Legislative Committee on Child Welfare and Juvenile Justice

(Nevada Revised Statutes 218E.705)

WORK SESSION DOCUMENT

(INCLUDES EXHIBITS)

May 9, 2012

Prepared by the Research Division
Legislative Counsel Bureau

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(*Nevada Revised Statutes* [NRS] 218E.705)

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The following "Work Session Document" was prepared by the staff of the Legislative Committee on Child Welfare and Juvenile Justice (NRS 218E.705) at the direction of the Chair of the Committee. The document contains a list of recommendations that were either submitted in writing or presented during the Committee's previous hearings on January 18, February 22, and April 4, 2012. It is designed to assist the Committee members in making decisions concerning recommendations to be forwarded to the 2013 Session of the Nevada Legislature.

The recommendations contained in this document are listed in no particular order and do not necessarily have the support of the Committee Chair or members. The source of each recommendation is noted in parentheses. The recommendations are organized by topic so that the members may review them to decide if they should be adopted, modified, rejected, or further considered. Though 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 Committee proclamation; (3) draft a Committee letter; or (4) include a statement in the final report. Pursuant to NRS 218D.160, the Committee is limited to not more than ten bill draft requests.

RECOMMENDATIONS FOR LEGISLATIVE MEASURES

CHILD CARE FACILITY BACKGROUND CHECKS

Recommendation No. 1—Draft a bill to require child care facilities to notify the Health Division, Department of Health and Human Services (DHHS), when a child care facility hires a new employee, has a new resident who is over the age of 18 years, or has a new participant in an outdoor youth program who is over the age of 18 years; to ensure background checks are completed on all employees, residents, and outdoor youth program participants within the current statutory time frame outlined in NRS 432A.170. A copy of NRS 432A.170 is provided behind **Tab A**.

(Recommended by Marla McDade Williams, B.A., M.P.A., Deputy Administrator, Health Division, DHHS)

DOMESTIC SEX TRAFFICKING OF MINORS, CHILD PROSTITUTION, AND THE PROSECUTION OF PERSONS ACCUSED OF PANDERING AND SOLICITING CHILDREN

Recommendation No. 2—Draft a bill to provide a definition of "sexually exploited child" in Chapter 62A ("General Provisions" related to juvenile justice) of NRS. A sexually exploited child, under this proposal, would be defined as a child under the age of 18 years who is engaged or attempting to engage in prostitution. Suggested language is provided behind **Tab B**.

(Recommended by Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office)

If Recommendation No. 2 is adopted, the following recommendations may also be considered:

Recommendation No. 2(a)—Draft a bill to amend statutes related to a child in need of supervision (NRS 62B.320) to include a sexually exploited child.

Recommendation No. 2(b)—Draft a bill to amend statutes related to the release of a child alleged to be in need of supervision (NRS 62C.050) to include an exception for a sexually exploited child.

Recommendation No. 2(c)—Draft a bill to amend statutes related to the initial admonition and referral of a child in need of supervision (NRS 62E.410) to include an exception for a sexually exploited child so that such a child is not subject to the initial admonition of the court.

Recommendation No. 3—Draft a bill to establish the crime of sex trafficking of a minor similar to statutes involving involuntary servitude, but without any requirement of proof of forced labor or services. The new crime must identify children who are commercially sexually exploited as sex trafficking victims. Additional information and the statutes referenced in this recommendation are provided behind **Tab B**.

(Recommended by Teresa Lowry, Assistant District Attorney, Family Support, Juvenile and Child Welfare Divisions, Clark County District Attorney's Office)

If Recommendation No. 3 is adopted, the following recommendations may also be considered:

Recommendation No. 3(a)—Draft a bill to revise the definition of "victim" for purposes of determining eligibility for aid to certain victims of crime (NRS 217.070) to make victims of sex trafficking of a minor eligible for such aid.

Recommendation No. 3(b)—Draft a bill to include victims of sex trafficking of a minor in existing rape shield provisions (NRS 50.090).

Recommendation No. 3(c)—Draft a bill to provide the same statute of limitations for victims of sex trafficking of a minor, as is provided for victims of sexual assault or sexual abuse, and to provide for the same removal of the statute of limitation or extension as provided for those crimes pursuant to NRS 171.083 and 171.095.

CRIMES AGAINST CHILDREN

Recommendation No. 4—Draft a bill to prohibit a person from willfully capturing and transmitting the image of a violent crime committed in this State by or against a child under the age of 18 years using an electronic communication device or other device with the intent to encourage, further, or promote such a crime.

(Recommended by Senator Valerie Wiener, Chair, Legislative Committee on Child Welfare and Juvenile Justice)

PLACING GRAFFITI ON OR OTHERWISE DEFACING PROPERTY

Recommendation No. 5—Draft a bill to add any property, symbol, structure, or sign listed with the Nevada State Register of Historic Places or the National Register of Historic Places to the definition of "Protected site" in NRS 206.330. Additional information and a copy of the statute are provided behind **Tab C**.

(Recommended by Scott Black, Detective, Gang Crimes Bureau, Las Vegas Metropolitan Police Department)

INCARCERATION AND PROSECUTION OF JUVENILES

Juveniles Certified as Adults

Recommendation No. 6—Draft a bill to amend statutes related to conditions and limitations on detaining a child in certain facilities (NRS 62C.030) to allow juveniles who are transferred to adult court for criminal proceedings to petition the court for temporary placement in a juvenile detention facility pending the outcome of the proceedings. Suggested language is provided behind **Tab D**.

(Recommended by Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office, and Esther Brown, Founder and Executive Director, The Embracing Project)

Recommendation No. 7—Draft a bill to require any child under the age of 18 years who is sentenced as an adult to a term of imprisonment for committing a crime to serve the term in a juvenile detention facility until the child reaches the age of 18 years, unless dangerous to another juvenile. Additional information is provided behind **Tab D**.

(Recommended by Esther Brown, Founder and Executive Director, The Embracing Project)

Recommendation No. 8—Draft a bill to amend statutes related to direct filing of charges against a juvenile for criminal proceedings as an adult (NRS 62B.330) so that direct filing may only occur if the crime charged is murder or attempted murder and the child is at least 16 years of age. Suggested language is provided behind **Tab D**.

(Recommended by Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office, and Esther Brown, Founder and Executive Director, The Embracing Project)

Recommendation No. 9—Draft a bill to amend statutes related to direct filing of charges against a juvenile for criminal proceedings as an adult (subsection 3(f) of NRS 62B.330) to remove the provision requiring a juvenile who was previously convicted of a criminal offense as an adult to be treated as an adult if charged with another offense in the future. Additional information is provided behind **Tab D**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, American Civil Liberties Union [ACLU] of Nevada)

Recommendation No. 10—Draft a bill to amend statutes related to discretionary certification of a juvenile for criminal proceedings as an adult (NRS 62B.390) to: (a) increase the age of a juvenile for purposes of determining when a court may exercise the discretion whether to certify the juvenile for adult criminal proceedings from 14 years to 16 years (subsection 1(a) of NRS 62B.390); and (b) eliminate presumptive certification (subsection 2 and subsection 3 of NRS 62B.390). Additional information is provided behind **Tab D**.

(Recommended by Esther Brown, Founder and Executive Director, The Embracing Project)

Recommendation No. 11—Draft a bill to amend statutes related to a child who is charged as an adult for the commission of a crime to:

(a) Allow the court to remand the case back to juvenile court if the charge for which the child was transferred for adult proceedings is dismissed or otherwise dropped;

(Recommended by Esther Brown, Founder and Executive Director, The Embracing Project)

- OR -

(b) Allow the case to be remanded back to juvenile court when the judge deems that to be appropriate.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

Recommendation No. 12—Draft a bill to amend statutes related to a child who escapes or attempts to escape from a facility for detention of juveniles (NRS 62B.400) to: (a) increase from 14 years to 16 years the minimum age at which a child may be charged as an adult under this statute; and (b) make the decision discretionary, rather than mandatory, whether to charge the juvenile as an adult for any other related offenses. Additional information is provided behind **Tab D**.

(Recommended by Esther Brown, Founder and Executive Director, The Embracing Project)

Recommendation No. 13—Draft a bill to make certain juvenile offenders who are sentenced to terms of imprisonment as an adult eligible for parole after a certain number of years. Suggested language is included behind **Tab D**.

(Recommended by Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office)

Use of Restraints on Juveniles

Recommendation No. 14—Draft a bill to provide that restraints such as handcuffs, waist belts, and leg irons may not be used on a juvenile during a court proceeding unless certain requirements are met. Suggested language is included behind **Tab D**.

(Recommended by Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office)

Criminal Acts Committed by Juveniles

Recommendation No. 15—Draft a bill to amend statutes related to acts which constitute domestic violence (NRS 33.018) to provide that violence by a juvenile toward a sibling or parent is not an act that constitutes domestic violence. Suggested language is included behind **Tab D**.

(Recommended by Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office)

LAWS GOVERNING THE PROTECTION OF CHILDREN

Recommendation No. 16—Draft a bill to require child welfare agencies to establish procedures to protect children and youth in the child welfare system from identity theft. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 17—Draft a bill to streamline and clarify the process and authority to substantiate abuse and neglect allegations. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 18—Draft a bill to require that all child welfare advisory groups or committees, formed pursuant to law, include parent representatives unless prohibited or limited. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 19—Draft a bill to require that all agency improvement plans be made available to the public and posted on the Internet (NRS 432B.216). Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 20—Draft a bill to amend statutes related to action taken by an agency upon receipt of report of possible abuse or neglect (NRS 432B.260) to allow referrals for differential response when the child is under the age of 5 years. Additional information is included behind **Tab E**.

(Recommended by Jill Marano, Acting Deputy Administrator, Child Welfare Services, Division of Child and Family Services [DCFS], DHHS)

Recommendation No. 21—Draft a bill to amend statutes related to the placement of a child in protective custody (NRS 432B.390) to require one of the following parties to obtain a warrant prior to placement: (a) an agent or an officer of a law enforcement agency; (b) an officer of the local juvenile probation department or the local department of juvenile services; or (c) a designee of an agency that provides child welfare service. Additional information is included behind **Tab E**.

(Recommended by Kevin Schiller, Director, Washoe County Department of Social Services)

Recommendation No. 22—Draft a bill to define "reasonable efforts" in Chapter 432B ("Protection of Children From Abuse and Neglect") of NRS. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 23—Draft a bill to amend statutes related to the preservation and reunification of a family and child (NRS 432B.393) to require a court to make case-specific judicial determinations regarding reasonable efforts. Additional information is included behind **Tab E**.

(Recommended by Jill Marano, Acting Deputy Administrator, Child Welfare Services, DCFS, DHHS)

Recommendation No. 24—Draft a bill to amend statutes related to the preservation and reunification of a family and child (subsection 3 of NRS 432B.393) to more closely align with the federal statutes, which allow for a waiver of reasonable efforts in certain circumstances and clearly state that the courts determine whether the child welfare agencies are required to make reasonable efforts to preserve and reunify a family and child. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 25—Draft a bill to revise statutes related to child death review teams to consolidate the two State-level teams (NRS 432B.408 and 432B.409) into one State-level team and to specifically allow for the use of de-identified, aggregate data for purposes of research or prevention (NRS 432B.407 and 432B.4095). Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 26—Draft a bill to amend statutes related to the execution and contents of a petition alleging that a child is in need of protection (subsection 4(b) of NRS 432B.510) to provide that the residence of a child refers to the address where the child resided before being taken into protective custody. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 27—Draft a bill to amend statutes related to the adjudicatory hearing on a petition alleging that a child is in need of protection (NRS 432B.530) to increase the time allowed for the hearing from 30 days to 60 days. Additional information is included behind **Tab E**.

(Recommended by the Working Group on the Revision of Laws Governing the Protection of Children)

Recommendation No. 28—Draft a bill to amend statutes related to the annual and semiannual review by a court of placement of a child (NRS 432B.580 and 432B.590) to revise language requiring that foster parents, preadoptive parents, and biological parents have the right to be heard in court proceedings to match language included in federal law. Additional information is included behind **Tab E**.

(Recommended by Jill Marano, Acting Deputy Administrator, Child Welfare Services, DCFS, DHHS)

Recommendation No. 29—Draft a bill to amend statutes related to the annual hearing on the disposition of a case of a child in need of protection (NRS 432B.590) to require the court to make determinations regarding out-of-state placement and transition services. Additional information is included behind **Tab E**.

(Recommended by Jill Marano, Acting Deputy Administrator, Child Welfare Services, DCFS, DHHS)

OTHER RECOMMENDATIONS

The following topics were also submitted to the Committee:

Recommendation No. 30—Revise certain definitions concerning child abuse and neglect. Additional information is included behind **Tab F**.

(Recommended by Devon Brooks, private citizen Clark County Democratic Black Caucus, Las Vegas)

Recommendation No. 31—Revise certain definitions concerning bullying, cyber-bullying, harassment, and intimidation. Additional information is included behind **Tab F**.

(Recommended by Carey Stewart, Director, Department of Juvenile Services, Washoe County)

Recommendation No. 32—Adopt the recommendations contained in the *Nevada Operations of Multi-Automated Data Systems (NOMADS)—Child Support Enforcement Application Assessment Project NOMADS CSE System Maintenance Plan & Modernization Roadmap*, dated October 6, 2011, as prepared by Policy Studies, Inc. Additional information is included behind **Tab F**.

(Recommended by Teresa Lowry, Assistant District Attorney, Family Support, Juvenile and Child Welfare Divisions, Clark County District Attorney's Office)

Recommendation No. 33—Adopt the recommendations contained in the Protected Innocence Initiative's Analysis and Recommendations for Nevada, as prepared by Shared Hope International. Additional information is included behind **Tab F**.

(Recommended by Teresa Lowry, Assistant District Attorney, Family Support, Juvenile and Child Welfare Divisions, Clark County District Attorney's Office)

Recommendation No. 34—Create a remediation plan, with concern for causes of disproportionality, to include: (a) legislative oversight; (b) policy recommendations; and (c) evidence-based practices, to be utilized by police departments, school officials, service providers, and others interacting with affected populations. Additional information is included behind **Tab F**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

Recommendation No. 35—Create a pilot program to ensure adequate case management for youth with severe emotional disturbances involved with out-of-community placements. Additional information is included behind **Tab F**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

Recommendation No. 36—Adopt Positive Behavioral Intervention and Support as a part of standards addressing the behavioral health care needs of children, and develop data systems to track school climate programs and discipline. Additional information is included behind **Tab F**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

Recommendation No. 37—Require the tracking of point of entry statistics for youth interacting with the juvenile justice system, including status offenses. Additional information is included behind **Tab F**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

Recommendation No. 38—Consider recommendations that will ensure that instances of expulsion related to "immoral conduct" and bullying are not illegally infringing on the First Amendment rights of students. Additional information is included behind **Tab F**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

Recommendation No. 39—Create a more comprehensive approach to addressing issues related to school discipline by identifying school-based trends as an inappropriate entrée into the juvenile justice system and create policies that will prevent students from improper introduction into the juvenile justice system through the school to prison pipeline. Additional information is included behind **Tab F**.

(Recommended by Rebecca S. Gasca, Legislative and Policy Director, ACLU of Nevada)

TAB A

NRS 432A.170 Investigation by Health Division; information concerning criminal convictions of applicant, licensee, employee and certain residents; cost of investigation.

1. The Health Division may, upon receipt of an application for a license to operate a child care facility, conduct an investigation into the:

(a) Buildings or premises of the facility and, if the application is for an outdoor youth program, the area of operation of the program;

(b) Qualifications and background of the applicant or the employees of the applicant;

(c) Method of operation for the facility; and

(d) Policies and purposes of the applicant.

2. The Health Division shall secure from appropriate law enforcement agencies information on the background and personal history of every applicant, licensee or employee of an applicant or licensee, or every resident of a child care facility who is 18 years of age or older, other than a resident who remains under the jurisdiction of a court pursuant to NRS 432B.594, or participant in an outdoor youth program who is 18 years of age or older, to determine whether the person has been convicted of:

(a) Murder, voluntary manslaughter or mayhem

(b) Any other felony involving the use of a firearm or other deadly weapon

(c) Assault with intent to kill or to commit sexual assault or mayhem

(d) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;

(e) Abuse or neglect of a child or contributory delinquency

(f) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;

(g) Abuse, neglect, exploitation or isolation of older persons or vulnerable persons, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive, or a law of any other jurisdiction that prohibits the same or similar conduct; or

(h) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property within the immediately preceding 7 years

3. The Health Division shall request information concerning every applicant, licensee or employee of an applicant or licensee, or every resident of a child care facility who is 18 years of age or older, other than a resident who remains under the jurisdiction of a court pursuant to NRS 432B.594, or participant in an outdoor youth program who is 18 years of age or older, from:

(a) The Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report pursuant to NRS 432A.175; and

(b) The Statewide Central Registry for the Collection of Information Concerning the Abuse or Neglect of a Child established pursuant to NRS 432.100 to determine whether there has been a substantiated report of child abuse or neglect made against any of them.

4. The Health Division may charge each person investigated pursuant to this section for the reasonable cost of that investigation.

5. The information required to be obtained pursuant to subsections 2 and 3 must be requested concerning an

(a) Employee of an applicant or licensee, resident of a child care facility who is 18 years of age or older, other than a resident who remains under the jurisdiction of a court pursuant to NRS 432B.594, or participant in an outdoor youth program who is 18 years of age or older not later than 3 days after the employee is hired, the residency begins or the participant begins participating in the program, and then at least once every 5 years thereafter.

(b) Applicant at the time that an application is submitted for licensure, and then at least once every 5 years after the license is issued.

6. A person who is required to submit to an investigation required pursuant to this section shall not have contact with a child in a child care facility without supervision before the investigation of the background and personal history of the person has been conducted.

(Added to NRS by 1979, 886; A 1985, 1473; 1987, 1551; 1991, 2309; 2009, 927; 2011, 245, 1368, 3547)

REVISER'S NOTE.

Ch. 233, Stats. 2009, which amended this section, contains the following provision not included in NRS

"The Bureau of Services for Child Care of the Division of Child and Family Services of the Department of Health and Human Services [now the Health Division of the Department of Health and Human Services] is not required to obtain the information required pursuant to subsections 2 and 3 of section 5 of this act [NRS 432A.170] concerning a person who, on October 1, 2009, is a licensee, employee of a licensee, or resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older until 6 years after the license was issued or renewed, or from the date of employment of an employee, residency of a resident or participation of a participant.

TAB B

NRS 62A.< "Sexually Exploited Child" defined. A "Sexually Exploited Child" means a child under the age of eighteen years who is the victim of commercial sexual abuse and/or engaged or attempting to engage in prostitution.

NRS 62B.320 Child in need of supervision.

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is alleged or adjudicated to be in need of supervision because the child:

(a) Is subject to compulsory school attendance and is a habitual truant from school;

(b) Habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable;

(c) Deserts, abandons or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation; or

(d) Is engaged or attempting to engage in prostitution and therefore in need of protection as a Sexually Exploited Child

2. A child who is subject to the jurisdiction of the juvenile court pursuant to this section must not be considered a delinquent child.

NRS 62C.050 Release of child alleged to be in need of supervision required within certain period; exceptions.

1. Except as otherwise provided in this section, if a child who is alleged to be in need of supervision is taken into custody and detained, the child must be released not later than 24 hours, excluding Saturdays, Sundays and holidays, after the child's initial contact with a peace officer or probation officer to:

(a) A parent or guardian of the child;

(b) Any other person who is able to provide adequate care and supervision for the child; or

(c) Shelter care.

2. A child does not have to be released pursuant to subsection 1 if the juvenile court:

(a) Holds a detention hearing;

(b) Determines that the child:

(1) Has threatened to run away from home or from the shelter;

(2) Is accused of violent behavior at home;

(3) Is accused of engaging in or attempting to engage prostitution and is in need of protection as a Sexually Exploited Child; or

(4) Is accused of violating the terms of a supervision and consent decree; and

(c) Determines that the child needs to be detained to make an alternative placement for the child.

↪ The child may be detained for an additional 24 hours but not more than 48 hours after the detention hearing, excluding Saturdays, Sundays and holidays.

3. A child does not have to be released pursuant to this section if the juvenile court:

(a) Holds a detention hearing; and

(b) Determines that the child:

(1) Is a ward of a federal court or held pursuant to a federal statute;

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(2) Has run away from another state and a jurisdiction within that state has issued a want, warrant or request for the child; or

(3) Is accused of violating a valid court order.

↪ The child may be detained for an additional period as necessary for the juvenile court to return the child to the jurisdiction from which the child originated or to make an alternative placement for the child.

4. For the purposes of this section, an alternative placement must be in a facility in which there are no physical restraining devices or barriers.

NRS 62E.410 Initial admonition and referral; conditions before adjudication; inapplicability to habitual truant or a sexually exploited child.

1. If a petition is filed alleging that a child is in need of supervision and the child previously has not been found to be within the purview of this title, the juvenile court:

(a) Shall admonish the child to obey the law and to refrain from repeating the acts for which the petition was filed;

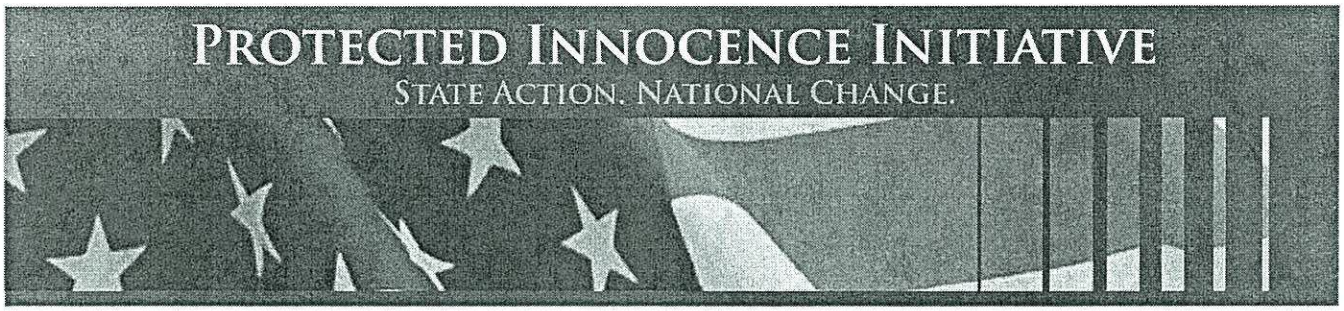
(b) Shall maintain a record of the admonition;

(c) Shall refer the child to services available in the community for counseling, behavioral modification and social adjustment; and

(d) Shall not adjudicate the child to be in need of supervision, unless a subsequent petition based upon additional facts is filed with the juvenile court after admonition and referral pursuant to this subsection.

2. If a child is not subject to the provisions of subsection 1, the juvenile court may not adjudicate the child to be in need of supervision unless the juvenile court expressly finds that reasonable efforts were taken in the community to assist the child in ceasing the behavior for which the child is alleged to be in need of supervision.

3. The provisions of this section do not apply to a child who is alleged to be in need of supervision because the child is a habitual truant ***or is a Sexually Exploited Child.***



ANALYSIS AND RECOMMENDATIONS
NEVADA

FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

1.1 The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.

1.2 Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.

1.3 CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.

Legal Analysis*[1]*:

1.1 The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.

Nevada does not have a separate sex trafficking statute, does not address the sex trafficking of minors, and requires "forced labor or services" for all cases of human trafficking.

Nev. Rev. Stat. Ann. § 200.463(1) (Involuntary servitude; penalties)[2] states,

> A person who knowingly subjects, or attempts to subject, another person to forced labor or services by:
> (a) Causing or threatening to cause physical harm to any person;
> (b) Physically restraining or threatening to physically restrain any person;
> (c) Abusing or threatening to abuse the law or legal process;

** This document has not been fully reviewed and approved by ACLJ.*

[1] Unless otherwise specified, all references to statutes were taken from the Nevada Revised Statutes Annotated (LEXIS through the 26th (2010) Special Sess.) and all federal statutes were taken from United States Code (LEXIS current through PL 112-54, approved 11/12/11).

[2] Nevada's statutes entitled "Trafficking in Persons," Nev. Rev. Stat. Ann. § 200.467 (Trafficking in persons for financial gain; penalties) and Nev. Rev. Stat. Ann. § 200.468 (Trafficking in persons for illegal purposes; penalty) deal with human smuggling and the transportation of individuals into Nevada who "do[] not have the legal right to enter or remain in the United States."

(d) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;
(e) Extortion; or
(f) Causing or threatening to cause financial harm to any person,
is guilty of holding a person in involuntary servitude.

A violation is a category B felony. Nev. Rev. Stat. Ann. § 200.463(2). If a person suffers "substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom," a violation of Nev. Rev. Stat. Ann. § 200.463 is punishable by imprisonment for 7–20 years and a possible fine not to exceed $50,000. Nev. Rev. Stat. Ann. § 200.463(2)(a). If the victim does not suffer "substantial bodily harm," a violation is punishable by imprisonment for 5–20 years and a possible fine not to exceed $50,000. Nev. Rev. Stat. Ann. § 200.463(2)(b).

Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty), through its reference to "involuntary servitude," also requires a showing of "forced labor or services" for minor victims. A violation is a class B felony if a person knowingly

1. Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude; or
2. Benefits, financially or by receiving anything of value from participating in a violation of NRS 200.463.

A violation of Nev. Rev. Stat. Ann. § 200.464 is a category B felony punishable by imprisonment for 1–15 years and a possible fine not to exceed $50,000. Nev. Rev. Stat. Ann. § 200.464.

Nevada does not define "labor and services," and does not clearly address sex trafficking.[3]

1.1.1 Recommendation: Enact a sex trafficking statute that establishes the crime of domestic minor sex trafficking and does not require proof of forced labor or services for minors under 18. The law should expressly identify children who are commercially sexually exploited as domestic minor sex trafficking victims.[4]

1.2 Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.

The following laws criminalize CSEC in Nevada:

1. Pursuant to Nev. Rev. Stat. Ann. § 201.354 (Engaging in prostitution or solicitation for prostitution: Penalty; exception), it is a crime to "engage in prostitution or solicitation therefor, except in a licensed house of prostitution."[5] Nev. Rev. Stat. Ann. § 201.354(1). If a child under 18 is solicited, a violation is a

[3] The preamble of Assembly Bill 383, which amended Nev. Rev. Stat. Ann. § 200.464, states that "victims of trafficking in persons are often subjected to force, fraud or coercion for the purpose of subjecting the victims to sexual exploitation, prostitution, providing other forms of sexual entertainment or forced labor . . . ." 2007 Nev. Stat. 316. Therefore, it appears the legislature may have contemplated that "services" could include commercial sex acts, but the language of this section as enacted by the legislature does not clearly apply to sex trafficking of minors.
[4] Subsequent recommendations in this report referring to the state human trafficking law(s) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.
[5] The state allows counties to control the licensing of houses of prostitution if the county population is less than 700,000. Pursuant to Nev. Rev. Stat. Ann. § 244.345(8) (Dancing halls, escort services, entertainment by referral services and gambling games or devices; limitation on licensing of houses of prostitution), "In a county whose population is 700,000 or more, the

category E felony punishable by imprisonment for 1–4 years. Nev. Rev. Stat. Ann. §§ 201.354(3), 201.295(2), 193.130(2)(e). The court may suspend the sentence and sentence an offender to probation instead.[6] Nev. Rev. Stat. Ann. § 193.130(2)(e). The court may also impose a fine not to exceed $5,000. Nev. Rev. Stat. Ann. § 193.130(2)(e).

2. Nev. Rev. Stat. Ann. § 201.300(1) (Pandering: Definitions; penalties; exception) states that a person is guilty of pandering when the person commits one of the following acts:

> (a) Induces, persuades, encourages, inveigles, entices or compels a person to become a prostitute or to continue to engage in prostitution;
> (b) By threats, violence or by any device or scheme, causes, induces, persuades, encourages, takes,

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license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution." The text of Nev. Rev. Stat. Ann. 244.345 included here and elsewhere in this report includes amendments made by the passage of Assembly Bill 545 during Nevada's 76th Regular Session. 2011 Nev. ALS 253 (effective July 1, 2011). Prior to the passage of Assembly Bill 545, Nev. Rev. Stat. Ann. § 244.345 only allowed counties with a population less than 400,000 to control the licensing of houses of prostitution. 2001 Nev. Stat. 255.

[6] Pursuant to Nev. Rev. Stat. Ann. § 176A.100(1)(b) (Authority and discretion of court to suspend sentence and grant probation; persons eligible; factors considered; intensive supervision; submission of report of presentence investigation),

> 1. Except as otherwise provided in this section and NRS 176A.110; and 176A.120, if a person is found guilty in a district court upon verdict or plea of:
>
> A category E felony, except as otherwise provided in this paragraph, the court shall suspend the execution of the sentence imposed and grant probation to the person. The court may, as it deems advisable, decide not to suspend the execution of the sentence imposed and grant probation to the person if, at the time of sentencing, it is established that the person:
>
> (1) Was serving a term of probation or was on parole at the time the crime was committed, whether in this State or elsewhere, for a felony conviction;
> (2) Had previously had the person's probation or parole revoked, whether in this State or elsewhere, for a felony conviction;
> (3) Had previously been assigned to a program of treatment and rehabilitation pursuant to NRS 453.580 and failed to successfully complete that program; or
> (4) Had previously been two times convicted, whether in this State or elsewhere, of a crime that under the laws of the situs of the crime or of this State would amount to a felony.
>
> If the person denies the existence of a previous conviction, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the person. At such a hearing, the person may not challenge the validity of a previous conviction. For the purposes of this paragraph, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

Pursuant to Nev. Rev. Stat. Ann. § 176A.110 (Persons convicted of certain offenses required to be certified as not representing high risk to reoffend before court suspends sentence or grants probation; immunity), unless a person has undergone a psychosexual evaluation and it has been certified that the person does not have a high risk to re-offend, a court cannot grant probation to or suspend the sentence of a person convicted under

> (a) Attempted sexual assault of a person who is 16 years of age or older pursuant to NRS 200.366\.
> (b) Statutory sexual seduction pursuant to NRS 200.368.
> (c) Battery with intent to commit sexual assault pursuant to NRS 200.400.
> (d) Abuse or neglect of a child pursuant to NRS 200.508.
> (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.
> (f) Incest pursuant to NRS 201.180.
> (g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.
> (h) Open or gross lewdness pursuant to NRS 201.210.
> (i) Indecent or obscene exposure pursuant to NRS 201.220.
> (j) Sexual penetration of a dead human body pursuant to NRS 201.450.
> (k) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony.
> (l) A violation of NRS 207.180.
> (m) An attempt to commit an offense listed in paragraphs (b) to (l), inclusive.
> (n) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

places, harbors, inveigles or entices a person to become an inmate of a house of prostitution or assignation place, or any place where prostitution is practiced, encouraged or allowed;
(c) By threats, violence, or by any device or scheme, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures a person to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of prostitution;
(d) By promises, threats, violence, or by any device or scheme, by fraud or artifice, by duress of person or goods, or abuse of any position of confidence or authority or having legal charge, takes, places, harbors, inveigles, entices, persuades, encourages or procures a person of previous chaste character to enter any place within this state in which prostitution is practiced, encouraged or allowed, for the purpose of sexual intercourse;
(e) Takes or detains a person with the intent to compel the person by force, threats, menace or duress to marry him or her or any other person; or
(f) Receives, gives or agrees to receive or give any money or thing of value for procuring or attempting to procure a person to become a prostitute or to come into this state or leave this state for the purpose of prostitution.

If a child is pandered using "physical force or the immediate threat of physical force," a violation is a category B felony punishable by imprisonment for 2–20 years and a possible fine not to exceed $20,000. Nev. Rev. Stat. Ann. § 201.300(2)(b)(1). If the person is guilty of pandering a child without "physical force or immediate threat of physical force," then the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed $10,000. Nev. Rev. Stat. Ann. § 201.300(2)(b)(2). In addition, when the victim is a minor aged 14–17, the court may also "impose a fine of not more than $100,000." Nev. Rev. Stat. Ann. § 201.352(1)(a). If the minor is under 14, the court may choose to "impose a fine of not more than $500,000." Nev. Rev. Stat. Ann. § 201.352(1)(b).

3. Pursuant to Nev. Rev. Stat. Ann. § 201.330(1) (Pandering: Detaining person in brothel because of debt; penalties), a person is guilty of pandering when the person "attempts to detain another person in a disorderly house or house of prostitution because of any debt or debts the other person has contracted or is said to have contracted while living in the house . . . ." If the person panders a child using "physical force or the immediate threat of physical force," the crime is a category B felony punishable by imprisonment for 2–20 years and a possible fine not to exceed $20,000. Nev. Rev. Stat. Ann. § 201.330(2)(b)(1). If the person is guilty of pandering a child without "physical force or immediate threat of physical force," the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed $10,000. Nev. Rev. Stat. Ann. § 201.330(2)(b)(2). In addition, when the victim is a minor aged 14–17, the court may also "impose a fine of not more than $100,000." Nev. Rev. Stat. Ann. § 201.352(1)(a). If the minor is under 14, the court may choose to "impose a fine of not more than $500,000." Nev. Rev. Stat. Ann. § 201.352(1)(b).

4. Pursuant to Nev. Rev. Stat. Ann. § 201.340(1) (Pandering: Furnishing transportation; penalties), a person is guilty of pandering if the person

> knowingly transports or causes to be transported, by any means of conveyance, into, through or across this state, or who aids or assists in obtaining such transportation for a person with the intent to induce, persuade, encourage, inveigle, entice or compel that person to become a prostitute or to continue to engage in prostitution . . . .

If the person panders a child using "physical force or the immediate threat of physical force," the crime is a category B felony punishable by imprisonment for 2–20 years and a possible fine not to exceed $20,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(1). If the person is guilty of pandering a child without "physical force or immediate threat of physical force," then the crime is a category B felony punishable by imprisonment for 1–10 years and a possible fine not to exceed $10,000. Nev. Rev. Stat. Ann. § 201.340(2)(b)(2). In addition, when the victim is a minor aged 14–17, the court may also "impose a fine of not more than

$100,000." Nev. Rev. Stat. Ann. § 201.352(1)(a). If the minor is under 14, the court may also "impose a fine of not more than $500,000." Nev. Rev. Stat. Ann. § 201.352(1)(b).

