
ASSEMBLY BILL NO. 273—COMMITTEE ON JUDICIARY

(ON BEHALF OF LEGISLATIVE COMMITTEE ON CHILDREN,
YOUTH AND FAMILIES (NRS 218.53723))

MARCH 11, 2003

Referred to Committee on Judiciary

SUMMARY—Establishes procedures for permanently placing an abused or neglected child with a guardian. (BDR 38-688)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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

AN ACT relating to the protection of children; establishing procedures for permanently placing an abused or neglected child with a guardian; and providing other matters properly relating thereto.

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

- 1 **Section 1.** 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
4 provides child welfare services, such an agency may petition for
5 appointment as guardian of the person and estate of the child in the
6 manner provided by chapter 159 *or 432B* of NRS.
7 2. The clerk of the district court, county clerk, county recorder
8 or other county officer shall not require the payment of any fees or
9 charges by the agency which provides child welfare services for
10 appointment as guardian pursuant to this section, and the district
11 court shall waive the furnishing of a bond by the agency which
12 provides child welfare services if it is appointed guardian.



1 3. Except as otherwise provided in this section, the agency
2 which provides child welfare services shall comply with all
3 applicable provisions of chapter 159 *or 432B* of NRS.

4 **Sec. 2.** Chapter 432B of NRS is hereby amended by adding
5 thereto the provisions set forth as sections 3 to 7, inclusive, of this
6 act.

7 **Sec. 3. 1.** *If the plan for the permanent placement of a*
8 *child adopted pursuant to NRS 432B.553 includes a request for*
9 *the appointment of a guardian for the child pursuant to sections 4*
10 *to 7, inclusive, of this act, the agency that adopted the plan may*
11 *petition the court for the appointment of a guardian. The guardian*
12 *may be appointed at a hearing conducted pursuant to NRS*
13 *432B.590 or at a separate hearing.*

14 2. A petition for the appointment of a guardian pursuant to
15 this section:

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

18 (b) *Must include the information required pursuant to NRS*
19 *159.044; and*

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

23 3. *In addition to the notice required pursuant to NRS*
24 *432B.590, an agency that files a petition for the appointment of a*
25 *guardian must serve notice of the petition that includes a copy of*
26 *the petition and the date, time and location of the hearing on the*
27 *petition, by registered or certified mail or by personal service:*

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

32 (b) *At least 10 days before the hearing on the petition.*

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

36 (a) *The court finds:*

37 (1) *That the child is in need of protection;*

38 (2) *That adoption of the child is not appropriate or is not*
39 *likely to occur and that termination of parental rights would not*
40 *be in the best interests of the child;*

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

43 (4) *That the child has been in the custody of the proposed*
44 *guardian for 6 months or more pursuant to a determination by a*



1 *court that the child was in need of protection, unless the court*
2 *waives this requirement for good cause shown;*
3 *(5) If the child is in the custody of an agency which*
4 *provides child welfare services, that the agency has made*
5 *reasonable efforts to preserve and reunify the family of the child*
6 *pursuant to NRS 432B.393, unless the agency is not required to*
7 *make such reasonable efforts pursuant to NRS 432B.393 or the*
8 *court determines that such reunification of the family would not*
9 *be in the best interests of the child because a parent of*
10 *the child is unwilling or unable to properly care for the child;*
11 *(6) That the proposed guardian has complied with the*
12 *requirements of chapter 159 of NRS; and*
13 *(7) That it is in the best interests of the child to appoint the*
14 *proposed guardian as the guardian of the child;*
15 *(b) The child consents to the guardianship, if the child is 14*
16 *years of age or older; and*
17 *(c) The court determines that the requirements for filing a*
18 *petition pursuant to section 3 of this act have been satisfied.*
19 **2. A guardianship established pursuant to this section:**
20 *(a) Provides the guardian with the powers and duties provided*
21 *in NRS 159.079, and subjects the guardian to the limitations set*
22 *forth in NRS 159.0805;*
23 *(b) Is subject to the provisions of NRS 159.065 to 159.075,*
24 *inclusive, and 159.185 to 159.201, inclusive;*
25 *(c) Provides the guardian with sole legal and physical custody*
26 *of the child and terminates the rights of all other persons to legal*
27 *or physical custody of the child;*
28 *(d) Does not result in the termination of parental rights of a*
29 *parent of the child; and*
30 *(e) Does not affect any rights of the child to inheritance, a*
31 *succession or any services or benefits provided by the Federal*
32 *Government, this state or an agency or political subdivision of this*
33 *state.*
34 **Sec. 5. 1. In determining whether to grant a petition for the**
35 **appointment of a guardian filed pursuant to section 3 of this act,**
36 **the court may consider all relevant and material evidence that is**
37 **admissible pursuant to this chapter, including, without limitation,**
38 **any report submitted by a special advocate appointed as a**
39 **guardian ad litem for the child pursuant to NRS 432B.500.**
40 **2. If a court appoints a guardian for a child pursuant to**
41 **section 4 of this act, the court may order a reasonable right of**
42 **visitation to any person whose right to custody or visitation of the**
43 **child was terminated as a result of the appointment of the**
44 **guardian if the court finds that the visitation is in the best interests**
45 **of the child.**



