committee on Judiciary). The bill was heard in Committee on March 5, 2003, and no action was taken.

**Assembly Bill 92 makes various changes to the requirements governing the filing and form of certain documents.**

Proponents/those testifying in support of the bill: John Sande, Nevada Bankers Association; Alan Rabkin, attorney.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the bill was to make some technical changes to Article 9 of the Uniform Commercial Code, in addition to some additional changes. With regard to certain forms contained in statute, testimony noted that changes cannot be made more frequently than every two years, which does not effectively accommodate new national forms that come out in the meantime.

Proposed Amendments: Mr. Rabkin submitted proposed amendments in writing following the hearing, which are attached on blue paper. Following is a summary of these amendments:

1. Reinstatement language deleted under Section 2—Amend page 6, lines 1 through 4 to reinstate the language under *Nevada Revised Statutes* (NRS) 104.9521.
2. Replace language regarding the forms prescribed by the Secretary of State under Section 4 of the bill—Amend Section 4, page 8, lines 1 through 4 to replace the new language in the bill as follows:

4. A document, except a map, that is submitted for recording must ~~be on a form prescribed and made available by the Secretary of State if~~

~~required pursuant to chapter 104 of NRS for the type of filing or must: be on a form authorized by NRS 104.9521(3) for the type of filing or must:~~

(The NRS section referenced above is amended under Section 2 of A.B. 92.)

3. **Replace language regarding the notice forms prescribed by the Secretary of State under Section 5 of the bill**—Amend Section 5, page 8, lines 29 and 30 to replace the new language in the bill as follows:

2. The notice [~~deleted lines 20 through 29 remain deleted~~]  
required by this section must be provided on a form prescribed and made available by the Secretary of State shall be substantially in the form described in NRS 104.9614.

(The newly referenced section [NRS 104.9614] prescribes the contents and form of notification before disposition of collateral in a consumer-goods transaction.)

- ASSEMBLY BILL 103** (BDR 14-532 was requested by the Assembly Committee on Judiciary on behalf of Nevada's Department of Corrections). The bill was heard in Committee on March 17, 2003, and no action was taken.

**Assembly Bill 103 eliminates the requirement for the Director of the Department of Corrections to return a certified copy of judgment of conviction to the county clerk of the issuing county.**

Proponents/those testifying in support of the bill: Glen Whorton, Nevada's Department of Corrections.

Opponents/those testifying in opposition of the bill: Kim Blandino, Benjamin Blinn.

Discussion: Testimony indicated the measure was requested to eliminate from statute the requirement to provide a certified copy of judgment of conviction to the county clerks, which the Department of Corrections has not done in at least the last 28 years. The information concerning the release of an inmate is available and is provided on a regular basis by other means.

Proposed Amendments: The following amendments were proposed:

- **Specify in statute the Department's current practices, proposed by Assemblyman John C. Carpenter.** Following is the language submitted by Mr. Whorton on this issue:

*The Department of Corrections will provide each county clerk in the State with a monthly listing of all offenders who have discharged their*

*final sentence from the Department or from parole, indicating the case number of all discharged sentences.*

- ASSEMBLY BILL 117** (BDR 3-901 was requested by the Assembly Committee on Judiciary). The bill was heard in Committee on March 11, 2003, and no action was taken.

**Assembly Bill 117 makes various changes to provisions governing withholding of income which is ordered to enforce payment of child support.**

Proponents/those testifying in support of the bill: Keith M. Lyons, Jr., Nevada Trial Lawyers Association.

Opponents/those testifying in opposition of the bill: None.

Those testifying with a neutral position on the bill: Leland Sullivan, Welfare Division, Nevada's Department of Human Resources; Don Winne, Office of the Attorney General.

Discussion: Testimony indicated the measure was requested to specify circumstances in which the court may find good cause for not issuing an order directing the withholding of income for the payment of child support. Testimony also indicated the proposed changes are not in conflict with federal laws requiring mandatory withholding of child support.

Proposed Amendments: None.

- ASSEMBLY BILL 126** (BDR 15-879 was requested on behalf of Assemblywoman Peggy Pierce). The bill was heard in Committee on March 4, 2003, and no action was taken.

**Assembly Bill 126 revises the definition of "exploitation" for the purposes of the provisions concerning the abuse of an older person and for the purposes of provisions concerning civil liability for exploiting an older person or a vulnerable person.**

Proponents/those testifying in support of the bill: Assemblywoman Pierce; Stan Olsen, Nevada Sheriffs' and Chiefs' Association; Colin Haynes, Las Vegas Metropolitan Police Department; Bonnie Parnell, National Alzheimer's Association; Thelma Clark.

Opponents/those testifying in opposition of the bill: None

Discussion: Testimony indicated the measure was requested to improve the definition of "exploitation."

Proposed Amendments: The following amendments are proposed:

- **Revise new definition of “exploitation,”** proposed by Assemblywoman Pierce. The proposed amendment strikes the new language in Section 1, subsection 2(b), lines 16 through 24 on page 2. And proposes to replace this language with the following:

Any act by a person who has the trust and confidence of an older person or any use of the power of attorney or guardianship of an older person who converts money, assets or property for their own use with intent to cause the older person to be permanently deprived of the ownership, use, benefit or possession of his money, assets or property.

(This same change should be considered on page 4, lines 3 through 12.)

- **ASSEMBLY BILL 191** (BDR 15-1081 was requested by Assemblyman Tom Collins). The bill was heard in Committee on March 13, 2003, and no action was taken.

**Assembly Bill 191 provides an enhanced penalty for burglary of a research facility.**

Proponents/those testifying in support of the bill: Assemblyman Collins; Dr. Richard Simmonds, University and Community College System of Nevada.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated the measure was requested to address the large financial loss resulting from burglaries of research facilities.

Proposed Amendments: The following amendments were proposed:

1. **Delete the enhanced penalty for burglary of a research facility and retain the addition of “research facility” to the existing burglary statute,** proposed by Assemblyman Bernie Anderson.
2. **Expand the circumstances under which the enhanced penalty applies,** proposed by Dr. Simmonds. A copy of Dr. Simmonds’ proposal is attached on green paper and affects Section 1 of the bill at line 19 on page 2. Following is the change proposed:

*(1) Obtain unauthorized control over any property, specimen, toxin, toxic chemical, record, data, result of any test or proprietary information in the facility;*

3. **Revise the definition of a “research facility,”** proposed by Dr. Simmonds. The proposal (attached on green paper) revises the definition of a “research facility” on page 2, line 39 of the bill as follows:

5. *As used in this section, “research facility” means any facility in or through which medical, agricultural, scientific or industrial research is conducted . . .*

- ASSEMBLY BILL 209** (BDR 16-1069 was requested by Assemblyman John Griffin). The bill was heard in Committee on March 11, 2003, and no action was taken.

**Assembly Bill 209** requires testing of prisoners to detect the presence of a controlled substance in their systems before consideration for and release on parole.

Proponents/those testifying in support of the bill: Assemblyman Griffin

Opponents/those testifying in opposition of the bill: Laura Hall, student.

Those testifying with a neutral position on the bill: Rex Reed, Nevada’s Department of Corrections; Fritz Schlottman, Nevada’s Department of Corrections.

Discussion: Testimony indicated the measure would not be difficult to implement, as the Department of Corrections currently performs random drug testing on its inmates.

Proposed Amendments: The following amendments have been proposed or discussed:

1. **Delete the new prohibition on releasing an inmate on parole based upon a positive test result,** proposed by Assemblyman Bernie Anderson. (See page 2 of the bill, lines 13 through 19.)
2. **Specify length of time until next parole hearing,** suggested by Assemblyman Griffin. In his testimony, Assemblyman Griffin noted there may be a need to address the length of time until the next parole hearing for an inmate who tests positive for the presence of a controlled substance. No formal proposal was submitted.

Additional Note: Following the hearing, the Department of Corrections provided documentation indicating it currently tests the pre-parole population. A copy of the documentation is attached on pink paper.

- ASSEMBLY BILL 273** (BDR 38-688 was requested by the Committee on Judiciary on behalf of the Legislative Committee on Children, Youth and Families). The bill was heard in Committee on March 25, 2003, and no action was taken.

**Assembly Bill 273 establishes procedures for permanently placing an abused or neglected child with a guardian.**

Proponents/those testifying in support of the bill: Assemblywoman Buckley; Judge Deborah Schumacher, Second Judicial District; Judge Gerald Hardcastle; Eighth Judicial District; Mike Capello, Washoe County Social Services; Cynthia Lu, Washoe County Public Defender's Office; Liz Breshears, Division of Child and Family Services.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated this measure is requested to provide a more appropriate, efficient mechanism for creating guardianships for abused and neglected children under Chapter 432B of NRS. Currently, the only option for creating such a guardianship requires parties to initiate new proceedings under Chapter 159 of NRS.

Proposed Amendments: A series of amendments were discussed during the hearing. Assemblywoman Buckley offered to work with the parties and prepare a list of amendments. Attached on white paper is a mock-up of the bill presenting the proposed revisions.

- ASSEMBLY BILL 365** (BDR 13-953 was requested by Assemblywoman Barbara Buckley). The bill was heard in Committee on March 25, 2003, and no action was taken.

**Assembly Bill 365 makes various changes to provisions regarding guardianship.**

Proponents/those testifying in support of the bill: Assemblywoman Buckley, Dara Goldsmith, attorney; Jennifer Henry, Clark County Guardianship Commissioner; Ernie Nielson, Washoe County Senior Law Project; Kim Spoon, Guardianship Services of Nevada; Cynthia Lu, Washoe County Public Defender's Office; Mike Solomon, attorney.

Opponents/those testifying in opposition of the bill: None.

Discussion: Testimony indicated this measure updates Nevada's guardianship laws. The measure also incorporates numerous provisions from Nevada's probate laws in response to a recent Nevada Supreme Court decision indicating that a guardian's reliance on the probate code was misguided.



Proposed Amendments: A series of amendments were discussed during the hearing. Assemblywoman Buckley offered to work through Ms. Goldsmith and Ms. Henry to coordinate the amendments and discuss any concerns raised during the hearing. A condensed summary of these amendments prepared by staff is attached. Also attached is the documentation submitted by the interested parties on March 27, 2003.

