

WORK SESSION DOCUMENT

LEGISLATIVE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE

(Nevada Revised Statutes 218E.705)

JULY 19, 2010

The following “work session document” has been prepared by the staff of the Legislative Committee on Child Welfare and Juvenile Justice (*Nevada Revised Statutes* [NRS] 218E.705) in order to facilitate the committee’s discussion of possible recommendations. This document contains recommendations that were submitted in writing to committee staff, provided through correspondence with committee members, or presented during one of the committee’s hearings.

The possible recommendations are compiled and organized by topic to assist members in determining which proposals to forward to the 2011 Session of the Nevada Legislature. The possible recommendations listed in this document do not necessarily have the support or opposition of the committee. Sponsors of recommendations may be noted in parentheses. The committee may accept, reject, modify or take no action on any of the proposals.

Pursuant to *Nevada Revised Statutes* (NRS) 218D.160, the committee is limited to ten bill draft requests (BDRs), including requests for the drafting of legislative resolutions. Although possible actions may be identified within each recommendation, the committee may choose to recommend any of the following actions: (1) draft legislation; (2) draft a legislative resolution; (3) draft a committee letter; or (4) include a statement in the final report. It should also be noted that some of the recommendations may contain an unknown fiscal impact. The BDRs must be submitted to the Legal Division of the Legislative Counsel Bureau (LCB) before September 1, 2010.

Finally, please note that during the drafting process, specific details of approved requests for legislation or other committee action may be further clarified by committee staff in consultation with the Chairwoman or others, as appropriate. Also, some recommendations may include references to specific chapters or statutes. However, as part of the bill drafting process, amendments to other related chapters or sections of the NRS may be added to fully implement the recommendation.

RECOMMENDATIONS

- 1. Draft legislation to permit child welfare agencies in this state to release a report relating to the abuse or neglect of a child if the report pertains to a hearing for guardianship pursuant to Chapter 159 of NRS. (Washoe County District Attorney’s Office and Judge Deborah Schumacher)**

Amend Chapter 432B of NRS (see, NRS 432B.280 and 432B.290) to permit child welfare agencies to disclose reports related to an investigation of the abuse or neglect of a child. The reports may be given to a proposed guardian or person who files a petition for appointment of a guardian of the child; a proposed successor

guardian or person who files a petition for appointment of a successor guardian of the child; the parent or parents of a child over whom a guardianship is sought; the child, if at least 14 years old, over whom a guardianship is sought; and the court for the purpose of determining whether a guardianship should be issued. The identity of the person responsible for reporting the abuse or neglect of the child to the public agency must be kept confidential.

2. Draft legislation to authorize, but not require, the child welfare agencies in the state to establish a kinship guardianship assistance program, as allowed by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). (Division of Child and Family Services [DCFS], Department of Health and Human Services [DHHS])

Amend NRS to require the DHHS to include in the state plan for child and family services a provision for kinship guardianship assistance payments in accordance with 42 U.S.C. §§ 671 and 673(d), including, without limitation, minimum requirements for the kinship guardianship assistance agreements, the amounts that may be paid pursuant to such agreements, additional services that may be provided and any other requirements prescribed by federal law. Further amend NRS to provide that child welfare agencies may, in accordance with the provisions of the state plan, enter into kinship guardianship assistance agreements. (See NRS 127.186 and 422A.650 for similar programs.)

Fiscal Impact: According to the testimony before the committee, the kinship guardianship assistance payments will have a fiscal impact on the child welfare agencies; however, no specific estimate is available at this time. If this bill is introduced, a fiscal note will be requested.

3. Draft legislation to change the residency requirements for finalization of out-of-state adoptions. (Washoe County Department of Social Services)

Amend NRS 127.060 to allow a court in Nevada to finalize the adoption of a child in the custody of a Nevada child welfare agency without regard to the state of residence of the proposed adopting parents, if the child welfare agency in the state of residence of the proposed adopting parents has agreed to the adoption. Also provide that the proposed adopting parents may attend the hearing in person or by telephone.

