MINUTES OF THE
LEGISLATIVE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE
(Senate Bill 3, 2009 Session)
June 21, 2010

The third meeting of the Legislative Committee on Child Welfare and Juvenile Justice (Senate Bill 3, 2009 Session) was held at 9:00 a.m. on June 21, 2010, at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada. The meeting was videoconferenced to the Legislative Building, 401 South Carson Street, Room 3137, Carson City, Nevada.

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblywoman Sheila Leslie, Chair
Senator Valerie Wiener, Vice Chair
Senator Barbara Cegavske
Senator Allison Copening
Assemblyman John Hambrick
Assemblywoman April Mastroluca

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT IN LAS VEGAS:

Rex Goodman, Program Analyst, Fiscal Analysis Division
Donna Thomas, Secretary, Fiscal Analysis Division

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT IN CARSON CITY:

Nicholas C. Anthony, Senior Principal Deputy Legislative Counsel
Sara L. Partida, Principal Deputy Legislative Counsel

EXHIBITS:

Exhibit A: Meeting Packet and Agenda.
Exhibit B: Attendance Record.
Exhibit C: Children's Behavioral Health Structure – Working Recommendation 1/28/10 – Nevada Children's Behavioral Health Consortium – Pam Becker, Washoe County Children's Mental Health Consortium.
Exhibit D: Legal Representation of Children and Families, National Conference of State Legislatures, June 21, 2010, Presentation.
Exhibit E: Termination of Parental Rights Pursuant to NRS Chapter 128 and the Right to Inheritance, Jon L. Sasser, ESQ., Legal Services, Statewide Advocacy Coordinator.
Exhibit F: Presentation on Programs for Foster Children and Victims of Child Abuse and Neglect, Thomas Waite, President/Executive Director, Boys Town Nevada.

Exhibit G: St. Jude's Ranch for Children, Cyndy Ortiz Gustafson, Principal, Strategic Progress, LLC, representing St. Jude's Ranch for Children.
Exhibit H: Nevada Youth Care Providers, Public Comment, Jennifer Bevacqua, President, Nevada Youth Care Providers.

I. ROLL CALL.

Chairwoman Leslie called the meeting of the Legislative Committee on Child Welfare and Juvenile Justice to order at 9:01 a.m. The secretary called roll; all members were present.

II. OPENING REMARKS.

Chairwoman Leslie welcomed the committee members present in Las Vegas and noted the meeting was the fourth regular meeting of the Legislative Committee on Child Welfare and Juvenile Justice. She indicated that the work session meeting was scheduled for July 19, 2010, at 1:00 p.m., which she would attend at the Carson City location, along with staff. Chairwoman Leslie welcomed legal staff from the Legislative Counsel Bureau present in Carson City. She introduced former Assemblywoman Barbara Buckley, Speaker of the Assembly, who was attending the meeting in Las Vegas.

III. APPROVAL OF THE MINUTES OF THE FEBRUARY 9, 2010, MEETING.

Chairwoman Leslie asked for a motion to approve the minutes of February 9, 2010.

> SENATOR CEGAVSKE MOVED FOR APPROVAL OF THE MINUTES OF THE FEBRUARY 9, 2010, MEETING OF THE LEGISLATIVE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE.
>
> SENATOR COPENING SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

IV. PRESENTATION ON TEN-YEAR STRATEGIC PLANS FOR CHILDREN'S MENTAL HEALTH CONSORTIUMS, PURSUANT TO *NEVADA REVISED STATUTES 433B.335.*

Pam Becker, Chair, Washoe County Children's Mental Health Consortium (Consortium), stated that during the 2009 Legislative Session the local Consortiums (Clark County, Washoe County and the Rural Region) moved from an annual strategic plan to strengthen the local partnership of creating an integrated system of behavioral healthcare for children and families, to a ten-year plan to create a system of care for children with mental health issues. She stated that Washoe County chose four goals to look at over the next ten years to serve youth with mental health needs in their home communities. The Consortium worked with Diane Comeaux, Administrator, Division of Child and Family Services (DCFS), and child welfare staff, to expand the Nevada wraparound project to serve children and families in Washoe County, and include

children in their home communities that were not Medicaid-eligible, but in parental custody, allowing families to help themselves with the assistance of the Suicide Prevention grant. The Consortium was aware that families had a difficult time discussing mental health issues and suicide and wanted to use the opportunity to help families learn about the resources available should someone present with suicidal ideation.

In addition, Ms Becker said the Consortium wanted to help youth succeed in school from birth throughout their entire school life. Recently, the Consortium wrote a Project LAUNCH grant with organizations like Ready for Life that targeted youth from birth through age eight to help them reach physical, social, emotional, behavioral and cognitive milestones. In addition, the Consortium wanted to support youth to succeed as adults, which was tied to other goals, specifically children aging out of the youth system into the adult mental health system, because often there were issues when youth transitioned into the adult system. Ms. Becker noted that the Consortium hoped to incorporate promising practices around youth transitioning to the adult mental health system.

Continuing, Ms. Becker stated that the Consortium was looking at their goals with the element of access to services, youth and family involvement, leadership, policy issues and collaborative funding. In addition, the Consortium would continue to operate with the use of workgroups for each goal, including evidence-based practices, better access to services for families and youth, family and youth involvement, and the braided and blended funding. Ms. Becker acknowledged the complexity of establishing a seamless and comprehensive system of care for families of youth with mental health needs, coupled with resource limitations and policy barriers, and the ten-year plan would be implemented in three phases. Phase 1 (2010 through 2012) would institute low-cost and no-cost services and policies that leveraged existing resources and relationships with the capacity to yield high impact results for youth and families. Phase 2 and Phase 3 would be implemented in 2013 through 2020.

Concluding, Ms. Becker stated that Washoe County was working toward the best interest of children and families in the community. She appreciated the opportunity to present the strategic plan and was available to answer questions of the committee.

Chairwoman Leslie asked Ms. Becker to provide a brief written summary to the committee on the priorities of the Washoe County Children's Mental Health Consortium.

Ms. Becker replied that the Consortium was currently looking at the priorities for action for Washoe County and would provide a synopsis of the priorities identified. She explained that the Consortium had to come up with a ten-year plan to establish a seamless, comprehensive system of care for families of youth with mental health issues. She indicated that the workgroups of the Consortium were discussing specific goals and hoped to identify short-term goals that would fit into the long-term plan before the beginning of the 2011 Legislative Session.

Senator Cegavske asked if there was an emphasis in the ten-year plan on the adoption and foster care population in the report provided by Ms. Becker entitled "2020 Vision" – A Call to Action, Ten-Year Plan for Children's Mental Health, January 2010 – December 2012 (Page 57, Exhibit A).

Ms. Becker replied that the Consortium looked at all youth. The Consortium defined the family as the family defined itself, so maybe families were in adoption situations or youth were currently under state custody. She stated that no actual population was defined other than what the family units described, and foster children and adoptive children were included.

Senator Wiener stated that the Consortium made an attempt to work with Nevada's Medicaid State Plan under the leadership and policy strategy with the intention that all children identified as seriously/severely emotionally disturbed were deemed medically needy. She noted there were challenges with Medicaid and wondered if Ms. Becker discussed this particular priority with Chuck Duarte, Administrator, Division of Health Care Financing and Policy (DHCFP).

Ms. Becker replied that Mr. Duarte provided regular updates to the Consortium. She stated that the Consortium had to keep an eye on what was occurring nationally in order to respond and anticipate issues so resources could be put in place to make the mental health issues of youth known before it was already said and done. The Consortium was aware that mental health issues were not a priority within the healthcare system and hoped that mental health services would be mandated and offered to youth and families in the future. She thanked Mr. Duarte for keeping the Consortium informed on the issues.

Chairwoman Leslie recalled that Senator Cegavske sponsored a bill during the 2009 Legislative Session, which provided the Consortium with the opportunity for a bill draft request dealing with the mental health issues of youth and families.

Ms. Becker replied that Senator Cegavske sponsored a bill during the 2009 Legislative Session and each Consortium had the opportunity for a bill draft request. She noted that Washoe County was working with the Division of Child and Family Services (DCFS) and Department of Health and Human Services (DHHS) because the three Consortiums found there was no one authority in the state to deal with children's mental health issues. The Consortiums were working with DCFS and DHHS on a bill draft request to make DCFS the lead agency over children's mental health issues. Ms. Becker stated that there were issues that elevated to the state level and there was no power at the state level to take ownership due to the lack of authority. Currently, the Consortium was working with consultants on the language for the bill draft legislation, which should be complete by September 1, 2010.

Chairwoman Leslie asked if the bill draft request would be submitted as the Washoe County Mental Health Consortium. Ms. Becker replied that the bill draft request would most likely be part of DHHS's legislation.

Diane Comeaux, Administrator, DCFS, clarified that DCFS submitted a bill draft request to the Executive Budget Office on the concept of DCFS being the lead agency over mental health issues. She stated that the bill would go through the process as a DHHS bill, which is why the Legislature has not seen the bill draft request.

Senator Cegavske stated that she was happy to see specific mental health services for foster youth in the ten-year strategic plan. She asked if drug and alcohol issues were addressed in the strategic plan.

Ms. Becker replied that drug and alcohol issues affected all of the Consortium's goals, and were incorporated into those goals.

Senator Cegavske stated that aftercare services for any drug and alcohol program was a benefit for youth and their families. She asked if there were good drug and alcohol aftercare programs in Northern Nevada that Southern Nevada could model.

Ms. Becker replied that the Washoe County Consortium was looking at drug and alcohol aftercare programs because Northern Nevada did not have a model aftercare program. Ms. Becker added that Northern Nevada had programs that worked with youth, such as Quest Counseling, and the Consortium provided follow-up care for youth after treatment. She noted the Consortium wanted to build on the existing resources and partnerships to strengthen practices to support local systems of care and provide better aftercare services.

Chairwoman Leslie added that Washoe County lacked residential beds for adolescent substance abusers, which was very disappointing. She stated that Washoe County had a great agency that provided outpatient care, but there were no residential beds for treatment services in Washoe County.

Senator Wiener stated that there was a reference in the report provided by Ms. Becker indicating that over half of students aged 14 and older with a mental health disorder dropped out of high school, which was the highest dropout rate of any disability group. She asked if that was a local or national statistic. Ms. Becker replied that those numbers were from the Ready for Life organization, which helped provide the tools for youth to succeed in school and as adults and become productive, contributing members of society. She was unsure if that was a national or local statistic and would provide that information to the committee.

Jackie Harris, Chair, Clark County Children's Mental Health Consortium, thanked the Committee for the opportunity to share information on the Clark County Children's Mental Health Consortium – Ten-Year Strategic Plan. Like Washoe County, Ms. Harris indicated that the committee would hear similar goals because of the statewide system and the need for youth services across the state. Ms. Harris stated that some of Clark County's long-term goals were:

- Children with serious emotional disturbance (SED) would thrive in their own communities with intensive supports and services.
- Children with behavioral health needs and their families would access a comprehensive array of effective services when and where needed.
- Families seeking assistance would find an organized pathway to information, referral, assessment and crisis intervention coordinated across agencies and providers.
- The system would be a locally managed partnership between families, providers and stakeholders committed to family-driven, community-based and culturally competent services.
- Services would focus on early identification of behavioral health needs.
- Heightened public awareness of children's behavioral health needs would reduce stigma, and empower families to seek early assistance and mobilize community support for system enhancements.

Referring to page 93, Exhibit A, Ms. Harris directed the committee to the chart, which displayed an example of Clark County's public health approach to children's mental health. Looking at the approach, Ms. Harris stated that the base of the chart represented over 80 percent of children that would benefit from social, emotional and behavioral health wellness activities and prevention. The center of the chart represented the 13.3 percent of children in need of targeted early intervention, and the top of the chart represented the 6 percent of children with the most serious mental health problems.

Ms. Harris stated Clark County Children's Mental Health Consortium expressed concern that the current system was an inverted triangle with the majority of the funds supporting children with significant mental health needs who did not receive initial services. She said that the Clark County Children's Mental Health Consortium, in addition to the other two Consortiums, supported the redesign and restructure of the public children's behavioral health financing and delivery system and were working with DHHS and DCFS on the redesign. She noted that some of Clark County's priorities were listed on page 86, and encompassed restructuring the behavioral health system to focus on quality, accountability and positive outcomes. In addition, providing mobile crisis and stabilization teams was something that the Clark County Consortium requested for years, and would impact a majority of systems, including emergency rooms and outcomes for youth. Ms. Harris said that the Consortium would like to expand neighborhood-based financial and intensive supports to allow children to stay with their families. In addition, the Consortium supported expanding the wraparound model for youth involved in the juvenile justice system and children living with their families, by supporting early intervention, preventative programs, and strengthening partnerships between schools and behavioral health providers. She indicated that information regarding child welfare and juvenile justice populations, specifically in Clark County, were addressed throughout the report. The child welfare and juvenile justice system mainly intervened with families and relied primarily on community providers and other governmental systems to assist families in the system.

Ms. Harris stated that nationwide, approximately three-fourths of the children in the child welfare system had mental health issues, and in Clark County, upward of 83 percent of children in the child welfare system were in need of behavioral health services, which encompassed mental health and substance abuse treatment. In addition, over 75 percent of youth involved in the Clark County juvenile justice system had behavioral health needs. Currently, there were gaps in existing services and the concern was the gap would continue to widen with the current economic climate in the state and nation. Concluding, Ms. Harris hoped the committee would use the Consortium reports to guide their decision-making over the next several years so Nevada youth could succeed.

Senator Wiener stated that the report, Clark County Children's Mental Health Consortium – Ten-Year Strategic Plan, showed that over 40 percent of Clark County's public behavioral healthcare dollars were spent on residential care, which has not been effective in improving the long-term outcomes for children with severe emotional disturbance (SED). She said the greatest success for youth was having services and care available in their home community, allowing children to remain with their families. Senator Wiener referenced an audit of the child welfare system commissioned by the Nevada Legislature, page 101, (Exhibit A), which indicated that families involved in the child welfare system were twice as likely to be offered services when children were removed from their homes. Senator Wiener believed that based on the chart that Ms. Harris referenced, early intervention was essentially needed. The state was in such a crisis by the time they intervened with youth and a lot of money had to be invested, and the vast majority of youth that needed early care and intervention were missed.

Ms. Harris agreed with Senator Wiener. Being a former early childhood therapist, she was aware that the longer the child welfare system waited to intervene, the more intense the problem becomes for youth and the likelihood increased that the child would become involved with multiple systems, such as child welfare, juvenile justice or the criminal justice system. She indicated that many of the children she worked with were now entering the adult system with substance abuse issues, had a criminal history, and their own children were being removed from their homes, continuing the cycle.

Senator Cegavske recently read an article that indicated the number of youth entering foster care in Clark County was rising despite the fact that the total population in the county was declining due to the current economic crisis and home foreclosures. Senator Cegavske wondered if parents were turning their children over to the child welfare system because they were unable to care for them.

Ms. Harris replied that there were a multitude of issues leading families to get involved in the child welfare system. She stated there were parents unable to access services for their children, and entering the child welfare system was the only way to receive services. In addition, it was challenging for families that lost employment, with limited skills and education to find work, and as a result, families were becoming involved in the system.

Senator Cegavske stated that she was aware that the Parents Encouraging Parents (PEP) conferences sponsored family-centered events designed to offer support, information, and education to parents and professionals, and promoted partnerships that were essential in supporting children and their families in schools and the community.

Speaker Buckley stated that the statistics were not much different from when the Consortiums were created in 2001. She explained that the Consortium was created to come up with strategies to reduce residential care for children. On a day-to-day basis, the system was still dysfunctional with regard to service coordination. Providing an example, there were children that acted out in therapeutic foster homes, which was the reason they were in the home, and when that happened a ten-day letter was served or the child was placed in a mental health hospital. When a child was placed in a mental health hospital the physician had no records for the child, and usually the child was prescribed medication, which started the cycle of youth being on too many psychotropic drugs. As a result, it was hard for the child to get a placement because of the drugs, and when a placement was finally found, the child often acted out and law enforcement got involved and the child was placed in a juvenile setting. Speaker Buckley expressed that the current system was a waste of money, harmful to the youth, and statistics showed that some youth were on eight psychotropic medications and being physically harmed by the drugs. Speaker Buckley recently met with Mike Willden, Director, DHHS; Diane Comeaux, Administrator, DCFS; Assemblywoman Mastroluca; Assemblyman Hardy; Dr. Norton Roitman, and other physicians to discuss the issues and set-up a pilot program. In addition to the more global issues, Speaker Buckley asked Ms. Harris if anything practical could be done on a day-to-day basis to improve outcomes for youth.

Ms. Harris replied that workgroups of the Consortiums met to identify issues in service coordination. For example, in the crisis and early intervention workgroups, parents reported gaps in services for children when they exited acute facilities and reentered school, so school district officials and representatives from private and public organizations were contacted in a coordinated effort to help youth exiting one system and reentering the school system without interruption. Ms. Harris stated the intervention workgroups were a simple solution and a coordinated effort without costing the state. Another issue the infrastructure workgroup recently tackled was children entering out-of-state placements, which was a concern because of the cost and children being away from their families and communities. The Consortium brought together approximately 40 people, including judges, juvenile justice and child welfare representatives, and school districts, to look at the what was currently being done and what was needed to address the issue. She believed issues were being identified at the workgroup level, which brought people together to solve the issues; however, it was hard to look at the issues on a larger scale.

Speaker Buckley commented that Senate Bill 343 was enacted during the 2009 Session and made various changes concerning the application and provision of certain treatment or services to a person involved in the child welfare system. In addition,

S.B. 343 established contacts so when the child welfare agencies were running into roadblocks with the mental health agency or other agencies, there was a point of contact, although that process has not been finalized. Speaker Buckley believed there should be a greater sense of urgency, because if child welfare representatives had contacts for all agencies and the barriers were eliminated, children would not escalate to higher levels of care.

Chairwoman Leslie shared Speaker Buckley's frustration. She recalled that many people did not like when the Children's Cabinet first offered family counseling because they thought it was the state's job to provide that type of counseling. Currently, the Children's Cabinet was offering more counseling to children and families than the state, which she believed was a result of funding. She referenced page 86, Exhibit A, where the desired outcome for services to Clark County youth in crisis was providing mobile crisis intervention and stabilization services. She recalled when the state funded the mobile intervention team, and the program was cut and never enacted in Clark County because of the budget crisis in the state.

Ms. Harris stated that currently the infrastructure workgroup in Clark County was focusing on the top priorities of the county and what those priorities encompass in terms of economic support.

Chairwoman Leslie asked Mr. Harris if Clark County was trying to identify short-term objectives for the 2011 Legislative Session now that long-term plans were identified.

Ms. Harris replied that page 122, (Exhibit A), displayed a timeline for some of the short-term goals for vision of a system that would best serve the children of Clark County.

Chairwoman Leslie asked Ms. Harris if Clark County had a bill draft request for the 2009 Legislative Session. Ms. Harris replied that Clark County had a bill draft and was in the process of developing priorities for the request.

Joann Flanagan, Treatment Program Analyst, Substance Abuse Prevention Treatment Agency (SAPTA), State of Nevada, and Vice Chair of the Rural Children's Mental Health Consortium, stated that many of the things that the other presenters covered were being done in the rural areas. Ms. Flanagan noted that the rural areas were defined as all areas with the exception of Clark County and Washoe County, including the 27 Native American Indian tribes throughout Nevada. Some of the key findings of the Consortium were that the rural counties were very knowledgeable consumers, actively involved in intervention, and were taking responsibility for mental health treatment and choices in the rural areas. Ms. Flanagan stated that one of the goals of the Consortium was to help the rural counties level the playing field, as far as information technology, since that was one way to access services, such as web-based treatment, and telemedicine, including telephone and videoconferencing. In addition, another need in the rural areas was evidence-based practices, efficient treatment and early intervention. Ms. Flanagan reiterated that the rural areas were a knowledgeable

community and the Consortium was helping the counties emphasize or build on a "rural can-do attitude." In a series of workgroup meetings with community partners and stakeholders across the rural regions, the Rural Consortium identified Lovelock as an area of focus due to the limited services, such as substance abuse counseling, mental health counseling, and even basic medical care. She stated that some families that needed access to services traveled to Winnemucca or Reno for treatment, which was a challenge for most families because of the distance. Also, the Rural Consortium collaborated with statewide coalitions, and through SAPTA, established a working relationship with the Rural Child Mental Health Consortium. Ms. Flanagan noted that SAPTA had a number of substance abuse treatments throughout rural Nevada, such as the Adolescent Program, Vitality Center in Elko, and New Frontiers, with programs throughout Northern Nevada. In addition to working with the rural communities, the Consortium established a working relationship with 27 Indian tribes and met with the Inter-Tribal Council of Nevada, Nevada Indian Health Board, and the Reno Sparks Indian Colony, to assist these communities and to help access services in the state. She indicated that the tribes had Indian health service care, which was very limited, and often some of the more serious medical needs were unmet even though there was access to the services.