5. Pursuant to Nev. Rev. Stat. Ann. § 609.210 (Employing or exhibiting minor in certain injurious, immoral or dangerous activities: Criminal penalty), a person is guilty of a misdemeanor when the person

> employs, or causes to be employed, exhibits or has in his or her custody for exhibition or employment, any minor, and every parent, relative, guardian, employer or other person having the care, custody or control of any minor, who in any way procures or consents to the employment of the minor:
>
> . . .
>
> 2. In any indecent or immoral exhibition or practice;
>
> . . . .

A violation is punishable by imprisonment in the county jail for up to 6 months, a fine not to exceed $1,000, or both. Nev. Rev. Stat. Ann. § 193.150(1). Alternatively, the court may sentence an offender to community service. Nev. Rev. Stat. Ann. § 193.150(2).

6. Under Nev. Rev. Stat. Ann. § 200.710(1) (Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance), it is a category A felony when a person "knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance . . . ." Additionally, Nev. Rev. Stat. Ann. § 200.710(2) states that it is a category A felony when a person "knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance . . . regardless of whether the minor is aware that the sexual portrayal is part of a performance . . . ." When the minor is 14 or older, a violation is punishable by a possible fine not to exceed $100,000 and life imprisonment with possibility of parole beginning after the offender has served 5 five years. Nev. Rev. Stat. Ann. § 200.750(1). When the minor is under 14, violations are punishable by imprisonment "for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than $100,000." Nev. Rev. Stat. Ann. § 200.750(2).

Although not specific to commercial sex offenses, the following offenses may also apply to commercial sexual exploitation of children cases:

1. Pursuant to Nev. Rev. Stat. Ann. § 200.368 (Statutory sexual seduction: Penalties), "statutory sexual seduction" is a crime. Nev. Rev. Stat. Ann. § 200.364(5), defines "statutory sexual seduction" as

> (a) Ordinary sexual intercourse, anal intercourse, cunnilingus or fellatio committed by a person 18 years of age or older with a person under the age of 16 years; or
> (b) Any other sexual penetration committed by a person 18 years of age or older with a person under the age of 16 years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either of the persons.

If the offender is 21or older, Nev. Rev. Stat. Ann. § 200.368 is a category C felony punishable by imprisonment for 1–5 years and a possible fine not to exceed $10,000. Nev. Rev. Stat. Ann. §§ 200.368(1), 193.130(2)(c). If the offender is under 21, a violation is a gross misdemeanor punishable by up to 1 year of imprisonment in the county jail, a fine not to exceed $2,000, or both. Nev. Rev. Stat. Ann. § 200.368(2), 193.140.

2. Under Nev. Rev. Stat. Ann. § 201.195(1) (Solicitation of minor to engage in acts constituting crime against nature; penalties), a person commits a crime if the person "incites, entices or solicits a minor to engage in

acts which constitute the infamous crime against nature."[7] When a minor under 14 "actually engaged in such acts as a result", the crime is a category A felony punishable by life imprisonment with eligibility for parole beginning when the offender has served 10 years. Nev. Rev. Stat. Ann. § 201.195(1)(a)(1). When a minor that is 14 or older "actually engaged in such acts as a result", the crime is a category A felony punishable by life imprisonment with eligibility for parole beginning when the offender has served 5 years. Nev. Rev. Stat. Ann. § 201.195(1)(a)(2). If the minor did not engage in the acts solicited, a first violation is a gross misdemeanor punishable by "imprisonment in the county jail for not more than 1 year", a fine not to exceed $2,000, or both. Nev. Rev. Stat. Ann. §§ 201.195(b)(1), 193.140. If the minor did not engage in the acts solicited, subsequent violations are category A felonies punishable by life imprisonment with eligibility for parole beginning when the offender has served 5 years. Nev. Rev. Stat. Ann. § 201.195(b)(2).

3. Pursuant to Nev. Rev. Stat. Ann. § 201.230(1) (Lewdness with child under 14 years; penalties)

> A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.

A violation is generally a category A felony punishable by a possible fine not to exceed $10,000 and life imprisonment with eligibility for parole beginning when the offender has served 10 years. Nev. Rev. Stat. Ann. § 201.230(2). However, if the person has been convicted of "lewdness with a child pursuant to this section or any other sexual offense against a child"[8] or a crime in another jurisdiction that could be classified as one of these crimes in Nevada, the crime is a category A felony punishable by life imprisonment without the possibility of parole. Nev. Rev. Stat. Ann. § 201.230(3).

1.3 CSEC or prostitution statutes refer to the sex trafficking statute in order to identify the commercially sexually exploited minor as a trafficking victim.

Nevada's CSEC statutes[9] do not refer to Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude) or Nev. Rev. Stat. Ann. § 200.464(1) (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty).

1.3.1 Recommendation: Add specific references to Nev. Rev. Stat. Ann. § 200.463 (Involuntary servitude) and Nev. Rev. Stat. Ann. § 200.464 (Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty) in the CSEC statutes to ensure that CSEC victims are properly identified as human trafficking victims.

[7] "Infamous crime against nature" is defined as "anal intercourse, cunnilingus or fellatio between natural persons of the same sex" and "[a]ny sexual penetration, however slight, is sufficient to complete the infamous crime against nature." Nev. Rev. Stat. Ann. § 201.195(2).
[8] *See supra* note 3.
[9] *See supra* Section 1.2.

NRS 50.090 Evidence of previous sexual conduct of victim of sexual assault or statutory sexual seduction inadmissible to challenge victim's credibility; exceptions. In any prosecution for sexual assault or statutory sexual seduction or for attempt to commit or conspiracy to commit either crime, the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct, in which case the scope of the accused's cross-examination of the victim or rebuttal must be limited to the evidence presented by the prosecutor or victim.

(Added to NRS by 1975, 1132; A 1977, 1630; 1991, 126)

REVISER'S NOTE.

Ch. 63, Stats. 1991, the source of the deletion from this section of assault with intent to commit either crime, contains the following provision not included in NRS:

"The amendatory provisions of this act do not apply to the prosecution of any criminal acts alleged to have been committed before October 1, 1991."

NEVADA CASES.

Sexual experience of minor admissible under the circumstances to show prior independent knowledge of acts. In a prosecution for sexual assault allegedly committed on a minor who was 6 years old, evidence of a prior similar sexual experience of the victim offered to show that she had prior independent knowledge of similar acts which constituted the basis for the present charge was not inadmissible under NRS 50.090, which prohibits presentation of evidence of previous sexual conduct of the victim of sexual assault under certain circumstances, where the remaining evidence of guilt was not strong and the truthfulness of the victim's testimony was an important element of the state's case. Summitt v. State, 101 Nev. 159, 697 P.2d 1374 (1985), cited, Chapman v. State, 117 Nev. 1, at 5, 16 P.3d 432 (2001), distinguished, Johnson v. State, 113 Nev. 772, at 777, 942 P.2d 167 (1997)

General policy behind rape victim shield laws. In general, the policy behind rape victim shield laws such as NRS 50.090 is to: (1) reverse the common-law rule that use of evidence of a female complainant's general reputation for morality and chastity is admissible to infer consent and also to attack credibility; (2) protect rape victims from degrading and embarrassing disclosure of intimate details about their private lives; and (3) encourage rape victims to come forward and report a crime and testify in court protected from unnecessary indignities and needless probing into their respective sexual histories. Summitt v. State, 101 Nev. 159, 697 P.2d 1374 (1985), cited, Lane v. Second Judicial Dist. Court, 104 Nev. 427, at 444, 760 P.2d 1245 (1988), Brown v. State, 107 Nev. 164, at 168, 807 P.2d 1379 (1991), Drake v. State, 108 Nev. 523, at 527, 836 P.2d 52 (1992), Johnson v. State, 113 Nev. 772, at 776, 942 P.2d 167 (1997)

Evidence of complainants' prior sexual conduct inadmissible before grand jury. In a sexual assault case, where the deputy district attorney presented evidence to the grand jury of the complainants' asserted reputations for promiscuity and specific instances of their prior sexual encounters, presentation of that evidence was improper because NRS 48.069 and 50.090 expressly limit admission of such evidence to prosecutions, and since prosecution of a case does not begin until charges are filed, evidence of prior sexual conduct is not admissible under NRS 48.069 and 50.090, and cannot become legal evidence within the meaning of NRS 172.135(2), until on a motion district court rules it to be such following the return of an indictment. Lane v. Second Judicial Dist. Court, 104 Nev. 427, 760 P.2d 1245 (1988)

Extrinsic evidence may be admissible to show that complaining witness made previous false accusations of sexual abuse or sexual assault. In sexual assault cases, NRS 50.085 and 50.090 do not bar cross-examination of a complaining witness to show that the witness has made previous false accusations of sexual abuse or sexual assault and the introduction of corroborative extrinsic evidence if: (1) before questioning begins, defendant files a written notice of his intent; (2) trial court holds a hearing outside the presence of the jury at which defendant establishes by a preponderance of evidence that the accusations were in fact made, the accusations were in fact false, and that the evidence is more probative than prejudicial; and (3) during cross-examination, the witness denies or fails to recall having made such accusations. Miller v. State, 105 Nev. 497, 779 P.2d 87 (1989), cited, Brown v. State, 107 Nev. 164, at 166, 807 P.2d 1379 (1991), Efrain M., A Minor v. State, 107 Nev. 947, at 949, 823 P.2d 264 (1991), Brown v. State, 110 Nev. 846, at 847, 877 P.2d 1071 (1994), Abbott v. State, 122 Nev. 715, at 732, 138 P.3d 462 (2006)

Section does not apply to illegal acts of prostitution. In a prosecution for sexual assault, provisions of NRS 48.069, which require an offer of proof and a hearing outside of the presence of the jury if the accused wishes to present evidence of any previous sexual conduct of the victim to prove the victim's consent, and provisions of NRS 50.090, which make inadmissible evidence of any previous sexual conduct of the victim to challenge the victim's credibility, do not apply to illegal acts of prostitution. The court's holding does not mean that a victim's prior arrest record for prostitution must always be admitted in a sexual assault case, but merely places a prior arrest record for prostitution on an equal footing with other evidence of misconduct. Drake v. State, 108 Nev. 523, 836 P.2d 52 (1992)

Because evidence of previous sexual conduct based on allegations of prior molestation was irrelevant, district court properly excluded evidence. Defendant appealed a conviction for sexual assault arguing that district court improperly excluded testimony regarding the victim's previous sexual conduct where the state's case was based on the victim's claim that she was a virgin at the time of the assault. Although the victim's testimony in the preliminary hearing indicated that she may have been molested before she was assaulted by defendant, there was no evidence in the record to support the proposition that her injuries were caused by the alleged molesters. Therefore, because testimony regarding the victim's previous sexual conduct was irrelevant, district court properly excluded the testimony pursuant to NRS 50.090 and the judgment of conviction was affirmed. Johnson v. State, 113 Nev. 772, 942 P.2d 167 (1997)

NRS 62B.320 Child in need of supervision.

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is alleged or adjudicated to be in need of supervision because the child:

(a) Is subject to compulsory school attendance and is a habitual truant from school;

(b) Habitually disobeys the reasonable and lawful demands of the parent or guardian of the child and is unmanageable;

(c) Deserts, abandons or runs away from the home or usual place of abode of the child and is in need of care or rehabilitation; or

(d) Uses an electronic communication device to transmit or distribute a sexual image of himself or herself to another person or to possess a sexual image in violation of NRS 200.737.

2. A child who is subject to the jurisdiction of the juvenile court pursuant to this section must not be considered a delinquent child.

3. As used in this section:

(a) "Electronic communication device" has the meaning ascribed to it in NRS 200.737.

(b) "Sexual image" has the meaning ascribed to it in NRS 200.737.

(Added to NRS by 2003, 1028; A 2011, 1062)

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62B.320 were derived from part of former NRS 62.040, which had the following legislative history:

"[3:63:1949; A 1949, 572; 1943 NCL § 1038.3]—(NRS A 1957, 148; 1963, 500; 1969, 443; 1971, 1333; 1973, 397, 1341; 1975, 1129; 1977, 1270; 1979, 501; 1981, 1892, 2019; 1983, 112; 1985, 1388; 1989, 867, 1806, 1807, 1909; 1993, 1981; 1995, 785, 1342, 1371; 1997, 832; 1999, 717, 722, 1338, 1339, 1342, 2059, 2067, 2070; 2001, 144, 1216)"

NEVADA CASES.

LIMITS OF JURISDICTION

Court lost jurisdiction when it placed juvenile in the custody of the Administrator of the former Division of Mental Hygiene and Mental Retardation. Where a judge of juvenile court had ordered a juvenile placed in the custody of the Administrator of the Division of Mental Hygiene and Mental Retardation (now the Division of Mental Health and Developmental Services), he could not then order placement in an out-of-state facility with expenses to be paid by the Division. Although the court could have acted independently under former NRS ch. 62 (cf. NRS title 5) to place the juvenile in an out-of-state facility (with expenses paid by the county of residence), once it granted custody to the Division, it lost jurisdiction to substitute its own determinations, appraisals and conclusions for those of the Division regarding appropriate placement and treatment. (N.B., this case was decided before the enactment of NRS 432B.560 and 432B.580 in 1985.) O'Bryan v. Eighth Judicial Dist. Court, 95 Nev. 386, 594 P.2d 739 (1979), but see Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, at 450-51, 92 P.3d 1239 (2004)

Court lacks jurisdiction over a child when allegations in petition insufficient for findings; court may not rely on the terms of an order entered on petition. Where allegations in a juvenile court petition were insufficient to support a finding that the child was a child in need of supervision under former NRS 62.040 (cf. NRS 62B.320 and 62B.330), the court lacked jurisdiction to adjudicate the child as having that status. Thus the court could not rely on the terms of an order which purportedly made that determination when it issued a later order committing the child to a juvenile correctional institution for willful violation of those terms. A Minor v. Juvenile Div. of Seventh Judicial Dist. Court, 97 Nev. 281, 630 P.2d 245 (1981), cited, Ewing v. State, 98 Nev. 81, at 83, 640 P.2d 922 (1982), Gregory C., A Minor v. State, 98 Nev. 465, at 467, 653 P.2d 152 (1982)

EFFECT OF ASSERTION OF JURISDICTION

District court may not affect the authority of the State over a minor after jurisdiction is obtained in another county. Where a minor under the age of 18 was committed to the Nevada School of Industry (now the Nevada Youth Training Center) by a district court of one county, escaped and was arrested by a juvenile officer of another county, and a habeas corpus proceeding was brought in the second county, former NRS 62.040 (cf. NRS 62B.320 and 62B.330) providing that the juvenile division of the district court shall have exclusive original jurisdiction, and former NRS 62.070 (cf. NRS 62B.410) providing that jurisdiction obtained shall be retained until the child reaches the age of 21 years, prevented the court in the second county from taking any action affecting the authority of the State over the minor after the first district court had properly brought the child under state supervision through its juvenile division. In re Short, 74 Nev. 250, 328 P.2d 299 (1958), distinguished, State v. Bill, 91 Nev. 275, at 276, 534 P.2d 1264 (1975)

District court may conduct adoption proceedings after jurisdiction over minor obtained by juvenile court of another county. An order of the juvenile court of the county in which a child was found abandoned which placed the child in the custody of the Welfare Division (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) did not preclude the district court of another county from entertaining a subsequent petition for adoption of the child, because the jurisdiction of juvenile court under former NRS 62.040 and

62.070 (cf. NRS 62B.320 and 62B.410) was limited to a juvenile proceeding and did not divest district court of original jurisdiction provided by NRS 127.010 in adoption proceedings. State v. Bill, 91 Nev. 275, 534 P.2d 1264 (1975)

MISCELLANEOUS

Nondelinquent children may not be committed to punitive correctional institutions. Only children adjudicated delinquent children by juvenile court pursuant to former NRS 62.040 (cf. NRS 62B.320 and 62B.330) may be committed to the Nevada Youth Training Center or the Nevada Girls Training Center (now the Caliente Youth Center) under former NRS 210.180 and 210.580 (cf. NRS 63.400). Nondelinquent children within the jurisdiction of juvenile court may not be committed to these punitive correctional institutions. A Minor v. Juvenile Div. of Seventh Judicial Dist. Court, 97 Nev. 281, 630 P.2d 245 (1981), cited, Glenda S., A Minor v. State, 103 Nev. 53, at 55, 732 P.2d 1356 (1987)

Child may not be both in need of supervision and a delinquent. Under former NRS 62.040 (cf. NRS 62B.320 and 62B.330), a child could not lawfully be adjudicated to be both a child in need of supervision and a delinquent child. Ewing v. State, 98 Nev. 81, 640 P.2d 922 (1982)

Isolated instances of disobedience or matters of temperament insufficient to find a child in need of supervision. Evidence of three incidents of disobedience in a 3-month period, together with the boy's admission that he "lied on everyone" and had a "bad temper" were insufficient to support a finding that the boy was a child in need of supervision under former NRS 62.040 (cf. NRS 62B.320 and 62B.330). Single or isolated instances of disobedience do not constitute habitual disobedience, and the statute does not purport to encompass matters of temperament. Gregory C., A Minor v. State, 98 Nev. 465, 653 P.2d 152 (1982)

FEDERAL AND OTHER CASES.

Judge of juvenile court immune from federal action for conspiracy to violate civil rights. A district judge who was acting as a judge of the juvenile division of district court was acting within the jurisdiction conferred by former NRS 62.040 (cf. NRS 62B.310 and 62B.320) in adjudicating a dispute over custody of a child and was, therefore, immune from an action brought under federal statute to recover damages for an alleged conspiracy to violate the plaintiff's civil rights. Thurston v. Robison, 603 F. Supp. 336 (D. Nev. 1985)

ATTORNEY GENERAL'S OPINIONS.

District court retains jurisdiction until a juvenile reaches 21. Under Nev. Art. 3, § 1, relating to separation of powers, Nev. Art. 6, § 1, relating to vesting of judicial power, and former NRS 62.040 and 62.070 (cf. NRS 62B.320, 62B.330 and 62B.410), relating to district court's original jurisdiction over juvenile matters and retention of such jurisdiction, district court has and retains exclusive jurisdiction in juvenile matters until the juvenile reaches age 21. (See also former NRS 210.290; cf. NRS 63.790.) AGO 86 (8-25-1959)

NRS 62C.050 Release of child alleged to be in need of supervision required within certain period; exceptions.

1. Except as otherwise provided in this section, if a child who is alleged to be in need of supervision is taken into custody and detained, the child must be released not later than 24 hours, excluding Saturdays, Sundays and holidays, after the child's initial contact with a peace officer or probation officer to:

(a) A parent or guardian of the child;

(b) Any other person who is able to provide adequate care and supervision for the child; or

(c) Shelter care.

2. A child does not have to be released pursuant to subsection 1 if the juvenile court:

(a) Holds a detention hearing;

(b) Determines that the child:

(1) Has threatened to run away from home or from the shelter;

(2) Is accused of violent behavior at home; or

(3) Is accused of violating the terms of a supervision and consent decree; and

(c) Determines that the child needs to be detained to make an alternative placement for the child.

➥ The child may be detained for an additional 24 hours but not more than 48 hours after the detention hearing, excluding Saturdays, Sundays and holidays.

3. A child does not have to be released pursuant to this section if the juvenile court:

(a) Holds a detention hearing; and

(b) Determines that the child:

(1) Is a ward of a federal court or held pursuant to a federal statute;

(2) Has run away from another state and a jurisdiction within that state has issued a want, warrant or request for the child; or

(3) Is accused of violating a valid court order.

➥ The child may be detained for an additional period as necessary for the juvenile court to return the child to the jurisdiction from which the child originated or to make an alternative placement for the child.

4. For the purposes of this section, an alternative placement must be in a facility in which there are no physical restraining devices or barriers.

(Added to NRS by 2003, 1056)

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62C.050 were derived from part of former NRS 62.170, which had the following legislative history:

"[16:63:1949; 1943 NCL § 1038.16]—(NRS A 1969, 267; 1973, 1345; 1975, 609; 1977, 297, 1273; 1981, 523; 1985, 1392; 1989, 61, 868, 1810; 1991, 459, 962, 1177; 1995, 1344; 1997, 3048; 1999, 719, 724, 1339, 1342, 2061, 2067, 2070; 2001, 144, 1217)"

NRS 62E.410 Initial admonition and referral; conditions before adjudication; inapplicability to habitual truant.

1. If a petition is filed alleging that a child is in need of supervision and the child previously has not been found to be within the purview of this title, the juvenile court:

(a) Shall admonish the child to obey the law and to refrain from repeating the acts for which the petition was filed;

(b) Shall maintain a record of the admonition;

(c) Shall refer the child to services available in the community for counseling, behavioral modification and social adjustment; and

(d) Shall not adjudicate the child to be in need of supervision, unless a subsequent petition based upon additional facts is filed with the juvenile court after admonition and referral pursuant to this subsection.

2. If a child is not subject to the provisions of subsection 1, the juvenile court may not adjudicate the child to be in need of supervision unless the juvenile court expressly finds that reasonable efforts were taken in the community to assist the child in ceasing the behavior for which the child is alleged to be in need of supervision.

3. The provisions of this section do not apply to a child who is alleged to be in need of supervision because the child is a habitual truant.

(Added to NRS by 2003, 1049)

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62E.410 were derived from the following sections of NRS:

1. Former NRS 62.132, which had the following legislative history:

"(Added to NRS by 1989, 1806; A 1997, 2838)"

2. Part of former NRS 62.212, which had the following legislative history:

"(Added to NRS by 1993, 2025; A 1997, 2841)"

NRS 171.083 No limitation for sexual assault if written report filed with law enforcement officer during period of limitation; effect of disability on period of limitation.

1. If, at any time during the period of limitation prescribed in NRS 171.085 and 171.095, a victim of a sexual assault or a person authorized to act on behalf of a victim of a sexual assault files with a law enforcement officer a written report concerning the sexual assault, the period of limitation prescribed in NRS 171.085 and 171.095 is removed and there is no limitation of the time within which a prosecution for the sexual assault must be commenced.

2. If a written report is filed with a law enforcement officer pursuant to subsection 1, the law enforcement officer shall provide a copy of the written report to the victim or the person authorized to act on behalf of the victim.

3. If a victim of a sexual assault is under a disability during any part of the period of limitation prescribed in NRS 171.085 and 171.095 and a written report concerning the sexual assault is not otherwise filed pursuant to subsection 1, the period during which the victim is under the disability must be excluded from any calculation of the period of limitation prescribed in NRS 171.085 and 171.095.

4. For the purposes of this section, a victim of a sexual assault is under a disability if the victim is insane, mentally retarded, mentally incompetent or in a medically comatose or vegetative state.

5. As used in this section, "law enforcement officer" means:

(a) A prosecuting attorney;

(b) A sheriff of a county or the sheriff's deputy;

(c) An officer of a metropolitan police department or a police department of an incorporated city; or

(d) Any other person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

(Added to NRS by 1997, 890)

REVISER'S NOTE.

Ch. 248, Stats. 1997, the source of this section, became effective on July 1, 1997, and contains the following provision not included in NRS:

"The provisions of this act apply to a person who committed a sexual assault before the effective date of this act [July 1, 1997] if the applicable statute of limitations has commenced but has not yet expired on the effective date of this act [July 1, 1997]."

NRS 171.095 Limitations for offenses committed in secret manner, offenses constituting sexual abuse of child and offenses regarding personal identifying information.

1. Except as otherwise provided in subsection 2 and NRS 171.083 and 171.084:

(a) If a felony, gross misdemeanor or misdemeanor is committed in a secret manner, an indictment for the offense must be found, or an information or complaint filed, within the periods of limitation prescribed in NRS 171.085, 171.090 and 624.800 after the discovery of the offense, unless a longer period is allowed by paragraph (b) or (c) or the provisions of NRS 202.885.

(b) An indictment must be found, or an information or complaint filed, for any offense constituting sexual abuse of a child, as defined in NRS 432B.100, before the victim of the sexual abuse is:

(1) Twenty-one years old if the victim discovers or reasonably should have discovered that he or she was a victim of the sexual abuse by the date on which the victim reaches that age; or

(2) Twenty-eight years old if the victim does not discover and reasonably should not have discovered that he or she was a victim of the sexual abuse by the date on which the victim reaches 21 years of age.

(c) If a felony is committed pursuant to NRS 205.461 to 205.4657, inclusive, against a victim who is less than 18 years of age at the time of the commission of the offense, an indictment for the offense must be found, or an information or complaint filed, within 4 years after the victim discovers or reasonably should have discovered the offense.

2. If any indictment found, or an information or complaint filed, within the time prescribed in subsection 1 is defective so that no judgment can be given thereon, another prosecution may be instituted for the same offense within 6 months after the first is abandoned.

[1911 Cr. Prac. § 74; RL § 6924; NCL § 10722]—(NRS A 1981, 771; 1985, 2167; 1989, 1443; 1993, 305; 1997, 891; 1999, 3525; 2001, 3031; 2005, 1209; 2011, 131)

NRS CROSS REFERENCES.

Contractors, misdemeanor offense, NRS 624.800

Crimes against children, failure to report, NRS 202.885

Felonies, limitations for, NRS 171.085

Gross and simple misdemeanors, limitations for, NRS 171.090

Month defined, NRS 169.105

Personal identifying information, unlawful acts regarding, NRS 205.461-205.4657

REVISER'S NOTE.

Ch. 31, Stats. 2011, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to a person who committed a felony pursuant to NRS 205.461 to 205.4657, inclusive, before October 1, 2011, if the applicable statute of limitations has commenced but has not yet expired on October 1, 2011."

NEVADA CASES.

Allegation first raised on appeal that offense was kept secret was sufficient to allow exception to statute of limitations. Where the district attorney was convicted on information which charged him with a misdemeanor in office under NCL § 2084 (cf. NRS 252.190), in that in October 1933 he received money due to the county and failed to turn it over to the county treasurer and kept such failure a secret until 1937, an allegation that the offense was kept secret was sufficient to allow application of NCL § 10722 (cf. NRS 171.095), which provides that the 1-year statute of limitations of NCL § 10721 (cf. NRS 171.090) does not apply where an act is kept secret, where an objection that the allegation was mere conclusion was raised for the first time on appeal. Wood v. State, 59 Nev. 445, 96 P.2d 441 (1939)

Statute applied only to felonies and misdemeanors during time conspiracy was allegedly committed and arguably discovered. In a prosecution for conspiracy (gross misdemeanor), NRS 171.095, which provides for tolling of a statute of limitations until discovery of a crime if the crime was committed in a "secret manner," did not apply because, although the conspiracy was arguably committed in a secret manner, the statute applied only to felonies and misdemeanors during the time the conspiracy was allegedly committed and arguably discovered. State v. Merolla, 100 Nev. 461, 686 P.2d 244 (1984), cited, Walstrom v. State, 104 Nev. 51, at 53, 752 P.2d 225 (1988), see also Houtz v. State, 111 Nev. 457, at 461, 893 P.2d 355 (1995), State v. Quinn, 117 Nev. 709, at 712, 30 P.3d 1117 (2001)

Lewdness with minor found to be secret crime which tolled statute of limitations. Where the defendant was convicted of lewdness with a minor and appealed on the ground that the statute of limitations had run, the supreme court held that substantial evidence supported the lower court's decision that the defendant committed his crime in a "secret manner," thus the tolling statute of limitations pursuant to NRS 171.095(1). Walstrom v. State, 104 Nev. 51, 752 P.2d 225 (1988), cited, Hubbard v. State, 110 Nev. 671, at 676, 877 P.2d 519 (1994), State v. Quinn, 117 Nev. 709, at 714, 30 P.3d 1117 (2001), see also Hubbard v. State, 112 Nev. 946, 920 P.2d 991 (1996)

State has burden of proving crime was secret. Under NRS 171.095 the state bears the burden of proving by the preponderance of evidence that a crime was committed in a secret manner and that the statute of limitations set forth in NRS 171.085 was thereby tolled. Walstrom v. State, 104 Nev. 51, 752 P.2d 225 (1988), cited, Houtz v. State, 111 Nev. 457, at 459, 893 P.2d 355 (1995), State v. Quinn, 117 Nev. 709, at 714, 30 P.3d 1117 (2001)

Evidence was sufficient under circumstances to show that lewdness with a minor was a secret crime which tolled statute of limitations. Where the defendant contended that his conviction of lewdness with a minor should have been barred by the statute of limitations, evidence that the defendant threatened the victim and instructed the victim to keep quiet showed that the crime was committed in a secret manner, thus tolling the statute of limitations pursuant to NRS 171.095. Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994), cited, Hubbard v. State, 112 Nev. 946, at 947, 920 P.2d 991 (1996)

Offense of lewdness with a child was committed in a secret manner where intimidation was used to prevent the victim from reporting the incidents; tolling of the statute of limitations did not extend beyond the age of majority of the victim. On an appeal of the judgment of conviction for one count of lewdness with a child under the age of fourteen (see NRS 201.230), the supreme court concluded that, because the defendant used intimidation to prevent the victim who was a juvenile at the time of molestation from reporting the incidents, the defendant committed the crime in a secret manner pursuant to NRS 171.095, thereby tolling the period of limitation set forth in NRS 171.085. However, the tolling of the statute of limitations pursuant to NRS 171.095 is not indefinite, and should not extend beyond the age of majority of the victim. Thus, because the victim did not report the offense until he was 25 years of age, the statute of limitations had run by the time the prosecution of the defendant had commenced. The defendant's judgment of conviction was accordingly reversed. Houtz v. State, 111 Nev. 457, 893 P.2d 355 (1995), cited, State v. Quinn, 117 Nev. 709, at 715, 30 P.3d 1117 (2001)

Statute would apply where material witnesses in criminal prosecution recanted their trial testimony. In a criminal prosecution, material witnesses who recanted their trial testimony could be charged with perjury because NRS 171.095 would apply to toll the applicable statute of limitations. Callier v. Warden, 111 Nev. 976, 901 P.2d 619 (1995)

Expiration of statute of limitations must be raised in trial court. Where the defendant was convicted of lewdness with a minor and appealed on the ground that the district court lacked jurisdiction to convict him of the crime because the statute of limitation set forth in NRS 171.095 had run, the supreme court held that the statutes of limitation for criminal offenses are nonjurisdictional, affirmative defenses and failure to raise the expiration of the statute of limitation in trial court waives defense. Hubbard v. State, 112 Nev. 946, 920 P.2d 991 (1996)

Meaning of "discovery" for purposes of tolling statute of limitations when offense is committed in secret manner. For purposes of tolling the statute of limitations under the "secret manner" provision of NRS 171.095, discovery occurs when any person (including the victim) other than the wrongdoer or someone acting in pari delicto with the wrongdoer has knowledge of the act and its criminal nature, unless the person with knowledge: (1) fails to report out of fear induced by threats made by the wrongdoer or by anyone acting in pari delicto with the wrongdoer; or (2) is a child-victim under 18 years of age and fails to report for the reasons set forth in *Walstrom v. State*, 104 Nev. 51 (1988). (See also NRS 171.085 and 201.230.) State v. Quinn, 117 Nev. 709, 30 P.3d 1117 (2001), cited, Bailey v. State, 120 Nev. 406, at 408, 91 P.3d 596 (2004)

Provisions of this section govern the extended period for filing of action for offense relating to sexual abuse of child not limited to offense committed in secret manner. Paragraph (b) of subsection 1 of NRS 171.095 does not contain any language limiting its application to offenses committed in a secret manner. The plain language of paragraph (b) of subsection 1 indicates that, regardless of when the crime was discovered, for an offense constituting the sexual abuse of a child (see NRS 432B.100), the State may file a charging document up to the time the child victim reaches age twenty-one. Bailey v. State, 120 Nev. 406, 91 P.3d 596 (2004)

INVOLUNTARY SERVITUDE; PURCHASE OR SALE OF PERSON

NRS 200.463 Involuntary servitude; penalties.

1. A person who knowingly subjects, or attempts to subject, another person to forced labor or services by:

(a) Causing or threatening to cause physical harm to any person;

(b) Physically restraining or threatening to physically restrain any person;

(c) Abusing or threatening to abuse the law or legal process;

(d) Knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of the person;

(e) Extortion; or

(f) Causing or threatening to cause financial harm to any person,

↳ is guilty of holding a person in involuntary servitude.

2. A person who is found guilty of holding a person in involuntary servitude is guilty of a category B felony and shall be punished:

(a) Where the victim suffers substantial bodily harm while held in involuntary servitude or in attempted escape or escape therefrom, by imprisonment in the state prison for a minimum term of not less than 7 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than $50,000.

(b) Where the victim suffers no substantial bodily harm as a result of being held in involuntary servitude, by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than $50,000.

(Added to NRS by 2005, 87)

NRS 200.464 Recruiting, enticing, harboring, transporting, providing or obtaining another person to be held in involuntary servitude; benefiting from another person being held in involuntary servitude; penalty. Unless a greater penalty is provided pursuant to NRS 200.468, a person who knowingly:

1. Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that the person will be held in involuntary servitude; or

2. Benefits, financially or by receiving anything of value, from participating in a violation of NRS 200.463,

↳ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $50,000.

(Added to NRS by 2005, 88; A 2007, 1268)

NRS 200.465 Assuming rights of ownership over another person; purchase or sale of person; penalty. A person who:

1. Assumes or attempts to assume rights of ownership over another person;

2. Sells or attempts to sell a person to another;

3. Receives money or anything of value in consideration of placing a person in the custody or under the control of another;

4. Buys or attempts to buy a person;

5. Except as otherwise provided in chapter 127 of NRS, pays money or delivers anything of value to another in consideration of having a person placed in his or her custody or under his or her power or control; or

6. Knowingly aids or assists in any manner a person who violates any provision of this section,

↳ is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and may be further punished by a fine of not more than $50,000.

(Added to NRS by 1989, 1186; A 1995, 1190; 2005, 88)

NRS CROSS REFERENCES.

