THE ADVISORY COMMITTEE TO STUDY LAWS RELATING TO CHILDREN

Bulletin No. 89-16

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

AUGUST 1988

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CHAPTER.....

AN ACT relating to children; creating the advisory committee to study the laws relating to children; making an appropriation; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. 1. The advisory committee to study the laws relating to children, consisting of 12 voting members, is hereby created.

2. The committee consists of:

(a) Two members of the senate appointed by the majority floor leader of the senate;

(b) Two members of the assembly appointed by the speaker of the assembly;

(c) One member who is a representative of the department of human resources and involved in the formulation of the policies of the department, appointed by the governor;

(d) One member who is a justice of the supreme court, appointed by the chief justice of the supreme court;

(e) Two members who are district judges and serve as judges of the juvenile division of the district court, appointed by the chief justice of the supreme court;

(f) One member who is a district attorney, appointed by the Nevada District Attorneys Association;

(g) One member who is a member of a board of county commissioners, appointed by the Nevada Association of Counties;

(h) One member who is a chief juvenile probation officer, appointed by the Nevada Association of Chief Juvenile Probation Officers; and

(i) One member who is the superintendent of public instruction or a person who is designated by him.

3. The legislators who are members of the committee are entitled to receive the salary provided for a majority of the members of the legislature during the first 60 days of the preceding session for each day's attendance at a meeting of the committee.

4. The legislative commission shall appoint a member of the committee to serve as chairman.

Sec. 2. 1. The committee shall study the laws relating to children who are 18 years of age or younger. The study must include but is not limited to:

(a) An evaluation of the need to modernize the laws relating to those children; and

(b) An analysis of the feasibility of and recommendations for creating a children's code to provide a coherent, comprehensive and integrated body of law relating to children, including the provisions of chapters 62, 432A and 432B of NRS.

2. The director of the legislative counsel bureau shall provide the committee with such staff as is necessary to carry out the duties of the committee.

3. The committee may accept and use any gift or grant of money or services to aid it in carrying out its duties.

Sec. 3. The committee to study the laws relating to children shall report the results of the study and any recommended legislation to the 65th session of the legislature.

Sec. 4. There is hereby appropriated from the state general fund to the advisory committee to study the laws relating to children the sum of $15,000 to carry out the duties of the committee.

Sec. 5. Any remaining balance of the appropriation made by section 4 of this act must not be committed for expenditure after August 31, 1988, and reverts to the state general fund as soon as all payments of money committed have been made.

Sec. 6. 1. This act becomes effective upon passage and approval.

2. Sections 1 and 2 of this act expire by limitation on September 1, 1988.

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SUMMARY OF RECOMMENDATIONS

1. Adopt a statutory procedure for informal supervision. Make certain the court is not deprived of the power to dismiss the formal petition and refer the child back for informal supervision. Require review and approval by the district attorney of any proposed informal supervision of a child who has committed a delinquent act which would otherwise be considered a gross misdemeanor or felony. **(BDR 5-373)**

2. Amend subsection 5 of NRS 62.128 to provide that children who successfully complete the consent decree period of supervision are able to respond to inquiries that they have not been arrested for or convicted of a delinquent offense. Make certain that nothing will prevent the probation department from using the record of the informal adjustment on a subsequent, adjudicated conviction for a delinquent offense. **(BDR 5-373)**

3. Require that all nondelinquent first referrals must be diverted without adjudication to available services in the community. If the child has violated a state law concerning truancy, incorrigibility or running away, the court will admonish the child to obey the law and a record of the admonition will be maintained. A child cannot be adjudicated as in need of supervision unless he has previously been diverted to community services in this manner. **(BDR 5-373)**

4. Using the current classification of delinquent, add a new section to chapter 62 of NRS which sets forth the ability of the district attorney to add to the petition for delinquency another charge, that of "serious or chronic offender." The requirements for adjudication as a serious or chronic offender would be (1) (a) at least three adjudications as delinquent for acts which otherwise would be considered felonies, or (b) one adjudication as delinquent for manslaughter, battery causing substantial bodily harm, assault with a deadly weapon, sexual assault, armed robbery or kidnaping; (2) that the child is at least 16 years of age; and (3) a determination by the court that the child was indeed a serious or chronic offender. Amend NRS 62.355 to authorize the court to publish for use by the press a list of the children who have been adjudicated as a serious or chronic offender and otherwise lift the usual veil of confidentiality. Upon the adjudication as a serious or chronic offender, the court's options for punishment would be expanded to include direct fines on the child, sending the child to a secure facility and any other punitive dispositional action determined by the court to be in the best interests of society. **(BDR 5-373)**

5. Amend NRS 62.271 to allow court-ordered commitments to juvenile detention facilities for adjudicated delinquents 17 years of age or less who violate their probation. Limit the commitment to 30 days. **(BDR 5-373)**

6. Amend NRS 62.211 to allow the court to impose fines directly on juvenile offenders when appropriate. Also amend paragraph (g) of subsection 1 to delete the requirement of participation in a "program" of restitution: just require restitution. **(BDR 5-373)**

7. Amend paragraph (e) of subsection 1 of NRS 62.211 to allow courts to order juvenile offenders to perform public service on projects supervised by private, nonprofit agencies as well as on public projects. Require the agencies to provide the same supervision of the children as is required on public projects. **(BDR 5-373)**

8. Make statutory the federal requirements which prohibit jailing of children in adult correctional facilities, jails or other detention facilities containing adults unless there is complete sight and sound separation. Provide an exception for children declared serious or chronic offenders. **(BDR 5-373)**

9. A child alleged to be delinquent or in need of supervision may be detained in secure detention before the court hearing only if it is demonstrated that probable cause exists to believe that:

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

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

(c) The child is brought to the juvenile probation officer pursuant to a court order or warrant; or

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

In addition, incorporate the proposed amendment to the Nevada's objective detention criteria. **(BDR 5-373)**

10. Amend NRS 62.170 to limit the period of preadjudication detention for children in need of supervision to 24 hours, after which the child must be released to a parent, guardian, custodian or other person able to provide adequate care and supervision, or to a shelter, unless there is a special court order extending the time because the child threatens to run away from home or from the shelter. Provide that this time limit does not apply to the detention of children in need of supervision who have violated court orders, violated their parole or probation, were involved in violence at home, have a history of running away, or are from out of the state and have run away. Use the exceptions in the federal requirements for objective criteria for detention. **(BDR 5-373)**

11. Delete subsections 3 and 5 of NRS 62.170. **(BDR 5-373)**

12. Amend NRS 62.170 to authorize supervised detention at the child's home instead of at the juvenile facility. **(BDR 5-373)**

13. Amend subsection 2 of NRS 62.180 to allow funding of less expensive alternative programs for jail removal of children. **(BDR 5-373)**

14. Allow specifically the use of electronic monitoring devices for home detention of adjudicated delinquents. Include legislative declaration that the devices are to be used as an alternative to commitment, not as an alternative to probation or informal supervision. **(BDR 5-373)**

15. Authorize the court to delegate some of its power to its special masters. In lieu of requiring a law degree for persons appointed as special masters, amend subsection 2 of NRS 62.090 to remove the exception to the requirement that special masters must attend a course of instruction. Amend NRS 62.090 to change the delayed effectiveness of the masters' orders, and prohibit probation officers from serving as juvenile masters except in cases involving only minor traffic offenses. **(BDR 5-373)**

16. Amend NRS 62.043 and 62.281 to state that the court has full and plenary jurisdiction over all adults who are the parents, relatives, guardians or custodians of children who are adjudicated the subject of chapter 62 of NRS. Give the court its usual contempt powers for a violation of a lawful court order and authorize the imposition of fines and other usual punishments for any such violations. **(BDR 5-373)**

17. Amend NRS 62.193 to include a provision that the maximum time between the referral and the court's disposition must be no longer than 60 days, unless the court enters a written order extending the time which contains specific reasons for the extension. **(BDR 5-373)**

18. Amend subsection 3 of NRS 62.211 to require committing courts to direct the school district to transmit the educational transcript of a juvenile offender to the superintendent of the designated juvenile correctional institution. **(BDR 5-373)**

19. Make formation of probation committees mandatory in all judicial districts. **(BDR 5-373)**

20. Limit the power of probation officers to make arrests, but do not interfere with their power to make arrests in matters arising incidental to their basic activities. **(BDR 5-674)**

21. Increase the minimum age from 8 to 12 years of children who may be committed to a juvenile correctional facility. **(BDR 16-374)**

22. Impose an administrative assessment in cases involving minor traffic offenses committed by children in counties other than Clark County (where such assessments are already being collected). Allow any judicial officer who handles juvenile traffic offenses to charge the administrative assessments. **(BDR 5-375)**

23. Adopt a resolution directing the Department of Human Resources, in cooperation with affected entities, to establish a formula for sharing with the counties the actual cost of keeping a child at a regional facility for children and at a regional facility halfway house, including the cost of providing parole services for those facilities and children. **(BDR R-675)**

24. Urge the juvenile courts to consider appointing some members of the probation committee (not a majority) from a list of persons named by the county commission. **(BDR R-377)**

25. Draft a bill which would:

(a) Prohibit the escalation of children in need of supervision into delinquency status.

(b) Expand current provisions providing for state aid to support local programs for the rehabilitation of juvenile offenders placed on probation (NRS 213.220 to 213.290, inclusive) to include local programs for the assistance of children in need of supervision. Require the Department of Human Resources to adopt regulations setting forth minimum standards for the new programs.

(c) Require that a petition alleging a child to be in need of supervision must contain a list of local programs to which the child was referred and other efforts taken in the community to modify the child's behavior. The juvenile court could not adjudicate the child to be in need of supervision unless it makes a specific finding that "reasonable efforts" were taken in the community to assist the child in ceasing the activities for which he is alleged to be in need of supervision.

The subcommittee which proposed this bill conditioned its support upon the Legislature ensuring that the Department of Human Resources is allocated sufficient money to provide the necessary care, custody and control of children in need of supervision. **(BDR 5-679)**

26. Prohibit termination of employment of persons because they appear with their minor children in juvenile court. **(BDR 5-378)**

27. Authorize delivery of students found to be truant to an agency designated by the local school district as having services available for counseling and family intervention. **(BDR 34-372)**

28. Prohibit exclusionary procedures for the enforcement of school attendance. **(BDR 34-380)**

29. Encourage school districts to contact the parents of a child each time the child is absent from school. Encourage school districts to implement programs to increase parental involvement in the enforcement of school attendance. Promote communication and cooperation between school districts and the business community to:

(a) Require, as a condition of student employment, regular school attendance and passing grades;

(b) Enable school districts to communicate during business hours with working parents; and

(c) Provide working parents with opportunities to attend school conferences during business hours. **(BDR R-382)**

30. Provide additional counselors in elementary and secondary schools, and redefine the duties of counselors in elementary and secondary schools to enable both sets of counselors to assist in the implementation of programs to improve the self-esteem of at-risk children and to provide instruction in parenting for their parents. Appropriate sufficient money to provide a ratio of one counselor for every 300 students. **(BDR 34-384)**

31. Create a new position within the Department of Education for a person, under the supervision of the Superintendent of Public Instruction, to:

(a) Investigate the availability and feasibility of state and local options to prevent dropouts;

(b) Contact public and private persons, agencies and organizations in the various communities to instigate programs for the prevention of dropouts;

(c) Monitor new and existing programs for the prevention of dropouts administered by school districts and other agencies or organizations in the various communities;

(d) Coordinate state and local efforts to prevent dropouts; and

(e) Make recommendations concerning state instigation, implementation and participation in programs for the prevention of dropouts.

Make the law expire by limitation on July 1, 1991. **(BDR 34-677)**

32. Create a state grant program to provide incentives for the prevention of dropouts. School districts would be able to apply for money from a fund, to be administered by the Superintendent of Public Instruction, with the approval of the State Board of Education, by describing their proposed programs for the prevention of dropouts. Awards would be based upon the efficacy and cost of the programs. **(BDR 34-678)**

33. Encourage school districts to seek sources of funding for "latchkey" programs for children. **(BDR R-676)**

34. Provide additional funding for children in the system of juvenile justice to obtain education during the summer. (Letter to Senate Committee on Finance and Assembly Committee on Ways and Means is Appendix E).

35. Encourage school districts to increase their use of techniques to test and diagnose conduct-disordered and emotionally disturbed children. **(BDR R-383)**

36 The committee supports the integrated and consolidated delivery of services to children in Nevada.

37. Draft a bill that creates a consolidated Division of Youth and Family Services within the Department of Human Resources. Include the bill draft in the report without recommendation. **(BDR 18-385)**

38. Instead of physically moving statutes within the NRS, request the legislative counsel to publish a manual that contains laws relating to children.

39. Direct the Superintendent of Public Instruction to ensure that the Nevada Youth Training Center in Elko is in compliance with Public Law 94-142.

40. Amend NRS 432B.220 to require the reporting of child abuse or neglect immediately, but in no case more than 72 hours after discovery. Current language is that the report must be made immediately. **(BDR 38-371)**

41. Create a 5-year legislative task force to create and review annually a 5-year plan for the provision of services to youth and recommend policies and laws for consideration by the appropriate governmental bodies. The plan should inventory existing services, assess the delivery of those services, evaluate existing and required resources, discuss and evaluate options for the delivery of services and propose an annual community-based plan to enhance those services, including permanency planning. The task force should be combined with the proposed oversight committees on education and mental health and mental retardation. The committee would also review and evaluate efforts by school districts to prevent dropouts, and report its findings and recommendations concerning programs for the prevention of dropouts to the Legislature. A program for the prevention of dropouts should:

(a) Be based upon a commitment to achieve a graduation rate of 100 percent of the students in the state;

(b) Offer a variety of alternative methods and procedures for the prevention of dropouts; and

(c) Provide an effective system for monitoring and reporting upon the progress of the program.

Allow the committee to form subcommittees. **(BDR 17-379)**

REPORT OF THE ADVISORY COMMITTEE TO STUDY LAWS RELATING TO CHILDREN

I. INTRODUCTION

In 1987, the 64th Session of the Nevada Legislature adopted Assembly Bill No. 637, which created an advisory committee to study the laws relating to children. The members of the advisory committee were:

Assemblyman David E. Humke, Chairman
Senator Sue Wagner, Vice Chairman
Senator Ann O'Connell
Assemblyman Bob E. Gaston
Honorable Charles E. Springer, Supreme Court Justice
Honorable Charles M. McGee, District Court Judge, Washoe County
Honorable John S. McGroarty, District Court Judge, Clark County
Stephen A. Shaw, Chief of Planning, Evaluation and Program Development, Department of Human Resources
Eugene T. Paslov, Superintendent of Public Instruction
Noel S. Waters, District Attorney, Carson City
William R. Lewis, Chief Juvenile Probation Officer, Carson City
Belie Williams, County Commissioner, Washoe County

The committee appointed Louis W. McHardy, Dean of the National College of Juvenile and Family Law, to serve as an ex officio member. The committee held six meetings, and formed subcommittees which held a total of ten additional meetings. Technical assistance and expert testimony were provided by the National Conference of State Legislatures, the Center for the Study of Youth Policy and the National Council of Juvenile and Family Court Judges. The committee also heard testimony from representatives of state and local government and interested citizens. A list of persons who testified before the committee is attached as Appendix A.

Though A.B. 637 permitted inquiry into all laws relating to children, the committee confined its study to matters directly or indirectly related to juvenile justice. The committee acquired a large amount of background material concerning the subject. This material has been retained and copies are available upon request from the legal division of the legislative counsel bureau. A bibliography of these materials is included as Appendix B.

II. BACKGROUND AND OVERVIEW

Laws relating to children have been studied in more than half of the states in the period following the 1987 legislative sessions. The legislative sessions which convene in 1989 may revolutionize the law in this area. The committee reviewed laws of several states, and representatives of the committee visited some of these states to observe their systems and determine whether Nevada could benefit from their examples.

Two of the principal models considered by the committee were systems established in Ohio and Utah. In Ohio, money is made available to local courts to contract with public or private entities for the provision of supervisory or other services to children placed on probation who are under the custody and supervision of the juvenile court. Courts in neighboring counties are authorized to enter into cooperative agreements for the provision of such services. The purposes of "the Ohio Plan" are twofold. First, the availability of money for these contracts encourages the development of local services and facilities for the supervision and treatment of children. As community resources are developed, the need to institutionalize is reduced. The secondary purpose and result is therefore a reduction in institutionalization. These results are also desirable in Nevada. The lack of local services and facilities, particularly in rural counties, causes children to be sent out of the state for treatment or to be admitted to facilities in Nevada that lack the resources to deal with the particular problems of these children. However, the committee did not feel that the Ohio plan would be as effective in Nevada. Rural counties in Nevada will probably never produce a sufficient number of "problem children" to support comprehensive local programs. The goals of the Ohio plan are desirable, and the committee sought to achieve similar results through its recommendations. (See Appendix C, The Ohio Plan, for more details.)

The second state examined by the committee was Utah. The problems confronted by Utah were the overcrowding of secure facilities for juvenile offenders and a lack of community-based services, similar to the problems addressed by the Ohio Plan. However, Utah addressed the problem from the opposite direction. Rather than stimulating the development of community-based programs to alleviate the need to commit to secure facilities, Utah addressed the problem of secure facilities first. The theory of Utah's program was that treatment provided outside of a secure facility would be more effective and less costly. Utah sought to limit commitments to secure facilities to only the most extreme cases, virtually closing these facilities. As children were funneled out of the secure facilities, local programs were created to meet the demand. The results are virtually the same as the Ohio Plan, and are also desirable for Nevada. (See Appendix D, Youth Corrections in Utah: Remaking a System.)

But Nevada's problem with secure facilities is different. In Nevada, a child committed to a youth training center from Clark County is completely

different from a child committed from a rural county. Clark County has a far wider range of options, and will only commit serious offenders to the training centers. A rural county may not have that luxury. Without local programs for treatment of less serious offenders, a court may have no option but to commit a child to a training center. Nevada's training centers do not suffer so much from overcrowding as from an inappropriate mixture of children. The committee felt that it is important to develop options for courts in all counties, so that commitment to a training center will be a punitive measure, appropriate only for children who need to be shown that the consequence of unacceptable behavior is punishment.

In Nevada, a major concern is in the area of children who have more than one serious problem. A child may be the victim of abuse or neglect, have committed several delinquent acts, and have psychological problems or a learning disorder. Depending upon where the child enters the system, he or she may receive different treatment. The end result is usually one of two options, both of which were found to be inadequate by the committee. The first option is to commit the child to a youth training center. This is clearly unacceptable because the centers lack the resources to provide the individualized professional treatment such a child needs. But nonsecure facilities cannot handle these children, and Nevada lacks the facilities and services to deal specifically with these children. The second option is to send these children out of the state, to facilities that are equipped to deal with their special problems. This option is very expensive. The committee felt that it would be more appropriate for Nevada to develop such facilities, and to bring our children home.

A major development coinciding with the work of this committee was a proposal by the Department of Human Resources to reorganize and create a division to deal specifically with children. The committee found that the purposes and goals of the reorganization coincided with the purposes and goals of the recommendations of the committee. The reorganization would help in all three of the related problem areas: 1) avoiding commitment to an institution unless appropriate and necessary; 2) developing local options to commitment; and 3) providing adequate service to multi-problem children. If the reorganization accomplishes its goals, it will be a model for the rest of the country.

Ultimately the committee concluded that attempting to adopt another state's solutions to Nevada's problems did not make much sense. The recommendations of the committee are tailored to Nevada's specific problems. But far more work is necessary. One recommendation, the formation of a 5-year task force to study these and other issues, reflects the committee's belief that more planning is necessary. Education, mental health and juvenile corrections have been treated as major, but independent, issues. The committee recognized that the interrelationship between these issues is critical to solving the problems facing our state.

III. FINDINGS AND RECOMMENDATIONS

A. Revision of Chapter 62 of NRS

1. Generally

Assembly Bill No. 637 directed the committee to evaluate "the need to modernize the laws" relating to children. It was readily apparent to the committee that the laws needed modernization. The committee formed a subcommittee to review chapter 62 of NRS, Juvenile Courts. This chapter contains the vast majority of the law relating to procedure in cases involving children who have committed delinquent acts or are in need of supervision. By reviewing this chapter and making recommendations for modernization and improvement, the committee felt that the concerns raised by Assembly Bill No. 637 would be addressed. The subcommittee produced almost one-half of the final recommendations of the committee.

2. Treatment of Less Serious Offenders

The first two recommendations of the subcommittee illustrate one of two recurring themes in the committee's recommendations. The first theme is that children who are not serious offenders should be given the opportunity to correct their behavior and avoid serious sanctions. Both informal supervision and supervision and consent decrees give children the opportunity to avoid serious sanctions. The second theme is that those offenders who have shown that they are not willing to correct their behavior should be treated more like adults: they should be punished for their actions, and the punishment should fit the offense.

The first area addressed by the subcommittee was the question of informal supervision. This procedure is in use, but the parameters and, technically, the authority for its use are not specified in the law. The primary benefit of informal supervision is that it allows the courts and the juvenile probation officers to handle less serious cases without the time, expense and stigma of formal adjudication. If a child successfully completes his or her period of informal supervision, it is unnecessary to take further action. If the child is not successful, the court can begin to take more punitive action. Informal supervision allows limited resources to be directed to more serious offenders.

The committee, therefore, recommends:

> Adopt a statutory procedure for informal supervision. Make certain the court is not deprived of the power to dismiss the formal petition and refer the child back for informal supervision. Require review and approval by the district attorney of any proposed informal supervision of a child who has committed a delinquent act which would otherwise be considered a gross misdemeanor or felony. **(BDR 5-373)**

A related area is the existing provision concerning supervision and consent decrees. NRS 62.128 authorizes the judge or master to place a child under the supervision of the court pursuant to a supervision and consent decree without a formal adjudication of delinquency. Upon successful completion of the terms and conditions of the decree, the petition may be dismissed. The purpose of this provision is similar to the procedure for informal supervision. If a child is successful, no punitive sanctions should attach. But a child who successfully completes the consent decree period receives little benefit other than avoiding adjudication. The committee believes that such a child should be able to respond to inquiries that he or she has not been arrested for or convicted of a delinquent offense. If the child avoids further problems in the future, the consent decree will provide an additional benefit: the child will be able to say that he or she has a "clean record."

The only possible abuse of this provision would be to preclude in a subsequent proceeding reference to the successful completion of supervision under a consent decree. The benefit is intended for a child who avoids further problems, not a child who commits subsequent delinquent acts. The committee wanted it to be clear that the record of successful completion of supervision under a consent decree could be used in a subsequent proceeding.

The committee, therefore, recommends:

> Amend subsection 5 of NRS 62.128 to provide that children who successfully complete the consent decree period of supervision are able to respond to inquiries that they have not been arrested for or convicted of a delinquent offense. Make certain that nothing will prevent the probation department from using the record of the informal adjustment on a subsequent, adjudicated conviction for a delinquent offense. **(BDR 5-373)**

A common problem with regard to the first theme, that nonserious offenders should have the chance to correct their behavior, is the "escalation" of "status offenders." A child may enter the system because he or she is in need of supervision. If such a child violates the terms or conditions of a court order, that child has committed a delinquent act. The act may be characterized as a delinquent act only because of the child's "status" as a child in need of supervision. The child has been "escalated" from "in need of supervision" to "delinquent." Members of the committee expressed the belief that there should be some preliminary attempt made to help a child before he or she could be declared "in need of supervision." The committee decided against creating a third classification, but did agree that there should be additional prerequisites to declaring a child to be in need of supervision. The committee concluded that all nondelinquent first referrals should be diverted to available services in the community. The child could only be declared in need of supervision if he or she is subsequently referred to the court. By adding this

additional safeguard, children will be assured some kind of assistance before they can be declared in need of supervision.

The committee, therefore, recommends:

> Require that all nondelinquent first referrals must be diverted without adjudication to available services in the community. If the child has violated a state law concerning truancy, incorrigibility or running away, the court will admonish the child to obey the law and a record of the admonition will be maintained. A child cannot be adjudicated as in need of supervision unless he has previously been diverted to community services in this manner. **(BDR 5-373)**

3. Punishment of Offenders

The committee's next recommendations concern the second theme, that serious offenders should be punished for their actions. A small percentage of the children who enter the juvenile court system are responsible for a large percentage of the criminal activity conducted by children. The committee wanted to give the courts greater latitude in dealing with these few, serious offenders. The committee looked to adult law for an analogy, the "habitual felon" statute (NRS 207.010). But the classification suggested by the committee is not limited to frequent offenders; it includes those children whose offenses are so serious that they ought to be treated differently than other children who commit delinquent acts. The committee decided upon the concept of "serious or chronic" offenders. A chronic offender is a child with three adjudications as delinquent for acts which would constitute felonies if committed by an adult. A serious offender is a child adjudicated as delinquent for manslaughter, battery causing substantial bodily harm, assault with a deadly weapon, sexual assault, armed robbery or kidnaping (if the crime is murder, the law already allows a child to be treated as an adult). To be classified as a chronic offender or a serious offender, the child would have to be at least 16 years of age. The committee recognized that each case is unique, and therefore required that the court make a determination that the child is indeed a serious or chronic offender. If the court determined that the classification was appropriate, a broader range of options for punishment would be available to the court. In this way, children who commit serious offenses, or who repeatedly commit relatively serious offenses, can learn the very basic lesson that crime begets punishment.

The committee discussed at length the issue of the publication of the names of these offenders. Rather than requiring publication of a list of serious or chronic offenders, the committee agreed to allow the court to release a child's name for use by the press. In this way, the court will retain control over lifting the veil of confidentiality, but will have an additional ground for doing so.

The committee, therefore, recommends:

> Using the current classification of delinquent, add a new section to chapter 62 of NRS which sets forth the ability of the district attorney to add to the petition for delinquency another charge, that of "serious or chronic offender." The requirements for adjudication as a serious or chronic offender would be (1) (a) at least three adjudications as delinquent for acts which otherwise would be considered felonies, or (b) one adjudication as delinquent for manslaughter, battery causing substantial bodily harm, assault with a deadly weapon, sexual assault, armed robbery or kidnaping; (2) that the child is at least 16 years of age; and (3) a determination by the court that the child was indeed a serious or chronic offender. Amend NRS 62.355 to authorize the court to publish for use by the press a list of the children who have been adjudicated as a serious or chronic offender and otherwise lift the usual veil of confidentiality. Upon the adjudication as a serious or chronic offender, the court's options for punishment would be expanded to include direct fines on the child, sending the child to a secure facility and any other punitive dispositional action determined by the court to be in the best interests of society. **(BDR 5-373)**

Current law provides for jailing of persons between 18 and 21 years of age who are subject to the jurisdiction of the court pursuant to chapter 62 of NRS if they violate a condition of their probation. There is no provision for punishment of persons under 18 years of age who violate their probation. If we are to show these children that they are responsible for their actions, they must learn that a violation of probation usually results in incarceration.

The committee, therefore, recommends:

> Amend NRS 62.271 to allow court-ordered commitments to juvenile detention facilities for adjudicated delinquents 17 years of age or less who violate their probation. Limit the commitment to 30 days. **(BDR 5-373)**

Juvenile courts are specifically authorized to impose a fine upon children only for traffic violations. The court may require a child to participate in a program designed to provide restitution to the victim of his crime, but is not specifically authorized to order direct restitution. The committee believes that if a child has money, the court should be specifically authorized to impose fines or require the payment of restitution to the victim. In many cases, this is the most appropriate punishment for a child.

The committee, therefore, recommends:

> Amend NRS 62.211 to allow the court to impose fines directly on juvenile offenders when appropriate. Also amend paragraph (g) of subsection 1 to delete the requirement of participation in a "program" of restitution: just require restitution. **(BDR 5-373)**

Another limitation upon the court's dispositional powers is the provision allowing the court to order a child to work on a public project under the supervision of a public organization. Many public projects are operated by private, nonprofit agencies. These agencies may be as capable of supervising children working on the projects as a public organization would be, but the court is not specifically authorized to order children to work for these agencies. If the court does use private agencies, they should provide the same level of supervision as would a public organization.

The committee, therefore, recommends:

> Amend paragraph (e) of subsection 1 of NRS 62.211 to allow courts to order juvenile offenders to perform public service on projects supervised by private, nonprofit agencies as well as on public projects. Require the agencies to provide the same supervision of the children as is required on public projects. **(BDR 5-373)**

4. Secure Detention of Children

The detention of children raises two issues. First, the state must comply with requirements of federal law concerning allowable confinement. Second, confinement in an environment that is more restrictive than necessary may harm the child, i.e., a child who is treated like a criminal is more likely to act like one. If we want to give less serious offenders the opportunity to reform (the "first theme"), we must commit them to the least restrictive environment possible. Secure detention should be punishment for those children who warrant punishment (the "second theme"), not to "warehouse" less serious offenders. The committee concluded that, at a minimum, we should adopt a law requiring compliance with the federal requirements concerning "sight and sound" separation of children from adults.

The committee, therefore, recommends:

> Make statutory the federal requirements which prohibit jailing of children in adult correctional facilities, jails or other detention facilities containing adults unless there is complete sight and sound separation. Provide an exception for children declared serious or chronic offenders. **(BDR 5-373)**

There are circumstances under which delinquents or children in need of supervision must be placed in secure detention. The law does not provide specific criteria for determining whether secure detention is appropriate. To ensure that this severe action is only taken when necessary, the statutes should specify the objective criteria for making this determination.

The committee, therefore, recommends:

> A child alleged to be delinquent or in need of supervision may be detained in secure detention before the court hearing only if it is demonstrated that probable cause exists to believe that:
>
> (a) If the child is not detained, the child is likely to commit an offense dangerous to himself or to the community or likely to commit damage to property;
>
> (b) The child will run away or be taken away so as to be unavailable for proceedings of the court or its officers;
>
> (c) The child is brought to the juvenile probation officer pursuant to a court order or warrant; or
>
> (d) The child is a fugitive from another jurisdiction.
>
> In addition, incorporate the proposed amendment to the Nevada's objective detention criteria. **(BDR 5-373)**

Preadjudication detention of children in need of supervision poses obvious problems. These are children who have not committed delinquent acts. Unless there are circumstances which justify detention, such a child should be released as soon as possible to the custody of the adult or adults responsible for the child's care and supervision.

The committee, therefore, recommends:

> Amend NRS 62.170 to limit the period of preadjudication detention for children in need of supervision to 24 hours, after which the child must be released to a parent, guardian, custodian or other person able to provide adequate care and supervision, or to a shelter, unless there is a special court order extending the time because the child threatens to run away from home or from the shelter. Provide that this time limit does not apply to the detention of children in need of supervision who have violated court orders, violated their parole or probation, were involved in violence at home, have a history of running away, or are from out of the state and have run away. Use the exceptions in the federal requirements for objective criteria for detention. **(BDR 5-373)**

Existing law generally prohibits confinement of children in jail or prison, but provides exceptions which are inconsistent with the requirements of jail

removal and sight and sound separation. Subsections 3 and 5 of NRS 62.170 provide:

> 3. Except as provided otherwise in this section a child under 18 years of age must not at any time be confined or detained in any police station, lockup, jail or prison, or detained in any place where the child can come into communication with any adult convicted of crime or under arrest and charged with crime, except that where no other detention facility has been designated by the court, until the judge or probation officer can be notified and other arrangements made therefor, the child may be placed in a jail or other place of detention, but in a place entirely separated from adults confined therein. Whenever it is possible to do so, special efforts must be made to keep children who are in need of supervision apart from children charged with delinquent acts.
>
> 5. The officer in charge of any facility for the detention of juveniles may by written order direct the transfer to the county jail of a child placed in the facility. The child must not be detained in the county jail for more than 24 hours unless a district judge orders him detained for a longer period. This order may be made by the judge without notice to the child or anyone on his behalf. Any child under 18 years of age who is held in the county jail pursuant to the provisions of this subsection must, where possible, be placed in a cell separate from adults.

These provisions are unnecessary in light of the previous recommendations, and in some respects conflict with those recommendations.

The committee, therefore, recommends:

Delete subsections 3 and 5 of NRS 62.170. **(BDR 5-373)**

When a child is taken into custody for violating a law or ordinance or because his conduct indicates that he is a child in need of supervision, the child may end up being taken to a place of detention. Pending disposition of the case, the child may be released to the custody of the parent or other person appointed by the court, or may be detained. The committee feels that the court should be specifically authorized to provide for supervised detention at the child's home instead of at a detention facility. In this way the court will have an option to ordering detention if it has doubts about releasing the child to the parent's or guardian's custody. This offers the benefits of allowing a child to be at home and serves the overall purpose of limiting the use of restrictive confinement.

The committee, therefore, recommends:

> Amend NRS 62.170 to authorize supervised detention at the child's home instead of at the juvenile facility. **(BDR 5-373)**

The emphasis upon removing children from jail or other secure confinement means that counties must develop alternatives. Current law authorizes, or in a county whose population is 20,000 or more requires, a county to provide a detention home for temporary detention of children (subsection 2 of NRS 62.180), or to combine with another county to provide such a home. However, detention homes are an expensive alternative to jail, and often are not much less secure. If counties are to be encouraged to develop alternatives, the law must be flexible enough to allow funding of these alternatives.

The committee, therefore, recommends:

> Amend subsection 2 of NRS 62.180 to allow funding of less expensive alternative programs for jail removal of children. **(BDR 5-373)**

Juvenile courts have a broad range of discretion in dealing with children brought before them. The committee believes that specifying some options in the law may encourage judges to select them more often. A new technology allows home detention through electronic monitoring devices. In addition to aiding the deinstitutionalization effort, this option allows a child the benefits of a familiar and stable environment. This option, to be consistent with the policy of using the least restrictive environment that is appropriate, should be used as an alternative to commitment, not as an alternative to probation or informal supervision.

The committee, therefore, recommends:

> Allow specifically the use of electronic monitoring devices for home detention of adjudicated delinquents. Include legislative declaration that the devices are to be used as an alternative to commitment, not as an alternative to probation or informal supervision. **(BDR 5-373)**

5. Procedure and Jurisdiction

Another area in which modernization of the laws is needed is the delegation of authority to juvenile masters. As our state continues to grow at one of the fastest paces in the country, the need to use special masters will increase. Existing law allows the use of masters, but limits the benefit by delaying the effect of a master's order until adopted by court order. If a master needs to take immediate action, the order must take effect immediately, subject to modification by the court. If we want to encourage courts to use masters, we must also adopt certain protections. For example, we require masters to attend

a course of instruction at the National College of Juvenile and Family Law, but allow a master to be excused from this requirement upon written order of the district judge. If masters are to exercise more authority, we must ensure that they are adequately trained. However, the committee did not feel that it was necessary for masters to have law degrees.

The other area addressed by the committee with regard to this issue was the use of probation officers as masters. Unless the case involves only minor traffic offenses, the committee believes that it would be inappropriate for the officer to serve as a master when the officer may also be responsible for conducting the preliminary inquiry, recommending the filing of a petition, and supervising the child if placed on probation.

The committee, therefore, recommends:

> Authorize the court to delegate some of its power to its special masters. In lieu of requiring a law degree for persons appointed as special masters, amend subsection 2 of NRS 62.090 to remove the exception to the requirement that special masters must attend a course of instruction. Amend NRS 62.090 to change the delayed effectiveness of the masters' orders, and prohibit probation officers from serving as juvenile masters except in cases involving only minor traffic offenses. **(BDR 5-373)**

For juvenile courts to administer complete justice, they must have authority not only over the children brought before them, but over all parents, relatives, guardians or custodians of the children. While the courts now have such authority, the law should provide explicitly for authority over these adults and the power to punish them for violating the court's orders.

The committee, therefore, recommends:

> Amend NRS 62.043 and 62.281 to state that the court has full and plenary jurisdiction over all adults who are the parents, relatives, guardians or custodians of children who are adjudicated the subject of chapter 62 of NRS. Give the court its usual contempt powers for a violation of a lawful court order and authorize the imposition of fines and other usual punishments for any such violations. **(BDR 5-373)**

One of the most frustrating aspects of our legal system is the pace at which it operates. Justice delayed particularly effects children. A child's future hangs in the balance as the court weighs its options. To delay the decision any longer than necessary is punishment in itself. The committee concluded that 60 days was a reasonable time between referral of the case and its disposition, but recognized that exceptional circumstances may require an extension.

The committee, therefore, recommends:

> Amend NRS 62.193 to include a provision that the maximum time between the referral and the court's disposition must be no longer than 60 days, unless the court enters a written order extending the time which contains specific reasons for the extension. **(BDR 5-373)**

One problem faced by juvenile correctional institutions is that they are not furnished with the educational transcripts of children committed to their custody, or there is a substantial delay in the transmission of the transcripts because the institution does not know the district in which the child was last attended school. This makes providing an appropriate education impossible. The committing court in many cases does not have the transcript. But the school district in which the child last attended school should have the transcript. To ensure that the correctional institution receives the transcript it needs, the court should require the school district to transmit the transcript to the institution.

The committee, therefore, recommends:

> Amend subsection 3 of NRS 62.211 to require committing courts to direct the school district to transmit the educational transcript of a juvenile offender to the superintendent of the designated juvenile correctional institution. **(BDR 5-373)**

Probation committees perform a valuable function. Their paramount duty is to advise the juvenile court, but they also perform investigative tasks and report to the court on matters ranging from personnel policies to the management of juvenile detention facilities. However, formation of probation committees is only mandated in judicial districts which include a county whose population is 250,000 or more. The committee concluded that the valuable function performed by probation committees justifies mandating their formation in all judicial districts.

The committee, therefore, recommends:

> Make formation of probation committees mandatory in all judicial districts. **(BDR 5-373)**

The final concern raised by the subcommittee was the issue of the power of probation officers to make arrests. The committee agreed that probation officers should not be engaged in police work unrelated to their duties. The difficulty was in defining the particular scope of their authority. The committee wanted to ensure that the limitations placed upon probation officers would not interfere with their ability to make arrests incidental to their duties. The committee decided that the best way to resolve the problem was to specify

the basic activities of probation officers, and to authorize arrests in the conduct of those activities or in any matters arising incidental to those activities.

The committee, therefore, recommends:

> Limit the power of probation officers to make arrests, but do not interfere with their power to make arrests in matters arising incidental to their basic activities. **(BDR 5-674)**

B. Other Juvenile Corrections Issues

Aside from its revision of chapter 62 of NRS, the committee made a number of recommendations concerning issues related to juvenile corrections and children in need of supervision. The first was proposed by various people, and opposed by none. The recommendation is to increase the minimum age from 8 to 12 years of children who may be committed to a juvenile correctional facility. It is hard to imagine a child of this young age warranting such treatment, but even if the child's behavior is comparable to that of older children who are committed to a correctional facility, we should not give up easily on such young children. To commit a child of this age to a correctional facility is to reduce the possibility of reform and rehabilitation. We should at least continue noncorrectional efforts until the age of 12.

The committee, therefore, recommends:

> Increase the minimum age from 8 to 12 years of children who may be committed to a juvenile correctional facility. **(BDR 16-374)**

The law currently provides that in every county other than Clark County, minor traffic offenses are handled by the juvenile court judge rather than the local municipal court or justice's court. As a result, the administrative assessments imposed in misdemeanor cases in municipal and justices' courts are only imposed in Clark County upon children who commit minor traffic offenses. To remedy this situation, the committee proposed to allow the juvenile courts in the other counties to impose administrative assessments upon children who commit such offenses. The proposal would allow any judicial officer who handles these offenses to charge the administrative assessment.

The committee, therefore, recommends:

> Impose an administrative assessment in cases involving minor traffic offenses committed by children in counties other than Clark County (where such assessments are already being collected). Allow any judicial officer who handles juvenile traffic offenses to charge the administrative assessments. **(BDR 5-375)**

An issue that relates directly to the principal of using the least restrictive environment as is practicable for dealing with delinquent children is the funding of regional facilities for children. The state has two excellent facilities of this type, China Springs Youth Camp and Spring Mountain Youth Camp, which were established for younger, less sophisticated offenders. Logic would dictate that we would do everything possible to encourage commitment to these facilities rather than the youth training centers and to encourage development of more of these facilities and regional halfway houses. But the fact is that the law encourages just the opposite. A court that commits a child to a youth training center will relieve the county of a financial burden because the state pays most of the cost of such a commitment. By contrast, the costs of committing a child to a regional facility is divided among the county of the child's residence, the county in which the facility is located (if different from the county of the child's residence) and the state. In other words, it is cheaper for a county to send a child to the more restrictive environment, the youth training centers. This clearly conflicts with the principle of committing a child to the least restrictive environment possible.

The committee at first was requested to transfer these costs to the state. But this proposal would mean that the regional facilities would become state facilities; a less extreme solution is to establish a formula for sharing these costs between the state and the counties. The Department of Human Resources is already studying this issue, and its representatives indicated that they would be willing to develop such a formula.

The committee, therefore, recommends:

> Adopt a resolution directing the Department of Human Resources, in cooperation with affected entities, to establish a formula for sharing with the counties the actual cost of keeping a child at a regional facility for children and at a regional facility halfway house, including the cost of providing parole services for those facilities and children. **(BDR R-675)**

The committee heard testimony concerning the relationship between the juvenile courts and the county commissioners. The relationship is unique in that employees of the juvenile courts are employees of the county, but they are under the control of the courts instead of county commissioners. The committee concluded that one method of ensuring an open and productive relationship between the courts and the commissioners is to encourage the courts to consider appointing to the probation committee some representatives suggested by the county commissioners. The role and benefits of probation committees have been discussed earlier. Probation committees could be used in this manner to help maintain a desirable relationship of cooperation.

The committee, therefore, recommends:

> Urge the juvenile courts to consider appointing some members of the probation committee (not a majority) from a list of persons named by the county commission. **(BDR R-377)**

The committee also considered urging the juvenile court in Clark County to conform to the uniform personnel policies of the county. The committee rejected the proposal for two reasons. First, the personnel policies are not completely uniform, in that many employees of the county fall in specific classifications that are treated differently. Second, the committee found no evidence that there was anything wrong with the existing policies of the juvenile court.

A major issue which the committee only briefly addressed is the issue of children in need of supervision. The committee lacked the time to devote enough attention to this issue and its many facets. Should the courts or social services deal with these children? Should escalation of status offenders be allowed (for nondelinquent acts)? Who is responsible, financially, for these children? A separate study of this issue alone may not produce a consensus on these and related issues. The committee had the benefit of a "summit" conducted on this issue, but the report of the summit was not definite enough to allow for specific recommendations for bill drafts. The committee appointed a subcommittee to review the recommendations of the summit and make proposals for a bill draft for inclusion in the report without recommendation.

The subcommittee made three recommendations, but indicated that the recommendations were only practical if the Legislature allocated a sufficient amount of money to support the program. The subcommittee recommended that escalation of status offenders be prohibited. If a child has not committed an act that would be a delinquent act regardless of his status, he should not be treated as a delinquent. The current program for rehabilitation of juvenile offenders is limited to children placed on probation. The subcommittee recommended that this program be extended to all children under the jurisdiction of the juvenile court (including children in need of supervision) to allow for adequate provision of services to children in need of supervision. Finally, the subcommittee recommended that a petition alleging that a child is in need of supervision indicate the efforts taken to address the conduct for which he is alleged to be in need of supervision. The court could only adjudicate a child to be in need of supervision if those efforts were reasonable, both in quantity and quality. This would also help ensure the adequate provision of services to these children.

The committee, therefore, recommends:

Draft a bill which would:

(a) Prohibit the escalation of children in need of supervision into delinquency status.