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

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

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

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

11 (a) *The agency that petitioned for the appointment of the*
12 *guardian; and*

13 (b) *Any counsel or guardian ad litem appointed by the court to*
14 *assist in the proceedings conducted pursuant to NRS 432B.410 to*
15 *432B.590, inclusive, and sections 3 to 7, inclusive, of this act.*

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

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

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

28 4. *A successor guardian may be appointed in accordance with*
29 *the procedures set forth in chapter 159 of NRS.*

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

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

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

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

37 3. In any proceeding held pursuant to NRS 432B.410 to
38 432B.590, inclusive **[H]**, *and sections 3 to 7, inclusive, of this act.*

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

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



1 attorney to represent him. The court may, if it finds it appropriate,
2 appoint an attorney to represent the child. The child may be
3 represented by an attorney at all stages of any proceedings held
4 pursuant to NRS 432B.410 to 432B.590, inclusive ~~§~~, *and sections*
5 *3 to 7, inclusive, of this act.* If the child is represented by an
6 attorney, the attorney has the same authority and rights as an
7 attorney representing a party to the proceedings.

8 2. If the court determines that the parent of an Indian child for
9 whom protective custody is sought is indigent, the court:

- 10 (a) Shall appoint an attorney to represent the parent;
- 11 (b) May appoint an attorney to represent the Indian child; and
- 12 (c) May apply to the Secretary of the Interior for the payment of
13 the fees and expenses of such an attorney,
14 as provided in the Indian Child Welfare Act.

15 3. Each attorney, other than a public defender, if appointed
16 under the provisions of subsection 1, is entitled to the same
17 compensation and payment for expenses from the county as
18 provided in NRS 7.125 and 7.135 for an attorney appointed to
19 represent a person charged with a crime. Except as otherwise
20 provided in NRS 432B.500, an attorney appointed to represent a
21 child may also be appointed as guardian ad litem for the child. He
22 may not receive any compensation for his services as a guardian ad
23 litem.

24 **Sec. 10.** NRS 432B.430 is hereby amended to read as follows:
25 432B.430 Except as otherwise provided in NRS 432B.457,
26 only those persons having a direct interest in the case, as ordered by
27 the judge or master, may be admitted to any proceeding held
28 pursuant to NRS 432B.410 to 432B.590, inclusive ~~§~~, *and sections*
29 *3 to 7, inclusive, of this act.*

30 **Sec. 11.** NRS 432B.440 is hereby amended to read as follows:
31 432B.440 The agency which provides child welfare services
32 shall assist the court during all stages of any proceeding in
33 accordance with NRS 432B.410 to 432B.590, inclusive ~~§~~, *and*
34 *sections 3 to 7, inclusive, of this act.*

35 **Sec. 12.** NRS 432B.450 is hereby amended to read as follows:
36 432B.450 In any civil proceeding had pursuant to NRS
37 432B.410 to 432B.590, inclusive, *and sections 3 to 7, inclusive, of*
38 *this act,* if there is expert testimony that a physical or mental injury
39 of a child would ordinarily not be sustained or a condition not exist
40 without either negligence or a deliberate but unreasonable act or
41 failure to act by the person responsible for his welfare, the court
42 shall find that the child is in need of protection unless that testimony
43 is rebutted.