Hate crimes, penalties, NRS 41.690, 193.1675, 193.169

TRAFFICKING IN PERSONS

NRS 200.467 Trafficking in persons for financial gain; penalties.

1. A person shall not transport, procure transportation for or assist in the transportation of or procurement of transportation for another person into the State of Nevada who the person knows or has reason to know does not

have the legal right to enter or remain in the United States in exchange for money or other financial gain.

2. A person who violates the provisions of subsection 1 is guilty of trafficking in persons and, unless a greater penalty is provided pursuant to NRS 200.464 or 200.468, shall be punished for a category B felony by imprisonment in the state prison 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 $50,000.

(Added to NRS by 2007, 1267)

NRS CROSS REFERENCES.
Hate crimes, penalties, NRS 41.690

NRS 200.468 Trafficking in persons for illegal purposes; penalty.

1. A person shall not transport, procure transportation for or assist in the transportation of or procurement of transportation for another person into the State of Nevada whom the person knows or has reason to know does not have the legal right to enter or remain in the United States with the intent to:

(a) Subject the person to involuntary servitude or any other act prohibited pursuant to NRS 200.463 or 200.465;

(b) Violate any state or federal labor law, including, without limitation, 8 U.S.C. § 1324a; or

(c) Commit any other crime which is punishable by not less than 1 year imprisonment in the state prison.

2. A person who violates the provisions of subsection 1 is guilty of trafficking in persons for illegal purposes and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and may be further punished by a fine of not more than $50,000.

(Added to NRS by 2007, 1267)

NRS CROSS REFERENCES.
Hate crimes, penalties, NRS 41.690

SELECTED FEDERAL RESOURCES.
Employment of unauthorized aliens unlawful, 8 U.S.C. § 1324a

NRS 217.070 "Victim" defined. "Victim" means:

1. A person who is physically injured or killed as the direct result of a criminal act;

2. A minor who was involved in the production of pornography in violation of NRS 200.710, 200.720, 200.725 or 200.730;

3. A minor who was sexually abused, as "sexual abuse" is defined in NRS 432B.100;

4. A person who is physically injured or killed as the direct result of a violation of NRS 484C.110 or any act or neglect of duty punishable pursuant to NRS 484C.430 or 484C.440;

5. A pedestrian who is physically injured or killed as the direct result of a driver of a motor vehicle who failed to stop at the scene of an accident involving the driver and the pedestrian in violation of NRS 484E.010;

6. An older person who is abused, neglected, exploited or isolated in violation of NRS 200.5099 or 200.50995; or

7. A resident who is physically injured or killed as the direct result of an act of international terrorism as defined in 18 U.S.C. § 2331(1).

➥ The term includes a person who was harmed by any of these acts whether the act was committed by an adult or a minor.

(Added to NRS by 1969, 1151; A 1975, 1789; 1981, 1667; 1983, 818; 1985, 2099; 1987, 2270; 1995, 953; 1997, 192, 787; 2005, 167; 2007, 748)

NRS CROSS REFERENCES.
Driving under the influence, NRS 484C.110, 484C.430
Vehicular homicide, NRS 484C.440

TAB C

BILL DRAFT REQUEST FROM LOCAL GOVERNMENT

REQUEST LIMITED TO ONE SUBJECT ONLY

FOR LCB USE ONLY
BDR # _____

FROM: Las Vegas Metropolitan Police Department
Local Government

TO: Legislative Counsel Bureau

I. **Intent of Proposed Bill:**(Summary of intended effect and background for request)

To provide legal protection to State of Nevada Historical properties, symbols, structures, signs not necessarily directly related to the settlement of Nevada but are iconic in nature to The State of Nevada. In order for these historical properties, symbols, structures, signs to receive such protection they would need to be first listed on the NV State Register of Historic Places and or listed on the National Register of Historic Places.

II. **Justification for Request:**(Why is this needed? Include an example in writing of positive or adverse impact of the requested legislation. Use this space to provide "testimony" that could be used at a legislative committee hearing.)

It is our opinion that current NRS does not protect certain historically significant locations based on the definition of "Protected Sites" in which the historical site must pertain to the "history of the settlement of Nevada." If it can not be shown that the historical site is related to the settlement of Nevada then it would not receive the protection of this NRS. Our agency believes that there are many locations in southern Nevada as well as throughout the state that are historically significant and are registered with the state registry and or the national registry but are not related to the "settlement" of Nevada.

III. **Fiscal Impacts:** (Include all known and potential impacts, e.g., County, State, Cities and Agencies, and other entities.)

Potential court cost, incarceration cost and judicial administration cost increases.

IV. **Non Fiscal Impacts:**(List affected agencies, customer groups, public or private associations, other government entities, etc., who will oppose/support this and why?)

Law enforcement agencies will support as well as historical preservation organizations, historical property owners, local and state governments who over see such properties, tourist industry. ACLU will most likely be opposed to increase possibility of law enforcement action in this area as well as public defenders.

V. **NRS Title, Chapter and Section Affected:**(If applicable)

NRS 206.330.9 (b) "Protected Site."

VI. **Effective Date:**

- ☑ Default (October 1, 2013)
- ☐ July 1, 2013
- ☐ Upon Passage and Approval
- ☐ Other

VII. **Suggested Language:**

Any property, symbol, structure or sign listed with the Nevada State Register of Historical Places and or the National Register of Historical Places.

NRS 206.330 Placing graffiti on or otherwise defacing property: Fines and penalties; restitution; parent or guardian responsible for fines and penalties if person violating section is under age of 18 years; suspension of driver's license.

1. Unless a greater criminal penalty is provided by a specific statute, a person who places graffiti on or otherwise defaces the public or private property, real or personal, of another, without the permission of the owner

(a) Where the value of the loss is less than $250, is guilty of a misdemeanor.

(b) Where the value of the loss is $250 or more but less than $5,000, is guilty of a gross misdemeanor

(c) Where the value of the loss is $5,000 or more or where the damage results in the impairment of public communication, transportation or police and fire protection, is guilty of a category E felony and shall be punished as provided in NRS 193.130. If the court grants probation to such a person, the court shall require as a condition of probation that the person serve at least 10 days in the county jail.

(d) Where the offense is committed on any protected site in this State, is guilty of a category C felony and shall be punished as provided in NRS 193.130. If the court grants probation to such a person, the court shall require as a condition of probation that the person serve at least 10 days in the county jail

2. If a person commits more than one offense pursuant to a scheme or continuing course of conduct, the value of all property damaged or destroyed by that person in the commission of those offenses must be aggregated for the purpose of determining the penalty prescribed in subsection 1, but only if the value of the loss when aggregated is $500 or more.

3. A person who violates subsection 1 shall, in addition to any other fine or penalty imposed:

(a) For the first offense, pay a fine of not less than $400 but not more than $1,000 and perform 100 hours of community service.

(b) For the second offense, pay a fine of not less than $750 but not more than $1,000 and perform 200 hours of community service.

(c) For the third and each subsequent offense:

(1) Pay a fine of $1,000; and

(2) Perform up to 300 hours of community service for up to 1 year, as determined by the court. The court may order the person to repair, replace, clean up or keep free of graffiti the property damaged or destroyed by the person or, if it is not practicable for the person to repair, replace, clean up or keep free of graffiti that specific property, the court may order the person to repair, replace, clean up or keep free of graffiti another specified property.

➥ The community service assigned pursuant to this subsection must, if possible, be related to the abatement of graffiti.

4. The court may, in addition to any other fine or penalty imposed, order a person who violates subsection 1 to pay restitution.

5. The parent or legal guardian of a person under 18 years of age who violates this section is liable for all fines and penalties imposed against the person. If the parent or legal guardian is unable to pay the fine and penalties resulting from a violation of this section because of financial hardship, the court may require the parent or legal guardian to perform community service

6. If a person who is 18 years of age or older is found guilty of violating this section, the court shall, in addition to any other penalty imposed, issue an order suspending the driver's license of the person for not less than 6 months but not more than 2 years. The court shall require the person to surrender all driver's licenses then held by the person. If the person does not possess a driver's license, the court shall issue an order prohibiting the person from applying for a driver's license for not less than 6 months but not more than 2 years. The court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles any licenses together with a copy of the order

7. The Department of Motor Vehicles:

(a) Shall not treat a violation of this section in the manner statutorily required for a moving traffic violation.

(b) Shall report the suspension of a driver's license pursuant to this section to an insurance company or its agent inquiring about the person's driving record. An insurance company shall not use any information obtained pursuant to this paragraph for purposes related to establishing premium rates or determining whether to underwrite the insurance.

8. A criminal penalty imposed pursuant to this section is in addition to any civil penalty or other remedy available pursuant to this section or another statute for the same conduct.

9. As used in this section:

(a) "Impairment" means the disruption of ordinary and incidental services, the temporary loss of use or the removal of the property from service for repair of damage.

(b) "Protected site" means:

(1) A site, landmark, monument, building or structure of historical significance pertaining to the history of the settlement of Nevada;

(2) Any Indian campgrounds, shelters, petroglyphs, pictographs and burials; or

(3) Any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe.

(c) "Value of the loss" means the cost of repairing, restoring or replacing the property, including, without limitation, the cost of any materials and labor necessary to repair, restore or replace the item

(Added to NRS by 1995, 736; A 1997, 37; 2001, 2582; 2003, 1019; 2007, 2297; 2011, 1598)

NRS CROSS REFERENCES.

City powers, NRS 268.4075-268.4085
County powers, NRS 244.3691-244.3695
Personal property defined, NRS 193.021
Real property defined, NRS 193.0235

TAB D

PROPOSED LEGISLATION FOR 2013

I. THIS MODIFICATION TO THE JUVENILE COURT JURISDICTIONAL STATUTE WOULD DELETE THE DIRECT FILE CHARGES EXCEPT FOR MURDER AND ATTEMPT MURDER, BUT PUT A MINIMUM AGE FOR DIRECT FILE FOR MURDER AND ATTEMPT MURDER AT 16 (NRS 62B.390 WOULD ALLOW FOR THE DISCRETIONARY CERTIFICATION OF 14 AND 15 YEAR OLDS CHARGED WITH MURDER OR ATTEMPT MURDER)

NRS 62B.330 Child alleged or adjudicated to have committed delinquent act; acts deemed not to be delinquent.

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act.

2. For the purposes of this section, a child commits a delinquent act if the child:

(a) Violates a county or municipal ordinance;

(b) Violates any rule or regulation having the force of law; or

(c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada.

3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act if :

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense, and the person was 16 years of age or older when the alleged offense occurred.

~~(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:~~

~~(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and~~

~~(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.~~

~~(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:~~

~~(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and~~

~~(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.~~

~~(d) A felony resulting in death or substantial bodily harm to the victim and any other related offense arising out of the same facts as the felony, regardless of the nature of the related offense, if:~~

~~(1) The felony was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties; and~~

~~(2) The person intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.~~

(~~e~~b) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and:

(1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or

(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.

(f) Any other offense if, before the offense was committed, the person previously had been convicted of a criminal offense.

II. AMEND NRS 62C.030 (4) TO ALLOW FOR YOUTH TRANSFERRED TO THE ADULT SYSTEM TO PETITION FOR TEMPORARY PLACEMENT IN THE JUVENILE FACILITY (STATUTE PRESENTLY ONLY ALLOWS DIRECT FILE YOUTH TO PETITION)

NRS 62C.030 Conditions and limitations on detaining child in certain facilities; temporary placement of child excluded from jurisdiction of juvenile court.

1. If a child is not alleged to be delinquent or in need of supervision, the child must not, at any time, be confined or detained in:

(a) A facility for the secure detention of children; or

(b) Any police station, lockup, jail, prison or other facility in which adults are detained or confined.

2. If a child is alleged to be delinquent or in need of supervision, the child must not, before disposition of the case, be detained in a facility for the secure detention of children unless there is probable cause to believe that:

(a) If the child is not detained, the child is likely to commit an offense dangerous to the child or to the community, or likely to commit damage to property;

(b) The child will run away or be taken away so as to be unavailable for proceedings of the juvenile court or to its officers;

(c) The child was taken into custody and brought before a probation officer pursuant to a court order or warrant; or

(d) The child is a fugitive from another jurisdiction.

3. If a child is less than 18 years of age, the child must not, at any time, be confined or detained in any police station, lockup, jail, prison or other facility where the child has regular contact with any adult who is confined or detained in the facility and who has been convicted of a criminal offense or charged with a criminal offense, unless:

(a) The child is alleged to be delinquent;

(b) An alternative facility is not available; and

(c) The child is separated by sight and sound from any adults who are confined or detained in the facility.

4. During the pendency of a proceeding involving a criminal offense excluded from the original jurisdiction of the juvenile court pursuant to NRS 62B.330, or certified to stand trial pursuant to NRS 62B.390, a child may petition the juvenile court for temporary placement in a facility for the detention of children.

(Added to NRS by 2003, 1055)

III. THE INDISCRIMINATE SHACKLING OF CHILDREN (BELLYCHAINS AND LEG IRONS) IS ROUTINE FOR EVERY CHILD REGARDLESS OF AGE IN CLARK COUNTY. I BELIEVE CLARK COUNTY IS THE ONLY COUNTY IN THE STATE OF NEVADA WITH THIS POLICY. SHACKLING OF CHILDREN IS CONTRARY TO THE LEGISLATIVE DECLARATION IN NRS 62A.360 THAT "CHILDREN RECEIVE SUCH CARE, GUIDANCE AND CONTROL AS WILL BE CONDUCIVE TO THE CHILD'S WELFARE AND THE BEST INTERESTS OF THIS STATE." FURTHERMORE, IT IS DEMEANING AND ANTITHETICAL TO THE JUVENILE COURT GOAL OF REHABILITATION AND TREATMENT. PSYCHOLGICAL AND MEDICAL EXPERTS HAVE RENDERED OPINIONS IN PLEADINGS AND EVIDENTIARY HEARINGS IN JURISDICATIONS WHERE THIS ISSUE HAS BEEN LITIGATED. THEY OPINE THAT CHILDREN SUFFER (EMOTIONALLY, PSYCHOLOGICALLY AND MEDICALLY) WHEN HELD IN RESTAINTS.

62D.XXX. **Use of Restraints of juveniles in courtroom.**

1. Instruments of restraint, such as handcuffs, waist belts, and leg irons, may not be used on a juvenile during a court proceeding and must be removed prior to the child's appearance before the court unless the court finds that:

(a) The use of restraints is necessary where a child in uncontrollable and constitutes a serious and evident danger to himself or herself and/or to others; or

(b) There is reason to believe that the child may try to escape.

2. The decision to shackle a child must be made on a case by case basis based upon an individualized assessment of the particular juvenile. The judge or hearing master presiding in the courtroom shall consider one or more of the following factors prior to the issuance of any order or findings:

(a) Any present behavior that the juvenile represents a current threat to his or her own safety, or the safety of other people in the courtroom;

(b) The seriousness of the present charge (supporting a concern that the child had an incentive to attempt to escape, risk of gang violence, or attempted revenge by others); any threats of harm to others, or threats of harm to others, or threats to cause a disturbance;

(c) Past behavior that the juvenile represents a current threat to his or her own safety; and

(d) Any past escapes or attempted escapes.

IV. AMEND 33.018 (DEFINITION OF DOMESTIC VIOLENCE) TO EXCLUDE SIBLINGS FIGHTING OR CHILDREN USING FORCE AGAINST PARENT (IT WOULD STILL BE CHARGED AS BATTERY, BUT NOT "DOMESTIC VIOLENSE"

NRS 33.018 Acts which constitute domestic violence.

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

(a) A battery.

(b) An assault.

(c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.

(d) A sexual assault.

(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:

(1) Stalking.

(2) Arson.

(3) Trespassing.

(4) Larceny.

(5) Destruction of private property.

(6) Carrying a concealed weapon without a permit.

(7) Injuring or killing an animal.

(f) A false imprisonment.

(g) Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

3. This section does not apply to sibling on sibling violence or violence by a child against his or her parent.

(Added to NRS by 1985, 2283; A 1995, 902; 1997, 1808; 2007, 82, 1275)

Modeled after the Florida Proposed Second Chance for Children Act and NRS 213.1215:

NRS 213.1XXX Parole Eligibility for youthful offenders

1. A prisoner who was sentenced to a cumulative term of imprisonment of 10 or more years for one or more non-homicide offenses committed while he or she was less than 18 years of age at the time that the prisoner committed the offense(s) for which the prisoner was imprisoned, upon reaching 25 years of age, may be immediately eligible for parole under this section, if:

(a) The prisoner has completed a program of general education or an industrial or vocational training program, unless this requirement has been waived because of the juvenile offender's disability as shown by the juvenile offender's previous individual education plan, 504 accommodation plan under s. 504 of the federal Rehabilitation Act of 1973, or by a psychological evaluation;

(b) The prisoner has not been identified as a member of a group that poses a security threat pursuant to the procedures for identifying security threats established by the Department of Corrections; and

(c) The prisoner has not, within the immediately preceding 24 months:

(1) Committed a major violation of the regulations of the Department of Corrections; or

(2) Been housed in disciplinary segregation.

2. The Board shall prescribe any conditions necessary for the orderly conduct of the parolee upon his or her release.

3. Each parolee so released must be supervised closely by the Division, in accordance with the plan for supervision developed by the Chief pursuant to NRS 213.122.

4. If the Board finds, at least 2 months before a prisoner would otherwise be paroled pursuant to subsection 1 that there is a reasonable probability that the prisoner will be a danger to public safety while on parole, the Board may require the prisoner to serve the balance of his or her sentence and not grant the parole provided for in subsection 1. If, pursuant to this subsection, the Board does not grant the parole provided for in subsection 1, the Board shall provide to the prisoner a written statement of its reasons for denying parole.

5. If the prisoner is the subject of a lawful request from another law enforcement agency that the prisoner be held or detained for release to that agency, the prisoner must not be released on parole, but released to that agency.

6. If the Division has not completed its establishment of a program for the prisoner's activities during his or her parole pursuant to this section, the prisoner must be released on parole as soon as practicable after the prisoner's program is established.

To:	Chair Wiener and the Interim Legislative Committee on Child Welfare and Juvenile Justice
CC:	Kelly Gregory, Senior Research Analyst (kgregory@lcb.state.nv.us)
From:	Esther Brown, Executive Director of the Embracing Project
Date:	April 13, 2012
Re:	Recommended legislative changes to address challenges of housing juveniles in adult criminal justice facilities

As noted during your most recent committee meeting on April 4th, 2012, Nevada detains youth in adult jails, both pre- and post-sentencing. Youth who are directly filed into adult proceeding have no ability to request being placed in youth facilities while they are being held for trial. When youth are incarcerated with adults, they are rarely given appropriate services and are often subjected to solitary confinement, simply because NDOC does not have the resources to properly deal with these juveniles.

Nationwide Trends

Over the last five years there has been tremendous work to update laws in other states around the nation to reflect the most recent research and best practices in regard to prosecuting youth in the adult court system. In April, 2011, a report was released titled "*State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System,*"[1] which provides state policymakers, the media, the public, and advocates with the latest information about youth in the adult justice system. The first half of the report explains the dangers to youth, public safety, and the overall prosperity of our economy and future generations. The second half of the report examines 27 positive pieces of legislation enacted in 15 states during the last 5 years, as well as highlights active reform efforts underway.

Even more recently, the New York Times editorialized youth incarcerated in adult facilities. "Numerous studies show that placing children in adult prisons leads to more suicide, victimization and recidivism, which is costly in both human and economic terms." *(See Appendix A)*

Colorado

Since the release of *"State Trends,"* five other states[2] have been added to the list of reforms. Among them is Colorado. Colorado has passed two major pieces of legislation in this legislative session.

House Bill 1139 (See Appendix B) - This bill prohibits a juvenile who is to be tried as an adult from being held in an adult jail or pretrial facility unless the district court, after a hearing, finds that an adult jail or pretrial facility is the appropriate place of confinement for the juvenile. This bill has been signed by the Governor.

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[1] *http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf*

[2] Arizona, Colorado, Texas, Oregon, Ohio

House Bill 1271 (See Appendix C) - This bill implements best practices by providing judicial oversight regarding the decision to file charges against a youth in adult criminal court. It provides judicial review by the adult criminal court judge who can consider whether the case belongs in juvenile or adult court and gives judges more flexibility in sentencing when youth are convicted as adults and allows youth under 18 to be prosecuted in the juvenile court system to avoid an adult felony conviction and raise the age of direct file to 16 years of age and starts 14-15 year olds in juvenile court, where a juvenile court judge can consider sending them to adult criminal court. This bill is currently on its way to the Governor for signature.

Suggested Changes in Nevada

Nevada should require that any youth (under 18) charged as an adult be placed in a juvenile detention facility rather than an adult jail, unless the youth is a threat to the safety of other children. In that case, it would be appropriate for the court to determine if another facility (eg- a police station, jail, or other facility) would be more appropriate. This situation would not be unique, as it is my understanding that a juvenile in Washoe County, who was recently certified as an adult and charged with first degree murder, was held pre-trial at the Jan Evans juvenile facility.

These changes would also raise the age at which youths may be tried as adults from 14 to 16 for some, but not all, offenses. By placing some youth in the juvenile justice system rather than in the adult criminal justice system, the fiscal and administrative burdens on NDOC will be reduced while excessive incarceration of youth in adult facilities will diminish, all without compromising public safety.

NRS 62B.330 Child alleged or adjudicated to have committed delinquent act; acts deemed not to be delinquent

- Amend 62B.330(3)(a) to put a minimum age of 16 for youths charged with Murder and Attempt Murder for exclusion from juvenile court jurisdiction.

NRS 62B.390 Certification of child for criminal proceedings as adult.

- Amend 62B.390(1)(b) to raise discretionary certification/transfer from 14 to 16 [Nevada has case law which defines the criteria for discretionary certification -- In re Seven Minors, 99 Nev. 427 (1983)]
- Remove 62B.390(2) and (3) which would eliminate presumptive certification

NRS 62B.400 Child who escapes or attempts escape from facility for detention of juveniles deemed escaped prisoner; when court may certify such child for criminal proceedings; when deemed delinquent act.

- Amend 62B.400(2) to put a minimum age of 16 for youths charged
- Amend 62B.400(3) by replacing "shall" with "may" to give judges the discretion to charge these adjudicated juveniles as adults for any other related crime

NRS 62C.030 Conditions and limitations on detaining child in certain facilities; temporary placement of child excluded from jurisdiction of juvenile court.

- NRS 62C.030(4) provides that a child excluded pursuant to NRS 62B.330 may petition the juvenile court for temporary placement in the juvenile detention facility during the pendency of the criminal proceedings. This does not include children transferred pursuant to NRS 62B.390. The Committee should recommend that judicial discretion be given in these circumstances.
- Add a provision that would allow cases to be remanded back to juvenile courts if adult charges are otherwise dropped
- Add a provision that would require that in any circumstance in which a child is certified pursuant to the amended form of NRS 62B.330, that the child must be placed in a juvenile facility, unless the court determines that the child is a threat to the safety or security of other juveniles

Thank you for your consideration. If you would like to contact me, I can be reached at embracingproject@yahoo.com or (702) 994-0585.

APPENDIX A

The New York Times
Reprints

April 9, 2012

Children Can Never Be Safe in Adult Prisons

After an unconscionable delay of nearly three years, the Justice Department needs to issue the final, mandatory rape-prevention policies for federal prisons and state correctional institutions that receive federal dollars. They must improve on the proposed rules issued last spring.

Those rules included more effective ways to investigate alleged attacks, report assaults, and improve medical and psychiatric help for the victims. But they notably failed to call for an end to the barbaric practice of placing children and youths in adult jails and prisons. Children will never be safe without that change.

Thirty-two members of Congress made exactly this point last week in a letter to Attorney General Eric Holder Jr., noting that "such a prohibition would be consistent with Congressional intent" as embodied in the federal Prison Rape Elimination Act of 2003.

An estimated 10,000 youths under 18 can be found in adult jails or prisons on any given day, according to federal statistics. As the members pointed out, data from a 2005 study showed that youths made up only 1 percent of the inmates in jails and prisons, but 21 percent of the victims of sexual violence.

Numerous studies show that placing children in adult prisons leads to more suicide, victimization and recidivism, which is costly in both human and economic terms.

Based on this evidence, California has broken with the past and, with the rare exception, no longer houses children under 18 in adult prisons. It is time for all states, with guidance from the Justice Department, to follow this sensible and humane example.

APPENDIX B

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0435.01 Michael Dohr x4347 **HOUSE BILL 12-1139**

HOUSE SPONSORSHIP

Levy, Fields, Barker, Court, Kagan, Massey, McCann, McKinley, Nikkel, Solano, Young

SENATE SPONSORSHIP

Guzman,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

CONCERNING PRETRIAL DETENTION OF CHILDREN PROSECUTED AS ADULTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill prohibits a juvenile who is to be tried as an adult from being held in an adult jail or pretrial facility unless the district court, after a hearing, finds that an adult jail or pretrial facility is the appropriate place of confinement for the juvenile. The bill sets forth a list of factors the district court must consider in making its decision.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 19-2-508, **amend** (3) (c) as follows:

19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions. (3) (c) (I) A juvenile taken to a detention or shelter facility or a temporary holding facility pursuant to section 19-2-502 as the result of an allegedly delinquent act that constitutes any of the offenses described in subparagraph (III) of paragraph (a) of this subsection (3) shall not be released from such facility if a law enforcement agency has requested that a detention hearing be held to determine whether the juvenile's immediate welfare or the protection of the community requires that the juvenile be detained. A juvenile shall not thereafter be released from detention except after a hearing, reasonable advance notice of which has been given to the district attorney, alleging new circumstances concerning the further detention of the juvenile.

(II) Following a detention hearing held in accordance with subparagraph (I) of this paragraph (c), a juvenile who is to be tried as an adult for criminal proceedings pursuant to a direct filing or transfer shall not be held at any ADULT JAIL OR PRETRIAL facility ~~intended to be utilized by juvenile offenders,~~ unless the ~~district attorney and the defense counsel agree otherwise. In determining whether~~ DISTRICT COURT FINDS, AFTER A HEARING HELD PURSUANT TO SUBPARAGRAPH (IV), (V), OR (VI) OF THIS PARAGRAPH (c), THAT AN ADULT jail is the appropriate place of confinement ~~the district attorney and defense counsel shall consider the following factors:~~ FOR THE JUVENILE.

~~(A) The age of the juvenile;~~

~~(B) The nature, seriousness, and circumstances of the alleged offense;~~

~~(C) The juvenile's history of prior delinquent or criminal acts;~~

~~(D) Whether detention in a juvenile facility will adequately serve the need for community protection pending the outcome of the criminal proceedings;~~

~~(E) Whether detention in a juvenile facility will negatively impact the functioning of the juvenile facility by compromising the goals of detention to maintain a safe, positive, and secure environment for all juveniles within the facility;~~

~~(F) The relative ability of the available adult and juvenile detention facilities to meet the needs of the juvenile, including the juvenile's need for educational services, and protect the public;~~

~~(G) Whether the juvenile presents an imminent risk of harm to himself or herself or others within a juvenile facility;~~

~~(H) The physical maturity of the juvenile;~~

~~(I) The current mental state or maturity of the juvenile as evidenced by relevant mental health or psychological assessments or screenings that are made available to both the district attorney and defense counsel; and~~

~~(J) Any other relevant factors.~~

(III) ~~At any stage of the proceedings, the district attorney may, after further consideration of the factors set forth in subparagraph (II) of this paragraph (c), agree to change the place of confinement from jail to a juvenile facility~~ IN DETERMINING WHETHER AN ADULT JAIL IS THE APPROPRIATE PLACE OF CONFINEMENT FOR THE JUVENILE, THE DISTRICT

COURT SHALL CONSIDER THE FOLLOWING FACTORS:

(A) THE AGE OF THE JUVENILE;

(B) WHETHER, IN ORDER TO PROVIDE PHYSICAL SEPARATION FROM ADULTS, THE JUVENILE WOULD BE DEPRIVED OF CONTACT WITH OTHER PEOPLE FOR A SIGNIFICANT PORTION OF THE DAY OR WOULD NOT HAVE ACCESS TO RECREATIONAL FACILITIES OR AGE-APPROPRIATE EDUCATIONAL OPPORTUNITIES;

(C) THE JUVENILE'S CURRENT EMOTIONAL STATE, INTELLIGENCE, AND DEVELOPMENTAL MATURITY, INCLUDING ANY EMOTIONAL AND PSYCHOLOGICAL TRAUMA, AND THE RISK TO THE JUVENILE CAUSED BY HIS OR HER PLACEMENT IN AN ADULT JAIL, WHICH RISK MAY BE EVIDENCED BY MENTAL HEALTH OR PSYCHOLOGICAL ASSESSMENTS OR SCREENINGS MADE AVAILABLE TO THE DISTRICT ATTORNEY AND TO DEFENSE COUNSEL;

(D) WHETHER DETENTION IN A JUVENILE FACILITY WILL ADEQUATELY SERVE THE NEED FOR COMMUNITY PROTECTION PENDING THE OUTCOME OF THE CRIMINAL PROCEEDINGS;

(E) WHETHER DETENTION IN A JUVENILE FACILITY WILL NEGATIVELY IMPACT THE FUNCTIONING OF THE JUVENILE FACILITY BY COMPROMISING THE GOALS OF DETENTION TO MAINTAIN A SAFE, POSITIVE, AND SECURE ENVIRONMENT FOR ALL JUVENILES WITHIN THE FACILITY;

(F) THE RELATIVE ABILITY OF THE AVAILABLE ADULT AND JUVENILE DETENTION FACILITIES TO MEET THE NEEDS OF THE JUVENILE, INCLUDING THE JUVENILE'S NEED FOR MENTAL HEALTH AND EDUCATIONAL SERVICES;

(G) WHETHER THE JUVENILE PRESENTS AN IMMINENT RISK OF HARM TO HIMSELF OR HERSELF OR OTHERS WITHIN A JUVENILE FACILITY;

(H) THE PHYSICAL MATURITY OF THE JUVENILE; AND

(I) ANY OTHER RELEVANT FACTORS.

(IV) ~~If there is no agreement, detention of the juvenile shall be subject to the provisions of subsection (4) of this section~~ AFTER CHARGES ARE FILED DIRECTLY IN DISTRICT COURT AGAINST A JUVENILE PURSUANT TO SECTION 19-2-517 OR A JUVENILE IS TRANSFERRED TO DISTRICT COURT PURSUANT TO SECTION 19-2-518, THE DIVISION OF YOUTH CORRECTIONS MAY PETITION THE DISTRICT COURT TO TRANSPORT THE JUVENILE TO AN ADULT JAIL. THE DISTRICT COURT SHALL HOLD A HEARING ON THE PLACE OF PRETRIAL DETENTION FOR THE JUVENILE AS SOON AS PRACTICABLE, BUT NO LATER THAN TWENTY DAYS AFTER THE RECEIPT OF THE DIVISION'S PETITION TO TRANSPORT. THE DISTRICT ATTORNEY, SHERIFF, OR JUVENILE MAY FILE A RESPONSE TO THE PETITION AND PARTICIPATE IN THE HEARING. THE JUVENILE SHALL REMAIN IN A JUVENILE DETENTION FACILITY PENDING HEARING AND DECISION BY THE DISTRICT COURT.

(V) IF A JUVENILE IS PLACED IN THE DIVISION OF YOUTH CORRECTIONS AND IS BEING TRIED IN DISTRICT COURT, THE DIVISION OF YOUTH CORRECTIONS MAY PETITION THE COURT FOR A FORTHWITH HEARING TO TERMINATE JUVENILE DETENTION PLACEMENT IF THE JUVENILE'S PLACEMENT IN A JUVENILE DETENTION FACILITY PRESENTS AN IMMINENT DANGER TO THE OTHER JUVENILES OR TO STAFF AT THE DETENTION FACILITY. IN MAKING ITS DETERMINATION, THE COURT SHALL REVIEW THE FACTORS SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c).

(VI) IF THE DISTRICT COURT DETERMINES THAT AN ADULT JAIL IS THE APPROPRIATE PLACE OF CONFINEMENT FOR THE JUVENILE, THE JUVENILE MAY PETITION THE COURT FOR A REVIEW HEARING. THE JUVENILE MAY NOT PETITION FOR A REVIEW HEARING WITHIN THIRTY DAYS

AFTER THE INITIAL CONFINEMENT DECISION OR WITHIN THIRTY DAYS AFTER ANY SUBSEQUENT REVIEW HEARING. UPON RECEIPT OF THE PETITION, THE COURT MAY SET THE MATTER FOR A HEARING IF THE JUVENILE HAS ALLEGED FACTS OR CIRCUMSTANCES THAT, IF TRUE, WOULD WARRANT RECONSIDERATION OF THE JUVENILE'S PLACEMENT IN AN ADULT JAIL BASED UPON THE FACTORS SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) AND THE FACTORS PREVIOUSLY RELIED UPON BY THE COURT.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

APPENDIX C

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

HOUSE BILL 12-1271

BY REPRESENTATIVE(S) Nikkel and McCann, Levy, Kagan, Labuda, Lee, Tyler, Vigil, Williams A., Wilson, Young;
also SENATOR(S) Giron and Neville, Aguilar, Bacon, Boyd, Carroll, Foster, Guzman, Heath, Hudak, Jahn, Newell, Nicholson, Steadman, Tochtrop, Williams S., Shaffer B.