Continuing, Ms. Flanagan stated that another success was organizing around the Developmental, Individual Difference, Relationship-Based (DIR/Floortime) model, an emergent treatment and training tailored to the unique and specific challenges of children so other professionals and families could assist children and provide ultimate care. She stated that one of the challenges of the Consortium was implementation and sustainability of the ten-year strategic plan with the limited and diminishing resources in the state. In addition, another challenge was children transitioning into adulthood, and the lack of specialty services for that segment of youth. Research has shown that the mental capacity of youth developed at age 25, and expecting youth to take care of themselves at 18 years of age was not possible in most cases. Ms. Flanagan noted that another challenge was the lack of prevention and early intervention services for children and families. According to national research, and from personal professional experience, early intervention for children helped so issues did not escalate. She said it seemed that more money was spent on back-end services for youth by direct treatment versus intervention and prevention treatment at a younger age.

Senator Weiner asked how telemedicine was being integrated into the scheme of treatment for youth in the juvenile justice system, because she believed face-to-face contact and counseling was important for youth.

Ms. Flanagan advised that currently a substance abuse counselor and instructor from the University of Nevada, Las Vegas, along with staff, provided telemedicine conferences and counsel to adolescents on probation in the rural areas, which has proven to be successful. As a previous counselor, Ms. Flanagan was aware of the need for face-to-face counseling; however, with the current budget constraints it was a challenge to provide services to the rural areas. She said the Rural Consortium was looking at different ways to establish services throughout rural Nevada.

Senator Weiner asked about integrating the telemedicine conferences into the mental health environment.

Ms. Flanagan responded that telemedicine conferences were not explored for mental health services for children in the rural areas. She indicated that through the Substance Abuse and Treatment Agency (SAPTA) and rural counseling, psychologists and psychiatrics were able to provide limited services to the rural communities. However, due to the budget constraints, counselors were only able to have one or two meetings in the rural communities and telemedicine was used to provide services. Ms. Flanagan believed that collaboration was needed between numerous state agencies, and resources needed to be pooled to provide additional telemedicine conferences. She said that having more telemedicine available was doable and the lack of telemedicine in the rural counties was due to the cost for services. Ms. Flanagan was aware of therapists working for the state that were anxious and excited about providing telemedicine, but unable to provide the needed services due to the lack of state funds.

Chairwoman Leslie thanked the presenters for their testimony and for the work of the Consortiums to help children and families in the state.

V. DISCUSSION REGARDING LEGAL REPRESENTATION OF CHILDREN IN CHILD ABUSE AND NEGLECT PROCEEDINGS.

Nina Williams Mbengue, Program Director, Children and Families Programs, National Conference of State Legislatures (NCSL), stated that on behalf of NCSL, she was pleased to be in attendance at the meeting. She explained that she would present a brief national overview of the efforts of other states regarding the legal representation of children in dependency proceedings. She provided on overview, Legal Representation of Children and Families, NCSL, (Exhibit D), which looked at legal representation for children, parents, and the child welfare agency, and the standards of practice from other states. Ms. Mbengue introduced Joanne Brown, retired juvenile and family law judge and Commissioner from Alameda County, California, who would discuss the ethical issues that child welfare workers and attorneys faced, in addition to the American Bar Association (ABA) standards of practice.

Ms. Mbengue said she would begin her presentation discussing the issues related to children's legal representation. She stated that information provided by well-trained legal advocates and/or professionals was essential to help judges make informed decisions about children's permanency plans, and to determine whether children can move from foster care to reunification, adoption, and guardianship. In reviewing state and federal laws regarding children's legal representation, the federal Child Abuse Prevention and Treatment Act (CAPTA) required states to provide for a guardian ad litem (GAL) appointment to represent the child's best interests when in care of the state. She explained that a GAL could be an attorney, court appointed special advocate (CASA), or both, and there was no federal mandate for the representative to be an attorney. Looking at statutes from different states, Ms. Mbengue said that

children's representation by a GAL varied in every state and county, and funding was an issue along with whether the child's wishes or best interests were represented. She noted that 39 states, including Nevada, provided for a GAL in statute – 16 states mandated that the GAL be an attorney, and 37 states set the specific duties of the GAL, which included face-to-face meetings with a child, attending hearings, case staffing, and developing the independent investigation. Seventeen states required or allowed the GAL to communicate the child's best wishes, which was different from the child's best interests. Ten states allowed courts to appoint separate counsel to represent the child's wishes; 15 states required an attorney for the child, which could be in addition to a GAL or CASA; and 43 states addressed training, qualifications, or standards regarding a GAL in statute in some way, and a few states addressed issues related to compensation of the GAL.

Ms. Mbengue noted that states have been active in testing various approaches to improving children's legal representation. One example was a legislative mandate in Colorado, the Colorado Office of Child's Representation, which was charged with enhancing legal representation of children dealing with compensation issues, setting up minimum practice and training standards, and collaborating with the CASA in the state. Ms. Mbengue mentioned a project in Florida evaluated by Chapin Hall, part of the University of Chicago Children's Research Center – Legal Aid Society of Palm Beach Foster Children's Project, which focused on providing representation for children in foster care in a particular county. The project consisted of 10 attorneys, 2 permanency planners and was limited to 358 clients or foster children, and represented the children's best interest with a focus on providing good representation for children. According to the study by Chapin Hall, higher rates of achieving permanency resulted for children involved in the project. Children involved were three times more likely than children in foster care to go on to adoption or legal guardianship. The project also experienced expedited permanency/legal milestones, which was why the representation issue was so important for children and families involved in the child welfare system, reducing the chance of children getting stuck in the system due to issues of representation. In addition, the State of Texas enacted a bill in 2005 (Senate Bill 6), which reformed child protection in the state. The bill required guidelines for the GAL meeting with children, and the GAL had to be familiar with the ABA standards for lawyers representing children.

Continuing her presentation, Ms. Mbengue stated most states recognized the need for parents to be represented in dependency hearings, or at least in termination of parental right hearings, and there were no similar mandates or guidance for parents or children. She referenced a 1998 survey conducted by the National Council of Juvenile and Family Court Judges, which showed how states provided or allowed counsel for parents; 39 states provided counsel for indigent parents; 6 states provided counsel for parents in all dependency hearings; 3 states provided counsel for parents in termination of parental rights hearings; and 3 states had nothing in statute regarding parent legal representation. She reiterated that representation of children in child welfare varied in states and counties, and financing was a huge issue, especially with the current economic crisis across the country. She explained that the State of Washington had an

Office of Public Defense, which had two county juvenile court pilot projects charged with improving the stills of defense attorneys defending parents involved with the child welfare system. Training was included and caseloads were limited for the projects with a focus on communication between the attorney and the parent. As a result of the pilot project, Washington experienced improved hearing rates, improved rates of family reunification in which children and youth can be safely returned home, and improvement in the rates of open court cases that were resolved. Similarly, Ms. Mbengue said that New York City had a project called the Center for Family Representation, Inc., which provided legal services for parents, along with a social worker and a parent advocate (another parent in the system), which reduced the average length of stay for foster children in the system to less than four months. For comparison, the average length of stay for children in foster care in the State of New York was 26 months; and in New York City the average was 11.5 months.

Ms. Mbengue stated that Louisiana had a legislatively mandated Louisiana Task Force on Legal Representation in Child Protection Cases, which looked at a plethora of issues including performance standards for public defenders. In addition, the state had a Pew Commission on Children in Foster Care, which examined the barriers to parent representation, such as inadequate case preparation, inadequate compensation, and unreasonable caseloads.

Ms. Mbengue noted the third area of legal representation was the representation of the child welfare agency, which would be discussed in more detail later in the meeting. She clarified for the committee that generally prosecutors or District Attorney's represented the public's interest, and the role of the child welfare agency role was to represent the child's interest.

Ms. Mbengue stated the Florida Office of Program Policy Analysis and Government Accountability, an office of the Florida Legislature, had a pilot project to look at some of the issues of representation. She noted the project provided an overview of where states housed the responsibility for child welfare legal services across the country. Approximately 31 states placed child welfare legal services with a locally elected prosecutor, which were services not only representing the child welfare agency in court cases, but also handling legal issues or affairs that the child welfare agency dealt with on a day-to-day basis. Eleven states placed this function in a legal branch of state government, such as the Attorney General's Office; approximately 20 states placed the responsibility for child welfare legal services within the state child welfare agency; 13 states contracted with private attorneys; 19 states had a combination system; and in some states a government agency provided legal services for child welfare cases.

Ms. Mbengue stated that Florida's Child Welfare Legal Services pilot project came about during the 1996-1997 Legislative Session in Florida's General Appropriations Act, which authorized a project to determine who was responsible for providing child welfare legal services, which at the time was handled by the state welfare agency, as well as the local prosecutor in certain counties. She explained that Florida was plagued by the same issues as Nevada and other states, such as high attorney and staff turnover,

conflict of interest issues, and poor outcomes for children and families in the child welfare system. Florida looked at four different models to determine the feasibility of whether child welfare legal services should be placed in any of the entities. First, Florida examined contracting with other government entities, such as the state Attorney General's Office and public defenders, and generally it was not feasible because the Attorney General and prosecutors believed it was outside their core function. Ms. Mbengue stated that two counties in Florida – Pinellas County and Pasco County, the state attorney handled child welfare legal issues and cases in the Sixth Judicial District, and this piece of the model continued. In addition, contracting with private law firms was examined, which could reduce some of the costs because the number of state employees for this function was reduced. However, the costs were unknown because private attorneys were used and it was not considered functional or feasible for the state at the time.

In addition, Ms. Mbengue stated that Florida looked at contracting with nonprofit organizations, which was determined not feasible because Florida switched to a privatization scheme, therefore, the nonprofits would also be serving families, which was a conflict of interest. Along with Pinellas County and Pasco County where the state attorney represented the agency, Florida continued to retain child welfare legal services within DCFS. Florida worked on improving the current model, such as staff retention, attorney professional development, and training and standards. In addition, Florida worked on continuity of representation and having the same representation for the child or parent from the beginning to the end of the case so information was not lost when a child was transferred from one legal person to another. She noted that at one time Florida had a requirement that the legal representative be co-located in the child welfare agency, which has been discontinued.

Ms. Mbengue stated that there was no federal guidance or mandate for representation for children, parents, or the child welfare agency beyond the requirement for a GAL. She advised that there were standards produced by the American Bar Association for lawyers representing child welfare agencies, the agency representation model, as well as the prosecutorial model, and standards for lawyers representing children and parents, which covered things like qualification and training, and the amount of time an attorney spent with their clients. The Child Abuse Prevention and Treatment Act (CAPTA) provided guidelines about the GAL, and states had to appoint a GAL for children for CAPTA in order to be eligible for federal funds. The National Association of Counsel for Children (NACC) had recommendations for representation of children in abuse and neglect cases.

Concluding, Ms. Mbengue said she wanted to highlight other legislative initiatives that had an impact on the representation issue. She stated that a number of states passed legislation requiring or allowing youth and families to participate in their hearings and discuss their wishes with the judge. For example, in California, children involved with the system over the age of 10 received notice of hearings; family court judges consulted with youth in New York; children aged 12 and older received notice of the hearing in

Oregon; and in Hawaii, children 14 years of age or older were required to participate in their hearings. Eleven states and the District of Columbia required the court to consider the wishes of the child, as opposed to the best interests of the child. Ms. Mbengue noted that there was an Integrated Family Court pilot program in Arizona, and New York had a One Family One Judge program and a judge was assigned to one family throughout the entire case. In addition, a number of states enacted legislation related to family group conferencing, which was another way to involve children and families in permanency planning and divert families from the heavier court involvement.

Senator Wiener stated that in 17 states the GAL communicated the child's best wishes, as opposed to the best interest of the child. She wondered if the court still utilized the best interest model, because the best wishes of the child may not be in the best interest of the child, and it was critical that the child was heard.

Ms. Mbengue replied that the best wishes and best interests of a child would be communicated in court; however, the best interests would still trump best wishes of a child. She said the best interests of the child was still a paramount concern of the child welfare agency and courts, and it was usually in addition to the best interest that the child's best wishes were considered, especially if the child was a certain age.

Senator Cegavske asked if the National Conference of State Legislatures (NCSL) evaluated the costs of the different models of representation. Ms. Mbengue replied that she did not have the costs of the models, but would provide that to the committee.

Senator Cegavske asked if there were concerns with attorneys providing pro bono work and whether those attorneys were representing the best interests of the child. In addition, she recalled a former foster child in Clark County with 11 different foster care placements, and the child wondered why the foster care system did not require parents to pay back anything for treatment and services. The foster child's birth mother had seven or eight children, who were all wards of the state; she had a job and husband, but was never required to pay back any portion of the money the state paid for her children's care.

Ms. Mbengue was aware of a project through the American Bar Association that trained pro bono attorneys to represent children in the legal system. She stated that the point of the project was to train attorneys on the services and factors for children and families involved in the very specialized child welfare system. In addition, the NCSL Child Welfare Project examined legislation related to child welfare, and a number of states passed legislation requiring parents to pay back some portion of the money the state spent for foster care.

Speaker Buckley commented that she helped run the attorneys pro bono project in Clark County. In addition to the 10 staff attorneys with the Children's Attorneys Project, there were 320 pro bono attorneys representing children in the community. She explained that free continuing legal education was offered to attorneys if they took a case pro bono. In addition, Clark County provided a free luncheon for pro bono lawyers

so they could discuss their cases. She added that every attorney had a mentor and training was provided by a child welfare judge, another attorney, advocate, or sometimes a national speaker. Some attorneys were previous CASA workers and represented the best interests of the child; attorneys were self-directed representing what the child wanted, and often became fierce warriors for children. Speaker Buckley reiterated that the pro bono attorneys were champions for children in the communities and having an active strong pro bono program complimented the work of all involved in a case.

Senator Wiener added that Speaker Buckley understated the impact of the work being done for child welfare cases in Clark County. She said that there were law firms in Clark County that required attorneys to take on one child welfare case a year. In addition, some attorneys would take 10 to 20 additional child welfare cases, and once the attorneys were involved in their first case, often child welfare became a lifelong commitment for those attorneys.

Judge Joanne Brown, Consultant, Institute on Law and Public Policy and Mark Morris and Associates, began her presentation by stating that she wanted to follow up on the experience of the child welfare agency and District Attorney's role in Florida. She stated the system for representation of children approved in legislation and piloted in Florida had some basic problems. She stated that the core frustration with the attorneys was the lack of the attorney client relationship with the social workers who come from the privatized system, or with the investigators, who were still employees of the state Department of Health and Human Services. She said that Florida struggled with many of the issues that social workers faced of not being represented in the proceedings. Judge Brown said it was interesting to hear the complaints and feedback from attorneys, because she usually received feedback on the two models of representation from judges or social workers. Judge Brown added that the attorneys were low paid for the expertise required of them. She noted it was a work in progress and interesting to look at, but not a resolution to the issue of providing competent representation to the agency and providing what the court needed from agency representation.

Judge Brown stated that she had firsthand experience in the area, from consulting for the courts, working in the criminal justice systems, corrections, and juvenile justice systems. She was familiar with the issues, specifically in the last 6 years as a consultant for state and local courts, and child welfare agencies in more than 30 states, including Nevada. Judge Brown was pleased to be invited by NCSL to participate in the discussion of agency representation in dependency proceedings. She noted it was a big responsibility to be the "eyes and ears" for the Nevada Legislature on child welfare and juvenile justice, and the committee had tremendous responsibility for the well-being of the most vulnerable children and families in the state.

Judge Brown noted that the country moved toward improving how to deal with abused and neglected children over the last decade and how to meet the needs of the children in the long-term as opposed to the short-term. She said a lot of research was available from reviewing pivotal issues in child abuse and neglect cases, as well as successful

projects from other states. The standards by the American Bar Association (ABA) were useful and important, but the pivotal reason they were so important was because they were issued by the ABA Congress of Delegates, not a body known to dabble into the juvenile justice, problem solving court models, or into communities and families. The ABA Congress of Delegates has approved separate standards of practice for lawyers who represent children, parents, and the child welfare agency, recognizing the increasing complexity of this area of law and need for competent and consistent legal representation. Judge Brown stated for child welfare law to receive the same status as criminal law, tax law, civil litigation and immigration law as a legal specialization was huge from an attorney's perspective. Judge Brown said the ABA elevated enormously in this level of law practice, and combined with the continuing and intensive interest, funding and commitment from the federal government and Congress to help states improve how to respond to the needs of children and families has coalesced to the point of asking core questions about the representation models, which really reflected the unity of a more sophisticated level of the sense of public responsibility to children and families. Judge Brown noted that the standards regarding agency representation were parallel in many ways to the standards for attorneys who represented children and parents, because of the shared responsibilities and the focus on the unique relationship between an attorney and a public entity. She noted that some states were going statewide in terms of requiring certification, specifically for attorneys who represented children, which was another example of the increasing level of sophistication.

Judge Brown explained that there were two primary models of representation – the agency model where the identified client was the child welfare agency, social services department, or Department of Health and Human Resources. Although there was not a personal attorney client relationship with the individual social worker, there was within the official capacity of the social worker. The second primary model of representation was the prosecutorial model – the people and the state were the client, and there was no attorney client relationship between the prosecutor and agency or individual social worker. Under the prosecutorial model, the prosecutor was not bound to advocate on behalf of the agency. Judge Brown stated when looking at legal ethics one of the core principles was who owned the case and the evolution of what competent representation had to do with the duty owed to the client. In the prosecutorial model, the client was the state or the people, and the prosecutor did not own the case as in an attorney client relationship with the client. For example, in a personal injury case the client would seek an attorney and the client would decide how to proceed with counsel and how the case would settle, which did not apply in the prosecutorial model.

Continuing, Judge Brown stated that one of the questions on the two models was how to measure the differences. She said that courts were reluctant to be measured, and judges do not like to be judged; however, with the increasing advancement of technology and volume into the courts, and the increasing mandate to be accountable for what was done in courts, more technology was available so standards could be set in courts. She noted that court systems have jumped on the possibility of better managing cases and the time and resources spent in court. The courts could now define what was successful, and although it may be a challenge to get a defined criteria

for success, success could be measured with data to show what was being done and if it led to the anticipated goals. Judge Brown noted that in courts handling civil cases, case management has become a common language, such as the use of rocket dockets, and trying to triage cases so resources were spent where best needed and the cases go to trial as quickly as possible. In addition, even in the criminal cases, many states set performance measures, such as timeliness, reducing the number of continuances. Also, studies were commonly conducted regarding the number of cases filed, dismissals, when cases settled, plea bargaining, and the number of cases to trial. Aging data was also available for judges on the length of cases and the time between arrest in the criminal case and resolution of that case.

Judge Brown noted that studies were constantly being done on the adequacy of representation, specifically in the area of representation of indigents due to excessive caseloads and the constitutional dimensions of the right of representation. She was unsure of the measurement of the prosecutorial and agency models, but was aware there were ways to measure other criteria. Judge Brown noted when thinking about the evolution of dependency proceedings and dependency law and the "professionalization" of legal practice in that area, states had to be mindful that this was a different kind of court, it was a problem solving court, and even though there were important constitutional rights at the core of the proceedings, the decisions made by judges were some of the most profound decisions. She stated it was a court and case authority, mandates from legislators, and policy from child welfare practice that was focused on how to determine if a child could safely remain at home and if resources could be put in place to keep that child in their home, if possible, and identifying the problems in the home. If a child was removed from his home, how quickly could that child be returned home safely after interventions were implemented for the parent and the conditions and problems in the home were identified, which was the parlance and the language talked in the courts. Judge Brown said that the focus was on families and family dynamics, which was complicated and often why judges with the most seniority and experience presided over civil and complex criminal cases. She stated there were attorneys on both sides of cases, which was intellectually and emotionally challenging, and the judge was trying to manage many different demands on their decision making. The complexity of dealing with family and problem solving in a courtroom with third parties and information important to the case, and the "gray area" decisions, added a dimension of challenge to the work that went back to having good lawyers.

Judge Brown stated that given the messy courtroom and the complexity of issues dealing with family dynamics and the uniqueness of each family, there were levels of complexity that would make a good soap opera. The courts were dealing with the problem solving environment, complexity of subject matter, and the question of whether attorneys had the resources and capability to present the best evidence to the judge, which allowed the judge to make the best possible resolution of issues.

