

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 146

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

AN ACT

RELATING TO KINSHIP GUARDIANSHIPS; PROVIDING FOR SUBSIDIZED
GUARDIANSHIPS; ESTABLISHING ELIGIBILITY CRITERIA FOR
GUARDIANSHIP ASSISTANCE PAYMENTS; PROVIDING FOR GUARDIANSHIP
ASSISTANCE AGREEMENTS; REPEALING SECTION 40-10B-2 NMSA 1978
(BEING LAWS 2001, CHAPTER 167, SECTION 2).

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"."

SECTION 2. 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:

.217690.2

underscored material = new
[bracketed material] = delete

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

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

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

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

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

17 F. "guardianship assistance payments" means
18 payments made by the department to a kinship guardian or
19 successor guardian on behalf of a child pursuant to the terms
20 of a guardianship assistance agreement;

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

24 [G.] H. "kinship" means the relationship that
25 exists between a child and a relative of the child, a

1 godparent, a member of the child's tribe or clan or an adult
2 with whom the child has a significant bond;

3 I. "legal custody" means a legal status that vests
4 in a person, department or agency the rights and obligations
5 that would otherwise vest by law in a parent;

6 [~~D.~~] J. "parent" means a biological or adoptive
7 parent of a child whose parental rights have not been
8 terminated; [and

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

15 L. "subsidized guardianship" means a guardianship
16 that meets subsidy eligibility criteria pursuant to the Kinship
17 Guardianship Act; and

18 M. "voluntary placement agreement" means a written
19 agreement between either the protective services division or
20 juvenile justice division of the department or Indian tribe
21 that has entered into a joint powers agreement and the parents
22 or guardians of a child, which agreement shall not exceed one
23 hundred eighty days unless there has been a judicial
24 determination that such placement is in the best interests of
25 the child, in which case the agreement may be extended for an

.217690.2

1 additional one hundred eighty days, that specifies at least the
2 following:

3 (1) whether the parent or guardian agrees to
4 give legal custody of the child to the department;

5 (2) the rights and obligations of the parents
6 or guardians, the child and the department, including that the
7 parent or guardian has the right to revoke or terminate the
8 placement agreement and grant of legal custody to the
9 department at any time; and

10 (3) such other criteria as set forth by rule
11 promulgated by the department as necessary to comply with state
12 and federal law."

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

.217690.2

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.

19 D. As part of a judgment entered pursuant to the
20 Kinship Guardianship Act, the court may order a parent to pay
21 the reasonable costs of support and maintenance of the child
22 that the parent is financially able to pay. The court shall
23 consider the potential impact of financial payments pursuant to
24 this subsection on the relationship of the parent and child and
25 on the prospects of family reunification. The court may use

.217690.2

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."

6 SECTION 4. A new section of the Kinship Guardianship Act,
7 Section 40-10B-16 NMSA 1978, is enacted to read:

8 "40-10B-16. [NEW MATERIAL] FINANCIAL SUBSIDIES--
9 ELIGIBILITY.--

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

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

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

18 (a) pursuant to a voluntary placement
19 agreement; or

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

23 (2) a guardian for the child has been
24 appointed pursuant to the Kinship Guardianship Act or the
25 Children's Code;

.217690.2

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

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

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

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

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

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

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

23 **SECTION 5.** A new section of the Kinship Guardianship Act,
24 Section 40-10B-17 NMSA 1978, is enacted to read:

25 "40-10B-17. [NEW MATERIAL] FINANCIAL SUBSIDIES--

.217690.2

1 NONRECURRING EXPENSES.--Nonrecurring expenses incurred by a
2 prospective kinship guardian associated with establishing a
3 subsidized guardianship may be reimbursed in an amount not to
4 exceed two thousand dollars (\$2,000) per child for an eligible
5 child and also for any of an eligible child's siblings."

6 SECTION 6. A new section of the Kinship Guardianship Act,
7 Section 40-10B-18 NMSA 1978, is enacted to read:

8 "40-10B-18. [NEW MATERIAL] GUARDIANSHIP ASSISTANCE
9 AGREEMENTS.--

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

16 (1) the amount of and manner in which
17 guardianship assistance payments will be provided;

18 (2) additional services and assistance for
19 which the child and kinship guardian will be eligible;

20 (3) a procedure by which the kinship guardian
21 may apply for additional services;

22 (4) the responsibility of the kinship guardian
23 to report changes in the needs of the child or the
24 circumstances of the kinship guardian that affect guardianship
25 assistance payments;

.217690.2

1 (5) reasonable and verified nonrecurring
2 expenses associated with obtaining a subsidized guardianship
3 pursuant to the provisions of Section 40-10B-17 NMSA 1978; and

4 (6) terms by which the guardianship assistance
5 agreement may be terminated and the ability of the department
6 to recoup funds received due to improper payment.

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

10 SECTION 7. A new section of the Kinship Guardianship Act,
11 Section 40-10B-19 NMSA 1978, is enacted to read:

12 "40-10B-19. [NEW MATERIAL] SUCCESSOR GUARDIANS.--

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

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

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

24 D. The successor guardian does not need to be a
25 relative and does not need to be licensed as a foster parent to

.217690.2

1 receive guardianship assistance payments."

2 SECTION 8. A new section of the Kinship Guardianship Act,
3 Section 40-10B-20 NMSA 1978, is enacted to read:

4 "40-10B-20. [NEW MATERIAL] DISCONTINUANCE OF GUARDIANSHIP
5 ASSISTANCE PAYMENTS.--

6 A. The department shall immediately discontinue
7 guardianship assistance payments when the department is advised
8 or determines:

9 (1) a child or kinship guardian no longer
10 meets the criteria to be eligible for guardianship assistance
11 payments;

12 (2) the kinship guardian has requested a
13 termination of the guardianship assistance agreement;

14 (3) the guardianship has been terminated;

15 (4) the child reaches eighteen years of age or
16 twenty-one years of age if eligible pursuant to the Fostering
17 Connections Act; or

18 (5) the child is no longer receiving support
19 from the kinship guardian.

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

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

1 SECTION 9. A new section of the Kinship Guardianship Act,
2 Section 40-10B-21 NMSA 1978, is enacted to read:

3 "40-10B-21. [NEW MATERIAL] APPEAL OF DECISIONS.--A child
4 or kinship guardian may appeal a decision made by the
5 department pursuant to the Kinship Guardianship Act related to
6 a subsidized guardianship. The department shall develop an
7 appeal procedure whereby a child or kinship guardian may
8 contest a decision by the department to establish, deny, reduce
9 or discontinue guardianship assistance payments."

10 SECTION 10. REPEAL.--Section 40-10B-2 NMSA 1978 (being
11 Laws 2001, Chapter 167, Section 2) is repealed.

underscored material = new
[bracketed material] = delete