

1 SENATE BILL 146

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

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

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "40-10B-1. SHORT TITLE.--~~[This act]~~ Chapter 40, Article  
20 10B NMSA 1978 may be cited as the "Kinship Guardianship Act".

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

23 "40-10B-2. POLICY--PURPOSE.--

24 A. It is the policy of the state that the interests  
25 of children are best served when they are raised by their

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1 parents. When neither parent is able or willing to provide  
2 appropriate care, guidance and supervision to a child, it is  
3 the policy of the state that, whenever possible, a child should  
4 be raised by family members or kinship caregivers.

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

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

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

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

20 (3) establish requirements for subsidized  
21 guardianships for eligible children."

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

24 "40-10B-3. DEFINITIONS.--As used in the Kinship  
25 Guardianship Act:

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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 relative or successor  
19 guardian on behalf of a child pursuant to the terms of a  
20 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

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

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

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

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

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

20 (1) the legal status of the child;

21 (2) the rights and obligations of the parents  
22 or guardians, the child and the department; and

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

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

3           "40-10B-8. HEARING--ELEMENTS OF PROOF--BURDEN OF PROOF--  
4 JUDGMENT--CHILD SUPPORT.--

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

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

16                   (1) a parent of the child is living and has  
17 consented in writing to the appointment of a guardian and the  
18 consent has not been withdrawn;

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

22                   (3) the child has resided with the petitioner  
23 without the parent for a period of ninety days or more  
24 immediately preceding the date the petition is filed and a  
25 parent having legal custody of the child is currently unwilling

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1 or unable to provide adequate care, maintenance and supervision  
2 for the child or there are extraordinary circumstances; and

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

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

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

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

19 SECTION 5. A new section of the Kinship Guardianship Act,  
20 Section 40-10B-16 NMSA 1978, is enacted to read:

21 "40-10B-16. [NEW MATERIAL] FINANCIAL SUBSIDIES--  
22 ELIGIBILITY.--

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

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

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

6                               (a) pursuant to a voluntary placement  
7 agreement; or

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

11                   (2) a guardian for the child has been  
12 appointed pursuant to the Kinship Guardian Act;

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

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

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

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

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

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

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

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

12 "40-10B-17. [NEW MATERIAL] FINANCIAL SUBSIDIES--  
13 NONRECURRING EXPENSES.--Nonrecurring expenses incurred by a  
14 prospective kinship guardian associated with establishing a  
15 subsidized guardianship may be reimbursed in an amount not to  
16 exceed two thousand dollars (\$2,000) per child for an eligible  
17 child and any of an eligible child's siblings."

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

20 "40-10B-18. [NEW MATERIAL] GUARDIANSHIP ASSISTANCE  
21 AGREEMENTS.--

22 A. In order for a kinship guardian to receive  
23 subsidized guardianship payments pursuant to the Kinship  
24 Guardianship Act, the department shall negotiate and enter into  
25 a written guardianship assistance agreement with the kinship

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1 guardian of an eligible child. The agreement shall specify the  
2 following:

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

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

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

9 (4) the responsibility of the kinship guardian  
10 to report changes in the needs of the child or the  
11 circumstances of the kinship guardian that affect guardianship  
12 assistance payments;

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

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

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

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

24 "40-10B-19. [NEW MATERIAL] SUCCESSOR GUARDIANS.--

25 A. A successor guardian shall be named in the

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1 guardianship assistance agreement and amendments thereto who  
2 shall be considered to serve as guardian in the event the  
3 kinship guardian dies or is incapacitated.

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

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

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

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

16 "40-10B-20. [NEW MATERIAL] DISCONTINUANCE OF GUARDIANSHIP  
17 ASSISTANCE PAYMENTS.--

18 A. The department shall immediately discontinue  
19 guardianship assistance payments when the department is advised  
20 or determines:

21 (1) a child or kinship guardian no longer  
22 meets the criteria to be eligible for guardianship assistance  
23 payments;

24 (2) the kinship guardian has requested a  
25 termination of the guardianship assistance agreement;

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- 1 (3) the guardianship has been terminated;  
2 (4) the child reaches eighteen years of age or  
3 twenty-one years of age if eligible pursuant to the Fostering  
4 Connections Act; or  
5 (5) the child is no longer receiving support  
6 from the kinship guardian.

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

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

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

15 "40-10B-21. [NEW MATERIAL] APPEAL OF DECISIONS.--

16 A. A child or kinship guardian may appeal a  
17 decision made by the department pursuant to the Kinship  
18 Guardianship Act related to a subsidized guardianship. The  
19 department shall develop an appeal procedure whereby a child or  
20 kinship guardian may contest a decision by the department to  
21 establish, deny, reduce or discontinue guardianship assistance  
22 payments.

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

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