AJWS-03-28-03

**NECESSARY AMENDMENTS TO AB 92**  
[Sections Refer To Sections Of AB 92]

**Section 1:**

*Amendment To NRS 104.9516 Adding NRS 104.9516(2)(h) Is Acceptable As Drafted*

**Section 2:**

*With regard to the revision to NRS 104.9521, do NOT delete current NRS 104.9521(3) that was inadvertently deleted.*

*That section reads:*

**3. A form that a filing office may not refuse to accept under subsection 1 or 2 must conform to the format prescribed for the form by the National Conference of Commissioners on Uniform State Laws.**

*Also, restore numbering to NRS 104.9521(4).*

**Section 3:**

*Amendment to NRS 108.669(1) Is Acceptable As Drafted*

**Section 4:**

*With regard to proposed revision of NRS 247.110(4), replace suggested amendment with the following corrected amendment:*

**be on a form authorized by NRS 104.9521(3) for the type of filing or must:**

**Section 5:**

*As to revisions to NRS 482.516(2), maintain deletion as stated and replace suggested amendment with the following corrected amendment:*

**required by this section shall be substantially in the form described in NRS 104.9614.**

*Amendment to NRS 482.516(3) Is Acceptable As Drafted*

[End]



Post-It® Fax Note	7671	Date	11 MAR 03	# of pages	1
To	ASSEMBLYMAN COLLINS				
Co./Dept	VY ASSEMBLY				
Phone #	684-8509	Phone #	784-4874		
Fax #	684-8883	Fax #	784-4201		
From	DICK SIMMONDS				
Co.	UCCSN				

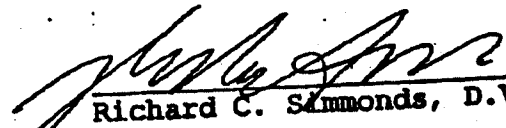
**LABORATORY ANIMAL MEDICINE**  
 Nellor Biomedical Sciences Building 340  
 University of Nevada, Reno  
 Reno, Nevada 89557-0036  
 (775) 784-4874  
 FAX: (775) 784-4201

GREEN


MEMORANDUM

DATE: March 11, 2003

TO: Assemblyman Tom Collins

FROM:   
 Richard C. Simmonds, D.V.M., M.S.

**SIGN  
HERE**



SUBJECT: Suggestion for Friendly Amendment to A.B. 191

1. After reviewing the provisions of the subject bill, I received the following two suggestions for friendly amendments and believe them to be worthwhile:

- a. Page 2, Line 19 - Insert "toxin, toxic chemical" after the word "specimen," to read "..... specimen, toxin, toxic chemical, record, data, result of any test or proprietary ....."
- b. Page 2, Line 39 - Insert "agricultural" after the word "medical," to read "..... facility in which medical, agricultural, scientific or industrial ....."

2. Thank you for introducing A.B. 191. I'm looking forward to testifying in favor of its passage and assisting you in any way necessary to accomplish that goal.

INSTITUTION: Department Wide

YEAR: 2002

**NDOC SUMMARY STATISTICS**  
**DRUG/ALCOHOL TESTING PROGRAM**

MONTH	AVERAGE POPULATION	RANDOM %	FOR CAUSE	TEST-LEVEL NUMBER OF EACH						BREAKDOWN OF TEST RESULTS						BREAKDOWN OF POSITIVE RESULTS												
				PROGRAM REQUIREMENT			SAT			REFUSED TO TEST	TOTAL	REFUSED TO TEST	TOTAL	MARLUANA	COCAINE	OPATES	BARBITURATES	AMPHETAMINES	PCP	ALCOHOL	TOTAL							
				POST VISIT	PRE PAROLE	INMATE	DMJ	As Ind.	REFUSED TO TEST													POSITIVE RESULTS	NEGATIVE RESULTS	URINE SAMPLE NOT VALUABLE	TOTAL			
JANUARY	9918	496	108	68	168	38	2	94	0	0	0	0	1128	0	1111	17	0	0	1128	8	4	2	3	1	0	0	0	18
FEBRUARY	9969	498	55	67	172	0	28	143	0	2	2	2	1024	2	988	36	0	0	1024	18	0	6	1	10	0	0	1	36
MARCH	9967	498	109	84	219	51	0	172	0	2	2	2	1144	2	1120	22	0	0	1144	11	2	6	3	1	0	0	0	23
APRIL	10008	498	76	37	204	32	34	172	0	5	5	5	1040	5	1019	16	0	0	1040	7	2	1	1	5	0	1	1	17
MAY	9987	471	89	17	176	38	0	48	0	1	1	1	839	1	828	10	0	0	839	6	0	0	0	2	0	0	0	10
JUNE	9971	499	91	38	207	47	3	374	0	4	4	4	1403	4	1384	15	0	0	1403	3	0	3	5	4	0	0	0	15
JULY	9986	500	35	19	174	38	31	118	0	3	3	3	993	3	972	18	0	0	993	5	1	1	2	2	0	0	8	19
AUGUST	10032	502	86	21	174	33	0	47	0	4	4	4	843	4	831	8	0	0	843	6	0	0	2	3	1	0	0	12
SEPTEMBER	10084	503	291	24	144	45	22	198	0	0	0	0	1184	0	1158	8	0	0	1184	2	0	3	0	1	1	1	1	8
OCTOBER	10089	503	177	43	178	20	27	60	0	3	3	3	1027	3	996	28	0	0	1027	16	3	1	0	6	0	0	2	28
NOVEMBER	10073	504	82	60	238	0	0	48	0	0	0	0	963	0	938	15	0	0	963	8	0	0	2	4	0	0	1	16
DECEMBER	9916	496	0	49	147	0	27	74	1101	4	4	4	1471	4	1438	29	0	0	1471	23	1	0	1	4	0	0	0	29
Yearly Totals	9997.5	5842	1250	571	2201	342	175	1547	1101	28	13029	28	12779	222	0	0	0	0	13029	115	13	23	20	43	2	14	230	

A total number of positive results in this column may exceed the total number of positive tests due to the potential for individual tests to contain multiple substances.  
 NOTE: column is target over actual

PINK

MOCK-UP

PROPOSED AMENDMENT TO  
ASSEMBLY BILL NO. 273

PREPARED FOR ASSEMBLY COMMITTEE ON JUDICIARY  
MARCH 28, 2003

PREPARED BY THE RESEARCH DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN  
CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE  
OFFICIAL AMENDMENT MAY DIFFER.**

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) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) green bold dashed underlining is deleted language in the original bill that is proposed to be retained in this amendment.

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

- 1     **Section 1.** NRS 432.039 is hereby amended to read as follows:  
2     432.039 1. When in the judgment of the court it is in the best  
3 interests of a child in the lawful custody of an agency which provides child  
4 welfare services, such an agency may petition for appointment as guardian  
5 of the person and estate of the child in the manner provided by chapter 159  
6 *or 432B* of NRS.  
7     2. The clerk of the district court, county clerk, county recorder or  
8 other county officer shall not require the payment of any fees or charges by  
9 the agency which provides child welfare services for appointment as  
10 guardian pursuant to this section, and the district court shall waive the  
11 furnishing of a bond by the agency which provides child welfare services if  
12 it is appointed guardian.  
13     3. Except as otherwise provided in this section, the agency which  
14 provides child welfare services shall comply with all applicable provisions  
15 of chapter 159 *or 432B* of NRS.  
16     **Sec. 2.** Chapter 432B of NRS is hereby amended by adding thereto  
17 the provisions set forth as sections 3 to 7, inclusive, of this act.

Proposed by Judge Schumacher, for clarification.

Proposed by Judge Hardcastle, who suggests that any person should be able to petition for a guardianship. The court is then able to determine the whether the guardianship is appropriate.

Noted by Judge Schumacher during her testimony as a change proposed by Clark County to provide consistency with Chapter 159 guardianships.

Proposed by Judge Schumacher and Ms. Lu, who explain, "These considerations are the subject of the permanency hearing and need not be reiterated at the hearing on the guardianship hearing."

Proposed by Judge Schumacher and Ms. Lu, who explain, "These considerations are the subject of the permanency hearing and need not be reiterated at the hearing on the guardianship hearing."

1 **Sec. 3. 1. If the plan adopted for the permanent placement of a**  
2 **child ~~adopted~~ pursuant to NRS 432B.553 includes a request for the**  
3 **appointment of a guardian for the child pursuant to sections 4 to 7,**  
4 **inclusive, of this act, an interested party or the agency that adopted the**  
5 **plan may petition the court for the appointment of a guardian. The**  
6 **guardian may be appointed at a hearing conducted pursuant to NRS**  
7 **432B.590 or at a separate hearing.**

8 **2. A petition for the appointment of a guardian pursuant to this**  
9 **section:**

10 **(a) May not be filed before the court has determined that the child is**  
11 **in need of protection;**

12 **(b) Must include the information required pursuant to NRS 159.044;**  
13 **and**

14 **(c) Must include a statement explaining why the appointment of a**  
15 **guardian, rather than the adoption of the child or the return of the child**  
16 **to a parent, is in the best interests of the child.**

17 **3. In addition to the notice required pursuant to NRS 432B.590, an**  
18 **agency that files a petition for the appointment of a guardian must serve**  
19 **notice of the petition that includes a copy of the petition and the date,**  
20 **time and location of the hearing on the petition, by registered or certified**  
21 **mail or by personal service:**

22 **(a) To all the persons entitled to notice of the hearing pursuant to**  
23 **NRS 432B.590, the parents of the child, any person or governmental**  
24 **agency having care, custody or control over the child, and, if the child is**  
25 **14 years of age or older, the child; and**

26 **(b) At least ~~10~~ 20 days before the hearing on the petition.**

27 **Sec. 4. 1. The court may, upon the filing of a petition pursuant to**  
28 **section 3 of this act, appoint a person as a guardian for a child if:**

29 **(a) The court finds:**

30 ~~(1) That the child is in need of protection;~~

31 ~~(2) That adoption of the child is not appropriate or is not likely to~~  
32 ~~occur and that termination of parental rights would not be in the best~~  
33 ~~interests of the child;~~

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

36 **(4) That the child has been in the custody of the proposed**  
37 **guardian for 6 months or more pursuant to a determination by a court**  
38 **that the child was in need of protection, unless the court waives this**  
39 **requirement for good cause shown;**

40 ~~(5) If the child is in the custody of an agency which provides child~~  
41 ~~welfare services that the agency has made reasonable efforts to preserve~~  
42 ~~and reunify the family of the child pursuant to NRS 432B.393, unless the~~  
43 ~~agency is not required to make such reasonable efforts pursuant to NRS~~  
44 ~~432B.393 or the court determines that such reunification of the family~~

1 ~~would not be in the best interests of the child because a parent of~~  
2 ~~the child is unwilling or unable to properly care for the child;~~

3 (6) **That the proposed guardian has complied with the**  
4 **requirements including the burden of proof, of chapter 159 of NRS; and**

5 ~~(7) That it is in the best interests of the child to appoint the~~  
6 ~~proposed guardian as the guardian of the child;~~

7 (b) **The child consents to the guardianship, if the child is 14 years of**  
8 **age or older; and**

9 (c) **The court determines that the requirements for filing a petition**  
10 **pursuant to section 3 of this act have been satisfied.**

11 2. **A guardianship established pursuant to this section:**

12 (a) **Provides the guardian with the powers and duties provided in**  
13 **NRS 159.079, and subjects the guardian to the limitations set forth in**  
14 **NRS 159.0805;**

15 (b) **Is subject to the provisions of NRS 159.065 to 159.075, inclusive,**  
16 **and 159.185 to 159.201, inclusive;**

17 (c) **Provides the guardian with sole legal and physical custody of the**  
18 **child and terminates the rights of all other persons to legal or physical**  
19 **custody of the child;**

20 (d) **Does not result in the termination of parental rights of a parent of**  
21 **the child; and**

22 (e) **Does not affect any rights of the child to inheritance, a succession**  
23 **or any services or benefits provided by the Federal Government, this**  
24 **state or an agency or political subdivision of this state.**

25  
26 New Section: If necessary to further the permanent placement of a  
27 child, the court may grant a guardianship, not to exceed 6 (six) months  
28 in duration, to a guardian who meets all requirements of chapter 159 of  
29 NRS except residency in the State of Nevada.