CONCERNING CHARGING OF JUVENILES BY DIRECT FILE OF INFORMATION OR INDICTMENT IN DISTRICT COURT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 19-2-517 as follows:

19-2-517. Direct filing. (1) A juvenile may be charged by the direct filing of an information in the district court or by indictment only if:

(a) The juvenile is sixteen years of age or older at the time of the commission of the alleged offense and:

(I) Is alleged to have committed a class 1 or class 2 felony; or

(II) ~~Is alleged to have committed a felony enumerated as a crime of~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~violence pursuant to section 18-1.3-406, C.R.S.;~~ IS ALLEGED TO HAVE COMMITTED A SEXUAL ASSAULT THAT IS A CRIME OF VIOLENCE PURSUANT TO SECTION 18-1.3-406, C.R.S., OR A SEXUAL ASSAULT UNDER THE CIRCUMSTANCES DESCRIBED IN SECTION 18-3-402 (5) (a), C.R.S.; or

(III) (A) ~~Is alleged to have committed a felony offense described in part 1 of article 12 of title 18, C.R.S., except for the possession of a handgun by a juvenile, as set forth in section 18-12-108.5, C.R.S.;~~ IS ALLEGED TO HAVE COMMITTED A FELONY ENUMERATED AS A CRIME OF VIOLENCE PURSUANT TO SECTION 18-1.3-406, C.R.S., OTHER THAN A SEXUAL ASSAULT AS DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), OR IS ALLEGED TO HAVE COMMITTED SEXUAL ASSAULT PURSUANT TO SECTION 18-3-402, C.R.S., SEXUAL ASSAULT ON A CHILD PURSUANT TO SECTION 18-3-405, C.R.S., OR SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST PURSUANT TO SECTION 18-3-405.3, C.R.S.; AND

(B) IS FOUND TO HAVE A PRIOR ADJUDICATED FELONY OFFENSE; or

(IV) ~~Is alleged to have used, or possessed and threatened the use of, a deadly weapon during the commission of a felony offense against a person described in article 3 of title 18, C.R.S.; or~~ HAS PREVIOUSLY BEEN SUBJECT TO PROCEEDINGS IN DISTRICT COURT AS A RESULT OF A DIRECT FILING PURSUANT TO THIS SECTION OR A TRANSFER PURSUANT TO SECTION 19-2-518; EXCEPT THAT:

(A) IF THE JUVENILE IS FOUND NOT GUILTY IN DISTRICT COURT OF THE PRIOR FELONY OR ANY LESSER INCLUDED OFFENSE, THE SUBSEQUENT CHARGE SHALL BE REMANDED TO THE JUVENILE COURT; AND

(B) IF THE JUVENILE IS CONVICTED IN DISTRICT COURT IN THE PRIOR CASE OF A LESSER INCLUDED OR NONENUMERATED OFFENSE FOR WHICH CRIMINAL CHARGES COULD NOT HAVE BEEN ORIGINALLY FILED BY INFORMATION OR INDICTMENT IN THE DISTRICT COURT PURSUANT TO THIS SECTION, THE SUBSEQUENT CHARGE MAY BE REMANDED TO THE JUVENILE COURT.

(V) ~~Is alleged to have committed vehicular homicide, as described in section 18-3-106, C.R.S., vehicular assault, as described in section 18-3-205, C.R.S., or felonious arson, as described in part 1 of article 4 of title 18, C.R.S.; or~~

(VI) ~~Is alleged to have committed a class 3 felony, or sexual assault as described in section 18-3-402 (1) (d), C.R.S., or section 18-3-403 (1) (e), C.R.S., as it existed prior to July 1, 2000, and the juvenile, within the two previous years, has been adjudicated a juvenile delinquent for an act that constitutes a felony; or~~

(VII) ~~Is alleged to have committed a felony, and is determined to be an habitual juvenile offender. For purposes of this section, "habitual juvenile offender" is defined in section 19-1-103 (61).~~

(b) ~~The juvenile is fourteen or fifteen years of age at the time of the commission of the alleged offense and:~~

~~(I) Is alleged to have committed murder in the first degree, as described in section 18-3-102, C.R.S., or murder in the second degree, as described in section 18-3-103, C.R.S.; or~~

~~(II) Is alleged to have committed sexual assault under the circumstances described in section 18-3-402 (5) (a), C.R.S.; or~~

~~(III) Is alleged to have committed any sexual offense that is enumerated as a crime of violence pursuant to section 18-1.3-406, C.R.S.; or~~

~~(IV) Is alleged to have committed any sexual offense classified as a class 3 felony, or sexual assault as described in section 18-3-402 (1) (d), C.R.S., or section 18-3-403 (1) (e), C.R.S., as it existed prior to July 1, 2000, and the juvenile, within the two previous years, has been adjudicated a juvenile delinquent for an act that constitutes a felony; or~~

~~(V) Is alleged to have committed any felony sexual offense and is determined to be an habitual juvenile offender; or~~

(c) ~~The juvenile is fourteen years of age or older at the time of the commission of the alleged offense, has allegedly committed a felony, and has previously been subject to proceedings in district court as a result of a direct filing pursuant to this section or a transfer pursuant to section 19-2-518; except that:~~

~~(I) If the juvenile is found not guilty in district court of the prior~~

~~felony or any lesser included offense, the subsequent charge shall be remanded back to the juvenile court; and~~

~~(II) If the juvenile is convicted in district court in the prior case of a lesser included or nonenumerated offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section, the subsequent charge may be remanded back to the juvenile court.~~

(1.5) IF, AFTER A PRELIMINARY HEARING, THE DISTRICT COURT DOES NOT FIND PROBABLE CAUSE FOR AN OFFENSE THAT MAY BE CHARGED BY DIRECT FILING, OR IF THE DIRECT FILE ELIGIBLE OFFENSE IS DISMISSED AT A LATER DATE, THE COURT SHALL REMAND THE CASE TO THE JUVENILE COURT.

(2) Notwithstanding the provisions of section 19-2-518, after filing charges in the juvenile court but ~~prior to the time that~~ BEFORE the juvenile court conducts a transfer hearing, the district attorney may file the same or different charges against the juvenile by direct filing of an information in the district court or by indictment pursuant to this section. Upon ~~said~~ THE filing or indictment in the district court, the juvenile court shall no longer have jurisdiction over proceedings concerning ~~said~~ THE charges.

(3) (a) ~~In determining whether to file charges in district court pursuant to this section, the district attorney shall first consider the following criteria:~~ AFTER A JUVENILE CASE HAS BEEN CHARGED BY DIRECT FILING OF INFORMATION OR BY AN INDICTMENT IN DISTRICT COURT, THE JUVENILE MAY FILE IN DISTRICT COURT A MOTION TO TRANSFER THE CASE TO JUVENILE COURT. THE JUVENILE MUST FILE THE MOTION NO LATER THAN THE TIME TO REQUEST A PRELIMINARY HEARING. UPON RECEIPT OF THE MOTION, THE COURT SHALL SET THE REVERSE-TRANSFER HEARING WITH THE PRELIMINARY HEARING. THE COURT SHALL PERMIT THE DISTRICT ATTORNEY TO FILE A RESPONSE TO THE JUVENILE'S MOTION TO TRANSFER THE CASE TO JUVENILE COURT. THE DISTRICT ATTORNEY SHALL FILE THE RESPONSE NO LATER THAN FOURTEEN DAYS BEFORE THE REVERSE-TRANSFER HEARING.

~~(I) The seriousness of the offense and whether the protection of the community requires response or consequence beyond that afforded by this article;~~

~~(II) Whether the alleged offense was committed in an aggressive,~~

~~violent, premeditated, or willful manner;~~

~~(III) Whether the alleged offense was against persons or property, greater weight being given to offenses against persons;~~

~~(IV) The age of the juvenile and the maturity of the juvenile as determined by considerations of the juvenile's home, environment, emotional attitude, and pattern of living;~~

~~(V) The record and previous history of the juvenile;~~

~~(VI) The likelihood of rehabilitation of the juvenile by use of the sentencing options available in the juvenile and district courts;~~

~~(VII) The interest of the community in the imposition of a punishment commensurate with the gravity of the offense;~~

~~(VIII) The impact of the offense on the victim;~~

~~(IX) Whether the juvenile was previously committed to the department of human services following an adjudication for a delinquent act that constitutes a felony; and~~

~~(X) Whether the juvenile used, or possessed and threatened the use of, a deadly weapon in the commission of a delinquent act.~~

(b) ~~The amount of weight given to each of the factors listed in paragraph (a) of this subsection (3) is discretionary with the district attorney. The insufficiency of any factor or set of factors shall not preclude the district attorney from charging by direct filing, so long as the district attorney is satisfied that the information available supports the decision~~ IN DETERMINING WHETHER THE JUVENILE AND THE COMMUNITY WOULD BE BETTER SERVED BY ADJUDICATIVE PROCEEDINGS PURSUANT TO THIS ARTICLE OR BY PROCEEDINGS UNDER TITLE 16, C.R.S., THE COURT SHALL CONSIDER THE FOLLOWING FACTORS:

(I) THE SERIOUSNESS OF THE ALLEGED OFFENSE AND WHETHER THE PROTECTION OF THE COMMUNITY REQUIRES RESPONSE OR CONSEQUENCE BEYOND THAT AFFORDED BY THIS ARTICLE;

(II) WHETHER THE ALLEGED OFFENSE WAS COMMITTED IN AN AGGRESSIVE, VIOLENT, PREMEDITATED, OR WILLFUL MANNER;

(III) WHETHER THE ALLEGED OFFENSE WAS AGAINST PERSONS OR PROPERTY, GREATER WEIGHT BEING GIVEN TO OFFENSES AGAINST PERSONS;

(IV) THE AGE OF THE JUVENILE AND THE MATURITY OF THE JUVENILE AS DETERMINED BY CONSIDERATIONS OF THE JUVENILE'S HOME, ENVIRONMENT, EMOTIONAL ATTITUDE, AND PATTERN OF LIVING;

(V) THE RECORD AND PREVIOUS HISTORY OF THE JUVENILE IN PRIOR COURT-RELATED MATTERS;

(VI) THE CURRENT AND PAST MENTAL HEALTH STATUS OF THE JUVENILE AS EVIDENCED BY RELEVANT MENTAL HEALTH OR PSYCHOLOGICAL ASSESSMENTS OR SCREENINGS THAT ARE MADE AVAILABLE TO BOTH THE DISTRICT ATTORNEY AND DEFENSE COUNSEL;

(VII) THE LIKELIHOOD OF THE JUVENILE'S REHABILITATION BY USE OF THE SENTENCING OPTIONS AVAILABLE IN THE JUVENILE COURTS AND DISTRICT COURTS;

(VIII) THE INTEREST OF THE COMMUNITY IN THE IMPOSITION OF A PUNISHMENT COMMENSURATE WITH THE GRAVITY OF THE OFFENSE;

(IX) THE IMPACT OF THE OFFENSE ON THE VICTIM;

(X) WHETHER THE JUVENILE WAS PREVIOUSLY COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES FOLLOWING AN ADJUDICATION FOR A DELINQUENT ACT THAT CONSTITUTES A FELONY; AND

(XI) WHETHER THE JUVENILE USED, OR POSSESSED AND THREATENED THE USE OF, A DEADLY WEAPON IN THE COMMISSION OF THE DELINQUENT ACT.

(c) IF THE DISTRICT COURT DETERMINES PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3) THAT THE JUVENILE AND THE COMMUNITY WOULD BE BETTER SERVED BY ADJUDICATIVE PROCEEDINGS PURSUANT TO THIS ARTICLE, THE COURT SHALL ENTER AN ORDER DIRECTING THAT THE OFFENSES AGAINST THE JUVENILE BE ADJUDICATED IN JUVENILE COURT

PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

(4) ~~(a) If, after or contemporaneously with the filing of a delinquency petition and after initial consideration of the factors set forth in subsection (3) of this section, the district attorney believes the case may be appropriate for charging by direct filing, the district attorney shall file with the juvenile court, with a copy to the juvenile's counsel of record, or to the juvenile if the juvenile has waived counsel or if there is no counsel of record, a notice of consideration of direct file. No later than forty-eight hours after the filing of the notice of consideration, the juvenile court shall readvise the juvenile of his or her right to counsel. If the juvenile has previously waived his or her right to counsel, the juvenile shall have an opportunity to withdraw such waiver.~~

~~(b) After the filing of the notice of consideration of direct file, the juvenile shall have fourteen days to provide to the district attorney any and all information the juvenile requests the district attorney to consider relating to the factors set forth in subsection (3) of this section in making the decision whether to direct file charges. The district attorney shall not direct file charges until the fourteen-day period for consideration has passed. Nothing in this section shall require the district attorney to extend the period for consideration; nor shall anything in this section prohibit the district attorney from agreeing with the juvenile's counsel of record to extend the period for consideration. Further, nothing in this section shall preclude the district attorney from direct filing the charges after the expiration of the period for consideration.~~

~~(c) The juvenile court shall not accept a plea of guilty during the period for consideration of direct file unless the plea is entered with the agreement of the district attorney.~~

~~(d) The district attorney is encouraged to provide the juvenile's counsel of record an opportunity to meet to discuss any and all information relevant to the factors set forth in subsection (3) of this section before a decision to direct file occurs. However, the lack of any such meeting shall not require an extension of the period for consideration.~~

~~(e) At the discretion of the district attorney, the provisions of this subsection (4) shall not apply to charges for first degree murder as described in section 18-3-102, C.R.S., second degree murder, as described in section~~

~~18-3-103, C.R.S., or any sexual offense that is eligible for direct file pursuant to subsection (1) of this section.~~

(5) ~~Upon the direct filing of charges in the district court pursuant to this section, the district attorney shall file a written statement listing the specific factors set forth in subsection (3) of this section upon which the decision to direct file was based.~~

(6) (a) If a juvenile is convicted following the filing of criminal charges by information or indictment in the district court pursuant to this section, the district judge shall sentence the juvenile ~~as follows~~ EITHER:

(I) As an adult; EXCEPT THAT A JUVENILE IS EXCLUDED FROM THE MANDATORY MINIMUM SENTENCING PROVISIONS IN SECTION 18-1.3-406, C.R.S., UNLESS THE JUVENILE IS CONVICTED OF A CLASS 1 FELONY OR A SEX OFFENSE THAT IS SUBJECT TO PART 9 OF ARTICLE 1.3 OF TITLE 18, C.R.S.; or

(II) To the youthful offender system in the department of corrections in accordance with section 18-1.3-407, C.R.S.; except that a juvenile shall be ineligible for sentencing to the youthful offender system if the juvenile is convicted of:

(A) A class 1 felony;

(B) Any sexual offense described in section 18-6-301 or 18-6-302, C.R.S., or part 4 of article 3 of title 18, C.R.S.; or

(C) A second or subsequent offense, if the juvenile received a sentence to the department of corrections or to the youthful offender system for the prior offense. ~~or~~

(III) ~~Pursuant to the provisions of this article, if the juvenile is less than sixteen years of age at the time of commission of the crime and is convicted of an offense other than a class 1 or class 2 felony, a crime of violence as defined under section 18-1.3-406, C.R.S., or an offense described in subparagraph (V) of paragraph (b) of subsection (1) of this section and the judge makes a finding of special circumstances.~~

(b) The district court judge may sentence a juvenile pursuant to the provisions of this article if the juvenile is convicted of a lesser included or

nonenumerated FELONY offense for which criminal charges could not have been originally filed by information or indictment in the district court pursuant to this section. IF THE JUVENILE IS CONVICTED OF ONLY A MISDEMEANOR OFFENSE OR MISDEMEANOR OFFENSES, THE COURT SHALL ADJUDICATE THE JUVENILE A DELINQUENT AND SENTENCE THE JUVENILE PURSUANT TO THIS ARTICLE.

(c) IF A JUVENILE IS CONVICTED OF AN OFFENSE THAT IS NOT ELIGIBLE FOR DISTRICT COURT JURISDICTION UNDER EITHER THIS SECTION OR SECTION 19-2-518, THE JUVENILE SHALL BE REMANDED TO JUVENILE COURT.

(7) In the case of a person who is sentenced as a juvenile pursuant to subsection (6) of this section, the following provisions shall apply:

(a) Section 19-2-908 (1) (a), regarding mandatory sentence offenders;

(b) Section 19-2-908 (1) (b), regarding repeat juvenile offenders;

(c) Section 19-2-908 (1) (c), regarding violent juvenile offenders; and

(d) Section 19-2-601, regarding aggravated juvenile offenders.

(8) The court in its discretion may appoint a guardian ad litem for a juvenile charged by the direct filing of an information in the district court or by indictment pursuant to this section.

(9) ~~The offenses described in this section shall include attempt, conspiracy, or solicitation to commit such offenses~~ WHEN A JUVENILE IS SENTENCED PURSUANT TO THE PROVISIONS OF THIS ARTICLE, THE JUVENILE'S CONVICTION SHALL BE ADJUDICATED AS A JUVENILE DELINQUENCY ADJUDICATION.

(10) FOR PURPOSES OF THIS SECTION, "VIOLENT JUVENILE OFFENDER" HAS THE SAME MEANING AS DEFINED IN SECTION 19-2-516 (3).

SECTION 2. In Colorado Revised Statutes, **repeal** 19-2-518 (5).

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED_____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

AMERICAN CIVIL LIBERTIES UNION of NEVADA

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To: Chairwoman Valerie Wiener and Members of the Committee on Child Welfare and Juvenile Justice
Date: April 13, 2012
Re: The Creation of a Statewide Juvenile Justice Commission

These written remarks advocate for our organization's position related to a variety of topics discussed by your committee throughout its interim meetings.

The ACLU of Nevada supports proactive, positive approaches to criminal justice reform that can reduce recidivism and ultimately keep juveniles out of the criminal justice system. We are pleased that the state continues to take seriously its obligation of constitutional care for youth and we believe that the best method to achieve this goal is to approach reform efforts in the most comprehensive manner as possible. As such, we urge this Committee to make recommendations to the Legislature that will include a broad spectrum of reform, ranging from school discipline to the incarceration of youth.

Should you have any concerns or questions about our position on this matter or would like additional information, please contact me at any time.

Sincerely,

Rebecca S. Gasca
Legislative and Policy Director, ACLU of Nevada

Disproportionate Minority Contact in the Child Welfare and Juvenile Justice Systems

Disproportionate minority contact was discussed at length on April 4, 2012 as Agenda Item VI. It was noted that children of color are involved in the juvenile justice system in Nevada at a higher rate than their Caucasian counterparts. In Nevada, African American youth are involved at a higher rate than their counterparts in other states. As Ritz Reece testified, "Youth of color start in system earlier than whites and deepens exponentially as time goes on."

While we certainly appreciate the work done on the administrative side by judicial officials,[1] as the Honorable Judge Schumacher noted, judges are not in the best position to direct how police

[1] For example, Nancy B. Miller (Director, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges) and The Honorable Deborah E. Schumacher (Family Division, Department 5, Second Judicial District Court of Nevada, Washoe County) both testified about how judicial practices are shifting towards better understanding how to interact with these populations.

should be interacting with the public. *Instead, we recommend that this Committee direct the Legislature to consider a remediation plan, which includes legislative oversight, as suggested by one of the presenters on April 4th. This should include use of evidence based practices as well as policy recommendations for police departments, school officials, and service providers who directly interact with the affected populations, particularly with concern to why disproportionality occurs.*

Creating a Wraparound Model for Youth with Severe Emotional Disturbances Within the Juvenile Justice System (Priority 5 of the Clark County Children's Mental Health Consortium)

Alarming statistics were provided by the Clark County Children's Mental Health Consortium with respect to the number of children involved in the juvenile justice system with severe emotional issues who are being placed in out of state care. We take seriously the position that youth should be treated equally and humanely while enjoying full due process rights throughout their entire involvement with the juvenile justice system. We also believe that additional emphasis should be placed on family unification. *As such, we urge the Committee to follow the recommendations to create a pilot program that will ensure adequate case management for youth with severe emotional disturbances or involved with out-of-community placements.*

Developing School-Based and -Linked Behavioral Intervention Services for Children with Behavioral Health Care Needs (Priority 7 of the Clark County Children's Mental Health Consortium)

The ACLU of Nevada certainly encourages any policy that will encourage complete evidence-based education regarding mental health issues. In addition, evidence-based best practices should be used in schools by officials who engage with children with behavioral needs. Positive Behavioral Interventions and Supports (PBIS) is an approach[2] that could help address policy shortcomings that marginalize our most at-risk youth with behavior problems. Such shortcomings deny them access to education and treatment by funneling them into the school-to-prison pipeline.[3]

Research shows that schools using proactive, positive approaches to discipline can reduce suspensions and expulsions, and ultimately keep juveniles out of the criminal justice system, while improving student achievement and perceptions of school safety. *We recommend that the*

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[2] From http://pbis.org/pbis_faq.aspx: "PBIS"…comes directly from the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA). ….PBIS is based on principles of applied behavior analysis and the prevention approach and values of positive behavior support…. PBIS emphasizes the establishment of organizational supports or systems that give school personnel capacity to use effective interventions accurately and successfully at the school, district, and state levels. These supports include (a) team-based leadership, (b) data-based decision-making, (c) continuous monitoring of student behavior, (d) regular universal screening, and (e) effective on-going professional development.

[3] See ACLU of Nevada testimony from May 7, 2010 regarding the State of Nevada's application for *Race to the Top* funds.

Committee suggest that the Legislature adopt PBIS as a part of its standards to addressing the needs of children with behavioral health care needs, as well as develop data systems that track school climate programs and discipline.

Juvenile Certification and Incarceration with Adults

Certifying juveniles as adults and incarcerating them in adult facilities was discussed on April 4, 2012 as Agenda Item X. While we would certainly support legislation that could reflect similarities with Florida's "Second Chance for Children Act,"[4] there clearly are other opportunities for the legislature to affect additional aspects of the criminal justice system. *We recommend that this Committee consider policies that would remove youth from all adult facilities, remove the "once an adult, always an adult" provision in state law, establish a higher minimum age before prosecuting a juvenile as an adult (from 14 to 16), and create a reverse waiver provision that would give judges the discretion to remand children back to the juvenile court system.*

School Discipline and the "School to Prison Pipeline"

On February 22, 2012, several advocates and members of law enforcement testified regarding bullying and other school discipline issues. At that time, a representative from the Education Services Division testified concerning approximately 45 recommendations for expulsion related to "immoral conduct" and bullying. *We urge this Committee to consider recommendations that will ensure that these instances are not illegally infringing on the First Amendment rights of students.*

While none question the need to keep schools safe, there is reason to question the efficacy of exclusionary discipline practices.[5] Historically disenfranchised youth, including students of color and students with disabilities, are most impacted by these policies. These students who have disciplinary problems at school are often most likely to be funneled into different parts of the juvenile justice system. However, these practices affect not only the student being disciplined, but the health and success of the school as a whole: schools with high suspension rates score lower on state accountability tests, even when adjusting for demographic differences.

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[4] http://www.flsenate.gov/Session/Bill/2012/635

[5] **According to the *American Psychological Association*, the use of these practices does not improve behavior, but can instead increase the likelihood that students will fall behind academically, have future behavior problems, become withdrawn and dropout of school** (http://www.apa.org/news/press/releases/2006/08/zero-tolerance.aspx). **There is also no evidence that zero-tolerance policies make schools safer or improve student behavior** (Advancement Project, Education on Lockdown: The Schoolhouse to Jailhouse Track (Mar. 2005), p. 16; and ABA Juvenile Justice Committee, Zero Tolerance Policy: Report (Feb. 2001). **On the contrary, research suggests that the overuse of suspensions and expulsions may actually increase the likelihood of later criminal misconduct** (Johanna Wald & Dan Losen, "Defining and Re-directing a School-to-Prison Pipeline," New Directions for Youth Development (No. 99, Fall 2003), p. 11.)

The "school to prison pipeline," sometimes called school pushout, refers to the national trend of criminalizing, rather than educating, our nation's children. It occurs as a result of policies and practices that disengage students from learning and remove them from instruction, including zero-tolerance policies and the overuse of disciplinary practices such as suspensions, expulsions, and school arrests. As such, the ACLU of Nevada was one of over 180 organizations and individuals who signed on to the Dignity in School Campaign's *National Resolution for Ending School Pushout,*[6] a call to action for our school systems to end the harsh discipline and law enforcement tactics that push too many young people out of school each year.

We urge this Committee to create a more comprehensive approach to addressing these issues by identifying these school based trends as an inappropriate entrée to the juvenile justice system and creating policies that will prevent students from improper introduction into the juvenile justice system through the school to prison pipeline.

Data Tracking at Point of Entry

As you know, the work and data-driven developments of Juvenile Detention Alternative Initiatives (JDAI) in Nevada throughout the years has been incredibly important. However, JDAI efforts do not generally include lower level and status offenses that are often a juvenile's first introduction into the juvenile justice system. No other commission or committee in this state concentrates on these first points of entry. *We recommend that this Committee support a bill that will require the tracking of point of entry statistics for juveniles, including status offenses.*

[6] http://www.dignityinschools.org/files/DSC_National_Resolution.pdf

NRS 33.018 Acts which constitute domestic violence.

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

(a) A battery.

(b) An assault.

(c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform

(d) A sexual assault.

(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:

(1) Stalking.

(2) Arson.

(3) Trespassing.

(4) Larceny.

(5) Destruction of private property.

(6) Carrying a concealed weapon without a permit

(7) Injuring or killing an animal.

(f) A false imprisonment.

(g) Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry

2. As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

(Added to NRS by 1985, 2283; A 1995, 902; 1997, 1808; 2007, 82, 1275)

FEDERAL AND OTHER CASES.

Assaulting a parent was not a misdemeanor crime of domestic violence for the purposes of federal law. A defendant's conviction for assaulting his mother was not a misdemeanor crime of domestic violence for the purposes of federal law that prohibits any person who has been convicted of such a crime from possessing any firearm and ammunition (see 18 U.S.C. §§ 922(g)(9) and 924(a)(2)) because the federal statute contemplates specific relationships between a perpetrator and a victim and the child-parent relationship was not specified in that statute. (See also NRS 33.018.) United States v. Skuban, 175 F. Supp. 2d 1253 (D. Nev. 2001)

NRS 62B.330 Child alleged or adjudicated to have committed delinquent act; acts deemed not to be delinquent.

1. Except as otherwise provided in this title, the juvenile court has exclusive original jurisdiction over a child living or found within the county who is alleged or adjudicated to have committed a delinquent act

2. For the purposes of this section, a child commits a delinquent act if the child

(a) Violates a county or municipal ordinance;

(b) Violates any rule or regulation having the force of law; or

(c) Commits an act designated a criminal offense pursuant to the laws of the State of Nevada

3. For the purposes of this section, each of the following acts shall be deemed not to be a delinquent act, and the juvenile court does not have jurisdiction over a person who is charged with committing such an act

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult

(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and

(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(d) A felony resulting in death or substantial bodily harm to the victim and any other related offense arising out of the same facts as the felony, regardless of the nature of the related offense, if

(1) The felony was committed on the property of a public or private school when pupils or employees of the school were present or may have been present, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties; and

(2) The person intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person.

(e) A category A or B felony and any other related offense arising out of the same facts as the category A or B felony, regardless of the nature of the related offense, if the person was at least 16 years of age but less than 18 years of age when the offense was committed, and

(1) The person is not identified by law enforcement as having committed the offense and charged before the person is at least 20 years, 3 months of age, but less than 21 years of age; or

(2) The person is not identified by law enforcement as having committed the offense until the person reaches 21 years of age.

(f) Any other offense if, before the offense was committed, the person previously had been convicted of a criminal offense.

(Added to NRS by 2003, 1029; A 2009, 50)

NRS CROSS REFERENCES.

School bus defined, NRS 62A.300

Substantial bodily harm defined, NRS 0.060

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62B.330 were derived from part of former NRS 62.040, which had the following legislative history

"[3:63:1949; A 1949, 572; 1943 NCL § 1038.3]—(NRS A 1957, 148; 1963, 500; 1969, 443; 1971, 1333; 1973, 397, 1341; 1975, 1129; 1977, 1270; 1979, 501; 1981, 1892, 2019; 1983, 112; 1985, 1388; 1989, 867, 1806, 1807, 1909; 1993, 1981; 1995, 785, 1342, 1371; 1997, 832; 1999, 717, 722, 1338, 1339, 1342, 2059, 2067, 2070; 2001, 144, 1216)"

NEVADA CASES.

LIMITS OF JURISDICTION

Jurisdiction limited to express provisions; murder and attempted murder excluded. On appeal from a conviction for murder where the defendant, a minor, had sought transfer to the juvenile division of district court, appellate court affirmed district court's conclusion that it lacked authority under the Juvenile Court Act (see former NRS ch. 62; cf. NRS title 5) to transfer the case to the juvenile division. The juvenile court system possesses only the jurisdiction expressly provided for it in statute, and former NRS 62.040 (cf. NRS 62B.330), which sets forth the juvenile court's jurisdiction, specifically excludes murder and attempted murder from offenses which may be tried as delinquent acts. Kell v. State, 96 Nev. 791, 618 P.2d 350 (1980)

Defendant 13 years old not a juvenile when charged with murder. Under former NRS 62.040 and 62.050 (cf. NRS 62B.330 and 62B.370), a 13-year-old defendant could not be treated as a juvenile under the Juvenile Court Act where the charge was murder. Poole v. State, 97 Nev. 175, 625 P.2d 1163 (1981)

Adult court may not transfer a case when the crime charged is excluded from the jurisdiction of juvenile court; court must maintain jurisdiction over the crime charged and lesser included offenses. Where a minor was charged with attempted murder (a crime within the jurisdiction of district court) and, pursuant to a plea bargain, offered a plea of guilty to supplemental information charging battery with the use of a deadly weapon, there could be no transfer of the case to juvenile court under former NRS 62.050 (cf. NRS 62B.370) even though the district judge dismissed the supplemental information because the matter was within the exclusive jurisdiction of juvenile court (see former NRS 62.040; cf. NRS 62B.330). District court could, however, accept a plea to a crime of battery with a deadly weapon if it determined that battery was the lesser included offense within the charged crime of attempted murder under the facts of the case. When adult court acquires jurisdiction in the prosecution of an offense excluded from juvenile court jurisdiction, jurisdiction is maintained to convict of the charged crime and its lesser included offenses. Dicus v. Second Judicial Dist. Court, 97 Nev. 273, 625 P.2d 1175 (1981), cited, Kimball v. State, 100 Nev. 190, at 191, 678 P.2d 675 (1984), Barton v. State, 117 Nev. 686, at 690, 30 P.3d 1103 (2001)

Court lacks jurisdiction over a child when allegations in petition insufficient for findings; court may not rely on the terms of an order entered on petition. Where allegations in a juvenile court petition were insufficient to support a finding that the child was a child in need of supervision under former NRS 62.040 (cf. NRS 62B.320 and 62B.330), the court lacked jurisdiction to adjudicate the child as having that status. Thus the court could not rely on the terms of an order which purportedly made that determination when it issued a later order committing the child to a juvenile correctional institution for willful violation of those terms. A Minor v. Juvenile Div. of Seventh Judicial Dist. Court, 97 Nev. 281, 630 P.2d 245 (1981), cited, Ewing v. State, 98 Nev. 81, at 83, 640 P.2d 922 (1982), Gregory C., A Minor v. State, 98 Nev. 465, at 467, 653 P.2d 152 (1982)

No protection under NRS title 5 for juveniles charged with murder. Where a juvenile charged with murder claimed that her inculpatory statements made after she was taken into custody should be suppressed on the ground that her parents were not notified of her arrest as provided in former NRS ch. 62 (cf. NRS title 5), the trial court properly declined to suppress her statements because persons charged with murder are specifically excepted from the jurisdiction of juvenile courts by former NRS 62.040 (cf. NRS 62B.330) and are not entitled to the protections of the juvenile laws of former NRS ch. 62 (cf. NRS title 5). Shaw v. State, 104 Nev. 100, 753 P.2d 888 (1988), clarified, Ford v. State, 122 Nev. 796, at 802, 138 P.3d 500 (2006)

Certification of juvenile to stand trial as an adult is not required for a robbery that arose out of the same facts as a murder. Fourteen-year-old defendant who was convicted of murder and robbery argued that the robbery charge should have been dismissed by the district court because he was not certified in juvenile court to stand trial as an adult for that charge. The Supreme Court affirmed defendant's conviction, holding that: (1) a juvenile does not need to be certified in juvenile court to stand trial as an adult (see former NRS 62.080; cf. NRS 62B.390) when the juvenile is charged with an offense excluded from the statutory jurisdiction of the juvenile court (see former NRS 62.040; cf. NRS 62B.330); and (2) the robbery was an offense excluded from the statutory jurisdiction of the juvenile court because the robbery arose out of the same facts as the murder. Elvik v. State, 114 Nev. 883, 965 P.2d 281 (1998)

EFFECT OF ASSERTION OF JURISDICTION

District court may not affect the authority of the State over a minor after jurisdiction is obtained in another county. Where a minor under the age of 18 was committed to the Nevada School of Industry (now the Nevada Youth Training Center) by a district court of one county, escaped and was arrested by a juvenile officer of another county, and a habeas corpus proceeding was brought in the second county, former NRS 62.040 (cf. NRS 62B.330) providing that the juvenile division of the district court shall have exclusive original jurisdicion, and former NRS 62.070 (cf. NRS 62B.410) providing that jurisdiction obtained shall be retained until the child reaches the age of 21 years, prevented the court in the second county from taking any action affecting the authority of the State over the minor after the first district court had properly brought the child under state supervision through its juvenile division. In re Short, 74 Nev. 250, 328 P.2d 299 (1958), distinguished, State v. Bill, 91 Nev. 275, at 276, 534 P.2d 1264 (1975)

Arrest of a juvenile without a warrant not precluded by jurisdiction of juvenile court. Where police questioned two juveniles for several hours concerning several unsolved crimes, and one of these stated that a third juvenile had participated in the burglary, probable cause existed for arrest of this third juvenile without a warrant under NRS 171.124, and former NRS 62.040 (cf. NRS 62B.330), which vests exclusive

jurisdiction over children in juvenile court, did not preclude such an arrest. Marschall v. City of Carson, 86 Nev. 107, 464 P.2d 494 (1970), cited, Carstairs v. State, 94 Nev. 125, at 127, 575 P.2d 927 (1978), Jordan v. State ex rel. Dep't of Motor Veh. & Pub. Safety,121 Nev. 44, at 70, 110 P.3d 30 (2005)

MISCELLANEOUS

Transfer to juvenile division of a related offense. In light of the provisions of former NRS 62.050 (cf. NRS 62B.370) stating that: "If, during the pendency of a criminal or quasi-criminal charge, except a charge of murder or attempted murder, brought against a person in any court, it is ascertained that the person was under the age of 18 years when the alleged offense was committed, the court shall forthwith transfer the case and record to the juvenile division," a defendant who was only 15 years of age at the time of the alleged offense was required to be transferred to the juvenile division of district court on a felony charge of leaving the scene of an accident but tried as an adult on the charge of attempted murder despite the existence of another statute (see former NRS 62.080; cf. NRS 62B.390) providing that no child under 16 years of age may be certified for treatment as an adult. A Minor v. Sheriff, Washoe County,94 Nev. 319, 579 P.2d 1249 (1978)

Nondelinquent children may not be committed to punitive correctional institutions. Only children adjudicated delinquent children by juvenile court pursuant to former NRS 62.040 (cf. NRS 62B.320 and 62B.330) may be committed to the Nevada Youth Training Center or the Nevada Girls Training Center (now the Caliente Youth Center) under former NRS 210.180 and 210.580 (cf. NRS 63.400). Nondelinquent children within the jurisdiction of juvenile court may not be committed to these punitive correctional institutions. A Minor v. Juvenile Div. of Seventh Judicial Dist. Court, 97 Nev. 281, 630 P.2d 245 (1981), cited, Glenda S., A Minor v. State, 103 Nev. 53, at 55, 732 P.2d 1356 (1987)

Child may not be both in need of supervision and a delinquent. Under former NRS 62.040 (cf. NRS 62B.320 and 62B.330), a child could not lawfully be adjudicated to be both a chid in need of supervision and a delinquent child. Ewing v. State,98 Nev. 81, 640 P.2d 922 (1982)

Isolated instances of disobedience or matters of temperament insufficient to find a child in need of supervision. Evidence of three incidents of disobedience in a 3-month period, together with the boy's admission that he "lied on everyone" and had a "bad temper" were insufficient to support a finding that the boy was a child in need of supervision under the provisions of former NRS 62.040 (cf. NRS 62B.320 and 62B.330). Single or isolated instances of disobedience do not constitute habitual disobedience, and the statute does not purport to encompass matters of temperament. Gregory C., A Minor v. State,98 Nev. 465, 653 P.2d 152 (1982)

Certification of juvenile to stand trial as an adult not required in murder cases. Where at the time of a murder and the time of trial the defendant was under 16 years of age, it was not required that juvenile court certify the defendant to stand trial as an adult before the defendant could be tried for murder. While juvenile court has exclusive original jurisdiction over a child who commits a delinquent act, the definition of "delinquent act" does not include crimes of murder and attempted murder. Therefore, juvenile court did not have jurisdiction over murder committed by the defendant and the defendant was not denied a fair trial by not being certified by juvenile court for trial as an adult. Shaw v. State, 104 Nev. 100, 753 P.2d 888 (1988), cited, Elvik v. State, 114 Nev. 883, at 894, 965 P.2d 281 (1998)

Vehicle registered to a minor is subject to forfeiture if used by the minor in commission of a delinquent act which would have been charged as a felony if committed by an adult. Where a minor was arrested for burglary and charged with committing a delinquent act under former NRS 62.040 (cf. NRS 62B.330), the vehicle registered to him and used in commission of the crime was subject to forfeiture under NRS 179.121 because the delinquent act would have been charged as a felony had it been committed by an adult. City of Sparks v. Nason, 107 Nev. 202, 807 P.2d 1389 (1991)

FEDERAL AND OTHER CASES.