4. Strengthen planning in the area of disaster response relating to child welfare agencies in the state and providers of child welfare services. (Washoe County Department of Social Services)

A. Require the DCFS to develop a plan for the care of children during disasters in circumstances in which the local child welfare agency is unable to respond to the needs of children.

- B. A summary of the plan must be submitted to the Legislative Committee on Child Welfare and Juvenile Justice and made available on the Internet website of the division.
 - C. Require the DCFS to adopt regulations relating to planning for children during disasters, which prescribe the elements of a disaster plan that must be in place for a foster home which provides care to a child in this state. See, e.g., NAC 432A.280 which prescribes requirements for child care facilities.
 - D. Require child welfare agencies to incorporate in contracts with child welfare service providers language regarding disaster response planning, including, without limitation, mandatory and emergency evacuations, disaster planning training for facility personnel, location and tracking of children, protection or recovery of records, provisions of regular and crisis response services to children during and after a disaster, communication with the division, and other post-disaster activities.
- 5. Draft legislation to address the representation of the agency which provides child welfare services, in child abuse and neglect proceedings. (Discussed at the June 21, 2010, committee meeting.)**

Current law governs the requirements for a petition alleging that a child is in need of protection and provides that the District Attorney shall countersign each such petition and represent the interests of the public in all subsequent proceedings (NRS 432B.510). This recommendation proposes to amend NRS 432B.510 to require that the agency which provides child welfare services, represent the best interests of the child in all proceedings and the District Attorney or Attorney General represent the child welfare agency in all such proceedings.

- 6. Draft legislation to remove the effect of termination of parental rights on a child's right to inheritance. (John J. Cahill, Clark County Public Administrator; Jon Sasser, Washoe Legal Services; Richard L. Brown, University of Nevada, Las Vegas)**

Amend Chapter 128 of NRS to allow the right to inheritance to continue from a parent and a parent's family to a child following termination of parental rights, but such a right shall not continue from a child to a parent whose parental rights have been terminated.

- 7. Draft legislation to require notice in certain adoption hearings regarding sibling visitation and provide that such hearings are not to be held at the same time as the adoption. (Judge Deborah Schumacher and Master Buffy Dreiling, Second Judicial District)**

Amend NRS 127.2827 to require that notice of a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption of a child in the custody of an agency which provides child welfare services, must be provided to

any interested party. Also, amend NRS 127.2827 to provide that a hearing to determine whether to include an order for visitation with a sibling must be held at a date and time other than when the petition for adoption is granted.

8. Draft legislation to allow access to child welfare and delinquency records, reports, and orders to legal stakeholders in certain circumstances. (Judge Francis Doherty, Second Judicial District)

- A. Amend Chapter 432 and 432B of NRS to allow child welfare records, including reports, recommendations, and orders, to be disclosed to the Juvenile Delinquency Court for child treatment, custodial and case planning purposes. Prohibit child welfare records disclosed to the Juvenile Delinquency Court from being used against a youth in Juvenile Delinquency or criminal court proceedings or disclosed beyond such proceedings.
- B. For youth in child welfare cases that crossover into the jurisdiction of Juvenile Delinquency Court, prohibit the closure of the child welfare case as a result of dual jurisdiction. Require that youth in such cases continue to have periodic case reviews and permanency hearings in order to ensure their ongoing eligibility for Title IV-E of the Social Security Act.
- C. Authorize Judicial Districts to have discretion to allow a single judicial officer to address post adjudicatory delinquency dispositions in ongoing dependency cases where appropriate.

9. Draft legislation to address penalties for pandering, soliciting a minor for sex, and conspiracy to solicit, pander and traffic a child for prostitution. (Sam Bateman, Clark County District Attorney's Office)

- A. Current law provides that a person who is found guilty of pandering a child (NRS 201.300), pandering a child by detaining a child in a brothel because of debt (NRS 201.330), or pandering a child by furnishing transportation (NRS 201.340) is guilty of a category B felony. If physical force or the immediate threat of physical force is used upon the child, the person shall be punished for a minimum term of not less than 2 years and a maximum term of not more than 20 years and may be further punished by a fine of not more than \$20,000. If no physical force or immediate threat of physical force is used upon the child, the person shall be punished for a minimum term of not less than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000. This recommendation would raise the penalties for pandering a child, either by raising the specific minimum and maximum terms of imprisonment allowed under a category B felony (see NRS 193.130) and/or increasing the amount of the fine, or by making the penalty for such crimes a category A felony.