30 )  
31 **Sec. 5. 1. In determining whether to grant a petition for the**  
32 **appointment of a guardian filed pursuant to section 3 of this act, the**  
33 **court may consider all relevant and material evidence that is admissible**  
34 **pursuant to this chapter, including, without limitation, any report**  
35 **submitted by a special advocate appointed as a guardian ad litem for the**  
36 **child pursuant to NRS 432B.500.**

37 2. **If a court appoints a guardian for a child pursuant to section 4 of**  
38 **this act, the court may order a reasonable right of visitation to any**  
39 **person whose right to custody or visitation of the child was terminated as**  
40 **a result of the appointment of the guardian if the court finds that the**  
41 **visitation is in the best interests of the child.**

42 **Sec. 6. Upon the entry of a final order by the court establishing a**  
43 **guardianship pursuant to section 4 of this act:**

Two changes are proposed by Judge Schumacher and Ms. Lu, who note, "there is presently legislation pending that may change the burden of proof for guardianships, which would make the standard set forth here potentially at odds with the new law."

Proposed by Judge Schumacher and Ms. Lu, who explain that the deletion "clarifies the intent."

Proposed by Judge Schumacher and Ms. Lu, who note that, "Sometimes out-of-state proposed guardians cannot immediately obtain guardianship in their home states because most states require the child to have lived in their state for some period of time before the courts have jurisdiction. Chapter 159 requires at least one guardian to be a resident of Nevada. This is a sensible provision because the Courts cannot effectively supervise out-of-state placements.

In order solve this dilemma, to further the permanent placement of children with out of state guardians, but not to create a situation of long-term supervision of out-of-state placements by Nevada courts, the following is proposed to be added to the bill."

1 1. The custody of the child by the agency that petitioned for the  
2 appointment of the guardian is terminated;

3 2. The proceedings concerning the child conducted pursuant to  
4 NRS 432B.410 to 432B.590, inclusive, and sections 3 to 7, inclusive, of  
5 this act terminate; and

6 3. Unless subsequently ordered by the court to assist the court, the  
7 following agencies and persons are excused from any responsibility to  
8 participate in the guardianship case:

9 (a) The agency that petitioned for the appointment of the guardian;  
10 and

11 (b) Any counsel or guardian ad litem appointed by the court to assist  
12 in the proceedings conducted pursuant to NRS 432B.410 to 432B.590,  
13 inclusive, and sections 3 to 7, inclusive, of this act.

14 Sec. 7. 1. The court ~~may~~ shall retain jurisdiction to enforce,  
15 modify or terminate a guardianship established pursuant to section 4 of  
16 this act until the child reaches 18 years of age.

17 2. Any person having a direct interest in a guardianship established  
18 pursuant to section 4 of this act may move to enforce, modify or  
19 terminate an order concerning the guardianship.

20 3. The court may shall issue an order directing an agency to file a  
21 report and make a recommendation in response to any motion to  
22 enforce, modify or terminate an order concerning a guardianship  
23 established pursuant to section 4 of this act. The agency must submit the  
24 report to the court within 45 days after receiving the order of the court.

25 ~~A successor guardian may be appointed in accordance with the~~  
26 ~~procedures set forth in chapter 159 of NRS. The procedures and~~  
27 ~~provisions of Chapter 159 apply to any motion to enforce, modify, or~~  
28 ~~terminate a guardianship, or to appoint a successor guardian.~~

29 Sec. 8. NRS 432B.250 is hereby amended to read as follows:

30 432B.250 Any person who is required to make a report pursuant to  
31 NRS 432B.220 may not invoke any of the privileges set forth in chapter 49  
32 of NRS:

33 1. For his failure to make a report pursuant to NRS 432B.220;

34 2. In cooperating with an agency which provides child welfare  
35 services or a guardian ad litem for a child; or

36 3. In any proceeding held pursuant to NRS 432B.410 to 432B.590,  
37 inclusive [-], and sections 3 to 7, inclusive, of this act.

38 Sec. 9. NRS 432B.420 is hereby amended to read as follows:

39 432B.420 1. A parent or other person responsible for the welfare of  
40 a child who is alleged to have abused or neglected the child may be  
41 represented by an attorney at all stages of any proceedings under NRS  
42 432B.410 to 432B.590, inclusive [-], and sections 3 to 7, inclusive, of this  
43 act. Except as otherwise provided in subsection 2, if the person is indigent,  
44 the court may appoint an attorney to represent him. The court may, if it  
45 finds it appropriate, appoint an attorney to represent the child. The child

Two changes ("may" to "shall")  
proposed by Assemblywoman Buckley  
to ensure that both the court and the  
child welfare agencies remain involved  
in guardianship cases involving abuse  
and neglect of children.

Proposed by Judge Schumacher and  
Ms. Lu, who note the change is "to  
clarify what burdens of proof,  
standards of evidence and procedures  
apply once a 432B guardianship has  
been established."



**ASSEMBLY BILL 365**  
**SUMMARY OF PROPOSED AMENDMENTS**  
**(As of March 27, 2003)**

Following is a summary of amendments proposed through Dara J. Goldsmith, Esq., and Jennifer Henry, Clark County Guardianship Commissioner following the hearing on the bill on March 25, 2003. The Research Division of the Legislative Counsel Bureau compiled the list for the consideration of the Assembly Committee on Judiciary.

1. **Section 5/Page 2 (lines 25 through 29) – Appraisal or Valuation of Assets** - The following change (underlined) is requested to address concerns of rural communities for the expense and difficulty in obtaining an appraisal.

2-25     2. *In lieu of an appraisal, the guardian may file a verified*  
 2-26 *record of value of an asset where the value of the asset can be*  
 2-27 *determined with reasonable certainty, including, without*  
 2-28 *limitation, miscellaneous personal property and household goods where the total*  
           *value does not exceed \$5,000, money, deposits in banks, bonds, policies of life*  
 2-29 *insurance or securities for money, when equal in value to cash. With regard to*  
           *real property, the county assessor's tax value may be used; however, if the real*  
           *property is to be sold an appraisal is necessary.*

2. **Section 6/Page 3 (line 2) - Conduct of Appraisal or Valuing and Compensation** – To correct an inaccurate reference, replace “sells” with “purchases.” The change follows (underlined):

3-1     4. *An appraiser, certified public accountant or expert in*  
 3-2 *valuation who directly or indirectly sells purchases any asset of an estate*  
 3-3 *without full disclosure to and approval by the court is guilty of a*  
 3-4 *misdemeanor. A sale made in violation of the provisions of this*  
 3-5 *subsection is void, and the asset sold may be recovered by the*  
 3-6 *guardian, ward or proposed ward.*

3. **Section 8/Page 3 - Order for Return of Asset and Holding Person in Contempt of Court After petition Alleging Conversion is Filed** - Revise the reference on page 3, lines 28 and 31, to refer to subsection 1 of Section 7 (instead of subsection 2 of Section 7).

4. **Section 10/Page 4 (lines 26 and 27) – Sale of Property Subject to Mortgage or Other Lien and Disposition of Proceeds** – The following change (underlined) is requested to address the concern of rural communities where the court is not able to hold the money, as required by the current language.

4-23     2. *To satisfy the mortgage or other lien, including, without*  
 4-24 *limitation, payment of interest and any other lawful costs and*

4-25 charges. *If the mortgagee or other lienholder cannot be found, the*  
4-26 *money from the sale may be paid to the court who shall hold the*  
4-27 ~~*money for the mortgagee or other lienholder*~~ *as directed by the court and the*  
*mortgage or*  
4-28 *other lien shall be deemed to be satisfied.*

5. Section 23/Page 9 - Failure of Purchaser to Complete the Sale of Real Property - The following change (underlined) is proposed to "better track" NRS 148.300, the probate section on which the new provision is based:

9-23 2. *If the amount realized on the resale of the property is*  
9-24 *insufficient to cover the ~~pay for the expenses related to the offer or~~ bid and*  
9-25 *the expenses of the previous sale, the original purchaser is liable*  
9-26 *to the estate of the ward for the deficiency.*

6. Section 47/Page 16 - Appeals to the Supreme Court from Certain Orders - The following change (underlined) is proposed to "make it clear that it is the notice of entry of Order that triggers appeal period."

16-13 Sec. 47. *In addition to any order from which an appeal is*  
16-14 *expressly authorized pursuant to this chapter, an appeal may be*  
16-15 *taken to the Supreme Court within 30 days after its notice of entry from an*  
16-16 *order:*

7. Section 49/Page 16 - "Incompetent" Defined - The following change (underlined) is to "differentiate a mentally incapacitated person from a physically incapacitated person."

16-37 Sec. 49. NRS 159.019 is hereby amended to read as follows:  
16-38 159.019 "Incompetent" means an adult person who, by reason  
16-39 of mental illness, mental deficiency, disease, weakness of mind or  
  
16-40 any other cause, is unable, without assistance, properly to manage  
16-41 and take care of himself or his property[.], *or both. The term*  
16-42 *includes a mentally incapacitated person.*

8. Section 54/Page 17 - Authorized Court Appointments - The following change (underlined) deletes the language which modifies guardian ad litem whom the bill now allows the court to appoint. The proponents of the change note that the standard may be confusing.

17-20 Sec. 54. NRS 159.035 is hereby amended to read as follows:  
(\* \* \* No changes proposed to lines 21 through 37 of the bill, as written.)

17-38 6. *Guardians ad litem to act in the best interests of the ward.*

9. **Section 57/Pages 18 and 19 – Contents of the Petition:** The following changes (underlined) are proposed to address concerns regarding confidentiality, the need to address situations when information may not be available (such as when the proposed ward is being sequestered or the petitioner may not have access to such information until appointed), and the need to clarify that the ward’s in-laws are not included, just the spouse.

18-19 **Sec. 57.** NRS 159.044 is hereby amended to read as follows:

18-20 159.044 1. Except as otherwise provided in NRS 127.045, a  
18-21 proposed ward, a governmental agency, a nonprofit corporation or  
18-22 any [~~concerned~~] *interested* person may petition the court for the  
18-23 appointment of a guardian.

18-24 2. The petition must state *and provide, to the extent known or reasonably ascertainable to or obtainable by the petitioner:*

18-25 (a) The name and address of the petitioner.