Judge of juvenile court immune from federal action for conspiracy to violate civil rights. A district judge who was acting as a judge of the juvenile division of district court was acting within the jurisdiction conferred by former NRS 62.040 (cf. 62B.320 and 62B.330) in adjudicating a dispute over custody of a child and was, therefore, immune from an action brought under federal statute to recover damages for an alleged conspiracy to violate the plaintiff's civil rights. Thurston v. Robison, 603 F. Supp. 336 (D. Nev. 1985

ATTORNEY GENERAL'S OPINIONS.

Terms of juveniles within exclusive jurisdiction of a court; no power in the Superintendent of former Nevada School of Industry. The Superintendent of the Nevada School of Industry (now the Nevada Youth Training Center) has no power to dismiss or fix the terms of juveniles committed by juvenile court, or to determine when juveniles have become rehabilitated. Such matters are within the exclusive jurisdiction of the juvenile court; the Superintendent's role is merely that of adviser.AGO 79 (7-6-1955)

District court retains jurisdiction until a juvenile reaches 21. Under Nev. Art. 3, § 1, relating to separation of powers, Nev. Art. 6, § 1, relating to vesting of judicial power, and former NRS 62.040 and 62.070 (cf. NRS 62B.320, 62B.330 and 62B.410), relating to district court's original jurisdiction over juvenile matters and retention of such jurisdiction, district court has and retains exclusive jurisdiction in juvenile matters until the juvenile reaches age 21. (See also formerNRS 210.290; cf. NRS 63.790.) AGO 86 (8-25-1959)

Juvenile court has jurisdiction over Indian boys. Nevada has jurisdiction to punish Indians for public offenses committed on or off Indian reservations in Nevada. Since former NRS ch. 62 (cf. NRS title 5), relating to juvenile courts, does not exempt Indian boys, they may be committed to the Nevada School of Industry (now the Nevada Youth Training Center). AGO 98 (10-1-1959)

Person employed as prosecutor of municipal court offenses may not defend juvenile persons accused of delinquent acts. A person who is employed as a prosecutor of municipal court offenses is prohibited pursuant to NRS 7.105 from defending juvenile persons accused of delinquent acts. Because NRS 7.105 prohibits certain publicly employed attorneys from defending, agreeing to defend or undertaking the defense of a person charged with the violation of an ordinance or law of the State of Nevada, and because former NRS 62.040 (cf. NRS 62B.330) makes clear that a child commits a delinquent act if he violates a county or municipal ordinance or any rule or regulation having the

force of law, or commits an act designated a crime under the law of the State of Nevada, the conduct prohibited by NRS 7.150 includes the defense of a juvenile in a delinquency proceeding. In addition, the carrying out of such dual representation by a public prosecutor would create the appearance of impropriety. (N.B., this opinion was issued before the amendment ofNRS 7.105 in 2001.) AGO 2000-23 (7-21-2000)

NRS 62B.390 Certification of child for criminal proceedings as adult.

1. Except as otherwise provided in subsection 2 and NRS 62B.400, upon a motion by the district attorney and after a full investigation, the juvenile court may certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child

(a) Is charged with an offense that would have been a felony if committed by an adult; an

(b) Was 14 years of age or older at the time the child allegedly committed the offense

2. Except as otherwise provided in subsection 3, upon a motion by the district attorney and after a full investigation, the juvenile court shall certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the offense if committed by an adult, if the child

(a) Is charged with:

(1) A sexual assault involving the use or threatened use of force or violence against the victim; o

(2) An offense or attempted offense involving the use or threatened use of a firearm; anc

(b) Was 16 years of age or older at the time the child allegedly committed the offense

3. The juvenile court shall not certify a child for criminal proceedings as an adult pursuant to subsection 2 if the juvenile court specifically finds by clear and convincing evidence that

(a) The child is developmentally or mentally incompetent to understand the situation and the proceedings of the court or to aid the child's attorney in those proceedings; or

(b) The child has substance abuse or emotional or behavioral problems and the substance abuse or emotional or behavioral problems may be appropriately treated through the jurisdiction of the juvenile court

4. If a child is certified for criminal proceedings as an adult pursuant to subsection 1 or 2, the juvenile court shall also certify the child for criminal proceedings as an adult for any other related offense arising out of the same facts as the offense for which the child was certified, regardless of the nature of the related offense.

5. If a child has been certified for criminal proceedings as an adult pursuant to subsection 1 or 2 and the child's case has been transferred out of the juvenile court:

(a) The court to which the case has been transferred has original jurisdiction over the child;

(b) The child may petition for transfer of the case back to the juvenile court only upon a showing of exceptional circumstances; and

(c) If the child's case is transferred back to the juvenile court, the juvenile court shall determine whether the exceptional circumstances warrant accepting jurisdiction.

(Added to NRS by 2003, 1030; A 2003, 1511; 2009, 238)

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62B.390 were derived from former NRS 62.080, which had the following legislative history

"[7:63:1949; 1943 NCL § 1038.7]—(NRS A 1977, 1272; 1991, 304; 1993, 293; 1995, 1343; 1997, 833; 1999, 423)"

NEVADA CASES.

GENERAL

Child entitled to counsel after a certain date. A child is entitled to counsel in a juvenile court hearing whether for commitment or for certification for trial as an adult under former NRS 62.080 (cf. NRS 62B.390), but because certification did not involve a determination of guilt, absence of counsel did not affect the reliability of a subsequent conviction, and this right was not applied to a certification proceeding prior to May 15, 1967. Powell v. Sheriff, Clark County, 85 Nev. 684, 462 P.2d 756 (1969), distinguished, Naves v. State, 91 Nev. 106, at 107, 531 P.2d 1360 (1975), but see Powell v. Hocker, 453 F.2d 652 (1971)

No unlawful legislative delegation; adequate standards for judicial administration. The provisions of former NRS 62.080 (cf. NRS 62B.390), permitting a minor to be certified for trial as an adult, were not an unlawful delegation of legislative power to juvenile court, because the purposes of the Juvenile Court Act set forth in the provisions of former NRS 62.290 (cf. NRS 62A.360) provide adequate standards for judicial administration of the certification issue. Lewis v. State, 86 Nev. 889, 478 P.2d 168 (1970), cited, Martin v. State, 94 Nev. 687, at 689, 586 P.2d 1346 (1978), Robert E., A Minor v. Justice's Court of Reno Township, 99 Nev. 443, at 445, 664 P.2d 957 (1983)

Postconviction relief denied where juvenile entered a negotiated plea in district court and certification as an adult not necessary on initial

charge. Where a 17-year-old defendant, indicted on an open murder charge, was permitted to plead guilty to information charging second degree murder as the result of a negotiated plea, without first being certified by juvenile court for trial as an adult pursuant to former NRS 62.080 (cf. NRS 62B.390), application for postconviction relief based on the lack of adult certification was denied because certification was not necessary on an initial charge and error in the proceeding by information, rather than accepting a plea to a lesser charge pursuant to the former provisions of NRS 174.320 (cf. NRS 174.065), was harmless. (See also former NRS 62.050; cf. NRS 62B.370.) Lehmann v. Warden, 87 Nev. 24, 480 P.2d 155 (1971), cited, Rhodes v. State, 91 Nev. 17, at 20, 530 P.2d 1199 (1975), Larsgaard v. Sheriff, Clark County, 95 Nev. 171, at 173, 591 P.2d 256 (1979), Poole v. State, 97 Nev. 175, at 177, 625 P.2d 1163 (1981), Dicus v. Second Judicial Dist. Court, 97 Nev. 273, at 275, 625 P.2d 1175 (1981)

Charge changed to a greater offense after certification. Where a juvenile was certified to stand trial as an adult on a charge of assault with intent to kill but was subsequently tried, convicted and sentenced on a charge of attempted murder, the appellate court reduced the sentence to the maximum for a lesser offense, because at the time of certification the juvenile was not apprised of the specific charge under which he was ultimately to be tried and convicted as required by procedural due process. Junior v. State, 89 Nev. 121, 507 P.2d 1037 (1973), distinguished, Turpin v. State, 89 Nev. 518, at 520, 515 P.2d 1271 (1973)

Certification for trial as an adult proper when punishment for crime possible either in state prison or county jail; crime deemed a felony until lesser sentence imposed. Under former NRS 62.080 (cf. NRS 62B.390), authorizing the certification of a juvenile to stand trial as an adult if the crime charged would be a felony if committed by an adult, and NRS 193.120 defining a felony as every crime which may be punished by death or imprisonment in a state prison, the certification of a juvenile to stand trial as an adult on a charge of involuntary manslaughter was proper, although under NRS 200.090 punishment may be either a state prison or county jail confinement because, prior to judgment, an offense punishable by imprisonment in a state prison or confinement in a county jail is deemed a felony for all purposes and remains such until the court imposes a lesser sentence. Hernandez v. State,90 Nev. 65, 519 P.2d 107 (1974)

Certification for trial as an adult not affected by a court decision proscribing the death penalty. The United States Supreme Court decision proscribing imposition of the death penalty did not affect the determination of the gravity of the offense for purposes of certification of a minor charged with murder to stand trial as an adult pursuant to former NRS 62.050 and 62.080 (cf. NRS 62B.370 and 62B.390). Rhodes v. State, 91 Nev. 17, 530 P.2d 1199 (1975)

Defendant under 16 must be tried as a juvenile for a felony charge of leaving the scene of an accident and as an adult on a charge of attempted murder. In light of the provisions of former NRS 62.050 (cf. NRS 62B.370) stating that: "If, during the pendency of a criminal or quasi-criminal charge, except a charge of murder or attempted murder, brought against a person in any court, it is ascertained that the person was under the age of 18 years when the alleged offense was committed, the court shall forthwith transfer the case and record to the juvenile division," a defendant who was only 15 years of age at the time of the alleged offense was required to be transferred to the juvenile division of the district court on a felony charge of leaving the scene of an accident but tried as an adult on a charge of attempted murder despite the existence of another statute (see former NRS 62.080; cf. NRS 62B.390) providing that no child under 16 years of age may be certified for treatment as an adult. A Minor v. Sheriff, Washoe County, 94 Nev. 319, 579 P.2d 1249 (1978)

Record must disclose exceptional circumstances to authorize a transfer back to juvenile court. The district court to which a child was certified to stand trial as an adult on criminal charges did not abuse its discretion by refusing to transfer the case back to the juvenile division because former NRS 62.080 (cf. NRS 62B.390) authorizes such a transfer only upon the showing of exceptional circumstances, and the record did not disclose the existence of such circumstances. Martin v. State,94 Nev. 687, 585 P.2d 1346 (1978)

Overruled, Castillo v. State, 106 Nev. 349, at 353, 792 P.2d 1133 (1990). The supreme court lacks jurisdiction to entertain an appeal from an order of the district court denying a petition for transfer back to the juvenile court

When a matter set in Justice Court after transfer to the district court, the district court could transfer the matter back to the juvenile court. Where an order issued by the juvenile division clearly reflected that a child was to be certified to the district court to stand trial as an adult on criminal charges, but the matter was set on the Justice Court calendar, a criminal complaint was filed in Justice Court and arraignment was conducted in Justice Court, the district court nevertheless had jurisdiction to rule on the child's petition for transfer back to the juvenile division in light of the provisions of former NRS 62.080 (cf. NRS 62B.390) which provide that original jurisdiction of the person of a child rests with the court to which the child has been certified for criminal proceedings. Martin v. State, 94 Nev. 687, 585 P.2d 1346 (1978), cited, Robert E., A Minor v. Justice's Court of Reno Township, 99 Nev. 443, at 445, 664 P.2d 957 (1983)

Hearing is civil in nature and is nonadjudicatory. A hearing to determine whether to transfer a juvenile's case to adult court (see former NRS 62.080; cf. NRS 62B.390) is civil rather than criminal in nature, and is nonadjudicatory in that no inquiry is made into the guilt or innocence of the juvenile. The sole inquiry at such a hearing is to determine whether the interests of the juvenile and of society would be better served by subsequent adjudication in a juvenile or adult court system. Marvin v. State, 95 Nev. 836, 603 P.2d 1056 (1979), cited, Faessel v. Second Judicial Dist. Court, 106 Nev. 106, at 110, 787 P.2d 767 (1990) (dissenting opinion)

Decisional factors for transfer to adult court. In determining whether to transfer a youth's case from juvenile court to adult court pursuant to former NRS 62.080 (cf. NRS 62B.390), the court should consider "decisional matrix" comprised of: (1) the nature and seriousness of the charged offense or offenses; (2) the persistency and seriousness of past adjudicated or admitted criminal offenses; and (3) personal factors such as age, maturity, character, personality and family relationships and controls. Primary consideration should be given to the first two of these categories. Transfer may not be based solely on the third category. In re Seven Minors, 99 Nev. 427, 664 P.2d 947 (1983), cited, Robert E., A Minor v. Justice's Court of Reno Township, 99 Nev. 443, at 447, 664 P.2d 957 (1983), In re Three Minors, 100 Nev. 414, at 420, 684 P.2d 1121 (1984), Faessel v. Second Judicial Dist. Court, 106 Nev. 106, at 107, 787 P.2d 767 (1990), Jeremiah B., A Minor v. State, 107 Nev. 924, at 925, 823 P.2d 883 (1991), Castillo v. State, 110 Nev. 535, at 546, 874 P.2d 1252 (1994), modified, In re William S., 122 Nev. 432, at 436, 132 P.3d

1015 (2006)

Requirements for transfer to adult court. Juvenile court proceedings for transfer of a case to adult court (see former NRS 62.080; cf. NRS 62B.390) must be initiated by a written motion or petition stating the charged offense, past record of criminal conduct and other relevant information. An investigation must be made and a report served on the minor and his parents or guardians. The court must make a preliminary determination of "prosecutive merit" to assure that there is probable cause to believe that the subject minor committed the offense charged. In determining whether to order a transfer, the court must consider the offense charged, the past record and personal attributes of the minor. The minor should not be transferred unless it is made to appear clearly and convincingly that public safety and welfare require transfer. Specific written findings must accompany the order of transfer. In re Seven Minors, 99 Nev. 427, 664 P.2d 947 (1983), cited, In re Three Minors, 100 Nev. 414, at 417, 684 P.2d 1121 (1984), Faessel v. Second Judicial Dist. Court, 106 Nev. 106, at 108, 787 P.2d 767 (1990), Anthony Lee R., A Minor v. State, 113 Nev. 1406, at 1410, 1411, 952 P.2d 1 (1997)

Dispositive question for transfer to adult court. The dispositive question before a juvenile court when considering whether to transfer a youth's case to adult court (see former NRS 62.080; cf. NRS 62B.390) is whether the public interest and safety require that he be placed within the jurisdiction of adult criminal courts. In re Seven Minors, 99 Nev. 427, 664 P.2d 947 (1983), cited, In re Three Minors, 100 Nev. 414, at 420, 684 P.2d 1121 (1984), Anthony Lee R., A Minor v. State, 113 Nev. 1406, at 1409, 952 P.2d 1 (1997), AGO 98-17 (5-27-1998), modified, In re William S., 122 Nev. 432, at 438, 132 P.3d 1015 (2006)

Certification for trial as an adult terminates jurisdiction only as to a specific offense. Certification from juvenile court to adult court under former NRS 62.080 (cf. NRS 62B.390) terminates juvenile court's jurisdiction only as to the specific offense alleged and considered at the certification hearing. The statute requires recertification of a juvenile for each independent offense. Robert E., A Minor v. Justice's Court of Reno Township, 99 Nev. 443, 664 P.2d 947 (1983), cited, Robinson v. State, 110 Nev. 1137, at 1140, 881 P.2d 667 (1994) (dissenting opinion)

Minor pleading guilty could not object to prior certification for trial as an adult. In a prosecution for armed robbery, conspiracy, grand larceny, burglary and assault, a minor who pleaded guilty could not object to being previously certified for trial as an adult (see former NRS 62.080; cf. NRS 62B.390). Reuben C., A Minor v. State, 99 Nev. 845, 673 P.2d 493 (1983)

Certification of juvenile to stand trial as an adult not required in murder cases. Where at the time of murder and the time of trial a defendant was under 16 years of age, it was not required that juvenile court certify the defendant to stand trial as an adult before the defendant could be tried for murder. While juvenile court has exclusive original jurisdiction over a child who commits a delinquent act, the definition of a delinquent act does not include crimes of murder and attempted murder. Therefore, juvenile court did not have jurisdiction over a murder committed by the defendant and the defendant was not denied a fair trial by not being certified by juvenile court for trial as an adult. Shaw v. State, 104 Nev. 100, 753 P.2d 888 (1988), cited, Elvik v. State, 114 Nev. 883, at 894, 965 P.2d 281 (1998)

Section formerly empowered juvenile court to transfer to the adult criminal justice system a minor 16 years of age or older who committed a felonious offense before his 16th birthday. Former NRS 62.080 (cf. NRS 62B.390) provided that if a juvenile 16 years of age or older was charged with an offense which would be a felony if committed by an adult, juvenile court may transfer a child to the adult criminal system. Former NRS 62.080 (cf. NRS 62B.390) empowered juvenile court to certify and transfer to the adult criminal justice system a minor 16 years of age or older who commits a felonious offense before his 16th birthday. State v. Ninth Judicial Dist. Court (Alejandro C.), 105 Nev. 644, 781 P.2d 776 (1989), cited, Castillo v. State, 110 Nev. 535, at 537, 874 P.2d 1252 (1994)

Supreme court does not have jurisdiction to hear an appeal from an order of the district court refusing to transfer a matter back to the juvenile division. Where the juvenile division of the district court certified a child to stand trial as an adult pursuant to former NRS 62.080 (cf. NRS 62B.390) and the district court denied the appellant's petition to transfer the matter back to the juvenile division, the supreme court had no jurisdiction to entertain an appeal from an order of the district court denying the petition because the right to appeal is statutory and no statute or court rule authorizes an appeal from such an order. Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990), cited, Valley Bank v. Ginsburg, 110 Nev. 440, at 444, 874 P.2d 729 (1994), Phelps v. State, 111 Nev. 1021, at 1022, 900 P.2d 344 (1995), State v. Second Judicial Dist. Ct., 121 Nev. 413, at 416, 116 P.3d 834 (2005)

Heinous and egregious acts justify transfer to adult court. Where a child 16 years of age or older willfully consumes alcohol, operates a motor vehicle and causes the death of another human being, the actions of the child are of such a heinous and egregious nature as to justify the transfer of the case to an adult court pursuant to former NRS 62.080 (cf. NRS 62B.390). Jeremiah B., A Minor v. State, 107 Nev. 924, 823 P.2d 883 (1991), cited, AGO 98-17 (5-27-1998)

District court did not err in refusing to apply amended provisions of a section retroactively to a defendant who committed certain felonies before he was 16 years of age. Where the supreme court issued a writ of mandamus to certify a defendant, who committed certain felonies before he was 16 years of age, as an adult pursuant to former NRS 62.080 (cf. NRS 62B.390) which allowed certification of a minor as an adult if the minor was charged after the age of 16, and legislature, in response to that action, amended the section to provide for certification of a minor as an adult only if the minor was 16 years of age at the time of the offense, the district court did not err in refusing to apply the amendment retroactively because: (1) there was no indication that the legislature intended retroactive application of the amendment; (2) changes in a criminal procedure which are not of a constitutional dimension are not required to be applied retroactively; (3) legislative action in response to the judicial interpretation of a statute is not clarification of the statute but an amendment to the statute which is presumed to operate prospectively absent contrary legislative intent; and (4) the defendant should not be able to raise arguments which were not available to him if he had not intentionally and illegally fled the State. Castillo v. State, 110 Nev. 535, 874 P.2d 1252 (1994), cited, Anthony Lee R., A Minor v. State, 113 Nev. 1406, at 1417, 952 P.2d 1 (1997)

Section was not violative of the due process clause of the U.S. 14th amendment for failure to provide criteria for certification of minors as

adults. Former NRS 62.080 (cf. NRS 62B.390), which provided for certification of a minor as an adult if the minor was at least 16 years of age at the time of commission of the offense, did not violate the due process clause of the U.S. 14th amendment on the ground that the section failed to provide adequate criteria for the court to consider in the certification of a minor because: (1) the supreme court previously created criteria for courts to consider in the certification of minors to be tried as adults; (2) orders certifying minors for transfer to another court are subject to review on appeal; and (3) criteria previously adopted by the supreme court were not subsequently amended by the legislature. Castillo v. State, 110 Nev. 535, 874 P.2d 1252 (1994)

Minor certified to stand trial as an adult on charges of statutory sexual assault entitled to jury instruction on a lesser included offense of statutory sexual seduction. A minor who has been certified pursuant to former NRS 62.080 (cf. NRS 62B.390) to stand trial as an adult on charges of statutory sexual assault (see NRS 200.366) is entitled to jury instruction on a lesser included offense of statutory sexual seduction see NRS 200.364 and 200.368), notwithstanding the fact that he is not 18 years of age or older as required by the definition of "statutory sexual seduction" in NRS 200.364, because it is not fair to use former NRS 62.080 (cf. NRS 62B.390) to force the defendant out of juvenile court and into adult court and at the same time deny him an important benefit that would have been available to him if he had been an adult criminal defendant. Robinson v. State, 110 Nev. 1137, 881 P.2d 667 (1994), cited, Barton v. State, 117 Nev. 686, at 689, 30 P.3d 1103 (2001)

Certification of minor for trial as an adult not required if child's substance abuse substantially influenced or contributed to his criminal actions. Where former NRS 62.080 (cf. NRS 62B.390) required certification of a child for trial as an adult if the child was charged with an offense involving the use or threatened use of a deadly weapon unless exceptional circumstances existed because the child's actions were substantially a result of his substance abuse, juvenile court erred in certifying the child as an adult on the ground that exceptional circumstances did not exist because the child's substance abuse was not a legal cause of his criminal misconduct. The child's criminal actions did not have to be substantially the result of substance abuse, but substance abuse had to have substantially influenced or contributed to the criminal actions. Judgment was, therefore, reversed on appeal and remanded to the juvenile division of the district court for determination of whether the child's substance abuse had a substantial influence on or contribution to the child's criminal actions or were insubstantial and tangential. (N.B., case decided before amendment of former NRS 62.080 [cf. NRS 62B.390] in 1997.) Anthony Lee R., A Minor v. State, 113 Nev. 1406, 952 P.2d 1 (1997), cited, In re William S., 122 Nev. 432, at 436, 132 P.3d 1015 (2006)

"Principal actor" does not include all participants in criminal activity. Juvenile court erred in certifying a child who was charged with battery with a deadly weapon for trial as an adult on the ground that he was the principal actor in an offense (see former NRS 62.080; cf. NRS 62B.390) where: (1) no witness saw the child with a weapon; (2) the child was smaller than the assailant described by witnesses; (3) there were no fingerprints or other physical evidence indicating that the child battered the victim; and (4) although the child was standing nearby the victim before she was battered, the victim could not testify that the childhad battered her. As used in former NRS 62.080 (cf. NRS 62B.390), "principal actor" does not include those persons who have a small, peripheral role in the commission of a crime and must be distinguished from the statutory definition of "principal" in NRS 195.020, which includes every person concerned in the commission of a felony. Judgment was, therefore, reversed on appeal and remanded to the juvenile division of the district court for determination of whether the child could establish that he was not the principal actor in the offense of battery with a deadly weapon. (N.B., case decided before amendment of former NRS 62.080 [cf. NRS 62B.390] in 1997.) Anthony Lee R., A Minor v. State, 113 Nev. 1406, 952 P.2d 1 (1997)

Section does not violate a constitutional guarantee of equal protection of law. The provisions of former NRS 62.080 (cf. NRS 62B.390) do not violate a guarantee of equal protection of law under the state or federal constitution (seeNev. Art. 1, § 8, and U.S. 14th Amendment) because the provisions do not implicate a suspect classification or fundamental right and are rationally related to and effectuate the legitimate legislative purpose of public protection and social control. Anthony Lee R., A Minor v. State,113 Nev. 1406, 952 P.2d 1 (1997)

Certification of juvenile to stand trial as an adult is not required for a robbery that arose out of the same facts as a murder. Fourteen-year-old defendant who was convicted of murder and robbery argued that the robbery charge should have been dismissed by the district court because he was not certified in juvenile court to stand trial as an adult for that charge. Supreme court affirmed defendant's conviction, holding that: (1) a juvenile does not need to be certified in juvenile court to stand trial as an adult (see former NRS 62.080; cf. NRS 62B.390) when the juvenile is charged with an offense excluded from the statutory jurisdiction of the juvenile court (see former NRS 62.040; cf. NRS 62B.330); and (2) the robbery was an offense excluded from the statutory jurisdiction of the juvenile court because the robbery arose out of the same facts as the murder. Elvik v. State, 114 Nev. 883, 965 P.2d 281 (1998)

Discretionary certification is possible even after presumptive certification has been rebutted; personal factors are relevant in close cases. After a minor has rebutted presumptive certification as an adult under NRS 62B.390, the juvenile court retains the power to certify the minor under the statute's discretionary prong. The emphasis in discretionary certification remains on public safety and welfare, and either the seriousness of the offense or the minor's delinquent past alone may justify certification. But in close cases, when neither of these factors clearly compels certification, the juvenile court may consider personal factors, such as substance abuse issues or emotional or behavioral problems and the minor's amenability to treatment in the juvenile court, and may decline certification based on the totality of all of the factors. In re William S., 122 Nev. 432, 132 P.3d 1015 (2006)

FULL INVESTIGATION

Certification for trial as an adult without a full investigation cured by voluntary plea of guilty. An error of the juvenile court in certifying a child accused of burglary for trial as an adult without a full investigation required by former NRS 62.080 (cf. NRS 62B.390) was cured by a subsequent voluntary plea of guilty entered with the advice of competent counsel. Powell v. Sheriff, Clark County, 85 Nev. 684, 462 P.2d 756 (1969), cited, Rahn v. Warden, 88 Nev. 429, at 432, 498 P.2d 1344 (1972), Glenny v. Warden, 89 Nev. 396, at 397, 514 P.2d 1 (1973), distinguished, Kline v. State, 86 Nev. 59, at 62, 464 P.2d 460 (1970), but see Powell v. Hocker, 453 F.2d 652 (1971)

Due process requires specific evidence of full examination for certification for trial as an adult. Where an order of the juvenile court certifying a child accused of possessing marijuana and LSD for trial as an adult recited only examination of the probation officer's file and receipt of unspecified evidence, the requirement of former NRS 62.080 (cf. NRS 62B.390) for a full investigation was not shown specifically enough to permit meaningful review. Due process was therefore not shown to have been accorded, and the conviction was reversed by the appellate court. Kline v. State, 86 Nev. 59, 464 P.2d 460 (1970), cited, Lewis v. State, 86 Nev. 889, at 894, 478 P.2d 168 (1970), Powell v. Hocker, 453 F.2d 652 (1971), Marvin, A Minor, v. State, 95 Nev. 836, at 844, 603 P.2d 1056 (1979) (dissenting opinion)

No prejudice from court's consideration of investigative reports under the circumstances. In a juvenile proceeding, where the evidence clearly established guilt beyond a reasonable doubt and no manifestations of bias on the part of the judge occurred at the trial, no prejudice resulted to the juvenile from the court's consideration of investigative reports required by former NRS 62.080 (cf. NRS 62B.390) in deciding a preliminary motion to certify the child for trial as an adult. A Minor v. State 86 Nev. 691, 476 P.2d 11 (1970)

Order certifying a juvenile for trial as an adult which recited only testimony of the probation officer affirmed under certain circumstances. Where a formal order certifying a juvenile for trial as an adult pursuant to former NRS 62.080 (cf. NRS 62B.390) recited only hearing of the testimony of the probation officer, but the record on appeal disclosed that the order was made after a full investigation, was supported by substantial relevant evidence, and received careful consideration of the court, the order was affirmed on appeal. Lewis v. State, 86 Nev. 889, 478 P.2d 168 (1970), cited, Turpin v. State, 89 Nev. 518, at 520, 515 P.2d 1271 (1973), Martin v. State, 94 Nev. 687, at 689, 586 P.2d 1346 (1978), Marvin, A Minor, v. State, 95 Nev. 836, at 843, 603 P.2d 1056 (1979), State Dep't of Commerce, Real Estate Div. v. Soeller, 98 Nev. 579, at 586, 656 P.2d 224 (1982), In re Seven Minors, 99 Nev. 427, at 431, 664 P.2d 947 (1983)

Investigation of admitted crimes by officer of juvenile court sufficient under certain circumstances. Where a child certified for trial as an adult was almost 18 years old, an investigation by an officer of the juvenile court concerning burglaries which the child had admitted, and further consideration by the court of amenability of the child to treatment as a juvenile in the short time jurisdiction over him as a juvenile would last, met the requirement of former NRS 62.080 (cf. NRS 62B.390) for a full investigation. Marvin, A Minor, v. State, 95 Nev. 836, 603 P.2d 1056 (1979)

Court could consider self-incriminating statements during detention under certain circumstances. For the purpose of deciding whether to certify a child for trial as an adult pursuant to former NRS 62.080 (cf. NRS 62B.390), the court could consider self-incriminating statements made during detention, although the parents were denied access during questioning, because the only issue was reliability of the statements. Here, the statements were corroborated by finding physical evidence of several burglaries. Marvin, A Minor, v. State, 95 Nev. 836, 603 P.2d 1056 (1979), cited, Quiriconi v. State, 96 Nev. 766, at 770, 616 P.2d 1111 (1980), distinguished, In re Seven Minors, 99 Nev. 427, at 437, 664 P.2d 947 (1983)

Due process rights of juvenile. In proceedings to determine whether to transfer a juvenile's case to an adult court (see former NRS 62.080; cf. NRS 62B.390), constitutional procedural due process requires that the juvenile be given a hearing, right to counsel, access to relevant court studies and reports, and a statement of reasons for the decision of the juvenile court. Such a statement of reasons need not be in the form of conventional findings of fact, but must be sufficient to show that the statutory requirement of a "full investigation" has been met. In re Three Minors, 100 Nev. 414, 684 P.2d 1121 (1984), cited, Faessel v. Second Judicial Dist. Court, 106 Nev. 106, at 110, 787 P.2d 767 (1990) (dissenting opinion)

FEDERAL AND OTHER CASES.

Certification for trial as an adult without a full investigation not cured by subsequent plea of guilty. An error of the juvenile court in certifying a child accused of burglary for trial as an adult without a full investigation required by formerNRS 62.080 (cf. NRS 62B.390) was not cured by a subsequent plea of guilty entered with the advice of counsel, because compliance with former NRS 62.080 (cf. NRS 62B.390) was essential to confer jurisdiction on an adult court, and the plea did not waive the defect in certification proceedings. Powell v. Hocker, 453 F.2d 652 (1971)

Due process requirements. Under a decision of the U.S. Supreme Court which had a retroactive effect, due process required that a child have the assistance of counsel, adequate notice and a statement of reasons in certification proceedings under former NRS 62.080 (cf. NRS 62B.390) for trial as an adult, because a hearing was a critical stage in criminal proceedings. Powell v. Hocker, 453 F.2d 652 (1971), see also In re William S., 122 Nev. 432, at 437, 132 P.3d 1015 (2006)

ATTORNEY GENERAL'S OPINIONS.

