

SENATE BILL 146

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO KINSHIP GUARDIANSHIPS; PROVIDING FOR SUBSIDIZED GUARDIANSHIPS; ESTABLISHING ELIGIBILITY CRITERIA FOR GUARDIANSHIP ASSISTANCE PAYMENTS; PROVIDING FOR GUARDIANSHIP ASSISTANCE AGREEMENTS.

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

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

"40-10B-1. SHORT TITLE.--~~[This act]~~ Chapter 40, Article 10B NMSA 1978 may be cited as the "Kinship Guardianship Act"."

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

"40-10B-2. POLICY--PURPOSE.--

A. It is the policy of the state that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance and supervision to a child, it is the policy of the state that, whenever possible, a child should be raised by family members or kinship caregivers.

B. The Kinship Guardianship Act is intended to address those cases where a parent has left a child or children in the care of another for ninety consecutive days and that arrangement leaves the child or children without appropriate care, guidance or supervision.

C. The purposes of the Kinship Guardianship Act are to:

(1) establish procedures to effect a legal relationship between a child and a kinship caregiver when the child is not residing with either parent; ~~and~~

(2) provide a child with a stable and consistent relationship with a kinship caregiver that will enable the child to develop physically, mentally and emotionally to the maximum extent possible when the child's parents are not willing or able to do so; and

(3) establish requirements for subsidized

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guardianships for eligible children."

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

"40-10B-3. DEFINITIONS.--As used in the Kinship Guardianship Act:

A. "caregiver" means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance and supervision consistent with the duties and responsibilities of a parent of the child;

B. "child" means an individual who is a minor;

C. "department" means the children, youth and families department;

D. "guardian" means a person appointed as a guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law;

E. "guardianship assistance agreement" means a written agreement entered into by the prospective kinship guardian and the protective services division or juvenile justice division of the department or Indian tribe prior to the establishment of the guardianship by a court;

F. "guardianship assistance payments" means payments made by the department to a SPAC→relative←SPAC SPAC→kinship guardian←SPAC or successor guardian on behalf of a child pursuant to the terms of a guardianship assistance

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agreement;

G. "guardianship assistance program" means the financial subsidy program provided for in the Kinship Guardianship Act;

[G.] H. "kinship" means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's tribe or clan or an adult with whom the child has a significant bond;

[D.] I. "parent" means a biological or adoptive parent of a child whose parental rights have not been terminated; [and

E.] J. "relative" means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any person denoted by the prefix "grand" or "great", or the spouse or former spouse of the persons specified;

K. "subsidized guardianship" means a guardianship that meets subsidy eligibility criteria pursuant to the Kinship Guardianship Act; and

L. "voluntary placement agreement" means a written agreement between either the protective services division or juvenile justice division of the department or Indian tribe that has entered into a joint powers agreement and the parents or guardians of a child that specifies at least the following:

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- (1) the legal status of the child;
- (2) the rights and obligations of the parents or guardians, the child and the department; and
- (3) such other criteria as set forth by rule promulgated by the department as necessary to comply with state and federal law."

SECTION 4. Section 40-10B-8 NMSA 1978 (being Laws 2001, Chapter 167, Section 8, as amended) is amended to read:

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

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

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

- (1) a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn;
- (2) a parent of the child is living but all

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parental rights in regard to the child have been terminated or suspended by prior court order; or

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

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

C. The burden of proof shall be by clear and convincing evidence.

D. As part of a judgment entered pursuant to the Kinship Guardianship Act, the court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. The court shall consider the potential impact of financial payments pursuant to this subsection on the relationship of the parent and child and on the prospects of family reunification. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

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

SECTION 5. A new section of the Kinship Guardianship Act,

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Section 40-10B-16 NMSA 1978, is enacted to read:

"40-10B-16. [NEW MATERIAL] FINANCIAL SUBSIDIES--
ELIGIBILITY.--

A. Guardianships granted pursuant to the Kinship
Guardianship Act may be eligible for financial assistance
through the guardianship assistance program.

B. In order to be eligible for guardianship
assistance payments, the following conditions must be
satisfied:

(1) the child must have been removed from the
child's home:

(a) pursuant to a voluntary placement
agreement; or

(b) as a result of a judicial
determination that the placement and care of the child should
be vested in the department;

(2) a guardian for the child has been
appointed pursuant to the Kinship SPAC→~~Guardian Act~~←SPAC
SPAC→Guardianship Act and the Children's Code←SPAC;

(3) the child must be eligible for foster care
maintenance payments while in the home of the prospective
kinship guardian;

(4) the child must have lived with the
prospective kinship guardian for at least six consecutive
months pursuant to a court order or a voluntary placement

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agreement;

(5) the child has a strong attachment to the kinship guardian;

(6) the kinship guardian has a strong commitment to caring permanently for the child, documented via a meeting with the guardian discussing the guardian's long-term commitment;

(7) if the child is fourteen years of age or older, the child has been consulted regarding the guardianship arrangement; and

(8) the child is the subject of a fully executed guardianship assistance agreement approved by the department; or

(9) the child is a sibling of a child who meets the eligibility criteria set forth in Paragraphs (1) through (8) of this subsection."