18-26 (b) *The name, [age] date of birth and current address of the*  
18-27 *proposed ward. [~~If he~~] and Additionally one of the following forms of*  
18-28 *identification of the proposed ward shall be supplied to the court in a*  
*confidential manner. Such confidential manner shall be the same manner as*  
*set forth in NRS 125.130(3)(b) or as the court determines:*

18-29 (1) *A social security number;*

18-30 (2) *A taxpayer identification number;*

18-31 (3) *A valid driver’s license number;*

18-32 (4) *A valid identification card number; or*

18-33 (5) *A valid passport number.*

*To the extent that such information is not provided at the time of the filing of the petition, it must be provided to the court not later than 60 days after the appointment of a guardian or as otherwise directed by the court.*

18-34 (c) *If the proposed ward is a minor, [~~the petition must state~~] the*  
18-35 *date on which he will attain the age of majority and whether he will*  
18-36 *need guardianship after attaining the age of majority[~~-~~*

18-37 (c)] *and:*

18-38 (1) *Whether there is a current order concerning custody*  
18-39 *and the state in which the order was issued; and*

18-40 (2) *Whether the petitioner anticipates that a guardian will*  
18-41 *be necessary for the proposed ward when the proposed ward is no*  
18-42 *longer a minor.*

18-43 (d) *Whether the proposed ward is a resident or nonresident of*  
18-44 *this state.*

19-1 [(d)] (e) *The names and addresses, so far as they are known to*

19-2 *the petitioner, of the spouse of the ward, the relatives of the proposed ward *who**  
*are within*

19-3 *the second degree[~~-~~*

19-4 (e)] *of consanguinity or affinity.*

- 19-5 (f) The name , date of birth and current address of the proposed  
 19-6 guardian.[-  
 19-7 ~~(f) That] ~~and one~~ Additionally, one of the following forms of identification of  
 19-8 the  
 19-8 proposed guardian be supplied to the court in a confidential manner. Such  
 19-8 confidential manner shall be the same manner as set forth in NRS  
 19-8 125.130(3)(b) or as the court determines:  
 19-9 (1) A social security number;  
 19-10 (2) A taxpayer identification number;  
 19-11 (3) A valid driver's license number;  
 19-12 (4) A valid identification card number; or  
 19-13 (5) A valid passport number.  
 19-14 (g) Whether the proposed guardian has [~~never~~] ever been  
 19-15 convicted of a felony[-  
 19-16 ~~(g)] and, if so, information concerning the crime for which ~~he~~ the proposed  
 19-16 guardian  
 19-17 was convicted and whether the proposed guardian was placed on probation  
 19-18 or parole.~~~~

10. Section 59/Page 21 - Issuance of the Citation - The following changes (underlined) is proposed to delete the use of the word "affinity" and to clarify that in-laws are not intended to be included in the notice requirements.

- 21-17 (b) Upon all known relatives of the proposed ward who are:  
 21-18 (1) Fourteen years of age or older; and  
 21-19 (2) The spouse of the ward or who are w~~Within~~ the second degree of  
 21-19 consanguinity ~~or affinity~~;  
 21-20 (c) Upon the parent or legal guardian of all known relatives of  
 21-21 the proposed ward who are:  
 21-22 (1) Less than 14 years of age; and  
 21-23 (2) The spouse of the ward or who are w~~Within~~ the second degree of  
 21-23 consanguinity ~~or affinity~~;  
 21-24 (d) If there is no spouse of the ward and there are no known relatives of the  
 21-24 proposed ward who  
 21-25 are within the second degree of consanguinity ~~or affinity~~ to the  
 21-26 proposed ward, upon the office of the public guardian of the  
 21-27 county where the proposed ward resides; and

11. Section 62/Page 23 - Appointment of Attorney for Adult Ward or Proposed Adult Ward and Attorney's Fees - The following change (underlined) is proposed "to allow the court discretion to permit payment of attorneys fees; as such it also allows the court discretion to determine the appropriate amount of such fees:

23-17 2. Subject to court approval, the attorney for the adult ward or proposed adult ward is

23-19 entitled to reasonable compensation from the estate of the adult

23-20 ward or proposed adult ward. If the court finds that a person has

23-21 unnecessarily or unreasonably caused the appointment of an

23-22 attorney, the court may order the person to pay to the estate of the

23-23 adult ward or proposed adult ward all or part of the expenses

23-24 associated with the appointment of the attorney.

12. Sections 64, 65 and 66 – Currently, under the bill, all three sections include a new subsection 8 (See page 25, lines 23 through 26; page 27, lines 26 through 29; and page 29, lines 29 through 32.), which reads as follows:

*If notice is given by publication pursuant to N.R.C.P. 4(e), the temporary guardian may request to extend the temporary guardianship for not more than 30 days during the period for publication, but may not be granted more than two extensions.*

The suggested amendment proposes to *delete* the new language (above) and replace it with the following language:

*A temporary guardianship may be extended for up to two additional 30-day periods for good cause shown.*

13. Section 71/Pages 31 and 32 - Qualifications of Guardian – The following changes (underlined) are proposed to clarify the language, “as it presently exists and to allow the court the same discretion that it is going to now be afforded as to felons with regard to persons found responsible for abuse, neglect and/or exploitation”:

31-37 5. Is a nonresident of this state and [~~has not~~:

31-38 ~~(a) Associated~~] :

31-39 (a) Is not a foreign guardian of a nonresident proposed ward

31-40 pursuant to subsection 2 of NRS 159.049;

31-41 (b) Has not associated as a coguardian, a resident of this state or

31-42 a banking corporation whose principal place of business is in this

31-43 state; and

31-44 ~~[(b) Caused]~~

32-1 ~~(c) Has not caused the appointment of the guardian to be filed~~

32-2 in the guardianship proceeding. Is not a petitioner.

32-3 6. Has been judicially determined, by clear and convincing

32-4 evidence, to have committed abuse, neglect or exploitation of a

32-5 child, spouse, parent or other adult[.], unless the court finds that it is in the best interests of the ward to appoint such person as the guardian of the ward.

14. Section 72/Pages 32 and 33 - Preferences in Appointing a Guardian; Considerations of the Court – The following changes (underlined) are proposed:

32-29 3. In determining who is most suitable, the court shall give  
32-30 consideration, among other factors, to:

\* \* \* (lines 31 through 39 – no changes proposed)

32-39 (d) The relationship by blood, adoption or marriage of the  
32-40 proposed guardian to the proposed ward. In considering  
32-41 preferences of appointment, the court shall may consider relatives of  
32-42 the half blood equally with those of the whole blood. The court  
32-43 shall consider relatives in the following order of preference:

32-44 (1) Spouse.

32-45 (2) Adult child.

33-1 (3) Parent.

33-2 (4) Adult sibling.

33-3 (5) Grandparent or adult grandchild.

33-4 (6) Uncle, aunt, adult niece or adult nephew.

33-5 (e) any other interested person that the court deems appropriate.

(f) Any recommendation made by a master of the court or  
33-6 special master pursuant to NRS 159.0615.

33-7 4. If the court finds that there is no suitable person pursuant to subsection 3  
to appoint

33-8 as guardian who is related by blood, adoption or marriage or who  
33-9 is nominated in a written instrument, the court shall appoint as  
33-10 guardian:

33-11 (a) The public guardian of the county where the ward resides,  
33-12 if:

33-13 (1) There is a public guardian in the county where the ward  
33-14 resides; and

33-15 (2) The proposed ward qualifies for a public guardian  
33-16 pursuant to chapter 253 of NRS.; or

33-17 (b) A private fiduciary who may obtain a bond in this state and

33-18 who is located in the county where the ward resides a resident of this state, if:

15. Section 93/Pages 42-43 - Petition to Secure Approval of Court – Proponents suggest the following changes (underlined) to clarify that the acts under this section need court approval and to clarify that “certain petitions will require a different burden of proof”:

42-10 Sec. 93. NRS 159.113 is hereby amended to read as follows:

42-11 159.113 1. At any time after ~~[his appointment,]~~ the

42-12 ~~appointment of the guardian of the estate,~~ the guardian, prior to taking any of  
the following actions shall, may

42-13 petition the court for an order authorizing the guardian to:

42-13 petition the court for an order authorizing the guardian to:

- 42-14 (a) Invest the property of the ward.
- 42-15 (b) Continue the business of the ward.
- 42-16 (c) Borrow money for the ward.
- 42-17 (d) Except as to necessary expenses of the ward's care as set forth in NRS 159.079, eEnter into contracts for the ward or complete the
- 42-18 performance of contracts of the ward.

\*\*\* (Lines 19 through 30 contain existing statutory language with no proposed changes)

- 42-31 ~~(l) Make or change the last will and testament of the ward.~~
- 42-32 ~~(m) Make or change the designation of a beneficiary in a will,~~
- 42-33 ~~trust, insurance policy, bank account or any other type of asset of~~
- 42-34 ~~the ward which includes the designation of a beneficiary.~~
- 42-35 (n) Exercise the right of the ward to take under or against a
- 42-36 will.
- 42-37 ~~(o) Create for the benefit of the ward or others a revocable or~~
- 42-38 ~~irrevocable trust of the property of the estate.~~
- 42-39 (p) Transfer to a trust created by the ward any property
- 42-40 unintentionally omitted from the trust.
- 42-41 (q) Submit a revocable trust to the jurisdiction of the court if the ward
- 42-42 and/or the ward's spouse is
- 42-43 the grantor and the ward and or the ward's spouse are the sole beneficiaries of
- 42-44 the income of the trust or it is a court created trust.
- 42-45 ~~(r) Except as otherwise provided in this paragraph, exercise~~
- 42-46 ~~the right of the ward to revoke or modify a revocable trust or to~~
- 42-47 ~~surrender the right to revoke or modify a revocable trust. The~~
- 43-1 ~~court shall not authorize or require the guardian to exercise the~~
- 43-2 ~~right to revoke or modify a revocable trust if the instrument~~
- 43-3 ~~governing the trust~~
- 43-4 ~~(1) Evidences an intent of the ward to reserve the right of~~
- 43-5 ~~revocation or modification exclusively to the ward,~~
- 43-6 ~~(2) Provides expressly that a guardian may not revoke or~~
- 43-7 ~~modify the trust, or~~
- 43-8 ~~(3) Otherwise evidences an intent that would be~~
- 43-9 ~~inconsistent with authorizing or requiring the guardian to exercise~~
- 43-10 ~~the right to revoke or modify the trust.~~
- 43-11 (s) Take any other action which the guardian deems would be
- 43-12 in the best interests of the ward.

RENUMBER THE ABOVE SECTIONS ACCORDINGLY AND ADD A NEW SUBSECTION 2 (also renumbering the sections following the new subsection 2):

2. Prior to taking any of the following actions and after the guardian has proved to the court by clear and convincing evidence that the ward, if competent, would actually, or as a reasonably prudent person, have taken the proposed action, the court may enter an order granting the guardian the right and power to take any of the following actions:

- (a) Make or change the last will and testament of the ward.
- (b) Make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the ward which includes the designation of a beneficiary.
- (c) Create for the benefit of the ward or others a revocable or irrevocable trust of the property of the estate
- (d) Exercise the right of the ward to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:
  - i. Evidences an intent of the ward to reserve the right of revocation or modification exclusively to the ward;
  - ii. Provides expressly that a guardian may not revoke or modify the trust;  
or
  - iii. Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.

*Additional revision* - In the new language above, specify that before the court may enter an order granting the authority to the guardian to take any of the above actions, the guardian must also prove by clear and convincing evidence that the testator or trustee would have changed the beneficiary or taken other such actions because of fraud. (Proposed by Assemblywoman Buckley)

16. **Section 94/Page 44 (lines 17 through 19) - Notice of a Hearing of petition or Account -** The following changes (underlined) are suggested "to clarify that the Ward's in laws are not needed to be included just the spouse. It was pointed out that the word affinity preceded by second degree to consanguinity was confusing and could lead to an interpretation to include in laws. That was not intended."