Continuing, Judge Brown said the knowledge in child welfare law was complex – there was always more to learn and attorneys and judges had to be on top of the issues. She noted that there was medical research on substance abuse, sexual abuse of children,

secondary violence, parenting issues, along with other issues that went back to the experts in the field that could provide the best information to the court to make the best decisions for the child. Judge Brown noted that other than experts in specific areas, the child welfare workers were relied on to be the experts in the field of child and family welfare.

Judge Brown explained that the prosecutorial and agency model related to the expertise of the child welfare worker in different ways. The focus in the prosecutorial model was instance based – the facts, what happened, was there a crime, who did it, what exactly did they do, and what was the punishment, and that model was in contrast to dependency court and dependency proceedings. However, the prosecutorial model was the reference point that was the basis of the exercise of independent judgment by the District Attorney, county attorney on a criminal case, or the Attorney General on a criminal action. The attorney's independence and focus on who did what, when, and where, was critical in the criminal case to maintain the system of justice that was in juxtaposition to the messy court and proceedings having to do with families. Judge Brown stated that many experts were concerned about whether the court was getting the advantage of the expertise presented by the social worker and whether that social worker was getting enough good advice to make those gray area decisions and discretionary calls that were essential to the case. In addition, there was concern whether the social worker was going to be as candid, either in their reports or testimony to the courts, if they did not have the ability to describe all aspects of the case in confidentiality with the attorney representing them in court. She stated other experts have talked about the challenges of the prosecutorial model in the context of what goes on specifically in the courtroom.

Judge Brown noted that until recently child welfare representation was not considered a career-making area of law practice and the odds of a new attorney going into the field of child welfare were slim. Most new attorneys entering the District Attorney's Office had a goal of prosecuting crimes, and child welfare and juvenile justice representation was seen as a training ground and provided trial experience to move to another area of law. Judge Brown noted that generally there was a lack of emphasis on developing a specialty or specialization, and there was a lot of opportunity for attorneys to use personal beliefs rather than relying on the expertise of the child welfare worker. In addition, there was a lot of opinion-based decision-making that occurred in cases, and other than the court, there was no examination of the opinions expressed by the attorney operating under the prosecutorial model, which was important because there were critical points in the dependency proceedings where good counseling was essential to the gray area judgment calls. Judge Brown noted that determinations needed to be made about whether a child could remain at home, which was a judgment call, and there was a whole system around risk and safety that forced workers to work through a very systemic step-by-step procedure in order to reach a conclusion, which did not involve a personal opinion. Judge Brown indicated there were decision points that had to do with the creation of the petition and an appropriate disposition plan for families. In addition, there were decision points to determine if a case plan was tailored to the needs of the parent and child, and whether everyone involved was legitimately

working toward remediating the problems that led the child into care. Another point was whether the parent was ready to have their child returned home, or did it look like the child would never be able to safely return to their parents, which were judgment calls that required expertise from the child welfare worker and the exceptional attorney with a background in child welfare law, which was not seen in the prosecutorial model.

Moving to the agency model, Judge Brown said there was an attorney client relationship in the agency model and attorneys were required to be guided by the expertise and direction of the client. She noted that the parallel ethical obligation that offered a "check and balance" on the relationship was the attorney in an agency model was required to counsel the client. The counsel within the context of the attorney client relationship provided the balance to the professional judgment of the social worker in a case.

Judge Brown stated there was an array of state and federal decision points with standards of proof that had to do with the sufficiency of evidence, and the extent to which the child welfare worker and the attorney, who were representing the child welfare worker as a witness, could communicate accurately and completely about those standards and evidentiary requirements, which were critical to the court getting the evidence it needed to make determinations essential to families. Judge Brown stated that there were very serious ethical considerations. She referenced an article on the legal ethics, *In Support of an Agency Model of Legal Representation for the Child Welfare Agency: The Need for More Comprehensive and Specialized Legal Representation Provided Consistently at the Statewide Level*, written by Kimberly Halbig-Sparks, Consultant, American Bar Association.

Judge Brown mentioned if a client was represented by an attorney and there was an attorney/client relationship, the client had the right to confidentiality and everything discussed about the case was confidential. In addition, the client had the right to communication – the attorney had to provide all information received about the case, and be available to the client, which was only required as a result of the attorney/client relationship. The client owned the case and provided direction to the attorney regarding how the case proceeded, not necessarily on a tactical side, but in terms of the outcomes. Judge Brown indicated that some of the important outcomes that could lead to a conflict between the social worker and the attorney when the attorney was not the client's attorney was whether both parties agreed to dismiss allegations in the petition; agreed to revise case plan requirements; agreed to a continuance; or agreed that a parent was ready to have their children returned home.

On the agency model, the attorney was not a "blind" agent of the client. Judge Brown stressed the importance of the child welfare professionalism and expertise and the necessity that information gets to the court so the best decision could be made for the client. Attorneys had an ethical obligation if there was a conflict, even if the attorney was representing an agency, and the attorney would have to withdraw from the case if they could not represent the agency.

Judge Brown stated that in the prosecutorial model there were questions about maintaining adverse interest between the attorney and client. Typically, the primary function of the District Attorney's Office was to prosecute crimes and when there was a criminal case of child abuse along with a dependency case, it produced extremely complex ethical issues, and the ability to maintain a "glass wall" between the two cases caused many states to look at a long list of rules regarding the management of District Attorney's Offices, the physicality of District Attorney's Offices, and the requirements that the two functions be kept separate.

Nationally, there was a change in terms of representation; however, the overall direction from the work Judge Brown has seen in her colleagues, was moving toward more professionalism, specialization, and focus on giving courts sufficient time to hear evidence in complex cases. The permanency cases of children and families that do not require the full attention of the court in adversarial settings were diverted earlier in the system, so when there was a contested matter, such as a permanency hearing or termination of parental rights, the number of cases in percentage to total caseloads was small, and the court had sufficient time to give full attention to the case, which was lacking in the current system. Judge Brown indicated that helping the court manage the tremendous caseloads was critical for the attorney, in both the prosecutorial and agency representation models. Judge Brown noted if there was a model that set attorneys apart from the process of trying to find ways for children and families to live safely together and avoid re-abuse with no obligations for doing that, and the only focus was on the adversarial part of the proceedings, she believed there was a different investment in terms of making sure the court did its best in terms of case management.

Speaker Buckley asked Judge Brown what other states did when the child agency representation model was utilized and there were disputes. She noted that Clark County had social workers that were wonderful, and some not as good, either because they were new on the job or because their judgment was faulty, and she wondered how that was accommodated in the agency representation model.

Judge Brown replied that typically the process was formalized and hopefully issues could be resolved by the social worker going to their immediate supervisor. She stated that New Jersey had a statute, a formalized "kick-it-upstairs" process for immediate mediation of conflicts before a situation got out of control. Basically, someone representing the attorney and social workers met to resolve the issues, similar to an employee grievance model. Judge Brown was aware that New Jersey had a class action lawsuit that led to tremendous work for the Legislature and Supreme Court, and one of the key issues in the lawsuit was the lack of confidence in child welfare workers. The State of New Jersey created a mechanism of discussion and resolution, with a commitment by the agency that they would remove the inappropriate social worker if necessary, in addition to a commitment from the attorney to abide by the resolution.

Speaker Buckley asked Judge Brown if she saw more evidence in the use of one model versus the other for social worker recommendations being more in line with the practice and standards appropriate for children. For example, if a social worker was making

mistakes that could potentially hurt children, was that recommendation more likely to change if the social worker had an attorney advisor and dispute resolution process in place so upper management could get involved to ensure the recommendation took into account the best interest of the child.

Judge Brown replied that she hoped a good supervisor would be doing that, but there were also challenges with supervisors. She stated that she did a lot of work in Yellowstone County, Montana, and the social workers in the state complained there was not enough feedback from the attorneys. Montana has a county attorney system equivalent to the District Attorney's Office that investigated the civil and criminal side, in addition to the prosecutorial model. Yellowstone County was diligent in meeting with their county attorneys, and the attorneys took the position that they were only engaged in the process at certain steps. Judge Brown often heard that social workers would feel more confident in terms of preparing for court, which meant more questioning of the adequacy of their opinions, more willingness to look at the pros and cons of opinions in that context in which they were preparing for court, if they had an attorney knowledgeable enough to provide guidance. Judge Brown has been to other states where the social workers wanted the attorneys out of their business, but she believed when there were a lot of turnover and inexperienced social workers there was a desire to get as much input as possible, in the context that the case may go to court.

Senator Cegavske asked if children were currently represented by the District Attorney's Office in Nevada.

Responding, Judge Brown stated that under Nevada law each child had the right to a guardian ad litem (GAL), which could be an attorney, and the judge had the authority or discretion to appoint an attorney to represent the child. She added that the attorney could come from Washoe Legal Services or from a private appointment list, similar to what was done in the rural counties.

Senator Cegavske wondered why the Attorney General did not represent the state agency if the Attorney General represented the Governor.

Judge Brown replied that she was not familiar enough with Nevada law to provide an opinion, but was aware in many states that happened. For example, by statute in Arizona, the Attorney General represented the agencies and the agencies were the Attorney General's client, so the attorney/client relationship was established at that point. She said it worked in Arizona and other states, and it was through constitution in those states. She indicated that it did not have to be authorized through constitution, and the Attorney General could be authorized to take on the representation and create an attorney/client relationship. Judge Brown stated that Nevada had an unusual system in terms of the different counties – Clark County, Washoe County, and the rural areas, so DCFS would be the state agency.

Speaker Buckley stated that prior to integration when the state handled all child welfare, the Attorney General's Office represented DCFS, and had an attorney/client

relationship. When child welfare services were transferred from the state level to Clark and Washoe County, the District Attorney took over representation of the child welfare agency since it was not a state agency, and the District Attorney's Office was concerned about some of the decisions made by DCFS. Therefore, the question becomes would better decisions be made if there was an actual attorney/client relationship with a way to bump the case to the top if a dangerous decision was contemplated, or would better results happen if the state continued to engage in the prosecutorial model of representation. Speaker Buckley noted that currently the state had a prosecutorial model, which was not working very well in terms of outcomes. Often, there were two attorneys in court from the District Attorney's Office arguing against each other; one representing the agency and one representing the public, which she believed ended after questions were raised about the process. The Children's Attorneys Project in Washoe and Clark County represented children, but only represented half the children in the system in Clark County. She noted that ironically, Clark County spends $3.0 million paying for representation of parents in abuse and neglect proceedings, but only paid $400,000 for children.

Senator Cegavske stated that Legal Services represented half of the child cases in Clark County and wondered who paid for that service. Speaker Buckley replied that Clark County paid a portion – approximately $400,000 for the children compared to $3.0 million for the parents, and the remainder was primarily paid through private philanthropy. Speaker Buckley stated that all services in Clark County went through the Children's Attorney Project, and Washoe Legal Services provided services in Washoe County. In addition, there were attorneys that volunteered in the rural communities; however, most attorneys were appointed. Speaker Buckley added that the state paid for half of the services, the federal government paid half, and Medicaid paid for some services.

Chairwoman Leslie asked if the Attorney General still had attorney client privileges with the rural counties in Nevada. Speaker Buckley replied that it was her understanding that the Attorney General still maintained services for the rural counties.

Marvin Ventrell, Executive Director, Juvenile Law Society (JLS), testifying via phone, thanked the committee for the opportunity to provide testimony. He thanked Speaker Buckley for her commitment to children and families in the State of Nevada, which was recognized nationally. Mr. Ventrell said that JLS was concerned with providing access to justice for children and what that meant in this context was helping build fair due process-based systems for the resolution of issues involving children. Mr. Ventrell stated that prior to JLS he was the Executive Director of the National Association of Counsel for Children (NACC), and in that capacity he was charged with going to the American Bar Association (ABA) to request that child welfare law be designated as a legitimate legal specialty, which has happened. In addition, he was charged with writing the curriculum and book, along with drafting the test for certifying lawyers as specialists in this area, and was intimately familiar with the complexities and specialization in this area. He stated that the NACC measured the competence of lawyers who represented state agencies, or children and parents.

Mr. Ventrell indicated that there were three distinct independent interests in all child welfare proceedings – child welfare agency, parents or caregiver, and the child, and as the law evolved, he believed each of those distinct parties must be competently represented if there was hope of producing justice in the child welfare system. He stated that to suggest as cost saving measures or simply uninformed measures that those independent interests were co-represented across attorney lines, was dangerous and inappropriate. He indicated that JLS, ABA, and NACC supported the notion that all three interests – agency, parents and child be independently and competently represented. He hoped the members of the committee were dissuaded from the notion that sometimes existed that the model of representation for the state or agency had something to do with the representation of children. Mr. Ventrell said that there was the idea that choosing either model of agency representation, the agency attorney or prosecutor, somehow served the interest of the child, which was not the case. The child was represented independently by a GAL, or attorney, or whatever model chosen, and within that there was debate about best interests and expressed wishes, which he would not discuss at the meeting.

Mr. Ventrell understood the primary issue was choosing the best model for state or agency representation and suggested that the key was to figure out how to provide the most competent representation. He believed that competence was a function of many things, primarily, talent (education and training of lawyers that do the work) and the model used to operate the system, because both of those were needed to be effective. He said there could be highly effective trained attorneys who were forced to function within a non-functioning system, so he believed there should be concern with finding highly competent talented attorneys and providing them with a system that allows attorneys to work effectively.

Continuing, Mr. Ventrell stated that the critical issue was which model worked best. He stated that Judge Brown mentioned an article written by Kimberly Halbig-Sparks, Consultant, ABA, entitled *In Support of an Agency Model of Legal Representation for the Child Welfare Agency: The Need for More Comprehensive and Specialized Legal Representation Provided Consistently at the Statewide Level*, on the agency versus prosecutorial model, which he recommended reading. He believed the article was much more than an academic issue and was currently the best writing to understand the pros and cons of the various models of representation. The article also clearly made a pitch for the agency model and was highly critical of the prosecutorial model. He suggested that there was semantic disconnect and often it was said which model was best, agency or prosecutorial, which he did not believe was the correct way to say it. He suggested a better way to say it was which model was the better manner in which to prosecute child welfare cases. In one instance the case was prosecuted by an agency attorney, and in another instance the case was prosecuted by a traditional prosecutor, but in both instances the attorney brought the action.

Mr. Ventrell stated that the other semantic inaccuracy was that the agency could be represented under one of two models – the agency model or prosecutorial model, which he took issue with. He indicated that the prosecutorial model does not represent the

agency, so the threshold reality was that if the agency was sent to court under a prosecutorial model, the agency was unrepresented. Mr. Ventrell believed it was intellectually dishonest to suggest that the prosecutor, in a prosecutorial model, from the District Attorney's Office, county attorney's office, or even the Attorney General's Office, represented the agency, which it clearly did not, and did not have a client in the agency. Under the agency model, the attorney was bound by that client, the agency. Mr. Ventrell suggested that the committee choose whatever model a jurisdiction thought was appropriate, but be intellectually honest that the agency was being sent to court without counsel in a prosecutorial model. The question that needed to be determined was if that mattered. Mr. Ventrell stated it mattered to him because in its infinite wisdom, the people and the Legislature of the State of Nevada created the child welfare agency for the purpose of caring for children and families in these circumstances. Therefore, to create an agency to take care of business, the state was vesting authority in the state agency to do the work, and sending the agency to court without representation was a questionable maneuver in his view. He recalled in the 1960s there were rarely these types of courts in existence, and child welfare was just coming into being, agencies developed, states adopted and created the complex agencies, and the law grew and agencies needed to go to court. Agencies needed lawyers and it was obvious they would turn to the local prosecutor because child welfare was now part of the state and needed help in court. Mr. Ventrell stated that he looked at this as an evolutionary process and the circumstances of the county attorney or prosecutor helping in a case was done out of necessity, not because it was the best issue. However, as agencies grew they wished that they could have their own lawyer, which has happened in many jurisdictions. Mr. Ventrell believed the committee was struggling with whether it was time for Nevada to invest in a lawyer for the state child welfare agency, the agency created by the state. He added it was expensive to have attorneys, but it was also expensive to have prosecutors, although he was unaware of data showing which was more expensive. However, as a policy pundit, Mr. Ventrell was aware that it was easy for him to talk about the financial aspects of the lawyer versus prosecutor, but he believed there were some things that were simply worth the money.

Concluding, Mr. Ventrell noted when looking at the role of the agency there was a tendency to say the job of the agency was looking out for the best interests of the child, which he believed was more complicated than that. He stated that it was very clear under federal law, which the State of Nevada and every other state in the country adopted, that the state child welfare agency had two jobs – to protect the child and preserve the family when possible. Therefore, there were two competing, sometimes aligned interests at work, and it was not the job of the child welfare agency to represent the child, which he believed was a misstatement. The child welfare agency does not represent the child, but one of its concerns was the welfare of the child. In addition, under federal law, another concern of the child welfare agency was the preservation of the family, which was why its independent interest of preservation of the family was different from the interest of the parent and child.

Chairwoman Leslie thanked Mr. Ventrell for his testimony, which was presented in terms that the committee could understand.

Speaker Buckley asked Mr. Ventrell if he was aware of any jurisdictions where the child welfare agency has its own counsel and the District Attorney or Attorney General's Office had an advocate for the child to intervene in cases when help was needed.

Mr. Ventrell replied that he was not aware of that being in place in any jurisdiction; however, it could exist. He stated that people were concerned about checks and balances, as they should be, but one of the concerns was the conflict issue, which was related to Speaker Buckley's question. Conflict resolution policies within agency/attorney models could be developed, and a good policy was developed by the ABA. Mr. Ventrell explained that the social worker in an agency model was not the client, the agency was the client and the social worker was simply one of the agents of the agency. Therefore, if an agency attorney found the social worker out of line, that attorney had the ethical duty to educate and discuss the appropriate course of action with the principal, which was one reason why he thought people should be less concerned about the conflict. However, the Legislature created DCFS, and for a prosecutor to say that an agency was not making good decisions was arguably a prosecutor acting beyond the scope of their job. Mr. Ventrell stressed it was not a local prosecutor's job to second guess the agency – the agency was created by the people and the prosecutor had a job to do, and second guessing or policing the agency was completely beyond the scope of the prosecutor's job.

Assemblywoman Mastroluca asked Mr. Ventrell about the conflict resolution in an agency model versus conflict resolution in the prosecutorial model.

Mr. Ventrell replied he has seen chaos because the conflict occurred when a prosecutor disagreed with the agent of the agency. He explained that he started his work under a prosecutorial model in the State of Montana, and in rural areas or in areas with a prosecutor devoted to the specialty, which was rare, there was an attempt by the lawyer to work with the caseworker to resolve the issue, and the supervisor would be brought in to discuss the conflict. If a prosecutor was of the mindset to do that, because they believed that alignment was important, then that was how the prosecutorial model worked. Mr. Ventrell stated the problem was that there was no requirement for the prosecutor to do that, and the prosecutor could simply say that the agency was not his client and not worry about the conflict. In order for the conflict to be well resolved in a prosecutorial model, it was a voluntary resolution and the prosecutor was motivated by integrity to do so, and there were no guarantees that would happen. There was no required impetus for resolution of the conflict in a prosecutorial system.

Janice Wolf, Deputy Directing Attorney, Children's Attorneys Project, Legal Aid Center of Southern Nevada (LACSN) stated that she was present to support the agency model of legal representation. She indicated that she has been a practicing attorney on child welfare issues for 20 years; 15 years in Hawaii; and the last 5 years in the State of Nevada. The Children's Attorneys Project (CAP) was created in 1999 with the idea of giving children a direct voice in the child welfare system and to provide independent legal representation to those children. The CAP followed the American Bar Association

(ABA) and National Association of Counsel for Children (NACC) model of representation, and CAP represented children directly – the attorneys were their direct independent voice and did not attempt to substitute their judgment for the judgment of their clients. Ms. Wolf stated that through this model of representation attorneys found that children were smart, resistant, and aware of what was good for them; most children were aware of what was in their best interest more often than the adults being paid to make decisions for them. For example, attorneys had children that wanted to return home with the hope their parents would be able to help get them to the point of a safe return. In addition, there were children that were aware that their parents cannot safely parent them at home. Ms. Wolf noted that she had clients that told her that they loved their parents but were aware that their parents needed to be in residential drug treatment in order to be a good parent. In addition, she had clients that could not deal with their parents not showing up for scheduled visits, which was frustrating. Ms. Wolf stated that often clients knew what was good for them and what their parents were capable of doing. Also, there were clients who were aware that being raised by the state was not a good thing and the state was not a good parent for children.