A child who is certified for criminal proceedings as an adult may be housed with the general population of the county jail. If a child is certified for criminal proceedings as an adult (see former NRS 62.080 and 62.081; cf. NRS 62B.390 and 62B.400), the child may be housed with the general population of the county jail. Although former NRS 62.170 (cf. NRS 62C.030) prohibits the confinement or detention of a child less than 18 years of age in any police station, lockup, jail, prison or other facility where the child has regular contact with any adult who is confined or detained therein, a child who is certified for criminal proceedings as an adult pursuant to former NRS 62.080 or 62.081 (cf. NRS 62B.390 and 62B.400) is specifically excluded from the definition of a "child" set forth in former NRS 62.020 (cf. NRS 62A.030) and, therefore, the prohibition set forth in former NRS 62.170 (cf. NRS 62C.030) does not apply to children who are certified as adults. However, with respect to such children, the administrators of the county jail must follow certain guidelines to avoid imposing unconstitutional preadjudicatory punishment upon those children. AGO 98-17 (5-27-1998)

NRS 62B.400 Child who escapes or attempts escape from facility for detention of juveniles deemed escaped prisoner; when court may certify such child for criminal proceedings; when deemed delinquent act.

1. A child shall be deemed to be a prisoner who has escaped or attempted to escape from lawful custody in violation of NRS 212.090, and proceedings may be brought against the child pursuant to the provisions of this section, if the child:

(a) Is committed to or otherwise is placed in a public or private facility for the detention or correctional care of children, including, but not limited to, all state, regional and local facilities for the detention of children; and

(b) Escapes or attempts to escape from such a facility.

2. Upon a motion by the district attorney and after a full investigation, the juvenile court may certify the child for criminal proceedings as an adult pursuant to subsection 1 of NRS 62B.390 if the child was 14 years of age or older at the time of the escape or attempted escape and:

(a) The child was committed to or placed in the facility from which the child escaped or attempted to escape because the child had been charged with or had been adjudicated delinquent for an unlawful act that would have been a felony if committed by an adult; or

(b) The child or another person aiding the child used a dangerous weapon to facilitate the escape or attempted escape.

3. If the child is certified for criminal proceedings as an adult pursuant to subsection 2, the juvenile court shall also certify the child for criminal proceedings as an adult for any other related offense arising out of the same facts as the escape or attempted escape, regardless of the nature of the related offense.

4. If the child is not certified for criminal proceedings as an adult pursuant to subsection 2 or otherwise is not subject to the provisions of subsection 2, the escape or attempted escape shall be deemed to be a delinquent act, and proceedings may be brought against the child pursuant to the provisions of this itle.

(Added to NRS by 2003, 1031)

NRS CROSS REFERENCES.

Interstate Compact for Juveniles, NRS ch. 62I

Penalties for prisoner who escapes, NRS 212.090

State facilities for detention of children, NRS ch. 63

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62B.400 were derived from former NRS 62.081, which had the following legislative history

"(Added to NRS by 1997, 830)"

ATTORNEY GENERAL'S OPINIONS.

A child who is certified for criminal proceedings as an adult may be housed with the general population of the county jail. If a child is certified for criminal proceedings as an adult (see former NRS 62.080 and 62.081; cf. NRS 62B.390 and 62B.400), the child may be housed with the general population of the county jail. Although former NRS 62.170 (cf. NRS 62C.030) prohibits the confinement or detention of a child less than 18 years of age in any police station, lockup, jail, prison or other facility where the child has regular contact with any adult who is confined or detained therein, a child who is certified for criminal proceedings as an adult pursuant to former NRS 62.080 or 62.081 (cf. NRS 62B.390 or 62B.400) is specifically excluded from the definition of a "child" set forth in former NRS 62.020 (cf. NRS 62A.030) and, therefore, the prohibition set forth in former NRS 62.170 (cf. NRS 62C.030) does not apply to children who are certified as adults. However, with respect to such children, the administrators of the county jail must follow certain guidelines to avoid imposing unconstitutional preadjudicatory punishment upon those children. AGO 98-17 (5-27-1998)

NRS 62C.030 Conditions and limitations on detaining child in certain facilities; temporary placement of child excluded from jurisdiction of juvenile court.

1. If a child is not alleged to be delinquent or in need of supervision, the child must not, at any time, be confined or detained in:

(a) A facility for the secure detention of children; or

(b) Any police station, lockup, jail, prison or other facility in which adults are detained or confined

2. If a child is alleged to be delinquent or in need of supervision, the child must not, before disposition of the case, be detained in a facility for the secure detention of children unless there is probable cause to believe that

(a) If the child is not detained, the child is likely to commit an offense dangerous to the child or to the community, or likely to commit damage to property

(b) The child will run away or be taken away so as to be unavailable for proceedings of the juvenile court or to its

officers;

(c) The child was taken into custody and brought before a probation officer pursuant to a court order or warrant; or

(d) The child is a fugitive from another jurisdiction.

3. If a child is less than 18 years of age, the child must not, at any time, be confined or detained in any police station, lockup, jail, prison or other facility where the child has regular contact with any adult who is confined or detained in the facility and who has been convicted of a criminal offense or charged with a criminal offense, unless

(a) The child is alleged to be delinquent;

(b) An alternative facility is not available; and

(c) The child is separated by sight and sound from any adults who are confined or detained in the facility

4. During the pendency of a proceeding involving a criminal offense excluded from the original jurisdiction of the juvenile court pursuant to NRS 62B.330, a child may petition the juvenile court for temporary placement in a facility for the detention of children.

(Added to NRS by 2003, 1055)

REVISER'S NOTE.

As part of the reenactment of title 5 of NRS, which became effective on January 1, 2004, the provisions of NRS 62C.030 were derived from part of former NRS 62.170, which had the following legislative history

"[16:63:1949; 1943 NCL § 1038.16]—(NRS A 1969, 267; 1973, 1345; 1975, 609; 1977, 297, 1273; 1981, 523; 1985, 1392; 1989, 61, 868, 1810; 1991, 459, 962, 1177; 1995, 1344; 1997, 3048; 1999, 719, 724, 1339, 1342, 2061, 2067, 2070; 2001, 144, 1217)"

ATTORNEY GENERAL'S OPINIONS.

Superintendent of Nevada youth training center may incarcerate boys in jail through a statutory procedure. The Superintendent of the industrial school (now the Nevada youth training center) has power to adopt a regulation providing for incarceration of incorrigible boys in the county jail, but such a regulation can be enforced only through a procedure set forth in former NRS 62.170 (cf. NRS 62C.010 and 62C.030). AGO 323 (11-15-1957)

A child who is certified for criminal proceedings as an adult may be housed with the general population of the county jail. If a child is certified for criminal proceedings as an adult (see former NRS 62.080 and 62.081; cf. NRS 62B.390 and 62B.400), the child may be housed with the general population of the county jail. Although former NRS 62.170 (cf. NRS 62C.030) prohibits the confinement or detention of a child less than 18 years of age in any police station, lockup, jail, prison or other facility where the child has regular contact with any adult who is confined or detained therein, a child who is certified for criminal proceedings as an adult pursuant to former NRS 62.080 or 62.081 (cf. NRS 62B.390 or 62B.400) is specifically excluded from the definition of a "child" set forth in former NRS 62.020 (cf. NRS 62A.030) and, therefore, the prohibition set forth in former NRS 62.170 (cf. NRS 62C.030) does not apply to children who are certified as adults. However, with respect to such children, the administrators of the county jail must follow certain guidelines to avoid imposing unconstitutional preadjudicatory punishment upon those children. AGO 98-17 (5-27-1998)

TAB E

Recommendations from the 432B Revisions Community Workgroup to the Legislative Committee on Child Welfare and Juvenile Justice

Presented on April 4, 2012

Recommendation 1:

Provide clarifying language in NRS 432B.510(4)(b) that the residence of a child refers to the address where the child resided before being taken into protective custody.

Suggested Language (changes indicated in red):

NRS432B.510(4) – Every petition must set forth specifically:

a. The facts which bring the child within the jurisdiction of the court as indicated in NRS 432B.410.
b. The name, date of birth and address of the primary residence of the child at the time of removal.

…

Reasoning/Discussion:

The primary purpose of this recommendation by the workgroup is to provide clarity in the language, ensuring that this provision is not interpreted to mean the address of the child's foster home or other protective custody placement.

Recommendation 2:

Revise language in NRS 432B.393(3) to more closely align with the federal statutes which allow for waiver of reasonable efforts in certain circumstances and clearly state that the decision to waive reasonable efforts by the child welfare agencies may be overturned by the court.

Suggested Language:

See attachment

Reasoning/Discussion:

The federal Adoption and Safe Families Act [42 USC §671(a) (15)] allows states to waive reasonable efforts when certain aggravating circumstances exist.

In 1999, the Nevada Legislature enacted legislation to codify ASFA requirements regarding waiver of reasonable efforts. In doing so, Nevada provided more flexibility for allowing waivers – well beyond the intent of the federal statute. This recommendation is aimed at aligning Nevada statute more closely

with the federal law by limiting waivers to only the most severe aggravating circumstances – allowing more families an opportunity to be provided with the services necessary to achieve safe reunification. See attachment "Reasonable Efforts" for more details on the federal and state laws, as well as a side by side comparison of the waiver provisions.

Recommendation 3:

Include a definition of "reasonable efforts" in 432B.

Suggested Language:

Sample definitions of "reasonable efforts" are provided in the attached document "Reasonable Efforts".

Reasoning/Discussion:

The purpose of this recommendation is to provide clarity in the law regarding what constitutes reasonable efforts on the part of the child welfare agencies. While the workgroup recognizes that reasonable efforts may vary widely depending on the circumstances of the allegation and family, the primary intent is to ensure that all parties (child welfare agencies, the courts, and the families) have a clear understanding of what efforts, at a minimum, are considered reasonable on the part of the child welfare agencies.

Recommendation 4:

Include language in NRS 432B which establishes procedures for child welfare agencies to follow to protect children and youth in the child welfare system from identity theft.

Suggested Language:

An agency which provides child welfare services shall be required to conduct a credit check of every child upon entry into system and then every 2 to 3 years OR at the beginning of entry into independent living to identify any potential identity theft issues prior to exiting the child welfare system. If a potential identity theft issue is identified by the child welfare agency, the agency must report the issue to the Nevada Attorney General's Office (?) and make diligent efforts to resolve the issue(s) prior to the child's exit from the child welfare system.

Reasoning/Discussion:

During the 2011 Nevada Legislative Session, AB83 was passed. This bill extended the statute of limitations for identity theft crimes, beginning to address the issue of victims who are children and often do not learn of the problem until years after the crime has occurred. This recommendation is intended to specifically address potential issues for youth in the child welfare system. The concern is that children and youth in the child welfare system can be particularly vulnerable to identity theft crimes, both from their family members and strangers. Given the number of people who have access to these children's personal information (even with strong confidentiality laws) they are at even greater risk.

To address these risks, the workgroup is recommending that procedures be enacted to ensure that a credit check be conducted on every child who enters the child welfare system, and at specific intervals prior to the child's exit from the system in an effort to both identify and resolve any potential identity theft issues before exit. DCFS has reported that they have looked into a subscription with one of the national credit reporting agencies which would allow them unlimited access to credit checks for youth in the system for $350 per year.

Recommendation 5:

Revise NRS 432B.530 to expand the timeframe for adjudication from 30 days to 60 days.

Suggested Language (changes indicated in red):

NRS 432B.530 Adjudicatory hearing on petition; disposition

1. An adjudicatory hearing must be held within ~~30~~ 60 days after the filing of the petition, unless good cause is shown or the hearing has been continued until a later date pursuant to NRS 432B.513.

Reasoning/Discussion:

The NCJFCJ RESOURCE GUIDELINES require adjudication hearings must take place within 60 days after a petition is filed. The federal guideline that is further addresses in this link: http://www.acf.hhs.gov/programs/cb/pubs/adopt02/02adpt4.htm#

The specific language in the GUIDELINES provide that: " when a child is in emergency protective care, the adjudication should be completed within 60 days of the removal of the child, whether or not parties are willing to agree to extensions."

In an effort to expedite this process, Nevada shortened the period to 30 days. Despite clear intentions by all parties to adjudicate the cases as quickly as possible, 30 days is usually an insufficient amount of time to gather all necessary documentation to allow for a comprehensive hearing. Currently, the law allows for an extension up to 60 days, but it requires an additional process. The intent here is to allow adequate time to gather necessary documentation and limit court congestion by eliminating the need for additional, unnecessary processes.

Recommendation 6:

Streamline and clarify the process and authority to substantiate abuse and neglect allegations. ***(See AG Opinion 2-22-11)***

Suggested Language:

See Attachment

Reasoning/Discussion:

When there is an allegation of abuse or neglect against a child, there are three parallel adjudications that may take place simultaneously. Each proceeding has its own procedural rules and its own rule of evidence. In Nevada, the follow are the three different proceedings that can occur under the same set of facts:

Type of Adjudication	Evidentiary Standard	Procedural Rules	Appeal
Criminal	Beyond a Reasonable Doubt	NV Criminal Procedure Act	NV Supreme Court
Dependency Hearing (NRS 432B)	Preponderance of the Evidence – Adjudication of the Petition	NV Rules of Civil Procedure	NV Supreme Court
Administrative Hearing	Credible Evidence	NV Administrative Procedure Act	District Court Judicial Review

In February 22, 2011, Deputy Attorney General Shannon Richards provided a written opinion which has pointed out a gap in the existing Nevada law which must be reconciled with the current practice of court-substantiating abuse or neglect allegations.

Specifically, as she pointed out, the adjudication of the petition in the dependency case does not effectively adjudicate whether the court found that the child has been abused or neglected by a caretaker. Instead, the court adjudicates whether there is preponderance of evidence to uphold the petition that child is in need of protection. There is other statutory basis for the court to uphold the petition other than for abuse or neglect. The comprehensive list is in N.R.S. 432B.330.

However, for most part, a child is in need of protection because the caretaker has abused or neglected the child. When a child welfare agency substantiates abuse or neglect, this finding is reported to the Central Registry for the Collection of Information Concerning the Abuse or Neglect.

Under the Nevada law, only the agency which provides child welfare services may substantiate abuse or neglect and this is the finding that is entered in the Nevada's central registry for child abuse and neglect. Furthermore, the agency's substantiation of abuse or neglect can only be appealed through the administrative hearing process which includes a right to request a fair hearing conducted pursuant to N.R.S. 233B.

Problems with changing the procedure to conform with the current law and regulation:

(1) Even if the dependency court substantiates the allegation of abuse or neglect, this issue can be re-litigated under different standards and process. This is extremely confusing.

Although in the administrative process, the evidentiary burden is lower and rule of evidence is more lax, there can be circumstances where the abuse or neglect can be overturned in the administrative context.

It is not only that the evidentiary burden is lower or that the rule of evidence is more lax. The scope of review is entirely different. Under the Nevada administrative procedural act, the scope of review is whether there is substantial evidence on the agency's record to uphold the agency's decision. For instance, although the evidentiary burden for criminal conviction is high, a jury can convict based mostly

on the credibility of the victim. If the victim of sexual abuse testifies and is extremely emotional and credible and convincing on the stand, the jury may convict without physical evidence or other types of empirical evidence. The jury only has to believe in the victim's testimony beyond a reasonable doubt. The same is true for the dependency judge. However, the administrative hearing officer has to weigh the evidence as it is provided in the record. It is difficult to weigh the credibility of the victim in a cold file, especially older files. If there is no physical evidence and psychiatric evidence or other types of empirical evidence, it is going to be very difficult for the hearing officer to find that there was sufficient evidence to substantiate sexual abuse.

(2) The timeline: Under NAC 432B.170, if the agency substantiates abuse or neglect, it must be entered in the central registry without delay. Then, within the short period of time, the agency must provide written notification to the perpetrator of his right to appeal the finding. Even if there is a case parallel in the NRS 432B court or criminal court, there is no provision requiring the appellant to wait for the disposition of the case.

(3) It is very expensive and wasteful for the agency to conduct this review if it has already been adjudicated in the NRS 432B court or the criminal court.– The cost of review is the panel's time, the hearing officer's fee, the investigator's time and legal representation for the hearing. If the appellant requests judicial review of the hearing officer's finding, the cost is very burdensome. –The cost includes transcripts, court costs, and legal representation for the agency. It is wasteful because it does not advance child welfare to re-litigate the same issue especially if the caretaker admitted to the underlying abuse or neglect in a plea agreement.

Other states have incorporated court findings in the administrative appeal process.

In Virginia for instance, there are three basic situations where the alleged perpetrator is not eligible for an Administrative Hearing:

- Situations in which criminal charges have actually been filed in court and are still pending;
- A Criminal Court conviction arising from the child abuse or neglect investigation; and,
- A Juvenile or Family Court adjudication arising from the child abuse or neglect investigation.

In the alternative, we may look into giving the effect of statutory presumption or conclusive presumption that if the court adjudicates the petition and finds preponderance of evidence to support abuse and neglect substantiation.

There is a wide discretion but the following are the parameters:

(1) NAC 432B.170- We need to either integrate the regulation into the proposed changes or require the amendment of the regulation.

(2) CAPTA – The administrative appeal process must minimally comply with the following:

(a) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.

(b) The office or individual hearing such appeals cannot be involved in any other stage of the case.

(c) The office or individual established to hear such appeals must have the authority to overturn previous finding of child abuse and neglect.

(d) Individual must be given written notification of their right to appeal, the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

(3) Constitution – There have been successful challenges in other states over the following issues in the administrative appeal process for being entered in the child abuse and neglect central registry:

(a) Substantive due process - The less than the preponderance of evidence standard found to be violating liberty interest of the appellant.

(b) Procedural due process – Because of the high error rate and the minimal burden of the state and the significant burden on the appellant, the court stated that the state agency must provide pre-deprivation hearing before putting a person's name in the central registry.

It is important to note that these decisions were based on the specific factual findings of the respective states. However, we should research these issues.

Recommendation 7:

Revise provisions in NRS 432B. 403 - 4095 relating to Child Death Review Teams to consolidate the two state level teams (Executive and Administrative) into one state level team and to specifically allow for the use of CDRT data for research and/or prevention activities.

Applicable Provisions:

ISSUE 1: Consolidation of State Administrative Team and the Executive Committee to Review the Death of Children. Combine NRS 432B.408 and NRS 432B.409 to create one state level team, including all membership and overall responsibilities of each current team. Specific responsibilities to be defined in NAC.

ISSUE 2: Revise NRS 432B.4095 to allow for the use of CDRT data for research and/or prevention activities and allow parameters of data sharing to be established in the NAC.

Reasoning/Discussion:

A separate group of workgroup members who are involved with CDR met to discuss the issues (included: DCFS, DFS, AG, rural team chairs, and local team chairs). The issues/recommendations below are the consensus points from that meeting:

ISSUE 1: Streamline state level structure of CDR teams:

Combine the two state level teams (Administrative and Executive Committees), ensuring that the new state level team maintain representation from local teams (including rural teams). Detailed purpose and structure of the new combined team should be put in regulations and/or team protocols, not NRS.

- A lot of overlap between Administrative Team and Executive Committee.
- Streamlines process and avoids duplication (multiple meetings, similar discussions).
- Serves as an opportunity for local teams to come together to address issues and discuss potential policy changes and/or prevention initiatives with administrators who can implement.

ISSUE 2: Use of de-identified data for research and prevention purposes:

Include in statute that de-identified, aggregate data can be used for research/prevention purposes, as defined in NAC.

- Has been confusion/disagreement about the use of CDR data for anything outside of team discussions and prevention recommendations.
- Current practice at state level allows for the use of de-identified, aggregate data for research and/or prevention purposes(including data for grant applications) – would like for statute to make this use clear.
- Providing this language in the statute would further clarify the role and purpose of CDR to assist in the prevention of future child deaths.

Recommendation 8:

Include parent representatives as mandatory members on all state level child welfare advisory/oversight groups and/or committees formed pursuant to state and/or federal law.

Applicable Committees:

- Healthcare Oversight and Care Coordination Group (Required by Fostering Connections Act and the 2011 Child and Family Innovations and Improvement Act)
- Children's Justice Act Committee (Required to receive CAPTA funds)
- Citizen Review Panel (Subcommittee of Children's Justice Act Committee)
- Children's Justice Act ICWA Subcommittee (Subcommittee of Children's Justice Act Committee)
- Administrative Team/Executive Committee to Review the Death of Children (NRS 432B.408-409)
- Local Child Death Review Teams (NRS 432B.406)
- Interagency Committee (NRS 432B.178)

Reasoning/Discussion:

In an effort to allow parent representatives an adequate and equal voice in the oversight of the child welfare system, we are recommending that a parent representative be included in all state level

advisory/oversight group formed pursuant to state and/or federal law and that the statute encourage agencies to consider the appointment of a parent representative on all other applicable oversight/advisory groups which are not required by law.

Recommendation 9:

Require that all agency improvement plans be made available to the public and posted on the internet.

Suggested Language:

None

Reasoning/Discussion:

Although it is the current practice of the child welfare agencies to post agency improvement plans on the internet, there is no law which currently requires this practice. To establish a better system of accountability and transparency to the public, the workgroup requests that this practice become a statutory requirement under NRS 432B.

Recommendation 10: RETRACTED by Workgroup

~~**Revise NRS 432B.350 to allow child welfare agencies to convene multidisciplinary teams to review specific cases in child welfare, as opposed to "teams for the protection of children."**~~

Suggested Language:

Reasoning/Discussion:

Recommendation 11:

Incorporate mandatory provisions of federal law into NRS 432B.

Suggested Language:

Please see attachments

Reasoning/Discussion:

Nevada's child welfare agencies (Department of Child and Family Services, Clark County Department of Family Services, and Washoe County Social Services) have reviewed federal legislation governing child welfare practice in the states to identify mandatory (and some discretionary) revisions to Nevada's child welfare laws that are necessary in order to be in compliance with federal law. The federal laws that were reviewed included:

- Social Security Act – Title IV-E (IV-E) - 42 U.S.C. 470 et seq.

    - Including amendments from the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)
- The Child Abuse Prevention and Treatment Act (CAPTA) – 42 U.S.C. 5101 et seq.

The specific provisions which were identified in the review are included in the attached document "Legislative Changes Due to Federal Requirements 2013 Session".

Recommendation 2: Waiver of Reasonable Efforts

Recommendation 11: Waiver of Reasonable Efforts for Previous Sexual Abuse (CAPTA)

*Additions are indicated in **blue**. Deletions are indicated in ~~red~~.

NRS 432B.393 Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; determining whether reasonable efforts have been made.

1. Except as otherwise provided in this section, an agency which provides child welfare services shall make reasonable efforts to preserve and reunify the family of a child:

(a) Before the placement of the child in foster care, to prevent or eliminate the need to remove the child from the home; and

(b) To make it possible for the safe return of the child to the home.

2. In determining the reasonable efforts required by subsection 1, the health and safety of the child must be the paramount concern. The agency which provides child welfare services may make reasonable efforts to place the child for adoption or with a legal guardian concurrently with making the reasonable efforts required pursuant to subsection 1. If the court determines that continuation of the reasonable efforts required by subsection 1 is inconsistent with the plan for the permanent placement of the child, the agency which provides child welfare services shall make reasonable efforts to place the child in a timely manner in accordance with that plan and to complete whatever actions are necessary to finalize the permanent placement of the child.

3. ~~An agency which provides child welfare services is not required to make the reasonable efforts required by subsection 1 if the court finds that:~~ **If the Court finds that one of the conditions enumerated in subsections (a) through (f) of this subsection exits, then the Court shall, in its discretion, determine if an agency which provides child welfare services is required to make the reasonable efforts required by subsection 1:**

(a) A parent or other primary caretaker of the child has:

(1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter **of another child of the parent**;

(2) Caused the abuse or neglect of the child, or of another child of the parent or primary caretaker, which resulted in substantial bodily harm to the abused or neglected child;

(3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to the home would result in an unacceptable risk to the health or welfare of the child; or

(4) Abandoned the child for 60 or more days, and the identity of the parent of the child is unknown and cannot be ascertained through reasonable efforts;

(5) Has been found guilty of committing sexual abuse against the specified child or any other child of the parent;

(b) A parent of the child has, for the previous 6 months, had the ability to contact or communicate with the child and made no more than token efforts to do so;

(c) The parental rights of a parent to a sibling of the child have been terminated by a court order upon any basis other than the execution of a voluntary relinquishment of those rights by a natural parent, and the court order is not currently being appealed; or

(d) ~~The child or a sibling of the child was previously removed from the home, adjudicated to have been abused or neglected, returned to the home and subsequently removed from the home as a result of additional abuse or neglect; or~~

~~(e)~~ The child is less than 1 year of age, the father of the child is not married to the mother of the child and the father of the child:

(1) Has failed within 60 days after learning of the birth of the child, to visit the child, to commence proceedings to establish his paternity of the child or to provide financial support for the child; or

(2) Is entitled to seek custody of the child but fails to do so within 60 days after learning that the child was placed in foster care.

(e) ~~(f)~~ The child was delivered to a provider of emergency services pursuant to NRS 432B.630.

4. Except as otherwise provided in subsection 6, for the purposes of this section, unless the context otherwise requires, "reasonable efforts" have been made if an agency which provides child welfare services to children with legal custody of a child has exercised diligence and care in arranging appropriate and available services for the child, with the health and safety of the child as its paramount concerns. The exercise of such diligence and care includes, without limitation, obtaining necessary and appropriate information concerning the child for the purposes of NRS 127.152, 127.410 and 424.038.

5. In determining whether reasonable efforts have been made pursuant to subsection 4, the court shall:

(a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;

(b) Consider any input from the child;

(c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;

(d) Consider the diligence and care that the agency is legally authorized and able to exercise;

(e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;

(f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;

(g) Consider whether the provisions of subsection 6 are applicable; and

(h) Consider any other matters the court deems relevant.

6. An agency which provides child welfare services may satisfy the requirement of making reasonable efforts pursuant to this section by taking no action concerning a child or making no effort to provide services to a child if it is reasonable, under the circumstances, to do so.

Recommendation #6 – Authority to Substantiate
*Highlighted sections are for reference/emphasis only. Additions are indicated in **blue**. Deletions are indicated in ~~red~~.

N.R.S. 432B.260 (2) Upon receipt of a report concerning the possible abuse or neglect of a child, an agency which provides child welfare services or a law enforcement agency shall immediately initiate an investigation if the report indicates that:

(a) The child is 5 years of age or younger;

(b) There is a high risk of serious harm to the child;

(c) The child has suffered a fatality; or

(d) The child is living in a household in which another child has died, or the child is seriously injured or has visible signs of physical abuse.

N.R.S. 432B.260 (3) Except as otherwise provided in subsection 2, upon receipt of a report concerning the possible abuse or neglect of a child or notification from a law enforcement agency that the law enforcement agency has received such a report, an agency which provides child welfare services shall conduct an evaluation not later than 3 days after the report or notification was received to determine whether an investigation is warranted. For the purposes of this subsection, an investigation is not warranted if:

(a) The child is not in imminent danger of harm;

(b) The child is not vulnerable as the result of any untreated injury, illness or other physical, mental or emotional condition that threatens the immediate health or safety of the child;

(c) The alleged abuse or neglect of the child or the alleged effect of prenatal illegal substance abuse on or the withdrawal symptoms resulting from any prenatal drug exposure of the newborn infant could be eliminated if the child and the family of the child are referred to or participate in social or health services offered in the community, or both; or

(d) The agency determines that the:

(1) Alleged abuse or neglect was the result of the reasonable exercise of discipline by a parent or guardian of the child involving the use of corporal punishment, including, without limitation, spanking or paddling; and

(2) Corporal punishment so administered was not so excessive as to constitute abuse or neglect as described in N.R.S 432B.150.

If an agency determines that an investigation is not warranted under this subsection, the agency shall take no further action in regard to the matter and shall delete all references to the matter from its records.[1]

N.R.S. 432B.260(4) If the agency determines that an investigation is warranted, the agency shall initiate the investigation not later than 3 days after the evaluation is completed.

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[1] This paragraph was in N.R.S. 432B.260(6) but the paragraph refers to this subsection.

N.R.S. 432B.260(6) ~~Except if otherwise provided in the subsection~~, If the agency determines that an investigation is not warranted, the agency may, as appropriate:

(a) Provide counseling, training or other services relating to child abuse and neglect to the family of the child, or refer the family to a person who has entered into an agreement with the agency to provide those services; or

(b) Conduct an assessment of the family of the child to determine what services, if any, are needed by the family and, if appropriate, provide any such services or refer the family to a person who has entered into a written agreement with the agency to make such an assessment.

N.R.S. 432B.300 Determinations to be made from investigation of report. ~~Except as otherwise provided in NRS 432B.260, an agency which provides child welfare services shall investigate each report of abuse or neglect received or referred to it to determine:~~ **If the investigation is warranted pursuant to N.R.S. 432B.260, the agency which provides child welfare services shall make the following determination by the completion of the investigation:**

1. The composition of the family, household or facility, including the name, address, age, sex and race of each child named in the report, any siblings or other children in the same place or under the care of the same person, the persons responsible for the children's welfare and any other adult living or working in the same household or facility;

2. Whether there is reasonable cause to believe any child is abused or neglected or threatened with abuse or neglect, the nature and extent of existing or previous injuries, abuse or neglect and any evidence thereof, and the person apparently responsible;

3. Whether there is reasonable cause to believe that a child has suffered a fatality as a result of abuse or neglect regardless of whether or not there are any siblings of the child or other children who are residing in the same household as the child who is believed to have suffered a fatality as a result of abuse or neglect;

4. If there is reasonable cause to believe that a child is abused or neglected, the immediate and long-term risk to the child if the child remains in the same environment;

5. The treatment and services which appear necessary to help prevent further abuse or neglect and to improve the environment of the child and the ability of the person responsible for the child's welfare to care adequately for the child.

6. Disposition of the case indicating whether the report of abuse or neglect is substantiated or unsubstantiated. If the report of abuse or neglect is substantiated, the agency which provides child welfare services shall notify the subject in writing that:[2]

(a) The allegation of abuse or neglect has been substantiated and that the subject's name has been placed in the central registry pursuant to N.R.S. 432B.310.

(b) The subject may request an administrative appeal of the substantiation by submitting a written request within 15 days unless there is a pending dependency proceeding pursuant to N.R.S. 432B.530

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[2] See minimal requirements under Child Abuse and Prevention and Treatment Act ("CAPTA") provided in ACYF-CB-PI-98-08 (6/29/98), 42 U.S.C. 5101 § 106(b)(2)(B)

or criminal proceeding arising out of the same incident that the substantiation of abuse or neglect is premised. The administrative appeal proceeding shall be automatically stayed upon the notice to the agency which provides child welfare services that a dependency or criminal proceeding is pending. The judicial determination made pursuant to N.R.S. 432B.530(6) shall provide conclusive presumption whether the substantiation of the abuse or neglect should be upheld.
(C) The subject's name shall remain in the central registry while the administrative appeal is pending.

N.R.S. 432B.310 1. Except as otherwise provided in subsection ~~6~~ **3(d)** of N.R.S 432B.260**,** the agency investigating a report of abuse or neglect of a child shall, upon completing the investigation, report to the Central Registry:

(a) Identifying and demographic information on the child alleged to be abused or neglected, the parents of the child, any other person responsible for the welfare of the child and the person allegedly responsible for the abuse or neglect;

(b) The facts of the alleged abuse or neglect, including the date and type of alleged abuse or neglect, the manner in which the abuse was inflicted, the severity of the injuries and, if applicable, any information concerning the death of the child; and

(c) The disposition of the case.

2. An agency which provides child welfare services shall not report to the Central Registry any information concerning a child identified as being affected by prenatal illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure unless the agency determines that a person has abused or neglected the child **after the child is born.**[3]

3. As used in this section, "Central Registry" has the meaning ascribed to it in N.R.S 432.0999.

432B.330. Circumstances under which child is or may be in need of protection

1. A child is in need of protection if:

(a) The child has been abandoned by a person responsible for the welfare of the child;

(b) The child has been subjected to abuse or neglect by a person responsible for the welfare of the child;

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[3] There are 3 evidence of legislative intent that prenatal exposure to illegal substance does not constitute abuse or neglect although drug exposed baby may be a child in need of protection. First, the statute delineates prenatal drug exposure from abuse. Secondly, N.R.S. 432B.330 delineates being subjected to abuse and neglect in § (1)(b) from being affected by prenatal substance abuse or having withdrawal symptoms resulting from prenatal drug exposure in circumstances under which child is or may be in need of protection. § (4). Finally, the definition of child in N.R.S. 432B.040 provides that child is a person. Furthermore, in the context of Chapter N.R.S. 432B, the child is not a fetus. Even in other chapters such as criminal law refers to fetus not as a person but unborn quick child. See N.R.S. 200.210.

(c) The child is in the care of a person responsible for the welfare of the child and another child has died as a result of abuse or neglect by that person;

(d) The child has been placed for care or adoption in violation of law; or

(e) The child has been delivered to a provider of emergency services pursuant to NRS 432B.630.

2. A child may be in need of protection if the person responsible for the welfare of the child:

(a) Is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(b) Fails, although the person is financially able to do so or has been offered financial or other means to do so, to provide for the following needs of the child:

(1) Food, clothing or shelter necessary for the child's health or safety;

(2) Education as required by law; or

(3) Adequate medical care; or

(c) Has been responsible for the abuse or neglect of a child who has resided with that person.

3. A child may be in need of protection if the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

4. A child may be in need of protection if the child is identified as being affected by prenatal illegal substance abuse or as having withdrawal symptoms resulting from prenatal drug exposure.