44-17 (b) The ward's spouse and heirs [~~at law and next of kin,~~] *of the ward who are*  
44-18 *related within the second degree of consanguinity* ~~or affinity~~ so far  
44-19 as known to the petitioner . [~~of the ward.~~]

17. **Section 95/Page 45 (lines 28 through 30) - Investment by a Guardian of the Estate -** The following changes (underlined) are suggested to address a "concern that the ward could be injured by the guardian not taking steps to get investments under control, also to make gender neutral":



45-28 4. A guardian of the estate may maintain the assets of the  
45-29 ward in the manner in which the ward had invested the assets  
45-30 before his the ward's incapacity.  
45-31 ~~(a) Upon approval of the court, for a such period authorized by the~~  
45-32 ~~court, or~~  
45-33 ~~(b) Without prior approval of the court, until a verified~~  
45-34 ~~account is filed and approved by the court in the guardianship~~  
45-35 ~~proceeding pursuant to NRS 159.177.~~

18. Section 103/Page 49 – Transfer of Property of Ward Not Ademption – The following changes (underlined) are suggested to clarify the language.

Sec. 103. NRS 159.173 is hereby amended to read as follows:

49-8 159.173 [~~In case of the sale or other transfer by~~] ***If*** a guardian  
49-9 of the estate [~~of~~] ***sells or transfers*** any real or personal property ***that***  
49-10 ***is*** specifically devised or bequeathed by the ward [~~who~~] ***or which is***  
49-11 ***held by the ward as a joint tenancy, designated as being held by***  
49-12 ***the ward in trust for another person or held by the ward as a***  
49-13 ***revocable trust and the ward*** was competent to make a will ***or***  
49-14 ***create the interest*** at the time ~~he executed the will or created the~~  
49-15 ~~interest when the will or interest was created~~, but was not  
49-16 competent to make a will ***or create the interest*** at the time of the  
49-17 sale or transfer and never executed a valid later will ***or changed the***  
49-18 ***manner in which he the ward held the interest*** ~~after removal of the legal~~  
49-19 ~~disability~~, the devisee, ***beneficiary*** or legatee may [~~at his option~~]  
49-20 elect to take the proceeds of [~~such~~] ***the*** sale or other transfer ~~with the~~  
49-21 ~~incidents of a~~ ***pursuant to such interest***, specific devise or bequest.

19. New Section to the Bill – Modification of NRS 59.026 – Definition of Special Guardian. The following changes are suggested to “address desire of many to allow a person of limited abilities to request a guardian.”

NRS 159.026 “Special guardian” defined. “Special guardian” means a guardian of a person of limited capacity ***or one who is appointed as a result of a voluntary petition by a person of limited abilities, who has the requisite capacity to make such a voluntary petition.***

## Summary of changes to AB 365.

Jennifer Henry and I have worked on coordinating changes and modifications to AB 365. Please note that this memorandum has been added to, as such the a section may be changed in multiple sections. Some of these changes may already have been made as this is the third time I am sending this to LCB.

The **first set** of changes were as a result of our first reading of the Bill.

The **second set** of changes were as a result of a meeting between a number of attorneys, including: Kim Boyer, Jack Fields, Sally Ramm, Ernie Nielsen (part of the meeting), Lora Myles, Laurie Buck, the Clark County Public Guardian and the Carson City Public Guardian, additionally comments had been received from Hank Cavallera and Mark Solomon.

**Third set** of changes. Thereafter comments were made at the hearing with the Assembly Judiciary Committee and issues were raised by Barbara Buckley, and other members of the Assembly Judiciary Committee, in addition to Ernie Nielsen, Cynthia Lu, Kim Stoon, and Mark Solomon. We believe that the third set of changes takes into account all of those issues and makes an acceptable resolution of each.

Please not all references to "second degree of consanguinity and affinity" are to be change to "spouse and second degree of consanguinity". I think that we caught all changes, but just in case we missed, please double check.

### AB 365 First Set of Changes:

Jennifer Henry and I have reviewed AB 365 and have found the following errors/concerns and offer the following corrections. The deletions are in "~~strikeout~~" and the additions are in "***bold italics***".

**Sec. 8.** 1. If the court finds, after examination of a person  
 3-26 cited pursuant to section 7 of this act, that the person has  
 3-27 committed an act:  
 3-28 (a) Set forth in paragraph (a) of subsection ~~2~~ ***1*** of section 7 of  
 3-29 this act, the court may order the person to return the asset or the  
 3-30 value of the asset to the guardian of the estate; or  
 3-31 (b) Set forth in paragraph (b) of subsection ~~2~~ ***1*** of section 7 of  
 3-32 this act, the court may order the person to return the asset or  
 3-33 provide information concerning the location of the asset to the  
 3-34 guardian of the estate.

*The reference to subsection 2 of section 7, should be subsection 1. This change/correction is critical.*

Sec. 57.

....

(g) Whether the proposed guardian has [never] ever been  
19-15 convicted of a felony[.  
19-16 (g)] and, if so, information concerning the crime for which ~~he~~ *the proposed*  
*guardian*  
19-17 was convicted and whether the *proposed* guardian was placed on probation  
19-18 or parole.

*These changes are only to correct reference to " he" and cause consistency to offered language. Change is not critical but is preferable.*

Sec. 103. NRS 159.173 is hereby amended to read as follows:

49-8 159.173 [In case of the sale or other transfer by] If a guardian  
49-9 of the estate [of] sells or transfers any real or personal property that  
49-10 is specifically devised or bequeathed by the ward [who] or which is  
49-11 held by the ward as a joint tenancy, designated as being held by  
49-12 the ward in trust for another person or held by the ward as a  
49-13 revocable trust and the ward was competent to make a will or  
49-14 create the interest at the time ~~he executed the will or created the~~  
49-15 ~~interest when~~ the will or interest was created, but was not  
49-16 competent to make a will or create the interest at the time of the  
49-17 sale or transfer and never executed a valid later will or changed the  
49-18 manner in which he held the interest ~~after removal of the legal~~  
49-19 ~~disability,~~ the devisee , beneficiary or legatee may [at his option]  
49-20 elect to take the proceeds of [such] the sale or other transfer ~~with the~~  
49-21 ~~incidents of a~~ *pursuant to such interest*, specific devise or bequest.

*We believe the deletion of the stricken words is preferable and makes it easier to read.  
We believe that the offered addition is helpful as well.*

**AB 365 Second Set of Changes.**

After having a telephonic conference with the northern and rural practitioners and other interested persons who have reviewed AB 365 we all agree to the following revisions. These revisions are primarily of a housekeeping nature:

20 **Sec. 5.** 1. Except as otherwise provided in subsection 2, the  
2-21 guardian of an estate shall cause an appraisal or valuation of any  
2-22 asset of a guardianship estate to be conducted by a disinterested  
2-23 appraiser, certified public accountant or expert in valuation and  
2-24 file the appraisal or valuation with the court.  
2-25 2. In lieu of an appraisal, the guardian may file a verified  
2-26 record of value of an asset where the value of the asset can be  
2-27 determined with reasonable certainty, including, without

2-28 limitation, *miscellaneous personal property and household goods where the total*  
value does not exceed \$5,000, money, deposits in banks, bonds, policies of life  
2-29 insurance or securities for money, when equal in value to cash.

This proposed addition to Chapter 159 is imported from Chapter 144 (probate code) in an attempt to make Chapter 159 more inclusive in both law and procedure. Currently, the court and practitioners must look to various chapters of the probate code for guidance. The Nevada Supreme Court has recently stated, in an unpublished opinion, that a guardian's reliance on a section of the probate code was misguided. Therefore, it is imperative to make Chapter 159 as all-inclusive as possible. **The recent addition regarding the personal property was important to the rural attorneys due to the expenses and difficulty in obtaining an appraisal.**

**Sec. 10.** If real property of the estate of a ward is sold that is

4-19 subject to a mortgage or other lien which is a valid claim against

4-20 the estate, the money from the sale must be applied in the

4-21 following order:

4-22 1. To pay the necessary expenses of the sale.

4-23 2. To satisfy the mortgage or other lien, including, without

4-24 limitation, payment of interest and any other lawful costs and

4-25 charges. If the mortgagee or other lienholder cannot be found, the

4-26 money from the sale may be paid to the court who shall hold the

4-27 ~~money for the mortgagee or other lienholder~~ *as directed by the court* and the mortgage or

4-28 other lien shall be deemed to be satisfied.

4-29 3. To the estate of the ward, unless the court orders

4-30 otherwise.

This proposed addition to Chapter 159 is imported from Chapter 148 (probate code), specifically 148.060 and 148.080 through 148.400, in an attempt to make Chapter 159 more inclusive in both law and procedure. Currently, the court and practitioners must look to various chapters of the probate code for guidance. The Nevada Supreme Court has recently stated, in an unpublished opinion, that a guardian's reliance on a section of the probate code was misguided. Therefore, it is imperative to make Chapter 159 as all-inclusive as possible. **Also the recent amendment is to address the issue in the rural counties where the Court cannot hold money.**

16-37 **Sec. 49.** NRS 159.019 is hereby amended to read as follows:

16-38 159.019 "Incompetent" means an adult person who, by reason

16-39 of mental illness, mental deficiency, disease, weakness of mind or

16-40 any other cause, is unable, without assistance, properly to manage

16-41 and take care of himself or his property[.], or both. The term

16-42 includes ~~an~~ *a mentally* incapacitated person.

Incompetent and incapacitated are often used interchangeably. The addition of this language allows the same meaning to be given to each term for the purposes of Chapter 159. **New language is to differentiate a mentally incapacitated person from a physically incapacitated person.**

**Changes in 57 are still as set forth previously but add confidentiality.**

- 18-19 **Sec. 57.** NRS 159.044 is hereby amended to read as follows:  
18-20 159.044 1. Except as otherwise provided in NRS 127.045, a  
18-21 proposed ward, a governmental agency, a nonprofit corporation or  
18-22 any [concerned] interested person may petition the court for the  
18-23 appointment of a guardian.  
18-24 2. The petition must state:  
18-25 (a) The name and address of the petitioner.  
18-26 (b) *The* name, [age] date of birth and current address of the  
18-27 proposed ward. [ If he] *and Additionally* one of the following forms of  
18-28 identification of the proposed *ward shall be supplied to the court in a*  
*confidential manner. Such confidential manner shall be the same manner as set forth*  
*in NRS 125.130(3)(b) or as the court determines:*  
18-29 (1) A social security number;  
18-30 (2) A taxpayer identification number;  
18-31 (3) A valid driver's license number;  
18-32 (4) A valid identification card number; or  
18-33 (5) A valid passport number.  
18-34 (c) If the proposed ward is a minor, [the petition must state] the  
18-35 date on which he will attain the age of majority and whether he will  
18-36 need guardianship after attaining the age of majority[.  
18-37 (c)] and:  
18-38 (1) Whether there is a current order concerning custody  
18-39 and the state in which the order was issued; and  
18-40 (2) Whether the petitioner anticipates that a guardian will  
18-41 be necessary for the proposed ward when the proposed ward is no  
18-42 longer a minor.  
18-43 (d) Whether the proposed ward is a resident or nonresident of  
18-44 this state.  
  