(b) Expand current provisions providing for state aid to support local programs for the rehabilitation of juvenile offenders placed on probation (NRS 213.220 to 213.290, inclusive) to include local programs for the assistance of children in need of supervision. Require the Department of Human Resources to adopt regulations setting forth minimum standards for the new programs.

(c) Require that a petition alleging a child to be in need of supervision must contain a list of local programs to which the child was referred and other efforts taken in the community to modify the child's behavior. The juvenile court could not adjudicate the child to be in need of supervision unless it makes a specific finding that "reasonable efforts" were taken in the community to assist the child in ceasing the activities for which he is alleged to be in need of supervision.

The subcommittee which proposed this bill conditioned its support upon the Legislature ensuring that the Department of Human Resources is allocated sufficient money to provide the necessary care, custody and control of children in need of supervision. **(BDR 5-679)**

The final recommendation in this area is designed to ensure parental participation in the juvenile court process. The law currently protects jurors and witnesses from losing their jobs for serving or appearing in court. The law does not provide this protection for a parent who appears in court with his or her minor child. The support of a parent should not depend on attitude of the parent's employer. The law should protect parents from losing their jobs for appearing in court with their children.

The committee, therefore, recommends:

Prohibit termination of employment of persons because they appear with their minor children in juvenile court. **(BDR 5-378)**.

C. Education

The interrelationship between juvenile justice and education concerns virtually all aspects of education. The committee focused on one particularly strong area of commonality, the problem of children who are not in school. The two most obvious examples are truants and dropouts. These children not only are on the street without supervision, they are not getting the education

that can make the difference between a life of social success and a life as a social outsider. The committee found other areas which cause similar problems. Some schools have adopted exclusionary policies for enforcing attendance requirements. Children excluded under such policies are also denied the benefits of education and forced to fill their days with other activities, activities which may lead them into the juvenile justice system. On a lesser scale, the problem of "latchkey" children (children who are typically unsupervised after school until their parents return home from work) not only puts children on the street, it puts them at risk of becoming victims of crime.

The committee formed a subcommittee to review issues relating to education. The primary focus of the recommendations returned from the subcommittee was the issue of truancy and the policies for enforcement of our attendance requirements. In Washoe County, the Children's Cabinet Inc. works with the school district to provide counseling and family intervention services to truants and other children and families who are experiencing difficulties. The committee feels that the service provided by this agency is invaluable, and should be encouraged as an effective tool to provide help to families before their children turn from truants to dropouts. One way to encourage the establishment of such agencies is to authorize specifically in the law the delivery of truants to such agencies.

The committee, therefore, recommends:

> Authorize delivery of students found to be truant to an agency designated by the local school district as having services available for counseling and family intervention. **(BDR 34-372)**

Some schools have adopted policies for the enforcement of attendance that the committee found to be counterproductive. In these schools, a child who is absent without excuse a certain number of times is suspended from school. This is contrary to the theory of mandatory attendance. If we feel strongly enough that school is such a benefit that attendance should be required, we should not punish failure to attend by exclusion from school. The committee considered the possibility of providing grants to schools that establish policies that are not exclusionary, but decided that it would be better simply to prohibit a practice that the committee concluded was indefensible.

The committee, therefore, recommends:

> Prohibit exclusionary procedures for the enforcement of school attendance. **(BDR 34-380)**

How, then, is a school to deal with the problem of truancy? The committee feels strongly that cooperation with parents and the business community is essential. Parents must be made aware of the problem and made a part of the solution. A parent should be contacted every time that a child is absent from school, even if that means contacting the parent at work. Parents must be

involved in enforcing attendance. The cooperation of the business community is required to allow communication with parents at work and to give parents the opportunity to attend conferences at school. Schools should cooperate with businesses to ensure that only those students who demonstrate their responsibility by attending school regularly and receiving passing grades are employed.

The committee, therefore, recommends:

> Encourage school districts to contact the parents of a child each time the child is absent from school. Encourage school districts to implement programs to increase parental involvement in the enforcement of school attendance. Promote communication and cooperation between school districts and the business community to:
>
> (a) Require, as a condition of student employment, regular school attendance and passing grades;
>
> (b) Enable school districts to communicate during business hours with working parents; and
>
> (c) Provide working parents with opportunities to attend school conferences during business hours. **(BDR R-382)**

The second major area addressed by the subcommittee was the problem of dropouts. Nevada has one of the lowest graduation rates in the country. The causes and possible solutions to the problem are too detailed and complicated to be addressed by this committee, which dealt with the problem only because of its substantial effect on the juvenile justice system. The subcommittee made recommendations that address the problem at the basic level: how can our schools do a better job at keeping children from dropping out?

The first, and most basic change required is to improve the counseling services provided to children in the schools. Children who are likely to fail in school for one reason or another are often identified early in their schooling, but the schools lack the resources to provide adequate counseling in this early stage. The committee believes that early intervention is critical, and if schools are to provide this intervention they must have an adequate number of counselors. The duties of counselors must be defined to help them identify these children, improve their self-esteem, and work with parents to improve their participation. An adequate number of counselors is required throughout elementary and secondary schools to carry out programs for keeping our children in school.

The committee, therefore, recommends:

> Provide additional counselors in elementary and secondary schools, and redefine the duties of counselors in elementary and secondary schools to enable both sets of counselors to assist in the implementation of programs to improve the self-

esteem of at-risk children and to provide instruction in parenting for their parents. Appropriate sufficient money to provide a ratio of one counselor for every 300 students. **(BDR 34-384)**

The second change suggested by the committee was the creation of a position in the Department of Education for a person who will coordinate the state's efforts in preventing children from dropping out of school. With the relative autonomy of our school districts, a central point of focus is needed to ensure that the policies of all of our districts are addressing the problem, even if the different districts adopt different approaches. The needs of a child who is in danger of dropping out in Las Vegas may be different from the needs of a child in danger of dropping out in Pioche. This does not mean that we do not need a central point. The new position would allow districts to learn from programs developed in other districts, and to create new programs. Central monitoring of the success of programs will allow for a meaningful review and evaluation of those programs. A central repository of information concerning efforts to prevent children from dropping out can be tapped by any district at any time.

The committee concluded that the creation of such a position should at least be tried. If, after 2 years, it appears that the position has not been of sufficient benefit, it will not be continued.

The committee, therefore, recommends:

Create a new position within the Department of Education for a person, under the supervision of the Superintendent of Public Instruction, to:

(a) Investigate the availability and feasibility of state and local options to prevent dropouts;

(b) Contact public and private persons, agencies and organizations in the various communities to instigate programs for the prevention of dropouts;

(c) Monitor new and existing programs for the prevention of dropouts administered by school districts and other agencies or organizations in the various communities;

(d) Coordinate state and local efforts to prevent dropouts; and

(e) Make recommendations concerning state instigation, implementation and participation in programs for the prevention of dropouts.

Make the law expire by limitation on July 1, 1991. **(BDR 34-677)**

The "bottom line" with regard to programs to prevent children from dropping out of school is no different than any other program: Where will we get the money? Each school district recognizes the problem and has tried in

its own way to address the problem. But we cannot ask a school district to cut back on teachers or counselors or books to increase funding for this effort. If a school district is to adopt a comprehensive program to keep children in school, it needs a source of money to support the program. The committee recommends a grant program administered by the Superintendent of Public Instruction, with all such grants requiring the approval of the State Board of Education. Districts will apply for money in the fund by submitting their proposed programs. Awards of money from the fund will be based upon the amount needed to administer the program and the value of the program. With this mechanism in place, schools will no longer be forced to decide between hiring new teachers and funding programs to prevent children from dropping out.

The committee, therefore, recommends:

> Create a state grant program to provide incentives for the prevention of dropouts. School districts would be able to apply for money from a fund, to be administered by the Superintendent of Public Instruction, with the approval of the State Board of Education, by describing their proposed programs for the prevention of dropouts. Awards would be based upon the efficacy and cost of the programs. **(BDR 34-678)**

The committee also considered related issues, that is, other circumstances under which children are not in school. An area which has become an increasing concern over the past several years is the subject of "latchkey" children. In the past, families in which only one parent was employed out of the house were the rule. Such families are now in decline. As a result, an ever-increasing number of children are unsupervised between the time school ends and the time that their parents finish working. Programs for these children, commonly known as "latchkey" children, serve two purposes. First, they keep the children occupied, which limits the possibility that their idle hands will get them into trouble. Second, young children on their own for hours at a time can become defenseless victims of crime. These programs are unquestionably worthwhile, and all options for funding the programs should be pursued by our school districts.

The committee, therefore, recommends:

> Encourage school districts to seek sources of funding for "latchkey" programs for children. **(BDR R-676)**

The two final recommendations concerning education involve issues that do not fall into a particular category. The first concerns education of children in the system of juvenile justice. The committee concluded that additional funding for summer school for these children was necessary. These children need summer schooling more than others because, in general, they have more

problems in school than other children. They also need the structure provided by these programs to avoid turning summer into a long, continuous invitation to misbehave. The idle hands of children who have already shown a tendency to misbehave are particularly susceptible to temptation.

The committee, therefore, recommends:

> Provide additional funding for children in the system of juvenile justice to obtain education during the summer. (Letter to Senate Committee on Finance and Assembly Committee on Ways and Means is Appendix E).

The final matter addressed by the committee in the area of education is the problem of diagnosing conduct-disordered and emotionally disturbed children. An incorrect diagnosis may result in a child receiving improper guidance or treatment. The manifestations of these two problems are often similar, which increases the likelihood of an incorrect diagnosis. There are techniques available to test and diagnose these separate but similar problems, which could improve the way that these children are helped. One member of the committee expressed his belief that we should also encourage additional testing to diagnose children with learning disorders, but the committee felt that the major problem was the confusion of two similar diagnoses that require completely different treatment.

The committee, therefore, recommends:

> Encourage school districts to increase their use of techniques to test and diagnose conduct-disordered and emotionally disturbed children. **(BDR R-383)**

D. Reorganization of Department of Human Resources

Children who receive services from our Department of Human Resources may receive different services based upon the division that first considers their cases. A child who is abused or neglected, or placed in a foster home, will first encounter the Welfare Division. A child who commits a delinquent act will first encounter the Youth Services Division. The Mental Hygiene and Mental Retardation Division will be the first contact of a child with mental health problems. As mentioned earlier, a major problem in Nevada is the child who fits into more than one of these categories. The divisions of the Department of Human Resources may not individually have the services or facilities necessary to provide adequate care for these children. The first problem is that a child may be bounced from one division to another, with each in turn indicating that they cannot deal with all of the child's problems. Each time the child moves from one division to another, he may have a different case worker. This system does not promote a unified, coordinated approach to meeting the child's needs. The second problem is the end result:

the child is sent out of the state to a facility that can meet his many needs and deal with his many problems.

The Department of Human Resources is proposing to reorganize to deal with these problems. A Youth and Family Services Division will be created to centralize and coordinate treatment of these children. Instead of passing a child from one division to another, the new division will attempt to determine the appropriate services and treatment and, with court approval, direct the various divisions to provide those services and treatment. The new division will also coordinate the creation of new services in Nevada to treat multi-problem children. The initial expense of establishing these services should be offset by the savings from not having to send children to expensive programs and facilities in other states. When a multi-problem child first enters the "system" the new division will assign a single case worker to the child. This person will be responsible for the department's treatment of the child, regardless of the number of other divisions that participate in that treatment.

The committee believes that, in concept, this reorganization addresses many of central problems experienced by states across the country. We have already discussed the two common goals of the Ohio and Utah plans: to reduce institutionalization and to increase the availability of local services for children. Under the current organization of the Department of Human Resources, a child who cannot be completely served by an individual division will either be inappropriately committed to an institution or will be sent out of the state. Under the proposed reorganization, the new division will be able avoid inappropriate institutionalization and will coordinate the creation of local services. Integrated and consolidated provision of services is unquestionably desirable.

The committee, therefore, declares:

> The committee supports the integrated and consolidated delivery of services to children in Nevada.

The department's bill draft providing for this reorganization could not be completed before the committee finished its deliberations. The committee supports the concept, supports the goals, but cannot support the ultimate bill draft without first seeing whether the bill attains these goals. The committee feels that it is important for the Legislature to consider this reorganization, and to review it with these goals in mind.

The committee, therefore, recommends:

> Draft a bill that creates a consolidated Division of Youth and Family Services within the Department of Human Resources. Include the bill draft in the report without recommendation. **(BDR 18-385)**

E. Children's Code

The committee was directed to determine the feasibility and desirability of creating a "Children's Code" within the statutes, similar to our Insurance Code. The laws relating to children can be found in Titles 5 (Procedures in Juvenile Cases), 11 (Domestic Relations), 16 (Correctional Institutions; Aid to Victims of Crime), 38 (Public Welfare), 39 (Mental Health and Mental Retardation) and 40 (Public Health and Safety) of NRS and, to a lesser degree, in other locations. This can be a problem for people working with the statutes and the children. A unified code, which incorporates most of these provisions, would be easier to use and understand.

The committee formed a subcommittee to review this issue. The subcommittee found that there are many good reasons for leaving the statutes as they are. If provisions concerning children are taken from Title 39 (Mental Health and Mental Retardation), the Children's Code will be more complete but Title 39 will be less complete. A person who wants to see all laws relating to mental health will have the same problem as a person who now wishes to see all laws relating to children: he will have to look in more than one place. The same can be said of other proposed changes. The place from which the statute would be moved will become incomplete. Another problem is that people may be familiar with the existing location and numbering of the statutes, and may have printed forms that refer to existing numbers. Any major revision could cause confusion, and actually make it more difficult (initially) to find the law. The subcommittee believed that a better approach to the problem would be the publication of a compilation of laws relating to children. People who need to use the laws relating to children would be able to use this publication to find all of the relevant laws in one place, but the format of NRS would not have to be changed.

The committee, therefore, recommends:

> Instead of physically moving statutes within the NRS, request the legislative counsel to publish a manual that contains laws relating to children.

F. Miscellaneous

During the course of its deliberations, the committee was made aware of the fact that the Nevada Youth Training Center in Elko may not be complying with the requirements of Public Law 94-142. That law, the Education for All Handicapped Children Act of 1975, is part of the Education of the Handicapped Act (EHA), and requires that each handicapped child have an individualized educational program, and that the child receive free public education appropriate to the child's unique needs. Compliance in our youth training center is not an option, it is a requirement. A recent decision of the

United States Supreme Court, Honig v. Doe, 108 S.Ct. 592 (1988) (Appendix F), emphasizes the importance of compliance with the EHA, and the ultimate responsibility of the state to ensure compliance if a local school district does not.

The committee, therefore, recommends:

> Direct the Superintendent of Public Instruction to ensure that the Nevada Youth Training Center in Elko is in compliance with Public Law 94-142.

The committee considered the problem with the enforcement of NRS 432B.220, a statute that requires the immediate reporting of child abuse or neglect. The problem is that a person is required to make a report when there is "reason to believe" that a child has been abused or neglected. The statute requires immediate reporting, but the subjective trigger to the requirement raises a question as to how immediate is "immediately." As it is difficult to say exactly when a person has a "reason to believe" that a child has been abused or neglected, it is difficult to determine whether the report was made immediately thereafter. The committee could not agree to a more clear or less subjective trigger than "reason to believe," but felt that it would be advisable to put an outside limit on "immediately." By specifying that a report must be made not more than 72 hours after discovery of a reason to believe that a child has been abused or neglected, an outside limit can be established. A person can claim that making a report the following day is as immediate as the statute requires, but waiting more than 3 days will be a violation of the statute. This suggestion will not eliminate all problems with the statute, as the courts will still have to determine when a person has reason to believe that a child has been abused or neglected, but it will at least end any argument that a delay of more than 3 days is allowed by the statute.

The committee, therefore, recommends:

> Amend NRS 432B.220 to require the reporting of child abuse or neglect immediately, but in no case more than 72 hours after discovery. Current language is that the report must be made immediately. **(BDR 38-371)**

The final recommendation of the committee is to continue the study. The committee recognized the impossibility of its task. The laws relating to children are not only voluminous, the issues involved are too complex to be resolved in a single, limited study. But there is no issue that is more important: our children are our future. The committee is very pleased with what it accomplished, but we must continue to refine and review these laws and our policies in implementing them. The committee proposed a 5-year task force to create and review annually a 5-year program. At this point, the committee considered practicalities. Senator O'Connell chaired an interim study of education, and Assemblyman Humke served on an interim study of

mental health and mental retardation, both of which proposed to create oversight committees for their subjects. The committee realized that it is unlikely that the Legislature will support all three of these proposals. As mental health and education are issues that relate to this committees study of laws relating to children, the committee proposed that the three studies be combined. The resulting task force would have another monumental task, but the committee believes that it is better to attempt this great task than to leave these matters to chance. All three areas require substantial planning and foresight, and all three have a substantial effect on our children.

The subcommittee on education proposed the creation of a separate committee to review our state's programs to prevent children from dropping out of school. The committee decided to include this idea in the proposed task force. There is no reason that this review cannot be a part of the task force's review of laws relating to children and education.

The committee, therefore, recommends:

> Create a 5-year legislative task force to create and review annually a 5-year plan for the provision of services to youth and recommend policies and laws for consideration by the appropriate governmental bodies. The plan should inventory existing services, assess the delivery of those services, evaluate existing and required resources, discuss and evaluate options for the delivery of services and propose an annual community-based plan to enhance those services, including permanency planning. The task force should be combined with the proposed oversight committees on education and mental health and mental retardation. The committee would also review and evaluate efforts by school districts to prevent dropouts, and report its findings and recommendations concerning programs for the prevention of dropouts to the Legislature. A program for the prevention of dropouts should:
>
> (a) Be based upon a commitment to achieve a graduation rate of 100 percent of the students in the state;
>
> (b) Offer a variety of alternative methods and procedures for the prevention of dropouts; and
>
> (c) Provide an effective system for monitoring and reporting upon the progress of the program.
>
> Allow the committee to form subcommittees. **(BDR 17-379)**

G. Conclusion

The committee does not purport to have solved all problems concerning the laws relating to children. Certain principles are embodied in the committee's recommendations, and subsequent legislation and studies concerning this subject should recognize these principles. First, children should receive

services (and punishment) which correspond to their needs. Children who have not committed serious offenses should not be treated as criminals, and children who have committed serious offenses should not be pampered. Second, we must stimulate the development of local options to institutionalization. To create the continuum of services needed to address the individual needs of each child, we must give courts a greater choice than commitment to a training center or banishment to a facility in another state. Third, a child who has problems in many areas must receive treatment and services in an integrated and coordinated manner. Sending a child from one division to another simply because no one person can address all of his or her needs is more than inefficient, it is counterproductive. We can, and should, do a better job of addressing the needs of these children.

The bill drafts referred to in this report are contained in Appendix G.

APPENDICES

APPENDIX A

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APPENDIX B

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APPENDIX C

Ohio Plan — A New Approach

By Gerald E. Radcliffe

This article represents an updated report of the saga of the transition of a juvenile justice system of a highly industrialized state suffering under the insidious impact of newly acquired constitutional freedom for children, an unanticipated increase in delinquency filings, a restrained economy, overpopulated juvenile state training schools, soaring inflation and an impatient and disgusted populace to an organized, definite system of juvenile justice based upon mandatory community involvement with judicial control and oversight.

The comingling of various types of juvenile offenders inhibited and restrained the rehabilitative delivery systems of the state in dealing with the more serious and dangerous offender. The limitation or lack of local resources encouraged the use of state programs as the appropriate dispositional alternative for the less serious and status offenders.

The Ohio legislature in 1977 recognized this dilemma and cautiously proceeded by study to reorganize the priorities of the state in dealing with the complex and intricate issues of deinstitutionalization of the less serious and status offenders, protection of the public and the development of local resources.

The executive budget request for the 1982-1983 biennium for the Ohio Youth Commission contained its law changes to support their recommendations. This budget called for reduction of state institutions, expansion of direct community placements as an extension of a "total bed concept" program and administrative authority to control placement without judicial input.

The Ohio Juvenile Judges Association met in February 1981 and provided the broad outline for the innovative, dramatic and bold approach to meet the same issues. The legislative proposal of the Ohio Juvenile Judges Association became known as House Bill 440.

There was judicial apprehension about the impact of this legislation on local communities where no alternative programs were available to care for the needs of delinquent or unruly children. To suggest that there was no need was to ignore the total of more than 68,000 delinquency filings and an estimated 30,000 unruly filings each year in Ohio. It need not be pointed out that the acts of unruliness or delinquency were the intentional overt acts of the child himself.

Judges exercise their discretion in each individual case, and it is this flexible dispositional alternative prerogative which enables our system of justice to meet the needs of each child. Judges do treat a first offender vastly

differently than a delinquent or unruly child with a number of offenses to his credit.

Judges do use the foster home facilities available through the children's services and/or the welfare department.

The superintendents of detention centers exercise discretion and good judgment to keep hardened, serious offenders from mingling with less serious offenders.

Unruly children are confined in secure facilities for in most instances only a few days. This has proved to be very therapeutic.

Many children are placed in the temporary custody of the children's services for supervision and for foster home placement. Resources available in many courts were limited or non-existent.

References are frequently made of unruly children and parents to the mental health clinics which provide psychiatric, psychological and caseworker services.

Many counties did not have adequate probation officers to supervise and work with offenders.

The juvenile justice programs in most counties are rated successful, taking into consideration the impossibility of compelling juveniles to be law-abiding. This decision is made by the juvenile. There is no person able to compel a change by a juvenile except the juvenile himself.

Only a court, with the authority granted under the laws and Constitution, has the legal authority to order any child confined in detention, a foster home, boarding home or into any other situation that infringes upon the right of freedom of the individual child.

The Ohio Youth Commission, an executive governmental agency, had become a delegated administrative body superseding the judicial branch of government in the control of the dispositional alternative of institutional commitment. This was accomplished by the development of direct community placement programs for juvenile offenders by the Ohio Youth Commission. This intricate placement program determined whether a child was institutionalized or placed directly in the community. *No legislative guidelines* were provided. The decision of determining if a serious and dangerous offender went to an institution rested solely with the Ohio Youth Commission. Judicial input was of no consequence.

H.B. 440 provides that all permanent commitments to the Ohio Youth Commission are institutional commitments. Institutional care as treatment of juvenile offenders would be a discretionary judicial alternative.

Under former law, this discretion was vested solely and exclusively with the Ohio Youth Commission. Under H.B. 440, the minimum institutional stay for a juvenile convicted of a felony III or IV will be six months, subject to "early" release with the written consent of the committing court by journal entry.

The minimum institutional stay for a juvenile convicted of a felony I or II will be one year, subject to "early" release only with the written consent of the committing court by journal entry.

A child sent to the Ohio Youth Commission for murder or aggravated murder cannot be released from institutional care prior to attaining the age of 21 years without the approval of the committing court by journal entry.

Under the former law, placement, release and terms of release were fixed by the Ohio Youth Commission. H.B. 440 provides that the Ohio Youth Commission recommends and files with the committing court or the juvenile court of the county wherein the child is to be placed a treatment and rehabilitation plan 15 days prior to release, with recommendations of terms and conditions for the deportment of the child for post-institutionalization conduct. The court may adopt this plan and its terms and conditions and may add additional terms that it considers appropriate and journalize its order. Post-institutional supervision and monitoring of the permanently committed child will be provided by the Ohio Youth Commission.

H.B. 440 places this responsibility of monitoring the post-institutional conduct of the child with the committing court or the juvenile court of the county wherein the child will reside after release and mandates the supervisor of the child to file a written progress report with the committing court regarding

each child released at least once every 30 days unless specifically directed otherwise by the court. The report shall indicate the treatment and rehabilitative progress of the child and his family, if applicable, and shall include any suggestions and recommendations for alteration of the program, custody, living arrangements or treatment.

Revocation of post-institutional release for a violation of the terms and/or conditions will be within judicial discretion. The former policy of the Ohio Youth Commission enabled the streetwise youthful offenders to utilize the bureaucracy of the Ohio Youth Commission to avoid re-institutionalization.

The Ohio Juvenile Judges Association favored legislation which provided aid and assistance to counties and implemented and made meaningful the dispositional alternatives provided by statute. H.B. 440 provides financial assistance to counties and regions who maintain and operate approved youth rehabilitation and/or detention facilities. The association opposed the reduction of facilities made available to provide for the treatment needs of the individual child, and this includes institutional beds.

The association has in the past and will continue to support legislation providing separate detention facilities for juveniles.

By allocating monies to the counties directly so that counties have dispositional alternatives for utilization, the state burden is lessened. However, if no local resources are available and state subsidies are terminated, there is an inescapable conclusion that the local community will insist that those juveniles in need of restraint be restrained on a state level.

Provisions for services, including shelter care, alternative living arrangements, family counseling, crisis intervention services, runaway centers, substance abuse treatment services, educational systems, health services and employment opportunities have become a reality and are presently available to communities by virtue of the Youth Services Subsidy program.

Director William Willis of the Ohio Youth Commission (OYC) stated to the Finance Committee of the House of Representatives on Feb. 25, 1981:

> . . . that the Commission believes that the primary responsibility for the unruly child and those juvenile offenders who pose minimal threat to themselves and society rests with the local community.

We concur with that position with the understanding that this constitutes an executive shift of responsibility for the child from the state to the local government and this burden should not be shifted without making appropriate funding.

The OYC further stated that it has embarked upon the establishment of an extensive subsidy program and restated its primary purpose is to continue and expand its deinstitutionalization program.

The director recommended reduction of commitments by restricting the situations whereby a youth may be committed to the custody of the OYC. This would reduce the number of youths supervised on aftercare. By the same logic, the number of youthful offenders treated by community resources would be increased.

In support of this dramatic change, whereby more responsibilities are directed to the local community, the Ohio Juvenile Judges Association made the following recommendations:

1) that the present Probation Subsidy terminate;
2) that the Law Enforcement Agency Subsidy terminate;
3) that the Foster Care Subsidy terminate; and
4) that these programs be supplanted by a Youth Services Grant.

In the recommended proposal for the distribution of Youth Services Grant Subsidy to the local counties, the Ohio Juvenile Judges Association believed that all counties in Ohio should be treated fairly and equitably and in a manner that would enable the counties with the least resources to be able to deal with the needs of its children in a meaningful manner.

The association urged that no subsidy be utilized to supplant any local funds. In other words, the Youth Services fund should be

used for the extension of local effort, not as a substitute.

H.B. 440 intends to put some teeth in the state laws by providing minimum sentences to state youth institutions for the serious juvenile felony offenders and to abolish the revolving door policy of early release or non-institutional commitment of juvenile offenders by the OYC.

To insure adequate bed space in the institutions, H.B. 440 intends that the local juvenile courts will no longer be able to commit misdemeanant offenders and status types of juvenile offenders to state institutions. The state will provide financial support in the form of Youth Services Grant Subsidy to local counties to assist in caring for these juveniles who could have been placed in state institutions prior to H.B. 440.

H.B. 440 will:

1) eliminate court commitments to the OYC of status offenders and minor or major misdemeanants. These offenders will be dealt with within the community with the assistance of the Youth Services Grant Subsidy.
2) eliminate temporary commitment and bind-over transfer requests for diagnostic evaluations from the OYC. These diagnostic services and evaluations will be made in the community with the assistance of the Youth Services Subsidy Grant.
3) permit permanent custody commitments to be made to the OYC only if the child has committed an act which would constitute a *felony* if committed by an adult.
4) eliminate the present Direct Community Placement program of the OYC and transfer this responsibility to local courts as viable dispositional alternatives with the assistance of the Youth Services Subsidy Grant.
5) retain the present After-Care program of the OYC and transfer monitoring and supervision to local courts by supervisory personnel of OYC.

Financing Structure

Youth Services Subsidy proposal by the OYC included in the executive budget fiscal year 1982 budget a request of $8,192,949.

The projected 402 Community Residential Services budget for fiscal year 1982 is $12,296,358 (estimated $2.3 million After-Care, $7 million for Direct Community and Residential Placement and $1.9 million for Community Non-Residential Service).

By canceling the Direct Community Placement and eliminating other unnecessary central and regional office personnel for fiscal year 1982 and reallocating this funding request to the Youth Services Subsidy-510 Account, the Youth Services Subsidy appropriation for fiscal year 1983 will be in the amount of $19.2 million. Allocation among all counties of Ohio will be as outlined in attachment.

In fiscal year 1981, due to a belated start, reduction in initial funding from an estimated $10 million to a reduced $6.9 million with an anticipated "lapse" of $2 million, the juvenile court judges of Ohio have made remarkable progress in a brief period of time from the initial implementation in energizing the community resources.

Director Willis commented on this in his presentation to the House Finance Committee:

> Previous mention was made that no specific Youth Services Grant (510) formula was adopted or legislated. During Fiscal Year 1981, the Youth Commission proceeded to allocate $7,671,680 to the juvenile courts based upon an adjusted population distribution formula according to Calendar Year 1980 Census figures. . . .
>
> (4) The Youth Services Grant (510) was reduced by $965,289 which required a readjustment to the county allocations and a projected lapse of county funds. . . .
>
> Our implementation of the allocation of the above mentioned funds was slow in getting off the ground because legislative efforts were being made to legislate a formula for Fiscal Year 1981. Consequently, our request was made to the State Control Board in May, 1980, instead of January, 1980, as mandated in Amended Substitute House Bill 204.
>
> Since the State Control Board approval, we have moved forward with this subsidy program to the extent that as of this writing, we have received 81 applications for participation in this program. Five counties have indicated they

will not participate and two have yet to submit applications.

A separate attachment reflects the high number of participating counties in the present voluntary program. This attachment outlines the type and variable needs of individual counties, and also appended are some representative programs.

The direct subsidy program will give local communities more flexibility in providing services for more juveniles at a local level.

H.B. 440 will reduce the number of youth permanently committed to institutions of the OYC. In fiscal year 1980 1,418 permanent commitments of felony offenders were made to the OYC. In fiscal year 1980 an additional 2,389 juvenile offenders were committed to the OYC for non-felony offenses. Under H.B. 440, the non-felony offenders will be retained in the community or diverted to local correctional programs or facilities. This alone will reduce permanent commitments to the OYC by two-thirds of the present commitment rate. In other words, the commitments will be one-third of the former commitment rate by eliminating all but felony offenders.

This bill will:

1) eliminate administrative decisions placing dangerous offenders back on streets mere months after the juvenile judge has made a permanent commitment;
2) reinforce the authority of the court to impose a sanction which protects society from the serious offender;
3) impose primary responsibility for post-release services in the local court; and
4) assist local communities in dealing with the less serious juvenile offenders.

Director Willis further stated:

As the state's juvenile correctional agency, we believe that those youth who have violated a criminal statute should be the only ones who are committed to us. Services for these excluded youth can be supported with Youth Services Grant funds.

4) "510 Subsidy Youth Services Grant" - a new section of the Revised Code is proposed, as well as the elimination of a number of existing sections. The new section sets out the basis subsidy program. It provides for granting the subsidy to counties to aid in the support of non-secure community treatment, diagnosis, rehabilitation, and residential services.

The Juvenile Judges Association believes that the OYC should administer the program and that each juvenile court should establish and maintain a Juvenile Comprehensive Advisory Committee to assist the court in the formulation of its annual or biannual application to meet the services needs of the children of its community and make recommendations. Each county should submit an annual or biannual evaluation and application.

We further believe that the OYC should continue to provide comprehensive and technical assistance to counties to aid them in developing a comprehensive application and that the agents and employees of the OYC should inspect and monitor programs operated in accordance with the approved annual or biannual application and inspect and audit programs relating thereto.

The association supports the continued authorization of the OYC to provide standards of juvenile probation officers and personnel and that the OYC continue to provide in-service training and technical assistance in the development of these and other court-related programs.

The judges recommended that the OYC, Department of Public Welfare, Department of Education, Department of Mental Health, Department of Mental Retardation and Developmental Disabilities and any other state agency with certification, licensure or approval authority aid and assist local courts in providing foster care homes, group homes or specialized facilities for children, subject to the jurisdiction of juvenile courts in order that local courts may obtain said services directly from such group homes, foster homes or facilities for children in need.

The association recognizes that:

1) community-based corrections, in the long run, are more cost-effective in dealing with most types of juvenile offenders than corrections applied at the state level;
2) the legislative objective of the OYC Youth Services program should be to encourage the development of local juvenile corrections as alternatives to state institutionalization; a secondary goal of the subsidy

program, or perhaps a byproduct of the first goal, will be a reduction in the commitments to and the population of state juvenile corrections facilities;

3) a Youth Services program will not be awarded without the OYC's express approval of a youth service plan submitted by the county juvenile court judge; such a plan will have to be developed under the oversight of an advisory board;
4) an advisory board shall be appointed by the county commissioners and the juvenile court judge or administrative juvenile court judge of the county; the board shall have an odd number of members, with a like number being appointed by each, with members of the board appointing the final person;
5) upon approval of the youth service plan by the OYC, the juvenile court judge shall provide a copy of the plan to his county's board of county commissioners.

The Ohio Juvenile Judges Association, OYC Liaison Committee and OYC were intimately involved with this intricate new concept for more than two years. The devotion and dedication of all involved to the needs of children as energized through the juvenile justice system of Ohio never waivered. Their energies were unlimited. When called upon, all responded unhesitantly and without reservation.

The objectives of the Youth Services Grant program are to:

1) assist counties in developing prevention, diversion and correctional services for youth, particularly helping the counties to keep non-serious juvenile offenders in the community;
2) reduce judicial commitments to the OYC through a program of financial assistance to local juvenile courts, helping them to develop alternative programs for juvenile offenders;
3) improve coordination among the components of the juvenile justice system in the planning and delivering of juvenile justice services at a local level; and
4) develop greater cooperation and coordination of effort between the OYC and local juvenile courts and other components of the youth-serving system.

Youth Service County Programs

The program supports "non-secure" programs only, since the OYC already administers other subsidies for construction and operations of secure facilities.[1] Services which may be supported by the subsidy include, but are not limited to, the following:

1) home advocacy services;
2) shelter care;
3) residential or group home services;
4) transportation to a juvenile detention facility if the county has no such facility;
5) continued probation development, law enforcement and foster care services;
6) non-residential programs;
7) innovative probation services;
8) diagnostic and clinical services;
9 alternative education and employment or vocational training; and
10) such other non-secure services as are approved by the OYC.

In conclusion, I think it would behoove all of us to become familiar with this and other legislation which endeavors to deal with problems of children in a modern society.

We sincerely hope that those who are charged with the responsibility of adopting legislation which endeavors to establish a code of behavior for all the citizenry of a democracy will provide laws that not only protect the child and community, but allow that system sufficient flexibility to permit each child's case to be based upon the child's needs and disallow systems which prescribe treatment without concern for the mental, physical and moral development of the child.

H.B. 440 and other bills under study have created concern to the members of the General Assembly who are wrestling with the current social problems of our generation.

Everything said about juveniles seems to be glamorous, spectacular and attention-getting. This of course creates the emotional climate which draws strong statements. At the same time, decent persons are challenged and motivated to the concept of improving a system which administers a very noble but vague commodity known as justice, particularly to

juveniles. The juvenile problems change as our social conditions vary.

Honorable Gerald E. Radcliffe, Chairman
Honorable David E. Grossman
Honorable Robert W. Murray
Honorable Andy Devine
Honorable Thomas E. Heydinger
Honorable Roger A. Jones
Honorable C. Kenneth Henry
Honorable Allan H. Davis
Honorable W. Donald Reader
Honorable John F. Corrigan
Honorable John W. Hill
Honorable Henry T. Webber
Honorable William P. Kannel
Honorable Robert G. Rawson
Honorable George W. Scurlock, deceased

Am. Sub. H.B. 440 was signed into law on Nov. 24, 1981, and became effective forthwith.

A summary of this legislation prepared by Sally E. Maxton, executive director of the Ohio Youth Services Network, is a supplement to this article.

The Ohio Youth Services Network provided invaluable resource and research assistance to the Ohio Juvenile Judges Association throughout the entire legislative process.

Analysis — Am. Sub. H.B. No. 440
As Passed
Summary By:
The Ohio Youth Services Network

1) States that a child who is bound over to the adult system and is subsequently convicted shall be deemed not to be a child in any case in which he is alleged to have committed murder, aggravated murder, or a Felony 1 or 2.

2) Allows a juvenile judge to contract with any public or private agency or individual to provide services to children under the supervision of the court.

3) Allows the juvenile judges of two or more adjoining or neighboring counties to join together to contract for services to children.

4) Requires the juvenile court to submit monthly to the Department of Youth Services, any data regarding all official cases of the court that the Department reasonably requests. The Department shall publish the data statewide in statistical form at least annually but shall not publish the identity of any party to a case.

5) Requires the court to prepare an annual report on the preceding calendar year by June of each year showing
-number and kinds of cases
-disposition of cases
-other data on the work of the court
Copies are to be filed with DYS and Court commissioners, and with commissioners' approval may be distributed to interested persons.

6) Bindover — Once waived always waived provision states: "Any child whose case is transferred for criminal prosecution pursuant to section 2151.26, and who is subsequently convicted in that case shall thereafter be prosecuted as an adult in the appropriate court for any future act that he is alleged to have committed that if committed by an adult would constitute the offense of murder or aggravated murder, or would constitute a felony of the first or second degree."

7) A child may be detained in jail or another facility for detention of adults only if the facility described in division (A)(3) (a detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency and approved by the court) of this section is not available and the detention is in a room separate and removed from those for adults. The court may order that a child over age 15 years be detained in a jail in a room separate and removed from adults if public safety and protection reasonably require such detention. The official in charge of a jail or other adult facility shall immediately notify the court if a child under 18 years is received, and deliver him to the court upon request or transfer him to a detention facility designated by the court.

8) No child shall be committed to or placed in any adult jail used for the detention of adults unless a facility described in Division (A)(3) is not available and then only if such

child is over 15 years of age, the public safety and protection requires that detention be such a place, and the detention is in a room totally separate by both sight and sound from all adult detainees.

9) No child under 18 years of age shall be placed in or committed to any prison, jail, or lockup, nor shall such child be brought into any police station, vehicle, or other place where the child can come in contact or communication with any adult convicted of a crime or under arrest and charged with a crime.

10) Section 2151.351 No child who is not alleged to be, or adjudicated, delinquent by reason of violating any law, ordinance, or regulation, a violation of which would be a crime if committed by an adult shall be held for longer than five days in a secure setting, as defined in rules adopted by the Department of Youth Services.

11) Section 2151.353 Dispositions for dependent, neglected, abused children (temporary commitments to OYC for diagnostic study are eliminated)

1) Permit child to remain with parents subject to court conditions, supervision and protection
2) Temporary commitment to welfare department or agency or foster home
3) Temporary placement in agency for children
4) Commit to permanent custody of welfare or welfare agency or organization

12) *Dispositions Delinquent Child*

1) Any order authorized by Section 2151.353
2) Probation under conditions the court prescribes
3) Temporary commitment to custody of school, camp, institution, or other facility for delinquent youth

(Eliminates commitment to OYC for nonfelons)

4) For Felony 3 or 4, can be committed to Department of Youth Services for institutionalization for an indefinite term—minimum 6 months and maximum period age 21. (Later provisions allow early release with court approval)
5) For Felony 1 and 2, commitment to OYC for indefinite term minimum one year and maximum age 21.
6) For murder or aggravated murder commitment to DYS for Institutionalization in a secure facility until the child's attainment of the age of 21 years.
7) Fine of not over $50 and costs
8) Restitution for property damage. If the victim was sixty-five or older or disabled this will be considered in favor of imposing restitution, but will not control the decision of the court.
9) Suspend or revoke driver's license or registration.
10) Make any further disposition the court finds proper.

If the victim is 65 or over or disabled this fact shall be considered in favor of commitment to DYS but will not control the court's decision.

The court will not designate the specific institution of placement when committing a child to DYS but shall specify if the youth is to be institutionalized in a secure facility.

13) *Submission of Records*

When a court commits a child to DYS, it shall provide the child's social history, medical records, section or sections of the revised code violated and degree of violation, and any other records the department reasonably requests. The court shall notify the school by sending the school a copy of the journal entry. Upon receipt the school shall provide the child's school transcript to DYS. The Department shall not refuse to accept a committed child, nor shall a child be held in a detention home because of the court's or school's failure to provide required records. DYS shall provide the court and school with an updated copy of the child's transcript and provide the court with a summary of the child's institutional record when it releases the child. The Department shall also provide the court with a copy of any portion of the child's institutional record that the court specifically requests within five working days of the request.

14) *Victim Notification*
After a hearing in which a child is adjudicated delinquent, the victim will be notified by the court of right to recovery under sections 3109.09, 3109.10, 2743.51 and 2743.72.

15) *Sealing and Expungement of Records*
Two years after termination of an order by the court or unconditional discharge the court that issued the order or committed the youth shall

1) For an unruly child — order the record sealed
2) For a delinquent child order the record sealed or notify the person of right to have record sealed within 90 days by certified mail

16) *Release and Aftercare Provisions*
Section 2151.38 The jurisdiction of the juvenile court terminates upon commitment to DYS or welfare except as provided in Divisions B and C of this section, or if a motion for termination of permanent custody is granted prior to the child's attaining age 21.

B 1) DYS shall not release a child from institutional care or discharge the child, order his release on parole, or assign him to a group home or other place of rehabilitation prior to the prescribed minimum periods of institutionalization unless the department, the child, or the child's parent requests an early release in a journal entry, or unless the court on its own motion grants an early release.

2) If DYS desires to release a child prior to the prescribed minimum periods of institutionalization it shall request the court for early release. Upon its own motion, the court shall either approve the release or schedule a hearing within 30 days.

If the court schedules a hearing, it shall order DYS to deliver the child on the hearing date and to present a treatment plan for the child's post-institutional care.

3) If the court approves early release DYS shall prepare a written treatment and rehabilitation plan setting forth the terms and conditions of release and shall send a copy of the plan and terms and conditions to the committing court and the court of the county where the child is placed.

The court of the county where the child is placed may adopt the terms and conditions set by the Department as an order of the court and may add any additional consistent terms and conditions it considers appropriate. If a child is released under this division and the court of the county in which the child is placed has reason to believe that the child has not deported himself in accordance with any post-release terms and conditions established by the court, a hearing on violation may be scheduled. If it is determined that the violation of terms and conditions was a serious violation, the court may order the child to be returned to DYS for institutionalization or institutionalization in a secure facility, consistent with the original order of commitment, or in any case may make any other disposition authorized by law which the court considers proper.

If the court of the county in which the child is placed orders the child to be returned to a DYS institution, the time during which the child was institutionalized prior to his early release shall be considered as time served in fulfilling the prescribed minimum period of institutionalization under the original order of commitment.

If the court orders the child returned to DYS, the child shall remain in institutional care for a minimum period of three months.

C If a child is committed to DYS pursuant to (A4) or (A5) and has been institutionalized for the prescribed minimum periods the Department may release the child from institutional care or discharge the child without approval of the committing court.

If the Department releases the child on parole or assigns him to a group home or

other place of treatment, the Department shall prepare a written treatment and rehabilitation plan which includes terms and conditions of release and shall send the plan to the committing court and court where the child is placed. The court where the child is placed may adopt the terms and conditions as an order of the court and may add any consistent terms and conditions it considers appropriate.

If the court where the child is placed has reason to believe the child has violated terms and conditions of release it may order a violation hearing as in (B2).

D Prior to the release of a child by DYS pursuant to (B) or (C), the Department shall:

1) After reviewing the child's rehabilitative progress history and medical and educational records, prepare a written treatment and rehabilitation plan for the child which shall include the terms and conditions of the release.