Continuing, Ms. Wolf said that the Legal Aid Center of Southern Nevada (LACSN), represented approximately half of the children in foster care, and an additional 320 attorneys were trained by LACSN to represent children in the public child welfare system. Ms. Wolf indicated that she came to the meeting to discuss the agency model of representation and role of the District Attorney in child welfare cases. She noted that before the county took over the child public welfare system in Clark County, the Attorney General represented the agency, which she believed worked well. Ms. Wolf stated that LACSN's concern was not whether they agreed with the District Attorney as a matter of position, but their position for supporting an agency model was to get the best information to the people charged with making decisions for children in the system. She reiterated that LACSN represented half of the children in foster care and was concerned about the other half of the children without a voice and dependent on a public welfare system making important decisions for them. In addition, LACSN wanted all children and parents to have attorneys, as well as the counties, because the counties were making decisions for children and providing input to the judge who ultimately made a decision. Ms. Wolf noted that it was often said there was an independent voice from the District Attorney and agency, but ultimately the quality of the decisions, future, and outcomes were made by a judge in court. The judge had an important role and needed the necessary information to make an informed decision. Therefore, Ms. Wolf stated that it was important for the specialists and child welfare workers to provide the best advice to help make the best decisions for children. She admitted that attorneys had information that was not accessible to the county agencies, which would help the agencies make better decisions.

Ms. Wolf stated that she wanted to address how the confusion over representation manifested itself. She said that sometimes attorneys did not know who represented the agency or if there were agents of the agency, and caseworkers believed they were being represented by the District Attorney, when actually there were no attorneys in court for the caseworker or county. Often judges did not to want to make decisions that

had a fiscal impact to a county without having an attorney present to advocate and be a voice for the county. Ms. Wolf stated if a case had a fiscal impact to the county, an attorney could represent the county on the monetary issue, which did not happen if an attorney was representing the agency from the beginning of the case and in court with the county.

Chairwoman Leslie asked where the Legal Aid Center of Southern Nevada (LACSN) found attorneys when there was a case with a fiscal impact to the county.

Ms. Wolf replied that currently there were two civil deputies that represented the agency, but their role did not include going to court.

Concluding her presentation, Ms. Wolf believed that outcomes for children and families would be better if the agency had the needed information to make better decisions for children in the child welfare system. If the agency was not represented, she asked who was helping children and guiding them, which was currently unknown. Ms. Wolf expressed that the current system was not working – the system worked better when there was agency representation under the Attorney General's model; the ABA recommended it and jurisdictions with better systems utilized agency representation.

Senator Cegavske indicated that she heard there could be three attorneys for one case in a courtroom. She wondered how a child would benefit with attorneys representing different entities, which seemed overwhelming and convoluted.

Mr. Wolf replied that it was not unusual to have three or more attorneys for children if there was a conflict, which was frightening for children in court. She believed it was important for children to have their own representation in court. Sometimes there was a CASA representative advocating for the best interest of the child, caseworker advocating for the family, or District Attorney with another opinion, but children needed to know that there was one person representing them, which was empowering and the one factor that rises above all of the other things identified as being difficult. Ms. Wolf stressed that children believed they were finally being heard when they had an attorney and there was only one person representing them.

Chairwoman Leslie stated it was helpful to go back to the three interests – the agency, parents, and the child. She said there may be six attorneys involved in a case because of family dynamics and the complicated situation, but the committee really needed to focus on the prosecutorial model versus the agency model and whether the agency had an attorney.

Ms. Wolf stated there were concerns raised about whether the agency was making good decisions, or whether an individual caseworker was qualified, and it would be helpful for children if the agency had an attorney that was involved from the beginning of the case until the case exited the system.

Assemblywoman Mastroluca commented that she received a copy of a survey from the National Child Welfare Resource Center on Legal and Judicial Issues from 2009, which was sent to all 50 states and the District of Columbia, and it was unclear in the survey if the agency attorney represented the agency or the people in the State of Nevada. She stated that Nevada was unique on this issue and it was good the committee was looking at representation in Nevada. Assemblyman Mastroluca asked Ms. Wolf if it was difficult for a judge to make a decision because of conflicting information and opinions that could have been resolved earlier.

Ms. Wolf replied that if judges had "true faith" in the decisions and expertise of the agency, she believed it would simplify things and the faith would come from the fact that the agency had knowledge of the process and was legally guided through the process. She noted that the 2009 Legislature passed Assembly Bill 364, which were the mental health modifications to Assembly Bill 369. Assembly Bill 364 contained specific legal requirements that were put upon the individual agency responsible for child welfare, such as advising a child of their legal rights when placed in a locked mental health facility. Currently, the agency did not have lawyers and she was unsure the agency knew the requirements under A.B. 364, and as a result, the agency was getting into trouble, which was one example of why agency representation would make a difference in the civil rights of children.

In order to accommodate the next presenter, Agenda Item VII, Presentation Concerning Sharing of Information Between Child Welfare Agencies and Juvenile Justice Courts, was taken out of order.

VII. PRESENTATION CONCERNING SHARING OF INFORMATION BETWEEN CHILD WELFARE AGENCIES AND JUVENILE JUSTICE COURTS.

This agenda item was taken out of order.

Judge Francis Doherty, Presiding Juvenile Court Judge, Family Division of the Second Judicial District Court, Washoe County, Nevada, stated that the committee expressed interest at the April meeting on follow-up information on the "crossover" youth in child welfare and juvenile delinquency cases. She noted the issue raised at the meeting was regarding the federal provisions that required juvenile delinquently courts access to child welfare records in the jurisdiction of the court when a juvenile appeared for a delinquency proceeding. She indicated to the committee at the April meeting that she was going to look into the protocols and practices and provide additional research identified on the topic to improve the systems of response to children in the child welfare and juvenile delinquency system.

Judge Doherty indicated the most commonly used phrase to refer to children in both systems was crossover youth, which included children who initially had contact with the court system in the dependency arena, and either simultaneous or subsequently had contact with the juvenile court system in the delinquency arena. Statistics have shown that children in the child welfare system had at least 11 times the increased likelihood of

coming in contact with the juvenile delinquency system. Judge Doherty noted that there was research supporting unified approaches to children in both systems, either because children skipped from one system to another or simultaneously appeared in each system. In February 2008, the ABA House of Delegates said "enough was enough" with respect to juvenile delinquents in terms of making sure juvenile courts had access to the child's history when the juvenile courts decide on disposition, treatment, and custodial placements. Even though the federal law under the Juvenile Justice Delinquency and Prevention Act required that records be made available to the juvenile court systemically across states, that information was not made available to courts in a holistic manner. Judge Doherty noted that legislation was needed to more specifically allow immediate access to child welfare and delinquency records, reports and orders to legal stakeholders in each action. Such legislation should include the following provisions:

- Youth child welfare records, including reports, recommendations and orders, should be disclosed to the juvenile delinquency courts for child treatment, custodial and case planning purposes, whenever the court encounters a child who was in the juvenile dependency system or has been in the juvenile dependency system.
- Youth child welfare records should be disclosed to the juvenile delinquency court, but not used against the juvenile delinquent in criminal proceedings or in juvenile delinquency proceedings. Therefore, the information was not to be used for purposes of prosecution and only used for planning and treatment.
- Youth child welfare records disclosed to the juvenile delinquency court should not be further disclosed beyond such proceedings, which under NRS 62 maintains that the juvenile delinquency records are similarly confidential to those in the child welfare arena if not more so.
- Youth in child welfare cases who crossover into the jurisdiction of juvenile delinquency court should not have their child welfare cases closed as a result of dual jurisdiction. Presently, Judge Doherty believed her colleagues would support the concept that generally child welfare cases in Nevada were not closed when a child entered the juvenile delinquency court. Although she has seen that in the past, she wanted to ensure Nevada did not go to a system of closing one case and opening another, and keep both cases open to address the child's ongoing needs in both arenas.
- Youth in child welfare cases who enter the juvenile delinquency system should continue periodic case reviews and permanency hearings in order to ensure their ongoing eligibility for Title IV-E of the Social Security Act.
- Judicial Districts have discretion to allow a single judicial officer to address post adjudicatory delinquency disposition in ongoing dependency cases where appropriate.

Concluding, Judge Doherty hoped that courts would give leeway to the local districts to come up with creative ways to respond to youth in a holistic manner, including but not limited to, allowing the juvenile court systems to adjudicate children in the juvenile delinquency court, but where appropriate, allow their disposition to be addressed in the

juvenile dependency court in order to create a holistic juvenile court response to children who touched both systems.
Chairwoman Leslie asked Judge Doherty for her written testimony since it contained suggested specific statutory changes to facilitate information sharing between the two systems.

Judge Doherty replied that the law existed at the federal level and it would be more effective if included in statute and state standards.

Senator Wiener asked about dependency court in the juvenile justice system. She wondered whether dependency was a reference to welfare or a generic reference to any child involved in the system.

Judge Doherty replied that juvenile dependency court was the child abuse and neglect court. She was referring to children that were in the child abuse and neglect arena and then entered the juvenile delinquency system, which was usually the flow. Typically, the children were challenged by their family circumstances and had a higher likelihood of entering the juvenile delinquency system as a result of those circumstances.

Chairwoman Leslie thanked Judge Doherty for her presentation.

V. DISCUSSION REGARDING LEGAL REPRESENTATION OF CHILDREN IN CHILD ABUSE AND NEGLECT PROCEEDINGS.

Amber Howell, Deputy Administrator, Division of Child and Family Services, DHHS, attending the meeting in Carson City, began her presentation by stating that the rural counties were in a unique situation and the county District Attorney normally provided representation for the agency in court cases, but the agency also received representation from the Attorney General's Office if there are differences of opinion with the District Attorneys, which worked well for the agency.

Chairwoman Leslie asked Ms. Howell if the District Attorney represented the rural counties and the Attorney General's Office represented the agency. Ms. Howell replied that Chairwoman Leslie was correct. She added that the child welfare agency had an attorney and there were attorney/client privileges. Ms. Howell stated that there were situations in the rural counties when the attorney for the District Attorney had a different argument than the agency's attorney, and when that occurred, the Attorney General's Office represented DCFS in the court proceedings.

Chairwoman Leslie said it seemed like the District Attorney's Office always represented the child welfare agency. Ms. Howell replied that the agency always had representation. In addition, each county in the rural region operated differently and in some situations the District Attorney met with the child welfare agency every week to discuss cases, while other counties meet monthly or as needed to discuss cases. Also, the agency met monthly with the division's attorney and there was good collaboration with their legal partners to help guide the agency in the decisions and actions they were

seeking. Ms. Howell noted that it was helpful to have representation and guidance from the legal side to help the agency justify decisions and determinations.

Senator Cegavske asked Ms. Howell for an example of why the child welfare agency needed legal representation.

Ms. Howell responded that there may be a situation where the agency wanted to terminate parental rights or remove a child from their home, which involved legal decisions. She said the agency spoke from practice decisions and when the agency believed they needed to move forward with a termination of parental rights, the agency wanted to ensure there was someone in court to discuss the legal aspects of the termination, guide the agency, and justify the reason for the decision. She stated that agency representation was another voice to ensure the agency stayed within its legal authority.

Senator Cegavske asked if there was an attorney for the parents to say whether there was an issue with the removal of a child or their rights being terminated, in addition to an attorney for the child to express the best interests of the child. Ms. Howell replied that Senator Cegavske was correct.

Chairwoman Leslie said it sounded like the agency attorney was defending the agency, but the attorney was really guiding the agency to ensure the decisions and representation to the court was within the legal boundaries of the requirements of the agency.

Kevin Schiller, Director, Washoe County Department of Social Services, thanked the committee for the opportunity to speak. He noted that in the interest of time he would summarize the agency perspective on legal representation from the social services side. Mr. Schiller said that between 1992 through 1995, 11 deaths occurred in Washoe County, and as a result, a grand jury report was published in 1995, which was significant in terms of the development of the Department of Social Services. He noted that one of the key recommendations from the grand jury report was communication between the Department of Social Services and District Attorney. The report was significant and detailed in terms of discussions and the need to have the “left hand” and “right hand” communicate better about the safety and the interest of the child. Mr. Schiller noted that what occurred from that point forward, which he believed was an evolution, was the Department of Social Services and the District Attorney partnered in terms of how to improve the system. One of the key discussions that came from the grand jury report, and area focused on in terms of communication, was whether the system was communicating about the child, was there history, and were the systems operating within its authority. He noted that one of the major issues referenced in the report was operating in the best interest of the child, and there were no attorneys representing children at the time the report was published. As a result of the grand jury report, a “team process” was developed that included model court involvement and legislation with transparency and communication, specifically within Washoe County Department of Social Services. Mr. Schiller believed the attorneys for children were the

key component and Washoe County funded the attorneys at a significant level. Currently, 50 percent of children in Washoe County were represented by attorneys, but the county had a tendency, whether at a child and family decision meeting where representation was an important aspect, or removal of a child, tried to get all parties in a room: the public defender, the District Attorney, the children's attorney, a CASA, although they did not usually see a CASA, and evolved to a process of frequent communication. Mr. Schiller stated that in the instance of a conflict with the District Attorney that could not be resolved, the issue would then go to the Attorney General's level in most instances, which he has not seen recently. Mr. Schiller stated that with the child's attorney, public defender, District Attorney and social worker, issues were resolved with the team concept, and there was a huge evolution in practice over the last two years in terms of how that process occurred. The number of children in legal custody in Washoe County dropped by approximately 200 children, which he believed was a result of the teaming approach.

Continuing, Mr. Schiller stated that the last matter he wanted to emphasize was the issue of outcomes for the Washoe County Department of Social Services. For example, he would use the issue of placement of children to show how teaming had an impact on children in custody. He said it was hard to provide the committee a flavor of how dynamic the team meetings were and the checks and balances that occurred in that process, which was working well for Washoe County Social Services. In the federal outcomes in the Child and Family Services Review, one of the key issues was focusing on the need to improve the timeliness to permanency, which was one of the most significant outcome measures. He emphasized that the agency had to change its practice of timeliness to permanency for children and a system needed to evolve to accomplish that goal. Mr. Schiller noted that one of the key players in that system was the public defender, District Attorney, and the attorney for the children to help the agency move in that direction. He emphasized from the perspective of Washoe County Department of Social Services, the system was operating in a different world because he believed the system had the ability to move policy and shift the system and to work within the auspices of the court.

Senator Cegavske said that Mr. Schiller mentioned that currently only 50 percent of children in Washoe County Social Services were represented by an attorney. She asked for clarification on the 50 percent of children in Washoe County without representation.

Mr. Schiller clarified that approximately 50 percent of children in legal custody in Washoe County Social Services were appointed attorneys through Washoe Legal Services. A percentage of the other children could have a Court Appointed Special Advocate (CASA), but actual representation for children was 50 percent. He added that funding was the primary issue for lack of representation of children. Currently, Washoe County funded approximately $500,000 toward Washoe Legal Services to support that cause, which he believed was funded for the next three years. He indicated that Washoe County has invested in the fact that it was a huge check and balance in their system and the county needed to do better. On the budgetary side,

Mr. Schiller stated that Washoe County was funded out of Washoe County District Attorney's Civil Division. He stated that there were six Deputy District Attorneys in the Civil Division; 1.75 of the District Attorneys were funded through the state; and the remainder were funded through the county. In addition, one legal secretary was funded through the state.

Mr. Schiller believed the current system in Washoe County worked fairly well, based on how it existed. He stated that Washoe County had a prosecutorial model by nature, but the reality was that Washoe County mastered the art of how to work within the guise of the system, which has been fairly successful. Mr. Schiller was torn in terms of the process, but he believed the key component that created the outcomes seen was how the representation was defined.

According to the testimony of Mr. Schiller, Speaker Buckley believed that Washoe County Department of Social Services was functioning with the agency model of representation, because the county received legal input and the best potential resolution was found for children even though there could be a disagreement. She said that Washoe County Social Services was troubled at one time, which was where Clark County was currently. She wondered how Clark County could get to where Washoe County was currently and the District Attorney's Office and agency were in agreement, and the judge had the best possible information on a case.

Mr. Schiller replied that he was new to his position during the troubled times in Washoe County, so his concept of what happened during that time was limited. Previously, Washoe County was in the same situation as Clark County, so the county has seen progress and knows how the system worked. If the Washoe County District Attorney was speaking at the meeting, Mr. Schiller believed he would say that currently Washoe County had public representation to the degree that it was a public agency, and the District Attorney was representing the public and ensuring the safety of children. From a statewide perspective, what can be learned was that the vision needed to be how to parallel the processes and have lessons learned. Mr. Schiller noted that Washoe County did not have a perfect system, although the conflict resolution worked fairly well. Washoe County worked hard to get to where they wanted to be with children in terms of permanency and reunification, and the county needed to continue moving forward, which was an evolving practice. In terms of representation, Washoe County evolved into a specialist civil division representing the county in the District Attorney's Office. Mr. Schiller had conflict with the prosecutorial model, because the prosecutors were prosecuting and there were findings occurring in NRS 432B, but it often felt like the prosecutors were representing the agency and the system was working toward a common goal. In terms of practice, he stated the process has taken approximately 20 years in Washoe County.

Responding to a question from Chairwoman Leslie, Mr. Schiller replied that Washoe County had attorney/client privileges with the District Attorney.

Referring to the letter from Judge Leonard Edwards, Judge-in-Residence, California Administrative Office of the Courts, page 157, Exhibit A, Chairwoman Leslie stated that Judge Edwards recommended child protection mediation if additional funding was available for system improvements. She asked Mr. Schiller if that was what he was previously referencing. Mr. Schiller replied that it was a form of mediation. In addition, Washoe County had a Child Protection and Enforcement Team (CPET) that met regularly to address systemic case issues. For example, the majority of conflict resolution occurred between the District Attorney and the supervisor or coordinator; in the Washoe County Department of Social Services it was the supervisor, coordinator, division director, and himself. He indicated that the highest level decisions may come to him in terms of conflict resolution and consultation, which were few, and the majority of cases had a facilitated process that would mirror that.

Chairwoman Leslie stated that the third recommendation of Judge Edwards was creating a family drug treatment court. She clarified for the record that she worked for the Second Judicial District Court in Washoe County in the area of family drug treatment. The fourth recommendation was a one judge one family court structure and each family appeared before one judge throughout the entire case, which the family court tried hard to maintain. Chairwoman Leslie said it was interesting that the highlights in Judge Edwards' written testimony matched what Washoe County was doing, along with family group conferencing.

Jeff Martin, Chief Deputy District Attorney, Washoe County District Attorney's Office (Office), stated that the Office has six attorneys specialized in child protective services. He added that he has practiced in this area of law for nine years. Mr. Martin testified that when he started with the Office he did not realize child welfare was an area of law he wanted to practice, which he now took very seriously. The Office was satisfied with the legal representation model as it currently existed in Washoe County. The public had a stake in the dependency proceedings and NRS 432B represented the public's perception of acceptable or unacceptable treatment of a child; it was public welfare and the community's reflection of what they thought of children and how children needed to be protected. Mr. Martin believed Washoe County was able to represent the interest of the agency and the public, and did a good job of protecting both.

Mr. Martin said he did not want to take credit for the entire accomplishments of the District Attorney's system, and credited Mr. Schiller for much of the success. He noted that Washoe County Social Services and the Office worked closely to come up with a system that worked well. Mr. Martin said that looking at the historical perspective, the Office referred to the grand jury investigation death of Mailin Stafford and 11 other child deaths that occurred between September 24, 1992, and April 5, 1995. Many of the cases during that time involved infants and children, the deaths were awful, and nobody wanted to see cases like these in their community. The cases involved children with shaken baby, bite marks, and burns on their bodies, which predated the change in statute clarifying the District Attorney's position of representing the interest of the public. Mr. Martin noted that the grand jury transcripts came out in 1995, and the statute was changed in 1997, which set forth the District Attorney represented the interest of the

public. The grand jury specifically cited the cases saying the cases shocked their conscience. The grand jury recommended a more formalized and organized method of communication with the District Attorney and a strategic action plan. He noted that part of what was missing was accountability on the part of the agency – a check and balance system and the fact the agency was operating independently without oversight. Mr. Martin stated that since the grand jury report and the change of law in 1997, the Office worked hard with Washoe County Department of Social Services, and a difference was seen in the child welfare system and the ability to work collaboratively with improved outcomes within child welfare. Mr. Martin said that much of the change was based on improved practices within child welfare that enabled prosecutors to go to court on a regular basis to express what was right for children and that they were in agreement with the caseworker. Mr. Martin believed prosecutors had accountability to the community and to the general public, and he did not think the public interest could be separated because it was part of the proceedings. He believed the Office has done well in terms of the collaborative system, and he has been able to take issues to the agency to let them know that he could not represent the case in court because the recommendation was not in the child's best interest. The Office went through the chain of command and most cases were resolved based on mutual trust and collaboration. Mr. Martin noted it was not a question of having a formal, organized system of dispute resolution; it was dealing with an agency that had good collaboration with the Office.