19-1 [(d)] (e) The names and addresses, so far as they are known to  
19-2 the petitioner, of the relatives of the proposed ward who are within  
19-3 the second degree[.  
19-4 (e)] of consanguinity or affinity.  
19-  
19-9 (1) A social security number;  
19-10 (2) A taxpayer identification number;  
19-11 (3) A valid driver's license number;  
19-12 (4) A valid identification card number; or

19-13 (5) A valid passport number.  
19-14 (g) Whether the proposed guardian has [never] ever been  
19-15 convicted of a felony[.  
19-16 (g)] and, if so, information concerning the crime for which ~~he~~ ***the proposed***  
***guardian***  
19-17 was convicted and whether the ***proposed*** guardian was placed on probation  
19-18 or parole.  
19-19 (h) A summary of the reasons why a guardian is needed[.  
19-20 (h)] and recent documentation demonstrating the need for a  
19-21 guardianship. The documentation may include, without limitation:  
19-22 (1) A certificate signed by a physician who is licensed to  
19-23 practice medicine in this state stating the need for a guardian;  
19-24 (2) A letter signed by any governmental agency in this state  
19-25 which conducts investigations stating the need for a guardian; or  
19-26 (3) A certificate signed by any other person whom the court  
19-27 finds qualified to execute a certificate stating the need for a  
19-28 guardian.  
19-29 (i) Whether the appointment of a general or a special guardian is  
19-30 sought.  
19-31 [(i)] (j) A general description and the probable value of the  
19-32 property of the proposed ward and any income to which [he]  
19-33 the proposed ward is or will be entitled, if the petition is for the  
19-34 appointment of a guardian of the estate or a special guardian. If any  
19-35 money is paid or is payable to the proposed ward by the United  
19-36 States through the Department of Veterans Affairs, the petition must  
19-37 so state.  
19-38 [(j)] (k) The name and address of any person or [institution]  
19-39 care provider having the care, custody or control of the proposed  
19-40 ward.  
19-41 [(k)] (l) The relationship, if any, of the petitioner to the  
19-42 proposed ward and the interest, if any, of the petitioner in the  
19-43 appointment.  
  
20-1 [(l)] (m) Requests for any of the specific powers set forth in  
20-2 NRS 159.117 to 159.175, inclusive, necessary to enable the  
20-3 guardian to carry out the duties of the guardianship.  
20-4 [(m)] (n) Whether the guardianship is sought as the result of an  
20-5 investigation of a report of abuse or neglect that is conducted  
20-6 pursuant to chapter 432B of NRS by an agency which provides child  
20-7 welfare services. As used in this paragraph, "agency which provides  
20-8 child welfare services" has the meaning ascribed to it in  
20-9 NRS 432B.030.  
20-10 (o) Whether the proposed ward is a party to any pending  
20-11 criminal or civil litigation.  
20-12 (p) Whether the guardianship is sought for the purpose of  
20-13 initiating litigation.

20-14 (q) Whether the proposed ward has executed a durable power  
20-15 of attorney for health care, a durable power of attorney for  
20-16 financial matters or a written nomination of guardian and, if so,  
20-17 who the named agents are for each document.

Changes to section 2(b) and 2(e) are being requested so that the court and investigative authorities can identify and locate wards and guardians. Currently, there is little to no identifying information in a court's files. Unfortunately, it has become common place for a guardian to use issued Letters of Guardianship for inappropriate purposes. Likewise, a guardian may leave the jurisdiction and for location purposes more than a name becomes necessary. The proposed information is intended to be kept in a confidential manner in the same fashion that this information is being kept from public disclosure in divorce and child support proceedings. Each jurisdiction was mandated by Chapter 125 to collect and safe guard identifying information. This proposed change will not impose unduly burdensome requirements on the courts as these safeguards are already statutorily mandated in other NRS chapters.

Section 2(g) requires that supporting documentation actually be filed in the court's file as opposed to being reviewed the judge or commissioner. The necessity of providing documentation from a physician or authorized agency affords more due process protections to the proposed ward.

Section 2(i) requests a disclosure of the possibility of future anticipated assets/income from public benefits, settlements or trusts. This mandatory disclosure will allow the court to be on notice of the need to insure sufficient security (bond, blocking) for future income. The current statute addresses only a disclosure of present assets or income.

Section 2(n) requires the petitioner to provide the court with any known or available custody order affecting a minor. Requiring evidence of such an order assists the court in determining jurisdictional matters as well as notification requirements.

Section 2(o) assists the court in determining the possibility of future assets/income. Additionally, the court can insure that conflicting orders regarding who has the authority to pursue claims or cause of action are not issued. For instance, a court appointed guardian may represent to third parties that they have the power to negotiate claims on behalf of an incapacitated person while at the same time there is a different person appointed guardian ad litem in the pending civil action. A specifically appointed GAL would have the superior authority.

Section 2(p) assists the court in determining whether the proposed ward had executed documents that contemplated the avoidance of guardianship

proceedings and probate proceedings. Likewise, these documents may provide the Court with valuable information regarding who the proposed ward nominated to act on his or her behalf during a period of their life when they were more capable of expressing wishes regarding future incompetency.

**The recent additions set forth a manner that is intended to protect the confidential information in the same manner as in domestic cases.**

23-6 **Sec. 62.** NRS 159.0485 is hereby amended to read as follows:  
23-7 159.0485 1. If an adult ward or proposed adult ward is unable  
23-8 to retain legal counsel and requests the appointment of counsel, at  
23-9 any stage of a proceeding for guardianship and whether or not [he]  
23-10 the adult ward or proposed adult ward lacks or appears to lack  
23-11 capacity, the court shall, at or before the time of the next hearing,  
23-12 appoint an attorney who works for legal aid services, if available, or  
23-13 a private attorney to represent [him. The attorney's fees ~~must~~ *may* be  
23-14 paid from the estate of the ward or proposed ward to the extent  
23-15 possible.] the adult ward or proposed adult ward. The appointed  
23-16 attorney must represent the adult ward or proposed adult ward  
23-17 until relieved of the duty by court order.  
23-18 2. The attorney for the adult ward or proposed adult ward is  
23-19 entitled to reasonable compensation from the estate of the adult  
23-20 ward or proposed adult ward. If the court finds that a person has  
23-21 unnecessarily or unreasonably caused the appointment of an  
23-22 attorney, the court may order the person to pay to the estate of the  
23-23 adult ward or proposed adult ward all or part of the expenses  
23-24 associated with the appointment of the attorney.

The proposed change incorporates a payment mechanism as well as defines the length of service of the attorney. The latest addition allows the court discretion to pay attorneys fees.

6 **Sec. 72.** NRS 159.061 is hereby amended to read as follows:  
32-7 159.061 1. The parents of a minor, or either parent, if  
32-8 qualified and suitable, are preferred over all others for appointment  
32-9 as guardian for the minor. The appointment of a parent as a  
32-10 guardian of the person must not conflict with a valid order for  
32-11 custody of the minor. In determining whether the parents of a  
32-12 minor, or either parent, is qualified and suitable, the court shall  
32-13 consider, without limitation:  
32-14 (a) Which parent has physical custody of the minor;  
32-15 (b) The ability of the parents or parent to provide for the basic  
32-16 needs of the child, including, without limitation, food, shelter,  
32-17 clothing and medical care;  
32-18 (c) Whether the parents or parent has engaged in the habitual use



32-19 of alcohol or any controlled substance during the previous 6 months,  
32-20 except the use of marijuana in accordance with the provisions of  
32-21 chapter 453A of NRS; and

32-22 (d) Whether the parents or parent has been convicted of a crime  
32-23 of moral turpitude, a crime involving domestic violence or a crime  
32-24 involving the exploitation of a child.

32-25 2. Subject to the preference set forth in subsection 1, the court  
32-26 shall appoint as guardian for an incompetent, a person of limited  
32-27 capacity or minor the qualified person who is most suitable and is  
32-28 willing to serve.

32-29 3. In determining who is most suitable, the court shall give  
32-30 consideration, among other factors, to:

32-31 (a) Any request for the appointment as guardian for an  
32-32 incompetent contained in a written instrument executed by the  
32-33 incompetent while competent.

32-34 (b) Any nomination of a guardian for an incompetent, minor or  
32-35 person of limited capacity contained in a will or other written  
32-36 instrument executed by a parent or spouse of the proposed ward.

32-37 (c) Any request for the appointment as guardian for a minor 14  
32-38 years of age or older made by the minor.

32-39 (d) The relationship by blood, adoption or marriage of the  
32-40 proposed guardian to the proposed ward. In considering  
32-41 preferences of appointment, the court ~~shall~~ *may* consider relatives of  
32-42 the half blood equally with those of the whole blood. The court  
32-43 shall consider relatives in the following order of preference:

32-44 (1) Spouse.

32-45 (2) Adult child.

33-1 (3) Parent.

33-2 (4) Adult sibling.

33-3 (5) Grandparent or adult grandchild.

33-4 (6) Uncle, aunt, adult niece or adult nephew.

33-5 (e) *Any other interested person that the Court deems appropriate.*

(f) Any recommendation made by a master of the court or

33-6 special master pursuant to NRS 159.0615.

33-7 4. If the court finds that there is no suitable person *pursuant to subsection 3* to  
33-8 appoint

33-8 as guardian ~~who is related by blood, adoption or marriage or who~~

33-9 ~~is nominated in a written instrument~~, the court shall appoint as

33-10 guardian:

33-11 (a) The public guardian of the county where the ward resides,  
33-12 if:

33-13 (1) There is a public guardian in the county where the ward  
33-14 resides; and

33-15 (2) The proposed ward qualifies for a public guardian

33-16 pursuant to chapter 253 of NRS; *or*

- 33-17 (b) A private fiduciary who may obtain a bond in this state and  
33-18 who is located in the county where the ward resides, if:  
33-19 (1) There is not a public guardian in the county where the  
33-20 ward resides;  
33-21 (2) The proposed ward does not qualify for a public  
33-22 guardian; or  
33-23 (3) The court finds that the interests of the ward will not be  
33-24 served appropriately by the appointment of a public guardian.

The addition in section 1, addresses the need to look at valid custody orders when attempting to appoint a guardian of a minor. A fit and appropriate parent has priority and recognized legal rights to care for his or her child. When this addition is read in conjunction with NRS 159.041, there should be a UCCJA telephone conference with the other court if there is or appears to be a valid custody order.

The addition of (3)(d) through (f) defines a hierarchy of preferences in appointment if there are competing petitions for appointment. Also gives court ability to appoint other interested person. That is an issue in Washoe and the rurals.

