

HOUSE BILL 328

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

INTRODUCED BY

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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"."

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

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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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