Chairwoman Leslie asked Mr. Martin if the Office had attorney/client privileges. Mr. Martin replied that the Office had attorney/client privileges to the extent that child protective services represented the best interest of the child. Mr. Martin said the Office represented the agency to the extent of representing the interest of the public.

Speaker Buckley clarified that Mr. Martin was saying that there was no conflict, and the agency represented the best interest of the child and was following the law, which was what the public wanted to see. She said the District Attorney could represent both the agency and the public because their interests were aligned in that case.

Mr. Martin replied that Speaker Buckley's comments were an accurate representation. He clarified that he would be unable to represent the agency on an issue if the Office and agency were not in agreement. He noted that there was a system built into NRS 432B and the District Attorney was allowed to countersign every petition that alleges a child was in need of protection; however, if the District Attorney could not sign the petition for a particular legal reason, the petition would go to the Attorney General for review. From a historical perspective, things have not always been good with the agency, and the District Attorney's Office wanted to maintain its accountability to the best interests of the public. Mr. Martin believed the current system was working, and the District Attorney's Office and Washoe County Social Services were satisfied with the system. He added that there was a system in place to mediate conflicts, which appeared to be working.

Mr. Schiller added if there were issues occurring between the District Attorney and Washoe County Social Services, he believed there was transparency and accountability

that the District Attorney required of Washoe County Social Services. Mr. Schiller stated he supervised and testified before the grand jury in 1998 on a highly publicized case where a social worker was held accountable for the process. He indicated that Washoe County Social Services was let loose of grand jury oversight within the last three years, so there was a lot of oversight from the perspective of public transparency. Mr. Schiller noted that if things went wrong, the reality was that Washoe County Social Services could end up in a circumstance where he was held accountable, from the perspective of an agency, to the District Attorney representing public safety.

Speaker Buckley asked Mr. Martin in addition to maintaining attorney/client confidentiality, if the District Attorney's Office provided advice to the agency on how to improve the standards required by the federal government in obtaining permanency.

Mr. Martin stated that the Office assisted in the court and model court process. In addition, the Office reviewed every court order to ensure the appropriate findings were obtained to maintain federal Title IV-E funds for services for children and parents. The Office provided substantial assistance for the children's day-to-day practice, and filed mental health petitions.

Speaker Buckley asked if the Office filed the legal documents on behalf of the agency required by NRS 432B. Mr. Martin replied that the Office filed the legal documents required by NRS 432B.

Assemblywoman Mastroluca asked Mr. Schiller if there were many disputes that Washoe County Social Services refused to sign that went to the Attorney General's Office based on NRS 432B. Mr. Schiller replied that he did not believe that occurred in his career with Washoe County; however, he would follow up with his predecessors to confirm that did not occur before his employment. Assemblywoman Mastroluca asked if that was based on the trust in the relationship of Washoe County Social Services and the Attorney General's Office and the best interests of the child were considered, as well as the best interests of the public.

Mr. Schiller agreed with the assumption of Assemblywoman Mastroluca. He added that when talking about disagreements and how they were resolved in the system, he argued that the system itself, whether the attorney or public defender, had a tendency to be a part of the team process to figure out how to get to the finish line. For example, Mr. Schiller stated that if he was trying to reunify a child, he may have a social worker who was in disagreement with the attorney for the child in relationship to the recommendation of moving forward. He said that disagreement would likely occur at a team level and in most instances the issue would be resolved, and in the conflict process it could go to a higher level. In addition, the accountability frequently occurred within the team process. He stated that often court litigation occurred just like any other setting, but it was a little different in dependency court because of the stakes. Often, all parties tried to litigate outside of the courtroom, which was tied to safety, federal outcomes and the best interest of the child.

Mr. Schiller emphasized a key team component that changed practice was the presence of an employee of the agency in the team meetings. The employee was independent of investigations or permanency facilitating meetings, did not have a vested interest, and was an impartial decision-maker or facilitator. Mr. Schiller paralleled that to a children's attorney who was operating based on the child's wishes, but eventually the wishes of the child and the best interest discussion occurred in the process to ultimately make a final recommendation.

Assemblywoman Mastroluca asked if the process of the team meetings and dealing with conflicts was written in policy. Mr. Schiller responded that there was a statewide practice policy for the family decision-making process, and for the child and family team process.

Teresa Lowry, Assistant District Attorney, Clark County District Attorney's Office (DA), said that the Clark County DA was responsible for child support, juvenile delinquency and child welfare. Ms. Lowry believed it was important that agencies were aware of the history so that bad processes were not repeated. In the discussion about the 1995 grand jury report, the findings in the report were that children were being returned home on incomplete or misread information. There was failure to communicate with law enforcement and the District Attorney's Office, and Social Services' defensiveness regarding review by others was inappropriate. Ms. Lowry indicated that the grand jury's main recommendation was the emphasis on family restoration in use by the social services organization, and the need to be tempered with recognition that the best interest of the child often does not coincide with family restoration. Ms. Lowry stated that there were a few premises that everyone needed to be aware of when discussing the issue. She noted that a presumption could not be made that case managers or investigators on cases were social workers; everyone needed to be careful how to utilize terms and the fact they were not necessarily dealing with social workers or people with the training necessary to make some of the critical decisions. In addition, a presumption could not be made that there was an attorney in the courtroom representing the best interests of children. Every child did not have an attorney, and likewise the attorneys that were appointed might not represent the child's best interest. Ms. Lowry noted that all parties must understand that often what children wanted was to go home to their abusive family – sexually abused children wanted to go home to their abuser because they loved them, and children do not always know what was best for them.

Ms. Lowry noted that certainly children's voices should be heard in the courtroom and it could not be presumed that children knew what was in their best interest, and there was not always a person in the courtroom who was taking that position. Additionally, the grand jury report indicated at that time, which was now true according to the federal Performance Improvement Plan currently in place for the State of Nevada, that training was a huge issue for Social Services and was a continuing issue, particularly in Clark County. Ms. Lowry indicated that the grand jury report strongly recommended active participatory review of cases in which serious injury to children could reasonably be anticipated, and such review should be made with the concurrence of both the

criminal and civil divisions of the District Attorney's Office with more reliance placed on the District Attorney's Office. The grand jury report recommended that training be instituted for case managers regarding standards of proof and the meaningful nature of evidence. Subsequently, the law was changed during the 1997 Legislative Session to have the District Attorney represent the public interest because of the grand jury investigation. As well, there were other sweeping changes in NRS 432B, which were focused on greater transparency of the child welfare system and the public's right to understand what was happening so the elected officials and public could make the necessary changes needed. Ms. Lowry stated that legislation was supported by Senator Cegavske; Directors of the Division of Child and Family Services (DCFS), Washoe County; and the Department of Family Services (DFS) in Clark County. In addition, Adrian Cox from Clark County and Mike Capello from Washoe County supported the change of the District Attorney representing the public's interest. Ms. Lowry indicated that the present statute provided flexibility to work for different jurisdictions, which worked in Washoe County due to significant improvements to the system. The District Attorney and agency rarely disagreed and the flexibility provided justice when the system was deficient and needed checks and balances. Nevada was one of two nationally recognized models – which model gave the most flexibility, which model was right for Nevada. The weaknesses associated with the prosecutorial model talked about attorneys not specialized in child welfare law and litigation. As previously heard from Mr. Jeff Martin, Washoe County, Ms. Lowry stated the attorneys in Washoe County, including Mr. Martin, have determined that child welfare was their career and they were highly trained and specialized. Ms. Lowry assured the committee that the attorneys on the child welfare team in the Clark County's District Attorney's Office were highly trained and specialized, and emphasis was placed on national training and organizations that specifically trained prosecutors in child abuse and neglect in the civil and criminal arena. Prosecutors attended annual national training across the country, and when funding ran out to pay for training, prosecutors paid for their own training. Some prosecutors had a background of social work, some were attorneys for agencies or for parents, so the staff was highly dedicated and trained with little turnover. The American Bar Association (ABA) stated that both the agency and prosecutorial models had to have a dispute resolution process in place, which Clark County had and utilized. In addition, the ABA stated that the most important issues were the safety of children and their needs were met, and families were treated fairly. States with similar models as Nevada included, Hawaii, Kansas, Massachusetts, Michigan, Oklahoma, and Wisconsin.

Ms. Lowry said that testimony was provided during the meeting about Nevada's federal Performance Improvement Plan. She stated that the committee understood and recognized that one of the deficiencies in the state was that case managers were not trained, and for over a decade there was the issue of untrained, undertrained, and underfunded child welfare programs and systems, which was more reason for the checks and balances that the prosecutorial method provided.

Ms. Lowry noted that she has been asked by members of the committee how often she disagreed with the Department of Family Services (DFS), and she thought the question

should be why there was a disagreement. In addition, she asked the committee to look at the cases where the Clark County District Attorney's Office and DFS disagreed to fully understand the issues, and read the facts to determine if checks and balances should be in place. Ms. Lowry stated that she has 80 examples from the last three years of where the Clark County District Attorney's Office has been concerned with the decision making of DFS, which she would provide to the committee to determine if utilizing the public interest model addressed Nevada's needs at this time. In addition, the Legislature convened in 2006 as a multidisciplinary team and child death review team to review child deaths in Clark County. She encouraged the committee to convene again and review the deaths in Clark County since 2006, through the three most recent child fatalities that occurred in the last 90 days in Clark County.

Concluding her presentation, Ms. Lowry said the current system had attorneys to represent the child's point of view, and DFS looked at the cases from a family-centered approach to ensure the best interest and safety of the child. She stated that the structure of how Clark County represented the public was not what needs the attention of the committee at this time, and was not the part of the system that was broken. She explained that significant improvements needed to be made in the current child welfare system and the committee had limited time and resources to make the changes. Ms. Lowry urged the committee to frame the debate where it was needed most and adequately fund the system, train workers, and sustain mental health and treatment resources and keep the current checks and balances in place. She said if the committee still questioned whether the checks and balances were needed, then review the cases, which would show was what was already known, that DFS needed more training, better decision-making, more resources and checks and balances. Ms. Lowry said the committee would determine the same thing the grand jury report stated 15 years ago, the same result that caused the Legislature to change the representation model to one of public interest in the first place. She stressed to leave the check and balances in place and focus on the other areas where the system was in crisis.

Chairwoman Leslie asked Ms. Lowry if the Clark County District Attorney's Office had attorney/client privileges with Clark County Social Services, similar to Washoe County. Ms. Lowry replied the team of civil attorneys that represented the agency had attorney/client privileges, which included two full-time attorneys dedicated to policy and procedure issues and civil litigation involving the department.

Chairwoman Leslie asked if it was similar to the structure in Washoe County. Ms. Lowry believed that Mr. Martin was talking about NRS 432B cases. In NRS 432 cases, Clark County took the position that they were the public interest and did not have attorney/client privileges. Therefore, there were no attorney/client privileges in NRS 432B cases in Clark County.

Chairwoman Leslie asked if the dispute resolution process in Clark County was written in policy, and if so, she requested a copy for the committee. Ms. Lowry replied that the dispute resolution process was written in policy, which she would provide to the committee.

Senator Cegavske thanked Ms. Lowry for her enlightening presentation; she appreciated the history and where Clark County was currently. She was aware there were issues in Clark County and asked to see some of the cases that Ms. Lowry referenced. She believed the cases were important for the committee to review and analyze when trying to make decisions on the best interests of children. Senator Cegavske was frightened to hear that case managers did not have to be social workers, and someone untrained was representing the best interests of the child. She stated that Ms. Lowry referenced national training and wondered if statewide training was available.

Ms. Lowry replied that national training was provided by the American Prosecutors Research Institute for workers who prosecute, recognize, evaluate, or investigate child abuse and neglect, in addition to the more complicated cases like the shaken baby, burns, or chronic neglect. Also, when there was the opportunity, Clark County invited national trainers to the state to sophisticate the skills of prosecutors, CAP attorneys and police officers. She agreed with Judge Edwards comments that system partner training was needed.

Senator Cegavske said that she understood there were issues and lack of communication in Clark County and the District Attorney's Office. She asked Ms. Lowry if she agreed there was a lack of communication in Clark County.

Ms. Lowry replied that there was tremendous and significant communication in Clark County and the issue was whether the policies in place were the right and best policies for children in the community. There was significant discussion among the District Attorney's Office and DFS and some of the disagreements could be resolved with information sharing. Ms. Lowry participated in some of the dispute resolutions, and sometimes the decisions made by the department were based on certain information. When subpoenas were provided with medical records, histories from other states, statements from law enforcement, and criminal records, it was a bigger picture and it was not unusual for the District Attorney and agency to be in alignment, and the decision could change.

Senator Cegavske stated that the process of debating conflict and looking at all the other entities involved with the child and what was best for the child was a good method for working out the issues.

Speaker Buckley believed that information sharing should be done before the entities went to court. She recalled at one time two attorneys were present in court from the Clark County District Attorney's Office – one representing the agency and one representing the public. She believed it made better sense if the District Attorney's Office and agency ironed out issues before going to court, and presented a united front so the judge could make the best decision, which was currently being done in Washoe County. Speaker Buckley believed that the child welfare agency would benefit from better communication with the District Attorney's Office, which would ultimately help the judge make the best decision for the child instead of a guess. Even though the

statute was the same, the Washoe County District Attorney's Office was representing the agency and the public, and the Clark County District Attorney's Office was not representing the agency. Speaker Buckley wondered who was representing the agency in Clark County since the agency did not have an attorney. She asked why the Clark County's District Attorney's Office was not representing the agency and the public without conflict, similar to the Washoe County District Attorney's Office.

Responding, Ms. Lowry stated that to the extent that Clark County did not view the agency as their client, when not in disagreement, the District Attorney provided legal advice to the agency and worked with social workers to help them understand the process and avoid lawsuits. Ms. Lowry reiterated that Clark County did not view the agency as clients, but it was the public's interest to provide the agency legal advice on the laws to the extent that they needed an attorney. For example, Ms. Lowry stated that not every investigating body that comes into a courtroom needed to have a lawyer representing them. When law enforcement provided a case to the Criminal Division, the District Attorney did not represent the police officer in the case. In the juvenile justice arena, the District Attorney did not go to court and represent the juvenile probation officer; the District Attorney represented the case and the public interest.

Speaker Buckley interjected that the child welfare agency had specific statutory duties and an attorney was needed to accomplish the duties and to file the necessary papers.

Ms. Lowry replied that there were two full-time civil District Attorneys that provided information to the agency if needed.

Speaker Buckley asked if she was correct that Washoe County and Clark County had two different models – Washoe County represented the agency when there was no disagreement, and Clark County never represented the child welfare agency.

Ms. Lowry believed the discussion was not as uncommon among attorneys and one of semantics. Ms. Lowry replied that Clark County did not represent the agency; however, the Clark County District Attorney was in court on a daily basis, and was a voice on behalf of the agency and their position, directed legal questions, and conducted research to find answers.

Chairwoman Leslie said it sounded like there was huge conflict between the Clark County District Attorney's Office and the Clark County child welfare agency. She encouraged Ms. Lowry to get in touch with DFS and work out the underlying problems. She believed that the Clark County District Attorney's Office had an obligation to get to the root of the problems if they believed there were untrained people and children were at risk. It was her observation that the Clark County District Attorney's Office did not have the confidence in the agency's ability to protect children; therefore, they could not ethically represent them and do their job representing the public. Chairwoman Leslie would like to see the Clark County District Attorney's Office have confidence in the child welfare system and represent the public interest and work out the day-to-day issues.

Assemblywoman Mastroluca asked Ms. Lowry how long the dispute resolution policy was in effect in Clark County. Ms. Lowry replied that the dispute resolution policy has been in effect in Clark County approximately six months. She added that it was not just Clark County's perception of the lack of training, and was the finding by the federal government when the State of Nevada was evaluated, which was part of the Clark County Performance Improvement Plan.

Chairwoman Leslie thanked the presenters. She called for public testimony on the issues discussed.

Donna Coleman, child welfare advocate, stated that her concern was for the safety and health of children in the State of Nevada. She supported the District Attorney being in the courtroom and maintaining the current statute on legal representation, because checks and balances were needed to ensure the safety of children.

Captain Vincent Cannito, Bureau Chief, Las Vegas Metropolitan Police Department's (LVMPD) Crimes Against Youth and Family Bureau (CAYF), stated that the Bureau dealt with sexual assault, child abuse and neglect cases, and family disagreements, and he would discuss some of the flaws in the current system. Mr. Cannito stated that he pulled cases from the last year with regard to the challenges Clark County had with DFS. In 2010, Mr. Cannito stated there were more than 50 examples in which DFS did not protect children within the community, with supporting evidence by e-mail, specific case and event number with history regarding the children. He noted that he has been with CAYF for three years and within the past several months he tried to establish several meetings with leadership at DFS, including the Supervisor of the Director, without luck. Regarding the comments presented at the meeting on proper training for caseworkers, Mr. Cannito indicated that the Bureau offered free training to DFS staff on investigations but has been rejected. He believed caseworkers should be very skilled, which was not the case. Mr. Cannito stressed that if the District Attorney was removed from the process, children were at significant risk, more than currently, and a terrible situation would become worse. He stated that some of the cases that he looked at included: failure to respond by DFS; no protective custody provided; and failure to remove children from the home or dangerous situation. For example, DFS failed to work cooperatively with law enforcement in the Harold Montague case in Clark County, where a four-month old child was chopped by an axe. Mr. Cannito said it sounded like a good system where everyone worked together, which was not the case and the best interests of the children were not being served.

Concluding, Mr. Cannito stressed that the system was failed and it was important that people worked together. However, if there was a systemic failure, it did not matter how much discussion there was about how important it was to work together. In 2005, Mr. Cannito stated that the city and the county had questions regarding the efficiency of the Metropolitan Police Department, so an outside agency from California conducted a study, which went well. He suggested having an outside unbiased agency to participate in a detailed study of the current DFS system. He noted that earlier in the meeting Senator Wiener asked whether the system was in a state of crisis, and he challenged

that DFS was in crisis. Mr. Cannito has been in the LVMPD for 20 years, and a Bureau Commander for CAYF, and the system was bad 20 years ago and was now worse under the existing administration. In addition, he challenged the committee to read an article in the Las Vegas Sun on October 12, 2009, entitled *More Kids are Dying Across the Nation, in Las Vegas,* where the Director of DFS was quoted many times, and one of his primary concerns noted in the article were staffing and financial means for the agency.

Chairwoman Leslie asked Mr. Cannito to provide a copy of the article he referenced to the committee.

Mark Jackson, District Attorney, Douglas County, thanked the committee for examining the issue of representation of the child welfare agency and the role of the District Attorney. From a rural perspective, Mr. Jackson said that his opinion concerning the legal representation issue mirrored that of the Teresa Lowry, Assistant District Attorney, Clark County District Attorney's Office. He noted that it was his position as the elected District Attorney in Douglas County to represent the public's best interest in the NRS 432B cases. He worked closely with the Division of Child and Family Services, and the way the agency and District Attorney worked together in Douglas County, was successful in the NRS 432B cases. Mr. Jackson noted that he could only recall two cases in the last ten years that resulted in the termination of parental rights, and the remaining cases resulted in reunification with the family, which he believed was the overriding goal of Chapter 432B. Mr. Jackson added that he cared deeply about the issue and thanked the committee for allowing his testimony.

Chairwoman Leslie called for a short recess at 12:40 p.m. The meeting reconvened at 1:03 p.m.

VI. DISCUSSION REGARDING TERMINATION OF PARENTAL RIGHTS, PURSUANT TO CHAPTER 128 OF THE *NEVADA REVISED STATUTES*, AND THE RIGHT TO INHERITANCE.

John J. Cahill, Clark County Public Administrator, stated that he provided written testimony, page 161 of the meeting packet (Exhibit A). Mr. Cahill briefly explained that he had a case dealing with children who were intestate heirs, and the termination of parental rights was signed by a judge approximately three hours after the death of the children's mother. Although the children were still eligible to inherit from their deceased parent, he looked at the statute because it appeared that the children could not inherit because of the definition regarding termination of parental rights in statute. Mr. Cahill stated that he was present at the meeting to suggest changing the definition in NRS 128.15 of the right to inherit from a parent if the court ordered that rights of the parents be terminated.