1 **Sec. 13.** NRS 432B.459 is hereby amended to read as follows:
2 432B.459 1. If a proceeding held pursuant to NRS 432B.410
3 to 432B.590, inclusive, *and sections 3 to 7, inclusive, of this act* is
4 recorded using sound recording equipment or is transcribed, the
5 clerk of the court shall, upon request, provide to a parent or guardian
6 of the child who is the subject of the proceeding and the attorney of
7 the parent or guardian a copy of the sound recording or transcript of
8 the proceeding if:

9 (a) Such a copy is available or could be made available; and
10 (b) The parent or guardian or the county in which the proceeding
11 is held, as appropriate, pays the fee for the copy in accordance with
12 subsection 2.

13 2. Each board of county commissioners shall adopt a sliding
14 scale for determining the amount to be paid for a copy of a sound
15 recording or transcript of a proceeding pursuant to subsection 1 for a
16 proceeding that was held in a court in its county. The sliding scale
17 must be based on the ability of the parent or guardian to pay. The
18 court shall review each case and make a finding as to the
19 reasonableness of the charge in relation to the ability of the parent or
20 guardian to pay. To the extent that the court determines that a parent
21 or guardian is unable to pay for a copy of the recording or transcript
22 pursuant to subsection 1, the cost of providing the copy of the sound
23 recording or transcript is a charge against the county in which the
24 proceeding was held.

25 **Sec. 14.** NRS 432B.513 is hereby amended to read as follows:

26 432B.513 1. Except as otherwise provided in subsection 3, a
27 person who submits a report or information to the court for
28 consideration in a proceeding held pursuant to NRS 432B.500 to
29 432B.590, inclusive, *and sections 3 to 7, inclusive, of this act* shall
30 provide a copy of the report or information, to the extent that the
31 data or information in the report or information is available pursuant
32 to NRS 432B.290, to each parent or guardian of the child who is the
33 subject of the proceeding and to the attorney of each parent or
34 guardian not later than 72 hours before the proceeding.

35 2. If a person does not provide a copy of a report or
36 information to a parent or guardian of a child and an attorney of the
37 parent or guardian before a proceeding if required by subsection 1,
38 the court or master:

39 (a) Shall provide the parent or guardian and his attorney an
40 opportunity to review the report or information; and

41 (b) May grant a continuance of the proceeding until a later date
42 that is agreed upon by all the parties to the proceeding if the parent
43 or guardian or his attorney requests that the court grant the
44 continuance so that the parent or guardian and his attorney may
45 properly respond to the report or information.



1 3. If a child was delivered to a provider of emergency services
2 pursuant to NRS 432B.630 and the location of the parent of the
3 child is unknown, a copy of a report or information described in
4 subsection 1 need not be sent to that parent or his attorney pursuant
5 to subsection 1.

6 4. As used in this section, "person" includes, without
7 limitation, a government, governmental agency or political
8 subdivision of a government.

9 **Sec. 15.** NRS 432B.555 is hereby amended to read as follows:
10 432B.555 In any proceeding held pursuant to NRS 432B.410
11 to 432B.590, inclusive, *and sections 3 to 7, inclusive, of this act*, if
12 the court determines that a custodial parent or guardian of a child
13 who has been placed in protective custody has ever been convicted
14 of a violation of NRS 200.508, the court shall not release the child
15 to that custodial parent or guardian unless the court finds by clear
16 and convincing evidence presented at the proceeding that no
17 physical or psychological harm to the child will result from his
18 release to that parent or guardian.

19 **Sec. 16.** NRS 432B.590 is hereby amended to read as follows:
20 432B.590 1. Except as otherwise provided in NRS 432B.513,
21 the court shall hold a hearing concerning the permanent placement
22 of a child:

23 (a) Not later than 12 months after the initial removal of the child
24 from his home and annually thereafter.

25 (b) Within 30 days after making any of the findings set forth in
26 subsection 3 of NRS 432B.393.

27 Notice of this hearing must be given by registered or certified mail
28 to all the persons to whom notice must be given pursuant to
29 subsection 4 of NRS 432B.580.