432B.530. Adjudicatory hearing on petition; disposition

1. An adjudicatory hearing must be held within 30 days after the filing of the petition, unless good cause is shown or the hearing has been continued until a later date pursuant to NRS 432B.513.

2. At the hearing, the court shall inform the parties of the specific allegations in the petition and give them an opportunity to admit or deny them. If the allegations are denied, the court shall hear evidence on the petition.

3. In adjudicatory hearings, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties or their attorney must be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when reasonably available.

4. The court may require the child to be present in court at the hearing.

5. If the court finds by a preponderance of the evidence that the child was in need of protection at the time of the removal of the child from the home, it shall record its

findings of fact and may proceed immediately or at another hearing held within 15 working days, to make a proper disposition of the case. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and, if the child is in protective custody, order the immediate release of the child.

6. If the child is found in need of protection under this section because the child has been subjected to abuse or neglect by a person responsible for the welfare of the child, it creates a conclusive presumption that abuse or neglect substantiated should be upheld for the purpose of N.R.S. 432B.300(B). The court's finding of the fact in an adjudicatory hearing becomes a part of the disposition of the case for the purpose of reporting to the Central Registry pursuant to N.R.S. 432B.310. If the parties admit to specific allegations, the facts admitted become a part of the disposition of the case for the Central Registry reporting purposes.

WASHOE COUNTY

"Dedicated to Excellence in Public Service"

DEPARTMENT OF SOCIAL SERVICES

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DATE: April 13, 2012

TO: Risa Lang, Legislative Counsel Bureau
Denise Tanata Ashby, Children's Advocacy Alliance

FROM: Kevin Schiller, Director

Re: Bill Draft Request for Amendments to NRS 432B, Warrants per Subcommittee Testimony

In follow up to testimony provided at the subcommittee hearing on April 4, 2012, I am providing a draft amendment to NRS 432B to address the need for obtaining a warrant. I appreciate the committee's willingness to evaluate and assist in addressing the necessary statutory changes to implement this change. Please review and let me know what questions you may have or how I can assist with details.

NRS 432B.390

1. ***Except in cases where there is probable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant, a***n agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services:

(a) May, after ***obtaining a warrant***, place a child in protective custody without the consent of the person responsible for the child's welfare if the agent, officer or designee has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.

(b) Shall, ***after obtaining a warrant***, place a child in protective custody upon the death of a parent of the child, without the consent of the person responsible for the welfare of the child, if the agent, officer or designee has reasonable cause to believe that the death of the parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

If there is probable cause to believe that the child is likely to experience serious bodily harm in the time that would be required to obtain a warrant, an agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services may place a child into protective custody without the consent of the person responsible for the child's welfare and without obtaining a warrant to protect the child from said harm.

2. Procedure for obtaining warrant. In addition to any existing procedures for obtaining warrants, the following procedure may be used to seek a warrant pursuant to this section:
a. an agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services may bring an application for a warrant before any district judge or any duly appointed court master.

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b. Such application may be made on written affidavit or sworn testimony which sets forth the facts which establish probable cause to believe that the child will experience injury, abuse or neglect if not placed into protective custody or that the death of parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

(1) Affidavits may be presented to the judge or master via facsimile or electronic transmission.

(2) Sworn testimony may be made in person or by telephonic transmission so long as the telephonic transmission is recorded in a manner that the recording can be transcribed or otherwise maintained as part of the court record.

c. If the facts presented are sufficient to establish probable cause to believe that the child will experience injury, abuse or neglect if not placed into protective custody or that the death of parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.01, the judge or master may authorize a warrant to place the child into protective custody by a person authorized to place the child. The warrant shall set forth the facts relied upon to form the basis of the probable cause.

(1)If the application was made by sworn testimony by telephonic transmission, the judge or master may orally authorize the applicant to sign the name of the judge or master on a duplicate original warrant. The warrant must be returned to the judge or master who authorized the signing of it on the next judicial day. The judge or master shall endorse his or her name and enter the date on the warrant when it is returned. Any failure of the judge or master to make such an endorsement and entry does not in itself invalidate the warrant.

d.The authorization of such warrant by a juvenile master shall be effective immediately unless stayed on review by a judge.

3. When an agency which provides child welfare services receives a report pursuant to subsection 2 of NRS 432B.630, a designee of the agency which provides child welfare services shall immediately place the child in protective custody.

4. If there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, a protective custody hearing must be held pursuant to NRS 432B.470, whether the child was placed in protective custody or with a relative. If an agency other than an agency which provides child welfare services becomes aware that there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, that agency shall immediately notify the agency which provides child welfare services and a protective custody hearing must be scheduled.

NRS changes due to Federal/Child Welfare Agency Requirements for the 2013 Session

Issue	Change needed	Federal Reason	Affected NRS section
Nevada statute does not require the court to make the determinations regarding out of state placement nor the determination regarding transition services	Statute needs to state that permanency hearings shall determine: • in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options; • in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living • in the case of a child who is placed out of state, the hearing shall consider whether or not the out of state placement continues to be appropriate and in the best interest of the child	IV-E compliance	NRS 432B.590
Foster parents, pre-adoptive parents and biological parents have a federally mandated "right" to be heard in court proceedings. Nevada statute only allows for an "opportunity" to be heard.	"Opportunity to be heard" language must be changed to "right to be heard" language	IV-E compliance	NRS 432B.580 and .590
Nevada statute should require documentation requiring the courts to make case specific judicial determinations regarding reasonable efforts.	Statute needs to state that language for judicial determinations regarding: • contrary to the welfare, • reasonable efforts to prevent removal, • reasonable efforts to finalize the permanency plan in effect, and	IV-E compliance * This one is a recommendation not mandatory. CIP is also working on creating	NRS 432B.393

	• waiving reasonable efforts shall be explicitly documented and made on a case-by-case basis, and so stated in the court order.	standard templates that could address this issue	
Nevada Statute is required to have provisions, procedures, and mechanisms that the State does not require reunification of a surviving child when a parent has committed sexual abuse against the child or another child of the parent	Language allowing waiving reasonable efforts when a parent is found guilty of committing sexual abuse against the specified child or any other child of the parent must be added to statute	CAPTA compliance	NRS 432B.393
Nevada statute does not require the courts to determine the safety of the child, the continuing need for and appropriateness of the placement	Language should be added to statute reflect changes to the federal law requiring: • determining the safety of the child and, • the likely date by which a child may safely be returned home	IV-E compliance	NRS 432B.580 and .590
NRS does not currently allow children under the age of 5 to be referred to differential response	Allow children under the age of 5 to be referred to this program rather than initiating a formal child abuse and neglect investigation.	CAPTA allows for this to occur, our NRS does not	NRS 432B.260
Amend current statutes to insure they support the implementation of nationally recognized statewide implemented safety practices	Based on current implementation of a nationally recognized statewide practice model to address safety intervention statutes require revision to include new terms and definitions to support statewide practice.	Correlates directly to intervention model with consultation through the National Resource Center for Child	NRS 432B.010-432B.325-432B.400 432B.500-NRS433B.590

		Welfare	
Court Substantiation	Child Welfare agencies need to revise NRS to comply with the Attorney General's opinion (see Recommendation #6)	AG guidance	Not specified
Following a Ninth Circuit Court of Appeals Decision warrants have been deemed necessary in certain circumstances when evaluating the protection of a child specific to removal.	Current statute does not include a provision for the utilization of a warrant in the protection of children within certain circumstances, based on case law through the Ninth Circuit Court of Appeals. A provision is necessary to insure the child welfare agencies can insure compliance as warranted in the protection of children pursuant to NRS 432B.	Ninth Circuit Court of Appeals Decision	432B.325-400

NRS 432B.216 Agency which provides child welfare services to submit biennial improvement plan; agency to solicit input regarding plan; requirements of plan; agency to submit annual data to Division of Child and Family Services.

1. Each agency which provides child welfare services shall submit an improvement plan to the Division of Child and Family Services on or before January 1 of each odd-numbered year.

2. Before submitting an improvement plan pursuant to subsection 1, the agency must solicit public input regarding the proposed improvement plan. The agency which provides child welfare services shall submit with the improvement plan an explanation of the manner in which the agency solicited such public input and a summary of any input received.

3. The improvement plan must cover a period of 2 years and include, without limitation:

(a) Specific performance targets for improving the safety, permanency and well-being of the children in the care of the agency which provides child welfare services; and

(b) The approach that the agency which provides child welfare services will take to achieve the specific performance targets, including, without limitation, specific strategies that will be used.

4. On or before December 31 of each year, the agency which provides child welfare services must submit to the Division of Child and Family Services data demonstrating the progress that the agency which provides child welfare services has made towards meeting the specific performance targets set forth in the improvement plan submitted pursuant to subsection 1.

(Added to NRS by 2011, 2493)

NRS 432B.260 Action upon receipt of report; agency which provides child welfare services required to inform person named in report of allegation of abuse or neglect if report is investigated.

1. Upon the receipt of a report concerning the possible abuse or neglect of a child, an agency which provides child welfare services or a law enforcement agency shall promptly notify the appropriate licensing authority, if any. A law enforcement agency shall promptly notify an agency which provides child welfare services of any report it receives.

2. Upon receipt of a report concerning the possible abuse or neglect of a child, an agency which provides child welfare services or a law enforcement agency shall immediately initiate an investigation if the report indicates that:

(a) The child is 5 years of age or younger;

(b) There is a high risk of serious harm to the child;

(c) The child has suffered a fatality; or

(d) The child is living in a household in which another child has died, or the child is seriously injured or has visible signs of physical abuse.

3. Except as otherwise provided in subsection 2, upon receipt of a report concerning the possible abuse or neglect of a child or notification from a law enforcement agency that the law enforcement agency has received such a report, an agency which provides child welfare services shall conduct an evaluation not later than 3 days after the report or notification was received to determine whether an investigation is warranted. For the purposes of this subsection, an investigation is not warranted if:

(a) The child is not in imminent danger of harm;

(b) The child is not vulnerable as the result of any untreated injury, illness or other physical, mental or emotional condition that threatens the immediate health or safety of the child;

(c) The alleged abuse or neglect of the child or the alleged effect of prenatal illegal substance abuse on or the withdrawal symptoms resulting from any prenatal drug exposure of the newborn infant could be eliminated if the child and the family of the child are referred to or participate in social or health services offered in the community, or both; or

(d) The agency determines that the:

(1) Alleged abuse or neglect was the result of the reasonable exercise of discipline by a parent or guardian of the child involving the use of corporal punishment, including, without limitation, spanking or paddling; and

(2) Corporal punishment so administered was not so excessive as to constitute abuse or neglect as described in NRS 432B.150.

4. If the agency determines that an investigation is warranted, the agency shall initiate the investigation not later than 3 days after the evaluation is completed.

5. If an agency which provides child welfare services investigates a report of alleged abuse or neglect of a child pursuant to NRS 432B.010 to 432B.400, inclusive, the agency shall inform the person responsible for the child's welfare who is named in the report as allegedly causing the abuse or neglect of the child of any allegation which is made against the person at the initial time of contact with the person by the agency. The agency shall not identify the person responsible for reporting the alleged abuse or neglect.

6. Except as otherwise provided in this subsection, if the agency determines that an investigation is not warranted, the agency may, as appropriate:

(a) Provide counseling, training or other services relating to child abuse and neglect to the family of the child, or refer the family to a person who has entered into an agreement with the agency to provide those services; or

(b) Conduct an assessment of the family of the child to determine what services, if any, are needed by the family and, if appropriate, provide any such services or refer the family to a person who has entered into a written agreement with the agency to make such an assessment.

➥ If an agency determines that an investigation is not warranted for the reason set forth in paragraph (d) of subsection 3, the agency shall take no further action in regard to the matter and shall delete all references to the matter from its records.

7. If an agency which provides child welfare services enters into an agreement with a person to provide services to a child or the family of the child pursuant to subsection 6, the agency shall require the person to notify the agency if the child or the family refuses or fails to participate in the services, or if the person determines that there is a serious risk to the health or safety of the child.

8. An agency which provides child welfare services that determines that an investigation is not warranted may, at any time, reverse that determination and initiate an investigation.

9. An agency which provides child welfare services and a law enforcement agency shall cooperate in the investigation, if any, of a report of abuse or neglect of a child.

(Added to NRS by 1985, 1373; A 1989, 440; 1997, 2472; 1999, 2910; 2001, 1840, 1850; 2001 Special Session, 39; 2003, 236; 2005, 2034, 2095; 2007, 1505)

ADMINISTRATIVE REGULATIONS.

Agencies which provide family assessment services, NAC 432B.135-432B.1368

NRS 432B.390 Placement of child in protective custody.

1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services:

(a) May place a child in protective custody without the consent of the person responsible for the child's welfare if the agent, officer or designee has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.

(b) Shall place a child in protective custody upon the death of a parent of the child, without the consent of the person responsible for the welfare of the child, if the agent, officer or designee has reasonable cause to believe that the death of the parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

2. When an agency which provides child welfare services receives a report pursuant to subsection 2 of NRS 432B.630, a designee of the agency which provides child welfare services shall immediately place the child in protective custody.

3. If there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, a protective custody hearing must be held pursuant to NRS 432B.470, whether the child was placed in protective custody or with a relative. If an agency other than an agency which provides child welfare services becomes aware that there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, that agency shall immediately notify the agency which provides child welfare services and a protective custody hearing must be scheduled.

4. An agency which provides child welfare services shall request the assistance of a law enforcement agency in the removal of a child if the agency has reasonable cause to believe that the child or the person placing the child in protective custody may be threatened with harm.

5. Before taking a child for placement in protective custody, the person taking the child shall show his or her identification to any person who is responsible for the child and is present at the time the child is taken. If a person who is responsible for the child is not present at the time the child is taken, the person taking the child shall show his or her identification to any other person upon request. The identification required by this subsection must be a single card that contains a photograph of the person taking the child and identifies the person as a person authorized pursuant to this section to place a child in protective custody.

6. A child placed in protective custody pending an investigation and a hearing held pursuant to NRS 432B.470 must be placed, except as otherwise provided in NRS 432B.3905, in the following order of priority:

(a) In a hospital, if the child needs hospitalization.

(b) With a person who is related within the fifth degree of consanguinity or a fictive kin, and who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative or fictive kin resides within this State.

(c) In a foster home that is licensed pursuant to chapter 424 of NRS.

(d) In any other licensed shelter that provides care to such children.

7. Whenever possible, a child placed pursuant to subsection 6 must be placed together with any siblings of the child. Such a child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.

8. A person placing a child in protective custody pursuant to subsection 1 shall:

(a) Immediately take steps to protect all other children remaining in the home or facility, if necessary;

(b) Immediately make a reasonable effort to inform the person responsible for the child's welfare that the child has been placed in protective custody; and

(c) As soon as practicable, inform the agency which provides child welfare services and the appropriate law enforcement agency, except that if the placement violates the provisions of NRS 432B.3905, the person shall immediately provide such notification.

9. If a child is placed with any person who resides outside this State, the placement must be in accordance with NRS 127.330.

10. As used in this section, "fictive kin" means a person who is not related by blood to a child but who has a significant emotional and positive relationship with the child.

(Added to NRS by 1985, 1377; A 1989, 268; 1991, 1182; 1993, 467; 1999, 830; 2001, 1257; 2001 Special Session, 44; 2007, 1004; 2009, 214; 2011, 253)

NRS CROSS REFERENCES.

Interstate Compact on the Placement of Children, NRS 127.330

NRS 432B.393 Preservation and reunification of family of child to prevent or eliminate need for removal from home before placement in foster care and to make safe return to home possible; determining whether reasonable efforts have been made.

1. Except as otherwise provided in this section, an agency which provides child welfare services shall make reasonable efforts to preserve and reunify the family of a child:

(a) Before the placement of the child in foster care, to prevent or eliminate the need to remove the child from the home; and

(b) To make it possible for the safe return of the child to the home.

2. In determining the reasonable efforts required by subsection 1, the health and safety of the child must be the paramount concern. The agency which provides child welfare services may make reasonable efforts to place the child for adoption or with a legal guardian concurrently with making the reasonable efforts required pursuant to subsection 1. If the court determines that continuation of the reasonable efforts required by subsection 1 is inconsistent with the plan for the permanent placement of the child, the agency which provides child welfare

services shall make reasonable efforts to place the child in a timely manner in accordance with that plan and to complete whatever actions are necessary to finalize the permanent placement of the child.

3. An agency which provides child welfare services is not required to make the reasonable efforts required by subsection 1 if the court finds that:

(a) A parent or other primary caretaker of the child has:

(1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter;

(2) Caused the abuse or neglect of the child, or of another child of the parent or primary caretaker, which resulted in substantial bodily harm to the abused or neglected child;

(3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to the home would result in an unacceptable risk to the health or welfare of the child; or

(4) Abandoned the child for 60 or more days, and the identity of the parent of the child is unknown and cannot be ascertained through reasonable efforts;

(b) A parent of the child has, for the previous 6 months, had the ability to contact or communicate with the child and made no more than token efforts to do so;

(c) The parental rights of a parent to a sibling of the child have been terminated by a court order upon any basis other than the execution of a voluntary relinquishment of those rights by a natural parent, and the court order is not currently being appealed;

(d) The child or a sibling of the child was previously removed from the home, adjudicated to have been abused or neglected, returned to the home and subsequently removed from the home as a result of additional abuse or neglect; or

(e) The child is less than 1 year of age, the father of the child is not married to the mother of the child and the father of the child:

(1) Has failed within 60 days after learning of the birth of the child, to visit the child, to commence proceedings to establish his paternity of the child or to provide financial support for the child; or

(2) Is entitled to seek custody of the child but fails to do so within 60 days after learning that the child was placed in foster care.

(f) The child was delivered to a provider of emergency services pursuant to NRS 432B.630.

4. Except as otherwise provided in subsection 6, for the purposes of this section, unless the context otherwise requires, "reasonable efforts" have been made if an agency which provides child welfare services to children with legal custody of a child has exercised diligence and care in arranging appropriate and available services for the child, with the health and safety of the child as its paramount concerns. The exercise of such diligence and care includes, without limitation, obtaining necessary and appropriate information concerning the child for the purposes of NRS 127.152, 127.410 and 424.038.

5. In determining whether reasonable efforts have been made pursuant to subsection 4, the court shall:

(a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;

(b) Consider any input from the child;

(c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;

(d) Consider the diligence and care that the agency is legally authorized and able to exercise;

(e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;

(f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;

(g) Consider whether the provisions of subsection 6 are applicable; and

(h) Consider any other matters the court deems relevant.

6. An agency which provides child welfare services may satisfy the requirement of making reasonable efforts

pursuant to this section by taking no action concerning a child or making no effort to provide services to a child if it is reasonable, under the circumstances, to do so.

(Added to NRS by 1999, 2031; A 2001, 1258, 1843; 2001 Special Session, 45; 2003, 236)

NRS 432B.407 Information available to child death review teams; sharing of certain information; subpoena to obtain information; confidentiality of information.

1. A multidisciplinary team to review the death of a child is entitled to access to:

(a) All investigative information of law enforcement agencies regarding the death;

(b) Any autopsy and coroner's investigative records relating to the death;

(c) Any medical or mental health records of the child; and

(d) Any records of social and rehabilitative services or of any other social service agency which has provided services to the child or the child's family.

2. Each organization represented on a multidisciplinary team to review the death of a child shall share with other members of the team information in its possession concerning the child who is the subject of the review, any siblings of the child, any person who was responsible for the welfare of the child and any other information deemed by the organization to be pertinent to the review.

3. A multidisciplinary team to review the death of a child may, if appropriate, meet and share information with a multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence organized or sponsored pursuant to NRS 217.475 or 228.495.

4. A multidisciplinary team to review the death of a child may petition the district court for the issuance of, and the district court may issue, a subpoena to compel the production of any books, records or papers relevant to the cause of any death being investigated by the team. Except as otherwise provided in NRS 239.0115, any books, records or papers received by the team pursuant to the subpoena shall be deemed confidential and privileged and not subject to disclosure.

5. Except as otherwise provided in this section, information acquired by, and the records of, a multidisciplinary team to review the death of a child are confidential, must not be disclosed, and are not subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding.

(Added to NRS by 2003, 863; A 2007, 2106; 2011, 739)

NRS CROSS REFERENCES.

Application to court for order allowing inspection or copying of certain records, NRS 239.0115

NRS 432B.4075 Authority of Administrator to organize multidisciplinary team to oversee review conducted by child death review team; access to information and privileges.

1. The Administrator of the Division of Child and Family Services may organize a multidisciplinary team to oversee any review of the death of a child conducted by a multidisciplinary team that is organized by an agency which provides child welfare services pursuant to NRS 432B.405.

2. A multidisciplinary team organized pursuant to subsection 1 is entitled to the same access and privileges granted to a multidisciplinary team to review the death of a child pursuant to NRS 432B.407.

(Added to NRS by 2007, 1500)

NRS 432B.408 Administrative team to review report of child death review team.

1. The report and recommendations of a multidisciplinary team to review the death of a child must be transmitted to an administrative team for review.

2. An administrative team must consist of administrators of agencies which provide child welfare services, and agencies responsible for vital statistics, public health, mental health and public safety.

3. The administrative team shall review the report and recommendations and respond in writing to the multidisciplinary team within 90 days after receiving the report.

(Added to NRS by 2003, 864)

NRS 432B.409 Establishment, composition and duties of Executive Committee to Review the Death of Children; creation of and use of money in Review of Death of Children Account.

1. The Administrator of the Division of Child and Family Services shall establish an Executive Committee to Review the Death of Children, consisting of representatives from multidisciplinary teams formed pursuant to paragraph (a) of subsection 1 of NRS 432B.405 and NRS 432B.406, vital statistics, law enforcement, public health and the Office of the Attorney General.

2. The Executive Committee shall:

(a) Adopt statewide protocols for the review of the death of a child;

(b) Adopt regulations to carry out the provisions of NRS 432B.403 to 432B.4095, inclusive;

(c) Adopt bylaws to govern the management and operation of the Executive Committee;

(d) Appoint one or more multidisciplinary teams to review the death of a child from the names submitted to the Executive Committee pursuant to paragraph (b) of subsection 1 of NRS 432B.405;

(e) Oversee training and development of multidisciplinary teams to review the death of children; and

(f) Compile and distribute a statewide annual report, including statistics and recommendations for regulatory and policy changes.

3. The Review of Death of Children Account is hereby created in the State General Fund. The Executive Committee may use money in the Account to carry out the provisions of NRS 432B.403 to 432B.4095, inclusive.

(Added to NRS by 2003, 864; A 2007, 1509)

NRS 432B.4095 Civil penalty for disclosure of confidential information; authority to bring action; deposit of money.

1. Each member of a multidisciplinary team organized pursuant to NRS 432B.405, a multidisciplinary team organized pursuant to NRS 432B.4075, an administrative team organized pursuant to NRS 432B.408 or the Executive Committee to Review the Death of Children established pursuant to NRS 432B.409 who discloses any confidential information concerning the death of a child is personally liable for a civil penalty of not more than $500.

2. The Administrator of the Division of Child and Family Services:

(a) May bring an action to recover a civil penalty imposed pursuant to subsection 1 against a member of a multidisciplinary team organized pursuant to NRS 432B.4075, an administrative team or the Executive Committee; and

(b) Shall deposit any money received from the civil penalty with the State Treasurer for credit to the State General Fund.

3. Each director or other authorized representative of an agency which provides child welfare services that organized a multidisciplinary team pursuant to NRS 432B.405:

(a) May bring an action to recover a civil penalty pursuant to subsection 1 against a member of the multidisciplinary team; and

(b) Shall deposit any money received from the civil penalty in the appropriate county treasury.

(Added to NRS by 2007, 1500)

NRS 432B.510 Execution and contents of petition; representation of interests of public.

1. A petition alleging that a child is in need of protection may be signed only by:

(a) A representative of an agency which provides child welfare services;

(b) A law enforcement officer or probation officer; or

(c) The district attorney.

2. The district attorney shall countersign every petition alleging need of protection, and shall represent the interests of the public in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the Attorney General. If the Attorney General determines that a petition should be filed, the Attorney General shall countersign the petition and shall represent the interests of the public in all subsequent proceedings.

3. Every petition must be entitled "In the Matter of ....., a child," and must be verified by the person who

signs it.

4. Every petition must set forth specifically:

(a) The facts which bring the child within the jurisdiction of the court as indicated in NRS 432B.410.

(b) The name, date of birth and address of the residence of the child.

(c) The names and addresses of the residences of the child's parents and any other person responsible for the child's welfare, and spouse if any. If the parents or other person responsible for the welfare of the child do not reside in this State or cannot be found within the State, or if their addresses are unknown, the petition must state the name of any known adult relative residing within the State or, if there is none, the known adult relative residing nearest to the court.

(d) Whether the child is in protective custody and, if so:

(1) The agency responsible for placing the child in protective custody and the reasons therefor; and

(2) Whether the child has been placed in a home or facility in compliance with the provisions of NRS 432B.3905. If the placement does not comply with the provisions of NRS 432B.3905, the petition must include a plan for transferring the child to a placement which complies with the provisions of NRS 432B.3905.

5. When any of the facts required by subsection 4 are not known, the petition must so state.

(Added to NRS by 1985, 1381; A 1997, 2475; 2001, 1850; 2001 Special Session, 48; 2003, 236; 2007, 1006)

NRS 432B.530 Adjudicatory hearing on petition; disposition.

1. An adjudicatory hearing must be held within 30 days after the filing of the petition, unless good cause is shown or the hearing has been continued until a later date pursuant to NRS 432B.513.

2. At the hearing, the court shall inform the parties of the specific allegations in the petition and give them an opportunity to admit or deny them. If the allegations are denied, the court shall hear evidence on the petition.

3. In adjudicatory hearings, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties or their attorney must be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when reasonably available.

4. The court may require the child to be present in court at the hearing.

5. If the court finds by a preponderance of the evidence that the child was in need of protection at the time of the removal of the child from the home, it shall record its findings of fact and may proceed immediately or at another hearing held within 15 working days, to make a proper disposition of the case. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and, if the child is in protective custody, order the immediate release of the child.

(Added to NRS by 1985, 1382; A 2001, 1703, 1846; 2003, 87)

NEVADA CASES.

Preponderance of the evidence is sufficient to support an order for temporary custody of a minor child. An order for temporary custody of a minor child differs significantly from an order terminating parental rights, and, therefore, a petition for temporary custody need not be supported by clear and convincing evidence, but only by the lesser standard of a preponderance of the evidence (see NRS 432B.530). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989)

NRS 432B.580 Semiannual review by court of placement of child.

1. Except as otherwise provided in this section and NRS 432B.513, if a child is placed pursuant to NRS 432B.550 other than with a parent, the placement must be reviewed by the court at least semiannually, and within 90 days after a request by a party to any of the prior proceedings. Unless the parent, guardian or the custodian objects to the referral, the court may enter an order directing that the placement be reviewed by a panel appointed pursuant to NRS 432B.585.

2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes:

(a) An evaluation of the progress of the child and the family of the child and any recommendations for further supervision, treatment or rehabilitation.

(b) Information concerning the placement of the child in relation to the child's siblings, including, without

limitation:

(1) Whether the child was placed together with the siblings;

(2) Any efforts made by the agency to have the child placed together with the siblings;

(3) Any actions taken by the agency to ensure that the child has contact with the siblings; and

(4) If the child is not placed together with the siblings:

(I) The reasons why the child is not placed together with the siblings; and

(II) A plan for the child to visit the siblings, which must be approved by the court.

(c) A copy of an academic plan developed for the child pursuant to NRS 388.155, 388.165 or 388.205.

(d) A copy of any explanations regarding medication that has been prescribed for the child that have been submitted by a foster home pursuant to NRS 424.0383.

3. Except as otherwise provided in this subsection, a copy of the report submitted pursuant to subsection 2 must be given to the parents, the guardian ad litem and the attorney, if any, representing the parent or the child. If the child was delivered to a provider of emergency services pursuant to NRS 432B.630 and the parent has not appeared in the action, the report need not be sent to that parent.

4. After a plan for visitation between a child and the siblings of the child submitted pursuant to subparagraph (4) of paragraph (b) of subsection 2 has been approved by the court, the agency which provides child welfare services must request the court to issue an order requiring the visitation set forth in the plan for visitation. If a person refuses to comply with or disobeys an order issued pursuant to this subsection, the person may be punished as for a contempt of court.

5. The court or the panel shall hold a hearing to review the placement, unless the parent, guardian or custodian files a motion with the court to dispense with the hearing. If the motion is granted, the court or panel may make its determination from any report, statement or other information submitted to it.

6. Except as otherwise provided in this subsection and paragraph (c) of subsection 4 of NRS 432B.520, notice of the hearing must be given by registered or certified mail to:

(a) All the parties to any of the prior proceedings;

(b) Any persons planning to adopt the child;

(c) A sibling of the child, if known, who has been granted a right to visitation of the child pursuant to NRS 127.171 and his or her attorney, if any; and

(d) Any other relatives of the child or providers of foster care who are currently providing care to the child.

7. The notice of the hearing required to be given pursuant to subsection 6:

(a) Must include a statement indicating that if the child is placed for adoption the right to visitation of the child is subject to the provisions of NRS 127.171;

(b) Must not include any confidential information described in NRS 127.140; and

(c) Need not be given to a parent whose rights have been terminated pursuant to chapter 128 of NRS or who has voluntarily relinquished the child for adoption pursuant to NRS 127.040.

8. The court or panel may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 6 an opportunity to be heard at the hearing.

9. The court or panel shall review:

(a) The continuing necessity for and appropriateness of the placement;

(b) The extent of compliance with the plan submitted pursuant to subsection 2 of NRS 432B.540;

(c) Any progress which has been made in alleviating the problem which resulted in the placement of the child; and

(d) The date the child may be returned to, and safely maintained in, the home or placed for adoption or under a legal guardianship.

10. The provision of notice and an opportunity to be heard pursuant to this section does not cause any person planning to adopt the child, any sibling of the child or any other relative, any adoptive parent of a sibling of the child or a provider of foster care to become a party to the hearing.

(Added to NRS by 1985, 1384; A 1991, 1360; 1999, 2041; 2001, 1263, 1704; 2005, 2098; 2011, 146, 2665)

NEVADA CASES.

Order for temporary custody of minor children not appealable. The order of the district court directing that the minor children of the appellant remain in the temporary custody of the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) (see NRS 432B.550) was not the final order and was subject to review and modification by the court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see NRAP 3A). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

District court's oral order commanding that child be released from psychiatric facility was ineffective and could not serve as basis for subsequent contempt order. Pursuant to the authority set forth in NRS 432B.560 and 432B.580, a district court ordered the Division of Child and Family Services to release a child from a psychiatric facility. The district court's release order was oral and not written. Twelve days later, after learning that the Division still had not released the child from the psychiatric facility, the district court orally held the Division in contempt. On appeal, the Nevada Supreme Court determined that the district court's oral release order was ineffective because, as a dispositional order, it had to be written, signed and filed to become effective. Furthermore, the provisions of NRS 22.030, allowing summary punishment of contempt committed in the immediate view and presence of the court, did not apply. (See also NRS 22.010.) Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004)

District court had jurisdiction to order child's release from psychiatric facility because court has power to determine proper treatment for child and is required to assess appropriateness of child's placement. The plain language of NRS 432B.560 dictates that the district court has the power to decide on appropriate treatment for a child. This power to determine proper treatment includes the power to discontinue the child's present treatment and order a new course of treatment. The provisions of NRS 432B.580 also require the district court to assess the appropriateness of the child's placement. If this requirement to assess meant the district court could merely evaluate the placement but not exercise discretion to change it, the court's placement review would be rendered meaningless. Thus, taken together, NRS 432B.560 and 432B.580 give a district court the jurisdiction to order the release of a child from a psychiatric facility in which the Division of Child and Family Services has placed the child. Division of Child & Family Servs. v. Eighth Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004)

NRS 432B.590 Annual hearing on disposition of case; when presumption that best interests of child will be served by termination of parental rights arises.

1. Except as otherwise provided in NRS 432B.513, the court shall hold a hearing concerning the permanent placement of a child:

(a) Not later than 12 months after the initial removal of the child from the home of the child and annually thereafter.

(b) Within 30 days after making any of the findings set forth in subsection 3 of NRS 432B.393.

➥ Notice of this hearing must be given by registered or certified mail to all the persons to whom notice must be given pursuant to subsection 6 of NRS 432B.580.

2. The court may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 1 an opportunity to be heard at the hearing.

3. At the hearing, the court shall review any plan for the permanent placement of the child adopted pursuant to NRS 432B.553 and determine:

(a) Whether the agency with legal custody of the child has made the reasonable efforts required by subsection 1 of NRS 432B.553; and

(b) Whether, and if applicable when:

(1) The child should be returned to the parents of the child or placed with other relatives;

(2) It is in the best interests of the child to:

(I) Initiate proceedings to terminate parental rights pursuant to chapter 128 of NRS so that the child can be placed for adoption;

(II) Initiate proceedings to establish a guardianship pursuant to chapter 159 of NRS; or

(III) Establish a guardianship in accordance with NRS 432B.466 to 432B.468, inclusive; or

(3) The agency with legal custody of the child has produced documentation of its conclusion that there is a compelling reason for the placement of the child in another permanent living arrangement.

➥ The court shall prepare an explicit statement of the facts upon which each of its determinations is based. If the court determines that it is in the best interests of the child to terminate parental rights, the court shall use its best efforts to ensure that the procedures required by chapter 128 of NRS are completed within 6 months after the date the court makes that determination, including, without limitation, appointing a private attorney to expedite the completion of the procedures. The provisions of this subsection do not limit the jurisdiction of the court to review any decisions of the agency with legal custody of the child regarding the permanent placement of the child.

4. If a child has been placed outside of the home and has resided outside of the home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.

5. This hearing may take the place of the hearing for review required by NRS 432B.580.

6. The provision of notice and an opportunity to be heard pursuant to this section does not cause any person planning to adopt the child, any sibling of the child or any other relative, any adoptive parent of a sibling of the child or a provider of foster care to become a party to the hearing.