2) Completely discuss the terms and conditions of the plan prepared pursuant to Division (D1) of this section and the possible penalties for violation of the plan with the child and his parents, guardian, or legal custodian.

3) Have the plan prepared pursuant to Division (D1) of this section signed by the child, his parents, and any person that is to supervise, control and provide supportive assistance to the child at the time of release.

4) File a copy of the treatment plan prepared pursuant to Division (D1) of this section, prior to the child's release with the committing court and the court where the child is to be placed.

E) The Department of Youth Services shall file a written progress report with the committing court regarding each child released pursuant to Division (B) or (C) of this section, at least once every 30 days unless specifically directed otherwise by the court.

The report shall indicate the treatment and rehabilitative progress of the child and his family, if applicable, and shall include any suggestions and recommendations for alteration of the program, custody, living arrangements, or treatment. The Department shall retain legal custody of a child so released until it discharges the child or until the custody is terminated as otherwise provided by law.

17) *Rehabilitation Facilities* — Section 2151.651 and 2. No longer allows girls ages 10-12 to be held in rehabilitative facilities. Boys and girls age 12-18 may be held.

18) *Definition Changes*:
"Institution" means a state facility created by the General Assembly that is under the management and control of the Division of Correctional Services of the Department of Youth Services and that maintains sufficient control over juveniles committed to its custody in order to prevent them from committing further acts of delinquency and accomplish their rehabilitation.

"Placement" means the conditional release of a child under such terms and conditions as are specified by the Department of Youth Services. The Department shall retain legal custody of a child released pursuant to Division (B) of Section 2151.38 of the Revised Code or Division (C) of Section 5139.06 of the Revised Code until such time as it discharges the child, or until such custody is terminated as otherwise provided by law.

"Release" means the termination of a child's stay in one of the institutions under the management and control of the division of correctional services. A child released pursuant to Division (B) of Section 2151.38 or Division (C) of Section 5139.06 shall be on parole until discharged pursuant to Division (E) of section 5139.06, or until such custody is terminated as otherwise provided by law.

19) *Abolishes Ohio Youth Commission*
Creates the Department of Youth Services. The governor shall appoint the director with the advice and consent of the Senate. The persons who were serving as members of the youth commission at the time of its abolition shall consult with and advise the director on matters relating to Department policies and

shall perform such other duties as the director may assign until such time as the governor that appointed them no longer holds office or until removed by the governor at his pleasure. However, such persons shall have no authority to make decisions relative to the philosophy of operation and operating policy of the department other than that specifically granted them by the director.

Future deputies shall be called chiefs, and shall be appointed by the director.

20) The DYS shall operate Maumee and Mohican without significant change in the purpose for use of institutions or level of operation without prior consent of the General Assembly.

21) The Youth Service Advisory Board for DYS is renamed Council.

22) Eliminates temporary commitments. Child Study Center closed. All commitment orders are permanent except in relation to procedures for early release.

23) *Confidentiality of Records*
Records maintained by the Department of Youth Services pertaining to the children in its custody shall be accessible only to Department employees, except by consent of the Department or upon the order of the judge of a court or record. These records shall not be considered "public records" as defined in Section 149.43 of the Revised Code.

24) *Parole*
If a child has been institutionalized for the prescribed minimum periods of time, DYS may order his release on parole under such supervision and conditions as it believes conducive to law abiding conduct or order replacement or renewed parole as often as conditions indicate it to be desirable; provided that the Department notify the committing court, in writing, of the terms of supervision and the conditions of the release at least 15 days prior to the scheduled date of release.

25) No person shall be transferred from a benevolent institution to a penal institution, or to a facility or institution operated by DYS. (Insanity, feeblemindedness, crippled condition and other negative language was deleted in this section and replaced with "mental illness, mental retardation, or other developmental disability.")

26) Discharge — The Department must notify the committing court in writing that it is going to discharge the child at least fifteen days before the scheduled date of discharge, and upon discharge shall immediately certify the discharge in writing and transmit the certificate to the committing court.

If the child has been institutionalized for the prescribed minimum periods, DYS may assign the child to a family home, group care facility or other public or private place, provided that the department notify the committing court in writing of the place and terms of assignment at least 15 days prior to scheduled date of assignment.

DYS must also send copies of treatment plan, terms and conditions to the committing and placing court. The court where the child is placed may add terms and conditions.

DYS cannot release a child from institutional care other than in accordance with Section 2151.38 and 5139.06.

27) The DYS division of community services shall:
- —Control and manage the operation of the Bureau of Aftercare Services
- —Control and manage the Bureau of Delinquency Prevention
- —Evaluate the rehabilitation of children committed to DYS and prepare and submit periodic reports to the committing court for the purposes of:
  1) Evaluating the effectiveness of institutional treatment
  2) Making recommendations for early release where appropriate, and recommending terms and conditions for release
  3) Reviewing the placement of children and recommending alternative placements where appropriate.
- —Coordinate dates for hearings and assist in the transfer and release of children from institutionalization to the custody of the committing court.

—Provide at least annually to the juvenile courts a list of all foster care facilities approved by the DYS under Section 5139.37.

28) Probation subsidy is eliminated.

29) *Aftercare Contracting*
The Director of the Department of Youth Services may, with the consent and approval of the board of county commissioners of any county, contract with the local welfare department, children's service board, probation department or service for the provision of direct supervision and control over and the provision of supportive assistance to all children who have been released on placement into that county from one of the institutions under the Department control, or may, with the consent of the juvenile or administrative judge of the juvenile court, contract with any other public agency, institution or organization that is qualified to provide the care and supervision required under the terms and conditions of the child's treatment plan for the provision of direct supervision and control over the provision of supportive assistance to all children who have been released on placement into that county from one of such institutions.

30) *Violations*
If a placement official has reasonable cause to believe that any child violated the terms and conditions of his placement, the official may request in writing from the committing court or transference court a custodial order, and upon reasonable and probable cause, the court may order the sheriff or police to make such apprehension. A person so apprehended may be confined in the detention home of the county in which he is apprehended until further order of the court.

31) *Youth Facilities Assistance*
DYS may grant financial assistance for construction not to exceed $6,500 per bed unit.

DYS may grant financial assistance for the operation and maintenance of a school, forestry camp or other facility not to exceed one-half of the cost of operating and maintaining such school, foresty camp, or other facility not to exceed in any one month an amount equal to five hundred dollars multiplied by the average daily enrollment in such school, forestry camp, or other facility for the three calendar months preceding the date of application for such assistance.

32) *Detention Subsidy*
DYS shall adopt rules for operation and maintenance of detention centers including criteria for programs of education, training, counseling, recreation, health, and safety, and qualifications of personnel with which a home shall comply as a condition of eligibility for such assistance.

DYS may grant assistance for detention if the home meets minimum standards, in the amount of 50% of the approved annual operating cost but not in excess of $150,000. No assistance is provided for a home housing more than 150 children at any one time.

33) The determination that a child is unable to benefit from the programs conducted by the Department shall be made by the committing court on its own motion or upon application by the department or parent or guardian of the youth, or if the youth has been institutionalized for the prescribed minimums, by the Department itself.

34) *Youth Service Subsidy*

a) Purpose: To grant state subsidies to counties to aid in the support of prevention, diversion, diagnosis, counseling, treatment, and rehabilitation programs and for foster care facilities for alleged or adjudicated unruly and delinquent children, or children at risk of becoming unruly or delinquent.

b) Licensing: No financial assistance shall be granted for the provision of care and services for children in a foster care facility unless the facility has been certified, licensed, or approved by a state agency with certification, licensure, or approval authority including but not limited to the Department of Youth Services, Department of Public Welfare, Department of Education, Department of Mental Health or Department of Mental Retardation and Developmental Disabilities.

Restrictions:

1) Subsidy will not be used for secure facilities, i.e. foster care facilities do not include a state institution, county or district detention home, or county or district children's home.

2) No more than 30% of the subsidy grant to any county with a population of more than 85,000, and no more than 50% of the subsidy grant to any county with a population of 85,000 or less shall be used for the operation of, or placement of children in, residential facilities that have more than twenty beds in any one site.

d) *Formula*

Each county receives a basic annual grant of $50,000. The sum of the basic annual grants provided, are then subtracted from the total amount of funds appropriated to DYS for the purpose of the grants described in Division (A) of this section to determine the remaining portion of funds appropriated. The remaining portion of the funds appropriated then shall be distributed on a per capita basis to each county that has a population of more than 25,000 for that portion of the population of the county that exceeds 25,000.

e) *Advisory Board*

The juvenile court and county commissioners shall *jointly* establish an advisory board to assist the court and board of county commissioners in the formulation of an annual comprehensive plan. The board shall advise the court and commissioners on youth services needs and recommended programs.

f) *Composition*

The board shall consist of not less than five persons representing the juvenile justice system and educational and other youth services agencies of the community. Each advisory board shall have an odd number of members. The total number of members is determined concurrently by the court and the commissioners shall appoint an equal number of members to the advisory board.

At its first meeting, the advisory board shall, by a majority vote of its members, appoint the final member of the advisory board.

Members serve at the pleasure of the appointing authority, provided that the member appointed by the advisory board may only be removed by a majority vote of the other members. Any vacancy occurring on the advisory board shall be filled in the same way as original appointments.

g) *Plan for Subsidy*

The Court's annual comprehensive plan shall specifically identify the county's plans for diversion, diagnosis, counseling, treatment, and rehabilitation of children alleged or adjudicated unruly or delinquent and those at risk of becoming unruly or delinquent, for the prevention of unruliness and delinquency, and for the support of foster care facilities. Each county, through its juvenile court and board of county commissioners, then shall submit to the Department of Youth Services its annual comprehensive plan as approved by the juvenile court and board of county commissioners and its application for the financial assistance described in this section.

The Advisory Committee advises but does not approve the plan.

h) The annual comprehensive plan must be reviewed and approved by DYS. No subsidy funds shall be expended or indebtedness incurred by a county until its annual plan is approved by the Department.

Subsidy funds are distributed to the counties on a quarterly advance basis. Such funds shall be used in accor-

dance with the county's annual comprehensive plan.

i) *Non Supplanting*
Subsidy funds shall not be used to supplant existing county expenditures for the juvenile court or related programs.

j) *County Commission Funding*
The juvenile court may submit a written request to the board of county commissioners for the appropriation of moneys to assist in the funding of the programs contained in the county's annual comprehensive plan. Upon receipt of the request the board may in its discretion appropriate a sum of money to assist in the funding of the programs.

The juvenile judge or judges of the court that so requests have no recourse against a board of county commissioners, either under Chapter 2731 of the Revised Code, under their contempt power, or under any authority, if the board of county commissioners does not appropriate money to assist in the funding of programs or if the board appropriates money in an amount less than the total amount of the submitted request for funding.

k) *Technical Assistance and Auditing*
Upon request, DYS shall provide consultation and Technical assistance to aid them in developing their annual comprehensive plans. Agents and employees of the Department are authorized to inspect and monitor any facility operated in accordance with an approved annual plan and to inspect and audit the books and records related to the facility or program.

35) DYS shall not place a youth who has committed a felony or capital offense in an institution with a less restrictive setting than that in which the child was originally placed, other than an institution under the management and control of the division of correctional services, without first obtaining the prior consent of the committing court. DYS must notify the committing court at least fifteen days before placement of a child (after the minimum period of institutionalization) in a less restrictive setting than the original placement

36) *DYS Licensing of Foster Care 5139.37*
DYS will adopt and promulgate rules prescribing the standards, including minimum standards for building safety and sanitation, that foster care facilities are required to satisfy in order to obtain department approval. If the application for approval is made to the Department in accordance with its rules, the application is in proper form and the standards of the foster care facility meet the requirements of its rules the Department shall approve the facility for the placement of children apart from their parents for care, supervision, or training.

37) *Section 5139.39 Transfer to Foster Care*
DYS according to 2151 and this chapter may transfer to any foster care facility approved under 5139.37, any child committed to it, and in the event of such transfer, unless otherwise mutually agreed, the Department shall bear the cost of care and services provided for such child in such foster care facility. A juvenile court may transfer to any foster care facility approved by the Department any child aged 12-18, other than psychotic or mentally retarded child, who has been designated delinquent and placed on probation by order of the juvenile court as a result of having violated any law of this state, or the United States, or any ordinance of a state subdivision.

38) *Section 5139.40 Inspection*
DYS may inspect or request a report of an inspection made by a juvenile court of any foster care facility for which an application for approval has been made to the Department or for which approval has been granted.

The inspection or report may include, but need not be limited to

—examination and evaluation of physical condition of facility

—observation and evaluation of care and services provided for children

—evaluation of qualifications, skills, and

abilities of persons providing direct services to children placed in facility
DYS shall annually consider the fitness of these facilities based on the report or inspection, when DYS is satisfied that standards are met, it shall give the facility or administrator a notice of approval applicable for a maximum period of one year, unless terminated by a change of place or residence or other cause.

If DYS finds that any foster care facility for which approval has been granted fails to meet or maintain these standards it may terminate its approval of the facility.

39) *Section 5139.43 Oversight Committee — HB 440*
A youth services oversight committee of nine members is created.

a) *Composition*
—2 members of the House of Representatives appointed by the Speaker of different political parties
—2 members of the Senate appointed by the President of the Senate, not more than one of whom shall be of the same political party
—one juvenile judge appointed by the Ohio juvenile judges' association
—one county commissioner appointed by the county commissioners association of Ohio
—one member appointed by the governor
—2 members appointed by the committee
*All appointments shall be made within thirty days after the effective date of this section. Vacancies are filled in the same way as original appointments.

b) *Meetings*
The committee will meet within 2 weeks after the initial members have been appointed at a time and place designated by the governor. At the first meeting the committee will elect a chairman and vice chairman among the legislative members and adopt rules for its procedures. By majority vote of appointed members the committee at its first meeting will appoint two members, one who will represent a public child welfare agency and one who will represent a private, not for profit agency that serves children. Thereafter, the committee will hold at least four committee meetings in different regions of the state to be scheduled by the chairman.

c) *Compensations*
Members receive no compensation but will receive reimbursement for actual and necessary expenses incurred while discharging the duties of their office.

40) *Section 5139.44 Oversight Committee Responsibilities*

a1) Monitor the juvenile justice system
2) Evaluate the changes in law enacted by Sub HB 440 and the impact of these changes on the juvenile justice system
3) No later than July 1, 1982, the committee shall submit a report to the General Assembly evaluating the implementation of the changes in law enacted by Sub HB 440 of the General Assembly.
4) The report shall contain recommendations to the General Assembly for the improvement of the juvenile justice system.

b) *Official Responsibilities*
Each officer, board, commission, bureau or Department of the State or any of its political subdivisions shall make available to the committee any information that the committee reasonably requests and cooperate with the committee in carrying out its duties.

41) *Section 5139.85*

a) Whenever any child under the jurisdiction of DYS dies, any personal funds or property of the child remain in the hands of the Department, and if no demand is made on the department by the decedent's legally appointed administrator or executor, all

money and property will remain in the custody of DYS for one year.

After one year the money if unclaimed will be delivered to the State treasurer for deposit to the general revenue fund, except that of the total amount of unclaimed money in the child's personal account the Department may transfer not more than $100 to the Industrial and Entertainment Fund established under Section 5139.86.

(Funds were formerly handled by the institutions superintendent.)

b) The same procedure applies for a child who may abscond.

c) Property which is unclaimed will be sold by the Department at public auction and proceeds deposited in the general revenue fund. Property with no value may be destroyed later.

42) *Section 5139.86*

Each manager officer of an institution or regional office of DYS with the Director's approval may establish the following local funds

a) The Commissary fund for the benefit of Children in the institution or region.

b) The Industrial and Entertainment fund, created for the benefit of children in institutions or the region. The fund shall receive profit from the commissary fund (revenue from the sale of commissary items). This fund shall be used solely for the benefit of DYS youth.

c) The managing officer of the institution or regional office with the director's approval shall establish rules for the operation of these funds.

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43) *OHIO DEPARTMENT OF YOUTH SERVICES*

		1981-1982	1982-1983	Biennium
Division of Correctional Services				
471-100	Personal Services	23,447,866	24,690,763	48,138,629
471-199	Purchase Services	532,983	533,865	1,066,848
471-200	Maintenance	5,074,532	4,950,561	10,025,093
471-300	Equipment	255,908	267,461	523,369
	TOTAL GRF	29,311,289	30,442,650	59,753,939
	FED. REVENUE	3,352,845	0	3,352.845
	PROGRAM TOTAL	32,695,270	29,724,592	62,419.862
Division of Community Services				
472-100	Personal Services	4,193,616	3,940,057	8,133.673
472-199	Purchase Services	126,217	0	126.217
472-200	Maintenance	844,345	887,345	1,739.739
472-300	Equipment	55,333	68,039	123.372
472-402	Comm. Res. Services	5,521,025	3,362,723	8,883.748
472-406	Comm. Non. Res. Ser.	1,228,813	1,362.805	2,591.619
472-502	Co. Youth Facil. Main.	5,279,438	7,194,289	12,473.727
472-510	Youth Services	13,431,092	0	13,431.092
	TOTAL GRF	30,679,928	16,823,259	47,503.187
	FED. REVENUE	154,685	0	154.685
	PROGRAM TOTAL	30,834,613	16,599,543	47,279.271

Division of Central Support

473-100	Personal Services	4,093,970	2,784,038	6,878,008
473-199	Purchase Services	6,405	0	6,405
472-200	Maintenance	937,811	986,681	1,924,492
473-300	Equipment	15,142	23,521	38,663
	TOTAL GRF	5,053,328	3,794,240	8,847,568
	FED. REVENUE	27,042	0	27,042
	PROGRAM TOTAL	5,080,370	3,453,240	8,533,610
DEPARTMENT TOTAL GRF		65,044,545	51,060,149	116,104,694
TOTAL INTRA GOVT. SER. FUND		31,136	31,942	63,078
FEDERAL REVENUE		3,534,572	0	3,534,572
TOTAL ODYS		68,610,253	51,092,091	119,702,344

($19,605,305 is placed with the Controlling Board for the 1983 Youth Service Subsidy)

44) *Temporary Language*

1) Institutional Funds shall be used for current 9 institutions. Child Study Center is closed and funds shall not be used for temporary commitments and bindover evaluations.

2) *Division of Community Services — Regional Offices*
Effective March 1, 1982 DYS will operate no more than *six* regional offices.

3) *Community Residential Services*
472-402 — Community Residential Services, shall be used for placements in agency group homes, foster home networks, other foster care facilities, and the residential portion of diversionary support.

Group Home Per Diems paid by DYS will be 33.92 in FY 82 and 35.84 in FY 83 or a per diem payment per youth calculated to reimburse the home for allowable costs as provided in promulgated rules of the Department will be used — whichever is less.

The per diem payment per youth will be based on budget projections which all agency homes shall submit to DYS and will be adjusted quarterly, if necessary, to reflect actual expenditures as reported on quarterly expenditure reports submitted by the homes and will be reconciled to allowable costs at the end of the contract period up to the allowable per diem.

The maximum per diem rate may be lower for those youth placed in other foster care facilities. Payment to facilities providing specialized residential treatment services contracted for by the Department may exceed the specified per diem rates and will be negotiated by the Department. The Department may audit the records of any agency group home with whom the Department contracts to verify actual expenditures.

4) *Non-Residential Services* shall be used for the non-residential portion of diversionary support services, made at the discretion of the DYS, and may include but are not limited to educational, vocational, social and psychological guidance, training, counseling, alcoholism and drug treatment and other rehabilitative services contracted for by the Department for any youth under the jurisdiction of the Department.

5) Youth Services (472-510) — Youth Services Appropriation shall be released to the respective counties based on the formula provided by Section 5139.34 and shall be used by counties in accordance with their annual comprehensive plan approved by DYS for the following non-secure purposes:
—home advocacy services
—shelter care
—residential or group home services
—transportation to a juvenile detention facility if the county has no such facility
—probation development
—law enforcement and foster care services
—non-residential and at risk programs
—innovative probation services
—diagnostic and clinical services
—alternative education
—employment or vocational training
—such other non-secure services as are approved by the Department

The Youth Service Subsidy shall be used for those youth who need to be rehabilitated on a local level, and when necessary, removed from a family setting and placed in an appropriate group home, foster home or residential treatment program previously provided by OYC contracts with service providers. The Department is directed to provide to each juvenile court of Ohio a complete list of all non-institutional services provided in the direct community placement program, and the juvenile courts of Ohio are encouraged to utilize these services whenever appropriate.

6) *Direct Community Placement Phase Out*
472-402 Community Residential Services and 472-406 Community Non-Residential Services are to be used to provide for the orderly transition of DCP programs. *All such direct community placement services shall be terminated by February 1, 1982. No direct community placements shall be made by the Department after the effective date of this act, and all institutional releases after the effective date of this act, shall be in conformity with existing law.

---

45) *911 — Controlling Board*

1) *Budget*

GRF	1981-1982	1982-1983	Biennium
406 DYS Unemployment and Vacation Payoff	221,011	255,305	476,316
510 DYS Youth Service Subsidy	0	19,350,000	19,350,000
TOTAL CONTROLLING BOARD	221,011	19,605,305	19,826,316

2) *911-406 Unemployment and Vacation payoff*
Shall be used by DYS for unemployment and vacation costs resulting from the implementation of the act. Funds shall be released to DYS upon submission of a request outlining the need for funds to the controlling board.

3) *911-510 Department of Youth Services* — Youth Services Subsidy shall be released by the Controlling Board for FY 83 to the various counties in accordance with the provisions of 440, upon receipt of an audit report from DYS indicating whether counties have expended the subsidy in accordance with the annual comprehensive plan filed by the counties with DYS.

The results of this audit will be sub-

mitted to the Controlling Board by DYS no later than May 15, 1982.

If any county is found not to have expended subsidy moneys in FY 82 in accordance with its annual plan, that county's FY 83 subsidy funds from 911-510 subsidy, will not be released until it provides a plan to correct any identified problems and this corrective plan is approved by DYS and the Controlling Board. Any non compliance by a county or counties will not prohibit release of FY 83 subsidy moneys to the remaining counties.

46) "Excess Employee" means any classified employee of the former Youth Commission and DYS who is reduced, laid off or has his or her position abolished or is otherwise displaced during the 1981-82 fiscal year as a direct result of the enactment of this act.

Section 8 describes procedures for classification, layoff and retention of employees. Expresses legislative intent that all state and local agencies including juvenile courts, cooperate and assist in the employment of qualified excess employees.

47) *Section 10*
Requires that DYS send a written summary of the act to the board of county commissioners and juvenile court of each county within thirty days of the effective date of this Act.

Sally E. Maxton/ Executive Director
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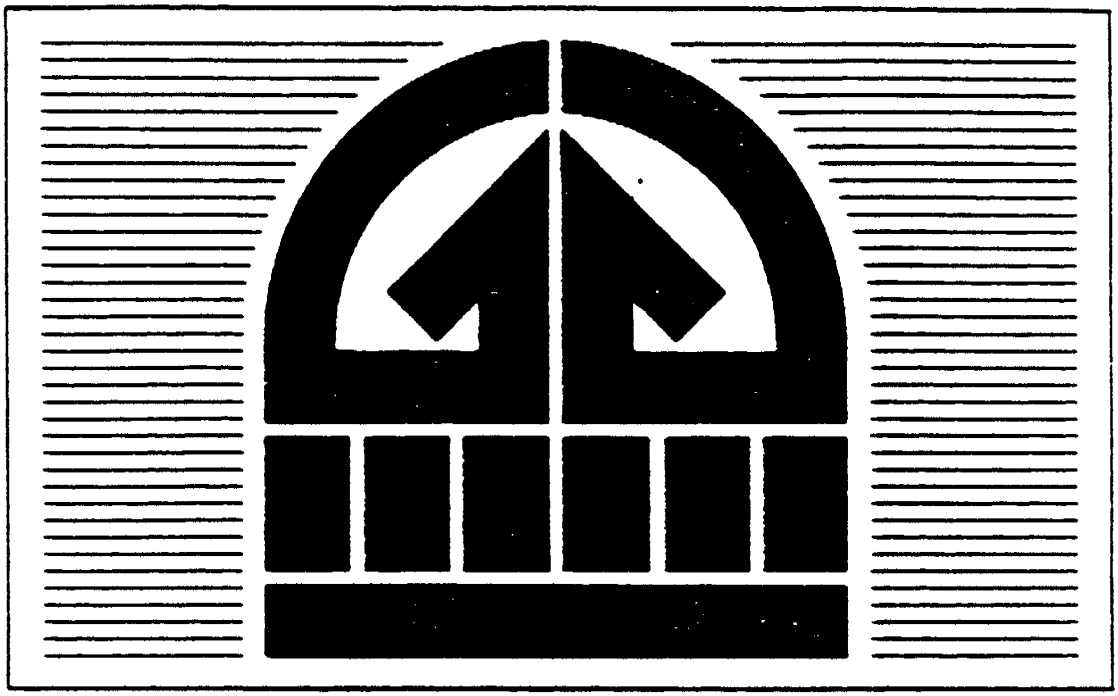
Notes

[1]Non-secure means any program that affords a youngster maximum opportunity to interact with the community at large, including attending community schools.

APPENDIX D

STATE LEGISLATIVE REPORT



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YOUTH CORRECTIONS IN UTAH: REMAKING A SYSTEM

by the Criminal Justice Program

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YOUTH CORRECTIONS IN UTAH: REMAKING A SYSTEM

INTRODUCTION

For nearly a century, Utah's youth corrections policy centered on a 450-bed training school which provided secure lockup of troubled youths. But in the last 10 years, public officials in Utah have dramatically transformed not only state facilities but also the philosophy of addressing youth corrections.

As a result, public resources and treatment efforts have shifted from institution-based placements to a broad continuum of decentralized, community-based programs. The new system has yielded several key results which are of interest to legislators, policymakers, administrators and analysts in other states. The Utah experience shows that:

- Youth offenders can be treated in non-secure community programs and family or group home settings without compromising the public safety; and

- Corrections services can be tailored to the individual client, can involve families to a greater extent, and can place youths in or close to their homes;

- Average daily costs are significantly lower in community programs than in secure institutional settings, so corrections services can be more cost-effective without reducing the number of youths served.

The political ingredients in Utah that made such sweeping reform possible included bipartisan support from the governor and state lawmakers, willing and committed administrative leadership, public comment through several studies and task forces, and technical knowledge from a variety of juvenile justice authorities (1, p. 12-13, 19).

This case study briefly reviews the political and historical context from which reform grew, describes the policy changes made in Utah, examines the elements and effects of the "new" youth corrections system, and identifies key issues confronting Utah policymakers and others who may want to duplicate or build on the Utah experience.

THE CONTEXT FOR REFORM

Several factors contributed to the climate for reform in Utah in the mid-1970s.

First, the Federal Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415) established a new, national tone for juvenile corrections reform and mandated a multifaceted movement to attack widespread problems within the juvenile justice field. Part of that effort mandated deinstitutionalizing status offenders--youth who were charged with or had committed acts that would not be considered criminal if committed by an adult. The act also required the separation of adult and juvenile offenders and, when legally possible, the removal of all juveniles from jails.

By the new law's yardstick, Utah's youth corrections system had serious problems. The Youth Development Center, the state's sole and aging institution, at the time housed an average of 350 youths, including serious offenders as well as runaways and youths adjudicated ungovernable. There were fewer than 50 beds in group homes, boys ranches or foster care in the state. As a result, hundreds of youths were held in adult jails each year.

Second, in May 1975, a class action suit (Manning v. State of Utah) was filed in Federal District Court alleging inhumane conditions and abuse at the Youth Development Center (YDC). The suit heightened the concerns of state policymakers about the operation and conditions at the YDC and raised the possibility of direct and extended federal intervention if Utah failed to correct the problems.

Third, several studies between 1976 and 1980 laid the groundwork for legislative and executive action on juvenile justice reform. A study commissioned by the Utah Legislature and conducted by the John Howard Association of Chicago confirmed serious problems in the state's system, including overincarceration, frequent jailing of juveniles, reported abuses at the YDC, and a lack of community-based alternatives (2, p.24)

In 1977, a blue ribbon task force appointed by then-Governor Scott Matheson reviewed the overall corrections system for both adults and juveniles. In terms of juvenile services, the task force examined programs in other states. The task force was particularly impressed with Massachusetts' experience in closing its state juvenile reformatories, developing smaller secure facilities for the most serious juvenile offenders, and contracting with private providers for community-based services for less serious offenders. The task force recommended a similar approach for Utah, including the removal of status offenses and criminal sanctions from juvenile court jurisdiction. It also recommended developing a corrections system that emphasized placement of youth in the "least restrictive setting" while ensuring public safety (2, p.24).

A third study--and ultimately the most important in terms of confirming bipartisan support for reform--came in the form of a detailed master plan developed in 1980 by a Juvenile Justice Task Force appointed by Governor Matheson. The master plan became the basis for legislative action in 1981 and laid the foundation for political and public support for major changes in the system (2, p.25).

These various studies and task forces produced a slow, deliberate process of consensus building. According to State Senator K.S. Cornaby, a key participant in the reform, the study process resulted in a basic and widely shared view "that we were not prepared to give up on these kids and simply lock them away."

Fourth, the process of reform got a final boost in 1979 when the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded Utah an $800,000 grant to begin developing a network of community-based, privately operated residential programs. Using the grant money as leverage, the Department of Social Services, which ran the YDC, began to reduce the number of youths in secure placement. The 100-bed cottage for female offenders at YDC was closed, and another YDC cottage was used to evaluate youths for release and placement in community programs.

LEGISLATIVE AFFIRMATION OF REFORM

In 1981, the Utah Legislature enacted the sweeping changes recommended by the task force that had been charged with developing a master plan (Utah Code Annotated, 55-112-1). The legislation decentralized youth corrections by combining secure confinement, when necessary, with residential and nonresidential community programs. It deinstitutionalized the vast majority of adjudicated youth, and emphasized placement in the least restrictive alternative. Sponsored by then-Representative Dale Stratford, the legislation specifically:

- Created a Division of Youth Corrections (DYC) within the Department of Social Services and gave the new division responsibility for all secure and community-based youth corrections programs;

- Restricted the use of juvenile detention and mandated the development by DYC of minimum standards for detention and a process for certifying detention facilities;

- Directed DYC to provide or develop residential and non-residential community corrections programs for youth offenders between 10 and 18-years-old; and

- Revised commitment procedures for adjudicated youth, thereby limiting secure confinement only to those youth "who pose a danger of serious bodily harm to others, who cannot be controlled in a less secure setting, or who have engaged in a pattern of conduct characterized by persistent and serious criminal offenses..."

The bill moved through the Legislature expeditiously and with little debate. Some discussion centered on what to do with the old YDC facility--an issue that was outside the scope of the immediate legislation. Senator Stratford initially proposed turning the YDC over to the adult corrections system, but there was strong local resistance. The training school was closed in 1983, remodeled and converted to a regional vocational school.

The Legislature also appropriated funds to build two (of three planned) small regional secure facilities of 30-beds each to replace the old YDC. Locating the new secure facilities provoked emotional debate and some community protest during public hearings, but state officials and community leaders worked together and successfully identified sites. Again, the consensus philosophy of keeping youth as close as possible to home helped (1, pp.20-21).

A companion bill (Utah Code Annotated 53-2-12.3) also passed in 1981, creating a separate pool of money within the state Board of Education to fund alternative educational programs for youth in custody. The additional funds provided support for community-based education programs without taxing local school districts.

Additional legislation was passed in 1985 that strengthened the original reform efforts. Senate Bill 88 expanded the authority of the Division of Youth Corrections to set standards and certify all community programs serving youth. In particular, the bill extended the certification responsibility to wilderness and outdoor survival programs operating

withinthe state. In 1986, legislation also shifted all fiscal, operational and administrative responsibilities for detention facilities from the counties to the division (3, p.4, 17).

HOW THE UTAH SYSTEM WORKS

Who is served. The Utah Juvenile Code covers youth up to the age of 18. For some youths who commit offenses prior to their 18th birthdays, jurisdiction may extend to the age of 21 or until fulfillment of a court-ordered commitment (Utah Code Annotated 78-3a-1).

The Division of Youth Corrections serves more than 700 youths a year. The typical client of the Division of Youth Corrections is a boy who is 16.7 years old with 18 prior criminal convictions, a history of drug and alcohol use, and no present job. A significant number are high school drop-outs. While almost three-fourths of the client population are Caucasian, the division's client profile includes a higher proportion of blacks, American Indians and Hispanics than in the general state population. Over 90 percent of the client population is male (3, p.7).

How youths move through the system. A client enters the youth corrections system after committing an offense. During the period prior to the hearing, the youth may be detained in one of the division's 156 detention beds located in 10 facilities. Some facilities provide counseling as well as custody and others offer only temporary holding. Once a youth is adjudicated delinquent by the juvenile court, interagency screening teams--composed of staff of the Division of Youth Corrections, the Division of Family Services and representatives of the court--review each case using specific guidelines and criteria designed to help determine the most appropriate placement. The placement guidelines are designed to make placement decisions consistent and limit the potential for indiscriminate out-of-home placements. The team submits its recommendations to the juvenile court.

Juvenile court judges make the final determination of a case and may decide among a variety of options including probation, fine or restitution, dismissal, adult certification or assignment of custody to either the Division of Family Services or the Division of Youth Corrections. Almost all cases assigned to Family Services tend to be abuse and neglect petitions or cases involving first-time and minor criminal offenses or status offenses. If the court commits a youth to the Division of Youth Corrections, it may be for assessment and observation, placement in a community program or placement in a secure setting.

Within the DYC, each youth is assigned a case manager who is responsible for the continual monitoring, supervision and coordination of treatment plans involving the division, the juvenile court, the youth and his or her family and the community.

The various service options available within the division are:

- Day treatment which includes non-residential educational and treatment programs developed for youths who remain in their own homes but who need specific services such as alternative education, clinical treatment, drug and alcohol counseling and career development;

- Residential community programs which provide 24-hour residential supervision and treatment such as that offered in group homes, foster care, family achievement homes, or proctor advocates;

- Observation and assessment for no more than 90 days in one of three, state-run centers established to evaluate and develop treatment plans for youths while providing an intensive, closely supervised residential environment;

- Secure placement which provides locked confinement, education and treatment for the most seriously delinquent youths in three regional facilities; and

- Multi-use facilities that serve rural areas with both detention beds for youths awaiting court hearings and longer-term shelter care beds for adjudicated youth. (The three multi-use facilities along with one of the regional secure facilities represent an unusual corrections concept of both treatment and detention adapted to meet the needs of sparsely populated rural areas.)

The Juvenile Court retains jurisdiction over a case until termination of community placement or observation and assessment. The Division of Youth Corrections and a Youth Parole Authority determine when and under what conditions a youth may be released from secure confinement. Guidelines and a hearing process govern the length of stay in secure confinement.

The impact of reform. The new system has resulted in several major changes in youth corrections in Utah. First, the number of youths in secure confinement before and after adjudication has been reduced dramatically reduced in the last 10 years (4, p.3). See Table 1.

Second, there is evidence that the new system is more cost-effective than the previous one, although cost comparisons between the two are difficult to make.

In 1985, Russell Van Vleet, then-director of the Division of Youth Corrections, testified before the Utah Legislature that the cost of running the old training school compared to the new system's 60 secure beds and community programs was approximately $250,000 less per year. An architectural consulting team also concluded that construction costs for the smaller, new secure facilities were comparable to the cost of massive renovation that would have been required of the old training school.

The secure and nonsecure placements in the new system also provide a basis for comparison (5, p. 8-9). The DYC estimates that community-based programs operate at half the average daily cost per youth of secure confinement. Youths can be placed in their own homes and receive day treatment services for one-sixth the average daily cost of secure placement. Table 2 illustrates the progressively increasing costs of more secure placement.

(In an effort to use bed space more effectively, the division in fiscal year 1987 changed its contracting procedures with private providers of community services. Previously, the division contracted for a set number of beds or spaces in community programs on a fixed cost basis. Now, the division pays only for services used. In FY 1987 reimbursement was based on

an average of 157 youth per day in community programs compared with reimbursement in FY 1985 for 250 spaces per day.)

The overall cost of running the Utah Division of Youth Corrections is $12.6 million. (See Tables 3 and 4 for a breakdown of the division's budget and revenue sources.)

Third, the shift to community-based placement and the efforts to deinstitutionalize youth offenders have not resulted in increased risk to public safety.

Data compiled by the Division of Youth Corrections in 1986 show that 55 percent of youths in community or home placement remained crime free while under the division's supervision. The other 45 percent committed further delinquent acts while in community placement, mostly misdemeanors and property-related crimes, with a significant reduction in crimes directed at people. These same youths had an average of 15 convictions, including approximately five felonies prior to placement (6, p.61).

While it is difficult to determine why a youthful offender turns away from delinquent behavior, research indicates many factors including: 1) maturation--some youth simply outgrow delinquency and commit fewer offenses as they mature; 2) a sheer change of luck--some youths may not get caught for later criminal acts or had bad luck to get caught up in the system in the first place; 3) the natural tendency for youths to turn away from delinquent behavior after a peak period of criminal involvement; and 4) treatment programs may work to discourage later delinquent behavior. Even with these caveats, the Utah programs seem to have produced some favorable results.

According to two studies, youths who have been through the youth corrections programs commit fewer offenses and less serious crimes after their release than before their commitment to the Division of Youth Corrections. A major three-year study by the National Council on Crime and Delinquency found that the rate of arrests and offenses for these youths was 43 percent lower in the 12 months after community placement than in the 12 months prior (7, p.102). The study concluded that "the imposition of appropriate community-based controls on highly active, serious and chronic juvenile offenders does not compromise public safety" (7, p. xiv).

Similarly, a study in 1986 by the division revealed that 73 percent of the youths who had been through community placements remained conviction-free for 12 months after their release. Youths who were paroled from secure confinement had a high conviction rate after release, but their crimes were less serious than the ones they previously committed. Prior to secure confinement, these youths averaged 24 convictions, including serious property or life endangering felonies. During the first year of parole 76 percent of them were convicted of further crimes--mostly misdemeanors--but not life-endangering felonies (6, p.60, 62).

THE FUTURE OF REFORM

Maintaining any reform effort is often as difficult as accomplishing it in the first place. Certainly, many factors will influence the shape of Utah juvenile justice services in the future, but two major pressures are likely to figure prominently.

First, because of Utah's growth through in-migration and higher-than-average birth rates, the number of youths of the "at risk" age for becoming delinquents is expected to increase by 4 percent a year between now and 1995. The state's school-age and pre-school population is already proportionately the highest among the states.

Second, this at-risk population must be managed as available fiscal resources are threatened. Says House Majority Leader Nolan Karras, "We are doggone out of money." Of immediate concern is the phase-out of federal Title XIX monies, which in the past provided $2.6 million for community-based programs. Moreover, Utah like other states has felt major fiscal pressures in the 1980s because of economic conditions and changes in the mix of federal and state revenue sources. With state taxpayers already unhappy about recent tax increases, legislators are being forced to consider every possible way to operate state programs for less.

To be sure, "finetuning" continues from year to year. A special planning task force for the Division of Youth Corrections identified a number of issues at the end of 1986. These included (6, p.32, 53, 63):

- Concern about developing special services for minority youth because of their disproportionate number within the Utah system;
- The difficulties in projecting the need for more secure beds in the future, given population estimates and current commitment trends;
- The problems of access to and the availability of specialized services in a largely rural state with a decentralized and regional system that makes it difficult at times to provide placement in or near a youth's home; and
- The need for strategies and programs to help youths paroled from secure facilities through the first 90 days when the risk of recidivism is greatest.

Beyond finetuning, however, a reform effort may be subject to reassessment or revision as personalities, politics, attitudes and issues evolve. For example, turnover among state legislators means that at least half of the Utah House members and a third of the senators did not participate in the promulgation of the 1981 juvenile justice legislation. One court official estimated that at least half the state's judges are also new appointees who are not familiar with the previous system and the reasons for its change. In other words, many of the key juvenile justice decision makers are new and must be the focal point of a continued education process.

As federal revenue has become more scarce in the 1980s and state budgets have been downsized, lawmakers have faced the hard choice of cutting services or raising taxes. And, finally, there are continuing philosophical tensions in many states, including Utah, between those who advocate more stringent or mandatory penalities for offenders and those who argue for an emphasis on rehabilitative efforts for delinquent youth.

Major correctional change is not accomplished overnight, as illustrated by Utah's nearly decade-long transformation of its juvenile justice services. For legislators, whose calendars are oriented toward biennial elections and annual sessions, the long-term perspective presents special

challenges. But major changes, as in the case of Utah, can be accomplished when bipartisan policy consensus is built methodically and accompanied by strong and professional administrative leadership and commitment. This combination of executive and legislative leadership has served Utah well and is likely to continue to be a key to whatever future changes may be contemplated.

Cindy Simon and Julie Fagan researched and wrote this report.

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Table 1

CAPACITY AND PATTERNS OF CONFINEMENT, 1976 TO 1985

Type of Placement	1976	1980	1985	1986
Secure beds*	450	200	60	70
Community beds*	< 50	100	250	157
Youth in jails **	>700	230	109	26
Status offenders in detention**	3324	689	124	162

*These figures reflect system capacity, not total numbers of youth served.
**These figures reflect actual numbers of youth held.

Source: Division of Youth Corrections

Table 2

DIVISION OF YOUTH CORRECTIONS COSTS AND SERVICES FOR FY1986

Service	Youth Served	Daily Capacity	Cost/Day/Youth
Day Treatment	191	64	$ 17.53
Community Residential	642	162	$ 56.18
Observation & Assessment	208	48	$ 80.32
Secure Confinement	91	60	$119.00
Multi-use Facilities	745	16	$ 60.64

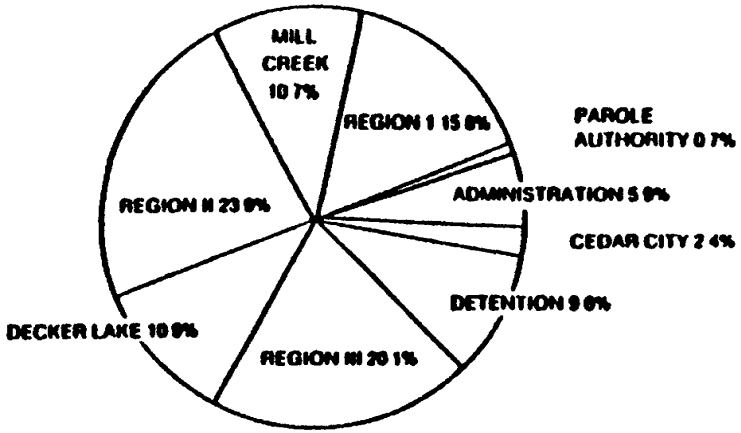
Note: In addition to these costs, the average daily cost for case management services for all youth was $9.85 per client. A total of 702 youth were served during FY1986.