30 2. The court may require the presence of the child at the
31 hearing and shall provide to each person to whom notice was given
32 pursuant to subsection 1 an opportunity to be heard at the hearing.

33 3. At the hearing, the court shall review any plan for the
34 permanent placement of the child adopted pursuant to NRS
35 432B.553 and determine:

36 (a) Whether the agency with legal custody of the child has made
37 the reasonable efforts required by subsection 1 of NRS 432B.553;
38 and

39 (b) Whether, and if applicable when:

40 (1) The child should be returned to his parents or placed with
41 other relatives;

42 (2) It is in the best interests of the child to ~~initiate~~:

43 ~~(I) Initiate~~ proceedings to ~~f~~

44 ~~(I) Terminate~~ terminate parental rights pursuant to
45 chapter 128 of NRS so that the child can be placed for adoption; ~~for~~



1 ~~(H) Establish~~
 2 *(II) Initiate proceedings to establish* a guardianship
 3 pursuant to chapter 159 of NRS; *or*
 4 *(III) Establish a guardianship in accordance with*
 5 *sections 3 to 7, inclusive, of this act;* or

6 (3) The agency with legal custody of the child has produced
 7 documentation of its conclusion that there is a compelling reason for
 8 the placement of the child in another permanent living
 9 arrangement.

10 The court shall prepare an explicit statement of the facts upon which
 11 each of its determinations is based. If the court determines that it is
 12 in the best interests of the child to terminate parental rights, the
 13 court shall use its best efforts to ensure that the procedures required
 14 by chapter 128 of NRS are completed within 6 months after the date
 15 the court makes that determination, including, without limitation,
 16 appointing a private attorney to expedite the completion of the
 17 procedures. The provisions of this subsection do not limit the
 18 jurisdiction of the court to review any decisions of the agency with
 19 legal custody of the child regarding the permanent placement of the
 20 child.

21 4. If a child has been placed outside of his home and has
 22 resided outside of his home pursuant to that placement for 14
 23 months of any 20 consecutive months, the best interests of the child
 24 must be presumed to be served by the termination of parental rights.

25 5. This hearing may take the place of the hearing for review
 26 required by NRS 432B.580.

27 6. The provision of notice and an opportunity to be heard
 28 pursuant to this section does not cause any person planning to adopt
 29 the child, or any relative or provider of foster care to become a party
 30 to the hearing.

31 **Sec. 17.** NRS 49.295 is hereby amended to read as follows:
 32 49.295 1. Except as otherwise provided in subsections 2 and
 33 3 and NRS 49.305:

34 (a) A husband cannot be examined as a witness for or against his
 35 wife without his consent, nor a wife for or against her husband
 36 without her consent.

37 (b) Neither a husband nor a wife can be examined, during the
 38 marriage or afterwards, without the consent of the other, as to any
 39 communication made by one to the other during marriage.

40 2. The provisions of subsection 1 do not apply to a:

41 (a) Civil proceeding brought by or on behalf of one spouse
 42 against the other spouse;

43 (b) Proceeding to commit or otherwise place a spouse, the
 44 property of the spouse or both the spouse and the property of the



1 spouse under the control of another because of the alleged mental or
2 physical condition of the spouse;

3 (c) Proceeding brought by or on behalf of a spouse to establish
4 his competence;

5 (d) Proceeding in the juvenile court or family court pursuant to
6 chapter 62 of NRS and NRS 432B.410 to 432B.590, inclusive ~~§~~,
7 *and sections 3 to 7, inclusive, of this act;* or

8 (e) Criminal proceeding in which one spouse is charged with:

9 (1) A crime against the person or the property of the other
10 spouse or of a child of either, or of a child in the custody or control
11 of either, whether the crime was committed before or during
12 marriage.

13 (2) Bigamy or incest.

14 (3) A crime related to abandonment of a child or nonsupport
15 of a wife or child.

16 3. The provisions of subsection 1 do not apply in any criminal
17 proceeding to events which took place before the husband and wife
18 were married.

19 **Sec. 18.** NRS 159.176 is hereby amended to read as follows:

20 159.176 Every guardianship *established pursuant to this*
21 *chapter* must be reviewed by the court annually.