(Added to NRS by 1985, 1384; A 1991, 1360; 1995, 362; 1999, 2042; 2001, 1705, 1848; 2003, 87, 592; 2005, 2099; 2011, 147)

REVISER'S NOTE.

Ch. 218, Stats. 1995, the source of the provision that sets forth the presumption that child's best interests will be served by termination of parental rights, contains the following provision not included in NRS:

"The calculation of the number of months that a child has resided outside his home, for the purposes of NRS 128.109 and 432B.590, as amended by this act, must not include any months before January 1, 1995."

ADMINISTRATIVE REGULATIONS.

Permanent placement of child, NAC 432B.261, 432B.2625
Termination of parental rights, NAC 432B.262

NEVADA CASES.

Order for temporary custody of minor children not appealable. The order of the district court directing that the minor children of the appellant remain in the temporary custody of the Welfare Division of the Department of Human Resources (now the Division of Welfare and Supportive Services of the Department of Health and Human Services) (see NRS 432B.550) was not the final order and was subject to review and modification by the court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see NRAP 3A). August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

Rebuttable presumption in favor of termination of parental rights in cases of abuse or neglect where child has resided outside of home for 14 of 20 consecutive months does not violate substantive due process rights of parent. The provisions of NRS 128.109 presume that termination of parental rights will serve a child's best interest when the child has been placed outside of his home under NRS ch. 432B and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months (see also NRS 432B.553 and 432B.590). The presumption does not violate parental substantive due process rights (see Nev. Art. 1, § 8) because it is narrowly tailored to serve a compelling state interest. The State has a compelling interest in assuring that abused and neglected children achieve safe, stable and permanent home environments within which to be reared and, without such a presumption, a child is susceptible to drift for an indefinite length of time within the foster care system. The presumption is narrowly tailored because the presumption: (1) applies only where a child is removed from the home pursuant to NRS ch. 432B as a result of parental abuse or neglect; (2) is rebuttable upon the presentation of evidence showing that termination of parental rights is not in the child's best interest; (3) must be read in conjunction with NRS 128.105, which requires the court to examine the child's best interest and to make a determination concerning parental fault; and (4) addresses the compelling state interest of planning for safe, stable and permanent placements for abused and neglected children. In re Parental Rights as to D.R.H., 120 Nev. 422, 92 P.3d 1230 (2004), cited, In re Parental Rights as to A.J.G., 122 Nev. 1418, at 1426, 148 P.3d 759 (2006)

TAB F

Issues and Concerns of NRS 432b.020 Abuse or Neglect

Subsection 1

B) Physical or mental injury of a no accidental nature

Mental Injury is defined as: evidence by an observable and substantial impartment of the child to function within a normal range of performance or behavior.

- Social worker are not licensed psychologist which does not give them right to make a predetermination which will influence the outcome that separates a family.

Subsection 1

C) Negligent treatment or maltreatment as set forth in NRS 432B.140

NRS 432.140 is defined Negligent treatment or maltreatment of a child occurs if a child has been abandoned, is without proper care, control and supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for the welfare of the child or the neglect or refusal of the person to provide them when able to do so.
(Added to NRS by 1985, 1370)
Measurable term to define as abandoned, proper care, control and supervision or lack the subsistence, education, shelter, and other care necessary for the well-being of the child.

- (Abandoned) 13yr old watching 8 or 9 year old
- (Proper care)1 box of cereal with six kids no milk
- (Control) If a child decides to punches
- (Supervision) 13yr old watching 8 or 9 year old
- (Lack of subsistence) What determines
- (Medical care) no comment
- (Other care necessary for the well-being of the child) Defined

If CPS or DFS social worker do not have a clear and concrete definition of neglect how can they possible make such vital decision? These county employees are taking on the responsibility of a judge, psychologist, and police without the proper credential. This is a terrible way of admitting kids in to the child warfare system and has a tremendous amount to do with the financing of all of those who receive funding from the children placed into the system.

Per Child

Pediatric Dental $4,000 to $10, 000
Physician $ 150
Psychologist $100hr
Psychiatrist $180hr
Therapist $ 85hr
PSR worker $20 to $30hr
BST worker $15hr to $20hr
3 Lawyer /DEA/ defense attorneys $100
Judges $100
CPS /DFS Case worker $20
Mediator $12
Foster care agency $1,000 month
Foster care parent $60
Child Heaven/ Positively kids
CPS investigator $20

CPS /DFS staff supervisor $25
Court reporter
Bailiff $20 hrs
Court Reporter $15
100's of non profits which receive funding

This is just to name a few

NRS 388.122 "Bullying" defined. "Bullying" means a willful act which is written, verbal or physical, or a course of conduct on the part of one or more persons which is not authorized by law and which exposes a person one time or repeatedly and over time to one or more negative actions which is highly offensive to a reasonable person and:

1. Is intended to cause or actually causes the person to suffer harm or serious emotional distress
2. Places the person in reasonable fear of harm or serious emoticnal distress; or
3. Creates an environment which is hostile to a pupil by interfering with the education of the pupil

(Added to NRS by 2009, 687; A 2011, 2245)

NRS 388.123 "Cyber-bullying" defined. "Cyber-bullying" means bullying through the use of electronic communication. The term includes the use of electronic communication to transmit or distribute a sexual image of a minor. As used in this section, "sexual image" has the meaning ascribed to it in NRS 200.737.

(Added to NRS by 2009, 687; A 2011, 1062)

NRS 388.125 "Harassment" defined. "Harassment" means a willful act which is written, verbal or physical, or a course of conduct that is not otherwise authorized by law, is highly offensive to a reasonable person and

1. Is intended to cause or actually causes another person to suffer serious emotional distress;
2. Places a person in reasonable fear of harm or serious emotional distress; oı
3. Creates an environment which is hostile to a pupil by interfering with the education of the pupil

(Added to NRS by 2001, 1928; A 2011, 2245)

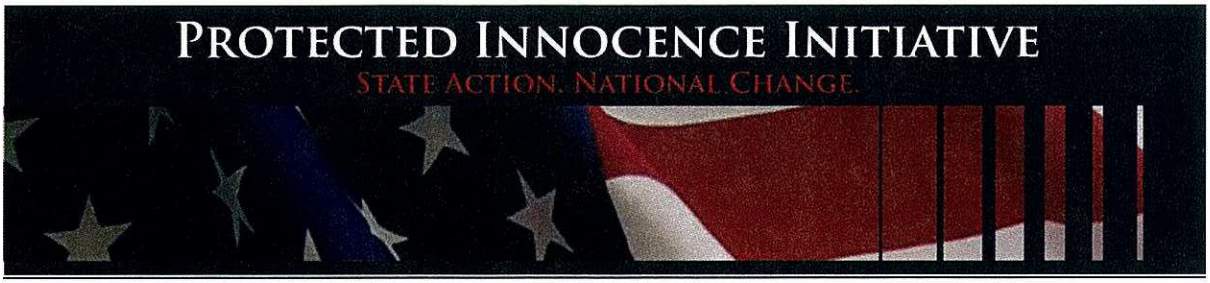
NRS 388.129 "Intimidation" defined. "Intimidation" means a willful act which is written, verbal or physical, or a course of conduct that is not otherwise authorized by law, is highly offensive to a reasonable person and

1. Poses a threat of immediate harm or actually inflicts harm to another person or to the property of another person;
2. Places a person in reasonable fear of harm or serious emotional distress; oı
3. Creates an environment which is hostile to a pupil by interfering with the educaion of the pupil.

(Added to NRS by 2001, 1928; A 2011, 2245)

NRS 388.135 Bullying, cyber-bullying, harassment and intimidation prohibited. A member of the board of trustees of a school district, any employee of the board of trustees, including, without limitation, an administrator, principal, teacher or other staff member, or any pupil shall not engage in bullying, cyber-bullying, harassment or intimidation on the premises of any public school, at an activity sponsored by a public school or on any school bus

(Added to NRS by 2001, 1929; A 2009, 688)



Nevada State Facts

1. Nevada law requires the proof of force, fraud and coercion for all cases of human trafficking and does not include sex trafficking of minors a specific form of trafficking.

2. In December 2010, Reno police rescued a 14 and 15-year-old from Sacramento, CA who were being prostituted on the streets of Reno. Their pimp was arrested on charges of sex trafficking.[1]

3. At any given time, approximately half of the girls at Clark County's juvenile detention facility are there on prostitution-related offenses.[2]

4. Since 2003, more than 1,000 children involved in prostitution have been rescued in Las Vegas. Authorities rescued 155 children in 2009.[3]

5. The human trafficking law is ineffective against buyers, leaving prosecutors to rely on local CSEC laws. Although the solicitation for prostitution statute establishes a felony for buying sex with a minor, a convicted buyer may be given probation as a sentence.

6. Individuals convicted of trafficking a minor for prostitution or pornography are subject to fines, imprisonment, and asset forfeiture. They may also be required to pay restitution to victims, register as sex offenders or subject to charges of racketeering and money laundering.

7. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking, leaving minor victims vulnerable to being arrested and charged with the delinquency of prostitution with no protective provisions statutorily mandated.

[1] http://www.kolotv.com/
[2] http://www.lasvegassun.com/news/2010/mar/22/what-should-clark-county-do-teenage-prostitutes/
[3] http://www.lasvegassun.com/news/2010/nov/08/51-arrested-las-vegas-area-part-national-prostitut/

Protected Innocence Initiative

State Action . National Change.

Nevada Report Card

Nevada's human trafficking law, called involuntary servitude, does not expressly include sex trafficking and requires force, fraud, or coercion for all victims. Limited prosecution options and weak penalties fail to deter demand and few protective provisions exist for children exploited through commercial sex acts.

Final Score

58

Final Grade

F

2.5 / 7.5	13 / 25	13.5 / 15	6.5 / 10	12.5 / 27.5	10 / 15

Criminalization of Domestic Minor Sex Trafficking

Nevada law requires "forced labor or services" for all cases of human trafficking and does not include sex trafficking of minors as a specific form of trafficking. The state commercial sexual exploitation of children (CSEC) laws include: soliciting prostitution from a minor under 18, pandering of a minor, employing or exhibiting minor in certain immoral activities, and unlawful use of a minor in producing pornography or as subject of sexual portrayal in performance. These laws do not refer to the human trafficking law or identify a victim as a sex trafficking victim.

Criminal provisions addressing demand

The absence of sex trafficking as a form of human trafficking in the law coupled with the lack of language directing application of the law to buyers of commercial sex with minors makes application to buyers unlikely. CSEC laws include the crime of buying sex with a minor. The solicitation for prostitution statute establishes a felony for buying sex with a minor but a convicted buyer may be given probation as a sentence. A potential exists for avoiding the felony charge of soliciting sex with a minor due to the lack of a prohibition on a mistake of age defense, an assertion of which would require proof of knowledge of age. The statute penalizing communications with a child with the intent to persuade or lure the child to engage in sexual conduct might apply to buyers using the Internet to contact victims. Buyers may be ordered to pay restitution, and victims of child pornography have a civil cause of action against buyers. Convictions for child pornography require sex offender registration, and buyers convicted of offenses involving a sexual act may be required to register, except in cases where the sexual act is with a minor over 12 who is not more than four years younger than the offender.

Demand | Selected Commercial Sex Crimes

Crime (name of law abridged)	Classification	Sentence	Fine	Asset Forfeiture (available)
Solicitation for prostitution of a minor (§201.354(3))	Category E felony	1–4 years (can be suspended in favor of probation)	Max. $5,000	○
Offer or agree to engage in act of prostitution (§ 207.030(1))	Misdemeanor	Max. 6 months	Max. $1,000	○
Possessing child pornography – child under 16 (§ 200.730)	Category B felony	1–6 years	Max. $5,000	●
Using the Internet with intent to view child pornography – child under 16 (§ 200.727)	Category C felony	1–5 years	Max. $10,000	●

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.

Criminal provisions for traffickers

Traffickers convicted of human trafficking, which would also apply to sex trafficking, may be sentenced to 5–20 years imprisonment (or 1–15 years for recruiting) and a possible fine up to $50,000, and could be in violation of racketeering and money laundering laws. Convictions for pandering carry a 1–10 year sentence and possible fines up to $100,000 if the victim is 14–17 or up to $500,000 if the victim is under 14. Using a minor in pornography carries up to a life sentence and a possible fine up to $100,000. Traffickers are subject to asset forfeiture. A trafficker may be ordered to pay victim restitution, and victims of child pornography offenses under 16 may bring a civil claim against a trafficker. The statute on communicating with a child with the intent to persuade or lure the child to engage in sexual conduct provides a means of prosecuting traffickers who use the Internet to recruit minors for illegal sex acts, which may include trafficking. Traffickers convicted of CSEC and child pornography offenses must register for crimes against a child and as sex offenders, and those convicted of a crime involving a sexual act may be required to register, except when the victim is over 12 and not more than 4 years younger than the offender. A conviction for human trafficking is grounds for terminating parental rights.

Protective provisions for the child victims

Domestic minor sex trafficking victims are vulnerable due to gaps in Nevada's laws. The definition of a victim for crime victim's compensation expressly includes only victims of pornography, not other forms of commercial sexual exploitation of children. Involuntary servitude and CSEC offenses do not prohibit a defendant from asserting a defense that the minor consented to the commercial sex acts. Prostitution offenses are not limited in application to adults and do not identify a minor engaged in prostitution as a victim of sex trafficking, leaving open the possibility of a victim being arrested and charged with the delinquency of prostitution with no protective provisions statutorily mandated. The definition of abuse or neglect includes sexual exploitation through prostitution or pornography, but child protective services is limited from responding in a case of a trafficker controlled child unless the trafficker is an adult "continually or regularly found in the same household as the child." Only victims suffering a physical injury and those exploited through production of pornography are eligible for state crime victims' compensation, and they may be adversely affected by requirements to file a claim within one year (or before turning 21 if a victim of child pornography) and to report the crime within five days of when a report could have reasonably been made unless "the interests of justice so require;" furthermore, they may have their claim reduced or denied due to contributory misconduct. Few victim-friendly criminal justice procedures exist. Testifying child sex trafficking and CSEC victims are not protected from the trauma of cross-examination by a "rape shield" law, and only children under 14 may testify through an "alternative method," such as closed circuit television. Juvenile records are automatically sealed once the minor reaches 21 and a child may petition at an earlier time. Though not mandatory, a court may award restitution in any criminal sentence. Victims under 16 exploited through child pornography have a specific civil action against buyers, traffickers, and facilitators and the action may be filed by the later of reaching 21 or within three years of a conviction in the criminal case. Criminal statutes of limitations (three years for felonies, two years for gross misdemeanors, and one year for misdemeanors) are not extended or eliminated for child sex trafficking and CSEC crimes.

Criminal justice tools for investigation and prosecutions

Nevada law mandates training on sexual exploitation of minors, but does not define sexual exploitation or mandate training on sex trafficking. Nevada requires both parties to consent to audiotaping over the telephone, but allows single party consent to in-person communications. Wiretapping is not expressly authorized in sex trafficking or CSEC investigations, denying a critical tool to law enforcement. No specific statutory language allows law enforcement to use a decoy in domestic minor sex trafficking investigations, although the crime of luring a child under 16 for sexual acts may use a decoy because the offender need only to have believed the child to be under 16, foreclosing the argument that the intended victims was not in fact a child. Similarly, law enforcement may utilize the Internet to investigate cases where the offender believes the law enforcement officer is under 16. Reporting missing and exploited children and recovered children is required by law.

Criminal provisions for facilitators

The state human trafficking law includes the crime of benefitting from participation in human trafficking, a felony punishable by 1–15 years imprisonment and a possible fine up to $50,000. Given the lack of sex trafficking in the human trafficking law, CSEC laws that include offenses of facilitation may be more applicable. Facilitators may be guilty of pandering, punishable by 1–10 years imprisonment and fines up to $100,000 if the victim is 14–17 and up to $500,000 if the victim is under 14. Promoting a sexual performance by a minor is a felony punishable by a possible fine not to exceed $100,000 and imprisonment up to life with parole eligibility only after 10 years if the victim is under 14, and 5 years if the victim is 14–17. Advertising or distributing child pornography is a felony punishable by 1–15 years imprisonment and/or a fine up to $15,000. Facilitators' criminal activities may also lead to racketeering and money laundering prosecutions. Convicted facilitators of CSEC and child pornography offenses are subject to asset forfeiture action. Though not mandatory, a court could order a facilitator to pay restitution, and a facilitator could face a civil cause of action for violations related to child pornography offenses. No laws in Nevada address sex tourism.

The Report Card is based on the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, and sets a national standard of protection against domestic minor sex trafficking. To access the Protected Innocence Legislative Framework Methodology, each completed Report Card, and foundational analysis and recommendations, please visit: www.sharedhope.org/reportcards.aspx.

sharedhope INTERNATIONAL

Nevada Operations of Multi-Automated Data Systems (NOMADS) – Child Support Enforcement Application Assessment Project

NOMADS CSE System Maintenance Plan & Modernization Roadmap

October 6, 2011

Revision 4.2

Policy Studies Inc.
Transforming policy into action™

Revision History

Revision #	Revision Date	Revision Description
1.0	01/27/11	Initial draft prepared for internal PSI review
1.1	02/11/11	Revised based on internal PSI review; distributed to DWSS for review
1.2	02/18/11	Revised based on DWSS review; distributed to DWSS for approval
2.0	03/10/11	Initial Deliverable 2 revision; distributed to DWSS for review
2.1	03/24/11	Revised based on DWSS review feedback and submitted to DWSS for final Deliverable 2 approval and acceptance
3.0	04/29/11	Preliminary deliverable 3 update; includes revisions based on DWSS feedback for Assumptions and Constraints, Architectural Principles, Governance Goals and Strategy. It also includes initial draft of TCSA, Maintenance Goals and Objectives and Modernization Vision.
3.1	05/13/2011	Deliverable 3 update; includes preliminary Gap Analysis.
3.2	07/01/2011	Deliverable 3 draft, including final analysis results and preliminary planning results, delivered to DWSS for review.
3.3	08/12/2011	Revised based on DWSS review feedback and submitted to DWSS for final Deliverable 3 approval and acceptance
4.0	08/29/2011	Initial, complete deliverable 4 draft submitted to DWSS for review
4.1	09/22/2011	Revised based on DWSS review, distributed to DWSS for approval
4.2	10/06/2011	Inserted the Steering Committee for the Nevada Operation of Multi-Automated Data Systems (NOMADS) Assessment's response to this report

Table of Contents

Related Documents

The following table identifies key documents that have been used to direct the project and inform its results. This is a partial list of the documents and information referenced during the course of this project. Unless otherwise indicated, the listed documents can be found in the project document repository, along with the full complement of project reference materials.

Table 1: Project Reference Documents

NOMADS CSE Application Assessment Project Charter	Project Charter.doc
NOMADS CSE Application Assessment Project Management Plan	Project Management Plan.doc
NOMADS CSE Application Assessment Methodology Plan	Methodology Plan.doc
IEEE 1471-2000 Recommended Best Practice for Documenting Software Intensive Systems	http://standards.ieee.org/reading/ieee/std_public/description/se/1471-2000_desc.html
Maximus Performance Audit of the State of Nevada's Enforcement and Collection of Child Support: Final Report Audit Findings and Recommendations	Performance Audit of the State of Nevada's Enforcement and Collection of Child Support.pdf
DWSS's Response and Status Report to Maximus Findings and Recommendations	Implementation Analysis of Maximus Suggestions 03-09.pdf
DWSS Child Support Enforcement Strategic Plan 2009 – 2010	NV CSE Strategic Plan 2009 – 2010 3-15-10.doc
DWSS – M205 Alternative (AMPS) Decision Unit – TIR Business Case	TIR_M205 Alternative Ver4.doc
CSP to EGL Migration TIR	CSP Migration TIR v6.doc
PGC Nevada DHHS Eligibility Engine Evaluation and Cost Estimate	HCR NV Report Final.pdf
DWSS Server Application Descriptions	App Description_0.doc
DWSS NOMADS Related Software Systems	DWSS NOMADS-Related Applications.doc
CSE County Business Process Documentation	Business Process.zip
Work Items Executive Summaries and System Requirement Documents	ES, SRD.zip
Software Development Life Cycle documentation	SDLC.ppt, SDLC Process Flow.doc, SDLC Policy.doc
Enterprise Information Technology Services (EITS)'s Mainframe Capacity and Performance Task Force Findings	Mainframe Task Force.pdf
NIST 800-53: Recommended Security Controls for Federal Information Systems and Organizations	http://csrc.nist.gov/publications/nistpubs/800-53-Rev3/sp800-53-rev3-final_updated-errata_05-01-2010.pdf
IRS 1075: TAX INFORMATION SECURITY GUIDELINES FOR FEDERAL, STATE AND LOCAL AGENCIES	http://www.irs.gov/pub/irs-pdf/p1075.pdf

Document Context

This document describes the current state (the as-is) and an envisioned state (the to-be) of the Nevada IV-D[1] System. It also discusses the recommended approach for evolving the system from the as-is to the to-be.

This document employs concepts of the IEEE (Institute of Electrical and Electronics Engineers) 1471-2000 Recommended Practice for describing software systems and architectures. IEEE is the world's largest professional association dedicated to technological advancement and excellence. The IEEE 1471-2000 (or simply 1471) establishes a stakeholders / viewpoints / multiple-views model for an Architectural Description (AD). In 1471:

- Stakeholders (individuals and groups who have an interest in some aspects of the system) are identified up front.
- Stakeholder concerns are identified as translated into high-level architectural requirements for the system. The remainder of the AD will address those concerns. The Needs Assessment section of this document describes the identified Stakeholders and the concerns they have voiced about the Nevada IV-D System.
- Multiple views are provided. A single view is not considered adequate to address all stakeholder concerns. In describing the Nevada IV-D System, this document concentrates on three main views: Functional, Information Flow, and Development. These three main views are employed to discuss both the as-is and to-be system architectures.

For more information on IEEE 1471, please see the reference to the official standard in the Related Documents section of this document.

[1] Title IV-D of the Social Security Act that is the origin of the child support Enforcement Program overseen and financed by the Department of Health and Human Services/Administration for Children and Families. A IV-D child support case is initiated by a parent's application for services or as a condition for a custodial parent to receive TANF benefits.

I. EXECUTIVE SUMMARY

Background

A 2006 Maximus Performance Audit of the State of Nevada's Enforcement and Collection of Support recommended that Nevada replace the statewide Child Support case management system. The Nevada Legislature in turn authorized funding to perform an assessment for upgrading the current Child Support (IV-D) component of Nevada Operations of Multi-Automated Data Systems (NOMADS). However, the Legislature instructed the Division of Welfare and Supportive Services (DWSS) to "…tailor the assessment in such a way as to identify solutions that can be funded by existing resources and …that address technological alternatives to replacement…"

DWSS contracted with Policy Studies Inc (PSI), a nationally recognized health and human services consulting firm, to conduct this assessment. PSI tailored a system assessment methodology to DWSS's needs in order to deliver a System Maintenance Plan that addresses system sustainability issues for the near term, and a Modernization Roadmap to upgrade the IV-D system in incremental steps for the longer term. The scope of the assessment included the additional system applications that have been developed to augment the NOMADS mainframe CSEP components.

Analysis and Findings

In carrying out its comprehensive system needs assessment, PSI reviewed extensive background documents, held structured interviews with key stakeholder groups, and examined selected business processes for their effectiveness. The synopsis of needs resulting from this assessment presents a clear picture of a IV-D system in urgent need of attention with nearly every element of the current system requiring some form of remediation.

In fact, PSI's assessment of the system's technical needs identified numerous concerns about, limitations of, and deficiencies within the current IV-D system. It is clear from this technical assessment that DWSS should aggressively pursue a Maintenance Plan designed to immediately stabilize and tactically enhance the current system. This will enable the system to remain workable while an incremental modernization effort is executed. This report identifies and discusses the critical requirements that must be satisfied to ensure the system's viability for the immediate future and to enable the CSEP, administered by DWSS, to complete its business functions in an effective and efficient manner over the long term.

The existing architecture of the Nevada IV-D System was analyzed from two distinct views. The Functional View looked at the IV-D System in terms of the business processes it currently supports, while the Technical View looked at the System in terms of architecture, source code, data management and interchanges with external systems. The major system deficiencies derived from these reviews are itemized below:

Functional Review:

- **System availability and performance.** The current system is unavailable or slow for significant periods of time – negatively impacting worker productivity.
- **Intuitive/supportive user interface.** The current IV-D mainframe application has a dated, unfriendly user interface.

- **Automated management tool for assigning, monitoring, reporting and auditing casework.** The current system does not effectively support proactive caseload management or prioritization of work
- **Robust reporting**. The current system lacks ***robust*** business intelligence capability and reporting. The current mainframe system also lacks ad hoc reporting capability.
- **Valid locate records**. The current IV-D system does little to prevent "bad" data from populating/entering the system.
- **Reliable IV-A (TANF) and IV-E (Foster Care) Referrals and Updates.** Automated IV-A referral information is frequently incomplete and/or of poor quality.
- **Workflow management capability**. The system does not inform the user of, move the user to, or assist the user in completing the next process step. Furthermore, the system does not automatically monitor timeframes and prompt users.
- **Robust financial management and accurate accounting**. The system lacks sophistication equal to the complexity of Child Support accounting business rules, resulting in financial data errors. The inability to produce an accurate pay history is a significant shortcoming.
- **Effective, efficient customer support.** The system does not provide staff with ready access to case summary information that would otherwise enable efficient/effective responses to customer inquiries
- **Consistent program security standards**. The system's security management is distributed and standards are inconsistent.

Technical Review:

- **Reliance upon IBM's Cross System Product**. The current system is predominantly coded in CSP, an unsupported programming language. It is our understanding that DWSS is proceeding with a conversion from IBM's Cross System Product (CSP) to Enterprise Generation Language (EGL) as part of a legislatively approved Health Care Reform (HIX) initiative with planned completion in calendar year 2012. This conversion is intended to help extend the useful life of NOMADS and transform NOMADS to a database of record.
- **Aging and brittle architecture**. The current architecture is brittle mainframe-based, monolithic, and difficult to maintain and extend.
- **Lacks a business logic layer**. The current monolithic architecture does not permit a separation of the business logic from the other elements of the application, as current Best Practices advise

- **"Unhealthy" coupling between IV-A and IV-D**. Key data elements that are essentially under the control of IV-A processes create data inaccuracies and causes significant inefficiencies in IV-D program operations.
- **Constrained mainframe capacity**. The limited performance and capacity of the existing mainframe infrastructure negatively impacts user productivity.
- **Fractured security model**. The split between NOMADS mainframe applications (using Resource Access Control Facility, or RACF, security) and ancillary applications imposes multiple credentials and logins for users and makes security more difficult for IT to manage.
- **Lacks a rules engine**. The business logic in NOMADS, including the complex financial distribution rules required for IV-D program are essentially hard coded within the screens and programs that make up the system.

Key Recommendations

This report recommends immediately implementing two strategies. The first strategy is designed to stabilize IV-D NOMADS so it can be maintained until it can be modernized. The second strategy is to modernize IV-D NOMADS so it effectively supports Child Support caseworkers and the customers they serve into the foreseeable future.

NOMADS IV-D Maintenance Plan

The first and most urgent strategy is to invest resources and funding to stabilize the current IV-D NOMADS so it can be maintained effectively while the modernization strategy is planned and funded. To stabilize the system, PSI's recommended DWSS embark on a number of projects that should not be superseded by other priorities unless absolutely necessary:

- Define and finish projects already in process and projects already planned that will directly address improvements to the NOMADS IV-D architecture; create projects and assign resources to monitor functional initiatives outsourced to third parties that are already planned/funded
- Use the recommended maintenance candidate screening process to rescreen In-Process Candidates that have been identified as Halted or Not Started
- Identify discreet components of the NOMADS IV-D financial system that can be fixed as a maintenance item
- Develop Mini Business Cases as recommended in the Maintenance Plan for the Top Maintenance Candidates from the recommended screening process

PSI recommends that the first 18 months be devoted to effectively delivering on the work items listed above. After this 18 month period, the focus should shift to system modernization, and maintenance should be scaled back to the minimum necessary to cover maintenance activities. This approach can deliver value to IV-D system users in the near term while allowing time to fully prepare for the modernization push that will follow.

NOMADS IV-D Modernization Plan

The current IV-D system has outlived its useful life and its technical core must be modernized to continue its vital role of supporting the State's CSEP. Over the course of the IV-D Systems Assessment Project, a clear vision emerged for the future IV-D System. The modernized IV-D system is a more scalable, robust, and easier to modify than the current system.

PSI produced rough order of magnitude (ROM) estimates of the level of effort and costs to fully modernize Nevada's IV-D System. PSI followed these basic steps to produce these estimates:

- Developed 41 discrete project descriptions ("Increments") that are based on the *Target* Conceptual System Architecture (TCSA), the gaps described in the Gap Analysis, and the current state of the system
- Estimated each of the increments using the best data available and PSI's extensive experience working on Child Support systems development projects
- Validated and strengthened the estimates using high-level information from other states, as well as PSI's own experience in other state modernization efforts

Using the ROM estimates presented above, DWSS can incrementally develop a fully modern IV-D system in nine (9) years. The development effort calls for the use of a combination of contractors to make up for shortfalls in DWSS staff resources. The modernization effort is comprised of four phases that in turn help drive the proper sequencing of individual increments. The four phases are as follows:

- **Risk Management phase.** This phase includes completing the conversion from CSP to EGL, back filling missing documentation of the existing system, cross training staff, and improving testing toolsets and database assets.
- **Foundational phase.** In this phase "assets" are created that will be leveraged across the remainder of the modernization effort. These include architectural/infrastructural increments. Each foundational increment should seek to deliver, as feasible, functional benefit to users in addition to demonstrating the components' reusability.
- **Functional phase.** This phase will primarily include functional additions to the modernized IV-D System, leveraging the more complete set of infrastructural components/assets.
- **Clean up phase.** During this phase, the last remnants of the legacy system can be removed as well as any infrastructure specific to supporting legacy code.

System Governance

DWSS and the CSEP will need an effective governance structure and a well-designed, repeatable process for implementing the Maintenance Plan and Modernization Roadmap. PSI examined the strengths and weaknesses of Nevada's current governance framework for the IV-D System. An overview of PSI's governance recommendations is presented below.

- **Designate and Authorize the C SEP as Owner of the IV-D System.** This is the most urgent of PSI's recommended organizational changes to improve system governance. Elevation of CSEP's ownership role includes hiring a qualified System Owner who will report to the Program. The System Owner will be directly responsible for, and actively manage, delivery of the modernized IV-D system. Product Owners should be designated to champion each significant maintenance and modernization project, from start to finish.
- **Align Nevada Child Support Strategic Planning, IV-D System Project Prioritization, and Discretionary Resource Allocation**. This alignment includes ensuring the IV-D System Owner's and key system stakeholders' participation in Strategic Planning. Strategic Planners should actively consider system solutions to help achieve performance objectives.
- **Improve the Quantity and Quality of Automation Support and New System Functionality Delivered.** A reengineered, more project-focused, more transparent SDLC process is recommended. The benefits of a team approach to projects, the utilization of Business Analyst (BA) positions, and the need for additional dedicated IV-D system resources are underscored. Steps to more accurately estimate and manage project effort are provided.
- **Leverage and Optimize all Available Resources.** DWSS should leverage local resources that have been identified or volunteered – including County IT staff, local subject matter experts (SMEs), and incentive earnings.

As DWSS implements the Maintenance Plan and Modernization Roadmap it will also need to apprise the Office of Child Support Enforcement (OCSE) of its plans via its Annual Planning Document Updates (APDUs).

Maintenance and Modernization Funding Options

In order to develop a Maintenance Plan that can be executed with existing program resources and to develop a Funding Plan for the Modernization Roadmap, PSI examined the basis for, and expenditure of, existing resources. PSI identified three primary state funding sources to support the IV-D systems maintenance and modernization plans. These state funding sources are: Retained TANF Collections, Earned Federal Incentives, and General Fund Support from DWSS. PSI concluded that these primary funding sources can be leveraged to support substantive IV-D system maintenance and modernization.

PSI worked closely with DWSS to understand CSEP's current funding streams, expenditures, and budget process allowing PSI to develop a funding strategy that includes the following elements:

- Increased amount of incentives expended on technology and the use of this funding to support maintenance and modernization activities
- Increase state share of collections expended on technology and the use of this funding to support maintenance and modernization activities

- Continued use of a portion of DWSS's General Fund support, temporarily suspended during recent budget cuts and approved for the current biennium, for CSEP for maintenance and modernization activities

PSI further outlines specific recommendations for fully leveraging each primary funding source. Most notable among these recommendations are the following:

- CSEP should use 75% of any incentives available to spend within a given year (whether final, banked, or estimated incentives) for program-wide initiatives focused on maintaining or enhancing IV-D NOMADS.
- CSEP should begin requesting an advance on *estimated* incentives in the year for which it earns the incentives, and expend 75% of available estimated incentives on maintenance and modernization activities.
- CSEP should hold back 25% of the total final and estimated incentives in a year as a contingency to mitigate the risk of data reliability or performance issues. The resulting balance of final and estimated incentives would be available in that year with 75% of that balance to be directed towards maintenance and modernization.
- CSEP should direct 75% of additional incentives and all state shares of collections accruing from performance improvements in future years to maintenance and modernization activities.
- The state share of collections used to reimburse DWSS's General Fund expenditures should be redirected to support maintenance and modernization activities, drawing down federal financial participation (FFP) (a restoration of General Funds for DWSS is required to enable this recommendation).
- The state share of collections reverted to the state government should be redirected to support maintenance and modernization activities, drawing down FFP.

Conclusion

By leveraging available funding sources, taking steps to strengthen system governance, and executing technical and functional system projects in a rational order, Nevada can realize a fully modernized IV-D system within the next 10 years. In the near term, Nevada's IV-D system will be stabilized by addressing urgent viability issues. In the longer term, Nevada's CSEP will be empowered to achieve its objectives and improve the lives of countless Nevada children.