Michael Foley, District Attorney's Office, Clark County, added that many states including, Illinois, Kansas, Indiana, Texas, Wisconsin, Louisiana, Rhode Island, Wyoming, and Arizona, allowed children to inherit from a parent even after the court

terminated parental rights. He noted that some states had a hybrid statute and children could inherit after parent's rights have been terminated; however, the inheritance rights were terminated if the child was adopted by a new family. He noted that other states like Colorado and California tied the right to inherit from a parent based on whether a natural parent was legally the child's parent and the parent remarried and the child was adopted by the stepparent, which was obviously a policy issue for the Legislature. Often, when children's parents' parental rights were terminated by the state it was because basically there was a ne'er-do-well mother, father, or both and eventually the child got adopted, or the child is not adopted and in foster care, and then the ne'er-do-well father gets into an accident and died and there was an insurance settlement, but because there was a termination of parental rights, it does not go for the children's benefit.

Chairwoman Leslie noted the suggested change in NRS 128.015, page 162, Exhibit A, changed the clause of the definition of "parent and child relationship" to read "parent and child relationship" included all rights, privileges and obligations existing between parent and child, except the rights of inheritance, from the parent to the child, but not from the child to the parent.

Mr. Foley replied the change was a policy issue for the Legislature. In some states it went both ways, and someone could have their rights terminated because they were an unfit parent, and then the child died by accident and the unfit parent had the right to inherit. He noted that most states that allowed this allowed children to inherit from their parents who had their rights terminated, but they did not allow it the other way around.

Senator Cegavske asked what happened to the inheritance when the child died and there were no heirs. She wondered if the inheritance could be used for the cost of the child's burial.

Mr. Cahill replied that if the parents were ineligible to receive the inheritance because of the law there would be an intestate distribution to other eligible family members such as siblings, grandparents, or cousins, and it was covered under statute.

Mr. Foley agreed that NRS 128.015 had the definition of termination of parental rights and cuts off inheritance, and the rest of the chapter does not actually say the judge shall enter an order using termination of parental rights. This suggested language would make it clear in statute.

Richard L. Brown, Professor of Law, Emeritus, William S. Boyd School of Law, University of Nevada, Las Vegas, stated that he wrote an article approximately five years ago on the topic of inheritance rights of children after parental rights were terminated. Professor Brown noted that his article was not focused on Nevada law and looked at what happened around the county; however, he hoped the national context of the article would provide some perspective on what was being done in Nevada. He said the question was how states around the country dealt with the inheritance rights of children after parental rights were terminated, but prior to adoption, children were called

"legal orphans" because for inheritance purposes that was what the children were, and some children remained legal orphans because they were never adopted. Professor Brown found that although there was a good deal of variation in detail from state to state, generally states fell into one of three categories. The first category, which he called Type 1 statutes, explicitly provided that the termination order did not affect the right of the child to inherit from their parents. In other words, Type 1 statutes expressly provide that even after the order to terminate parental rights, the child's right to inherit would be preserved, which was the most common statutory approach for states. For example, in Utah statute, an order terminating the parent/child relationship shall divest the child and parents of all legal rights, powers, immunities, duties and obligations with respect to each other, except the right of a child to inherit from the parent. The statutes varied somewhat in detail and some of the Type 1 statutes specified that the child's right to inherit continued only until adoption. In many states that language probably did not make a great deal of difference because the right of any child to inherit from a biological parent ended when the child was adopted. Professor Brown noted that some of the Type 1 statutes also addressed the right of parents to continue to inherit from children after the termination of parental rights, which had very different results. Some states preserved the right of the parent to inherit, some expressly terminated the right of the parent to inherit, and some states do not address the right of the parent to inherit.

Continuing, Professor Brown stated the Type 2 statutes are the converse of Type 1 statutes – Type 2 statutes expressly end the right of the child to inherit after the termination of parental rights. For example, in the State of Idaho, an order terminating the parent/child relationship shall divest the parent/child of all legal rights, privileges, duties and obligations, including rights of inheritance with respect to each other. Professor Brown characterized Nevada as a Type 2 statute, although the statute was not as direct as the statute in Idaho. The Nevada termination of parental rights statute defined the parent/child relationship and the relationship included all rights, privileges and obligations existing between parent and child, including rights of inheritance, and presumably it was that parent/child relationship that was being terminated under Chapter 128.015. Professor Brown believed it was fair to characterize Nevada as a Type 2 statute, but the statute lacked the clarity of other Type 2 statutes.

Professor Brown stated that Type 3 statutes made no explicit mention of inheritance rights, although the statute often included broad language that purports to divest parents and children of all legal rights and obligations vis-a-vie each other. In a few states courts have interpreted that language, either directly or assumed that the language had the effect of terminating the child's right to inherit. Therefore, Type 3 statutes might in fact have the same effect as Type 2 statutes and cut off the right of the child to inherit.

Concluding, Professor Brown stated that in his view termination of parental rights statutes should directly address inheritance rights first and not leave the language unclear as Type 3 statutes. He believed the answer should be that the statute expressly preserved the right of the child to inherit after termination. In other words, he thought the Type 1 statutes, which were the most common, were the best.

Professor Brown said the most compelling straightforward reason was the current approach seemed to be inconsistent with the goals of the child welfare system. It seemed clear that the primary goal of the child welfare system was to protect the welfare and best interests of the child, and it was hard to imagine how cutting off the right of the child to inherit from the natural parent furthers the child's best interest. In addition, Professor Brown said it was it was important to note that extinguishing the right of the child to inherit from the parents, does more than orphan the child in that sense because the Type 2 statutes do not only cut off the right of the child to inherit from the parents, but also the right of the child to inherit from the parent's family. For example, a child who was never adopted and the terminated parent died, and then the grandparent died, the child was precluded from inheriting from the grandparent. Therefore, Professor Brown said it seemed to him that by statutorily disinheriting these children, states were simply adding one disadvantage upon children who were already disadvantaged by living in dysfunctional families, and had the effect of punishing children for the sins of their parents. In addition, Professor Brown identified some potential constitutional problems in his article with disinheriting children, and Chapter 128 as it was currently written might be subject to constitutional challenges on equal protection grounds. Professor Brown said he favored the suggestion made by Mr. Cahill to amend Chapter 128. In addition, he suggested that the amendment make clear that the child continued to have a right to inherit both from the terminated parent and from the parent's family.

Chairwoman Leslie thanked Professor Brown for his thorough presentation.

Senator Wiener asked if the law considered an adoptive child, not a subsequent adoption after the parents' rights were terminated, equal to a natural born child.

Professor Brown replied that in most states, which he believed was the case in Nevada, once a child was adopted, the child was entitled to inherit from the adoptive parents just like a natural born child, and the child no longer had the right to inherit from the biological parents, with an exception often made for stepparent adoptions.

Chairwoman Leslie said the suggested amendment to the statute looked at the definitions of the parent and child relationship and she wondered how adoption fit into that.

Professor Brown replied that the problem applied to children whose parental rights have been terminated, but who have not yet or ever been adopted, because once the child was adopted, the child gained the right to inherit from the adoptive parents and would lose the right to inherit from the biological parent.

Chairwoman Leslie stated that subsection 2 of NRS 128.015 stated, as used in this section, "parent" includes an adoptive parent.

Mr. Cahill stated that the intent was the narrow focus and the language under adoptions in law, but when a child was adopted the language covered that issue and at that point

the child becomes a member of the new family and everything preceding that was gone. Specifically, Mr. Cahill was addressing the narrow issue of termination of parental rights, and adoption becomes a much more sensitive issue for families.

John Sasser, ESQ., Legal Services Advocate, Washoe Legal Services, stated that he was asked to do some research on the practical impact of changes on a child's ability to collect benefits under social security. Mr. Sasser added that he invited Melissa Casal and Karen Sabo, Children's Attorneys Project, Legal Aid Center of Southern Nevada, to discuss their practice representing children in Washoe County and Clark County and what termination of parental rights and the right to inheritance meant in their practice. Unfortunately, both of those presenters were sick and unable to attend the meeting. In addition, Mr. Sasser stated that he talked to Tom Morton, Director, Department of Family Services, about the impact of the issue on the child welfare system in Clark County.

Mr. Sasser began his presentation by stating that he concurred with the previous testimony that clarification was needed in Nevada statute so children did not lose inheritance rights between the time their parental rights were terminated and the time of adoption. Mr. Sasser understood from Mr. Morton that there were 708 legal orphans in Clark County, and 203 in Washoe County, so there were approximately 900 children in the system at risk of having a natural parent die or becoming disabled prior to adoption and therefore losing inheritance through no fault of their own. As a general rule, Mr. Sasser stated that most of these children come from families where there was not much in assets to inherit. However, there was the possibility that the child could inherit through their parent from a grandparent or someone who might have some resources that would help. Most commonly, the issue would arise in terms of the child's benefits when a parent who has paid into the Social Security system died, and the child was eligible for the benefits as a result of the death, or if the parent becomes disabled, the child could claim benefits for that reason. Mr. Sasser indicated that the Social Security law basically looked to state law, and to qualify for child benefits, the child must be a natural child or adoptive child and be dependent upon that parent. The definition of a natural child was to look to state law to see if a child could inherit under state law, and if the child could inherit they were considered a natural child by Social Security and eligible for benefits. If not in state law, then the child would not be considered a natural child and could not inherit. The Program Operations Manual System (POMS) of Social Security stated that what happened after a termination of parental rights was up to state law, and attorneys for Social Security Administration could look at Nevada's law to decide whether they believed the child had the right to inherit under Nevada law, after the parental rights have been terminated.

Mr. Sasser said it was his understanding from Mr. Morton that currently there was a termination of parental rights case in Clark County, and the Social Security Administration was not denying benefits for this reason; however, it was unclear whether that was because Social Security interpreted the state law not to distinguish inheritance rights or if Social Security even looked at the issue. However, to be safe going forward for the children in Nevada, it would make sense to clarify in statute

whether inheritance rights should continue in a termination of parental rights case. In addition, Nevada charged approximately $43.52 a day in therapeutic foster care payments, so the change in statute would benefit the state. If a child had another source of income, the foster care system was reimbursed from the child's income. Therefore, the Social Security benefit would reimburse the child welfare system at the local level, and any remaining funds above the daily rate would go to the child. Mr. Sasser was recently informed of a child that had been in the child welfare system for a while and would inherit $15,000 from a trust account when the child turned 19 years of age. Financially, if the statute was changed it would benefit the child welfare system and children, in terms of Social Security benefits, which he recommended.

Chairwoman Leslie thanked Mr. Sasser for his testimony and research on the issue. She stated that it was a small change but certainly important for the state to consider. She added that the issue would be looked at in the committee's work session meeting in July.

VIII. PRESENTATION ON PROGRAMS FOR FOSTER CHILDREN AND VICTIMS OF CHILD ABUSE AND NEGLECT.

Thomas C. Waite, President/Executive Director, Boys Town Nevada, stated that Boys Town was made famous by the Academy Award winning movie, Father Flanagan's Boys' Home, and is one of the country's largest privately funded organizations serving at-risk children and families. Children receive effective treatment and life-changing help through the main campus in Omaha Nebraska, and at sites in ten states and the District of Columbia. Besides being well-known for helping at-risk youth in safe, caring environments, Boys Town has developed a Department for Family Preservation for youth in their homes to help families stay together and solve problems that threaten their stability, and thereby preventing youth from entering the foster care system. With proven results and evidenced-based programs, Boys Town saved children and healed families.

Mr. Waite stated that Boys Town was founded in Omaha, NE in 1917 with a mission statement of "change the way America takes care of her children", which was later amended to "change the way America takes care of their children and families." Recently, the mission statement was re-amended to "takes care of her children, families and communities." In 1949, Boys Town was blessed with an endowment, and approximately $500 million was spent nationally from 1949 through the 1990s to achieve that mission without success. Boys Town helped a lot of children in the process, but nothing was really changed with the endowment. From 2004 through 2005, with the help of BridgeSpan, a national nonprofit strategic planning firm, Boys Town changed its tactical approach to the mission of "changing the way America takes care of children, families, and communities" to what they did now. Mr. Waite noted that what was developed through that process was an Integrated Continuum of Child and Family Services (Continuum) to align with key states that sought to improve services for children and families. Through the Continuum, Boys Town provided services at varying levels of intensity to meet the individual treatment needs of boys and girls and their

families. Referring to page 171, Exhibit A, Mr. Waite explained that the Continuum allowed a child to enter Boys Town services at any level and move through the program based on his or her treatment needs, allowing children to get the right care, at the right time, for the right length of time, and in the right way. All levels or programs had the same treatment language, same theory of change, same standards of care and there was clear continuity and communication between each level for staff, children and families participating, which was in contrast to many states that had the typical siloed systems that fell short of meeting the needs of at-risk children and families.

Mr. Waite stated that Boys Town was a national child and family organization offering a broad spectrum of treatment for emotional, behavioral, and clinical problems. The Boys Towns Continuum of Care programs were:

- Based on a national model-of-care that includes objective fidelity measures.
- Training for all staff by a professional dedicated training department providing a competency based training curriculum.
- Staff was annually certified by a professional dedicated evaluation department.
- Programs were annually certified, and all affiliate sites using the Boys Town model had to complete an annual certification.
- Programs were monitored by a professional research department that provided ongoing research and measurements with objective performance outcomes.
- Programs moved through the evidence-based process and were currently listed on all three registries, (Office of Juvenile Justice and Delinquency Prevention (OJJDP), Find Youth Info (FYI), California Clearing House for Evidence Based Programs (CEBC).
- Programs were currently nationally accredited by the Council on Accreditation and/or the Joint Commission on Accreditation of Healthcare Organizations.

Mr. Waite noted that Boys Town's programs taught children and families how to continue to better themselves, their communities and society, long after treatment ended. In addition, Boys Town programs were highly successful at teaching at-risk children and parents how to be productive, law-abiding citizens. He noted that Boys Town provided cost effective, and ultimately cost efficient, programs because of their immediate and long-term impact.

Directing the committee to page 171 (Exhibit A), Mr. Waite noted that the Integrated Continuum of Care developed by Boys Town offered a wide variety of resources for anyone seeking help, which included community support services, such as:

- National Crisis Hotline, available to Nevada, which included parenting help and tips, help with homework, and rape crisis and drug use intervention.
- Boys Town Press published books, posters, multi-media products and other resources to assist children, parents, caregivers, educators and professionals who work with youth and families.

- Common Sense Parenting Program, which was a parent training program that helped build good family relationships, prevent and correct misbehavior, taught self-control and how to remain calm.
- Worked with schools in Clark County and provided school-based programs.
- Out-patient behavioral health services with therapists who worked with children.

Mr. Waite stated that other support services included the In-Home Family program, which offered family preservation, worked with transitions, reunifications, and moving children to programs as needed. The main goal of the In-Home Family programs was to prevent children from being placed outside of the home and/or to reunify them with their family if outside placement was necessary.

The Foster Family Services program was a community-based program where professionally trained foster parents provided care and support to children of all ages, infancy through adolescents; however, there was no program in the State of Nevada.

Mr. Waite explained that Treatment Family Homes were located in Nevada and over 1,000 children have been served since the program opened in 1990. The Intervention and Assessment Services program was a diagnostic and shelter program that was open for approximately 14 years; however, the program was closed in 2009 due to cost overruns and lack of funding to support the program. Specialized Treatment Groups was a program Mr. Waite wanted to put back into the Treatment Family Homes and kept children who did not need to be placed in a psychiatric hospital from going out-of-state and stabilized children when they moved between systems. He noted that the Intensive Residential Treatment Center was located in Omaha, Nebraska, and Nevada was able to refer children to the treatment center in Nebraska.

Continuing, Mr. Waite stated that through research and work, Boys Town has made a difference for the children and the families they worked with. Referring to the Outcomes Dashboard, page 173, Exhibit A, Mr. Waite noted that the page contained follow-up data collected from January 2008 through March 2010 for the Nevada Family Preservation Services. For example, the lower line on the left hand of the chart for the In-Home Family program outcomes showed research that was collected 12 months after services were stopped and 90 percent of families remained intact without placement disruption; 90 percent of families had children who continued to attend school; 96 percent of families reported a positive impact from the services received; and 90 percent of families with youth 13 years or older remained arrest free. Similar data and research was tracked in terms of the Treatment Family Homes and In-Home Family program. Data was reported 6 months and 12 months after ending the program, and the treatment effect was powerful. A five-year study showed that children with problems in schools dropped from 85 percent at admission to 18 percent at departure; aggression dropped from 71 percent at admission to 33 percent at departure; and truancy dropped from 51 percent to 3 percent. The Treatment Family Homes was a way of dealing with problems in a successful way, which research and data demonstrated.

Nationally, Mr. Waite explained that Nevada should look at other states and local governments that had programs with an emphasis and concern for children and families, because that was where the future needed to be in terms of prevention services to stabilize families so children get better.

Mr. Waite referred to a research summary from Cohen and Piquero (2009), the Value of Saving on High Risk Youth, which if not served or helped had staggering costs for the individual and society, especially later on, not only lack of employment, but also the issues of drug and alcohol abuse along with many other problems. Clearly across the country, certainly in Nevada, Boys Town found a way to help youth served in Treatment Family Homes with a high school graduation rate of 83 percent, which played a significant role in setting the youth up for success in the future, in addition to an excellent return on investment.

In closing, Mr. Waite noted that he wanted to provide the committee with five observations, suggestions, and recommendations that he believed were critical for Nevada:

- Focus on families and the need to solve the problems at that level. There was a lot that could be done to help and support families to establish strong values, healthy traditions, and effective parenting. This is the first form of government and authority that children confront, and if they do not get it right at the family level, children would have problems later on.
- Develop closer and stronger partnerships with state, county and city governments where a difference could be made together. Privatizing services or turning over some functions to qualified providers should be discussed and considered and would save money and achieve better outcomes.
- Invest in prevention in the long run with children in care. Early intervention and effective parent training to families with preschool children needed to be supported and encouraged, along with health and nutrition, family preservation, drug awareness and mental and behavioral health services.
- Current Medicaid system was not working effectively as it should. The system benefits agencies opening, but it does not benefit the children and families it is supposed to help. The focus is more on maximizing billing than on outcomes and treatment. Children saw more permanency and greater success in the old level system versus the current Medicaid system.
- Better performance measures for what was being done to ensure success for families and children. The state needed top quality providers with outcomes, performance measures, evidence-based programs, data tracking systems, and standards of care second to none for children and families. He believed the state was working hard, but no one was sure of the outcomes for success.

Chairwoman Leslie thanked Mr. Waite for his presentation. She said the work done by Boys Town for children in the state was appreciated. Chairwoman Leslie believed his metrics were the best and did a good job of measuring the success of the programs. She was aware that Boys Town was talking about expanding services to Northern Nevada and wondered if they were still based in Las Vegas.

Mr. Waite replied that Boys Town held back on the number of clients served in Northern Nevada when the economic climate changed in the state. He said that Boys Town was still serving children and families in Northern Nevada when possible, but services were not moved to Northern Nevada.

Senator Cegavske said she appreciated the work of Mr. Waite and Boys Town. She has talked to many children over the years who attributed their success to Boys Town. She asked Mr. Waite about the waiting list for Boys Town and the average cost for services in the campus program. Mr. Waite replied that the largest waiting list was for the Family Preservation Services; the In-Home Family Program only had a two month waiting list. He indicated that funding was from grants or donations, which has not improved due to the current economy in the state and country. Mr. Waite believed it cost approximately $125 per day for the campus program, which included educational costs, salaries and expenses.

Cyndy Ortiz Gustafson, Principal, Strategic Progress, LLC, representing St. Jude's Ranch for Children, stated that she has worked with St. Jude's Ranch for the last five years on growth and development of their programs for abused, abandoned and neglected children in Nevada. She stated that she was presenting at the meeting because the Chief Executive Officer of St. Jude's Ranch had a family medical situation and was unable to attend the meeting. However, she indicated that Christina Vela, Campus Director, St. Jude's Ranch was in attendance to address technical questions of the committee.

Ms. Gustafson began her presentation by stating that she believed that Boys Town did a great job of helping youth and families, and it was interesting to look at Boys Town and St. Jude's Ranch and the broader landscape of child welfare changes in the community. Recently, she provided a presentation to the committee on Casey Family Programs and the Department of Family Services project, The Community We Will, and the necessity to have a continuum of solid outcomes-based programs to invest in and measure outcomes. While obviously St. Jude's Ranch would like to be out of a job by focusing on prevention, she also believed that the structures and supports in some of the residential programs needed to be very strong. She noted that in 2010, Casey Family Programs commissioned an independent report on treatment foster care, which was requested by Thomas Morton, Director, Clark County Department of Family Services, to look at access to services in greater detail and what the treatment level foster care programs were doing in the community. She stated that the study found that St. Jude's Ranch and Boys Town were the highest performing programs in the community.

