

HOUSE BILL 277

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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AN ACT

RELATING TO KINSHIP GUARDIANSHIP; REMOVING THE REQUIREMENT TO
STATE MARITAL STATUS OF THE CHILD; UPDATING THE PROCESS OF
OBTAINING A HEARING DATE; CHANGING THE STANDARD OF PROOF IN
INDIAN CHILD WELFARE ACT CASES TO COMPORT WITH THE FEDERAL LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 40-10B-5 NMSA 1978 (being Laws 2001,
Chapter 167, Section 5) is amended to read:

"40-10B-5. PETITION--WHO MAY FILE--CONTENTS.--

A. A petition seeking the appointment of a guardian
pursuant to the Kinship Guardianship Act may be filed only by:

(1) a kinship caregiver;

(2) a caregiver, who has reached [~~his~~

~~twenty-first birthday~~] the age of twenty-one, with whom no

kinship with the child exists, who has been nominated to be

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1 guardian of the child by the child, and the child has reached
2 [~~his fourteenth birthday~~] the age of fourteen; or

3 (3) a caregiver designated formally or
4 informally by a parent in writing if the designation indicates
5 on its face that the parent signing understands:

6 (a) the purpose and effect of the
7 guardianship;

8 (b) that [~~he~~] the parent has the right
9 to be served with the petition and notices of hearings in the
10 action; and

11 (c) that [~~he~~] the parent may appear in
12 court to contest the guardianship.

13 B. A petition seeking the appointment of a guardian
14 shall be verified by the petitioner and allege the following
15 with respect to the child:

16 (1) facts that, if proved, will meet the
17 requirements of Subsection B of Section [~~8 of the Kinship~~
18 ~~Guardianship Act~~] 40-10B-8 NMSA 1978;

19 (2) the date and place of birth of the child,
20 if known, and if not known, the reason for the lack of
21 knowledge;

22 (3) the legal residence of the child and the
23 place where [~~he~~] the child resides, if different from the legal
24 residence;

25 [~~(4) the marital status of the child;~~

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1 ~~(5)~~ (4) the name and address of the
2 petitioner;
3 ~~(6)~~ (5) the kinship, if any, between the
4 petitioner and the child;
5 ~~(7)~~ (6) the names and addresses of the
6 parents of the child;
7 ~~(8)~~ (7) the names and addresses of persons
8 having legal custody of the child;
9 ~~(9)~~ (8) the existence of any matters pending
10 involving the custody of the child;
11 ~~(10)~~ (9) a statement that the petitioner
12 agrees to accept the duties and responsibilities of
13 guardianship;
14 ~~(11)~~ (10) the existence of any matters
15 pending pursuant to the provisions of Chapter 32A, Article 4
16 NMSA 1978 and, if so, a statement that the children, youth and
17 families department consents to the relief requested in the
18 petition;
19 ~~(12)~~ (11) whether the child is subject to
20 provisions of the federal Indian Child Welfare Act of 1978 and,
21 if so:
22 (a) the tribal affiliations of the
23 child's parents; and
24 (b) the specific actions taken by the
25 petitioner to notify the parents' tribes and the results of the

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1 contacts, including the names, addresses, titles and telephone
2 numbers of the persons contacted, and copies of correspondence
3 with the tribe; and

4 [~~(13)~~] (12) other facts in support of the
5 guardianship sought."

6 SECTION 2. Section 40-10B-6 NMSA 1978 (being Laws 2001,
7 Chapter 167, Section 6) is amended to read:

8 "40-10B-6. SERVICE OF PETITION--NOTICE--PARTIES.--

9 A. [~~At the time of filing the petition, the~~
10 ~~petitioner shall obtain an order of the court setting]~~ The
11 court shall set a date for hearing on the petition, which date
12 shall be no less than thirty and no more than ninety days from
13 the date of filing the petition.

14 B. The petition and a notice of the hearing shall
15 be served upon:

16 (1) the children, youth and families
17 department if there is any pending matter relating to the child
18 pursuant to the provisions of Chapter 32A, Article 4 NMSA 1978;

19 (2) the child if [~~he~~] the child has reached
20 [~~his fourteenth birthday~~] the age of fourteen;

21 (3) the parents of the child;

22 (4) a person having custody of the child or
23 visitation rights pursuant to a court order; and

24 (5) if the child is an Indian child as defined
25 in the federal Indian Child Welfare Act of 1978, the

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1 appropriate Indian tribe and any "Indian custodian", together
2 with a notice of pendency of the guardianship proceedings,
3 pursuant to the provisions of the federal Indian Child Welfare
4 Act of 1978.

5 C. Service of process required by Subsection A of
6 this section shall be made in accordance with the requirements
7 for giving notice of a hearing pursuant to Subsection A of
8 Section 45-1-401 NMSA 1978.

9 D. The persons required to be served pursuant to
10 Subsection B of this section have a right to file a response as
11 parties to this action. Other persons may intervene pursuant
12 to Rule 1-024 NMRA."

13 SECTION 3. Section 40-10B-8 NMSA 1978 (being Laws 2001,
14 Chapter 167, Section 8) is amended to read:

15 "40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--
16 JUDGMENT--CHILD SUPPORT.--

17 A. Upon hearing, if the court finds that a
18 qualified person seeks appointment, the venue is proper, the
19 required notices have been given, the requirements of
20 Subsection B of this section have been proved and the best
21 interests of the minor will be served by the requested
22 appointment, it shall make the appointment. In other cases,
23 the court may dismiss the proceedings or make any other
24 disposition of the matter that will serve the best interests of
25 the minor.

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1 B. A guardian may be appointed pursuant to the
2 Kinship Guardianship Act only if:

3 (1) a parent of the child is living and has
4 consented in writing to the appointment of a guardian and the
5 consent has not been withdrawn;

6 (2) a parent of the child is living but all
7 parental rights in regard to the child have been terminated or
8 suspended by prior court order; or

9 (3) the child has resided with the petitioner
10 without the parent for a period of ninety days or more
11 immediately preceding the date the petition is filed and a
12 parent having legal custody of the child is currently unwilling
13 or unable to provide adequate care, maintenance and supervision
14 for the child or there are extraordinary circumstances; and

15 (4) no guardian of the child is currently
16 appointed pursuant to a provision of the Uniform Probate Code.

17 C. The burden of proof shall be by clear and
18 convincing evidence [~~except that in those cases involving an~~
19 ~~Indian child as defined in the federal Indian Child Welfare Act~~
20 ~~of 1978, the burden of proof shall be proof beyond a reasonable~~
21 ~~doubt~~].

22 D. As part of a judgment entered pursuant to the
23 Kinship Guardianship Act, the court may order a parent to pay
24 the reasonable costs of support and maintenance of the child
25 that the parent is financially able to pay. The court may use

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1 the child support guidelines set forth in Section 40-4-11.1
2 NMSA 1978 to calculate a reasonable payment.

3 E. The court may order visitation between a parent
4 and child to maintain or rebuild a parent-child relationship if
5 the visitation is in the best interests of the child."

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