Table 3
YOUTH CORRECTIONS BUDGET

Area of Operation	Actual FY '85	Authorized FY '86	Requested FY '87
Administration	$ 587,800	$ 749,500	$ 749,235
Parole Authority	73,100	87,100	94,258
Region I Northern [1]	1,784,800	1,952,400	1,995,741
Mill Creek	1,187,800	1,300,300	1,356,853
Region II Central [1]	2,817,000	2,911,400	3,022,374
Decker Lake	1,326,600	1,323,800	1,376,075
Region III South [1]	2,308,700	2,367,600	2,542,979
Detention	1,222,700	1,215,000	1,215,000
Cedar City	582,300[2]	294,600	300,000
TOTAL	$11,890,800	$12,201,700	$12,652,513

[1] Includes Observation and Assessment and Case Management

[2] 1985 Funds were for construction costs only

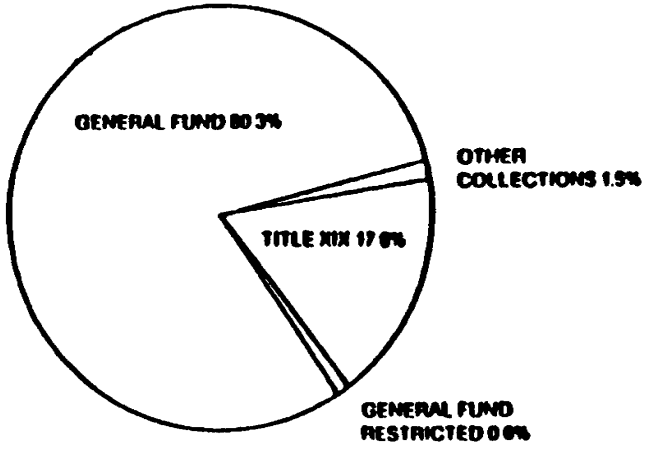


Source: Division of Youth Corrections. Fiscal Year 1985 Annual Report, Utah State Department of Social Services, 1985, p. 5

Table 4
SOURCES OF REVENUE

Sources	Authorized FY '86	Requested FY '87
General Fund	$ 9,343,900	$10,184,227
General Fund Restricted	50,000	75,000
Social Services Health Plan (Title XIX)	2,500,000	2,222,286
Other Collections [1]	307,800	191,000
TOTAL	$12,201,700	$12,652,513

[1] From Land Grant royalties School lunch Technical Assistance Grant Support Collections from parents and Diversion Collections from Courts



Source: Division of Youth Corrections. Fiscal Year 1985 Annual Report, Utah State Department of Social Services, 1985, p. 5.

STATE OF NEVADA
EGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
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CARSON CITY, NEVADA 89710

DONALD A. RHODES, *Director*
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APPENDIX E

LEGISLATIVE COMMISSION (702) 687-6800
LAWRENCE E. JACOBSEN, *Senator, Chairman*
Donald A. Rhodes, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
MARVIN M. SEDWAY, *Assemblyman, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

JOHN R. CROSSLEY, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

January 16, 1989

TO: Senate Committee on Finance

FROM: Advisory Committee on Laws Relating to Children (A.B. 637)

SUBJECT: Funding for Education of Children in the Juvenile Justice System

Our committee has recommended that additional funding be provided to children in the system of juvenile justice to obtain education during the summer. Many of these children have found themselves moved from one school system to another throughout their lives. They generally are far behind the educational level of most children their age, and have little hope of closing the gap without your support. Education during the summer months offers some hope. In addition to allowing these children to receive the education they so desperately need, summer school keeps their hands and minds occupied. The alternative is long, restless months with little or nothing to do.

We therefore urge you to provide additional funding for the education of children in the juvenile justice system, particularly for education during the summer.

Sincerely,

David E. Humke
Chairman

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
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CARSON CITY, NEVADA 89710

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ROBERT E. ERICKSON, *Research Director* (702) 687-6825
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

January 16, 1989

TO: Assembly Committee on Ways and Means

FROM: Advisory Committee on Laws Relating to Children (A.B. 637)

SUBJECT: Funding for Education of Children in the Juvenile Justice System

Our committee has recommended that additional funding be provided to children in the system of juvenile justice to obtain education during the summer. Many of these children have found themselves moved from one school system to another throughout their lives. They generally are far behind the educational level of most children their age, and have little hope of closing the gap without your support. Education during the summer months offers some hope. In addition to allowing these children to receive the education they so desperately need, summer school keeps their hands and minds occupied. The alternative is long, restless months with little or nothing to do.

We therefore urge you to provide additional funding for the education of children in the juvenile justice system, particularly for education during the summer.

Sincerely,

David E. Humke
Chairman

Bill HONIG, California Superintendent of Public Instruction, Petitioner

v.

John DOE and Jack Smith.

No. 86-728.

Argued Nov. 9, 1987.

Decided Jan. 20, 1988.

Handicapped students brought action against school district and others to recover for alleged violation of Education of the Handicapped Act. The United States District Court for the Northern District of California entered summary judgment for handicapped students and issued permanent injunction and appeal was taken. The Court of Appeals of the Ninth Circuit, 793 F.2d 1470, affirmed with slight modifications and petition was filed for writ of certiorari. The Supreme Court, Justice Brennan, held that: (1) challenge of 20-year-old emotionally handicapped individual to school district's violation of Education of the Handicapped Act was not moot; (2) "Stay-put" provision of the Education of the Handicapped Act prohibited state or local school authorities from unilaterally excluding disabled children from classroom for dangerous or disruptive conduct growing out of their disabilities during pendency of review proceeding; and (3) trial court did not abuse its discretion in enjoining local school officials from indefinitely suspending emotionally handicapped student pending completion of expulsion proceedings.

Court of Appeals decision affirmed, as modified.

Chief Justice Rehnquist, concurred and filed opinion.

Justice Scalia, dissented and filed opinion in which Justice O'Connor joined.

1. Schools ⇐148(2)

Education of the Handicapped Act is more than simple funding statute, and instead, confers upon disabled students an enforceable substantive right to public education in participating states, and conditions federal financial assistance upon State's compliance with substantive and procedural goals of the Act. Education of the Handicapped Act, § 601 et seq., 20 U.S.C.A. § 1400 et seq.

2. Schools ⇐17

States seeking to qualify for federal funds under Education of the Handicapped Act must develop policies assuring all disabled children the right to free appropriate public education, and must file with Secretary of Education formal plans mapping out in detail programs, procedures, and timetables under which they will effectuate such policies, and such plans must assure that to maximum extent appropriate, states will mainstream disabled children, that is, they will educate them with children who are not disabled, and will segregate or otherwise remove such children from regular classroom setting only when nature or severity of handicapped is such that education or regular classrooms cannot be achieved satisfactorily. Education of the Handicapped Act, § 612(1, 5), 20 U.S.C.A. § 1412(1, 5).

3. Schools ⇐155.5(1, 5)

Education of the Handicapped Act establishes various procedural safeguards that guarantee parents both opportunity for meaningful input into all decisions affecting their children's education and right to seek review of any decision they think inappropriate. Education of the Handicapped Act, § 615(b)(1, 2), 20 U.S.C.A. § 1415(b)(1, 2).

4. Federal Courts ⇐12

Under the Federal Constitution, Supreme Court may only adjudicate actual, ongoing controversies. U.S.C.A. Const. Art. 3, § 1 et seq.

5. Federal Courts ⇐452

That dispute between parties was very much alive when suit was filed, or at the

time the Court of Appeals renders judgment, cannot substitute for actual case or controversy that exercise of Supreme Court's jurisdiction requires. U.S.C.A. Const. Art. 3, § 1 et seq.

6. Federal Courts ⇐13.30

Twenty-year-old emotionally handicapped individual was no longer entitled to protections and benefits of Education of the Handicapped Act, so that whatever rights to state educational services he might yet have as ward of state of California, Act would not govern state's provision of those services, and thus action challenging state's suspension and proposed expulsion was moot. Education of the Handicapped Act, § 601 et seq., 20 U.S.C.A. § 1400 et seq.; U.S.C.A. Const. Art. 3, § 1 et seq.

7. Federal Courts ⇐13.30

Twenty-year-old emotionally handicapped individual who had not yet completed high school, although not faced with proposed expulsion or suspension proceedings, and no longer residing within school district that had suspended him and proposed his expulsion, remained resident of California and was entitled to free appropriate public education within the state, so that his challenge to suspension and proposed expulsion under the Education of the Handicapped Act was capable of repetition, yet evading review, and thus claims were not moot; given individual's continued eligibility for educational services under the Act, nature of his disability, government's insistence that school districts retained residual authority to exclude disabled children for dangerous conduct, there was reasonable expectation that individual would once again be subjected to unilateral change in placement for disruptive conduct growing out of his disabilities were it not for state-wide injunctive relief issued. Education of the Handicapped Act, § 601 et seq., 20 U.S.C.A. § 1400 et seq.; U.S.C.A. Const. Art. 3, § 1 et seq.

8. Schools ⇐177

"Stay-put" provision of Education of the Handicapped Act, providing that during pendency of any proceedings initiated under Act, unless state or local educational agency and parents or guardian of disabled child otherwise agreed, "the child shall remain in the then current educational placement," prohibited state or local school authorities from unilaterally excluding disabled children from classroom for dangerous or disruptive conduct growing out of their disabilities during pendency of review proceedings. Education of the Handicapped Act, § 615(e)(3), 20 U.S.C.A. § 1415(e)(3).

9. Schools ⇐177

While handicapped child's placement could not be unilaterally changed during any complaint proceeding, where student poses immediate threat to safety of others, officials may temporarily suspend him or her for up to ten days without violating Education of the Handicapped Act, although suspension in excess of ten days constitutes prohibited "change in placement" under the Act. Education of the Handicapped Act, § 615(e)(3), 20 U.S.C.A. § 1415(e)(3).

10. Administrative Law and Procedure ⇐229

Schools ⇐155.5(3, 4)

Although it is true that judicial review is normally not available under the Education of the Handicapped Act until all administrative proceedings are completed, schools, as well as parents, may bypass administrative process where exhaustion will be futile or inadequate; burden in such cases rests with school or parent to demonstrate futility or inadequacy of administrative review. Education of the Handicapped Act, § 615(e)(2, 3), 20 U.S.C.A. § 1415(e)(2, 3).

11. Schools ⇐177

Although one of evils of the Education of the Handicapped Act sought to be remedied was unilateral exclusion of disabled children by schools, Act does not limit equitable powers of district courts to

temporarily enjoin dangerous disabled child from attending school in appropriate cases; "stay-put" provision prohibiting school officials from removing children from regular public school classroom over parents' objection pending completion of review proceedings in no way purported to limit or preempt authority conferred on courts. Education of the Handicapped Act, § 615(e)(2, 3), 20 U.S.C.A. § 1415(e)(2, 3).

12. Schools ⇐177

In any action brought by school seeking to temporarily enjoin dangerous disabled child from attending school, there is presumption in favor of child's current educational placement under Education of the Handicapped Act which school officials can overcome only by showing that maintaining child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others. Education of the Handicapped Act, § 615(e)(2, 3), 20 U.S.C.A. § 1415(e)(2, 3).

13. Schools ⇐155.5(5)

District court did not abuse its discretion in enjoining local school officials from indefinitely suspending emotionally handicapped child pending completion of expulsion proceedings after weighing emotionally handicapped student's interest in receiving free appropriate public education in accordance with procedures and requirements of Education of the Handicapped Act against interests of state and local school officials in maintaining safe learning environment for all their students. Education of the Handicapped Act, § 615(e)(2, 3), 20 U.S.C.A. § 1415(e)(2, 3).

14. Schools ⇐155.5(4)

In any suit brought by parents seeking injunctive relief for violation of "stay-put" provisions of Education of the Handicapped Act, burden rests with school district to demonstrate that educational status quo must be altered. Education of the Handicapped Act, § 615(e)(3), 20 U.S.C.A. § 1415(e)(3).

Syllabus *

In order to assure that States receiving federal financial assistance will provide a "free appropriate public education" for all disabled children, including those with serious emotional disturbances, the Education of the Handicapped Act (EHA or Act) establishes a comprehensive system of procedural safeguards designed to provide meaningful parental participation in all aspects of a child's educational placement, including an opportunity for an impartial due process hearing with respect to any complaints such parents have concerning their child's placement, and the right to seek administrative review of any decisions they think inappropriate. If that review proves unsatisfactory, either the parents or the local educational agency may file a civil action in any state or federal court for "appropriate" relief. 20 U.S.C. § 1415(e)(2). The Act's "stay-put" provision directs that a disabled child "shall remain in [his or her] then current educational placement" pending completion of any review proceedings, unless the parents and state or local educational agencies otherwise agree. § 1415(e)(3). Respondents Doe and Smith, who were emotionally disturbed students, were suspended indefinitely for violent and disruptive conduct related to their disabilities, pending the completion of expulsion proceedings by the San Francisco Unified School District (SFUSD). After unsuccessfully protesting the action against him, Doe filed a suit in Federal District Court, in which Smith intervened, alleging that the suspension and proposed expulsion violated the EHA, and seeking injunctive relief against SFUSD officials and petitioner, the State Superintendent of Public Instruction. The court entered summary judgment for respondents on their EHA claims and issued a permanent injunc-

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

tion. The Court of Appeals affirmed with slight modifications.

Held:

1. The case is moot as to respondent Doe, who is now 24 years old, since the Act limits eligibility to disabled children between the ages of 3 and 21. However, the case is justiciable with respect to respondent Smith, who continues to be eligible for EHA educational services since he is currently only 20 and has not yet completed high school. This Court has jurisdiction since there is a reasonable likelihood that Smith will again suffer the deprivation of EHA-mandated rights that gave rise to this suit. Given the evidence that he is unable to conform his conduct to socially acceptable norms, and the absence of any suggestion that he has overcome his behavioral problems, it is reasonable to expect that he will again engage in aggressive and disruptive classroom misconduct. Moreover, it is unreasonable to suppose that any future educational placement will so perfectly suit his emotional and academic needs that further disruptions on his part are improbable. If Smith does repeat the objectionable conduct, it is likely that he will again be subjected to the same type of unilateral school action in any California school district in which he is enrolled, in light of the lack of a statewide policy governing local school responses to disability-related misconduct, and petitioner's insistence that all local school districts retain residual authority to exclude disabled children for dangerous conduct. In light of the ponderousness of review procedures under the Act, and the fact that an aggrieved student will often be finished with school or otherwise ineligible for EHA protections by the time review can be had in this Court, the conduct Smith complained of is "capable of repetition, yet evading review." Thus his EHA claims are not moot. Pp. 601–604.

2. The "stay-put" provision prohibits state or local school authorities from unilaterally excluding disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities during the pendency of review proceedings. Section 1415(e)(3) is unequivocal in its mandate that "the child *shall* remain in the then current educational placement" (emphasis added), and demonstrates a congressional intent to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. This Court will not rewrite the statute to infer a "dangerousness" exception on the basis of obviousness or congressional inadvertence, since, in drafting the statute, Congress devoted close attention to *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866, and *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F.Supp. 1257, and 343 F.Supp. 279, thereby establishing that the omission of an emergency exception for dangerous students was intentional. However, Congress did not leave school administrators powerless to deal with such students, since implementing regulations allow the use of normal, nonplacement-changing procedures, including temporary suspensions for up to 10 schooldays for students posing an immediate threat to others' safety, while the Act allows for interim placements where parents and school officials are able to agree, and authorizes officials to file a § 1415(e)(2) suit for "appropriate" injunctive relief where such an agreement cannot be reached. In such a suit, § 1415(e)(3) effectively creates a presumption in favor of the child's current educational placement which school officials can rebut only by showing that maintaining the current placement is substantially likely to result in injury to the student or to others. Here, the District Court properly balanced respondents' interests under the Act against the state and local school officials' safety interest, and both lower courts properly construed and applied § 1415(e)(3), except insofar as the Court of Appeals held that a suspension exceeding 10 schooldays does not constitute a prohibited change in placement. The

Court of Appeals' judgment is modified to that extent. Pp. 604–607.

3. Insofar as the Court of Appeals' judgment affirmed the District Court's order directing the State to provide services directly to a disabled child where the local agency has failed to do so, that judgment is affirmed by an equally divided Court. P. 607.

793 F.2d 1470 (CA9, 1986) affirmed.

BRENNAN, J., delivered the opinion of the Court as to holdings number 1 and 2 above, in which REHNQUIST, C.J., and WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. REHNQUIST, C.J., filed a concurring opinion. SCALIA, J., filed a dissenting opinion, in which O'CONNOR, J., joined.

Asher Rubin, San Francisco, Cal., for petitioner.

Glen D. Nager, Washington, D.C., for U.S. as amicus curiae, pro hac vice, supporting the petitioner, by special leave of Court.

Sheila L. Brogna, Legal Services for Children, Inc., San Francisco, Cal., for respondents; Toby F. Rubin, William J. Taylor, Brobeck, Phleger & Harrison, San Francisco, on brief.

Justice BRENNAN delivered the opinion of the Court.

As a condition of federal financial assistance, the Education of the Handicapped Act requires States to ensure a "free appropriate public education" for all disabled children within their jurisdictions. In aid of this goal, the Act establishes a comprehensive system of procedural safeguards designed to ensure parental participation in decisions concerning the education of their disabled children and to provide administrative and judicial review of any decisions with which those parents disagree. Among these safeguards is the so-called "stay-put" provision, which directs that a disabled child "shall remain in [his or her] then current educational placement" pending completion of any review proceedings, unless the parents and state or local educational agencies otherwise agree. 20 U.S.C. § 1415(e)(3). Today we must decide whether, in the face of this statutory proscription, state or local school authorities may nevertheless unilaterally exclude disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities. In addition, we are called upon to decide whether a district court may, in the exercise of its equitable powers, order a State to provide educational services directly to a disabled child when the local agency fails to do so.

I

In the Education of the Handicapped Act (EHA or the Act), 84 Stat. 175, as amended, 20 U.S.C. § 1400 *et seq.*, Congress sought "to assure that all handicapped children have available to them ... a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, [and] to assure that the rights of handicapped children and their parents or guardians are protected." § 1400(c). When the law was passed in 1975, Congress had before it ample evidence that such legislative assurances were sorely needed: 21 years after this Court declared education to be "perhaps the most important function of state and local governments," *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954), Congressional studies revealed that better than half of the Nation's eight million disabled children were not receiving appropriate educational services. § 1400(b)(3). Indeed, one out of every eight of these children was excluded from the public school system altogether, § 1400(b)(4); many others were simply "warehoused" in special classes or were neglectfully shepherded through the system until they were old enough to drop out. See H.R.Rep. No. 94–332, p. 2 (1975). Among the most poorly served of disabled students were emotionally disturbed children: Congressional statistics revealed that for the school year immediately preceding passage of the Act, the educational

needs of 82 percent of all children with emotional disabilities went unmet. See S.Rep. No. 94–168, p. 8 (1975), U.S.Code Cong. & Admin.News 1975, p. 1425 (hereinafter S.Rep.).

Although these educational failings resulted in part from funding constraints, Congress recognized that the problem reflected more than a lack of financial resources at the state and local levels. Two federal-court decisions, which the Senate Report characterized as "landmark," see *id.*, at 6, U.S.Code Cong. & Admin.News 1430, demonstrated that many disabled children were excluded pursuant to state statutes or local rules and policies, typically without any consultation with, or even notice to, their parents. See *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (DC 1972); *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F.Supp. 1257 (ED Pa.1971), and 343 F.Supp. 279 (1972) (*PARC*). Indeed, by the time of the EHA's enactment, parents had brought legal challenges to similar exclusionary practices in 27 other states. See S.Rep., at 6.

[1, 2] In responding to these problems, Congress did not content itself with passage of a simple funding statute. Rather, the EHA confers upon disabled students an enforceable substantive right to public education in participating States, see *Board of Education of Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982),[1] and conditions federal financial assistance upon a State's compliance with the substantive and procedural goals of the Act. Accordingly, States seeking to qualify for federal funds must develop policies assuring all disabled children the "right to a free appropriate public education," and must file with the Secretary of Education formal plans mapping out in detail the programs, procedures and timetables under which they will effectuate these policies. 20 U.S.C. §§ 1412(1), 1413(a). Such plans must assure that, "to the maximum extent appropriate," States will "mainstream" disabled children, *i.e.*, that they will educate them with children who are not disabled, and that they will segregate or otherwise remove such children from the regular classroom setting "only when the nature or severity of the handicap is such that education in regular classes ... cannot be achieved satisfactorily." § 1412(5).

The primary vehicle for implementing these congressional goals is the "individualized educational program" (IEP), which the EHA mandates for each disabled child. Prepared at meetings between a representative of the local school district, the child's teacher, the parents or guardians, and, whenever appropriate, the disabled child, the IEP sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives. § 1401(19). The IEP must be reviewed and, where necessary, revised at least once a year in order to ensure that

1. Congress' earlier efforts to ensure that disabled students received adequate public education had failed in part because the measures it adopted were largely hortatory. In the 1966 amendments to the Elementary and Secondary Education Act of 1965, Congress established a grant program "for the purpose of assisting the States in the initiation, expansion, and improvement of programs and projects ... for the education of handicapped children." Pub.L. 89–750, § 161, 80 Stat. 1204. It repealed that program four years later and replaced it with the original version of the Education of the Handicapped Act, Pub.L. 91–230, 84 Stat. 175, Part B of which contained a similar grant program. Neither statute, however, provided specific guidance as to how States were to use the funds, nor did they condition the availability of the grants on compliance with any procedural or substantive safeguards. In amending the EHA to its present form, Congress rejected its earlier policy of "merely establish[ing] an unenforceable goal requiring all children to be in school." 121 Cong.Rec. 37417 (1975) (remarks of Sen. Schweiker). Today, all 50 states and the District of Columbia receive funding assistance under the EHA. U.S.Dept. of Education, Ninth Annual Report to Congress on Implementation of Education of the Handicapped Act (1987).

local agencies tailor the statutorily required "free appropriate public education" to each child's unique needs. § 1414(a)(5).

[3] Envisioning the IEP as the centerpiece of the statute's education delivery system for disabled children, and aware that schools had all too often denied such children appropriate educations without in any way consulting their parents, Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness. See §§ 1400(c), 1401(19), 1412(7), 1415(b)(1)(A), (C), (D), (E), and 1415(b)(2). Accordingly, the Act establishes various procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate. These safeguards include the right to examine all relevant records pertaining to the identification, evaluation and educational placement of their child; prior written notice whenever the responsible educational agency proposes (or refuses) to change the child's placement or program; an opportunity to present complaints concerning any aspect of the local agency's provision of a free appropriate public education; and an opportunity for "an impartial due process hearing" with respect to any such complaints. § 1415(b)(1), (2).

At the conclusion of any such hearing, both the parents and the local educational agency may seek further administrative review and, where that proves unsatisfactory, may file a civil action in any state or federal court. § 1415(c), (e)(2). In addition to reviewing the administrative record, courts are empowered to take additional evidence at the request of either party and to "grant such relief as [they] determine[ ] is appropriate." § 1415(e)(2). The "stay-put" provision at issue in this case governs the placement of a child while these often lengthy review procedures run their course. It directs that:

> "During the pendency of any proceedings conducted pursuant to [§ 1415], unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child...." § 1415(e)(3).

The present dispute grows out of the efforts of certain officials of the San Francisco Unified School District (SFUSD) to expel two emotionally disturbed children from school indefinitely for violent and disruptive conduct related to their disabilities. In November 1980, respondent John Doe assaulted another student at the Louise Lombard School, a developmental center for disabled children. Doe's April 1980 IEP identified him as a socially and physically awkward 17 year old who experienced considerable difficulty controlling his impulses and anger. Among the goals set out in his IEP was "[i]mprovement in [his] ability to relate to [his] peers [and to] cope with frustrating situations without resorting to aggressive acts." App. 17. Frustrating situations, however, were an unfortunately prominent feature of Doe's school career: physical abnormalities, speech difficulties, and poor grooming habits had made him the target of teasing and ridicule as early as the first grade, *id.*, at 23; his 1980 IEP reflected his continuing difficulties with peers, noting that his social skills had deteriorated and that he could tolerate only minor frustration before exploding. *Id.*, at 15–16.

On November 6, 1980, Doe responded to the taunts of a fellow student in precisely the explosive manner anticipated by his IEP: he choked the student with sufficient force to leave abrasions on the child's neck, and kicked out a school window while being escorted to the principal's office afterwards. *Id.*, at 208. Doe admitted his misconduct and the school subsequently suspended him for five days. Thereafter, his principal referred the matter to the SFUSD Student Placement Committee (SPC or Committee) with the recommendation that Doe be expelled. On the day the suspen-

sion was to end, the SPC notified Doe's mother that it was proposing to exclude her child permanently from SFUSD and was therefore extending his suspension until such time as the expulsion proceedings were completed.[2] The Committee further advised her that she was entitled to attend the November 25 hearing at which it planned to discuss the proposed expulsion.

After unsuccessfully protesting these actions by letter, Doe brought this suit against a host of local school officials and the state superintendent of public education. Alleging that the suspension and proposed expulsion violated the EHA, he sought a temporary restraining order cancelling the SPC hearing and requiring school officials to convene an IEP meeting. The District Judge granted the requested injunctive relief and further ordered defendants to provide home tutoring for Doe on an interim basis; shortly thereafter, she issued a preliminary injunction directing defendants to return Doe to his then current educational placement at Louise Lombard School pending completion of the IEP review process. Doe re-entered school on December 15, 5½ weeks, and 24 school days, after his initial suspension.

Respondent Jack Smith was identified as an emotionally disturbed child by the time he entered the second grade in 1976. School records prepared that year indicated that he was unable "to control verbal or physical outburst[s]" and exhibited a "[s]evere disturbance in relationships with peers and adults." *Id.*, at 123. Further evaluations subsequently revealed that he had been physically and emotionally abused as an infant and young child and that, despite above average intelligence, he experienced academic and social difficulties as a result of extreme hyperactivity and low self-esteem. *Id.*, at 136, 139, 155, 176. Of particular concern was Smith's propensity for verbal hostility; one evaluator noted that the child reacted to stress by "attempt[ing] to cover his feelings of low self worth through aggressive behavior[,] ... primarily verbal provocations." *Id.*, at 136.

Based on these evaluations, SFUSD placed Smith in a learning center for emotionally disturbed children. His grandparents, however, believed that his needs would be better served in the public school setting and, in September 1979, the school district acceded to their requests and enrolled him at A.P. Giannini Middle School. His February 1980 IEP recommended placement in a Learning Disability Group, stressing the need for close supervision and a highly structured environment. *Id.*, at 111. Like earlier evaluations, the February 1980 IEP noted that Smith was easily distracted, impulsive, and anxious; it therefore proposed a half-day schedule and suggested that the placement be undertaken on a trial basis. *Id.*, at 112, 115.

At the beginning of the next school year, Smith was assigned to a full-day program; almost immediately thereafter he began misbehaving. School officials met twice with his grandparents in October 1980 to discuss returning him to a half-day program; although the grandparents agreed to the reduction, they apparently were never apprised of their right to challenge the decision through EHA procedures. The school officials also warned them that if the child continued his disruptive behavior—which included stealing, extorting money from fellow students, and making sexual comments to female classmates—they would seek to expel him. On November 14, they made good on this threat, suspending Smith for five days after he

2. California law at the time empowered school principals to suspend students for no more than five consecutive school days, Cal.Educ.Code Ann. § 48903(a) (West 1978), but permitted school districts seeking to expel a suspended student to "extend the suspension until such time as [expulsion proceedings were completed]; provided, that [it] has determined that the presence of the pupil at the school or in an alternative school placement would cause a danger to persons or property or a threat of disrupting the instructional process." § 48903(h). The State subsequently amended the law to permit school districts to impose longer initial periods of suspension. See n. 3, *infra*.

made further lewd comments. His principal referred the matter to the SPC, which recommended exclusion from SFUSD. As it did in John Doe's case, the Committee scheduled a hearing and extended the suspension indefinitely pending a final disposition in the matter. On November 28, Smith's counsel protested these actions on grounds essentially identical to those raised by Doe, and the SPC agreed to cancel the hearing and to return Smith to a half-day program at A.P. Giannini or to provide home tutoring. Smith's grandparents chose the latter option and the school began home instruction on December 10; on January 6, 1981, an IEP team convened to discuss alternative placements.

After learning of Doe's action, Smith sought and obtained leave to intervene in the suit. The District Court subsequently entered summary judgment in favor of respondents on their EHA claims and issued a permanent injunction. In a series of decisions, the District Judge found that the proposed expulsions and indefinite suspensions of respondents for conduct attributable to their disabilities deprived them of their congressionally mandated right to a free appropriate public education, as well as their right to have that education provided in accordance with the procedures set out in the EHA. The District Judge therefore permanently enjoined the school district from taking any disciplinary action other than a two- or five-day suspension against any disabled child for disability-related misconduct, or from effecting any other change in the educational placement of any such child without parental consent pending completion of any EHA proceedings. In addition, the judge barred the State from authorizing unilateral placement changes and directed it to establish an EHA compliance-monitoring system or, alternatively, to enact guidelines governing local school responses to disability-related misconduct. Finally, the judge ordered the State to provide services directly to disabled children when, in any individual case, the State determined that the local educational agency was unable or unwilling to do so.

On appeal, the Court of Appeals for the Ninth Circuit affirmed the orders with slight modifications. *Doe v. Maher*, 793 F.2d 1470 (1986). Agreeing with the District Court that an indefinite suspension in aid of expulsion constitutes a prohibited "change in placement" under § 1415(e)(3), the Court of Appeals held that the stay-put provision admitted of no "dangerousness" exception and that the statute therefore rendered invalid those provisions of the California Education Code permitting the indefinite suspension or expulsion of disabled children for misconduct arising out of their disabilities. The court concluded, however, that fixed suspensions of up to 30 school days did not fall within the reach of § 1415(e)(3), and therefore upheld recent amendments to the state education code authorizing such suspensions.[3] Lastly, the court affirmed that portion of the injunction requiring the State to provide services directly to a disabled child when the local educational agency fails to do so.

Petitioner Bill Honig, California Superintendent of Public Instruction,[4] sought review in this Court, claiming that the Court of Appeals' construction of the stay-put provision conflicted with that of several other courts of appeals which had recognized a dangerousness exception, compare *Doe v. Maher*, 793 F.2d 1470 (CA9 1986) (case below), with *Jackson v. Franklin County School Board*, 765 F.2d 535, 538 (CA5 1985); *Victoria L. v. District School*

3. In 1983, the State amended its Education Code to permit school districts to impose initial suspensions of 20, and in certain circumstances, 30 school days. Cal.Educ.Code Ann. §§ 48912(a), 48903 (West Supp.1988). The legislature did not alter the indefinite suspension authority which the SPC exercised in this case, but simply incorporated the earlier provision into a new section. See § 48911(g).

4. At the time respondent Doe initiated this suit, Wilson Riles was the California Superintendent of Public Instruction. Petitioner Honig succeeded him in office.

Bd. of Lee County, Fla., 741 F.2d 369, 374 (CA11 1984); *S-1 v. Turlington*, 635 F.2d 342, 348, n. 9 (CA5), cert. denied, 454 U.S. 1030, 102 S.Ct. 566, 70 L.Ed.2d 473 (1981), and that the direct services ruling placed an intolerable burden on the State. We granted certiorari to resolve these questions, 479 U.S. ——, 107 S.Ct. 1284, 94 L.Ed.2d 142 (1987), and now affirm.

II

[4, 5] At the outset, we address the suggestion, raised for the first time during oral argument, that this case is moot.[5] Under Article III of the Constitution this Court may only adjudicate actual, ongoing controversies. *Nebraska Press Assn v. Stuart*, 427 U.S. 539, 546, 96 S.Ct. 2791, 2796, 49 L.Ed.2d 683 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975). That the dispute between the parties was very much alive when suit was filed, or at the time the Court of Appeals rendered its judgment, cannot substitute for the actual case or controversy that an exercise of this Court's jurisdiction requires. *Steffel v. Thompson*, 415 U.S. 452, 459, n. 10, 94 S.Ct. 1209, 1216, n. 10, 39 L.Ed.2d 505 (1974); *Roe v. Wade*, 410 U.S. 113, 125, 93 S.Ct. 705, 713, 35 L.Ed.2d 147 (1973). In the present case, we have jurisdiction if there is a reasonable likelihood that respondents will again suffer the deprivation of EHA-mandated rights that gave rise to this suit. We believe that, at least with respect to respondent Smith, such a possibility does in fact exist and that the case therefore remains justiciable.

[6, 7] Respondent John Doe is now 24 years old and, accordingly, is no longer entitled to the protections and benefits of the EHA, which limits eligibility to disabled children between the ages of three and 21. See 20 U.S.C. § 1412(2)(B). It is clear, therefore, that whatever rights to state educational services he may yet have as a ward of the State, see Tr. of Oral Arg. 23, 26, the Act would not govern the State's provision of those services, and thus the case is moot as to him. Respondent Jack Smith, however, is currently 20 and has not yet completed high school. Although at present he is not faced with any proposed expulsion or suspension proceedings, and indeed no longer even resides within the SFUSD, he remains a resident of California and is entitled to a "free appropriate public education" within that State. His claims under the EHA, therefore, are not moot if the conduct he originally complained of is "'capable of repetition, yet evading review.'" *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353 (1982). Given Smith's continued eligibility for educational services under the EHA,[6]

5. We note that both petitioner and respondents believe that this case presents a live controversy. See Tr. of Oral Arg. 6, 27–31. Only the United States, appearing as *amicus curiae*, urges that the case is presently nonjusticiable. *Id.*, at 21.

6. Notwithstanding respondent's undisputed right to a free appropriate public education in California, Justice SCALIA argues in dissent that there is no "demonstrated probability" that Smith will actually avail himself of that right because his counsel was unable to state affirmatively during oral argument that her client would seek to re-enter the state school system. See *post*, at 2. We believe the dissent overstates the stringency of the "capable of repetition" test. Although Justice SCALIA equates "reasonable expectation" with "demonstrated probability," the very case he cites for this proposition described these standards in the disjunctive, see *Murphy v. Hunt*, 455 U.S., at 482, 102 S.Ct., at 1183, 1184 ("[T]here must be a 'reasonable expectation' *or* a 'demonstrated probability' that the same controversy will recur" (emphasis added)), and in numerous cases decided both before and since *Hunt* we have found controversies capable of repetition based on expectations that, while reasonable, were hardly demonstrably probable. See *e.g., Burlington Northern R. Co. v. Maintenance of Way Employees*, 481 U.S. ——, ——, n. 4, 107 S.Ct. 1841, ——, n. 4, 95 L.Ed.2d 381 (1987) (parties "reasonably likely" to find themselves in future disputes over collective bargaining agreement); *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. ——, ——, 107 S.Ct. 1419, ——, 94 L.Ed.2d 577 (1987) (O'CONNOR, J.) ("likely" that respondent would again submit mining plans that would trigger contested state permit requirement); *Press-Enterprise Co. v. Superior Court of Cal., Riverside County*, 478 U.S. 1, 6, 106 S.Ct. 2735, ——, 92 L.Ed.2d 1 (1986) ("It can reasonably be as-

the nature of his disability, and petitioner's insistence that all local school districts retain residual authority to exclude disabled children for dangerous conduct, we have little difficulty concluding that there is a "reasonable expectation," *ibid.*, that Smith would once again be subjected to a unilateral "change in placement" for conduct growing out of his disabilities were it not for the state-wide injunctive relief issued below.

Our cases reveal that, for purposes of assessing the likelihood that state authorities will re-inflict a given injury, we generally have been unwilling to assume that the party seeking relief will repeat the type of misconduct that would once again place him or her at risk of that injury. See *Los Angeles v. Lyons*, 461 U.S. 95, 105–106, 103 S.Ct. 1660, 1666–1667, 75 L.Ed.2d 675 (1983) (no threat that party seeking injunction barring police use of chokeholds would be stopped again for traffic violation or other offense, or would resist arrest if stopped); *Murphy v. Hunt*, *supra*, 455 U.S., at 484, 102 S.Ct., at 1184 (no reason to believe that party challenging denial of pretrial bail "will once again be in a position to demand bail"); *O'Shea v. Littleton*, 414 U.S. 488, 497, 94 S.Ct. 669, 676, 38 L.Ed.2d 674 (1974) (unlikely that parties challenging discriminatory bond-setting, sentencing, and jury-fee practices would again violate valid criminal laws). No such reluctance, however, is warranted here. It is respondent Smith's very inability to conform his conduct to socially acceptable norms that renders him "handicapped" within the meaning of the EHA. See 20 U.S.C. § 1401(1); 34 CFR § 300.5(b)(8) (1987). As noted above, the record is replete with evidence that Smith is unable to govern his aggressive, impulsive behavior—indeed, his notice of suspension acknowledged that "Jack's actions seem beyond his control." App. 152. In the absence of any suggestion that respondent has overcome his earlier difficulties, it is certainly reasonable to expect, based on his prior history of behavioral problems, that he will again engage in classroom misconduct. Nor is it reasonable to suppose that Smith's future educational placement will so perfectly suit his emotional and academic needs that further disruptions on his part are improbable. Although Justice SCALIA suggests in his dissent, *post*, at 3, that school officials are unlikely to place Smith in a setting where they cannot control his misbehavior, any efforts to ensure such total control must be tempered by the school system's statutory obligations to provide respondent with a

sumed" that newspaper publisher will be subjected to similar closure order in the future); *Globe Newspaper Co. v. Superior Court of Norfolk County*, 457 U.S. 596, 603, 102 S.Ct. 2613, 2618, 73 L.Ed.2d 248 (1982) (same); *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 398, 100 S.Ct. 1202, 1210, 63 L.Ed.2d 479 (1980) (case not moot where litigant "faces some likelihood of becoming involved in same controversy in the future") (dicta). Our concern in these cases, as in all others involving potentially moot claims, was whether the controversy was *capable* of repetition and not, as the dissent seems to insist, whether the claimant had demonstrated that a recurrence of the dispute was more probable than not. Regardless, then, of whether respondent has established with mathematical precision the likelihood that he will enroll in public school during the next two years, we think there is at the very least a reasonable expectation that he will exercise his rights under the EHA. In this regard, we believe respondent's actions over the course of the last seven years speak louder than his counsel's momentary equivocation during oral argument. Since 1980, he has sought to vindicate his right to an appropriate public education that is not only free of charge, but free from the threat that school officials will unilaterally change his placement or exclude him from class altogether. As a disabled young man, he has as at least as great a need of a high school education and diploma as any of his peers, and his counsel advises us that he is awaiting the outcome of this case to decide whether to pursue his degree. Tr. Oral Arg. 23–24. Under these circumstances, we think it not only counterintuitive but unreasonable to assume that respondent will forgo the exercise of a right that he has for so long sought to defend. Certainly we have as much reason to expect that respondent will reenter the California school system as we had to assume that Jane Roe would again both have an unwanted pregnancy and wish to exercise her right to an abortion. See *Roe v. Wade*, 410 U.S. 113, 125, 93 S.Ct. 705, 713, 35 L.Ed.2d 147 (1973).

free appropriate public education in "the least restrictive environment," 34 CFR § 300.552(d) (1987); to educate him, "to the maximum extent appropriate," with children who are not disabled, 20 U.S.C. § 1412(5); and to consult with his parents or guardians, and presumably with respondent himself, before choosing a placement. §§ 1401(19), 1415(b). Indeed, it is only by ignoring these mandates, as well as Congress' unquestioned desire to wrest from school officials their former unilateral authority to determine the placement of emotionally disturbed children, see *infra*, at 15–16, that the dissent can so readily assume that respondent's future placement will satisfactorily prevent any further dangerous conduct on his part. Overarching these statutory obligations, moreover, is the inescapable fact that the preparation of an IEP, like any other effort at predicting human behavior, is an inexact science at best. Given the unique circumstances and context of this case, therefore, we think it reasonable to expect that respondent will again engage in the type of misconduct that precipitated this suit.

We think it equally probable that, should he do so, respondent will again be subjected to the same unilateral school action for which he initially sought relief. In this regard, it matters not that Smith no longer resides within the SFUSD. While the actions of SFUSD officials first gave rise to this litigation, the District Judge expressly found that the lack of a state policy governing local school responses to disability-related misconduct had led to, and would continue to result in, EHA violations, and she therefore enjoined the state defendant from authorizing, among other things, unilateral placement changes. App. 247–248. She of course also issued injunctions directed at the local defendants, but they did not seek review of those orders in this Court. Only petitioner, the State Superintendent of Public Instruction, has invoked our jurisdiction, and he now urges us to hold that local school districts retain unilateral authority under the EHA to suspend or otherwise remove disabled children for dangerous conduct. Given these representations, we have every reason to believe that were it not for the injunction barring petitioner from authorizing such unilateral action, respondent would be faced with a real and substantial threat of such action in any California school district in which he enrolled. Cf. *Los Angeles v. Lyons*, *supra*, 461 U.S., at 106, 103 S.Ct., at 1667 (respondent lacked standing to seek injunctive relief because he could not plausibly allege that police officers choked all persons whom they stopped, or that the City "*authorized* police officers to act in such manner" (emphasis added)). Certainly, if the SFUSD's past practice of unilateral exclusions was at odds with state policy and the practice of local school districts generally, petitioner would not now stand before us seeking to defend the right of all local school districts to engage in such aberrant behavior.[7]

We have previously noted that administrative and judicial review under the EHA is often "ponderous," *Burlington School Committee v. Massachusetts Dept. of Education*, 471 U.S. 359, 370, 105 S.Ct. 1996, 2003, 85 L.Ed.2d 385 (1985), and this case, which has taken seven years to reach us, amply confirms that observation. For obvious reasons, the misconduct of an emotionally disturbed or otherwise disabled child who has not yet reached adolescence typically will not pose such a serious threat to the well-being of other students that school officials can only ensure classroom safety by excluding the child. Yet, the adolescent student improperly disciplined for misconduct that does pose such a threat will often

7. Petitioner concedes that the school district "made a number of procedural mistakes in its eagerness to protect other students from Doe and Smith." Reply Brief for Petitioner 6. According to petitioner, however, unilaterally excluding respondents from school was not among them; indeed, petitioner insists that the SFUSD acted properly in removing respondents and urges that the stay-put provision "should not be interpreted to require a school district to maintain such dangerous children with other children." *Id.*, at 6–7.

be finished with school or otherwise ineligible for EHA protections by the time review can be had in this Court. Because we believe that respondent Smith has demonstrated both "a sufficient likelihood that he will again be wronged in a similar way," *Los Angeles v. Lyons*, 461 U.S., at 111, 103 S.Ct., at 1670, and that any resulting claim he may have for relief will surely evade our review, we turn to the merits of his case.

III

[8] The language of § 1415(e)(3) is unequivocal. It states plainly that during the pendency of any proceedings initiated under the Act, unless the state or local educational agency and the parents or guardian of a disabled child otherwise agree, "the child *shall* remain in the then current educational placement." § 1415(e)(3) (emphasis added). Faced with this clear directive, petitioner asks us to read a "dangerousness" exception into the stay-put provision on the basis of either of two essentially inconsistent assumptions: first, that Congress thought the residual authority of school officials to exclude dangerous students from the classroom too obvious for comment; or second, that Congress inadvertently failed to provide such authority and this Court must therefore remedy the oversight. Because we cannot accept either premise, we decline petitioner's invitation to re-write the statute.

Petitioner's arguments proceed, he suggests, from a simple, common-sense proposition: Congress could not have intended the stay-put provision to be read literally, for such a construction leads to the clearly unintended, and untenable, result that school districts must return violent or dangerous students to school while the often lengthy EHA proceedings run their course. We think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. In so doing, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials their former right to "self-help," and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, the courts.

