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SENATE BILL 607

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

L. Skip Vernon

AN ACT

RELATING TO CHILDREN; PROVIDING PROCEDURES FOR APPOINTING A PERMANENT GUARDIAN IF A COMPLAINT ALLEGING NEGLECT OR ABUSE HAS NOT BEEN FILED.

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

Section 1. Section 32A-1-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 19) is amended to read:

"32A-1-10. PETITION--WHO MAY SIGN. --

A. Except for a petition filed pursuant to Section 32A-4-31.1 NMSA 1978, a petition initiating proceedings pursuant to the provisions of Chapter [ ~~32~~ ] 32A, Article 2, 3B, 4 or 6 NMSA 1978 shall be signed by the children's court attorney.

B. An affidavit for an ex-parte custody order may be signed by any person who has knowledge of the facts alleged

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1 or is informed of them and believes that they are true."

2 Section 2. Section 32A-4-31 NMSA 1978 (being Laws 1993,  
3 Chapter 77, Section 125) is amended to read:

4 "32A-4-31. PERMANENT GUARDIANSHIP OF A CHILD. --

5 A. In proceedings for permanent guardianship, the  
6 court shall give primary consideration to the physical, mental  
7 and emotional welfare and needs of the child. Permanent  
8 guardianship vests in the guardian all rights and  
9 responsibilities of a parent, other than those rights and  
10 responsibilities of the natural or adoptive parent, if any,  
11 set forth in the decree of permanent guardianship.

12 B. Any adult, including a relative or foster  
13 parent, may be considered as a permanent guardian, provided  
14 that the department grants consent to the guardianship if the  
15 child is in the department's custody. An agency or  
16 institution may not be a permanent guardian. [~~The court shall~~  
17 ~~appoint a person nominated by the child, if the minor is~~  
18 ~~fourteen years of age or older, unless the court finds the~~  
19 ~~appointment contrary to the best interests of the child.~~] The  
20 court shall consider the express wishes of the child, if the  
21 child is fourteen years of age or older, regarding the  
22 appointment of a permanent guardian.

23 C. Except as provided in Subsection D of its  
24 section, the court may establish a permanent guardianship  
25 between a child and the guardian when the prospective

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1 guardianship is in the child's best interest and when:

2 (1) the child has been adjudicated as an  
3 abused or neglected child;

4 (2) the department has made reasonable  
5 efforts to reunite the parent and child and further efforts by  
6 the department would be unproductive;

7 (3) reunification of the parent and child is  
8 not in the child's best interests because the parent continues  
9 to be unwilling or unable to properly care for the child; and

10 (4) the likelihood of the child being adopted  
11 is remote or it is established that termination of parental  
12 rights is not in the child's best interest.

13 D. For a petition filed pursuant to Section  
14 32A-4-31.1 NMSA 1978, the court may establish a permanent  
15 guardianship of a child when the prospective guardianship is  
16 in the child's best interest and when the court finds that:

17 (1) the child has suffered, or is at risk of  
18 suffering, abuse, neglect or abandonment; and

19 (2) placing the child in the natural or  
20 adoptive parent's care is against the child's best interest  
21 because the parent continues to be unwilling or unable to  
22 properly care for the child. "

23 Section 3. A new Section 32A-4-31.1 NMSA 1978 is enacted  
24 to read:

25 "32A-4-31.1. [NEW MATERIAL] PETITION FOR PERMANENT

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1 GUARDIANSHIP IF A COMPLAINT ALLEGING NEGLECT OR ABUSE HAS NOT  
2 BEEN FILED. --

3 A. If a complaint alleging neglect or abuse of a  
4 child has not been filed, but an adult having a relationship  
5 with a child believes that the child has suffered or is at  
6 risk of suffering abuse, neglect or abandonment, the adult may  
7 petition the court to be appointed as a permanent guardian.

8 B. The court has jurisdiction to hear petitions  
9 filed pursuant to this section. A petition filed pursuant to  
10 this section shall be heard and adjudicated pursuant to the  
11 requirements of Sections 32A-4-31 and 32A-4-32 NMSA 1978. "

12 Section 4. Section 32A-4-32 NMSA 1978 (being Laws 1993,  
13 Chapter 77, Section 126) is amended to read:

14 "32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE. --

15 A. A ~~[motion]~~ petition for permanent guardianship  
16 may be filed by any party or by any adult having a  
17 relationship with the child.