SECTION 6. A new section of the Kinship Guardianship Act, Section 40-10B-17 NMSA 1978, is enacted to read:

"40-10B-17. [NEW MATERIAL] FINANCIAL SUBSIDIES--NONRECURRING EXPENSES.--Nonrecurring expenses incurred by a prospective kinship guardian associated with establishing a subsidized guardianship may be reimbursed in an amount not to exceed two thousand dollars (\$2,000) per child for an eligible child and any of an eligible child's siblings."

SECTION 7. A new section of the Kinship Guardianship Act,

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Section 40-10B-18 NMSA 1978, is enacted to read:

"40-10B-18. [NEW MATERIAL] GUARDIANSHIP ASSISTANCE AGREEMENTS.--

A. In order for a kinship guardian to receive subsidized guardianship payments pursuant to the Kinship Guardianship Act, the department shall negotiate and enter into a written guardianship assistance agreement with the kinship guardian of an eligible child. The agreement shall specify the following:

- (1) the amount of and manner in which guardianship assistance payments will be provided;
- (2) additional services and assistance for which the child and kinship guardian will be eligible;
- (3) a procedure by which the kinship guardian may apply for additional services;
- (4) the responsibility of the kinship guardian to report changes in the needs of the child or the circumstances of the kinship guardian that affect guardianship assistance payments;
- (5) reasonable and verified nonrecurring expenses associated with obtaining a subsidized guardianship pursuant to the provisions of Section 40-10B-17 NMSA 1978; and
- (6) terms by which the guardianship assistance agreement may be terminated and the ability of the department to recoup funds received due to improper payment.

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B. A copy of the fully executed guardianship assistance agreement shall be given to the kinship guardian and to the department."

SECTION 8. A new section of the Kinship Guardianship Act, Section 40-10B-19 NMSA 1978, is enacted to read:

"40-10B-19. [NEW MATERIAL] SUCCESSOR GUARDIANS.--

A. A successor guardian shall be named in the guardianship assistance agreement and amendments thereto who shall be considered to serve as guardian in the event the kinship guardian dies or is incapacitated.

B. The department may pay the cost, not to exceed two thousand dollars (\$2,000), of nonrecurring expenses associated with the successor guardian obtaining a subsidized guardianship of the child.

C. The department shall promulgate rules setting forth requirements for a successor guardian to receive guardianship assistance payments.

D. The successor guardian does not need to be a relative and does not need to be licensed as a foster parent to receive guardianship assistance payments."

SECTION 9. A new section of the Kinship Guardianship Act, Section 40-10B-20 NMSA 1978, is enacted to read:

"40-10B-20. [NEW MATERIAL] DISCONTINUANCE OF GUARDIANSHIP ASSISTANCE PAYMENTS.--

A. The department shall immediately discontinue

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guardianship assistance payments when the department is advised or determines:

- (1) a child or kinship guardian no longer meets the criteria to be eligible for guardianship assistance payments;
- (2) the kinship guardian has requested a termination of the guardianship assistance agreement;
- (3) the guardianship has been terminated;
- (4) the child reaches eighteen years of age or twenty-one years of age if eligible pursuant to the Fostering Connections Act; or
- (5) the child is no longer receiving support from the kinship guardian.

B. The department shall notify the kinship guardian of a discontinuation of guardianship assistance payments and the reasons for discontinuation.

C. The discontinuance of guardianship assistance payments does not terminate a guardianship that has been established by a court."

SECTION 10. A new section of the Kinship Guardianship Act, Section 40-10B-21 NMSA 1978, is enacted to read:

"40-10B-21. [NEW MATERIAL] APPEAL OF DECISIONS.--

A. A child or kinship guardian may appeal a decision made by the department pursuant to the Kinship Guardianship Act related to a subsidized guardianship. The

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department shall develop an appeal procedure whereby a child or kinship guardian may contest a decision by the department to establish, deny, reduce or discontinue guardianship assistance payments.

B. An aggrieved party may appeal a decision of the district court pursuant to the Kinship Guardianship Act in the manner provided by law."

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