As noted above, Congress passed the EHA after finding that school systems across the country had excluded one out of every eight disabled children from classes. In drafting the law, Congress was largely guided by the recent decisions in *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (1972), and *PARC*, 343 F.Supp. 279 (1972), both of which involved the exclusion of hard-to-handle disabled students. *Mills* in particular demonstrated the extent to which schools used disciplinary measures to bar children from the classroom. There, school officials had labeled four of the seven minor plaintiffs "behavioral problems," and had excluded them from classes without providing any alternative education to them or any notice to their parents. 348 F.Supp., at 869–870. After finding that this practice was not limited to the named plaintiffs but affected in one way or another an estimated class of 12,000 to 18,000 disabled students, *id.*, at 868–869, 875, the District Court enjoined future exclusions, suspensions, or expulsions "on grounds of discipline." *Id.*, at 880.

Congress attacked such exclusionary practices in a variety of ways. It required participating States to educate *all* disabled children, regardless of the severity of their disabilities, 20 U.S.C. § 1412(2)(C), and included within the definition of "handicapped" those children with serious emotional disturbances. § 1401(1). It further provided for meaningful parental participation in all aspects of a child's educational placement, and barred schools, through the stay-put provision, from changing that placement over the parent's objection until all review proceedings were completed.

Recognizing that those proceedings might prove long and tedious, the Act's drafters did not intend § 1415(e)(3) to operate inflexibly, see 121 Cong.Rec. 37412 (1975) (remarks of Sen. Stafford), and they therefore allowed for interim placements where parents and school officials are able to agree on one. Conspicuously absent from § 1415(e)(3), however, is any emergency exception for dangerous students. This absence is all the more telling in light of the injunctive decree issued in *PARC*, which permitted school officials unilaterally to remove students in " 'extraordinary circumstances.' " 343 F.Supp., at 301. Given the lack of any similar exception in *Mills*, and the close attention Congress devoted to these "landmark" decisions, see S.Rep., at 6, U.S.Code Cong. & Admin.News p. 1430, we can only conclude that the omission was intentional; we are therefore not at liberty to engraft onto the statute an exception Congress chose not to create.

[9] Our conclusion that § 1415(e)(3) means what it says does not leave educators hamstrung. The Department of Education has observed that, "[w]hile the [child's] placement may not be changed [during any complaint proceeding], this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others." Comment following 34 CFR § 300.513 (1987). Such procedures may include the use of study carrels, timeouts, detention, or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days.[8] This authority, which respondent in no way disputes, not only ensures that school administrators can protect the safety of others by promptly removing the most dangerous of students, it also provides a "cooling down" period during which officials can initiate IEP review and seek to persuade the child's parents to agree to an interim placement. And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10–day respite gives school officials an opportunity to invoke the aid of the courts under § 1415(e)(2), which empowers courts to grant any appropriate relief.

[10, 11] Petitioner contends, however, that the availability of judicial relief is more illusory than real, because a party seeking review under § 1415(e)(2) must exhaust time-consuming administrative remedies, and because under the Court of Appeals' construction of § 1415(e)(3), courts are as bound by the stay-put provision's "automatic injunction," 793 F.2d, at 1486,

8. The Department of Education has adopted the position first espoused in 1980 by its Office of Civil Rights that a suspension of up to 10 school days does not amount to a "change in placement" prohibited by § 1415(e)(3). U.S. Dept. of Education, Office of Special Education Programs, Policy Letter (Feb. 26, 1987), Ed. for Handicapped L.Rep. 211:437 (1987). The EHA nowhere defines the phrase "change in placement," nor does the statute's structure or legislative history provide any guidance as to how the term applies to fixed suspensions. Given this ambiguity, we defer to the construction adopted by the agency charged with monitoring and enforcing the statute. See *INS v. Cardoza-Fonseca*, 480 U.S. ——, ——, 107 S.Ct. 1207, ——, 94 L.Ed.2d 434 (1987). Moreover, the agency's position comports fully with the purposes of the statute: Congress sought to prevent schools from permanently and unilaterally excluding disabled children by means of indefinite suspensions and expulsions; the power to impose fixed suspensions of short duration does not carry the potential for total exclusion that Congress found so objectionable. Indeed, despite its broad injunction, the District Court in *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (DC 1972), recognized that school officials could suspend disabled children on a short-term, temporary basis. See *id*, at 880. Cf. *Goss v. Lopez*, 419 U.S. 565, 574–576, 95 S.Ct. 729, 736–737, 42 L.Ed.2d 725 (1975) (suspension of 10 school days or more works a sufficient deprivation of property and liberty interests to trigger the protections of the Due Process Clause). Because we believe the agency correctly determined that a suspension in excess of 10 days does constitute a prohibited "change in placement," we conclude that the Court of Appeals erred to the extent it approved suspensions of 20 and 30 days' duration.

as are schools.[9] It is true that judicial review is normally not available under § 1415(e)(2) until all administrative proceedings are completed, but as we have previously noted, parents may by-pass the administrative process where exhaustion would be futile or inadequate. See *Smith v. Robinson*, 468 U.S. 992, 1014, n. 17, 104 S.Ct. 3457, 3469, 82 L.Ed.2d 746 (1984) (citing cases); see also 121 Cong.Rec. 37416 (1975) (remarks of Sen. Williams) ("[E]xhaustion ... should not be required ... in cases where such exhaustion would be futile either as a legal or practical matter"). While many of the EHA's procedural safeguards protect the rights of parents and children, schools can and do seek redress through the administrative review process, and we have no reason to believe that Congress meant to require schools alone to exhaust in all cases, no matter how exigent the circumstances. The burden in such cases, of course, rests with the school to demonstrate the futility or inadequacy of administrative review, but nothing in § 1415(e)(2) suggests that schools are completely barred from attempting to make such a showing. Nor do we think that § 1415(e)(3) operates to limit the equitable powers of district courts such that they cannot, in appropriate cases, temporarily enjoin a dangerous disabled child from attending school. As the EHA's legislative history makes clear, one of the evils Congress sought to remedy was the unilateral exclusion of disabled children by *schools*, not courts, and one of the purposes of § 1415(e)(3), therefore, was "to prevent *school* officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings." *Burlington School Committee v. Massachusetts Dept. of Education*, 471 U.S., at 373, 105 S.Ct., at 2004 (emphasis added). The stay-put provision in no way purports to limit or pre-empt the authority conferred on courts by § 1415(e)(2), see *Doe v. Brookline School Committee*, 722 F.2d 910, 917 (CA1 1983); indeed, it says nothing whatever about judicial power.

[12–14] In short, then, we believe that school officials are entitled to seek injunctive relief under § 1415(e)(2) in appropriate cases. In any such action, § 1415(e)(3) effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others. In the present case, we are satisfied that the District Court, in enjoining the state and local defendants from indefinitely suspending respondent or otherwise unilaterally altering his then current placement, properly balanced respondent's interest in receiving a free appropriate public education in accordance with the procedures and requirements of the EHA against the interests of the state and local school officials in maintaining a safe learning environment for all their students.[10]

9. Petitioner also notes that in California, schools may not suspend any given student for more than a total of 20, and in certain special circumstances 30, school days in a single year, see Cal.Educ.Code Ann. § 48903 (West Supp. 1988); he argues, therefore, that a school district may not have the option of imposing a 10-day suspension when dealing with an obstreperous child whose previous suspensions for the year total 18 or 19 days. The fact remains, however, that state law does not define the scope of § 1415(e)(3). There may be cases in which a suspension that is otherwise valid under the stay-put provision would violate local law. The effect of such a violation, however, is a question of state law upon which we express no view.

10. We therefore reject the United States' contention that the District Judge abused her discretion in enjoining the local school officials from indefinitely suspending respondent pending completion of the expulsion proceedings. Contrary to the Government's suggestion, the District Judge did not view herself bound to enjoin any and all violations of the stay-put provision, but rather, consistent with the analysis we set out above, weighed the relative harms to the parties and found that the balance tipped decidedly in favor of respondent. App. 222–223. We of course do not sit to review the factual determinations underlying that conclusion. We do note, however, that in balancing the parties' respective interests, the District Judge gave proper consideration to respondent's rights un-

IV

We believe the courts below properly construed and applied § 1415(e)(3), except insofar as the Court of Appeals held that a suspension in excess of 10 school days does not constitute a "change in placement." [11] We therefore affirm the Court of Appeals' judgment on this issue as modified herein. Because we are equally divided on the question whether a court may order a State to provide services directly to a disabled child where the local agency has failed to do so, we affirm the Court of Appeals' judgment on this issue as well.

Affirmed.

Chief Justice REHNQUIST, concurring.

I write separately on the mootness issue in this case to explain why I have joined Part II of the Court's opinion, and why I think reconsideration of our mootness jurisprudence may be in order when dealing with cases decided by this Court.

The present rule in federal cases is that an actual controversy must exist at all stages of appellate review, not merely at the time the complaint is filed. This doctrine was clearly articulated in *United States v. Munsingwear*, 340 U.S. 36, 71 S.Ct. 104, 95 L.Ed. 36 (1950), in which Justice Douglas noted that "[t]he established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Id.*, at 39, 71 S.Ct., at 106. The rule has been followed fairly consistently over the last 30 years. See, *e.g.*, *Preiser v. Newkirk*, 422 U.S. 395, 95 S.Ct. 2330, 45 L.Ed.2d 272 (1975); *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 92 S.Ct. 577, 30 L.Ed.2d 560 (1972).

All agree that this case was "very much alive," *ante*, at 10, when the action was filed in the District Court, and very probably when the Court of Appeals decided the case. It is supervening events since the decision of the Court of Appeals which have caused the dispute between the majority and the dissent over whether this case is moot. Therefore, all that the Court actually *holds* is that these supervening events do not deprive *this* Court of the authority to hear the case. I agree with that holding, and would go still further in the direction of relaxing the test of mootness where the events giving rise to the claim of mootness have occurred after our decision to grant certiorari or to note probable jurisdiction.

The Court implies in its opinion, and the dissent expressly states, that the mootness doctrine is based upon Art. III of the Constitution. There is no doubt that our recent cases have taken that position. See *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546, 96 S.Ct. 2791, 2796, 49 L.Ed.2d 683 (1976); *Preiser v. Newkirk*, *supra*, 422 U.S., at 401, 95 S.Ct., at 2334; *Sibron v. New York*, 392 U.S. 40, 57, 88 S.Ct. 1889, 1899, 20 L.Ed.2d 917 (1968); *Liner v. Jafco, Inc.*, 375 U.S. 301, 306, n. 3, 84 S.Ct. 391, 394, n. 3, 11 L.Ed.2d 347 (1964). But it seems very doubtful that the earliest case I have found discussing mootness, *Mills v. Green*, 159 U.S. 651, 16 S.Ct. 132, 40 L.Ed. 293 (1895), was premised on constitutional constraints; Justice Gray's opinion in that case nowhere mentions Art. III.

If it were indeed Art. III which—by reason of its requirement of a case or controversy for the exercise of federal judicial power—underlies the mootness doctrine, the "capable of repetition, yet evading re-

der the EHA. While the Government complains that the District Court indulged an improper presumption of irreparable harm to respondent, we do not believe that school officials can escape the presumptive effect of the stay-put provision simply by violating it and forcing parents to petition for relief. In any suit brought by parents seeking injunctive relief for a violation of § 1415(e)(3), the burden rests with the school district to demonstrate that the educational status quo must be altered.

11. See n. 8, *supra*.

view" exception relied upon by the Court in this case would be incomprehensible. Article III extends the judicial power of the United States only to cases and controversies; it does not except from this requirement other lawsuits which are "capable of repetition, yet evading review." If our mootness doctrine were forced upon us by the case or controversy requirement of Art. III itself, we would have no more power to decide lawsuits which are "moot" but which also raise questions which are capable of repetition but evading review than we would to decide cases which are "moot" but raise no such questions.

The exception to mootness for cases which are "capable of repetition, yet evading review," was first stated by this Court in *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911). There the Court enunciated the exception in the light of obvious pragmatic considerations, with no mention of Art. III as the principle underlying the mootness doctrine:

> "The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short term orders, capable of repetition, yet evading review, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress." *Id.*, at 515, 31 S.Ct., at 283.

The exception was explained again in *Moore v. Ogilvie*, 394 U.S. 814, 816, 89 S.Ct. 1493, 1494, 23 L.Ed.2d 1 (1969):

> "The problem is therefore 'capable of repetition, yet evading review.' The need for its resolution thus reflects a continuing controversy in the federal-state area where our 'one man, one vote' decisions have thrust" (citation omitted).

It is also worth noting that *Moore v. Ogilvie* involved a question which had been mooted by an election, just as did *Mills v. Green* some 70 years earlier. But at the time of *Mills*, the case originally enunciating the mootness doctrine, there was no thought of any exception for cases which were "capable of repetition, yet evading review."

The logical conclusion to be drawn from these cases, and from the historical development of the principle of mootness, is that while an unwillingness to decide moot cases may be connected to the case or controversy requirement of Art. III, it is an attenuated connection that may be overridden where there are strong reasons to override it. The "capable of repetition, yet evading review" exception is an example. So too is our refusal to dismiss as moot those cases in which the defendant voluntarily ceases, at some advanced stage of the appellate proceedings, whatever activity prompted the plaintiff to seek an injunction. See, *e.g.*, *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289, n. 10, 102 S.Ct. 1070, 1074, n. 10, 71 L.Ed.2d 152 (1982); *United States v. W.T. Grant Co.*, 345 U.S. 629, 632, 73 S.Ct. 894, 897, 97 L.Ed. 1303 (1953). I believe that we should adopt an additional exception to our present mootness doctrine for those cases where the events which render the case moot have supervened since our grant of certiorari or noting of probable jurisdiction in the case. Dissents from denial of certiorari in this Court illustrate the proposition that the roughly 150 or 160 cases which we decide each year on the merits are less than the number of cases warranting review by us if we are to remain, as Chief Justice Taft said many years ago, "the last word on every important issue under the Constitution and the statutes of the United States." But these unique resources—the time spent preparing to decide the case by reading briefs, hearing oral argument, and conferring—are squandered in every case in which it becomes apparent after the decisional process is underway that we may not reach the question presented. To me the unique and valuable ability of this Court to decide a case—we are, at present, the only Art. III court which can decide a federal

question in such a way as to bind all other courts—is a sufficient reason either to abandon the doctrine of mootness altogether in cases which this Court has decided to review, or at least to relax the doctrine of mootness in such a manner as the dissent accuses the majority of doing here. I would leave the mootness doctrine as established by our cases in full force and effect when applied to the earlier stages of a lawsuit, but I believe that once this Court has undertaken a consideration of a case, an exception to that principle is just as much warranted as where a case is "capable of repetition, yet evading review."

Justice SCALIA, with whom Justice O'CONNOR joins, dissenting.

Without expressing any views on the merits of this case, I respectfully dissent because in my opinion we have no authority to decide it. I think the controversy is moot.

I

The Court correctly acknowledges that we have no power under Art. III of the Constitution to adjudicate a case that no longer presents an actual, ongoing dispute between the named parties. *Ante*, at 601, *citing Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 546, 96 S.Ct. 2791, 2796, 49 L.Ed. 2d 683 (1976); *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272 (1975). Here, there is obviously no present controversy between the parties, since both respondents are no longer in school and therefore no longer subject to a unilateral "change in placement." The Court concedes mootness with respect to respondent John Doe, who is now too old to receive the benefits of the Education of the Handicapped Act (EHA). *Ante*, at 601. It concludes, however, that the case is not moot as to respondent Jack Smith, who has two more years of eligibility but is no longer in the public schools, because the controversy is "capable of repetition, yet evading review." *Ante*, at 601–604.

Jurisdiction on the basis that a dispute is "capable of repetition, yet evading review" is limited to the "exceptional situatio[n]," *Los Angeles v. Lyons*, 461 U.S. 95, 109, 103 S.Ct. 1660, 1669, 75 L.Ed.2d 675 (1983), where the following two circumstances simultaneously occur: " '(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party would be subjected to the same action again.' " *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353 (1982) (*per curiam*), quoting *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 348, 46 L.Ed.2d 350 (1975) (*per curiam*). The second of these requirements is not met in this case.

For there to be a "reasonable expectation" that Smith will be subjected to the same action again, that event must be a "demonstrated probability." *Murphy v. Hunt, supra*, 455 U.S., at 482, 483, 102 S.Ct., at 1184; *Weinstein v. Bradford, supra*, 423 U.S., at 149, 96 S.Ct., at 348. I am surprised by the Court's contention, fraught with potential for future mischief, that "reasonable expectation" is satisfied by something less than "demonstrated probability." *Ante*, at 601–602, n. 6. No one expects that to happen which he does not think probable; and his expectation cannot be shown to be reasonable unless the probability is demonstrated. Thus, as the Court notes, our cases recite the two descriptions side by side ("a 'reasonable expectation' or a 'demonstrated probability,' " *Hunt, supra*, 455 U.S., at 482, 102 S.Ct., at 1184). The Court asserts, however, that these standards are "described ... in the disjunctive," *ante*, at 601–602, n. 6—evidently believing that the conjunction "or" has no accepted usage except a disjunctive one, *i.e.*, "expressing an alternative, contrast, or opposition," Webster's Third New International Dictionary 651 (1981). In fact, however, the conjunction is often used "to indicate ... (3) the synonymous, equivalent, or substitutive charac-

ter of two words or phrases <fell over a precipice [or] cliff> <the off [or] far side> <lessen [or] abate>; (4) correction or greater exactness of phrasing or meaning <these essays, [or] rather rough sketches> <the present king had no children—[or] no legitimate children ...>." *Id.*, at 1585. It is obvious that in saying "a reasonable expectation or a demonstrated probability" we have used the conjunction in one of the latter, or nondisjunctive, senses. Otherwise (and according to the Court's exegesis), we would have been saying that a controversy is sufficiently likely to recur if *either* a certain degree of probability exists *or* a higher degree of probability exists. That is rather like a statute giving the vote to persons who are "18 or 21." A bare six years ago, the author of today's opinion and one other member of the majority plainly understood "reasonable expectation" and "demonstrated probability" to be synonymous. Cf. *Edgar v. MITE Corp.*, 457 U.S. 624, 662, and n. 11, 102 S.Ct. 2629, 2651, and n. 11, 73 L.Ed.2d 269 (1982) (MARSHALL, J., dissenting, joined by BRENNAN, J.) (using the two terms here at issue interchangeably, and concluding that the case is moot because "there is no *demonstrated probability* that the State will have occasion to prevent MITE from making a takeover offer for some other corporation") (emphasis added).

The prior holdings cited by the Court in a footnote, *see ante*, at ——, n. 6, offer no support for the novel proposition that less than a probability of recurrence is sufficient to avoid mootness. In *Burlington Northern R. Co. v. Maintenance of Way Employees*, — U.S. ——, ——, n. 4, 107 S.Ct. 1841, ——, ——, n. 4, 95 L.Ed.2d 381 (1987), we found that the same railroad and union were "reasonably likely" to find themselves in a recurring dispute over the same issue. Similarly, in *California Coastal Comm'n v. Granite Rock Co.*, — U.S. ——, ——, 107 S.Ct. 1419, ——, ——, 94 L.Ed.2d 577 (1987), we found it "likely" that the plaintiff mining company would submit new plans which the State would seek to subject to its coastal permit requirements. See Webster's Third New International Dictionary 1310 (1981) (defining "likely" as "of such a nature or so circumstanced as to make something probable[;] ... seeming to justify belief or expectation[;] ... in all probability"). In the cases involving exclusion orders issued to prevent the press from attending criminal trials, we found that "[i]t can reasonably be assumed" that a news organization covering the area in which the defendant court sat will again be subjected to that court's closure rules. *Press-Enterprise Co. v. Superior Court of Cal., Riverside County*, — U.S. ——, ——, 106 S.Ct. 2735, ——, 92 L.Ed.2d 1 (1986); *Globe Newspaper Co. v. Superior Court of Norfolk County*, 457 U.S. 596, 603, 102 S.Ct. 2613, 2618, 73 L.Ed.2d 248 (1982). In these and other cases, one may quarrel, perhaps, with the accuracy of the Court's probability assessment; but there is no doubt that assessment was regarded as necessary to establish jurisdiction.

In *Roe v. Wade*, 410 U.S. 113, 125, 93 S.Ct. 705, 713, 35 L.Ed.2d 147 (1973), we found that the "human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete," so that "pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied." *Roe*, at least one other abortion case, see *Doe v. Bolton*, 410 U.S. 179, 187, 93 S.Ct. 739, 745, 35 L.Ed.2d 201 (1973), and some of our election law decisions, see *Rosario v. Rockefeller*, 410 U.S. 752, 756, n. 5, 93 S.Ct. 1245, 1249, n. 5, 36 L.Ed.2d 1 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 333, n. 2, 92 S.Ct. 995, 998, n. 2, 31 L.Ed.2d 274 (1972), differ from the body of our mootness jurisprudence *not* in accepting less than a probability that the issue will recur, in a manner evading review, between the same parties; but in dispensing with the same-party requirement entirely, focusing instead upon the great likelihood that the issue will recur *between the defendant and the other*

members of the public at large without ever reaching us. Arguably those cases have been limited to their facts, or to the narrow areas of abortion and election rights, by our more recent insistence that, at least in the absence of a class action, the "capable of repetition" doctrine applies only where "there [is] a reasonable expectation that the *same complaining party* would be subjected to the same action again." *Hunt*, 455 U.S., at 482, 102 S.Ct., at 1183 (emphasis added), quoting *Weinstein*, 423 U.S., at 149, 96 S.Ct., at 348; see *Burlington Northern R. Co., supra*, at ——, n. 4, 107 S.Ct., at 1846, n. 4; *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. 173, 187, 99 S.Ct. 983, 991, 59 L.Ed.2d 230 (1979). If those earlier cases have not been so limited, however, the conditions for their application do not in any event exist here. There is no extraordinary improbability of the present issue's reaching us as a traditionally live controversy. It would have done so in this very case if Smith had not chosen to leave public school. In sum, on any analysis, the proposition the Court asserts in the present case —that probability need not be shown in order to establish the "same-party-recurrence" exception to mootness—is a significant departure from settled law.

II

If our established mode of analysis were followed, the conclusion that a live controversy exists in the present case would require a demonstrated probability that *all* of the following events will occur: (1) Smith will return to public school; (2) he will be placed in an educational setting that is unable to tolerate his dangerous behavior; (3) he will again engage in dangerous behavior; and (4) local school officials will again attempt unilaterally to change his placement and the state defendants will fail to prevent such action. The Court spends considerable time establishing that the last two of these events are likely to recur, but relegates to a footnote its discussion of the first event, upon which all others depend, and only briefly alludes to the second. Neither the facts in the record, nor even the extra-record assurances of counsel, establish a demonstrated probability of either of them.

With respect to whether Smith will return to school, at oral argument Smith's counsel forthrightly conceded that she "cannot represent whether in fact either of these students will ask for further education from the Petitioners." Tr. of Oral Arg. 23. Rather, she observed, respondents would "look to [our decision in this case] to find out what will happen after that." *Id.*, at 23–24. When pressed, the most counsel would say was that, in her view, the 20-year-old Smith *could* seek to return to public school because he has not graduated, he is handicapped, and he has a right to an education. *Id.*, at 27. I do not perceive the principle that would enable us to leap from the proposition that Smith could reenter public school to the conclusion that it is a demonstrated probability he will do so.

The Court nevertheless concludes that "there is at the very least a reasonable expectation" that Smith will return to school. *Ante*, at 601–602, n. 6. I cannot possibly dispute that on the basis of the Court's terminology. Once it is accepted that a "reasonable expectation" can exist without a demonstrable probability that the event in question will occur, the phrase has been deprived of all meaning, and the Court can give it whatever application it wishes without fear of effective contradiction. It is worth pointing out, however, how slim are the reeds upon which this conclusion of "reasonable expectation" (whatever that means) rests. The Court bases its determination on three observations from the record and oral argument. First, it notes that Smith has been pressing this lawsuit since 1980. It suffices to observe that the equivalent argument can be made in every case that remains active and pending; we have hitherto avoided equating the existence of a case or controversy with the existence of a lawsuit. Second, the Court observes that Smith has "as great

a need of a high school education and diploma as any of his peers." *Ibid.* While this is undoubtedly good advice, it hardly establishes that the 20-year-old Smith is likely to return to high school, much less to public high school. Finally, the Court notes that counsel "advises us that [Smith] is awaiting the outcome of this case to decide whether to pursue his degree." *Ibid.* Not only do I not think this establishes a current case or controversy, I think it a most conclusive indication that no current case or controversy exists. We do not sit to broaden decision-making options, but to adjudicate the lawfulness of acts that have happened or, at most, are about to occur.

The conclusion that the case is moot is reinforced, moreover, when one considers that, even if Smith does return to public school, the controversy will still not recur unless he is again placed in an educational setting that is unable to tolerate his behavior. It seems to me not only not demonstrably probable, but indeed quite unlikely, given what is now known about Smith's behavioral problems, that local school authorities would again place him in an educational setting that could not control his dangerous conduct, causing a suspension that would replicate the legal issues in this suit. The majority dismisses this further contingency by noting that the school authorities have an obligation under the EHA to provide an "appropriate" education in "the least restrictive environment." *Ante,* at 603. This means, however, the least restrictive environment appropriate for the particular child. The Court observes that "the preparation of an [individualized educational placement]" is "an inexact science at best," *ante,* at 603, thereby implying that the school authorities are likely to get it wrong. Even accepting this assumption, which seems to me contrary to the premises of the Act, I see no reason further to assume that they will get it wrong by making the same mistake they did last time—assigning Smith to too *un*restrictive an environment, from which he will thereafter be suspended—rather than by assigning him to too *restrictive* an environment. The latter, which seems to me more likely than the former (though both combined are much less likely than a correct placement), might produce a lawsuit, but not a lawsuit involving the issues that we have before us here.

III

THE CHIEF JUSTICE joins the majority opinion on the ground, not that this case is not moot, but that where the events giving rise to the mootness have occurred after we have granted certiorari we may disregard them, since mootness is only a prudential doctrine and not part of the "case or controversy" requirement of Art. III. I do not see how that can be. There is no more reason to intuit that mootness is merely a prudential doctrine than to intuit that initial standing is. Both doctrines have equivalently deep roots in the common-law understanding, and hence the constitutional understanding, of what makes a matter appropriate for judicial disposition. See *Flast v. Cohen,* 392 U.S. 83, 95, 88 S.Ct. 1942, 1950, 20 L.Ed.2d 947 (1968) (describing mootness and standing as various illustrations of the requirement of "justiciability" in Art. III).

THE CHIEF JUSTICE relies upon the fact that an 1895 case discussing mootness, *Mills v. Green,* 159 U.S. 651, 16 S.Ct. 132, 40 L.Ed. 293 (1895), makes no mention of the Constitution. But there is little doubt that the Court believed the doctrine called into question the Court's power and not merely its prudence, for (in an opinion by the same Justice who wrote *Mills*) it had said two years earlier:

> "[T]he court is not *empowered* to decide moot questions or abstract propositions, or to declare ... principles or rules of law which cannot affect the result as to the thing in issue in the case before it. No stipulation of parties or counsel ... can enlarge the *power,* or affect the duty, of the court in this regard." *California v. San Pablo & Tulare R. Co.,*

149 U.S. 308, 314, 13 S.Ct. 876, 878, 37 L.Ed. 747 (1893) (Gray, J.) (emphasis added).

If it seems peculiar to the modern lawyer that our 19th century mootness cases make no explicit mention of Art. III, that is a peculiarity shared with our 19th century, and even our early 20th century, standing cases. As late as 1919, in dismissing a suit for lack of standing we said simply:

"Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it." *Blair v. United States*, 250 U.S. 273, 279, 39 S.Ct. 468, 470, 63 L.Ed. 979 (1919).

See also, *e.g.*, *Standard Stock Food Co. v. Wright*, 225 U.S. 540, 550, 32 S.Ct. 784, 786, 56 L.Ed. 1197 (1912); *Southern Ry. Co. v. King*, 217 U.S. 524, 534, 30 S.Ct. 594, 596, 54 L.Ed. 868 (1910); *Turpin v. Lemon*, 187 U.S. 51, 60–61, 23 S.Ct. 20, 23–24, 47 L.Ed. 70 (1902); *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 409, 21 S.Ct. 206, 208, 45 L.Ed. 252 (1900). The same is also true of our early cases dismissing actions lacking truly adverse parties, that is, collusive actions. See, *e.g.*, *Cleveland v. Chamberlain*, 1 Black 419, 425–426, 17 L.Ed. 93 (1862); *Lord v. Veazie*, 8 How. 251, 254–256, 12 L.Ed. 1067 (1850). The explanation for this ellipsis is that the courts simply chose to refer directly to the traditional, fundamental limitations upon the powers of common-law courts, rather than referring to Art. III which in turn adopts those limitations through terms ("The judicial Power"; "Cases"; "Controversies") that have virtually no meaning except by reference to that tradition. The ultimate circularity, coming back in the end to tradition, is evident in the statement by Justice Field:

"By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs. Whenever the claim of a party under the constitution, laws, or treaties of the United States takes such a form that the judicial power is capable of acting upon it, then it has become a case." *In re Pacific R. Commn.*, 32 F. 241, 255 (CCND Cal. 1887).

See also 2 M. Farrand, Records of the Federal Convention of 1787, p. 430 (rev. ed. 1966):

"Docr. Johnson moved to insert the words 'this Constitution and the' before the word 'laws'.

"Mr. Madison doubted whether it was not going too far to extend the jurisdiction of the Court generally to cases arising Under the Constitution, & whether it ought not to be limited to cases of a Judiciary Nature. The right of expounding the Constitution in cases not of this nature ought not to be given to that Department.

"The motion of Docr. Johnson was agreed to nem: con: it being generally supposed that the jurisdiction given was constructively limited to cases of a Judiciary nature—"

In sum, I cannot believe that it is only our prudence, and nothing inherent in the understood nature of "The judicial Power," U.S.Const., Art. III, § 1, that restrains us from pronouncing judgment in a case that the parties have settled, or a case involving a nonsurviving claim where the plaintiff has died, or a case where the law has been changed so that the basis of the dispute no longer exists, or a case where conduct sought to be enjoined has ceased and will not recur. Where the conduct has ceased for the time being but there is a demonstrated probability that it *will* recur, a real-life controversy between parties with a personal stake in the outcome continues to exist, and Art. III is no more violated than it is violated by entertaining a declaratory judgment action. But that is the limit of

our power. I agree with THE CHIEF JUSTICE to this extent: the "yet evading review" portion of our "capable of repetition yet evading review" test is prudential; whether or not that criterion is met, a justiciable controversy exists. But the probability of recurrence between the same parties is essential to our jurisdiction as a court, and it is that deficiency which the case before us presents.

* * *

It is assuredly frustrating to find that a jurisdictional impediment prevents us from reaching the important merits issues that were the reason for our agreeing to hear this case. But we cannot ignore such impediments for purposes of our appellate review without simultaneously affecting the principles that govern district courts in their assertion or retention of original jurisdiction. We thus do substantial harm to a governmental structure designed to restrict the courts to matters that actually affect the litigants before them.

CARNEGIE-MELLON UNIVERSITY, et al., Petitioners

v.

Maurice B. COHILL, Jr., Judge, United States District Court for the Western District of Pennsylvania, et al.

No. 86-1021.

Argued Nov. 10, 1987.

Decided Jan. 20, 1988.

Former employee and his wife brought action against former employer and former supervisor for violation of federal and state age discrimination laws, wrongful discharge, breach of contract, intentional infliction of emotional distress, defamation, and misrepresentation. Employer and supervisor removed case from state court to federal court. Former employee and wife moved to amend their complaint to delete allegations of age discrimination, and for remand to state court. The United States District Court for the Western District of Pennsylvania, 648 F.Supp. 1318, Cohill, Chief Judge, remanded remaining claims to state court. Former employer and supervisor filed petition for writ of mandamus with the United States Court of Appeals for the Third Circuit, and divided panel granted petition. The Court of Appeals granted former employee's petition for rehearing en banc, and denied application for writ of mandamus. Certiorari was granted. The Supreme Court, Justice Marshall, held that federal district court had discretion to remand to state court removed case involving pendent claims after determining that retaining jurisdiction over case would be inappropriate.

Affirmed.

Justice White filed dissenting opinion in which Chief Justice Rehnquist and Justice Scalia joined.

1. Federal Courts ⇐14

Federal court has jurisdiction over entire action, including state-law claims, whenever federal-law claims and state-law claims in case derive from common nucleus of operative fact, and are such that plaintiff would ordinarily be expected to try all of them in one judicial proceeding.

2. Federal Courts ⇐43

Federal court should consider and weigh in each case, and at every stage of litigation, values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over case brought in that court involving pendent state-law claims; when balance of these factors indicates that case properly belongs in state court, federal court should decline exercise of jurisdiction by dismissing case without prejudice.

APPENDIX G

Suggested Legislation

SUMMARY--Limits maximum time for mandatory reporting of suspicion of child abuse or neglect. (BDR 38-371)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to children; establishing a specific limit on the maximum time for mandatory reporting of suspicion of child abuse or neglect; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 432B.220 is hereby amended to read as follows:

432B.220 1. A report must be made [immediately] to an agency which provides protective services or to a law enforcement agency [when] *immediately, but in no event later than 72 hours after discovery that* there is reason to believe that a child has been abused or neglected. If the report of abuse or neglect of a child involves the acts or omissions of an agency which provides protective services or a law enforcement agency, the report must be made to and the investigation made by an agency other than the one alleged to have committed the acts or omissions.

2. Reports must be made by the following persons who, in their professional or occupational capacities, know or have reason to believe that a child has been abused or neglected:

(a) A physician, dentist, dental hygienist, chiropractor, optometrist, podiatrist, medical examiner, resident, intern, professional or practical nurse, physician's assistant, psychiatrist, psychologist, marriage and family therapist, alcohol or drug abuse counselor, advanced emergency medical technician or other person providing medical services licensed or certified in this state;

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of suspected abuse or neglect of a child by a member of the staff of the hospital;

(c) A coroner;

(d) A clergyman, practitioner of Christian Science or religious healer, unless he has acquired the knowledge of the abuse or neglect from the offender during a confession;

(e) A social worker and an administrator, teacher, librarian or counselor of a school;

(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child;

(g) Any person licensed to conduct a foster home;

(h) Any officer or employee of a law enforcement agency or an adult or juvenile probation officer;

(i) An attorney, unless he has acquired the knowledge of the abuse or neglect from a client who is or may be accused of the abuse or neglect; and

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding abuse or neglect of a child and refers them to persons and agencies where their requests and needs can be met.

3. A report may be made by any other person.

4. Any person required to report under this section who has reasonable cause to believe that a child has died as a result of abuse or neglect shall report this belief to the appropriate medical examiner or coroner, who shall investigate the report and submit to an agency which provides protective services his written findings, which must include the information required under the provisions of subsection 2 of NRS 432B.230.

SUMMARY--Authorizes delivery of truant to agency providing family counseling. (BDR 34-372)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to truancy; authorizing the delivery of a truant to an agency providing family counseling; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 392.160 is hereby amended to read as follows:

392.160 1. Any peace officer, the attendance officer, or any other school officer shall, during school hours, take into custody without warrant:

(a) Any child between the ages of 7 and 17 years; and

(b) Any child who has arrived at the age of 6 years but not at the age of 7 years and is enrolled in a public school,

who has been reported to him by the teacher, superintendent of schools or other school officer as an absentee from instruction upon which he is lawfully required to attend.

2. *Except as otherwise provided in subsection 3:*

(a) During school hours, the officer having custody shall forthwith deliver the child to the superintendent of schools, principal or other school officer at the child's school of attendance.

(b) After school hours, he shall deliver the child to the parent, guardian or other person having control or charge of the child.

3. The board of trustees of a school district may enter into an agreement with a counseling agency to permit delivery of the child to the agency. For the purposes of this subsection, "counseling agency" means an agency designated by the school district in which the child is enrolled to provide counseling for the child and the parent, guardian or other person having control or charge of the child.

SUMMARY--Revises various provisions concerning practice and procedure in juvenile courts. (BDR 5-373)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to juvenile courts; revising various provisions concerning practice and procedure; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. A child alleged to be delinquent or in need of supervision may be placed under the informal supervision of a probation officer if the child voluntarily admits his participation in the acts for which he was referred to the probation officer. If any of the acts would constitute a gross misdemeanor or felony if committed by an adult, the child may not be placed under informal supervision unless the district attorney approves of the placement in writing. The probation officer must advise the child and his parent, guardian or custodian that they may refuse informal supervision.*

2. An agreement for informal supervision must be entered into voluntarily and intelligently by the child with the advice of his attorney, or by the child with the consent of a parent, guardian or custodian if the child is not represented by counsel. The period of informal supervision must not exceed 180 days. The terms of the agreement must be clearly stated in writing and signed by all parties. A copy of the agreement must be given to the child, the attorney for the child, if any, the child's parent, guardian or custodian, and the probation officer, who shall retain a copy in his file for the case. The child and his parent, guardian or custodian may terminate the agreement at any time and request the filing of a petition for formal adjudication.

3. An agreement for informal supervision may require a child to perform public service or make restitution to the victim, if any, of the acts for which the child was referred to the probation officer.

4. If a child is placed under informal supervision, a petition based upon the events out of which the original complaint arose may be filed only within 180 days after entry into the agreement for informal supervision. If a petition is filed within that period, the child may withdraw the admission he made pursuant to subsection 1. The child's compliance with all proper and reasonable terms of the agreement constitute grounds for the court to dismiss the petition.

5. A probation officer shall file annually with the court a report of the number of children placed under informal supervision during the previous year, the conditions imposed in each case and the number of cases that were successfully completed without the filing of a petition.

Sec. 3. *1. The district attorney, after consultation with the probation officer, may file a petition alleging that a child is a serious or chronic offender.*

2. The court may determine that a child is a serious or chronic offender if the child:

(a) Is at least 16 years of age; and

(b) Has been adjudicated:

(1) On at least three separate occasions of having committed delinquent acts that would constitute felonies if committed by an adult; or

(2) As having committed a delinquent act that would constitute manslaughter, battery causing substantial bodily harm, assault with a deadly weapon, sexual assault, armed robbery or kidnaping if committed by an adult.

Sec. 4. NRS 62.040 is hereby amended to read as follows:

62.040 1. Except as otherwise provided in this chapter, the court has exclusive original jurisdiction in proceedings:

(a) Concerning any child living or found within the county who is in need of supervision because he:

(1) Is a child who is subject to compulsory school attendance and is an habitual truant from school;

(2) Habitually disobeys the reasonable and lawful demands of his parents, guardian, or other custodian, and is unmanageable; or

(3) Deserts, abandons or runs away from his home or usual place of abode,

and is in need of care or rehabilitation. The child must not be considered a delinquent.

(b) Concerning any child living or found within the county who has committed a delinquent act. A child commits a delinquent act if he:

(1) Commits an act designated a crime under the law of the State of Nevada except murder or attempted murder, or violates a county or municipal ordinance or any rule or regulation having the force of law; or

(2) Violates the terms or conditions of an order of court determining that he is a child in need of supervision.

(c) Concerning any child in need of commitment to an institution for the mentally retarded.

2. This chapter does not deprive justices' courts and municipal courts in any county [having a population of] *whose population is* 250,000 or more of original jurisdiction to try juveniles charged with minor traffic violations but:

(a) The restrictions set forth in subsection [3] *4* of NRS 62.170 are applicable in those proceedings; and

(b) Those justices' courts and municipal courts may, upon adjudication of guilt of the offenses, refer any juvenile to the juvenile court for disposition if the referral is deemed in the best interest of the child and where the minor is unable to pay the fine assessed or there has been a recommendation of imprisonment.

In all other cases prior consent of the judge of the juvenile division is required before reference to the juvenile court may be ordered. Any child charged in a justice's court or municipal court pursuant to this subsection must be accompanied at all proceedings by a parent or legal guardian.

Sec. 5. NRS 62.043 is hereby amended to read as follows:

62.043 The court [shall have] *has* such jurisdiction over adults as is incidental to its jurisdiction over children, [but any] *including jurisdiction over the parents, guardians and custodians of children adjudicated to be delinquent or in need of supervision. An* adult subject to the jurisdiction of the court *is subject to the provisions of NRS 62.281 and* has available to him all of the rights, remedies and writs guaranteed by the constitution and the laws of this state to a defendant who is charged with having committed a criminal offense in this state.

Sec. 6. NRS 62.090 is hereby amended to read as follows:

62.090 1. The judge, in his discretion, may appoint any person qualified by previous experience, training and demonstrated interest in youth welfare as master. The master, upon the order of the judge in proceedings arising under the provisions of this chapter, may swear witnesses and take evidence. *No probation officer may act as master unless the proceeding concerns only a minor traffic offense.*

2. Each master who is first appointed after July 1, 1981, shall attend instruction at the National College of Juvenile [Justice] *and Family Law* in Reno, Nevada, in a course designed for the training of new judges of the juvenile courts on the first occasion when such instruction is offered after he is appointed . [, unless excused by written order of the judge who appointed him or his successor, which order must be filed with the court administrator. The order is final for all purposes.]

3. The compensation of a master in juvenile sessions may not be taxed against the parties, but when fixed by the judge must be paid out of appropriations made for the expenses of the district court.

4. The judge may direct that the facts in any juvenile court proceeding, from the inception of the matter, be found by the master in the same manner as in the district court. Within 10 days after the evidence before him is closed, the master shall file with the judge all papers relating to the case, written findings of fact and recommendations.

5. Notice in writing of the master's findings and recommendations, together with the notice of right of appeal as provided in this section, must be given by the master, or someone designated by him , to the parent, guardian or custodian, if any, of the child, or to any other person concerned. A hearing by the court must be allowed upon the filing with the court by such person of a request for a hearing if the request is filed within 5 days after the giving of the notice. [If no hearing by the court is requested, the] *The* findings and recommendations of the master, [when confirmed] *unless reversed* or modified by an order of the court, [become] *constitute* a decree of the court.

Sec. 7. NRS 62.100 is hereby amended to read as follows:

62.100 1. The judge or judges of the court in each judicial district which does not include a county [having a population of] *whose population is* 250,000 or more shall, [when facilities for the temporary detention of children or other commitment facilities administered or financed by the county for the detention of children have been established within that district, and may at any other time in their discretion,] by an order entered in the minutes of the court,

appoint five representative citizens of good moral character to be known as the probation committee, and the judge or judges shall fill all vacancies occurring in the committee within 30 days after the occurrence of the vacancy. The clerk of the court shall immediately notify each person appointed to the committee. The person appointed shall appear before the appointing judge or judges within 10 days after notification, which must specify the time in which to appear, and shall qualify by taking an oath, which must be entered in the records, faithfully to perform the duties of a member of the committee. Of the members first appointed, one must be appointed for a term of 1 year, two for terms of 2 years, and two for terms of 3 years. Thereafter, all appointments must be for a term of 3 years. Appointment to vacancies occurring other than by expiration of the term of office must be filled for the remainder of that term. Members of the probation committee shall serve without compensation and shall choose from among their members a chairman and secretary. Any member of the probation committee may be removed for cause at any time by the judge or judges.

2. The duties of the probation committee are the following:

(a) The paramount duty of the probation committee is to advise the court, at its request.

(b) The probation committee shall advise with the judge and probation officer on matters having to do with the control and management of any facility for the temporary detention of children or other commitment facilities administered or financed by the county for the detention of children *that are* established by boards of county commissioners.

(c) Upon the request of the judge or judges, the probation committee shall investigate and report in writing concerning the facilities, resources and management of all [natural persons, societies, associations, organizations, agencies and corporations (except state institutions or agencies)] *persons* applying for or receiving children under this chapter. The committee may initiate an investigation thereof if it deems an investigation proper or necessary, and must thereafter report its findings, conclusions and recommendations to the judge or judges.