Continuing, Ms. Gustafson stated that St. Jude's Ranch for children was a therapeutic treatment level foster home providing services to abused, abandoned and neglected children in Nevada and Texas. St. Jude's Ranch has been operating for over 40 years, with national headquarters and the main campus located in Boulder City, Nevada. St. Jude's Ranch served approximately 75 unduplicated youth in 2010, from youth to young adults aged infant to 21 at the physical campus in Boulder City, Nevada. All the

children were abused and neglected with most children having more than five placements. In addition, over 50 percent of the children had siblings on campus because it was difficult for foster homes in the community to take sibling groups, which often included five or more siblings. Ms. Ortiz Gustafson said that looking at the larger landscape in terms of child welfare there was a need for programs such as Boys Town and St. Jude's Ranch to provide therapeutic care to sibling groups. In addition, there were a disproportionate number of children on campus that had been sexually abused. Often, sexually abused children did better in settings like St. Jude's Ranch where there was a therapeutic model and trained staff as opposed to being placed in a home where someone did not know how to deal with those issues.

Continuing, Ms. Ortiz Gustafson was excited about a new Independent Living program that would expand St. Jude's Ranch continuum of care from serving infants to 21 years of age up to 25 years of age. St. Jude's Ranch was recently awarded $3.0 million from the U.S. Department of Housing and Urban Development (HUD) and other local government funding sources to build an Independent Living Home near the University of Nevada, Las Vegas, for former foster youth aged 18 through 25 years old. Youth were provided case management services, job skills training, educational support, life skills and community services to help them stabilize, find permanent housing, and live independently and productively in the community after they leave.

Concluding, Ms. Gustafson noted that St. Jude's Ranch was interested in growing in the continuum of care and being a local provider for services. St. Jude's Ranch firmly believed that Nevada, particularly Southern Nevada, had the local resources, whether the intellectual capital or leaders of child welfare, to fill the gaps in services as needed. She explained that building the new program was a result of discussions with the Southern Nevada Regional Planning Coalition and the Ready for Life group under the Committee on Youth, on the greatest needs and the largest gaps in services, because St. Jude's Ranch knew how to work with the children and wanted to expand to fill the needed services. Ms. Gustafson said that through the discussions many people believed there was a huge need for continuum of care for homeless former foster youth aged 8 to 25. St. Jude's Ranch would be partnering with the Workforce Investment Board and wrapping youth with case management services, job skills training, education support, life skills and community services to help them stabilize, find permanent housing and live independently and productively in the community after they leave the campus. The Independent Living program was the newest program, opening in Las Vegas in 2011, and would serve 15 homeless former foster youth. Youth could remain in the Independent Living program for up to two years. In addition, the Pregnant and Parenting Teens program was new and served girls aged 10 through 21 who were pregnant or caring for a child. The girls received high quality care during and after their pregnancy, and the mother and baby could stay together for up to two years while the mother learned to care for herself and baby while finishing her middle school or high school education. Ms. Ortiz Gustafson noted that the Pregnant and Parenting Teens program actually came about when the Chief Executive Office of St. Jude's Ranch, who had a turnaround business background, asked child welfare workers to go into the community white space analysis to find out what services were missing. Judges and

stakeholders were interviewed, and Judge William Voy, Juvenile Division, Eighth Judicial District Court, Las Vegas, expressed that the largest need of services was for pregnant and parenting girls. As a result of that conversation, St. Jude's Ranch worked with juvenile justice partners, Judge William Voy, and others to build the program. Ms. Ortiz Gustafson noted that as far as she was aware there was no other program in the community that allowed mothers to stay with their babies for that length of time, and often the mother and baby would be separated, or there was no stable placement. Therefore, St. Jude's Ranch looked at this as a family preservation program for the girls, many who were pregnant by a stepfather or caregiver and had additional needs.

The last program that Ms. Ortiz Gustafson wanted to address was the Transitional Living program for children aged 16 to 21 years old. The program prepared children to live on their own in a therapeutic program where they were taught independent living skills to be productive, wage-earning members of the community when they exited the program. Children were taught how to apply to college, how to get a job and keep a job, how to open a bank account, write checks and how to cook.

Ms. Ortiz Gustafson concluded that the main program for St. Jude's Ranch was the Therapeutic Foster Care program, which provided 24-hour care to abused and abandoned children aged 5 to 21 years of age. She stated that 96 percent of youth graduated from high school; 97 percent of youth who are eligible to work were employed; and 60 percent of youth arrived on psychotropic medications and after treatment and care, only 14 percent of the youth were on medication.

Ms. Gustafson stressed that St. Jude's Ranch for Children was a stable and strong program, served local children, and was ready to expand and grow to meet additional needs of the children in the community.

Chairwoman Leslie thanked Ms. Gustafson for her presentation.

Senator Wiener asked about the Independent Living program being close to the University of Nevada, Las Vegas, where there was the highest homeless youth population. She stated that the homeless population was very resistant and learned how to be anonymous and how to get what they needed without anybody knowing for all the reasons that drove them into homelessness. She asked if an outreach program was in place to build trust and confidence with the homeless population.

Ms. Ortiz Gustafson replied that one of the big drivers for the St. Jude's Ranch Independent Living program was the Family Resource Homeless plan, and they were working with the Coordinator of the Office of the Regional Homeless, Shannon West. Ms. Ortiz Gustafson stated that she helped write the ten-year homeless plan, so St. Jude's Ranch was connected with regional efforts and tried to tie into those regional structures. In addition, there was budgeted revenue for homeless outreach and St. Jude's Ranch would also work closely with the Department of Family Services and HUD to identify children and youth leaving the child welfare or juvenile justice systems.

Senator Cegavske stated that she has heard from many of the board members from St. Jude's Ranch that were fierce advocates for the programs and thrilled to be on the board, which she believed said a lot for the campus and their beliefs. She asked Ms. Gustafson about the cost per child in the different St Jude's Ranch programs, which she believed varied according to age. She asked if St. Jude's Ranch used community resources for prenatal care for the pregnant mothers, and were the services donated for mothers and babies. In addition, she wondered if the children were able to use Medicaid to offset the costs of the programs.

Ms. Gustafson believed it cost approximately $110 per day, which varied according to the program. She was unaware of the cost per day for the new Pregnant and Parenting Teens program, but would provide that information to the committee. In addition, she noted that St. Jude's Ranch partnered with St. Rose Dominican Hospital in Las Vegas to help with some of the medical care for the birth of the babies. There was also an Early Head Start program that came to the St. Jude's Ranch campus and offered resources and help for newborns, and connected mothers with other resources in the community. She noted that medical care was not provided on campus, but St. Jude's Ranch ensured girls had transportation to doctor's appointments and services. Ms. Ortiz Gustafson stated that children in the Therapeutic Foster Care program were able to use Medicaid to supplement services.

Senator Cegavske referenced Dr. Florence Jameson's Volunteers in Medicine program in Southern Nevada, which hoped to start another program similar to that in downtown Las Vegas and in Henderson/Boulder City area.

Senator Copening asked how much emphasis was put on the outreach programs and working with the Department of Family Services before youth aged out of child welfare and the juvenile justice system versus trying to find homeless youth in the community.

Ms. Ortiz Gustafson replied a huge emphasis was put on trying to reach youth before they aged out of the child welfare and juvenile justice systems. She was aware that HUD worked with United Way and the Workforce Investment Board on an exciting partnership in Southern Nevada, and HUD provided 15 to 20 lifetime vouchers, which was a big deal to work with DFS ahead of time because they wanted to have children who needed the help, but that were also willing to accept help because the vouchers were for a lifetime. Ms. Ortiz Gustafson said St. Jude's Ranch would look for youth on the streets that did not have or wanted a connection with DFS. In addition, because the program went up to 25 years of age, it was a really different population and many of the youth have been in the system for a long time and did not want anything that sounded bureaucratic. Ms. Ortiz Gustafson stated that St. Jude's Ranch would try to find youth coming out of the DFS system, in addition to youth on the streets.

IX. PRESENTATION CONCERNING PARTICIPATION IN HEARINGS REGARDING SIBLING VISITATION, PURSUANT TO *NEVADA REVISED STATUTES* 127.140, RELATED TO ASSEMBLY BILL 364 (Chapter 111, *Statutes of Nevada 2009*).

Judge Deborah Schumacher, stated that Buffy Dreiling, Juvenile Court Master, Family Division, Second Judicial District Court was unable to attend the meeting so she would be testifying before the committee. She said that the Legislature amended the adoption statute, NRS Chapter 127.140 to indicate where there had been an order for sibling visitation in the foster care case that, "the court must conduct a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption." She stated that there was no quarrel with the amendment; however, the problem has been in making the order operational. She noted that there were suggestions to clarify or amplify Chapter 127 to make the amendment more operational. Specifically, the issue was the only notice that must be given under NRS 127.123 for an adoption petition was to the legal custodian or guardian of the child and not to anyone else. In addition, under another provision of Chapter 127, those proceedings were confidential and although the court could open the proceeding, adoption proceedings happened with the petitioner, who was the adoptive parents and the agency knowing about the hearing and no one else. The amendment to NRS Chapter 127 concerning sibling visitation indicated that any interested party in the adoption, "including without limitation the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency, which provides for child welfare services or a licensed child placing agency, may petition the court to participate in the determination of whether to include an order of visitation with the sibling in the decree of adoption." Judge Schumacher stated that the problem was that none of those people were notified of the adoption proceeding because NRS 127 limited notice and had confidentially provisions that did not allow anyone to go beyond it and limited notice only to the custodian. Judge Schumacher said the suggestion was that it would be helpful if NRS Chapter 127 was clarified or amplified to indicate a different noticing provision and who was responsible for that. She suggested amending the statute to provide that a hearing to determine whether to include an order for visitation with a sibling must be held at a date and time other than when the petition for adoption was granted. Judge Schumacher stated that although she has not spoken to any of the child welfare representatives, she thought that only the child placing agency or child welfare agency would have information about the location of siblings. Sometimes the siblings were placed with relatives of the parents who lost their rights or maybe even with the parents who lost their rights to that particular sibling, and combining a hearing on sibling visitation with the final adoption would be a disservice or worse. Occasionally children being adopted had months or years of therapeutic intervention to deal with the harm that came from their relationships with their parents and to potentially set up a scheme at which their relatives would be appearing at the same time as the final adoption was not a good idea and harmful.

Chairwoman Leslie thanked Judge Schumacher for her testimony. She asked Judge Schumacher if she suggested a change in statute so adoption proceedings and hearings regarding sibling visitation were not held at the same time.

Judge Schumacher replied that was her recommendation. She explained that the sibling visitation provision was fairly new, but the courts had been dealing with post adoptive contract with parents for a long time and frequently it was an issue that was agreed upon, which had a tendency to come to the court at the same time as the home study, almost at the same time as the adoption proceeding. Judge Schumacher believed that people should be provided notice of a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption, and then the adoption attorneys would know to set the adoption hearing after the petition proceeding. She indicated that she did not have language to offer at this time; however, language could be worked up within her model court and provided to the committee.

Chairwoman Leslie asked Legislative Legal Counsel if they had enough information to include Judge Schumacher's suggestion in the committee work session document.

Nick Anthony, Senior Principal Deputy, Legislative Counsel believed that Legal Counsel had enough information to include the suggested change in the work session document.

X. PRESENTATION CONCERNING EFFORTS TO HELP VICTIMS OF CHILD PROSTITUTION.

Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County Public Defender's Office, stated that Teresa Lowry, Assistant District Attorney, Clark County District Attorney's Office; Alexis Kennedy, Assistant Professor, Department of Criminal Justice, University of Nevada, Las Vegas; Judge William O. Voy, Juvenile Division, Eight Judicial District Court have been working together for a solution to the problem of child prostitution. She noted that there was a real dichotomy in the way girls charged with prostitution were treated in Nevada. Under federal law, minors prostituted or used for commercial sex were considered victims of human trafficking but under states' laws, children were charged with the same crimes of which they were victims. Ms. Roske said that many states were starting to look at this dilemma and how to reasonably treat girls as victims instead of delinquents. For example, the State of New York created the Safe Harbor Act, and children being prostituted under 16 years of age were considered severe trafficking victims and were presumed to be children in need of state supervision. The Safe Harbor Act provided safe housing and services for girls that were trafficking victims. Illinois recently passed a law that provided for immunity for children under the age of 18 from being prosecuted for prostitution, and investigating officers referred to the children as abused under state dependency actions. Florida recently tried to introduce a Florida Safe Harbor law so children would be treated as abused and neglected children under Florida's law and not prosecuted for prostitution. In addition, Alberta Canada had a law that provided for children involved in prostitution and taken into custody. Alberta held the children in a secure facility for the first five days, and if it appeared that the child would likely return to prostitution upon release, a petition could be filed to hold the child for an additional 21 days. An additional petition could be filed for a second 21-day period of secure housing if it appeared that the child's safety was in danger. In Alameda County, California, the District Attorney's Office had a model

program to combat human trafficking and part of the strategy of the program was to provide safe housing for the children. Ms. Roske stated that it was critical for the girls to be on board and willing to testify in the prosecution of the panderers; however, they were difficult children to work with and had more or less been brainwashed by the pimps, and the relationship to the pimp was very much like the relationship between a wife and abusive husband.

Ms. Roske explained that there were many programs around the country to treat the girls voluntarily, but girls were not in a mindset to recognize they were victims and needed help when taken away from their pimps, and at the first chance would often return to the pimp. Ms. Roske said it was very difficult to find a secure facility to hold the victims other than juvenile detention and the dilemma was how to address the treatment of victims of child prostitution and treat them appropriately.

Theresa Lowry, Assistant District Attorney, Juvenile Division, Clark County District Attorney's Office, stated that to address a multidisciplinary approach to the issue of victims of prostitution, the juvenile justice representatives were looking at the successes and failures of other states addressing the issue. Ms. Lowry wanted to ensure that the legislation and bill draft that was ultimately proposed for this population was comprehensive and did not drop off too soon. She noted the juvenile justice representatives agreed that there was a better way to work with the children who were victims of prostitution. In addition, when the committee was ready to draft language, child welfare representatives wanted broad reaching support, and wanted to come to the committee, as prosecutors, defense attorneys, law enforcement, and educators to agree on the proposed language. Ms. Lowry said that one of the starting points was giving girls immunity when arrested for prostitution-related offenses, recognizing that not every prostitution arrest was the same and appropriate for immunity; therefore, if there was blanket immunity there would be concerns from law enforcement. However, if the child was engaged in prostitution at the direction of an adult or under the influence of an adult, then the child was a victim and they could look at giving the child immunity from prosecution. Ms. Lowry noted that another thing to look at was placing the youth into the Children in Need of Supervision (CHINS) system, Chapter 62, which provided juvenile delinquency jurisdiction. However, the CHINS system was what the population really was – children in need of supervision, but with that category were restrictions and the ability to hold victims of prostitution in a secure facility. Ms. Lowry believed youth held in the CHINS system could only remain there for up to four days, and children had a high-risk of running prior to receiving needed services. The third component was to place children involved with prostitution in a safe-house or secure facility for the treatment of sexually exploited girls. Ms. Lowry was aware there had to be some secure component to that – security for staff, and the ability to hold the youth until they received the needed treatment and services.

Concluding Ms. Lowry stated that the child welfare representatives were tracking other jurisdictions and looking at system partners and hoped to have bill draft request language soon. In addition, Ms. Lowry believed there might be a federal funding

stream available for CHINS programs that could help the state fund a safe-house or facility for the treatment of sexually exploited girls.

Alexis Kennedy, Assistant Professor, Department of Criminal Justice, University of Nevada, Las Vegas, began by stating that her background was actually forensic psychology and law. Ms. Kennedy said that she recently conducted a needs assessment for the Juvenile Detention Alternatives Initiative. She interviewed 161 girls held in detention in Clark County, which was an important piece of the information because the girls arrested in prostitution cases were a difficult population to work with. She stated that on the outside the girls were tough and the juvenile justice representatives did not always get the story or information for the reason for their behaviors. In addition, the juvenile justice system was very much built for boys and the rates of incarcerating and detaining girls and treating them as serious offenders has gone up across the country. Girls were being held too long and were not provided the programs needed because the assessments were not being done on the underlying reasons for their lifestyle. She explained that the girls held in detention were very complicated and their needs were much more complex than boys. Ms. Kennedy noted that over half of the girls picked up for prostitution had been pregnant, involved in drugs and alcohol abuse, so they were dealing with those issues as well. The girls involved in prostitution were hanging out with adults and engaging in sex with adults and not using birth control and at risk for diseases on top of the other health risk behaviors. Eighty-eight percent of the girls held for prostitution-related offenses had a history of running away from home; 47 percent of the girls ran away between the ages of 8 and 12; and 24 percent ran away for the first time at the age of 13. Ms. Kennedy noted that when a 13 year old or younger child was running away from a situation in Las Vegas, they went to the Strip or the Greyhound Station where adults and pimps were waiting to draw them into prostitution.

In addition, Ms. Kennedy said that 57 percent of the girls interviewed had a formal diagnosis for a mental health issue; and the majority of the girls were using some type of illegal drugs. She said it was a very difficult picture, but Nevada needed to be the leader for intervention for the girls. Ms. Kennedy was aware that Judge William Voy disliked when people said that Las Vegas was the worst city for runaways, and her response was that she hoped that there was no city that had it worse than Las Vegas. However, Las Vegas definitely had a unique problem and hundreds of children were being drawn into prostitution every year, whether taking the numbers through detention, law enforcement, or courtroom, the point was that Nevada needed to step up and be a leader in helping the children because the state was inheriting the problem of prostitution from other cities and also creating the problem.

Ms. Kennedy stated that one of the interesting things when interviewing the girls in detention was a large percentage of the girls were from Nevada. She noted that not all the girls had been arrested for prostitution; however, one-third of the girls disclosed being involved in prostitution, so even the girls not being arrested for prostitution were turning to it as a survival strategy, and there was something about the City of Las Vegas that was putting children at risk. She was aware from the interviews at the state

detention facility there were a number of girls from Reno, Nevada, as well as Las Vegas, which were overtly sexual cities, and prostitution was what children did to survive. Ms. Kennedy said these children were the most abused – the children were abused at home and on the streets, were in dysfunctional relationships with adult pimps who were abusing them further, and in addition the girls were providing sexual services for 5 to 20 adults a night.

Concluding, Ms. Kennedy reiterated that girls arrested for prostitution were a tough group to help, but the state could not turn a "blind eye" and it was a very important issue to focus on.

Chairwoman Leslie thanked the presenters for their efforts. She stated that Judge William Voy testified at previous meetings on the topic, and he talked about his issues with the county and lack of funding. She wondered if there was a state that provided a safe-house or this type of secure facility.

Ms. Roske replied that she was unaware of any secure facility or safe-house in the United States like Nevada envisioned. She has spoken with Linda Smith, President, Shared Hope International, who had contacts all over the world investigating this issue, and the closest safe-house was in Alberta, Canada.

Chairwoman Leslie stated that she used to run a shelter for runaway girls in South Lake Tahoe, California, and although the shelter did not deal with legalized prostitution, it certainly brought it the same types of girls. She was aware of how difficult it was to provide services for the girls and when girls were pressured they would leave the facility.

Senator Cegavske thanked the presenters and was very appreciative of Judge William Voy, who invited legislators to his task force meetings so they could see his vision for this population of girls. She was aware of a program through Dr. Florence Jameson, and other physicians, that donated their time at the jails once a week and provided examinations for the girls. Senator Cegavske stated that she was invited to go to the jails with the physicians and listened to them speak to the girls. What surprised her was that the girls did not look like the "typical" prostitutes, they did not get where they were and knew they would get out, so they did what they had to do, and waited their time until release. Sentor Cegavske was very concerned about the young girls and transitioning them back into school and society without any skills or limited skills. She was concerned about the "flip side" of legislation that could possibly be detrimental to society.

Ms. Kennedy replied that building a discretion was discussed in terms of the immunity issue, but a child was a child and if they say they were not old enough to drop out of school, get a job, open a bank account and have a bank card, then they were also saying they were not old enough to choose prostitution and they would help them with as many of the issues they could while they were still a child. She indicated that two of the programs with success were the Alberta, Canada model, which was a secure

facility, and the Girls Education and Mentoring Service (GEMS) program in New York. Part of the success of the two programs was the fact that girls were allowed to fail, which was true with juveniles and prostitution as well as adults. Ms. Kennedy stated that girls had to be allowed to fail and it would take six to seven times of leaving the pimp and going back and each time they would get a little closer to leaving the situation. The situation was very similar to domestic violence, where 20 years ago an abused person was asked why they did not leave their abuser – it was not that simple and child welfare and juvenile justice workers had to take that model of support services to help the victim, understanding the person had to hit rock bottom and be aware they were in a dysfunctional relationship before they got out of the circumstances. Ms. Kennedy stated that they were working against the teenage brain and when the child was 15 and someone told them they were loved, it was the child's whole world. Especially an adult who told the child they loved them and they did not have to go back to school, could live with them and never had to see their parents again, which was a potent and powerful message for the child. Ms. Kennedy said places had to be set up where the girls would be safe and protected.