18 B. ~~[Any application]~~ A petition for permanent  
19 guardianship shall be signed and verified by the petitioner,  
20 filed with the court and set forth:

- 21 (1) the date, place of birth and marital
- 22 status of the child, if known;
- 23 (2) the facts and circumstances supporting
- 24 the ground for permanent guardianship;
- 25 (3) the name and address of the prospective

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1 guardian and a statement that the person agrees to accept the  
2 duties and responsibilities of guardianship;

3 (4) the basis for the court's jurisdiction;

4 (5) the relationship of the child to the  
5 petitioner and the prospective guardian; and

6 (6) whether the child is subject to the  
7 federal Indian Child Welfare Act of 1978 and, if so:

8 (a) the tribal affiliations of the  
9 child's parents;

10 (b) the specific actions taken by the  
11 petitioner to notify the parents' tribe and the results of the  
12 contacts, including the names, addresses, titles and telephone  
13 numbers of the persons contacted. Copies of any  
14 correspondence with the tribes shall be attached as exhibits  
15 to the petition; and

16 (c) what specific efforts were made to  
17 comply with the placement preferences set forth in the federal  
18 Indian Child Welfare Act of 1978 or the placement preferences  
19 of the appropriate Indian tribes.

20 C. If the petition is not filed by the prospective  
21 guardian, the petition shall be verified by the prospective  
22 guardian.

23 D. Notice of the filing of the [~~motion~~] petition,  
24 accompanied by a copy of the [~~motion~~] petition, shall be  
25 served by the [~~moving party~~] petitioner on any parent who has

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1 not previously been made a party to the proceeding, the  
2 parents of the child, foster parents with whom the child is  
3 residing, foster parents with whom the child has resided for  
4 six months, the child's custodian, the department, any person  
5 appointed to represent any party, including the child's  
6 guardian ad litem, and any other person the court orders  
7 provided with notice. Service shall be in accordance with the  
8 Rules of Civil Procedure for the District Courts for the  
9 service of process in a civil action in this state. The  
10 notice shall state specifically that the person served [ ~~must~~  
11 shall file a written response to the application within twenty  
12 days if the person intends to contest the guardianship.

13 E. When the child is an Indian child, subject to  
14 the federal Indian Child Welfare Act of 1978, notice shall  
15 also be served upon the Indian tribes of the child's parents  
16 and upon any "Indian custodian" as that term is defined in  
17 25 U.S.C. Section 1903(6).

18 F. The grounds for permanent guardianship shall be  
19 proved by clear and convincing evidence. The grounds for  
20 permanent guardianship [ ~~must~~ ] shall be proved beyond a  
21 reasonable doubt and meet the requirements of 25 U.S.C.  
22 Section 1912(f) in any proceeding involving a child subject to  
23 the federal Indian Child Welfare Act of 1978.

24 G. A judgment of the court vesting permanent  
25 guardianship with an individual divests the biological or

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1 adoptive parent of legal custody or guardianship of the child,  
2 but is not a termination of the parent's rights. A child's  
3 inheritance rights from and through the child's biological or  
4 adoptive parents are not affected by this proceeding.

5 H. Upon a finding that grounds exist for a  
6 permanent guardianship, the court may incorporate into the  
7 final order provisions for visitation with the natural  
8 parents, siblings or other relatives of the child and any  
9 other provision necessary to rehabilitate the child or provide  
10 for the child's continuing safety and well-being.

11 I. The court shall retain jurisdiction to enforce  
12 its judgment of permanent guardianship.

13 J. Any party to [~~the~~] an abuse or neglect  
14 proceeding, the child or a parent of the child may [~~make a~~  
15 ~~motion~~] petition for revocation of the order granting  
16 guardianship when there is a significant change of  
17 circumstances, including:

18 (1) the child's parent is able and willing to  
19 properly care for the child; or

20 (2) the child's guardian is unable to  
21 properly care for the child.

22 K. The court shall appoint a guardian ad litem for  
23 the child in all proceedings for the revocation of permanent  
24 guardianship.

25 L. The court may revoke the order granting

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1 guardianship when a change of circumstances has been proven by  
2 clear and convincing evidence and it is in the child's best  
3 interests to revoke the order granting guardianship. "