(d) The probation committee shall prepare an annual report of its activities, investigations, findings and recommendations . [in connection therewith.] The reports must be submitted to the court and filed as public documents with the clerk of the court.

(e) The judge or judges shall, with the advice of the probation committee, set up policies and procedures, *and* establish standards for the proper performance of *the* duties and responsibilities of probation officers and all employees of any detention home or other commitment facilities administered or financed by the county.

(f) The probation committee shall advise and recommend the appointment of such employees as it deems necessary for the operation and management of the detention home or other commitment facilities administered or financed by the county. Any [employees are] *employee is* subject to discharge by the judge or judges.

(g) The probation committee may, upon the majority vote of its members, recommend the removal or discharge of any probation officer.

Sec. 8. NRS 62.128 is hereby amended to read as follows:

62.128 1. A complaint alleging that a child is delinquent or in need of supervision must be referred to the probation officer of the appropriate county. The probation officer shall conduct a preliminary inquiry to determine whether the best interests of the child or of the public require that a petition be filed **[.]** *or would better be served by placing the child under informal supervision pursuant to section 2 of this act.* If judicial action appears necessary, the probation officer may recommend the filing of a petition, but any petition must be prepared and countersigned by the district attorney before it is filed with the court. The decision of the district attorney on whether to file a petition is final.

2. If the probation officer refuses to *place the child under informal supervision or* recommend the filing of a petition, the complainant must be notified by the probation officer of his right to a review of his complaint by the district attorney. The district attorney, upon request of the complainant, shall review the facts presented by the complainant and after consultation with the probation officer shall prepare, countersign and file the petition with the court when he believes the action is necessary to protect the community or the interests of the child.

3. When a child is in detention or shelter care and the filing of the petition is not approved by the district attorney, the child must be immediately released.

4. When a child is in detention or shelter care, a petition alleging delinquency or need of supervision must be dismissed with prejudice if it is not filed within 10 days after the date the complaint was referred to the probation officer.

5. Upon the filing of the petition, the judge or the master may **[**place**]** *, in addition to his other powers under this chapter:*

(a) Dismiss the petition without prejudice and refer a child to the probation officer for informal supervision pursuant to section 2 of this act; or

(b) Place a child under the supervision of the court pursuant to a supervision and consent decree without a formal adjudication of delinquency, upon the recommendation of the probation officer, the written approval of the district attorney and the written consent and approval of the child and his parents or guardian, under the terms and conditions provided for in the decree. The petition may be dismissed upon successful completion of the terms and conditions of the supervision and consent decree **[.]** *, and the child may respond to any inquiry concerning the proceedings and events which brought about the proceedings as if they had not occurred. The records concerning a supervision and consent decree may be considered in a subsequent proceeding before the court regarding that child.*

Sec. 9. NRS 62.170 is hereby amended to read as follows:

62.170 1. Except as provided in NRS 62.175, any peace officer or probation officer may take into custody any child who is found violating any law or ordinance or whose conduct indicates that he is a child in need of

supervision. When a child is taken into custody, the officer shall immediately notify the parent, guardian or custodian of the child, if known, and the probation officer. Unless it is impracticable or inadvisable or has been otherwise ordered by the court, or is otherwise provided in this section, the child must be released to the custody of his parent or other responsible adult who has signed a written agreement to bring the child to the court at a stated time or at such time as the court may direct. The written agreement must be submitted to the court as soon as possible. If this person fails to produce the child as agreed or upon notice from the court, a writ may be issued for the attachment of the person or of the child requiring that the person or child, or both of them, be brought into the court at a time stated in the writ.

2. If the child is not released, as provided in subsection 1, the child must be taken without unnecessary delay to the court or to the place of detention designated by the court, and, as soon as possible thereafter, the fact of detention must be reported to the court. Pending further disposition of the case the child may be released to the custody of the parent or other person appointed by the court, or may be detained in such place as is designated by the court, subject to further order. *The court may authorize supervised detention at the child's home in lieu of detention at a facility for the detention of juveniles.*

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

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

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

(c) The child was brought to the probation officer pursuant to a court order or warrant; or

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

4. [Except as provided otherwise in this section a] *A* child under 18 years of age must not at any time be confined or detained in any police station, lockup, jail [or prison, or detained in any place] , *prison or other facility* where the child [can come into communication] *has regular contact* with any adult convicted of crime or under arrest and charged with crime, [except that where no other detention facility has been designated by the court, until the judge or probation officer can be notified and other arrangements made therefor, the child may be placed in a jail or other place of detention, but in a place entirely separated from adults confined therein. Whenever it is possible to do so, special efforts must be made to keep children who are in need of supervision apart from children charged with delinquent acts.

4.] *unless the child has been adjudicated to be a serious or chronic offender.*

5. A child who is taken into custody and detained must, [upon application,] *if alleged to be delinquent,* be given a detention hearing, conducted by the judge or master [, within] *:*

(a) Within 24 hours after the child submits [an application,] *a written application;*

(b) Within 24 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined; or

(c) Within 72 hours after the commencement of detention at a facility in which no adults are detained or confined,

whichever occurs first, excluding Saturdays, Sundays and holidays. A child must not be released after a detention hearing without the written consent of the judge or master.

[5. The officer in charge of any facility for the detention of juveniles may by written order direct the transfer to the county jail of a child placed in the facility. The child must not be detained in the county jail for more than 24 hours unless a district judge orders him detained for a longer period. This order may be made by the judge without notice to the child or anyone on his behalf. Any child under 18 years of age who is held in the county jail pursuant to the provisions of this subsection must, where possible, be placed in a cell separate from adults.**]**

6. *A child who is taken into custody and detained must, if alleged to be a child in need of supervision, be released within 24 hours after his initial contact with a peace officer to his parent, guardian or custodian, to any other person who is able to provide adequate care and supervision, or to shelter care, unless the time is extended by special court order because the child:*

(a) Is the ward of a federal court;

(b) Has run away from another state;

(c) Threatens to run away from home or shelter care;

(d) Is accused of violent behavior at home;

(e) Is accused of violating a valid court order; or

(f) Is accused of violating the terms of his parole, probation or supervision and consent decree.

7. During the pendency of a criminal or quasi-criminal charge of murder or attempted murder, a child may petition the juvenile division for temporary placement in a facility for the detention of juveniles.

Sec. 10. NRS 62.180 is hereby amended to read as follows:

62.180 1. Provision must be made for the temporary detention of children in a detention home to be conducted as an agency of the court or in some other appropriate public institution or agency , **[**;**]** or the court may arrange for the care and custody of such children temporarily in private homes subject to the supervision of the court, or may arrange with any private institution or private agency to receive for temporary care and custody children within the jurisdiction of the court.

2. Except as provided in this subsection, any county may provide, furnish and maintain at public expense a building suitable and adequate for the purpose of a detention home for the temporary detention of children, subject to the provisions of this chapter. In counties **[**having a population of**]** *whose population is* 20,000 or more, the boards of county commissioners shall provide the detention facilities. Two or more counties, without regard to their respective populations, may provide a combined detention home under suitable terms agreed upon between the respective boards of county

commissioners and the judges of the juvenile court regularly sitting in the judicial districts covering the counties.

3. Any detention home [,] built and maintained under this chapter [,] must be constructed and conducted as nearly like a home as possible, and [shall] *must* not be deemed to be or treated as a penal institution, nor, in counties [having a population of] *whose population is* 20,000 or more, may it be adjoining or on the same grounds as a prison, jail or lockup.

4. In addition to detention homes, a county may provide and maintain at public expense programs which provide alternatives to placing a child in a detention home.

Sec. 11. NRS 62.193 is hereby amended to read as follows:

62.193 1. Proceedings concerning any child alleged to be delinquent, in need of supervision or in need of commitment to an institution for the mentally retarded are not criminal in nature and must be heard separately from the trial of cases against adults, and without a jury. The hearing may be conducted in an informal manner and may be held at a juvenile detention facility or elsewhere at the discretion of the judge. Stenographic notes or other transcript of the hearing are not required unless the court so orders. The general public must be excluded and only those persons having a direct interest in the case may be admitted, as ordered by the judge, or, in case of a reference, as ordered by the referee.

2. The parties must be advised of their rights in their first appearance at intake and before the court. They must be informed of the specific allegations in the petition and given an opportunity to admit or deny those allegations.

3. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court shall record its findings on whether the acts ascribed to the child in the petition were committed by him. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or temporary care theretofore ordered in the proceedings, unless otherwise ordered by the court.

4. If the court finds on the basis of an admission or a finding on proof beyond a reasonable doubt, based upon competent, material and relevant evidence, that a child committed the acts by reason of which he is alleged to be delinquent, it may, in the absence of objection, proceed immediately to make a proper disposition of the case.

5. In adjudicatory hearings all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value. The parties or their counsel must be afforded an opportunity to examine and controvert written reports so received and to cross-examine persons making reports when reasonably available.

6. On its motion or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition. The court shall make an appropriate order for detention or temporary care of the child subject to supervision of the court during the period of the continuance.

7. If the court finds by preponderance of the evidence that the child is in need of supervision or is in need of commitment to an institution for the mentally retarded, the court may proceed immediately , or at a postponed hearing, to make proper disposition of the case.

8. *Unless the court by written order extends the time for disposition of the case and sets forth specific reasons for the extension, the court shall make its final disposition no later than 60 days after the petition was filed.*

9. The district attorney may disclose to the victim of an act committed by a child the disposition of the child's case regarding that act. The victim shall not disclose to any other person the information so disclosed by the district attorney.

Sec. 12. NRS 62.211 is hereby amended to read as follows:

62.211 1. If the court finds that the child is within the purview of this chapter, *except as otherwise provided in subsection 3,* it shall so decree and may:

(a) Place the child under supervision in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court may determine. *A program of supervision in the home may include electronic surveillance of the child. The legislature declares that a program of supervision that includes electronic surveillance is intended as an alternative to commitment and not as an alternative to probation, informal supervision or a supervision and consent decree.*

(b) Commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children, or place him in a home with a family. In committing a child to a private institution or agency the court shall select one that is required to be licensed by the department of human resources to care for such children, or, if the institution or agency is in another state, by the analogous department of that state. The court [shall] *must* not commit a female child to a private institution without prior approval of the superintendent of the Nevada girls training center, and [shall] *must* not commit a male child to a private institution without prior approval of the superintendent of the Nevada youth training center.

(c) Order such medical, psychiatric, psychologic or other care and treatment as the court deems to be for the best interests of the child, except as otherwise provided in this section.

(d) Order the parent, guardian, custodian or any other person to refrain from continuing the conduct which, in the opinion of the court, has caused or tended to cause the child to come within or remain under the provisions of this chapter.

(e) Place the child, when he is not in school, under the supervision of a public organization to work on public projects [.] *or a private nonprofit organization to perform public service.* The person under whose supervision the child is placed shall keep the child busy and well supervised and shall make such reports to the court as it may require.

(f) Permit the child to reside in a residence without the immediate supervision of an adult, or exempt the child from mandatory attendance at school so that the child may be employed full time, or both, if the child is at

least 16 years of age, has demonstrated the capacity to benefit from this placement or exemption and is under the strict supervision of the juvenile division.

(g) Require the child to [participate in a program designed to] provide restitution to the victim of the crime which the child has committed.

(h) Impose a fine on the child.

2. If the court finds that the child is a serious or chronic offender, it may, in addition to the options set forth in subsection 1:

(a) Commit the child for confinement in a secure facility, including a facility which is secured by its staff.

(b) Impose any other punitive measures the court determines to be in the best interests of the public.

3. If the court finds that the child is within the purview of paragraph (a) of subsection 1 of NRS 62.040 and has not previously been the subject of a complaint under NRS 62.128 before committing the acts for which the petition was filed, the court shall:

(a) Admonish the child to obey the law and to refrain from repeating the acts for which the petition was filed, and maintain a record of the admonition; and

(b) Refer the child, without adjudication, to services available in the community for counseling, behavioral modification and social adjustment.

A child must not be adjudicated to be a child in need of supervision unless a subsequent petition based upon additional facts is filed with the court after admonition and referral pursuant to this subsection.

4. At any time, either on its own volition or for good cause shown, the court may terminate its jurisdiction concerning the child.

[3.] *5.* Whenever the court commits a child to any institution or agency pursuant to this section, it shall transmit [to the institution or agency] a summary of its information concerning the child [.] *and order the administrator of the school that the child last attended to transmit a copy of the child's educational records to the institution or agency.* The institution or agency shall give to the court any information concerning the child [as] *that* the court may require.

Sec. 13. NRS 62.271 is hereby amended to read as follows:

62.271 Whenever the court has taken jurisdiction over a person pursuant to the provisions of this chapter, it may order any person [over the age of 18 years] *:*

1. Under the age of 18 years who has been adjudicated to be delinquent and placed on probation by the court to be placed in a facility for the detention of juveniles for not more than 30 days for the violation of probation.

2. Eighteen years of age or older and under the age of 21 years who has been placed on probation by the court to be placed either in the county jail or the state prison for the violation of [such] probation.

Sec. 14. NRS 62.355 is hereby amended to read as follows:

62.355 1. Except as otherwise provided in [subsection 2,] *subsections 2 and 3,* the name or race of any child connected with any

proceedings under this chapter may not be published in or broadcasted or aired by any news medium without a written order of the court.

2. If there have been two prior adjudications that a child has committed offenses which would be felonies if committed by an adult, and the child is charged under this chapter with another such offense, the name of the child and the nature of the charges against him may be released and made available for publication and broadcast.

3. The court may release for publication and broadcast the names of and nature of the charges against children who are adjudicated to be serious or chronic offenders.

Sec. 15. NRS 387.123 is hereby amended to read as follows:

387.123 1. The count of pupils for apportionment purposes includes all those who are enrolled in programs of instruction of the school district for:

(a) Pupils in the kindergarten department.

(b) Pupils in grades 1 to 12, inclusive.

(c) Handicapped minors receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive.

(d) Children detained in detention homes , *alternative programs* and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570.

(e) Part-time pupils enrolled in classes and taking courses necessary to receive a high school diploma.

2. The state board of education shall establish uniform regulations for counting enrollment and calculating the average daily attendance of pupils. In establishing such regulations for the public schools, the state board:

(a) Shall divide the school year into 10 school months, each containing 20 or fewer school days.

(b) May divide the pupils in grades 1 to 12, inclusive, into categories composed respectively of those enrolled in elementary schools and those enrolled in secondary schools.

(c) Shall calculate average daily attendance by selecting the average daily attendance--highest 3 months for each category of pupils, as established by subsection 1 or pursuant to paragraph (b) of this subsection, in each school.

(d) Shall prohibit counting of any pupil specified in paragraph (a), (b), (c) or (d) of subsection 1 more than once.

3. The state board of education shall establish by regulation the maximum pupil-teacher ratio in each grade, and for each subject matter wherever different subjects are taught in separate classes, for each school district of the state which is consistent with:

(a) The maintenance of an acceptable standard of instruction;

(b) The conditions prevailing in such school district with respect to the number and distribution of pupils in each grade; and

(c) Methods of instruction used, which may include educational television, team teaching or new teaching systems or techniques.

If the superintendent of public instruction finds that any school district is maintaining one or more classes whose pupil-teacher ratio exceeds the applicable maximum, and unless he finds that the board of trustees of the

school district has made every reasonable effort in good faith to comply with the applicable standard, he shall, with the approval of the state board, reduce the count of pupils for apportionment purposes by the percentage which the number of pupils attending such classes is of the total number of pupils in the district, and the state board may direct him to withhold the quarterly apportionment entirely.

Sec. 16. NRS 387.1233 is hereby amended to read as follows:

387.1233 1. Except as otherwise provided in subsection 2, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) Six-tenths the count of pupils enrolled in the kindergarten department on the last day of the first school month of the school year.

(2) The count of pupils enrolled in grades 1 to 12, inclusive, on the last day of the first school month of the school year.

(3) The count of handicapped minors receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, on the last day of the first school month of the school year.

(4) The count of children detained in detention homes , *alternative programs* and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570 on the last day of the first school month of the school year.

(5) One-fourth the average daily attendance--highest 3 months of part-time pupils enrolled in classes and taking courses necessary to receive a high school diploma.

(b) Multiplying the number of special education program units maintained and operated by the amount per program established for that school year.

(c) Adding the amounts computed in paragraphs (a) and (b).

2. If the sum of the counts prescribed in subparagraphs (1) to (4), inclusive, of paragraph (a) of subsection 1 is less than the sum similarly obtained for the immediately preceding school year, the larger sum must be used in computing basic support.

3. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

4. Pupils who are incarcerated in a facility or institution operated by the department of prisons must not be counted for the purpose of computing basic support pursuant to this section.

Sec. 17. NRS 388.550 is hereby amended to read as follows:

388.550 With the approval of the juvenile court and the board of county commissioners, the board of trustees of a school district may employ necessary legally qualified teachers for the instruction of children detained in:

1. A detention home [which is] *or alternative program* maintained by the county pursuant to the provisions of NRS 62.180.

2. A juvenile forestry camp established by the county pursuant to the provisions of NRS 244.297.

3. A juvenile training school established by the state pursuant to the provisions of chapter 210 of NRS.

Sec. 18. NRS 388.560 is hereby amended to read as follows:

388.560 Only courses of instruction approved by the state board of education [shall] *may* be given in such detention homes, *alternative programs,* juvenile training schools or juvenile forestry camps. Necessary textbooks, equipment and supplies [shall] *must* be furnished by the school district.

Sec. 19. NRS 388.570 is hereby amended to read as follows:

388.570 1. The state board of education shall establish regulations for the computation of enrollment and average daily attendance of children detained in detention homes *alternative programs* and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570.

2. Boards of trustees of school districts providing such instruction shall report to the superintendent of public instruction at such times and in such manner as he prescribes.

Sec. 20. Section 16 of this act becomes effective at 12:01 a.m. on July 1, 1989.

SUMMARY--Increases minimum age for commitment to juvenile correctional institutions. (BDR 16-374)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to juvenile correctional institutions; increasing the minimum age for commitment; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 210.180 is hereby amended to read as follows:

210.180 1. A court may commit to the school any person between the ages of **[**8**]** *12* and 18 years who is found to be delinquent. Before any person is conveyed to the school, the superintendent **[**must determine that**]** *shall determine whether* adequate facilities are available to provide the necessary care to the person. The superintendent shall fix the time at which the person must be delivered to the school. The superintendent shall accept the person unless **[**there**]** *:*

(a) There are not adequate facilities available to provide the necessary care **[**, or there**]** *;*

(b) There is not adequate money available for the support of the school **[**, or, in**]** *; or*

(c) In the opinion of the superintendent, the person is not suitable for admission to the school.

2. The court may order, when committing a person to the care, custody and control of the school, the expense of his support and maintenance be paid in whole or in part by his parents, guardian or other person liable for his support and maintenance. Such payments must be paid to the superintendent, who shall immediately deposit the money with the state treasurer for credit to the state general fund.

3. The court shall order, before commitment, that the person be given a physical examination, which includes a blood test, test for tuberculosis, urinalysis and an examination for venereal disease, by a physician. The physician shall, within 5 days after the examination, make a written report of the results thereof to the clerk of the juvenile court, if there is one, and otherwise to the county clerk of the county wherein the commitment was ordered. Upon receipt of the written report, the county auditor shall allow a claim for payment to the physician for the examination. The clerk of the juvenile court or the county clerk , *as the case may be,* shall immediately forward a copy of the written report to the superintendent.

Sec. 2. NRS 210.580 is hereby amended to read as follows:

210.580 1. A court may commit to the school any female person between the ages of **[**8**]** *12* and 18 years who is found to be delinquent. Before any person is conveyed to the school, the superintendent **[**must determine that**]**

shall determine whether adequate facilities are available to provide the necessary care to the person. The superintendent shall fix the time at which the person must be delivered to the school. The superintendent shall accept the person unless [there] *:*

(a) There are not adequate facilities available to provide the necessary care [, or there] *;*

(b) There is not adequate money available for the support of the school [, or, in] *; or*

(c) In the opinion of the superintendent, the person is not suitable for admission to the school.

Upon the written request of the superintendent, at any time either before or after commitment to the school, the court may order commitment to a school outside of the State of Nevada which is approved by the board, or to a private institution within the State of Nevada.

2. The court may order, when committing a person to the care, custody and control of the school, that the expense of her support and maintenance be paid in whole or in part by her parents, guardian or other person liable for her support and maintenance. Such payments must be paid to the superintendent, who shall immediately deposit the money with the state treasurer for credit to the state general fund.

3. The court shall order, before commitment, that the person be given a physical examination, which includes a blood test, test for tuberculosis, urinalysis, and an examination for venereal disease , by a physician. The physician shall, within 5 days after the examination, make a written report of the results thereof to the clerk of the juvenile court, if there is one, and otherwise to the county clerk of the county wherein the commitment was ordered. Upon receipt of the written report, the county auditor shall allow a claim for payment to the physician for the examination. The clerk of the juvenile court or the county clerk, as the case may be, shall immediately forward a copy of the written report to the superintendent.

Sec. 3. NRS 210.615 is hereby amended to read as follows:

210.615 The administrator, with the consent of the superintendent, may transfer to the school a male person between the ages of [8] *12* and 18 years who is an inmate of the Nevada youth training center. If such a transfer is made, the general provisions regarding placements in the school apply.

SUMMARY--Requires imposition of administrative assessment for certain minor traffic offenses committed by children. (BDR 5-375)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to children; requiring the imposition of an administrative assessment for certain minor traffic offenses committed by children; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a child is found to have committed a minor traffic offense, except one related to metered parking, and a fine is imposed, the judicial officer shall order the child to pay an administrative assessment of $10 in addition to the fine.

2. The money collected for an administrative assessment must be stated separately on the court's docket. If the child is found not to have committed the offense or the charges are dropped, the money deposited with the court must be returned to the child.

3. The money collected for administrative assessments imposed pursuant to this section must be paid by the clerk of the court to the county treasurer on or before the 5th day of each month for the preceding month. The county treasurer shall, on or before the 15th day of that month, deposit the money in the county general fund for credit to a special account for the use of the county's juvenile court or for services to juvenile offenders.

Sec. 2. NRS 62.221 is hereby amended to read as follows:

62.221 Whenever any child is found to have [violated a traffic law or ordinance,] *committed a minor traffic offense,* the judge, or his [duly] authorized representative, shall forward to the department of motor vehicles and public safety, in the form required by NRS 483.450, a record of the violation, other than violation of a law or ordinance governing standing or parking, and may do any or all of the following:

1. Impose a fine. *If a fine is imposed, the judge or his authorized representative shall impose an administrative assessment pursuant to section 1 of this act.*
2. Recommend to the department of motor vehicles and public safety the suspension of the child's driver's license.
3. Require that the child attend and complete a traffic survival course.
4. Order that the child or his parents pay the reasonable cost of the child's attending the traffic survival course.
5. Order the child to be placed on a work detail to repay any fine imposed.
6. Order the child placed on probation.

SUMMARY--Urges judges of juvenile division of district court to consider persons recommended by board of county commissioners when appointing members of probation committee. (BDR R-377)

CONCURRENT RESOLUTION--Urging the judges of the juvenile divisions of the district courts to consider persons recommended by the boards of county commissioners when appointing members of the probation committee.

WHEREAS, County governments provide the majority of financial support for the juvenile divisions of the district courts and the related services provided to juveniles; and

WHEREAS, NRS 62.100 and 62.105 provide for the establishment of probation committees comprised of members who are appointed by the judge or judges of each district; and

WHEREAS, The duties of the probation committees include advising the juvenile divisions of the district courts on matters relating to the control and management of any facility for the temporary detention of children which is administered or financed by the county; and

WHEREAS, The boards of county commissioners are understandably concerned and interested in the administration of juvenile justice in their counties and would like to be involved in the workings of the probation committees; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the judges of the juvenile divisions of the district courts are urged to consider persons recommended by the boards of county commissioners of their respective counties when appointing members of their respective probation committees; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the of the to the judges of the juvenile divisions of each district court in this state.

SUMMARY--Prohibits termination of employment of person because he appears in juvenile court with his child. (BDR 5-378)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to juvenile courts; prohibiting the termination of employment of a person who appears in juvenile court with a child; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62 of NRS is hereby amended by adding thereto a new section to read as follows:

1. It is unlawful for an employer or his agent to:

(a) Terminate the employment of a person who, as the parent, guardian or custodian of a child, appears with or on behalf of the child in any court, as a consequence of his appearance or prospective appearance in court; or

(b) Assert to the person that his appearance or prospective appearance with or on behalf of the child will result in the termination of his employment.

2. Any person who violates the provisions of subsection 1 is guilty of a misdemeanor.

3. A person discharged from employment in violation of subsection 1 may commence a civil action against his employer and obtain:

(a) Wages and benefits lost as a result of the violation;

(b) An order of reinstatement without loss of position, seniority or benefits;

(c) Damages equal to the amount of the lost wages and benefits; and

(d) Reasonable attorney's fees fixed by the court.

SUMMARY--Creates legislative committee on education, services to youth, and mental health and mental retardation. (BDR 17-379)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to legislative committees; establishing the committee on education, services to youth, and mental health and mental retardation; defining the powers and duties of the committee; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 218 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *As used in sections 2 to 8, inclusive, of this act, "committee" means the legislative committee on education, services to youth, and mental health and mental retardation.*

Sec. 3. *1. There is hereby established a legislative committee on education, services to youth, and mental health and mental retardation. The committee consists of four members of the senate and four members of the assembly.*

2. The members of the committee must be appointed as follows:

(a) Two members must be appointed by the majority leader of the senate;

(b) Two members must be appointed by the minority leader of the senate;

(c) Two members must be appointed by the speaker of the assembly; and

(d) Two members must be appointed by the minority leader of the assembly.

3. The majority leader of the senate shall select the initial chairman of the committee and the speaker of the assembly shall select the initial vice chairman of the committee. Each such officer holds office for a term of 2 years commencing on July 1 of each odd-numbered year. If a vacancy occurs in the chairmanship or the vice chairmanship, the majority leader of the senate or the speaker of the assembly, as appropriate, shall appoint a replacement for the remainder of the unexpired term. After the initial terms of the chairman and vice chairman expire, the chairmanship and vice chairmanship of the committee must alternate every 2 years between members of the senate and assembly. The chairman and vice chairman must not be members of the same house of the legislature.

4. Any member of the committee who does not return to the legislature continues to serve until the next session of the legislature convenes.

5. Any vacancy on the committee must be filled in the same manner as an original appointment.

Sec. 4. *1. The committee shall meet not less frequently than once each quarter and throughout the year at the times and places specified by a call of the chairman or a majority of the committee. The director of the legislative*

counsel bureau or a person designated by him shall act as the nonvoting recording secretary of the committee.

2. The committee shall prescribe regulations for its own management and government. Five members of the committee constitute a quorum, and a quorum may exercise all the powers conferred on the committee.

3. Except during a regular or special session of the legislature, each member of the committee is entitled to receive the compensation provided for a majority of the members of the legislature during the first 60 days of the preceding regular session for each day or portion of a day during which he attends a meeting of the committee or is otherwise engaged in the business of the committee plus the per diem allowance and travel expenses provided for state officers and employees generally.

4. The salaries and expenses of the committee must be paid from the legislative fund.

Sec. 5. *The committee may:*

1. Review and evaluate the quality and effectiveness of programs for education and programs provided for young persons and mentally ill and mentally retarded persons in this state.

2. Review and evaluate programs established by school districts to prevent pupils from leaving school before graduation, giving particular consideration to the extent to which such programs:

(a) Are designed to ensure that all pupils are able to graduate;

(b) Offer alternative methods and procedures to achieve their objectives; and

(c) Provide an effective means of monitoring and reporting upon their progress.

3. Analyze the system of education in this state and the systems for providing services to young persons and mentally ill and mentally retarded persons in this state with a view to:

(a) Achieving the most efficient use of all available resources;

(b) Determining methods of coordinating services and avoiding the duplication of services; and

(c) Enhancing the provision of services.

4. Analyze the ratio of pupils to teachers in the public schools in this state.

5. Review the activities of the mental hygiene and mental retardation division of the department of human resources.

6. Conduct investigations and hold hearings in connection with its inquiries.

7. Apply for any available grants and accept any gifts, grants or donations to aid the committee in carrying out its duties.

8. Direct the legislative counsel bureau to assist in its research, investigations, review and analysis.

9. Recommend to the legislature any appropriate legislation.

Sec. 6. *1. The committee shall prepare and review annually a statewide plan for the provision of services to young persons in this state.*

2. In addition to such other provisions as the committee deems appropriate, the plan must contain:

(a) A description of existing services and an evaluation of those services;

(b) A description of available resources and an evaluation of any need for additional resources;

(c) An evaluation of the various options for the delivery of such services; and

(d) An annual community-based plan to enhance services, including permanency planning.

Sec. 7. *1. In conducting the investigations and hearings of the committee:*

(a) The secretary of the committee, or in his absence any member of the committee, may administer oaths.

(b) The secretary or chairman of the committee may cause the deposition of witnesses, residing within or outside of this state, to be taken in the manner prescribed by the Nevada Rules of Civil Procedure for the taking of depositions.

(c) The chairman of the committee may issue subpenas to compel the attendance of witnesses and the production of books and papers.

2. If any witness refuses to attend or testify or produce any books and papers as required by the subpena, the chairman of the committee may report to the district court by petition, stating that:

(a) The witness has been subpenaed by the committee pursuant to this section;

(b) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpena before the committee, or has refused to answer questions propounded to him,

and praying for an order of the court compelling the witness to attend and testify or produce the books and papers before the committee.

3. Upon the filing of the petition, the court shall enter an order directing the witness to appear before the court, at a time and place specified in the order, to show cause why he should not be compelled to attend and testify or produce books and papers before the committee. The time fixed for the hearing of the matter must not be more than 10 days after the date the order is entered. The chairman of the committee shall, not later than 3 days after the date the order is entered, cause a certified copy of the order to be served upon the witness.

4. If, after hearing, it appears to the court that the subpena was regularly issued and that there is no sufficient basis for denying the relief sought by the petition, the court shall enter an order directing the witness to appear before the committee at a time and place fixed by the order and testify or produce the required books or papers. Any failure to obey the order constitutes contempt of court.

Sec. 8. *Each witness, except an officer or employee of the state, who appears before the committee by its order or pursuant to a subpena is entitled to receive for his attendance the fees and mileage provided for witnesses in civil cases in the courts of this state. The fees and mileage must be audited and paid upon the presentation of proper claims sworn to by the witness and approved by the secretary and chairman of the committee.*

Sec. 9. This act expires by limitation on July 1, 1994.

SUMMARY--Prohibits county school districts from authorizing removal of pupil from public school system for truancy. (BDR 34-380)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to pupils; prohibiting the board of trustees of a county school district from authorizing the expulsion, suspension or removal of a pupil from the public school system for truancy; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 392.467 is hereby amended to read as follows:

392.467 1. [The] *Except as otherwise provided in subsection 4, the* board of trustees of a school district may authorize the suspension or expulsion of any p from any public school within the school district.

2. No pupil may be suspended or expelled until he has been given notice of t charges against him, an explanation of the evidence and an opportunity for a hea except that a pupil who poses a continuing danger to persons or property o ongoing threat of disrupting the academic process or who is selling or distributing controlled substance or is found to be in possession of a dangerous weapo provided in NRS 392.466 may be removed from the school immediately upon b given an explanation of the reasons for his removal, and pending proceedings, t conducted as soon as practicable after removal, for his suspension or expulsion.

3. The provisions of chapter 241 of NRS do not apply to any hearing conduct under this section. Such hearings must be closed to the public.

4. The board of trustees of a school district shall not authorize the expulsio suspension or removal of any pupil from the public school system solely because pupil is declared a truant or habitual truant in accordance with NRS 392.13 392.140.

SUMMARY--Encourages county school districts to increase community and parental involvement in enforcement of school attendance. (BDR R-382)

CONCURRENT RESOLUTION--Encouraging the county school districts to increase community and parental involvement in the enforcement of school attendance.

WHEREAS, Truancy is a growing problem in the several school districts and, although written notice of truancy must be given to the parent or guardian of a pupil pursuant to NRS 392.130, there are times when the schools fail to contact the appropriate person when a pupil is unexcusably absent or, after providing the written notice, the parent or guardian does not assist in remedying the truancy; and

WHEREAS, The education of the children of this country is the key to the continuous technological, economical and social advancement of the United States which will ensure that this country maintains its position as a world leader; and

WHEREAS, The courses of study required by the several school districts and the extracurricular school activities in which many pupils participate are time consuming, increasingly demanding both scholastically and physically and require regular attendance; and

WHEREAS, The requirements and restraints imposed on many parents by their employers or that evolve from particular types of employment often prevent the parents from meeting or communicating with their children's teachers during business hours regarding the progress of their children; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the county school districts are encouraged to contact personally the parent or guardian of a pupil each time the pupil is absent from school; and be it further

RESOLVED, That the county school districts are encouraged to create programs to increase parental involvement in the enforcement of school attendance; and be it further

RESOLVED, That the county school districts and the local business communities are urged to cooperate and communicate with each other to establish guidelines which:

1. Permit school districts to contact a parent or guardian during business hours regarding his child.
2. Provide a working parent with the opportunity to attend school conferences during business hours.
3. Require, as a condition of a pupil's employment, regular school attendance and passing grades; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the of the to the president of the board of trustees of each county school district in this state.

SUMMARY--Encourages county school districts to increase use of techniques to test and diagnose conduct-disordered and emotionally disturbed children. (BDR R-383)

CONCURRENT RESOLUTION--Encouraging the county school districts to increase their use of techniques to test and diagnose conduct-disordered and emotionally disturbed children.

WHEREAS, The abnormal behavioral patterns displayed by children who are emotionally disturbed are similar to the abnormal behavioral patterns displayed by children who are diagnosed as conduct-disordered, but the reasons for their sudden outbursts are distinct, thus requiring different treatment; and

WHEREAS, The abnormal behavior of children who are diagnosed as emotionally disturbed is caused by organically triggered malfunctions of the brain which prohibit the children from controlling their actions; and

WHEREAS, The children who are diagnosed as conduct-disordered are those who are capable of controlling their abnormal behavior since it is not organically triggered but, instead, voluntarily carried out; and

WHEREAS, There is federal money available to the states to be used to help meet the expenses of treating emotionally disturbed children, but not to help meet the expenses incurred in treating conduct-disordered children; and

WHEREAS, Early detection of the exact cause of the abnormal behavior patterns of children would enable the children to receive the appropriate kind of treatment and, in the case of emotionally disturbed children, would enable the states to receive additional federal assistance; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That each of the county school districts is encouraged to increase their use of techniques to test and diagnose conduct-disordered and emotionally disturbed children in the public schools; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the of the to the president of the board of trustees of each county school district in this state.

SUMMARY--Provides for development of programs and employment of counselors to aid certain pupils at risk of dropping out of school. (BDR 34-384)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Contains Appropriation.

AN ACT relating to public schools; directing the department of education to develop certain programs; requiring counselors to carry out those programs; requiring each school district to employ a minimum number of counselors based on the number of pupils in the district; making an appropriation; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 388 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *The superintendent of public instruction shall develop for use by the county school districts programs designed to:*

1. Improve the self-esteem of pupils who may be at risk of dropping out of school or being unable to function as independent and self-sufficient members of society.

2. Provide instruction in related parenting skills.

Sec. 3. *1. The board of trustees of each county school district shall employ one full-time counselor for every 300 pupils within the district.*

2. In addition to his other counseling duties, each school counselor shall, with the assistance of the department and the other counselors employed by the district, carry out a program developed pursuant to section 2 of this act which is tailored to meet the needs of the pupils in his school.

Sec. 4. 1. There is hereby appropriated from the state general fund to the department of education for allocation to the various county school districts to pay the salaries and related benefits of the additional counselors employed by the districts for the 1989-90 and 1990-91 school years to meet the requirements of section 3 of this act:

For the fiscal year 1989-90	$12,000,000
For the fiscal year 1990-91	$12,000,000

2. Any balance of the appropriation made by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 and reverts to the state general fund as soon as all payments of money committed have been made.

3. The board of trustees of each county school district may apply to the department of education for reimbursement of costs incurred to pay the salary

and other related benefits of any counselor employed for the 1989-90 and 1990-91 school years to fill a position which was created to meet the requirements of section 3 of this act.

Sec. 5. 1. This act becomes effective upon passage and approval.

2. The superintendent of public instruction and the boards of trustees of the respective county school districts shall take such actions as are necessary to carry out the provisions of this act in full beginning with the 1989-90 school year.

SUMMARY--Creates youth and family services division within department of human resources. (BDR 18-385)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to children; creating a youth and family services division within the department of human resources; abolishing the youth services division of the department; reorganizing the duties of the divisions of the department; changing the name of the Nevada girls training center; expanding the program for the rehabilitation of youthful offenders to include children in need of supervision; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 232 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *It is the intent of the legislature to reduce current fragmentation in programs for children by establishing a youth and family services division to:*

1. Promote the strength of all families;

2. Provide services to parents to care for their children before crises develop;

3. Keep families together whenever possible;

4. Minimize the number of children in out-of-home placement;

5. Ensure reasonable efforts are made to avoid the placement of children in out-of-home care;

6. Ensure children are placed in the least restrictive placement that is appropriate and available;

7. Promote a stable living environment for all children;

8. Provide preventive services to families in need of such services; and

9. Reunite children with families whenever possible.

Therefore, the youth and family services division shall provide or regulate the provision of protective services for children, substitute care, adoption services, mental health services for children, early childhood services, day care for children, juvenile justice services offered by the state and special health care for children.

Sec. 3. *The youth and family services division shall:*

1. Integrate a comprehensive system of child welfare, mental health, early childhood services, day care for children, juvenile justice services and other special health care for children offered by the state to those children and families in need of such assistance.

2. Carry out a case-management system for children and families to assess the family, develop a course of action or plan for treatment that is appropriate to the family, secure resources to carry out the plan, and oversee the services to ensure the needs of the family are met.

3. Aid in the preservation, rehabilitation, and reuniting of families by:

(a) Establishing a process for identifying families at high risk for placement of their children in out-of-home care and offering them appropriate services;

(b) Preventing or remedying the neglect, abuse, sexual exploitation or delinquency of children;

(c) Ensuring that all reasonable efforts are made before the placement of each child in out-of-home care to prevent or eliminate the need for removal of the child from his own home, as well as reasonable efforts to make it possible for the child to return to his home when placement of the child is necessary;

(d) Providing diagnosis and treatment to families and their children who are being abused, exploited or neglected and to eligible children in need of juvenile justice, mental health and special health care services; and

(e) Reuniting the child with his parents as soon as possible or, whenever appropriate, placing the child in an adoptive home, with guardians or in a permanent foster home.

4. Minimize reliance upon institutional care by providing community-based care, home-based care, or another form of less restrictive care.

5. Establish reasonable minimum standards and regulations for residential and nonresidential facilities and child-placing agencies, and license such facilities as provided by law.

6. Coordinate protective services for children pursuant to chapter 432B of NRS.

Sec. 4. NRS 232.290 is hereby amended to read as follows:

232.290 As used in NRS 232.290 to 232.460, inclusive, *and sections 2 and 3 of this act,* unless the context requires otherwise:

1. "Department" means the department of human resources.

2. "Director" means the director of the department.

Sec. 5. NRS 232.300 is hereby amended to read as follows:

232.300 1. The department of human resources is hereby created.

2. The department consists of a director and the following divisions:

(a) Aging services division.

(b) Division for review of health resources and costs.

(c) Health division.

(d) Mental hygiene and mental retardation division.

(e) Rehabilitation division.

(f) Welfare division.

(g) Youth *and family* services division.

3. The department is the sole agency responsible for administering the provisions of law relating to its respective divisions.

Sec. 6. NRS 232.320 is hereby amended to read as follows:

232.320 1. Except as otherwise provided in subsection 2, the director:

(a) Shall appoint, with the consent of the governor, chiefs of the divisions of the department, who are respectively designated as follows:

(1) The administrator of the aging services division;

(2) The administrator of the division for review of health resources and costs;

(3) The administrator of the health division;

(4) The administrator of the rehabilitation division;

(5) The state welfare administrator; and

(6) The administrator of the youth *and family* services division.

(b) Shall administer, through the divisions of the department, the provisions of chapters 210, 422 to 427A, inclusive, 432 to 436, inclusive, 439 to 443, inclusive, 446, 447, 449, 450, 458 and 615 of NRS, NRS 444.003 to 444.430, inclusive, 445.015 to 445.038, inclusive, and all other provisions of law relating to the functions of the divisions of the department, but is not responsible for the clinical activities of the health division or the professional line activities of the other divisions.

(c) Shall, upon request, provide the director of the department of general services a list of organizations and agencies in this state whose primary purpose is the training and employment of handicapped persons.

(d) Has such other powers and duties as are provided by law.

2. The governor shall appoint the administrator of the mental hygiene and mental retardation division.

Sec. 7. NRS 232.357 is hereby amended to read as follows:

232.357 The divisions of the department, in the performance of their official duties, may share information in their possession amongst themselves which is otherwise declared confidential by statute, if the confidentiality of the information is otherwise maintained under the terms and conditions required by law. *The divisions of the department may share confidential information with agencies of local governments which are responsible for aiding the department in its official duties if the confidentiality of the information is otherwise maintained under the terms and conditions required by law.*

Sec. 8. NRS 232.400 is hereby amended to read as follows:

232.400 1. [The] *One* purpose of the youth *and family* services division in the department is to provide services for youth who are in need of residential care or in need of treatment or both. In accomplishing this purpose, the division shall work closely with other governmental agencies and with public and private agencies providing the same or similar service.

2. The department, through the division, is the sole state agency for the establishment of standards for the receipt of federal money in the field of juvenile development and for programs to prevent, combat and control delinquency. The administrator, subject to approval by the director, may develop state plans, make reports to the Federal Government and comply with such other conditions as may be imposed by the Federal Government for the receipt of assistance for such programs. In developing and revising state plans, the administrator shall consider, among other things, the amount of money available from the Federal Government for the programs and the conditions attached, and the limitations of legislative appropriations for the programs.

3. The administrator shall cause to be deposited with the state treasurer all money allotted to this state by the Federal Government for the purposes described in this section and shall cause to be paid out of the state treasury the money therein deposited for those purposes.

4. The division shall develop standards for carrying out programs aimed toward the prevention of delinquent acts of children and programs for the treatment of those brought to its attention. It shall assist in the development of

programs for the predelinquent children whose behavior tends to lead them into contact with law enforcement agencies.

5. The division shall develop and assist in carrying out programs for the diversion of juveniles out of the judicial system and programs for the aftercare of juveniles who have been released from state institutions, who have been brought before the juvenile court or have otherwise come into contact with law enforcement agencies. The administrator of the division is responsible for observing and evaluating the success of those programs.

Sec. 9. NRS 232.410 is hereby amended to read as follows:

232.410 As used in NRS 232.400 to 232.460, inclusive, *and sections 2 and 3 of this act,* unless the context requires otherwise:

1. "Administrator" means the administrator of the division.

2. "Division" means the youth *and family* services division of the department.

Sec. 10. NRS 232.420 is hereby amended to read as follows:

232.420 The youth *and family* services division in the department consists of an administrator , *three regional administrators* and the following bureaus:

1. Nevada youth training center bureau.
2. [Nevada girls training] *Caliente youth* center bureau.
3. Northern Nevada children's home bureau.
4. Southern Nevada children's home bureau.
5. Bureau of services for child care.
6. Youth parole bureau.