- 42-10 **Sec. 93.** NRS 159.113 is hereby amended to read as follows:  
42-11 159.113 1. At any time after [his appointment,] the  
42-12 ~~appointment of the guardian of the estate,~~ the guardian, *prior to taking any of the*  
42-13 *following actions shall, may*  
42-13 petition the court for an order authorizing the guardian to:  
42-14 (a) Invest the property of the ward.  
42-15 (b) Continue the business of the ward.  
42-16 (c) Borrow money for the ward.  
42-17 (d) *Except as to necessary expenses of the Ward's care as set forth in NRS*  
42-18 *159.079, Enter* into contracts for the ward or complete the  
42-18 performance of contracts of the ward.  
42-19 (e) Make gifts from the ward's estate or make expenditures for  
42-20 the ward's relatives.  
42-21 (f) Sell, lease, place into any type of trust or surrender any  
42-22 property of the ward.  
42-23 (g) Exchange or partition the ward's property.  
42-24 (h) Obtain advice, instructions and approval of any other  
42-25 proposed act of the guardian relating to the ward's property.  
42-26 (i) Release the power of the ward as trustee, personal  
42-27 representative, custodian for a minor or guardian.  
42-28 (j) Exercise or release the power of the ward as a donee of a  
42-29 power of appointment.  
42-30 (k) Change the state of residence or domicile of the ward.  
42-31 (l) Make or change the last will and testament of the ward.

42-32 (m) Make or change the designation of a beneficiary in a will,  
42-33 trust, insurance policy, bank account or any other type of asset of  
42-34 the ward which includes the designation of a beneficiary.

42-35 (n) Exercise the right of the ward to take under or against a  
42-36 will.

42-37 (o) Create for the benefit of the ward or others a revocable or  
42-38 irrevocable trust of the property of the estate.

42-39 (p) Transfer to a trust created by the ward any property  
42-40 unintentionally omitted from the trust.

42-41 (q) Submit a trust to the jurisdiction of the court if the ward is  
42-42 the grantor and sole beneficiary of the income of the trust.

42-43 (r) Except as otherwise provided in this paragraph, exercise  
42-44 the right of the ward to revoke or modify a revocable trust or to  
42-45 surrender the right to revoke or modify a revocable trust. The

43-1 court shall not authorize or require the guardian to exercise the  
43-2 right to revoke or modify a revocable trust if the instrument  
43-3 governing the trust:

43-4 (1) Evidences an intent of the ward to reserve the right of  
43-5 revocation or modification exclusively to the ward;

43-6 (2) Provides expressly that a guardian may not revoke or  
43-7 modify the trust; or

43-8 (3) Otherwise evidences an intent that would be  
43-9 inconsistent with authorizing or requiring the guardian to exercise  
43-10 the right to revoke or modify the trust.

43-11 (s) Take any other action which the guardian deems would be  
43-12 in the best interests of the ward.

43-13 2. The petition must be signed by the guardian and contain:

43-14 (a) The name, age, residence and address of the ward.

43-15 (b) A concise statement as to the condition of the ward's estate.

43-16 (c) A concise statement as to the advantage to the ward of or the  
43-17 necessity for the proposed action.

43-18 (d) The terms and conditions of any proposed sale, lease,  
43-19 partition, trust, exchange or investment, and a specific description of  
43-20 any property involved.

43-21 3. Any of the matters set forth in subsection 1 may be  
43-22 consolidated in one petition, and the court may enter one order  
43-23 authorizing or directing the guardian to do one or more of those acts.

43-24 4. A petition filed pursuant to paragraphs (b) and (d) of  
43-25 subsection 1 may be consolidated in and filed with the petition for  
43-26 the appointment of the guardian, and if the guardian is appointed the  
43-27 court may enter additional orders authorizing the guardian to  
43-28 continue the business of the ward, enter contracts for the ward, or to  
43-29 complete contracts of the ward.

Section 1(l) allows a guardian to make or change a will. **Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries. Appropriate medical evaluations and court hearings will be necessary to insure that the ward possesses the requisite level of capacity to formulate beneficiaries.**

Section 1(m) allows a guardian to change beneficiary designations on assets. **Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries. Appropriate medical evaluations and court hearings will be necessary to insure that the ward possesses the requisite level of capacity to formulate beneficiaries.**

Section 1(n) allows a guardian, with the permission of the court, to take under or against a will if it is in the best interests of the ward.

Section 1(o) attempts to permit the guardian of an estate to create a trust, with the permission of the court. **Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries. Appropriate medical evaluations and court hearings will be necessary to insure that the ward possesses the requisite level of capacity to formulate beneficiaries. Otherwise, it would be suggested that intestate succession of beneficiaries be incorporated into the document.**

Section 1(p) permits a guardian, with the permission of the court, to deposit assets into an already established trust if it appears appropriate.

Section 1 (q) allows the guardianship court to assume jurisdiction under a grantor trust (created by the ward) or a trust wherein the ward is the sole beneficiary. In counties where there is a family court which is separate from the general civil court, there have been issues regarding which court has appropriate jurisdiction in such situations. In an attempt to keep all related matters together for ease of administration, cost and consistency, a specific statute is warranted.

Section 1(r) allows a guardian to revoke or modify a trust with sufficient cause unless the instrument specifically forbids it. **Please note: this statute is needed in order to deal with Medicaid planning requirements. Often a house must be deeded out of a trust in order to preserve the asset for a non-institutionalized spouse under 42 U.S.C. 1396, et al.**

**NOTE: All or part of these proposed sections are in response to a case wherein a judicially determined exploiter who had an outstanding judgment against him or her ultimately inherited the remainder of the**

*ward's estate because of documents that were not able to be revoked or invalidated due to the untimely death of the ward. The guardianship court was without jurisdiction upon the ward's death and the judicially determined exploiter was nominated as the executrix of the ward's estate. The current state of the statutes requires undue influence or exploitation to be proven before a will/trust or other planning document can be found invalid. Upon this finding, there will usually not be another document on which the court can rely; therefore, most assets will pass by intestate succession or escheat to the State. Additionally, Medicaid planning has warranted some of these needed changes*

*Finally, the most recent additions were agreed to by the North, South and Rurals in an attempt to make it clear that these acts need court approval.*

49-7 **Sec. 103.** NRS 159.173 is hereby amended to read as follows:  
49-8 159.173 [In case of the sale or other transfer by] If a guardian  
49-9 of the estate [of] sells or transfers any real or personal property that  
49-10 is specifically devised or bequeathed by the ward [who] or which is  
49-11 held by the ward as a joint tenancy, designated as being held by  
49-12 the ward in trust for another person or held by the ward as a  
49-13 revocable trust and the ward was competent to make a will or  
49-14 create the interest at the time ~~he executed the will or created the~~  
49-15 ~~interest when the will or interest was created, but was not~~  
49-16 competent to make a will or create the interest at the time of the  
49-17 sale or transfer and never executed a valid later will or changed the  
49-18 manner in which ~~he~~ *the Ward* held the interest ~~after removal of the legal~~  
49-19 ~~disability,~~ the devisee , beneficiary or legatee may [at his option]  
49-20 elect to take the proceeds of [such] the sale or other transfer ~~with the~~  
49-21 ~~incidents of a~~ *pursuant to such interest*, specific devise or bequest.

This proposed addition to Chapter 159 allows the court to restore the Ward's asset planning and/or beneficiary designation. For instance, if stock is payable on death, but liquidated and the funds deposited into a bank account, upon the termination of the guardianship, the previously designated beneficiary can elect to take the proceeds in the bank account in lieu of the stock. The restoration negates ademption (the disposal of assets with a testamentary designation).

The latest change gets rid of the gender issue and clarifies language.

### AB 365 3<sup>rd</sup> Set of Changes 3/26 Changes

**Sec. 5** 2. In lieu of an appraisal, the guardian may file a verified record of value of an asset where the value of the asset can be determined with reasonable certainty, including,

without limitation, *miscellaneous personal property and household goods where the total value does not exceed \$5,000*, money, deposits in banks, bonds, policies of life insurance or securities for money, when equal in value to cash. *With regard to real property, the county assessor's tax value may be used; however, if the real property is to be sold an appraisal is necessary.*

**The recent addition regarding the personal property was important to the rural attorneys due to the expenses and difficulty in obtaining an appraisal. The final addition added 3/26 is to allow assessed value to be used if no sale is being pursued. This was important to the rurals.**

**Sec. 23** 2. If the amount realized on the resale of the property is insufficient to ~~cover the pay for the expenses related to the offer or~~ bid and the expenses of the previous sale, the original purchaser is liable to the estate of the ward for the deficiency.

**The recent change dated 3/26 is to make the statute better track to 148.300. It clarified what the defaulting purchaser is liable for.**

**Sec. 47** In addition to any order from which an appeal is expressly authorized pursuant to this chapter, an appeal may be taken to the Supreme Court within 30 days after its *notice of* entry from an order:

**“notice of” was added 3/26 to make it clear that it is the notice of entry of Order that triggers appeal period.**

**Sec. 54** 6. Guardians ad litem ~~to act in the best interests of the ward.~~

**Line 17-38 recent change (3/26) to accommodate issue about the standard being confusing and superfluous.**

**Sec. 57** 2. (b) *The name, [age] date of birth and current address of the proposed ward. [ If he] and Additionally one of the following forms of identification of the proposed ward shall be supplied to the court in a confidential manner. Such confidential manner shall be the same manner as set forth in NRS 125.130(3)(b) or as the court determines:*

- (1) A social security number;
- (2) A taxpayer identification number;
- (3) A valid driver's license number;
- (4) A valid identification card number; or
- (5) A valid passport number.

*To the extent that such information is not provided at the time of the filing of the Petition, it must be provided to the court not later than 60 days after the appointment of a guardian or as otherwise directed by the court.*

**Sec. 57** 2. [(d)] (e) The names and addresses, so far as they are known to the petitioner, of *the spouse of the ward*, the relatives of the proposed ward who are within the second degree [(e)] of consanguinity ~~or affinity~~.

**Additional changes were made to lines 18-24 through 18-23 to take into account when that information is not available, i.e., the proposed ward is being sequestered or the petitioner does not have access to such information until appointed. Also new changes at 19-1 through 19-4 are to clarify that the Ward's in laws are not needed to be included just the spouse. It was pointed out that the word affinity preceded by second degree of consanguinity was confusing and could lead to an interpretation to include in laws. That was not the intent.**

**Sec. 59** 2.(b) (2) *The spouse of the Ward or who are w*Within the second degree of consanguinity ~~or affinity~~;

(c) Upon the parent or legal guardian of all known relatives of the proposed ward who are:

(1) Less than 14 years of age; and

(2) *The spouse of the Ward or who are w*Within the second degree of consanguinity ~~or affinity~~;;

(d) *If there is no spouse of the ward and there* are no known relatives of the proposed ward who are within the second degree of consanguinity ~~or affinity~~ to the proposed ward, upon the office of the public guardian of the county where the proposed ward resides; and

**It was pointed out that the use of the word affinity preceded by second degree of consanguinity was confusing and made it appear that in-laws were to be noticed. That was not the intent. The intent was to notice spouses. So the language has been clarified (3/26), see 21-19 through 21-23.**

**Sec. 62** 2. *Subject to court approval, t*The attorney for the adult ward or proposed adult ward is entitled to reasonable compensation from the estate of the adult ward or proposed adult ward. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney.

