

AB 387 Fact Sheet

March 18, 2025: Nevada Coalition of Legal Service Providers (Jonathan Norman, Marina Dalia-Hunt)

AB 387 updates the minor guardianship statute to better meet the needs of children under guardianship, including their safety. Guardianship over a minor occurs in two forms: person and estate. Most guardianships over minors in Nevada are guardianships of the minor's person. Guardianships of the person generally occur when a relative or family friend takes in a child or children because their parents are unable or unwilling to care for them. The reasons for the need for guardianship vary significantly and range from the death, severe illness, or incarceration, of the parents to untreated substance abuse, alcohol abuse, or mental health of the parents, to abandonment of the child by their parents, to safety issues in the home including domestic violence, child abuse, and sexual assault. Most petitioners for guardianship seek guardianship pro se (without an attorney) and most guardianships are uncontested. Guardianships in Nevada are never permanent, meaning that they can always be terminated by further order of the court, but if a parent did not consent to the guardianship at its inception, they face an incredibly high burden to terminate the guardianship. In 2017, the Nevada Legislature enacted sweeping reforms to the then existing statute to separate out adult and minor guardianship, recognizing the many different needs of these populations. That legislation was a great step forward, and this bill further refines the law to improve outcomes for children and families. Minor guardianship has long provided an avenue for families to deal with crises on their own, but it is not uncommon for these situations to turn contentious. For these complex cases, the current statute is not working as well as it could.

Goals of AB 387:

- Simplify the service requirements to remove the expensive form of service by publication, instead allowing for any alternative method of service deemed appropriate by the court, including electronic service when appropriate. Removing the barrier of publication will ensure that more children who need guardianship actually get it.
- Provide the guardianship court to learn more about the qualifications of a guardian, including whether they have any history of child protective services investigation or removal due to abuse and neglect and whether they have the ability to care for the proposed protected minor.
- Set forth unique best interest factors reflecting the common needs of children in guardianship to better guide courts in deciding whether to award a guardianship.
- Set forth specific parameters for the appointment of attorneys for children, reflecting the national standard of practice for children with histories of abuse and neglect.
- Clarify and expand when a temporary guardianship may be granted for medical reasons or for the safety and basic needs of the proposed protected minor.
- Provide clear guidance on the function of the constitutional presumption that a parent is the best person to raise their child, unless they are unable to meet their child's basic needs.
- Elevate the child's voice in the proceedings, regardless of their age and recognizing the need for buy-in for older children (14 and up).
- Clarifying the duty of a guardian to help a child maintain a relationship with their parent as appropriate to the child's unique needs and best interest.

- Better protect minors' estates by requiring that all moneys, in the first instance, be placed in a blocked account until further order of the court.
- Establish a child-focused standard for termination of a guardianship rather than the current model that severely punishes parents who do not consent to guardianship.

The following proposed amendments were developed in consultation with stakeholders, including the Nevada Guardianship Commission to refine and enhance the broad goals of the bill to best protect children and to honor parental rights. Additionally, the initial bill made broad deletions to provisions relating to minor estate issues. Upon feedback from stakeholders, the existing law is useful for courts in those rare circumstances. Therefore, many of the provisions removed from 159A under the original bill have been re-included in the amendment.

Below, please find a list of the amendments and function of each revision:

- In Sections 3, 9, 13, and 14 the amendments remove specific reference to specifically allowing alternative service by any means provided in the Nevada Rules of Civil Procedure.
- Section 6 sets forth specific guidance as to when a legal services provider may be appointed for a minor, clarifying the minor may also be appointed a pro bono attorney or retain their own counsel and specify the rules of professional conduct an attorney for a minor must adhere to.
- Section 7 clarifies the preference for appointment of an attorney prior to appointment of anyone to serve as a guardian ad litem or best interests attorney, in line with the national standards of practice for minors in guardianship proceedings.
- Section 13 and 14 set forth procedures for the appointment of a temporary guardian due to emergency medical or other circumstances. The amendment sets forth a procedure for a court to order a hearing be held prior to an award or denial of the temporary guardianship to best preserve the safety and needs of the proposed protected minor.
- Section 16 sets forth factors a court must consider in determining whether a guardianship is in a proposed protected minor's best interest.
- Section 18 is the primary section relating to how a court may ascertain if a parent is unsuitable to care for their child, subject to the constitutional protections for parental rights. The amendments clarify that a parent is presumed suitable to care for their child, rather than stating a parent is presumed to be preferred for appointment of guardian over their child; there is no need for a parent to petition for guardianship of the person of their child. As to the factors a court must consider relating to suitability, the amendment clarifies the court must also consider the suitability factors relating to the proposed guardian as well as the parent. Finally, the amendments clarify the procedure if a proposed protected minor over fourteen objects to a guardianship, as they must consent before it may be granted.
- Section 20 sets forth the duties of a guardian. The amendment clarifies that a guardian has the duty to facilitate a relationship between a minor and their parent to the extent it is in the best interest of the minor and as long as it otherwise complies with court orders for visitation. This change recognizes that guardians may be able to determine, on a day-by-day basis whether visitation is appropriate for the child in their care and what that contact should look like.

- Section 24 relates to expenditures from guardianships of minors' estates. The amendment clarifies the court may consider an expense in light of the minor's prior needs and routines.