- B. Current law provides that a person who is found guilty of living from the earnings of a prostitute in violation of NRS 201.320 is guilty of a category D felony with a penalty of 1 to 4 years and/or a fine of not more than \$5,000. The current statute does not provide any additional penalty when the offense is committed against a child. This recommendation proposes to amend NRS 201.320 to make it a category B felony (consistent with the penalties for pandering provided in NRS 201.300, 201.330, and 201.340) for living from earnings of a prostitute when the prostitute is a child.
- C. Current law provides that a person who is found guilty of soliciting a minor for sex, is guilty of a category E felony (1 to 4 years imprisonment with a mandatory suspended sentence) (NRS 201.354). This recommendation proposes to amend NRS 201.354 to provide that a person found guilty of soliciting a minor for sex is guilty of a category D, C, or B felony.
- D. Current law provides that whenever two or more persons conspire to commit murder, robbery, sexual assault, kidnapping in the first or second degree, arson in the first or second degree, or to obtain and use personal identifying information of another person, each person is guilty of a category B felony and shall be punished by a minimum prison term of not less than 1 year, and a maximum term of not less than 6 years (NRS 199.480). This recommendation proposes to amend subsection 1 of NRS 199.480 to add the crimes of pandering a child (NRS 201.300), pandering a child by furnishing transportation (NRS 201.340), trafficking of persons for financial gain (NRS 200.467), and solicitation of a child (subsection 3 of NRS 201.354), to the current list of offenses constituting category B felony conspiracy.

10. Draft legislation to require background checks for employees of all facilities that provide residential services to children. (Legislative Auditor's Review of Governmental and Private Facilities for Children, 2010)

- A. Amend the appropriate chapters of NRS to require all facilities that provide residential services to children, including:
 - (1) group foster homes which provide full-time care for 7-15 children (Chapter 424 of NRS),
 - (2) child care facilities or institutions (Chapter 432A of NRS),
 - (3) mental health treatment facilities, which will include any medical facility, residential facility for groups, agency to provide personal care services in the home or home for individual residential care that provides residential mental health services to children (Chapter 449 of NRS),
 - (4) substance abuse treatment facilities (Chapters 449 and 641C of NRS),
 - (5) detention and correction facilities at the local and state levels (Chapters 62G and 63 of NRS), and

(6) resource centers (TBD)

to obtain and receive the results of state and federal fingerprint background checks for all employees prior to allowing the employees to have independent unsupervised access to the children in those facilities.

- B. Amend the appropriate chapters of NRS (identified above) to specify the offenses for which a prior conviction would exclude a person from obtaining employment at a facility that provides residential services to children. The committee may wish to review the list of offenses that currently prohibit a person from being employed by a child care facility under NRS 432A.170 and for mental health treatment facilities under NRS 449.188.
- C. Require all facilities that provide residential services to children to maintain the results of the background check for each employee for as long as that person remains employed by the facility. This recommendation would amend the appropriate chapters of NRS (identified above) to provide a similar requirement such as the current law requiring child care facilities to maintain records of its employees under NRS 432A.1785.
- D. Require background checks to be obtained periodically for persons remaining employed at a facility for a specified time. The committee may wish to consider NAC 432A.200, which requires fingerprints to be taken within 3 working days after hiring and every 6 years thereafter, or NRS 449.179 which requires background checks for employees of mental health treatment facilities to be completed at least once every 5 years.

NOTE:

- **The Legislative Committee on Child Welfare and Juvenile Justice may make additional recommendations based on discussions held at its meeting on July 19, 2010.**
- **The Chairman of the committee may choose to raise related issues for discussion or committee action during the work session.**
- **Committee staff may need to seek additional details or clarification on approved recommendations from committee members and others prior to drafting BDRs or committee letters/statements.**