In addition, the same thing comes up in the medical examination. Teenagers do not think they were going to drink and drive, get in accidents, or get a sexually transmitted disease. The youth were hanging out with drug-using adults, engaging in high-risk sexual behaviors, and doing things for the people they think they love, such as sleeping with 15 other people a night and putting themselves at great risk. The juvenile justice representatives had to be parent or the person that offers the youth alternative choices, which was necessary to save the youth.

Assemblyman Hambrick stated that he believed everyone hoped the bill draft request would come sooner than later. He asked if there was an advantage to start "spoon feeding" the Legislature, because currently Judge William Voy's hands were tied as far as holding girls arrested for prostitution. He was not worried about the finance aspect, which would be an issue for some time, but potentially changing legislation to give the judiciary the authority to hold the girls, so the public would start hearing the message.

Ms. Lowry responded that the juvenile justice representatives had those types of discussions and wanted to ensure that as they make those incremental shifts, they did not close any doors and limit their ability. So there was concern if children involved with prostitution were placed in the CHINS system, which sounded like the right thing to do, but it limited Judge William Voy's ability to hold the girls in a secure facility, and the final piece was not there, she wondered if the girls would be released to the street. She agreed with Assemblyman Hambrick and said that juvenile justice representatives needed to look at what could be done incrementally to shift the perception and how the system handled the girls.

Chairwoman Leslie asked the capacity for the safe-house in Clark County.

Ms. Kennedy replied that the first step and the starting point would be an assessment center, a short term 30-day facility where girls could start treatment and wraparound

services. She noted that there were some out-of-state programs that could house girls longer, but the biggest issue was getting the break from the streets and the pimps, and putting together the education, health and addiction plan. The key was the idea of holding the youth versus them running away, so trying to come up with "stop gap" measures and different approaches. She added that looking at the detention numbers; approximately 300 girls a year come through the detention center in Clark County suspected of being involved in prostitution. Ms. Kennedy added that law enforcement consistently saw 150 to 200 youth a year identified as being involved in prostitution. Judge William Voy's programs saw approximately 150 to 180 youth a year involved in prostitution; 5 of the 400 have been boys, and the remaining were girls.

XI. DISCUSSION REGARDING CHILD PROSTITUTION AND THE PROSECUTION OF PERSONS ACCUSED OF PANDERING AND SOLICITING CHILDREN.

Rex Goodman, Program Analyst, Fiscal Analysis Division, LCB, stated that Agenda Item XI was a follow up to previous discussions of the suggestion to make penalties for pandering of a child the same of trafficking of a child. He directed the committee to page 183 (Exhibit A), which was a comparison of the current statute, NRS 201.300 through NRS 201.340 and contained the definitions for pandering and the current penalties for each. He noted that the pages list the section of statute and the bold and italics sections were the sections that discuss the penalties. Comparing pandering in each of the three sections that included penalties, the conviction for each penalty was guilty of a category B felony and if immediate threat of physical force was used upon a child, penalties were a minimum term of not less than 2 years in the state prison, and a maximum term of not more than 20 years and may be further punished by a fine not more than $20,000. If no physical force was involved upon a child, the penalty was 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 10 years, and may be further punished by a fine of not more than $10,000. He noted that those penalties were the same for each of the different areas of pandering that were defined in statute. Mr. Goodman stated that NRS 201.351, pages 184 to 185, were the additional financial penalties that have been imposed that were added by Assemblyman Hambrick's bill, Assembly Bill 380 from the 2009 Legislative Session, which included penalties that allowed the seizure of property owned by persons convicted of pandering. In addition, NRS 201.352 allowed for additional financial fines imposed on persons pandering children and conspiring to pander children. He noted that depending on the age of the victim when the offense was committed, the fine could be $100,000 if 14 years of age, but less than 18 years of age, and $500,000 if the victim was less than 14 years of age when the offense was committed. Mr. Goodman stated that the financial penalties were in addition to the felony conviction and the prison time involved with the pandering offenses.

Continuing, Mr. Goodman stated that the penalty for trafficking a person for financial gains (NRS 200.467), which was also a category B felony and has a minimum term of not less than 1 year and a maximum term of not more than 20 years, but may be further

punished by a fine of not more than $50,000, which is a relatively lesser penalty or similar to pandering if there was no physical force involved. The financial penalty in trafficking was slightly higher, which was more than the basic penalties for pandering, but comparing the additional fines and seizure language added during the 2009 Session, the pandering still had a stronger penalty. *Nevada Revised Statute* 200.468, trafficking a person for illegal purposes, had a penalty similar to pandering; it was a category B felony with 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.

Mr. Goodman stated that although the committee did not previously discuss involuntary servitude, he added that information to the packet. He indicated that the penalties for involuntary servitude or someone that was held against their will and caused to engage in certain activities, included a category B felony. If substantial bodily harm was inflicted the minimum term of not less than 7 years in a state prison and not more than 20 years, and may be further punished by a fine of not more than $50,000. If no substantial bodily harm was involved the penalties were 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.

Mr. Goodman noted that there were a few more similar categories for involuntary servitude, which included transporting, providing or obtaining another person to be held in involuntary servitude which had similar penalties of 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. In addition, purchase or sale of a person for involuntary servitude was a category B felony and shall be punished by imprisonment 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. He stated that none of the penalties carried a maximum prison sentence of more than 20 years and a minimum prison sentence of 1 year in state prison up to 7 years. He stated that minimum imprisonment for pandering was 1 year and 7 years imprisonment for involuntary servitude, and not more than 20 years. The maximum financial fines for pandering were $20,000, whereas trafficking and involuntary servitude had a maximum fine of $50,000, although there were other sections that involved seizure of property and much greater monetary fines for pandering of a child. Mr. Goodman said that his simple interpretation was that the penalties for each were quite similar and it was the committee's discretion if they saw a benefit to changing the penalties for pandering.

Chairwoman Leslie said the information provided by Mr. Goodman was helpful and would be discussed during the committee's work session meeting. She asked if the suggestions from previous testimony was to increase the pandering penalties to the level of trafficking.

Mr. Goodman replied that the suggestions were to increase the penalties for pandering to the level of trafficking, but in reviewing the statutes, it did not appear to be increasing the penalties other than the basic financial fine from $10,000 or $20,000 for pandering,

up to $50,000 for trafficking; however, with the additions of language from the 2009 Session (Assembly Bill 380), the prosecution had some leeway to do other things financially about pandering, so there may not be any advantage to changing the penalties to mirror the trafficking statute.
Assemblyman Hambrick asked the committee to keep in mind the potential additional penalties on the conspiracy aspect. They were aware of what happened individually, but as the traffickers come to Nevada for conventions and are convicted of a felony, the fact that they have conspired to commit trafficking or pandering of a child should result in a stronger penalty.

Chairwoman Leslie replied that the question of conspiracy had not been previously raised or discussed by the committee.

Ms. Lowry replied that she prosecuted cases in the Criminal Division, on the Special Victims Unit, and there were pimps and panderers serving life sentences under the kidnapping theory, sexual assaults, statutory sexual seduction, pandering, and child abuse and neglect. Therefore, from a law enforcement perspective they should look at any opportunity to hold the perpetrators accountable for what they did to children.

Chairwoman Leslie asked why the statute stated that a child had to be at least 14 years of age for a conviction of pandering or trafficking.

Ms. Lowry replied that in the child abuse and neglect statutes the definition of a child was framed in terms of someone under the age of 18, so why 14 years of age was chosen in the trafficking and pandering statutes was something to look at, especially since teenage girls were targeted.

Nicholas C. Anthony, Senior Principal Deputy Legislative Counsel, clarified that generally a child was defined in NRS 201 as someone less than age 18. In this particular provision, NRS 201.352, the age defined for a child was a policy decision of the committee and the sponsor of the bill during the 2009 Legislative Session to break out the penalties further and there was an additional penalty if the victim was less than 14 years of age.

Chairwoman Leslie stated that she hoped the District Attorney's Association (Association) was prepared to provide a recommendation for stronger penalties for pandering of a child to mirror the trafficking penalties. She was uncomfortable with the committee making decisions without formal input from the Association.

Ms. Lowry replied that Chairwoman Leslie's request for input from the Association was reasonable. She would speak to Sam Bateman, Nevada District Attorneys Association and request that he talk to his colleagues across the state regarding whether the prison penalties and fines were adequate for trafficking, pandering and conspiracy, and make recommendations to the committee.

XII. PRESENTATION ON THE RECOMMENDATIONS OF THE LEGISLATIVE AUDITOR'S REVIEW OF GOVERNMENTAL AND PRIVATE FACILITIES FOR CHILDREN, PURSUANT TO *NEVADA REVISED STATUTES* 218G.575.

Mr. Goodman stated that Agenda Item XII provided additional background information on the recommendations from the Legislative Auditors regarding background checks for facilities that house children. In the most recent audit report there were four recommendations on additional policies that could be put in statute to strengthen the types of background checks conducted for employees of these facilities. The facilities were broken down in the report into six different types of facilities, and with the recommendations, staff did additional research into the current language in statute and if there were any other Nevada Administrative Code (NAC) or agency policies that related to these.

Mr. Goodman stated the first recommendation on page 187, Exhibit A, required that all facilities that provided residential services to children had to obtain state and federal fingerprint background checks of all employees prior to allowing unsupervised access to children in those facilities. He indicated that the key term was unsupervised access and currently in statute most facilities could hire a person, or in the case of a foster home, an adult could move into the home and live there and begin the process of getting a background check, but there was no language that prohibited unsupervised access to the children living in the home or facility until the background was complete. Mr. Goodman indicated that there were some requirements regarding licensure in group foster homes in NAC and language about a conditional license being provided, but nothing in statute about background checks prior to unsupervised access to children. He stated that the child welfare agencies have indicated that there were agency policies in place to preclude unsupervised access in some cases, but at this point it was not in regulation or statute.

Chairwoman Leslie thanked Mr. Goodman for the information he provided in the meeting packet beginning on page 187. She said the information allowed the committee time to review before the work session meeting in July.

Mr. Goodman stated that he would provide a brief overview of the Legislative Auditor's recommendations. The first recommendation required all facilities that provide residential services to children to obtain state and federal fingerprint background checks of all employees prior to allowing the employees to have independent unsupervised access to the children in those facilities. He noted that it did not appear that there was anything in statute for facilities that dealt with unsupervised access. The second recommendation was specifying the offenses for which a prior conviction would exclude a person from obtaining employment at a facility that provides residential services to children. In some cases there were offenses specified in statute and in other cases there were not. He said a main point to look at was in the mental health treatment facilities, as recommended by the Auditors. The definition in statute deals with only certain types of facilities including intermediate care, skilled nursing, and residential facilities and did not include psychiatric hospitals, which included Desert Willow

Treatment Center, Montevista Hospital, and West Hills Hospital, which were some of the facilities that the Auditors reviewed. He said the committee may want to consider putting language in statute for background checks because currently statute and regulation were silent on some or all aspects of background checks at these types of facilities. Mr. Goodman noted that he was informed by DCFS that there were internal policies requiring background checks for employees at Desert Willow Treatment Center, but there were no licensing requirements in statute or NAC.

Continuing, Mr. Goodman stated that the third Legislative Auditor recommendation was facilities had to maintain the results of the background check for each employee for as long as that person remained employed by the facility, or the person lived at the group foster home. He indicated that there were some facilities that maintained the results, while others did not, based on assumptions that "employee" means a current employee, and language could be put into statute regarding that.

The fourth recommendation of the Legislative Auditors was to require background checks be obtained periodically for persons remaining employed at a facility for a specified time. As with the previous recommendation, Mr. Goodman stated that some types of facilities required background checks, including child care facilities, every six years, mental health treatment centers every five years, but other facilities did not, such as group foster homes. It should be explicitly clear in statute or regulation how often background checks had to be conducted for persons employed at a facility for children.

Concluding, Mr. Goodman said that more precise detail and clarification of what needed to be done for each type of facility could be provided at the work session meeting depending on the desire of the committee and how much the committee wanted to implement the recommendations.

Chairwoman Leslie thanked Mr. Goodman for his presentation. She thought improving the process for background checks at facilities would be the most important thing the committee did in terms of protecting the broadest number of formable children in the system.

XIII. DISCUSSION OF FUTURE MEETING DATES AND FUTURE AGENDA ITEMS AND TOPICS.

Chairwoman Leslie stated that the next meeting, which was the work session meeting, was scheduled for July 19, 2010, 1:00 p.m.

XIV. PUBLIC COMMENT.

Jennifer Bevacqua, President, Nevada Youth Care Providers Association (NYCP), stated that NYCP represented over 25 agencies in Nevada and provided a continuum of services to children and families in the area of mental health, foster care, independent living, aftercare services, family preservation, therapy and rehabilitation services.

Ms. Bevacqua believed it was important to bring to the committee's attention the concerns regarding treatment foster care services, otherwise known as specialized foster care, which had an impact on children in the child welfare and juvenile justice systems. She said that based on historical data, it was estimated that currently over 900 children were receiving services statewide. Treatment foster care services provided a home and placement, as well as treatment services for children and youth with special needs, often very high needs. Treatment homes/specialized foster care services were also provided as an alternative to residential treatment and out-of-state care. Ms. Bevacqua stated that in 2006, changes were made to Nevada's model and system for treatment care services, changing from a four-level system to a one service system, where rehabilitation services could be added on as deemed medically necessary. She noted this service model/framework was funded primarily through Medicaid with a small amount set aside for room and board coming from DCFS. The model has been in place from January 2006 to October 2008 when it was changed from a "bundled" service to an "unbundled" service, which was done in response to directives from the Center for Medicaid/Medicare (CMS), and not as part of a plan service/system change, which was a concern for all involved, especially the providers. At that time, Nevada Medicaid determined that they could only reimburse and support one component of the treatment home service referred to as basic skills training; therefore, DFCS would need to fund the rest of the model/framework. Ms. Bevacqua was certain for a time leading up to November 1, 2008, some funding was secured and children were able to remain in their treatment homes receiving at least the same level of services. She said this has essentially been maintained until recently when Medicaid began to cut authorizations for the basic skills training component of treatment homes/specialized foster care services. With the drastic cuts, of approximately 50 percent, in addition to denials of services for children, there was an impact on service delivery. Ms. Bevacqua stated without authorizations, providers were essentially not supposed to provide the service even if they believed the service was appropriate and medically necessarily. Currently, providers were actively appealing all these determination, but ultimately the cuts could lead to children not receiving the appropriate services in their treatment homes and providers not being able to provide the appropriate level of service to meet children's special needs. Many providers continued to provide services without the authorization and funding, but could only sustain this for so long.

Ms. Bevacqua stressed that the treatment home system was in chaos again with the third major change in four years, which was not fair to the children that made progress with the needed services. Ms. Bevacqua stated that children were helped by the services and achieved their goals, behaviors were stabilized in the homes, self-esteem was enhanced for children, and children were able to develop coping skills and appropriate emotional responses, allowing them to transition to permanency.

Concluding her presentation, Ms. Bevacqua said her hope was that the state could collaborate and develop a more stable treatment home/specialized foster care framework to ensure children could continue to receive appropriate services in the least restrictive environment with positive outcomes. She hoped the need for drastic system

changes was minimized, which caused instability and stress for children and families, as well as providers in the child welfare and juvenile justice systems.

Barbara De Castro, representing Nevada Youth Care Providers (NYCP), stated that she wanted to make the committee aware of a situation currently occurring similar to the treatment foster care, but impacting more children in more areas. The situation was occurring in the Behavioral Health System, particularity around rehabilitation services, (day treatment, psychosocial rehabilitation, and basic skills training) and outpatient services (therapy) for children on Medicaid. Since the beginning of April 2010, rehabilitation services authorized for children across all systems statewide have been cut dramatically, sometimes being denied altogether. These cuts had a significant impact on children and their families, especially those in the child welfare and juvenile justice system, but also on children residing with their natural families who accessed services and were now being denied services or the services were being drastically reduced. Ms. De Castro said that these were children who had an Axis I mental health diagnosis and in need of rehabilitation services and were no longer receiving services to the extent they were before with no opportunity to transition out of the services.

Ms. De Castro stated that data taken from over 300 authorizations submitted to Magellan/First Health, in April 2010, showed that 90 percent of the services requested were reduced. These reductions averaged about 40 percent, with some as high as 75 percent, which was in contrast to a rate of 90 percent approval in March 2010, with 10 percent denial, and in April 2010, 90 percent were reduced or denied with only 10 percent being fully approved. She indicated that this was significant and providers were concerned for children and families because something in the system has changed with essentially no warning to providers. Ms. De Castro noted that this made it challenging to serve children and their families, and it was becoming more challenging to address the needs of children with such drastic cuts, and providers were concerned for the children of Nevada.

Concluding, Ms. De Castro said that NYCP has been told that the criteria for medical necessity was changing, which they were using now, but not sharing with providers, making it more challenging for providers to address the needs of the children. She noted the NYCP was reaching out to Medicaid, Magellan, and child welfare agencies to address the current situation, which NYCP referred to as a crisis situation at this point. Nevada Youth Care Providers Association would like to see a stable behavioral health system, stable treatment foster care model, and to cultivate an environment that was working toward the best interest of children.

Julia Sarkup-French, pro se consultant and motion strategist, asked what level of comprehensive legal representation can an indigent person, parent or child, be provided for due process and equal protection when Nevada's counsels, whether the District Attorney, public defense, or the presiding judge who was also an attorney, under MRPC Rule 1.13: Organization As Client, providing that the interest of the state would be the one represented in all of the persons thereof. She asked what due process and equal protection does the indigent parent or child receive. In what she called a legal

algebraic formula of combing NRS 128.105, NRS 128.1093, etc., it created the presumption to be a parental fault and that no evidence could be presented to the contrary in any hearing, let alone the one that would provide counsel who states interest was narrowly tailored to remove children permanently rather than leave them in foster care. Ms. Sarkup-French indicated that she has seen many cases where a female child was removed from the parental home and a male child was left, which seemed to be a human trafficking and child harvesting provision and promotes child harvesting and human trafficking. Ms. Sarkup-French asked that the same laws and provisions of law that are being asked to be administered to the pimps also be administered to anybody who was found trafficking or pandering of a child. She noted that according to the federal guidelines, the principle of maintaining families and avoiding separation was clearly expressed in child welfare standards and literature. Services to maintain children in their own homes have been called the first line of defense in child welfare. The goal of maintaining families has been a central spousal goal in child welfare and the goal was grounded in the belief that the best place for children was in their own homes, cared for by their own parents. In addition, it was consistent with the constitutional right of family integrity recognized consistently by the United States Supreme Court and other federal and state courts. She stated that this right allowed parents to raise their child free from state intervention unless a compelling reason associated with the safety or welfare of the child justified intervention.

Continuing, Ms. Sarkup-French asked if a child was deprived of the early diagnostic screening prevention program, that child has a condition that was caused from that deprivation, but that derivational evidence could not be used in a hearing that was going to terminate the parents' rights, because they have been claimed as being parental faulted or that they were objecting to the hearing itself, or the abduction of their child, which was then considered "token efforts", why not reasonable efforts as the state used, where they do nothing, they provide nothing and it was okay and it was upheld in the Nevada Supreme Court as reasonable. She said it was not reasonable to make no effort and provide no service that caused a condition in which they find a parental fault and take that child from the family unit. She noted that this was legal algebraic formula, what she referred to as the "Black French Indigent Removal and Abduction of the Indigent Child." Ms. Sarkup-French was unsure if everybody understood what they were doing, but she asked that this be reconsidered and that this was serving notice to all those people who were doing such things and there would be a lawsuit.

Chairwoman Leslie thanked Ms. Sarkup-French for her testimony.

XV. ADJOURNMENT.

Chairwoman Leslie adjourned the meeting at 3:06 p.m.

Respectfully submitted,

_____
Donna Thomas, Committee Secretary

APPROVED:

_____
Assemblywoman April Mastroluca, Chairwoman

Date: _____

Copies of exhibits mentioned in these minutes are on file in the Fiscal Analysis Division at the Legislative Counsel Bureau, Carson City, Nevada. The division may be contacted at (775) 684-6821.