Sec. 11. NRS 232.430 is hereby amended to read as follows:

232.430 The administrator [shall] *must* be appointed on the basis of his education, training, experience, demonstrated abilities and his interest in youth services and related programs. *The administrator must hold a graduate degree and possess demonstrated administrative qualities of leadership in one of the professional fields of social work, child welfare, juvenile justice, mental health or public administration.*

Sec. 12. NRS 232.440 is hereby amended to read as follows:

232.440 1. The administrator shall appoint, with the approval of the director, *three regional administrators and* a chief of each of the bureaus in the division. The chiefs are designated respectively as:

(a) The superintendent of the Nevada youth training center;

(b) The superintendent of the [Nevada girls training] *Caliente youth* center;

(c) The superintendent of the northern Nevada children's home;

(d) The superintendent of the southern Nevada children's home;

(e) The chief of the bureau of services for child care; and

(f) The chief of the youth parole bureau.

2. The administrator is responsible for the administration, through the division, of the provisions of chapters 210 , [and] 423 , *424, 432A and 432B* of NRS , [and] NRS 232.400 to 232.460, inclusive, *and 432.100 to 432.130, inclusive, and sections 2 and 3 of this act,* and all other provisions of law relating to the functions of the division but is not responsible for the professional activities of the components of the division except as specifically provided by law.

Sec. 13. NRS 232.450 is hereby amended to read as follows:

232.450 [1.] The superintendents of the Nevada youth training center, the [Nevada girls training] *Caliente youth* center, the northern Nevada children's home and the southern Nevada children's home [are in the unclassified service of the state unless federal law or regulation requires otherwise.

2. The] , *the* chief of the bureau of services for child care , and the chief of the youth parole bureau are in the classified service of the state.

Sec. 14. NRS 233D.030 is hereby amended to read as follows:

233D.030 1. The governor's advisory council on youth, consisting of five members appointed by the governor, is hereby created within the department of human resources.

2. At least one of the members must be between the ages of 15 and 21 years.

3. No more than two members of the council may be residents of the same county.

4. The governor shall designate a chairman from among the members.

5. The administrator of the youth *and family* services division of the department of human resources shall serve ex officio as a member of the council and as the council's executive secretary.

Sec. 15. NRS 62.211 is hereby amended to read as follows:

62.211 1. If the court finds that the child is within the purview of this chapter, it shall so decree and may:

(a) Place the child under supervision in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court may determine.

(b) Commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children, or place him in a home with a family. In committing a child to a private institution or agency the court shall select one that is required to be licensed by the department of human resources to care for such children, or, if the institution or agency is in another state, by the analogous department of that state. The court shall not commit a female child to a private institution without prior approval of the superintendent of the [Nevada girls training] *Caliente youth* center, and shall not commit a male child to a private institution without prior approval of the superintendent of the Nevada youth training center.

(c) Order such medical, psychiatric, psychologic or other care and treatment as the court deems to be for the best interests of the child, except as otherwise provided in this section.

(d) Order the parent, guardian, custodian or any other person to refrain from continuing the conduct which, in the opinion of the court, has caused or tended to cause the child to come within or remain under the provisions of this chapter.

(e) Place the child, when he is not in school, under the supervision of a public organization to work on public projects. The person under whose supervision the child is placed shall keep the child busy and well supervised and shall make such reports to the court as it may require.

(f) Permit the child to reside in a residence without the immediate supervision of an adult, or exempt the child from mandatory attendance at

school so that the child may be employed full time, or both, if the child is at least 16 years of age, has demonstrated the capacity to benefit from this placement or exemption and is under the strict supervision of the juvenile division.

(g) Require the child to participate in a program designed to provide restitution to the victim of the crime which the child has committed.

2. At any time, either on its own volition or for good cause shown, the court may terminate its jurisdiction concerning the child.

3. Whenever the court commits a child to any institution or agency pursuant to this section, it shall transmit to the institution or agency a summary of its information concerning the child. The institution or agency shall give to the court any information concerning the child as the court may require.

Sec. 16. NRS 62.321 is hereby amended to read as follows:

62.321 1. Whenever a child is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of the child, compensation for the care of the child while in such custody, when approved by order of the court, is a charge upon the county where the child has a legal residence. If a female child is committed to a private institution within the state, any compensation for the care of the child which is not paid by a parent must be paid by the state from money budgeted for by and appropriated to the [Nevada girls training] *Caliente youth* center bureau of the youth *and family* services division of the department of human resources. A commitment must not be made to such a private institution until the court has ascertained from the superintendent of the institution that sufficient money is available for such compensation. This subsection does not prohibit the payment of compensation by the [Nevada girls training] *Caliente youth* center bureau from money appropriated for that purpose to schools outside the state to which female children are committed pursuant to the provisions of NRS 210.580.

2. Notwithstanding any provision made by the law of this state for the support of such children, after the parent has been given a reasonable opportunity to be heard, the court may order and decree that the parent pay, in such a manner as the court may direct and within the parent's ability to pay, a sum of money to cover in whole or in part the support of the child. If the parent willfully fails or refuses to pay the sum, the court may proceed against him for contempt of court.

3. Whenever the court orders the parent or parents of a child to pay for the support of a child, as provided in this section, the money must be paid to the superintendent or fiscal officer of the institution to which the child is committed.

Sec. 17. NRS 62.325 is hereby amended to read as follows:

62.325 1. Except as otherwise provided in this subsection, if a child is committed to the custody of a regional facility for children, the court may order that the expense of the child's support and maintenance be paid by the county of the child's residence in an amount equal to any money paid for that purpose by the division. Such an order may not be entered if the county maintains the facility to which the child is committed.

2. The court may order that the parents, guardian or other person liable for the support and maintenance of the child reimburse the county in whole or in part for the expense of the child's support and maintenance.

3. This section does not prohibit the court from providing for the support and maintenance of the child in any other manner authorized by law.

4. As used in this section:

(a) "Division" means the youth *and family* services division of the department of human resources.

(b) "Regional facility for children" includes:

(1) The institution in Douglas County known as China Springs Youth Camp.

(2) The institution in Clark County known as Spring Mountain Youth Camp.

(3) Any other institution established and maintained for the care of minors adjudged delinquent and committed thereto, except the Nevada youth training center and the [Nevada girls training] *Caliente youth* center.

Sec. 18. NRS 62.390 is hereby amended to read as follows:

62.390 1. In carrying out the objects and purposes of this chapter, the juvenile court may utilize the services and facilities of the [welfare] *youth and family services* division of the department of human resources provided by such division pursuant to the provisions of [chapter] *chapters* 432 *and 432A* of NRS and NRS 432B.010 to 432B.400, inclusive.

2. The [welfare] *youth and family services* division shall determine the plans, placements and services to be provided any child pursuant to this chapter, [chapter 432] *chapters 424, 432 and 432A* of NRS and NRS 432B.010 to 432B.400, inclusive.

Sec. 19. NRS 125A.080 is hereby amended to read as follows:

125A.080 1. If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

2. Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

3. Where the court declines to exercise jurisdiction pursuant to subsection 1, the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. Upon request of the court of the other state, the court of this state shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with NRS 125A.230.

4. Where the court refused to assume jurisdiction to modify the custody decree of another state pursuant to subsection 2 or pursuant to NRS 125A.180,

the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within 10 days, the court may place the child in a foster home approved by the [welfare] *youth and family services* division of the department of human resources for that period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to the appropriate court of the other state which has continuing jurisdiction or, if that court declines jurisdiction, to a court in a state which has jurisdiction.

5. In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

Sec. 20. NRS 127.007 is hereby amended to read as follows:

127.007 1. The [welfare] *youth and family services* division of the department of human resources shall maintain the state register for adoptions, which is hereby established, in its central office for the purpose of providing information to adults who were adopted and their natural parents.

2. The state register for adoptions consists of:

(a) Names and other information, which the [state welfare] administrator *of the youth and family services division* deems to be necessary for the operation of the register, relating to persons who have released a child for adoption or have consented to the adoption of a child, or whose parental rights have been terminated by a court of competent jurisdiction, and who have submitted the information voluntarily to the [welfare] *youth and family services* division; and

(b) Names and other necessary information of persons who are 18 years of age or older, who were adopted and who have submitted the information voluntarily to the [welfare] *youth and family services* division.

Any person whose name appears in the register may withdraw it by requesting in writing that it be withdrawn. The [welfare] *youth and family services* division shall immediately withdraw a name upon receiving a request to do so, and may not thereafter release any information relating to that person, including the information that such a name was ever in the register.

3. The [welfare] *youth and family services* division may release information about a natural parent to an adopted person, or about an adopted person to a natural parent, if the names and information about both are contained in the register.

Sec. 21. NRS 127.050 is hereby amended to read as follows:

127.050 The following may accept relinquishments for the adoption of children from parents and guardians and may consent to the adoption of children:

1. The [welfare] *youth and family services* division of the department of human resources, to whom the child has been relinquished for adoption;

2. A child-placing agency licensed by the [welfare] *youth and family services* division of the department of human resources, to whom the child has been relinquished for adoption; or

3. Any child-placing agency authorized under the laws of another state to accept relinquishments and make placements, to whom the child has been relinquished for adoption.

Sec. 22. NRS 127.053 is hereby amended to read as follows:

127.053 No consent to a specific adoption executed in this state, or executed outside this state for use in this state, is valid unless it:

1. Identifies the child to be adopted by name, if any, gender and date of birth.

2. Is in writing and signed by the person consenting to the adoption as required in this chapter.

3. Is acknowledged by the person consenting and signing the same in the manner and form required for conveyances of real property by NRS 111.240 to 111.305, inclusive.

4. Contains, at the time of execution, the name of the person to whom consent to adopt the child is given.

5. Is attested by at least two competent, disinterested witnesses who subscribe their names to the consent in the presence of the person consenting. If neither the petitioner or the spouse of a petitioner is related to the child within the third degree of consanguinity, then one of the witnesses must be a social worker employed by:

(a) The [welfare] *youth and family services* division of the department of human resources;

(b) An agency licensed in this state to place children for adoption; or

(c) A comparable state or county agency of another state.

Sec. 23. NRS 127.057 is hereby amended to read as follows:

127.057 1. Any person to whom a consent to adoption executed in this state or executed outside this state for use in this state is delivered shall, within 48 hours after receipt of the executed consent to adoption, furnish a true copy thereof to the [welfare] *youth and family services* division of the department of human resources, together with a report of the permanent address of the person in whose favor the consent was executed.

2. Any person recommending in his professional or occupational capacity, the placement of a child for adoption in this state shall immediately notify the [welfare] *youth and family services* division of the impending adoption.

3. All information received by the [welfare] *youth and family services* division pursuant to the provisions of this section is confidential and must be protected from disclosure in the same manner that information concerning recipients of public assistance is protected under NRS 422.290.

4. Any person who violates any of the provisions of this section is guilty of a misdemeanor.

Sec. 24. NRS 127.120 is hereby amended to read as follows:

127.120 1. A petition for adoption of a child shall be filed in duplicate with the county clerk. The county clerk shall send one copy of the petition to the [welfare] *youth and family services* division of the department of human resources, which shall make an investigation and report as [hereinafter provided.] *provided in this section.* If one petitioner or the spouse of a petitioner is related to the child within the third degree of consanguinity, the

court may, in its discretion, waive the investigation by the [welfare] *youth and family services* division.

2. The [welfare] *youth and family services* division or a licensed child-placing agency authorized to do so by the court shall verify the allegations of the petition and investigate the condition and the antecedents of the child and make proper inquiry to determine whether the proposed adopting parents are suitable for the minor. The [welfare] *youth and family services* division or the designated agency shall, [prior to] *before* the date on which the child [shall have] *has* lived for [a period of] 6 months in the home of the petitioners or within 30 days after receiving the copy of the petition for adoption, whichever date is later, submit to the court a full written report of its findings, which [shall] *must* contain a specific recommendation for or against approval of the petition, and shall furnish to the court any other information regarding the child or proposed home which the court may require. The court, on good cause shown, may extend the time, designating a time certain, within which to submit a report.

3. If the court is dissatisfied with the report submitted by the [welfare] *youth and family services* division, the court may order an independent investigation to be conducted and a report submitted by such agency or person as the court may select. The costs of such investigation and report may be assessed against the petitioner or charged against the county wherein the adoption proceeding is pending.

Sec. 25. NRS 127.127 is hereby amended to read as follows:

127.127 The petitioners shall file with the court, within 15 days after the petition is filed or 5 months after the child begins to live in their home, whichever is later, an affidavit executed by them and their attorney setting forth all fees, donations and expenses paid by them in furtherance of the adoption. A copy of the affidavit must be sent to the [welfare] *youth and family services* division of the department of human resources. If one petitioner or the spouse of a petitioner is related to the child within the third degree of consanguinity, the court may waive the filing of the affidavit.

Sec. 26. NRS 127.130 is hereby amended to read as follows:

127.130 The report of either the [welfare] *youth and family services* division of the department of human resources or the licensed child-placing agency designated by the court [shall] *must* not be made a matter of public record, but [shall] *must* be given in writing and in confidence to the district judge before whom the matter is pending. If the recommendation of the [welfare] *youth and family services* division or the designated agency is adverse, the district judge, before denying the petition, shall give the petitioner an opportunity to rebut the findings and recommendation of the report of the [welfare] *youth and family services* division or the designated agency.

Sec. 27. NRS 127.157 is hereby amended to read as follows:

127.157 1. After an order or decree of adoption has been entered, the court shall direct the petitioner or his attorney to prepare a report of adoption on a form prescribed and furnished by the state registrar of vital statistics. The report shall:

(a) Identify the original certificate of birth of the person adopted;

(b) Provide sufficient information to prepare a new certificate of birth for the person adopted;

(c) Identify the order or decree of adoption; and

(d) Be certified by the clerk of the court.

2. The [welfare] *youth and family services* division of the department of human resources shall provide the petitioner or his attorney with any factual information which will assist in the preparation of the report required in subsection 1.

3. If an order or decree of adoption is amended or annulled, the petitioner or his attorney, shall prepare a report to the state registrar of vital statistics which includes sufficient information to identify the original order or decree of adoption and the provisions of that decree which were amended or annulled.

4. The petitioner or his attorney shall forward all reports required by the provisions of this section to the state registrar of vital statistics not later than the 10th day of the month next following the month in which the order or decree was entered, or more frequently if requested by the state registrar, together with any related material the state registrar may require.

Sec. 28. NRS 127.186 is hereby amended to read as follows:

127.186 1. The [welfare] *youth and family services* division of the department of human resources, or a child-placing agency licensed by the [welfare] *youth and family services* division pursuant to this chapter, may consent to the adoption of a child under 18 years of age with special needs due to race, age or physical or mental problems who is in the custody of the [welfare] *youth and family services* division or the licensed agency by proposed adoptive parents of limited means when, in the judgment of the [welfare] *youth and family services* division or the licensed agency, it would be in the best interests of the child to be placed in that adoptive home and it would be difficult to locate a suitable adoptive home where the adoptive parents would be capable of bearing the full costs of maintaining the child.

2. The [welfare] *youth and family services* division may grant financial assistance for attorney's fees and court costs in the adoption proceeding, for maintenance and for preexisting physical or mental conditions to the adoptive parents out of money provided for that purpose if:

(a) Due and diligent effort has been made by the [welfare] *youth and family services* division or the licensed agency to locate a suitable adoptive home for the child where financial assistance would not be required; and

(b) The state welfare administrator has reviewed and approved in writing the proposed adoption and grant of assistance.

3. The financial assistance grant must be limited, both as to amount and duration, by agreement in writing between the [welfare] *youth and family services* division and the adoptive parents. The agreement does not become effective until the entry of the order of adoption.

4. Any grant of financial assistance must be reviewed and evaluated at least once annually by the [welfare] *youth and family services* division. The evaluation must be presented for approval to the state welfare administrator. Financial assistance must be discontinued immediately upon written

notification to the adoptive parents by the [welfare] *youth and family services* division that continued assistance is denied.

5. All financial assistance provided under this section ceases immediately when the child attains majority, becomes self-supporting, is emancipated or dies, whichever is first.

6. Neither a grant of financial assistance pursuant to this section nor any discontinuance of such assistance affects the legal status or respective obligations of any party to the adoption.

Sec. 29. NRS 127.200 is hereby amended to read as follows:

127.200 1. A married person not lawfully separated from his spouse may not adopt an adult person without the consent of the spouse of the adopting person, if such spouse is capable of giving such consent.

2. A married person not lawfully separated from his spouse may not be adopted without the consent of the spouse of the person to be adopted, if such spouse is capable of giving such consent.

3. Neither the consent of the natural parent or parents of the person to be adopted, nor of the [welfare] *youth and family services* division of the department of human resources, nor of any other person is required.

Sec. 30. NRS 127.210 is hereby amended to read as follows:

127.210 1. The adopting person and the person to be adopted may file in the district court in the county in which either resides a petition praying for approval of the agreement of adoption by the issuance of a decree of adoption.

2. The court shall fix a time and place for hearing on the petition, and both the person adopting and the person to be adopted shall appear at the hearing in person, but if such appearance is impossible or impractical, appearance may be made for either or both of such persons by counsel empowered in writing to make such appearance.

3. The court may require notice of the time and place of the hearing to be served on other interested persons, and any such interested person may appear and object to the proposed adoption.

4. No investigation or report to the court by any public officer is required, but the court may require the [welfare] *youth and family services* division of the department of human resources to investigate the circumstances and report thereon, with recommendations, to the court [prior to] *before* the hearing.

5. At the hearing the court shall examine the parties, or the counsel of any party not present in person. If the court is satisfied that the adoption will be for the best interests of the parties and in the public interest, and that there is no reason why the petition should not be granted, the court shall approve the agreement of adoption, and enter a decree of adoption declaring that the person adopted is the child of the person adopting him. Otherwise, the court shall withhold approval of the agreement and deny the prayer of the petition.

Sec. 31. NRS 127.220 is hereby amended to read as follows:

127.220 As used in NRS 127.230 to 127.310, inclusive, unless the context otherwise requires:

1. "Arrange the placement of a child" means to make preparations for or bring about any agreement or understanding concerning the adoption of a child.

2. "Child-placing agency" means the [welfare] *youth and family services* division of the department of human resources or a nonprofit corporation organized under NRS 81.290 to 81.340, inclusive, and licensed by the [welfare] *youth and family services* division to place children for adoption or permanent free care.

3. "Person" includes a hospital.

4. "Recommend the placement of a child" means to suggest to a licensed child-placing agency that a prospective adoptive parent be allowed to adopt a specific child, born or in utero.

Sec. 32. NRS 127.230 is hereby amended to read as follows:

127.230 1. The [welfare] *youth and family services* division of the department of human resources [, with the approval of the state welfare board,] shall:

(a) Establish reasonable minimum standards for child-placing agencies.

(b) Prescribe rules for the regulation of child-placing agencies.

(c) Adopt regulations establishing the procedure to be used in placing children for adoption, including adoptions in which the natural parent or parents have limited knowledge of the prospective adoptive parent or parents.

2. All licensed child-placing agencies shall conform to the standards established and the rules prescribed pursuant to subsection 1.

Sec. 33. NRS 127.240 is hereby amended to read as follows:

127.240 1. No person may place, arrange the placement of, or assist in placing or in arranging the placement of, any child for adoption or permanent free care without securing and having in full force a license to operate a child-placing agency issued by the [welfare] *youth and family services* division of the department of human resources. This subsection applies to agents, servants, physicians and attorneys of parents or guardians, as well as to other persons.

2. This section does not prohibit a parent or guardian from placing, arranging the placement of, or assisting in placing or in arranging the placement of, any child for adoption or permanent free care if the placement is made pursuant to the provisions of subsections 1 to 4, inclusive, of NRS 127.280.

3. This section does not prohibit the [welfare] *youth and family services* division of the department of human resources from placing, arranging the placement of, or assisting in placing or in arranging the placement of, any child for adoption or permanent free care.

Sec. 34. NRS 127.250 is hereby amended to read as follows:

127.250 1. The application for a license to operate a child-placing agency [shall] *must* be in a form prescribed by the [welfare] *youth and family services* division of the department of human resources. The license [shall] *must* state to whom it is issued and the fact that it [shall be in force and] *remains in* effect for 1 year from the date of its issuance.

2. The issuance by the [welfare] *youth and family services* division of the department of human resources of a license to operate a child-placing agency [shall] *must* be based upon reasonable and satisfactory assurance to the division that the applicant [for such license] will conform to the standards established and the rules prescribed by the division as provided in NRS 127.230.

3. When the division is satisfied that a licensee is conforming to such standards and rules, it shall renew his license, and the license so renewed [shall continue] *continues* in force for 1 year from the date of renewal.

Sec. 35. NRS 127.270 is hereby amended to read as follows:

127.270 1. After notice and hearing, the [welfare] *youth and family services* division of the department of human resources may:

(a) Refuse to issue a license if the division finds that the applicant does not meet the standards established and the rules prescribed by the division for child-placing agencies.

(b) Refuse to renew a license or may revoke a license if the division finds that the child-placing agency has refused or failed to meet any of the established standards or has violated any of the rules prescribed by the division for child-placing agencies.

2. A notice of the time and place of the hearing must be mailed to the last known address of the applicant or licensee at least 15 days before the date fixed for the hearing.

3. When an order of the division is appealed to the district court, the trial may be de novo.

Sec. 36. NRS 127.280 is hereby amended to read as follows:

127.280 1. A child may not be placed in the home of prospective adoptive parents for the 30-day residence in that home which is required before the filing of a petition for adoption, except where a child and one of the prospective adoptive parents are related within the third degree of consanguinity, unless the [welfare] *youth and family services* division of the department of human resources first receives written notice of the proposed placement from:

(a) The prospective adoptive parents of the child;

(b) The person recommending the placement; or

(c) A child-placing agency,

and the investigation required by the provisions of this section has been completed.

2. If the placement is to be made by a child-placing agency, the [welfare] *youth and family services* division shall [make no] *not make an* investigation and shall retain the written notice for informational purposes only.

3. If the placement is recommended by a person other than a child-placing agency, the [welfare] *youth and family services* division shall, within 60 days after receipt of the written notice, complete an investigation of the medical, mental, financial and moral backgrounds of the prospective adoptive parents to determine the suitability of the home for placement of the child for adoption. The investigation must also embrace any other relevant factor relating to the qualifications of the prospective adoptive parents and may be a substitute for the investigation required to be conducted by the [welfare] *youth and family services* division on behalf of the court when a petition for adoption is pending, if the petition for adoption is filed within 6 months after the completion of the investigation required by this subsection.

4. Pending completion of the required investigation, the child must be:

(a) Retained by the natural parent; or

(b) Voluntarily placed by the natural parent with the [welfare] *youth and family services* division or relinquished to the [welfare] division and placed by the [welfare] division in a foster home licensed by it,

until a determination is made by the [welfare] division concerning the suitability of the prospective adoptive parents.

5. Upon completion of the investigation, the [welfare] *youth and family services* division shall forthwith inform the person recommending the placement and the prospective adoptive parents of the [welfare] division's decision to approve or deny the placement. If, in the opinion of the [welfare] division, the prospective adoptive home is:

(a) Suitable, the natural parent must execute a consent to a specific adoption pursuant to NRS 127.053, if not previously executed and if the child has not been relinquished pursuant to the provisions of subsection 4, and then the child may be placed in the home of the prospective adoptive parents for the purposes of adoption.

(b) Unsuitable or detrimental to the interest of the child, the [welfare] division shall file an application in the district court for an order prohibiting the placement. If the court determines that the placement should be prohibited, the court may nullify the written consent to the specific adoption and order the return of the child to the care and control of the parent who executed the consent, but if the parental rights of the parent have been terminated by a relinquishment or a final order of a court of competent jurisdiction or if the parent does not wish to accept the child, then the court may order the placement of the child with the [welfare] *youth and family services* division or with any licensed child-placement agency for adoption.

6. Whenever the [welfare] *youth and family services* division believes that anyone has violated or is about to violate any of the provisions of this chapter, in addition to any other penalty or remedy provided:

(a) The [welfare] division may petition the appropriate district court for an order to restrain and enjoin the violation or threatened violation of any of the provisions of this chapter, or to compel compliance with the provisions of this chapter; and

(b) The court shall, if a child has been or was about to be placed in a prospective adoptive home in violation of the provisions of this chapter:

(1) Prohibit the placement if the child was about to be so placed, or order the removal of the child if the child was so placed within 6 months before the filing of the [welfare] division's petition, and proceed pursuant to paragraph (b) of subsection 5; or

(2) Proceed pursuant to paragraph (b) of subsection 5 in all other cases if the court determines that it is in the best interest of the child that the child should be removed.

7. Whenever the [welfare] *youth and family services* division believes that a person has received for the purposes of adoption or permanent free care a child not related by blood, and when the written notice required by subsection 1 has not been received, and the [welfare] division does not proceed pursuant to subsection 6, the [welfare] division shall make an investigation. Upon completion of the investigation, if the home is found suitable for the child, the

prospective adoptive parents must be allowed 6 months from the date of completion of the investigation to file a petition for adoption. If a petition for adoption is not filed within that time a license as a foster home must thereafter be issued by the [welfare] division if the home meets established standards. If, in the opinion of the [welfare] division, the placement is detrimental to the interest of the child, the [welfare] division shall file an application with the district court for an order for the removal of the child from the home. If the court determines that the child should be removed, the court shall proceed pursuant to paragraph (b) of subsection 5.

8. Any person who places, accepts placement of, or aids, abets or counsels the placement of any child in violation of this section is guilty of a gross misdemeanor.

Sec. 37. NRS 127.283 is hereby amended to read as follows:

127.283 1. The [welfare] *youth and family services* division of the department of human resources or any child-placing agency licensed pursuant to this chapter may publish in any newspaper published in this state or broadcast by television a photograph of and relevant personal information concerning any child who is difficult to place for adoption.

2. A child-placing agency shall not publish or broadcast:

(a) Any personal information which reveals the identity of the child or his parents; or

(b) A photograph or personal information for a child without the prior approval of the agency having actual custody of the child.

Sec. 38. NRS 127.300 is hereby amended to read as follows:

127.300 1. Except as provided in NRS 127.285 and 422.283, any person who, without holding a valid license to operate a child-placing agency issued by the [welfare] *youth and family services* division of the department of human resources, requests or receives, directly or indirectly, any compensation or thing of value for placing, arranging the placement of, or assisting in placing or arranging the placement of, any child for adoption or permanent free care shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

2. The natural parents and the adopting parents are not accomplices for the purpose of this section.

Sec. 39. NRS 127.310 is hereby amended to read as follows:

127.310 Except as provided in NRS 127.240, 127.283 and 127.285, any person or organization other than the [welfare] *youth and family services* division of the department of human resources who, without holding a valid unrevoked license to place children for adoption issued by the [welfare] *youth and family services* division:

1. Places, arranges the placement of, or assists in placing or in arranging the placement of, any child for adoption or permanent free care; or

2. Advertises in any periodical or newspaper, or by radio or other public medium, that he will place children for adoption, or accept, supply, provide or obtain children for adoption, or causes any advertisement to be published in or

by any public medium soliciting, requesting or asking for any child or children for adoption,

is guilty of a misdemeanor.

Sec. 40. NRS 202.010 is hereby amended to read as follows:

202.010 1. Except as provided in subsections 2 and 3, it [shall be] *is* unlawful for any person or persons, firm, association, corporation or managing agent of any person, firm, association or corporation to sell, give away, or offer to sell cigarettes, cigarette paper or any tobacco of any description to any person under the age of 18 years.

2. Upon the written order of the parent or guardian of the minor, the person applied to may give or sell to the minor, for the use of the guardian or parent, cigarettes, cigarette paper, or tobacco of any description. The written request shall be kept on file by the seller or giver of the article so sold or given away.

3. The superintendent of the Nevada youth training center and the superintendent of the [Nevada girls training] *Caliente youth* center may sell or supply cigarettes, cigarette paper, tobacco or tobacco products to any minor 16 years of age or older confined in any institution under his supervision, if the guardian or parent of such minor consents thereto.

4. Any person violating any provision of this section shall be punished by a fine of not more than $500.

5. If any dealer in cigarettes, cigars and tobacco [shall be] *is* convicted twice for the commission of the offense described in subsection 1, he [shall forfeit] *forfeits* his license or licenses for carrying on his business, and no license [shall] *may* be again granted to him for a like business in this state.

Sec. 41. NRS 209.301 is hereby amended to read as follows:

209.301 The department may, with the consent of the superintendent of the Nevada youth training center or the superintendent of the [Nevada girls training] *Caliente youth* center, transfer to the Nevada youth training center or the [Nevada girls training] *Caliente youth* center any minor persons who are confined in an institution or facility of the department.

Sec. 42. NRS 210.010 is hereby amended to read as follows:

210.010 As used in NRS 210.010 to 210.290, inclusive:

1. "Administrator" means the administrator of the youth *and family* services division in the department of human resources.

2. "Director" means the director of the department of human resources.

3. "School" means the Nevada youth training center, established and maintained for the care of minors adjudged delinquent and committed thereto.

4. "Superintendent" means the superintendent of the school.

5. "Youth parole bureau" means the youth parole bureau of the youth *and family* services division in the department of human resources.

Sec. 43. NRS 210.180 is hereby amended to read as follows:

210.180 1. A court may commit to the school any person between the ages of 8 and 18 years who is found to be delinquent. Before any person is conveyed to the school, the superintendent must determine that adequate facilities are available to provide the necessary care to the person. The superintendent shall fix the time at which the person must be delivered to the

school. The superintendent shall accept the person unless there are not adequate facilities available to provide the necessary care . [, or there is not adequate money available for the support of the school, or, in the opinion of the superintendent, the person is not suitable for admission to the school.] *If there are not adequate facilities available to provide the necessary care, the superintendent shall accept the person as soon as such facilities are available, unless otherwise ordered by the court.*

2. The court may order, when committing a person to the care, custody and control of the school, the expense of his support and maintenance be paid in whole or in part by his parents, guardian or other person liable for his support and maintenance. Such payments must be paid to the superintendent, who shall immediately deposit the money with the state treasurer for credit to the state general fund.

3. The court shall order, before commitment, that the person be given a physical examination, which includes a blood test, test for tuberculosis, urinalysis and an examination for venereal disease, by a physician. The physician shall, within 5 days after the examination, make a written report of the results thereof to the clerk of the juvenile court, if there is one, and otherwise to the county clerk of the county wherein the commitment was ordered. Upon receipt of the written report, the county auditor shall allow a claim for payment to the physician for the examination. The clerk of the juvenile court or the county clerk shall immediately forward a copy of the written report to the superintendent.

Sec. 44. NRS 210.400 is hereby amended to read as follows:

210.400 As used in NRS 210.400 to 210.715, inclusive:

1. "Administrator" means the administrator of the youth *and family* services division in the department of human resources.

2. "Director" means the director of the department of human resources.

3. "School" means the [Nevada girls training] *Caliente youth* center.

4. "Superintendent" means the superintendent of the school.

5. "Youth parole bureau" means the youth parole bureau of the youth *and family* services division in the department of human resources.

Sec. 45. NRS 210.520 is hereby amended to read as follows:

210.520 1. The superintendent shall cause a department of instruction to be organized for the inmates of the school, with programs of study corresponding so far as practicable to programs of study given in the elementary and high schools of the state.

2. The superintendent may arrange for industrial training and the teaching of various trades, and he may purchase such supplies and equipment as may be necessary for the teaching of such programs of study.

3. If deemed practicable, and with the concurrence of the board of trustees of the Lincoln County school district, inmates of the school may be enrolled for instruction in the county school district system, and the superintendent of the [Nevada girls training] *Caliente youth* center or the county school district shall provide transportation for such inmates to the public schools.

4. The superintendent may also arrange for the employment of inmates upon ranches, farms, and in other private occupations during the summer

vacation months and for other periods which he deems proper for the full utilization of the inmates' time and productive capacity, but the inmates shall not be compelled to accept such private employment against their desires. For the purposes of this section, the amounts to be paid to the inmates and working conditions under which they shall be employed shall be determined by the superintendent and the employer, and any amounts paid shall, at the discretion of the superintendent, be paid in whole or in part to the inmate or to the superintendent for safekeeping as provided for in NRS 210.560.

5. The ultimate purpose of all such instruction, training, employment and industry shall be to qualify inmates for profitable and honorable employment, and to enable them to lead useful lives after their release from the school.

Sec. 46. NRS 210.550 is hereby amended to read as follows:

210.550 Gifts of money which the school is authorized to accept must be deposited in the state treasury for credit to the [girls training] *Caliente youth* center's gift account in the department of human resources' gift fund. The money in the account must be used for school purposes only, and expended in accordance with the terms of the gift. All claims must be approved by the superintendent before they are paid.

Sec. 47. NRS 210.560 is hereby amended to read as follows:

210.560 1. The superintendent may accept money and other valuables of inmates for safekeeping pending their discharges, and shall deposit any such money in a trust fund which he shall establish in a bank or in a savings and loan association qualified to receive deposits of public money. The superintendent shall keep a full account of any such money and valuables, and shall submit reports to the administrator relative to them as may be required from time to time.

2. The superintendent may transfer the amount of any uncashed check issued by the school to an inmate to the [girls training] *Caliente youth* center's gift account after 1 year from the date the check was issued. Each check so issued must be stamped "void after 1 year from date of issue."

Sec. 48. NRS 210.580 is hereby amended to read as follows:

210.580 1. A court may commit to the school any female person between the ages of 8 and 18 years who is found to be delinquent. Before any person is conveyed to the school, the superintendent must determine that adequate facilities are available to provide the necessary care to the person. The superintendent shall fix the time at which the person must be delivered to the school. The superintendent shall accept the person unless there are not adequate facilities available to provide the necessary care . [, or there is not adequate money available for the support of the school, or, in the opinion of the superintendent, the person is not suitable for admission to the school.] *If there are not adequate facilities available to provide the necessary care, the superintendent shall accept the person as soon as such facilities are available, unless otherwise ordered by the court.* Upon the written request of the superintendent, at any time either before or after commitment to the school, the court may order commitment to a school outside of the State of Nevada which is approved by the board, or to a private institution within the State of Nevada.

2. The court may order, when committing a person to the care, custody and control of the school, that the expense of her support and maintenance be paid in whole or in part by her parents, guardian or other person liable for her support and maintenance. Such payments must be paid to the superintendent, who shall immediately deposit the money with the state treasurer for credit to the state general fund.

3. The court shall order, before commitment, that the person be given a physical examination, which includes a blood test, test for tuberculosis, urinalysis, and an examination for venereal disease by a physician. The physician shall, within 5 days after the examination, make a written report of the results thereof to the clerk of the juvenile court, if there is one, and otherwise to the county clerk of the county wherein the commitment was ordered. Upon receipt of the written report, the county auditor shall allow a claim for payment to the physician for the examination. The clerk of the juvenile court or the county clerk, as the case may be, shall immediately forward a copy of the written report to the superintendent.

Sec. 49. NRS 210.730 is hereby amended to read as follows:

210.730 As used in NRS 210.735 to 210.760, inclusive, "youth parole bureau" means the youth parole bureau of the youth *and family* services division in the department of human resources.

Sec. 50. NRS 210.735 is hereby amended to read as follows:

210.735 The chief of the youth parole bureau may:

1. Appoint such employees as are necessary to carry out the functions of the bureau.

2. With the approval of the administrator of the youth *and family* services division in the department of human resources, enter into contracts with colleges, universities and other organizations for the purposes of:

(a) Research in the field of delinquency and crime prevention.

(b) Training special workers, including parole officers and social workers, whether volunteers or not, or whether they are on a part-time or full-time basis, engaged in the fields of education, recreation, mental hygiene and the treatment and prevention of delinquency.

Sec. 51. NRS 210.740 is hereby amended to read as follows:

210.740 The chief of the youth parole bureau shall:

1. Supervise all persons released on parole from the Nevada youth training center and the [Nevada girls training] *Caliente youth* center, and all persons released by other states for juvenile parole in Nevada pursuant to interstate compact.

2. Furnish to each person so paroled a written statement of the conditions of the parole and instructions regarding those conditions.

3. Keep himself informed concerning the conduct and condition of all persons under his supervision.

4. Coordinate his functions with those of the superintendents of the Nevada youth training center and the [Nevada girls training] *Caliente youth* center.

Sec. 52. NRS 210.750 is hereby amended to read as follows:

210.750 1. Each person who is paroled from the Nevada youth training center or the [Nevada girls training] *Caliente youth* center must be placed in a

reputable home and in either an educational or work program or both. The chief of the youth parole bureau may pay the expenses incurred in providing alternative placements for residential programs and for structured nonresidential programs from money appropriated to the bureau for that purpose.

2. The chief may accept money of parolees for safekeeping pending their discharges from parole. The chief must deposit the money in federally insured accounts in banks or savings and loan associations. He shall keep or cause to be kept a fair and full account of the money, and shall submit such reports concerning the accounts to the administrator of the youth *and family* services division of the department of human resources as the administrator may require.

3. When any person so paroled has proven his ability to make an acceptable adjustment outside the center or, in the opinion of the chief, is no longer amenable to treatment as a juvenile, the chief shall apply to the committing court for a dismissal of all proceedings and accusations pending against the person.

4. Before the chief recommends that the committing court revoke a person's parole, he shall ascertain from the superintendent of the appropriate center whether adequate facilities remain available at the center to provide the necessary care for the person. If the superintendent advises that there are not such facilities available, there is not enough money available for support of the person at the center, or that the person is not suitable for admission to the center, the chief shall report that fact to the court and recommend a suitable alternative.

Sec. 53. NRS 213.220 is hereby amended to read as follows:

213.220 1. It is the policy of this state to rehabilitate *youthful* offenders, to effect a more even administration of justice and to increase the public welfare of the citizens of this state.

2. It is the purpose of NRS 213.220 to 213.290, inclusive, to reduce the necessity for commitment of youthful offenders to state correctional institutions by strengthening and improving local supervision of [persons placed on probation by] *children under the jurisdiction of* the juvenile and district courts of this state.

Sec. 54. NRS 213.230 is hereby amended to read as follows:

213.230 As used in NRS 213.220 to 213.290, inclusive:

1. *"Child" means:*

(a) An offender who was less than 18 years of age when he violated a state law; and

(b) A person under the jurisdiction of a juvenile court pursuant to paragraph (a) or (b) of subsection 1 of NRS 62.040.

2. "Department" means the department of human resources.

[2.] *3.* "Juvenile court" means the juvenile court of any judicial district.

[3.] *4.* "Special supervision program" means a [probation] program meeting the standards prescribed pursuant to NRS 213.220 to 213.290, inclusive, for the rehabilitation of [offenders who were less than 18 years of age at the time of violating any state law, which does include:] *children, which includes:*

(a) A degree of supervision substantially above the usual; and

(b) The use of new techniques rather than routine [supervision techniques.] *techniques for supervision.*

Sec. 55. NRS 213.240 is hereby amended to read as follows:

213.240 From any legislative appropriation for such *a* purpose and in accordance with the provisions of NRS 213.220 to 213.290, inclusive, the state shall share the cost of supervising [offenders] *children* in special supervision programs established in any county participating under NRS 213.220 to 213.290, inclusive . [, who would otherwise be committed to a state-operated juvenile institution.]

Sec. 56. NRS 213.250 is hereby amended to read as follows:

213.250 1. [Any] *A* juvenile court may [make application] *apply* to the department to participate under NRS 213.220 to 213.290, inclusive, for the sharing of the cost of special supervision programs.

2. The application [shall:] *must:*

(a) Be in the form prescribed by the department;

(b) Include a plan or plans for providing special supervision programs; and

(c) Include assurances that [such funds] *the money* will not be used to replace local [funds] *money* for existing programs for [delinquent youth.] *children.*

Sec. 57. NRS 213.270 is hereby amended to read as follows:

213.270 1. The juvenile court shall use the amount received under NRS 213.220 to 213.290, inclusive, for the purposes described in NRS 213.220 to employ necessary probation officers who shall carry caseloads substantially less than required for normal or routine supervision, and to initiate new techniques and services of an innovative nature for [delinquent youth.] *children.*

2. The department shall determine the applicable costs to the state in calculating amounts to be paid to a juvenile court.

Sec. 58. NRS 244.162 is hereby amended to read as follows:

244.162 The board of county commissioners may establish, in [any county where funds are] *a county where money is* expended under the provisions of NRS 213.220 to 213.290, inclusive, special supervision programs for the rehabilitation of [youthful offenders] *children* in accordance with the provisions of NRS 213.220 to 213.290, inclusive.

Sec. 59. NRS 277.065 is hereby amended to read as follows:

277.065 1. Within the limits of legislative appropriations, the department of education, the county school districts of the various counties of the state, the Nevada youth training center bureau and the [Nevada girls training] *Caliente youth* center bureau of the youth *and family* services division of the department of human resources may enter into cooperative arrangements for the purpose of improving the quality of the academic and occupational education provided at the Nevada youth training center and [Nevada girls training] *Caliente youth* center.

2. This authorization includes the right to pay over money appropriated to the Nevada youth training center or [Nevada girls training] *Caliente youth* center to the department of education or to a county school district when necessary to accomplish the purpose of this section.

Sec. 60. NRS 281.210 is hereby amended to read as follows:

281.210 1. Except as provided in this section, it is unlawful for any [individual] *person* acting as a school trustee, state, township, municipal or county [official,] *officer,* or as an employing authority of the University of Nevada, any school district or of the state, any town, city or county, or for any state or local board, agency or commission, elected or appointed, to employ in any capacity on behalf of the State of Nevada, or any county, township, municipality or school district thereof, or the University of Nevada, any relative of such [individual] *a person* or of any member of such *a* board, agency or commission, within the third degree of consanguinity or affinity.

2. This section does not apply:

(a) To school districts, when the teacher or other school employee so related is not related to more than one of the trustees or person who is an employing authority by consanguinity or affinity and [shall receive] *receives* a unanimous vote of all members of the board of trustees and approval by the state department of education.

(b) To school districts, when the teacher or other school employee so related has been employed by an abolished school district or educational district, which constitutes a part of the employing county school district, and the county school district for 4 years or more [prior to] *before* April 1, 1957.

(c) To the wife of the warden of an institution or manager of a facility of the department of prisons.

(d) To the wife of the superintendent of the [Nevada girls training] *Caliente youth* center.

(e) To relatives of blind officers and employees of the bureau of services to the blind of the rehabilitation division of the department of human resources when such relatives are employed as automobile drivers for such officers and employees.

3. Nothing in this section:

(a) Prevents any officer in this state, employed under a flat salary, from employing any suitable person to assist in any such employment, when the payment for any such service [shall be] *is* met out of the personal funds of [such] *the* officer.

(b) Disqualifies any widow with a dependent or dependents as an employee of any officer or board in this state, or any of its counties, townships, municipalities or school districts.

4. A person employed contrary to the provisions of this section shall not be compensated for such employment.

5. Any person violating any provisions of this section is guilty of a gross misdemeanor.

Sec. 61. NRS 334.010 is hereby amended to read as follows:

334.010 1. No automobile may be purchased by any department, office, bureau, officer or employee of the state without prior written consent of the state board of examiners.