**The latest addition allows the court discretion to permit pay attorneys fees, as such it also allows the court discretion to determine the appropriate amount of such fees (3/26).**

**Secs. 64, 65 and 66**

~~8. If notice is given by publication pursuant to N.R.C.P. 4(e), 25-24 the temporary guardian may request to extend the temporary 25-25 guardianship for not more than 30 days during the period for 25-26 publication, but may not be granted more than two extensions. A temporary guardianship may be extended for up to 2 additional 30 day periods for good cause shown.~~

**Recent change at 25-26(3/26) is due to request of rurals and Washoe Senior Law Project to have more flexibility in obtaining an extension.**

**Sec. 71 5.(c) ~~Has not caused the appointment of the guardian to be filed in the guardianship proceeding. Is not a Petitioner.~~**

6. Has been judicially determined, by clear and convincing evidence, to have committed abuse, neglect or exploitation of a child, spouse, parent or other adult[.], *unless the court finds that it is in the best interests of the ward to appoint such person as the guardian of the ward.*
- 7.

**3/26 changes to 32-1 through 32-5 clarify the meaning behind 5(c) as it was pointed out that the language is confusing, as it presently exists and to allow the court the same discretion that it is going to now be afforded as to felons with regard to persons found responsible for abuse, neglect and/or exploitation.**

**Sec. 72 3. (d) The relationship by blood, adoption or marriage of the proposed guardian to the proposed ward. In considering preferences of appointment, the court ~~shall~~ may consider relatives of the half blood equally with those of the whole blood. The court ~~shall~~ may consider relatives in the following order of preference:**

**4. (b) A private fiduciary who may obtain a bond in this state and who *is a resident of this state* ~~located the county where the ward resides~~, if:**

**The recent changes (3/26) were to address the familial preference as a may not shall and to address that it is conceivable that the private fiduciary may not live in the same county. This will allow greater flexibility especially in the rural counties without jeopardizing jurisdiction (3/26).**



Sec. 93      **Sec. 93.** NRS 159.113 is hereby amended to read as follows:159.113 1.  
At any time after [his appointment,] ~~the appointment of the guardian of the estate,~~ the guardian *prior to taking any of the following actions shall* ~~may~~ petition the court for an order authorizing the guardian to:

- (a) Invest the property of the ward.
- (b) Continue the business of the ward.
- (c) Borrow money for the ward.
- (d) *Except as to necessary expenses of the Ward's care as set forth in NRS 159.079,* Enter into contracts for the ward or complete the performance of contracts of the ward.
- (e) Make gifts from the ward's estate or make expenditures for the ward's relatives.
- (f) Sell, lease, place into any type of trust or surrender any property of the ward.
- (g) Exchange or partition the ward's property.
- (h) Obtain advice, instructions and approval of any other proposed act of the guardian relating to the ward's property.
- (i) Release the power of the ward as trustee, personal representative, custodian for a minor or guardian.
- (j) Exercise or release the power of the ward as a donee of a power of appointment.
- (k) Change the state of residence or domicile of the ward.
- ~~(l) Make or change the last will and testament of the ward.~~
- ~~(m) Make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the ward which includes the designation of a beneficiary.~~
- (n) Exercise the right of the ward to take under or against a will.
- ~~(o) Create for the benefit of the ward or others a revocable or irrevocable trust of the property of the estate.~~
- (p) Transfer to a trust created by the ward any property unintentionally omitted from the trust.
- (q) Submit a *revocable* trust to the jurisdiction of the court if the ward *and/or the ward's spouse* is the grantor and *the ward and or the ward's spouse are the sole beneficiaries* of the income of the trust *or it is a court created trust.*
- ~~(r) Except as otherwise provided in this paragraph, exercise the right of the ward to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:
  - ~~(1) Evidences an intent of the ward to reserve the right of revocation or modification exclusively to the ward;~~
  - ~~(2) Provides expressly that a guardian may not revoke or modify the trust; or~~
  - ~~(3) Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.~~~~

(s) Take any other action which the guardian deems would be in the best interests of the ward.

2. *Prior to taking any of the following actions and after the guardian has proved to the court by clear and convincing evidence that the ward, if competent, would actually, or as a reasonably prudent person, have taken the proposed action, the court may enter an order granting the guardian the right and power to take any of the following actions:*

(a) *Make or change the last will and testament of the ward.*

(b) *Make or change the designation of a beneficiary in a will, trust, insurance policy, bank account or any other type of asset of the ward which includes the designation of a beneficiary.*

(c) *Create for the benefit of the ward or others a revocable or irrevocable trust of the property of the estate*

(d) *Exercise the right of the ward to revoke or modify a revocable trust or to surrender the right to revoke or modify a revocable trust. The court shall not authorize or require the guardian to exercise the right to revoke or modify a revocable trust if the instrument governing the trust:*

(1) *Evidences an intent of the ward to reserve the right of revocation or modification exclusively to the ward;*

(2) *Provides expressly that a guardian may not revoke or modify the trust; or*

(3) *Otherwise evidences an intent that would be inconsistent with authorizing or requiring the guardian to exercise the right to revoke or modify the trust.*

2. 3.

3. 4.

4. 5.

Section 2(a) allows a guardian to make or change a will. **Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries unless the court finds clear and convincing evidence to support the same.**

Section 2(b) allows a guardian to change beneficiary designations on assets. **Please note: it is not the intent to allow a guardian to use substituted judgment to designate beneficiaries, unless the court finds clear and convincing evidence to support the same.**

Section 1(n) allows a guardian, with the permission of the court, to take under or against a will if it is in the best interests of the ward **Note this section will need to be renumbered..**

Section 2(c) attempts to permit the guardian of an estate to create a trust, with the permission of the court. **Please note: it is not the intent to**

**allow a guardian to use substituted judgment to designate beneficiaries, unless the court finds clear and convincing evidence to support the same. Otherwise, it would be suggested that intestate succession of beneficiaries be incorporated into the document.**

**Section 1(p) permits a guardian, with the permission of the court, to deposit assets into an already established trust if it appears appropriate. Note this section will need to be renumbered.**

**Section 1 (q) allows the guardianship court to assume jurisdiction under a grantor trust (created by the ward) or a trust wherein the ward is the sole beneficiary. In counties where there is a family court which is separate from the general civil court, there have been issues regarding which court has appropriate jurisdiction in such situations. In an attempt to keep all related matters together for ease of administration, cost and consistency, a specific statute is warranted. Note this section will need to be renumbered.**

**Section 2(d) allows a guardian to revoke or modify a trust with sufficient cause unless the instrument specifically forbids it. Please note: this statute is needed in order to deal with Medicaid planning requirements. Again this section involves substituted judgment after a finding of clear and convincing evidence by the court supporting the need for the change. Often a house must be deeded out of a trust in order to preserve the asset for a non-institutionalized spouse under 42 U.S.C. 1396, et al.**

***NOTE: All or part of these proposed sections are in response to a case wherein a judicially determined exploiter who had an outstanding judgment against him or her ultimately inherited the remainder of the ward's estate because of documents that were not able to be revoked or invalidated due to the untimely death of the ward. The guardianship court was without jurisdiction upon the ward's death and the judicially determined exploiter was nominated as the executrix of the ward's estate. The current state of the statutes requires undue influence or exploitation to be proven before a will/trust or other planning document can be found invalid. Upon this finding, there will usually not be another document on which the court can rely; therefore, most assets will pass by intestate succession or escheat to the State. Additionally, Medicaid planning has warranted some of these needed change.***

**The Most recent changes separating 1 and 2 will make it clear that certain Petitions will require a different burden of proof (3/26). Note this whole Section needs to be renumbered.**

Sec. 94 3. (b) The *ward's spouse and* heirs [at law and next of kin,] of the ward who are related within the second degree of consanguinity ~~or affinity~~ so far as known to the petitioner . [, of the ward.]

**Also new changes at 44-17 and 44-18 are to clarify that the Ward's in laws are not needed to be included just the spouse. It was pointed out that the word affinity preceded by second degree of consanguinity was confusing and could lead to an interpretation to include in laws. That was not the intent..**

Sec. 95 4. A guardian of the estate may maintain the assets of the 45-29 ward in the manner in which the ward had invested the assets 45-30 before ~~his~~ *the ward's* incapacity

**The recent change 3/26 was added/deleted as there was a concern that the ward could be injured by the Guardian not taking steps to get investments under control, also to make gender neutral.**

#### **New Section**

**Sec. 121 NRS 159.026 "Special Guardian" defined. "Special Guardian" means a guardian of a person of limited capacity ~~or one who is appointed as a result of a voluntary petition by a person of limited abilities, who has the requisite capacity to make such a voluntary petition.~~**

**This Section was added 3/26 to address desire of many to allow a person of limited abilities to request a guardian.**

Jennifer and I are hopeful that these corrections/changes may be made. If you have any questions, please do not hesitate to contact Jennifer Henry at 455-6767 or me (Dara Goldsmith) at 873-9500.

ASSEMBLY BILL NO. 365-ASSEMBLYMEN BUCKLEY, HORNE, CONKLIN, OHRENSCHALL,  
ANDERSON, CARPENTER, CLABORN, MORTENSON AND OCEGUERA (BY REQUEST)

March 17, 2003

Referred to Committee on Judiciary

SUMMARY— Makes various changes to provisions regarding guardianship. (BDR 13&#8209; 953)

SCAL NOTE: Effect on Local Government: Yes.  
Effect on the State: No.

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

Green numbers along left margin indicate location on the printed bill (e.g., 5-15 indicates page 5, line 15).

=====

AN ACT relating to guardianship; making various changes to provisions regarding guardianship; providing penalties; and providing other matters properly relating thereto.

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

Note the draft sent last night included changes in a deleted section. So use this Sec. 62.

6 Sec. 62. NRS 159.0485 is hereby amended to read as follows:

7 159.0485 1. If an adult ward or proposed adult ward is unable  
8 to retain legal counsel and requests the appointment of counsel, at  
9 any stage of a proceeding for guardianship and whether or not [he]  
10 the adult ward or proposed adult ward lacks or appears to lack  
11 capacity, the court shall, at or before the time of the next hearing,  
12 appoint an attorney who works for legal aid services, if available, or  
13 a private attorney to represent [him. The attorney's fees must be  
14 paid from the estate of the ward or proposed ward to the extent  
15 possible.] the adult ward or proposed adult ward. The appointed  
16 attorney must represent the adult ward or proposed adult ward  
17 until relieved of the duty by court order.

18 2. *Subject to court approval*, ~~t~~The attorney for the adult ward or proposed adult ward is  
19 entitled to reasonable compensation from the estate of the adult  
20 ward or proposed adult ward. If the court finds that a person has  
21 unnecessarily or unreasonably caused the appointment of an  
22 attorney, the court may order the person to pay to the estate of the  
23 adult ward or proposed adult ward all or part of the expenses  
24 associated with the appointment of the attorney.

The proposed change incorporates a payment mechanism as well as defines the length of service of the attorney. The latest addition allows the court discretion to pay attorneys fees (3/26).

58-28 H