2. All such automobiles may be used for official purposes only.

3. All such automobiles, except:

(a) Automobiles maintained for and used by the governor;

(b) Automobiles used by or under the authority and direction of the chief parole and probation officer, the state contractors' board and auditors, the state fire marshal, the investigation division of the department of motor vehicles and public safety and investigators of the state gaming control board and the attorney general;

(c) One automobile used by the department of prisons;

(d) Two automobiles used by the [Nevada girls training] *Caliente youth* center;

(e) Three automobiles used by the Nevada youth training center; and

(f) Four automobiles used by the youth parole bureau of the youth *and family* services division of the department of human resources,

must be labeled by painting the words "State of Nevada" and "For Official Use Only" thereon in plain lettering. The director of the department of general services or his representative shall prescribe the size and location of the label for all such automobiles.

4. Any officer or employee of the State of Nevada who violates any provision of this section is guilty of a misdemeanor.

Sec. 62. NRS 389.020 is hereby amended to read as follows:

389.020 1. In all public schools, the [Nevada girls training] *Caliente youth* center, and the Nevada youth training center, instruction must be given in American government, including but not limited to the essentials of the Constitution of the United States, the constitution of the State of Nevada, the origin and history of the constitutions and the study of and devotion to American institutions and ideals.

2. The instruction required in subsection 1 must be given during at least 1 year of the elementary school grades and for a period of at least 1 year in all high schools.

Sec. 63. NRS 389.035 is hereby amended to read as follows:

389.035 No pupil in any public high school, the [Nevada girls training] *Caliente youth* center or the Nevada youth training center may receive a certificate or diploma of graduation without having passed a course in American government and American history as required by NRS 389.020 and 389.030.

Sec. 64. NRS 391.090 is hereby amended to read as follows:

391.090 1. Any person who is:

(a) Granted a license to teach or perform other educational functions in the public schools of Nevada, in the school conducted at the Nevada youth training center or the [Nevada girls training] *Caliente youth* center or for any program of instruction for kindergarten or grades 1 to 12, inclusive, conducted at any correctional institution in the department of prisons; or

(b) Charged with the duty at the Nevada youth training center or the [Nevada girls training] *Caliente youth* center of giving instruction in the Constitution of the United States and the constitution of the State of Nevada,

must show, by examination or credentials showing college, university or normal school study, satisfactory evidence of adequate knowledge of the origin, history, provisions and principles of the Constitution of the United States and the constitution of the State of Nevada.

2. The commission may grant a reasonable time for compliance with the terms of this section.

Sec. 65. NRS 422.283 is hereby amended to read as follows:

422.283 1. The [welfare] *youth and family services* division *of the department* may charge reasonable fees for the services it provides in placing, arranging the placement of or assisting in placing or arranging the placement of any child for adoption, and for conducting any investigation required pursuant to NRS 127.280.

2. The [welfare] *youth and family services* division may waive or reduce any fee charged pursuant to subsection 1 if it determines that the adoptive parents are not able to pay the fee or the needs of the child require a waiver or reduction of the fee.

3. Any money collected pursuant to this section must be accounted for in the appropriate account of the [welfare] *youth and family services* division and may be used only to pay for the costs of any adoptive or post-adoptive services provided by the division.

Sec. 66. NRS 423.010 is hereby amended to read as follows:

423.010 As used in this chapter:

1. "Administrator" means the administrator of the youth *and family* services division in the department.

2. "Department" means the department of human resources.

3. "Director" means the director of the department.

4. "Superintendent" means the superintendent of the northern Nevada children's home or the superintendent of the southern Nevada children's home.

Sec. 67. NRS 423.210 is hereby amended to read as follows:

423.210 1. A child other than an orphan [shall] *must* be admitted to the northern Nevada children's home or the southern Nevada children's home when committed by the district court of the county in which such *a* child resides as a dependent child.

2. The county from which the child was committed shall pay to the superintendent [the sum of $50 monthly] for the care and support of each child committed and the order of commitment [shall] require the parent or parents of the child to reimburse [such county the sum of $50 per month; but when] *the county. The amount paid must be equal to the amount paid by the welfare division of the department for a child placed in a foster home licensed pursuant to chapter 424 of NRS. If* it appears to the district court that the parent or parents are unable to pay [$50 per month,] *the amount required,* the order shall require the payment of such *a* lesser amount as [may be found] *it finds* to be reasonable, or, if the parents be found unable to pay anything, [no reimbursement shall be ordered.] *the court shall not order reimbursement.*

3. If the parent or parents [shall] fail or refuse to comply with the order of the court, the county where the child was committed [shall thereupon be] *is* entitled to recover from the parent or parents, by appropriate legal action, all sums due together with interest thereon at the rate of 7 percent per annum.

4. The board of county commissioners of the county from which the child was committed shall advise the district attorney of [such] *the* county of the

failure of a parent or parents to make the support payments required by the court order and the district attorney shall cause appropriate legal action to be taken to collect such payments, together with interest thereon at the rate of 7 percent per annum.

5. When any parent of a child committed under this section [shall fail] *fails* to pay the amount ordered for support or, if no support [be ordered, shall fail] *is ordered, fails* to make any contribution for support, for a period of 1 year, that failure [shall be] *is* prima facie proof of abandonment of the child by the parents.

Sec. 68. NRS 424.020 is hereby amended to read as follows:

424.020 1. The [welfare] *youth and family services* division of the department of human resources, in cooperation with the state board of health and the state fire marshal, shall:

(a) Establish reasonable minimum standards for family foster homes and group foster homes.

(b) Prescribe rules for the regulation of family foster homes and group foster homes.

2. All licensed family foster homes and group foster homes must conform to the standards established and the rules prescribed in subsection 1.

Sec. 69. NRS 424.030 is hereby amended to read as follows:

424.030 1. No person [shall] *may* conduct a family foster home or a group foster home as defined in NRS 424.010 without receiving a license to do so from the [welfare] *youth and family services* division of the department of human resources.

2. Except as provided in subsection 4, no license [shall] *may* be issued to a family foster home or a group foster home until an investigation of the home and its standards of care has been made by the [welfare] *youth and family services* division or a child-placing agency licensed by the [welfare] division.

3. Any family foster home or group foster home that conforms to the established standards of care and prescribed rules [shall] *must* receive a regular license from the [welfare] *youth and family services* division, which [shall] *must* be in force for 1 year from the date of issuance. On reconsideration of the standards maintained, the license may be renewed annually.

4. When, because of an emergency situation, a child must be placed [prior to] *before* completion of the licensing investigation, a family foster home or group foster home may be issued a provisional license for a period not to exceed 3 months, renewable for one additional period not to exceed 3 months. A provisional license may be issued to a foster home only after determination that the health and safety of the child or children placed therein will not be jeopardized. If at any time during the period a provisional license is in effect, it is determined that the foster home does not meet minimum licensing standards, the provisional license [shall] *must* be revoked and any child or children placed in such home [shall] *must* be promptly removed by the placing agency. If, on or before the expiration date of the provisional license, it has been determined that the foster home meets minimum licensing standards, a regular license [shall] *must* be issued pursuant to the provisions of subsection 3, to be in force for 1 year from the date of issuance.

5. When a family foster home does not meet minimum licensing standards but offers values and advantages to a particular child or children and will not jeopardize the health and safety of the child or children placed therein, such family foster home may be issued a special license, which shall be in force for 1 year from the date of issuance and may be renewed annually. No foster children other than those specified on the license may be cared for in the home.

6. The license [shall] *must* show:

(a) The name of the persons licensed to conduct the family foster home or group foster home.

(b) The exact location of the family foster home or group foster home.

(c) The number of children that may be received and cared for at one time.

(d) If the license is a special license issued pursuant to subsection 5, the name of the child or children for whom the family foster home is licensed to provide care.

7. No family foster home or group foster home [shall] *may* receive for care more children than are specified in the license.

Sec. 70. NRS 424.031 is hereby amended to read as follows:

424.031 1. The [welfare] *youth and family services* division of the department of human resources shall obtain from appropriate law enforcement agencies information on the background and personal history of each applicant for a license to conduct a foster home, prospective employee of that applicant or of a person who is licensed to conduct a foster home, and resident of a foster home who is 18 years of age or older, to determine whether the person investigated has been arrested for or convicted of any crime.

2. The division may charge each person investigated pursuant to this section for the reasonable cost of that investigation.

Sec. 71. NRS 424.033 is hereby amended to read as follows:

424.033 1. Each applicant for a license to conduct a foster home, prospective employee of that applicant or of a person who is licensed to conduct a foster home, or resident of a foster home who is 18 years of age or older shall submit to the [welfare] *youth and family services* division of the department of human resources a complete set of his fingerprints and written permission authorizing the division to forward those fingerprints to the central repository for Nevada records of criminal history for submission to the Federal Bureau of Investigation for its report to enable the division to conduct an investigation pursuant to NRS 424.031.

2. The division may exchange with the central repository or the Federal Bureau of Investigation any information respecting the fingerprints submitted.

3. When a report from the Federal Bureau of Investigation is received by the central repository, it shall immediately forward a copy of the report to the division.

Sec. 72. NRS 424.035 is hereby amended to read as follows:

424.035 1. The [welfare] *youth and family services* division of the department of human resources may provide by regulation for the delegation of its authority to issue provisional licenses to foster homes if the situation requires the issuance of a provisional license immediately.

2. In the regulations adopted pursuant to this section, the [welfare] *youth and family services* division shall specify:

(a) The classes of persons to whom the authority will be delegated;

(b) The procedure for applying for authority to issue provisional licenses;

(c) The conditions under which a provisional license may be issued by a person to whom authority has been delegated pursuant to this section; and

(d) Procedures which the person who has issued a provisional license must follow after doing so.

Sec. 73. NRS 424.040 is hereby amended to read as follows:

424.040 The [section of child welfare services of the welfare] *youth and family services* division of the department of human resources, or its authorized agent, shall visit every licensed family foster home and group foster home as often as is necessary to assure that proper care is given to the children.

Sec. 74. NRS 424.050 is hereby amended to read as follows:

424.050 Whenever the [welfare] *youth and family services* division of the department of human resources [shall be] *is* advised or [shall have] *has* reason to believe that any person is conducting or maintaining a foster home for children without a license, as required by NRS 424.010 to 424.100, inclusive, the [welfare] division shall have an investigation made. If the person is conducting a foster home, the [welfare] division shall either issue a license or take action to prevent continued operation of the foster home.

Sec. 75. NRS 424.060 is hereby amended to read as follows:

424.060 If at any time the [section of child welfare services of the welfare] *youth and family services* division of the department of human resources [shall find] *finds* that a child in a foster home is subject to undesirable influences or lacks proper or wise care and management, the [section] *division* shall notify any agency or institution that has placed the child in the home to remove the child from the home. If the child is in a foster home where he has been placed by his parents, relatives or other persons independently of an agency, the [section] *division* shall take necessary action to remove the child and arrange for his care.

Sec. 76. NRS 424.070 is hereby amended to read as follows:

424.070 No person other than the parents or guardian of a child and no agency or institution in this state or from outside this state may place any child in the control or care of any person without sending notice of the pending placement and receiving approval of the placement from the [welfare] *youth and family services* division of the department of human resources. No such person, parent, guardian, agency or institution may place such child for adoption except as provided in chapter 127 of NRS.

Sec. 77. NRS 432.010 is hereby amended to read as follows:

432.010 As used in this chapter:

1. "Child" means a person less than 18 years of age, or if in school, until graduation from high school.

2. "Maintenance" means general expenses for care such as board, shelter, clothing, transportation and other necessary or incidental expenses, or any of them, or money payments therefor.

3. "Special services" means medical, hospital, psychiatric, surgical or dental services, or any combination thereof.

4. "Welfare division" means the welfare division of the department of human resources.

5. "Youth and family services division" means the youth and family services division of the department of human resources.

Sec. 78. NRS 432.020 is hereby amended to read as follows:

432.020 The [welfare] *youth and family services* division shall:

1. Provide, to the extent that support is not otherwise ordered by a court pursuant to chapter 432B of NRS, maintenance and special services to:

(a) Unmarried mothers and children awaiting adoptive placement.

(b) Handicapped children who are receiving specialized care, training or education.

(c) Children who are placed in the custody of the [welfare] *youth and family services* division, and who are placed in foster homes, homes of relatives other than parents or other facilities or institutions, but payment for children who are placed in the northern Nevada children's home or the southern Nevada children's home must be made in accordance with the provisions of NRS 423.210. If any child is to be placed in the custody of the [welfare] *youth and family services* division, pursuant to any order of a court or request made by a person or agency other than the [welfare] *youth and family services* division, this order or request may be issued or made only after an opportunity for a hearing has been given to the [welfare] *youth and family services* division after 3 days' notice, or upon request of the [welfare] *youth and family services* division.

2. Except as otherwise provided in chapter 432B of NRS for an abused or neglected child, return a child to his natural home or home of a competent relative for a probationary period any time after the expiration of 60 days from the placement of the child in the custody of the [welfare] *youth and family services* division, with notification to but without formal application to a court, but the [welfare] *youth and family services* division retains the right to custody of the child during the probationary period, until a court of competent jurisdiction determines proper custody of the child.

3. Accept money from and cooperate with the United States or any of its agencies in carrying out the provisions of this chapter and of any federal acts pertaining to public child welfare and youth services, insofar as authorized by the legislature.

Sec. 79. NRS 432.100 is hereby amended to read as follows:

432.100 1. There is hereby established a statewide central registry for the collection of information concerning abuse or neglect of a child. This central registry must be maintained by and in the central office of the [welfare] *youth and family services* division.

2. The central registry must contain:

(a) The information in any report of child abuse or neglect made pursuant to NRS 432B.220, and the results, if any, of the investigation of the report;

(b) Statistical information on the protective services provided in this state; and

(c) Any other information which the [welfare] *youth and family services* division determines to be in furtherance of NRS 432.100 to 432.130, inclusive, and 432B.010 to 432B.400, inclusive.

3. The [welfare] *youth and family services* division may designate a county hospital in each county having a population of 100,000 or more as a regional registry for the collection of information concerning the abuse or neglect of a child.

Sec. 80. NRS 432.110 is hereby amended to read as follows:

432.110 The [welfare] *youth and family services* division shall maintain a record of the names and identifying data, dates and circumstances of any persons requesting or receiving information from the central or regional registries and any other information which might be helpful in furthering the purposes of NRS 432.100 to 432.130, inclusive, and 432B.010 to 432B.400, inclusive.

Sec. 81. NRS 432.120 is hereby amended to read as follows:

432.120 1. Information contained in the central or regional registries or obtained for these registries must not be released unless the right of the applicant to the information is confirmed and the released information discloses the nature of the disposition of the case or its current status.

2. Unless an investigation of a report, conducted pursuant to NRS 432.100 to 432.130, inclusive, and 432B.010 to 432B.400, inclusive, reveals some credible evidence of alleged abuse or neglect of a child, all information identifying the subject of a report must be expunged from the central and regional registries at the conclusion of the investigation or within 60 days after the report is filed, whichever occurs first. In all other cases, the record of the substantiated reports contained in the central or regional registries must be sealed no later than 10 years after the child who is the subject of the report reaches the age of 18.

3. The [welfare] *youth and family services* division shall adopt regulations to carry out the provisions of this section.

Sec. 82. NRS 432.135 is hereby amended to read as follows:

432.135 1. The committee for protection of children is hereby created within the department of human resources.

2. The committee consists of the following seven members, with at least one member residing within a county with a population of less than 100,000:

(a) The administrator of the youth *and family* services division of the department of human resources;

(b) A superintendent of a county school district appointed by the director of the department of human resources;

(c) A director of a local agency providing services for abused or neglected children appointed by the director of the department of human resources;

(d) A representative of a community organization involved with children, appointed by the director of the department of human resources; and

(e) Three members of the general public with knowledge of or experience in services to prevent abuse or neglect of children, appointed by the governor.

Sec. 83. Chapter 432A of NRS is hereby amended by adding thereto the provisions set forth as sections 84 to 95, inclusive, of this act.

Sec. 84. *"Administrator" means the administrator of the division.*

Sec. 85. *"Board" means the board for child care.*

Sec. 86. *"Bureau" means the bureau of services for child care of the division.*

Sec. 87. *"Chief" means the chief of the bureau.*

Sec. 88. *"Child" means a person who is less than 18 years of age.*

Sec. 89. *"Child care facility" means an establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during the day or overnight, for compensation, to five or more children under 18 years of age. "Child care facility" does not include:*

(a) The home of a natural parent or guardian, foster home as defined in chapter 424 of NRS or maternity home; or

(b) A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility.

Sec. 90. *"Department" means the department of human resources.*

Sec. 91. *"Director" means the director of the department.*

Sec. 92. *"Division" means the youth and family services division of the department.*

Sec. 93. *The department is responsible for the provision of educational, developmental and therapeutic services for developmentally-delayed children from birth through 2 years of age, and for their families. The department shall transfer responsibility for providing services for these children when they become eligible for local programs in their school districts.*

Sec. 94. *Employees of the division who have direct contact with children and who provide professional services must receive at least 15 hours of training that is provided or approved by the division. Employees whose positions require that they be licensed or certified must maintain that licensure or certification.*

Sec. 95. *1. Except as otherwise provided in this section, no child under 6 years of age may be placed in a residential facility which cares for seven or more children.*

2. A child under 6 years of age may be placed in a hospital, as defined in NRS 449.0038, a facility for skilled nursing, as defined in NRS 449.0039, or a residential facility for groups, as defined in NRS 449.017, that is operated by the mental hygiene and mental retardation division of the department of human resources pursuant to NRS 433A.510.

3. The administrator may grant a waiver of the provisions of subsection 1 if he determines that the placement is in the best interest of the child.

Sec. 96. NRS 432A.020 is hereby amended to read as follows:

432A.020 [For purposes of] *As used in* this chapter [:

1. "Board" means the board for child care.

2. "Bureau" means the bureau of services for child care of the youth services division of the department.

3. "Chief" means the chief of the bureau.

4. "Child care facility" means an establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during

the day or overnight, for compensation, to five or more children under 18 years of age. "Child care facility" does not include:

(a) The home of a natural parent or guardian, foster home as defined in chapter 424 of NRS or maternity home; or

(b) A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility.

5. "Department" means the department of human resources.

6. "Director" means the director of the department.] , *unless the context otherwise requires, the words and terms defined in sections 84 to 92, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 97. NRS 432A.071 is hereby amended to read as follows:

432A.071 1. The board for child care is hereby created.

2. The board consists of five members appointed by the administrator [of the youth services division of the department] with the concurrence of the director.

Sec. 98. NRS 432A.075 is hereby amended to read as follows:

432A.075 1. The board may meet regularly at least [four times a] *once each* year and may meet at such other times as the board deems necessary.

2. Each member of the board is entitled to receive a salary of [not more than] $60 per day [, as fixed by the board,] while engaged in the business of the board.

Sec. 99. NRS 432A.077 is hereby amended to read as follows:

432A.077 1. The [board] *administrator* shall adopt:

(a) Licensing standards for child care facilities.

(b) Such other regulations as [it] *he* deems necessary or convenient to carry out the provisions of this chapter.

2. The [board] *administrator* shall require that the practices and policies of each child care facility provide adequately for the protection of the health and safety and the physical, moral and mental well-being of each child accommodated in the facility.

3. If the [board] *administrator* finds that the practices and policies of a child care facility are substantially equivalent to those required by the [board in its regulations, it] *administrator in his regulations, he* may waive compliance with a particular standard or other regulation by that facility.

4. The board shall:

(a) Advise and assist the division, focusing on the general policies and philosophical purpose of the division.

(b) Consider methods of improving the quality of services for child care in the state.

(c) Oversee the award of money from the children's trust account.

(d) Study the needs of children in Nevada and promote adequate services to meet those needs.

Sec. 100. NRS 432A.079 is hereby amended to read as follows:

432A.079 1. The [board] *administrator* shall establish a policy providing for coordination among all interested public, private and commercial agencies or entities to foster their cooperation in the interests of:

(a) Improving the quality of child care services offered by each participating agency and entity.

(b) Ensuring continuity in the program of community child care for each family.

(c) Reaching the maximum number of families possible within available resources, with top priority given to low-income families.

(d) Increasing opportunities for developing staff competence and career development within and between cooperating agencies and entities.

(e) Developing the most efficient, effective and economical methods for providing services to children and families.

(f) Ensuring an effective voice by parents of children receiving child care in the policy for and direction of programs.

(g) Mobilizing the resources of the community in such a manner as to ensure maximum public, private and individual commitment to provide expanded child care.

2. Such a policy must be primarily concerned with the coordination of day care and preschool programs, and also be concerned with:

(a) Availability of other needed services for children in preschool or day care programs;

(b) Availability of needed services for children of school age; and

(c) Coordination of community services with preschool or day care programs.

Sec. 101. Chapter 432B of NRS is hereby amended by adding thereto the provisions set forth as sections 102 to 114, inclusive, of this act.

Sec. 102. *"Administrator" means the administrator of the youth and family services division.*

Sec. 103. *"Department" means the department of human resources.*

Sec. 104. *"Emergency-shelter care" means care provided on a temporary basis, and not for more than 60 days, for children who must be removed from their homes to ensure their safety. The term does not include a placement made for the primary purpose of treatment.*

Sec. 105. *"Preventive services" include:*

1. Primary preventive services, which are intended to educate the community about abuse and neglect. Primary preventive services include, but are not limited to, educational workshops and materials, parenting classes, public service announcements, safety programs, parenting newsletters and providing materials for schools.

2. Secondary preventive services, which are directed at families at high risk for abuse and neglect of children to:

(a) Preserve families;

(b) Increase a family's ability to care for its own children; and

(c) Prevent the occurrence of abuse, neglect or delinquency,

thereby preventing the need for placement of children away from their own homes. Secondary preventive services include, but are not limited to, alcohol and drug treatment, case-management services, services such as advocacy, clothing, day care, emergency cash, employment assistance, food, housing, language translation, transportation, payment for utilities, crisis intervention, education,

legal services, medical diagnoses and treatment, outreach programs, parent and child education, respite care, social support such as support groups, and counseling in areas such as advocacy and empowerment skills, management of anger, family counseling, marital and personal counseling, self-esteem development and stress reduction.

3. Tertiary preventive services, which include the treatment of abuse and neglect. Tertiary preventive services include, but are not limited to, alcohol and drug treatment, case-management services, crisis intervention, medical diagnoses and treatment, parent and child education, psycho-social assessments, respite care, social support such as support groups, and therapy and treatment in areas such as advocacy and empowerment skills, management of anger, family therapy, marital and personal counseling, psycho-therapy, self-esteem development and stress reduction.

Sec. 106. *"Protective services" means a specialized service for child welfare that is provided on behalf of a child who is found or considered by the administrator to be abused, neglected or sexually exploited. The purpose of protective services is to identify, treat and prevent abuse, neglect or exploitation of a child and to ensure reasonable efforts are made to maintain and protect children in their own homes.*

Sec. 107. *"Reasonable efforts" means the efforts of an agency which provides protective services to:*

1. Assess the offending person and the family regarding the appropriateness of preventive and reunification services;

2. Identify available and accessible community resources to provide those services; and

3. Assist the family in the use of the services in order to maintain the child in the home.

These efforts may consist of the provision of case-management services, direct services, financial or in-kind benefits, or counseling assistance.

Sec. 108. *"Reunification services" means services to improve family functioning in order to reunify a child placed in out-of-home care with his parents or relatives. Reunification services include, but are not limited to, case-management services, direct services, financial or in-kind benefits, counseling and treatment services.*

Sec. 109. *"Youth and family services division" means the youth and family services division of the department of human resources.*

Sec. 110. *1. The youth and family services division may request the court to order removal of an abusive or offending person from a home.*

2. The division may expend money and charge fees based upon the financial resources of the family to keep the abusive or offending person out of the home.

Sec. 111. *The administrator shall adopt such regulations as are necessary to carry out the provisions of this chapter, including regulations governing the acceptance of children and families in need of preventive and reunification services.*

Sec. 112. *The agency which provides protective services shall:*

1. Act promptly on every report of abuse, neglect or sexual exploitation of a child, and in no event more than 72 hours after receiving the report.

2. Determine if the child is in danger of abuse, neglect or exploitation.

3. If abuse, neglect or exploitation exists:

(a) Offer or arrange services to the parents to assist them in providing care;

(b) Provide or arrange services to enable them to protect their child from harm and meet the child's minimal needs; and

(c) Ensure that all reasonable efforts are made before the placement of each child in out-of-home care to prevent or eliminate the need for removal of the child, as well as reasonable efforts to make it possible for the child to return to his home when placement is necessary.

When parents are unable or unwilling to change conditions which place the child's safety in jeopardy, the agency shall coordinate, as defined by regulation, with the youth and family services division to take appropriate action to obtain appropriate care for the child.

4. If a court confirms that the child has been subject to abuse, neglect or exploitation, provide or arrange preventive or reunification services for at least 90 days unless otherwise determined by the court or the division. The agency shall notify the division not less than 5 days before any transfer of the child.

5. If the abuse, neglect or exploitation is confirmed but no immediate danger to the child exists, coordinate services for the family with the youth and family services division, as defined by regulation.

6. If the court maintains legal custody but leaves physical custody with the parent or guardian, provide or arrange preventive services to the family for at least 90 days, unless otherwise determined by the court or the division, before petitioning the court for a transfer to the division. The agency which provides protective services shall notify the division within 5 days before a potential transfer.

7. If a report of abuse, neglect or exploitation is investigated and found to be unsubstantiated, but the potential for the occurrence of abuse, neglect or exploitation may exist, coordinate services, as defined by regulation, for the family with the division. The agency which provides protective services may request appropriate and available services from the youth and family service division, as defined by regulation, to assist in the evaluation and treatment of children and families in need of such services. The administrator shall adopt regulations for the uniform transfer of cases from the agencies providing protective services to the division. The division shall enter into a written agreement with such agencies outlining the conditions for the acceptance of children and families in need of preventive and reunification services.

Sec. 113. *An agency which provides protective services shall comply with the regulations adopted by the administrator.*

Sec. 114. *A county agency authorized as an agency which provides protective services in a county whose population is 100,000 or more shall report annually, on a form provided the youth and family services division on or before August 1 of each year, on the results of the program and services provided, including but not limited to the number of children and families served, by type of service provided, the number of out-of-home placements prevented, the number of children placed in out-of-home care, the number of children reunited with*

parent or relatives, the number of children receiving emergency shelter care and the number of days such care was provided.

Sec. 115. NRS 432B.010 is hereby amended to read as follows:

432B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 432B.020 to [432B.120,] *432B.110,* inclusive, *and sections 102 to 109, inclusive, of this act,* have the meanings ascribed to them in those sections.

Sec. 116. NRS 432B.030 is hereby amended to read as follows:

432B.030 "Agency which provides protective services" means:

1. The local office of the [welfare] *youth and family services* division; or
2. An agency of a county authorized by the court to receive and investigate reports of abuse or neglect,

which provides or arranges for necessary services.

Sec. 117. NRS 432B.180 is hereby amended to read as follows:

432B.180 The [welfare] *youth and family services* division shall:

1. Administer any money granted to the state by the Federal Government under 42 U.S.C. § 5103;
2. Plan and coordinate all protective services provided throughout the state;
3. Provide directly or arrange for other persons or governmental organizations to provide protective services;
4. Coordinate its activities with and assist the efforts of any law enforcement agency, a court of competent jurisdiction and any public or private organization which provides social services for the prevention, identification and treatment of abuse or neglect of children;
5. Involve communities in the improvement of protective services;
6. Evaluate all protective services provided throughout the state *;* [and withhold money from or revoke the license of any agency providing protective services which is not complying with the regulations adopted by the welfare division;] and
7. Evaluate the plans submitted for approval pursuant to NRS 432B.395.

If an agency which provides protective services is found not to be in compliance with the regulations of the division, the division may establish a plan for corrective action to bring the agency into compliance no later than 1 year after completion of the review. If the division determines an agency's noncompliance represents a danger to the children and families it serves, or if at the end of 1 year after the establishment of a plan for corrective action the agency continues to be out of compliance with the regulations, the division may revoke the agency's license, withhold money from the agency, or petition the appropriate district court to compel compliance with the division's regulations.

Sec. 118. NRS 432B.190 is hereby amended to read as follows:

432B.190 The [welfare] *youth and family services* division shall adopt regulations establishing reasonable and uniform standards for:

1. Protective services provided in this state;
2. Programs for the prevention of abuse or neglect of a child;
3. The development of local councils involving public and private organizations;

4. Reports of abuse or neglect, records of these reports and the response to these reports;

5. The management and assessment of reported cases of abuse or neglect;

6. The protection of the legal rights of parents and children;

7. Emergency shelter for a child;

8. The prevention, identification and correction of abuse or neglect of a child in residential institutions; and

9. Evaluating the development and contents of a plan submitted for approval pursuant to NRS 432B.395.

Sec. 119. NRS 432B.200 is hereby amended to read as follows:

432B.200 The [welfare] *youth and family services* division shall establish and maintain a center with a toll-free telephone number to receive reports of abuse or neglect of a child in this state 24 hours a day, 7 days a week. Any reports made to this center must be promptly transmitted to the agency providing protective services in the community where the child is located.

Sec. 120. NRS 432B.290 is hereby amended to read as follows:

432B.290 1. Data or information concerning reports and investigations thereof made pursuant to this chapter may be made available only to:

(a) A physician who has before him a child who he reasonably believes may have been abused or neglected;

(b) A person authorized to place a child in protective custody if he has before him a child who he reasonably believes may have been abused or neglected and he requires the information to determine whether to place the child in protective custody;

(c) An agency, including an agency in another jurisdiction, responsible for or authorized to undertake the care, treatment or supervision of:

(1) The child; or

(2) The person responsible for the child's welfare;

(d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of abuse or neglect of a child;

(e) Any court, for in camera inspection only, unless the court determines that public disclosure of the information is necessary for the determination of an issue before it;

(f) A person engaged in bona fide research or an audit, but any information identifying the subjects of a report must not be made available to him;

(g) The child's guardian ad litem;

(h) A grand jury upon its determination that access to these records is necessary in the conduct of its official business;

(i) An agency which provides protective services or which is authorized to receive, investigate and evaluate reports of abuse or neglect of a child;

(j) A team organized for the protection of a child pursuant to NRS 432B.350;

(k) A parent or legal guardian of the child, if the identity of the person responsible for reporting the alleged abuse or neglect of the child to a public agency is kept confidential;

(l) The person named in the report as allegedly being abused or neglected, if he is not a minor or otherwise legally incompetent;

(m) An agency which is authorized by law to license foster homes or facilities for children or to investigate persons applying for approval to adopt a child, if the agency has before it an application for that license or is investigating an applicant to adopt a child; or

(n) Upon written consent of the parent, any officer of this state or a city or county thereof or legislator authorized, by the agency or department having jurisdiction or by the legislature, acting within its jurisdiction, to investigate the activities or programs of an agency which provides protective services if:

(1) The identity of the person making the report is kept confidential; and

(2) The officer, legislator or a member of his family is not the person alleged to have committed the abuse or neglect.

2. Any person, except for the subject of a report or a district attorney or other law enforcement officer initiating legal proceedings, who is given access, pursuant to subsection 1, to information identifying the subjects of a report who makes this information public is guilty of a misdemeanor.

3. The **[**welfare**]** *youth and family services* division shall adopt regulations to carry out the provisions of this section.

Sec. 121. NRS 432B.360 is hereby amended to read as follows:

432B.360 1. A parent or guardian of a child who is in need of protection may place the child with a public agency authorized to care for children or a private institution or agency licensed by the department of human resources to care for such children if:

(a) Efforts to keep the child in his own home have failed; and

(b) The parents or guardian and the agency or institution voluntarily sign a written agreement for placement of the child which sets forth the rights and responsibilities of each of the parties to the agreement.

2. If a child is placed with an agency or institution pursuant to subsection 1, the parent or guardian shall:

(a) If able, contribute to the support of the child during his temporary placement;

(b) Inform the agency or institution of any change in his address or circumstances; and

(c) Meet with a representative of the agency or institution and participate in developing and carrying out a plan for the possible return of the child to his custody, the placement of the child with a relative or the eventual adoption of the child.

3. A parent or guardian who voluntarily agrees to place a child with an agency or institution pursuant to subsection 1 is entitled to have the child returned to his physical custody within 48 hours of a written request to that agency or institution. If that agency or institution determines that it would be detrimental to the best interests of the child to return him to the custody of his parent or guardian, it shall cause a petition to be filed pursuant to NRS 432B.490.

4. If the child has remained in temporary placement for 6 consecutive months, the agency or institution shall:

(a) Immediately return the child to the physical custody of his parent or guardian; or

(b) Cause a petition to be filed pursuant to NRS 432B.490.

5. The [welfare] *youth and family services* division shall adopt regulations to carry out the provisions of this section.

Sec. 122. NRS 432B.395 is hereby amended to read as follows:

432B.395 An agency which provides protective services shall submit annually to the [welfare] *youth and family services* division for its approval a plan to ensure that reasonable efforts are made by that agency to prevent or eliminate removal of a child from his home and, when removal is necessary, to facilitate the return of the child to its home.

Sec. 123. NRS 433A.140 is hereby amended to read as follows:

433A.140 1. Any person may apply to any public or private mental health facility in the State of Nevada for admission to such *a* facility as a voluntary client for the purposes of observation, diagnosis, care and treatment. In the case of a person who has not attained the age of majority, application for voluntary admission may be made on his behalf by his spouse, parent or legal guardian.

2. If a person to be admitted as a voluntary client is 14 years of age or older, but under the age of majority, he must consent to the admission.

3. A person under the age of majority who is admitted to a mental health facility as a voluntary client must have his admission reviewed 60 days after his date of admission. The review must be conducted by the administrative officer of the facility. If the administrative officer determines that continuation of the treatment is in the best interest of the client, the facility must petition the district court for certification of the need for continuing treatment.

4. If the application is for admission to a division facility, the applicant [shall] *must* be admitted as a voluntary client if examination by admitting personnel reveals that the person needs and may benefit from services offered by the mental health facility.

[3. Any] *5. A* person admitted to a division facility as a voluntary client [shall] *must* be released immediately after the filing of a written request for release with the responsible physician or his designee within the normal working day.

[4. Any] *6. A* person admitted to a division facility as a voluntary client who has not requested release may nonetheless be released by the medical director when examining personnel at the division facility determine that the client has recovered or has improved to such an extent that he is not considered a danger to himself or others and that the services of that facility are no longer beneficial to him or advisable.

Sec. 124. NRS 433A.500 is hereby amended to read as follows:

433A.500 1. An emotionally disturbed child is any child who has [attained the age of 2 years but has] not attained the age of 18 years, whose progressive development of personality is interfered with or arrested by mental disorder so that he shows impairment in the capacity expected of him for his age and endowment for:

(a) A reasonably accurate perception of the world around him;

(b) Control of his impulses;
(c) Satisfying and satisfactory relationships with others;
(d) Learning; or
(e) Any combination of these factors.

2. The treatment provided an emotionally disturbed child must be designed to facilitate the adjustment and effective functioning of that child in his present or anticipated situation in life, and includes:

(a) Services provided without admission to a facility, such as:

(1) Counseling for the family;

(2) Therapy in a group for parents, adolescents and children;

(3) Classes for parents in effective techniques for the management of children;

(4) Individual therapy for children; and

(5) Evaluation of the child, including personal assessments and studies of individual social environments;

(b) Services for the care of children during the day, involving educational programs and therapy programs provided after school or for half a day;

(c) In cooperation with the [welfare] *youth and family services* division of the department, placement in transitional homes operated by professionally trained parents working in close consultation with the administrative officer and his staff; and

(d) Short-term residential services providing 24-hour supervision, evaluation and planning and intensive counseling for the family, therapy and educational evaluation and consultation.

Sec. 125. NRS 433A.560 is hereby amended to read as follows:

433A.560 *1.* In any case involving an application from the child's parent, parents or legal guardian, the child shall first be examined and evaluated by the administrative officer or his staff and admitted to a treatment facility only if, in the judgment of the administrative officer:

[1.] *(a)* The child can benefit from the treatment program; and

[2.] *(b)* Facilities and staff are available and adequate to meet the child's needs.

2. During the examination, the administrative officer or his staff must inform the child orally and in writing that he has a right to object to the admission, and the procedures for requesting release at any time if he so desires.

Sec. 126. NRS 444.330 is hereby amended to read as follows:

444.330 1. The health division has supervision over the sanitation, healthfulness, cleanliness and safety, as it pertains to the foregoing matters, of the following state institutions:

(a) Institutions and facilities of the department of prisons.
(b) Nevada mental health institute.
(c) Nevada youth training center.
(d) [Nevada girls training] *Caliente youth* center.
(e) Northern Nevada children's home.
(f) Southern Nevada children's home.
(g) University of Nevada System.

2. The state board of health may adopt regulations pertaining thereto as are necessary to promote properly the sanitation, healthfulness, cleanliness and, as it pertains to the foregoing matters, the safety of such institutions.

3. The state health officer or his authorized agent shall inspect such institutions at least once each calendar year and whenever he deems an inspection necessary to carry out the provisions of this section.

4. The state health officer may publish reports of such inspections.

5. All persons charged with the duty of maintenance and operation of the institutions named in this section shall operate such institutions in conformity with the regulations adopted by the state board of health pursuant to subsection 2.

6. The state health officer or his authorized agent may, in carrying out the provisions of this section, enter upon any part of the premises of any of the institutions named in this section over which he has jurisdiction, to determine the sanitary conditions of such places and to determine whether the provisions of this section and the regulations of the state board of health pertaining thereto are being violated.

Sec. 127. NRS 481.054 is hereby amended to read as follows:

481.054 The following officers and employees of state and local government must be certified by the committee:

1. The bailiff of the supreme court;

2. The bailiffs of the district courts, justices' courts and municipal courts whose duties require them to carry weapons and make arrests;

3. Sheriffs of counties and of metropolitan police departments, their deputies and correctional officers;

4. Constables and their deputies whose official duties require them to carry weapons and make arrests;

5. Personnel of the Nevada highway patrol who exercise the police powers specified in NRS 481.150 and 481.180;

6. Inspectors employed by the public service commission of Nevada who exercise those enforcement powers conferred by chapters 704, 705 and 706 of NRS;

7. Marshals, policemen and correctional officers of cities and towns;

8. Parole and probation officers;

9. Special investigators who are employed full time by the office of any district attorney or the attorney general;

10. Investigators of arson for fire departments who are specially designated by the appointing authority;

11. Members of the police department of the University of Nevada System;

12. The assistant and deputies of the state fire marshal;

13. The brand inspectors of the state department of agriculture who exercise the powers of enforcement conferred in chapter 565 of NRS;

14. Investigators for the state forester firewarden who are specially designated by him and whose primary duties are the investigation of arson;

15. The superintendents and correctional officers of the department of prisons;

16. Employees of the division of state parks of the department of conservation and natural resources designated by the administrator of the division who exercise police powers specified in NRS 407.065;

17. Security officers employed by the board of trustees of any county school district;

18. Agents of the state gaming control board who:

(a) Exercise the powers of enforcement specified in NRS 463.140 or 463.1405; or

(b) Investigate a violation of a provision of chapter 205 of NRS in the form of a crime against property of a gaming licensee,

except those agents whose duties relate primarily to auditing, accounting, the collection of taxes or license fees, or the investigation of applicants for licenses;

19. The chief, investigators and agents of the investigation division of the department of motor vehicles and public safety;

20. Investigators and administrators of the bureau of enforcement of the registration division of the department of motor vehicles and public safety who exercise the police powers specified in NRS 481.048;

21. Officers and investigators of the section for the control of emissions from vehicles of the registration division of the department of motor vehicles and public safety who exercise the police powers specified in NRS 481.0481;

22. The personnel of the department of wildlife who exercise those enforcement powers conferred by Title 45 and chapter 488 of NRS;

23. Legislative police officers of the State of Nevada;

24. Police officers of the buildings and grounds division of the department of general services;

25. Parole counselors of the youth *and family* services division of the department of human resources;

26. Juvenile probation officers and deputy juvenile probation officers employed by the various judicial districts in Nevada;

27. Field investigators of the taxicab authority; and

28. Security officers employed full time by a city or county whose official duties require them to carry weapons and make arrests.

Sec. 128. NRS 482.368 is hereby amended to read as follows:

482.368 1. Except as provided in subsection 2, the department shall provide suitable distinguishing plates for exempt vehicles. These plates must be provided at cost and must be displayed on the vehicles in the same manner as provided for privately owned vehicles. Any license plates authorized by this section must be immediately returned to the department when the vehicle for which they were issued ceases to be used exclusively for the purpose for which it was exempted from the privilege and use tax.

2. License plates furnished for:

(a) Those automobiles which are maintained for and used by the governor or under the authority and direction of the chief parole and probation officer, the state contractors' board and auditors, the state fire marshal, the investigation division of the department and any authorized federal or out-of-state law enforcement agency;

(b) One automobile used by the department of prisons, three automobiles used by the department of wildlife, two automobiles used by the [Nevada girls training] *Caliente youth* center, and four automobiles used by the Nevada youth training center;

(c) Vehicles of a city, county or the state, except any assigned to the state industrial insurance system, if authorized by the department for purposes of law enforcement or work related thereto or such other purposes as are approved upon proper application and justification; and

(d) Automobiles maintained for and used by investigators of the following:

(1) The state gaming control board;

(2) The division of brand inspection of the state department of agriculture;

(3) The attorney general;

(4) Duly appointed city or county juvenile officers;

(5) District attorneys' offices;

(6) Sheriffs' offices; and

(7) Police departments in the state,

must not bear any distinguishing mark which would serve to identify the automobiles as owned by the state, county or city. These license plates must be issued annually for $12 per plate or, if issued in sets, per set.

3. The director may enter into agreements with departments of motor vehicles of other states providing for exchanges of license plates of regular series for automobiles maintained for and used by investigators of the law enforcement agencies enumerated in paragraph (d) of subsection 2, subject to all of the requirements imposed by that paragraph, except that the fee required by that paragraph must not be charged.

4. Applications for the licenses must be made through the head of the department, board, bureau, commission, school district or irrigation district, or through the chairman of the board of county commissioners of the county or town or through the mayor of the city, owning or controlling the vehicles, and no plate or plates may be issued until a certificate has been filed with the department showing that the name of the department, board, bureau, commission, county, city, town, school district or irrigation district, as the case may be, and the words "For Official Use Only" have been permanently and legibly affixed to each side of the vehicle, except those automobiles enumerated in subsection 2.

5. For the purposes of this section, "exempt vehicle" means a vehicle exempt from the privilege tax, except one owned by the United States.

6. The department shall adopt regulations governing the use of all license plates provided for in this section. Upon a finding by the department of any violation of its regulations, it may revoke the violator's privilege of registering vehicles pursuant to this section.

Sec. 129. NRS 502.077 is hereby amended to read as follows:

502.077 1. The department shall issue special fishing permits to the administrative head of:

(a) The Nevada mental health institute;

(b) The Las Vegas mental health center;

(c) The Northern Nevada children's home;
(d) The Southern Nevada children's home;
(e) The Nevada youth training center;
(f) The [Nevada girls training] *Caliente youth* center;
(g) The Spring Mountain Youth Camp;
(h) Any facility which provides temporary foster care for children who are not delinquent; and
(i) Such other public or charitable institutions or organizations as are designated by regulations adopted by the commission,
for use only by the members, patients or children of such institutions or organizations.
2. The permits:
(a) Must be in the possession of the officer or employee who is supervising a member, patient or child while he is fishing.
(b) Authorize a member, patient or child to fish in a legal manner if in the company of an officer or employee of one of the institutions listed in this section, or of an organization provided for by regulation, if the officer or employee has a valid Nevada fishing license.
(c) Must be issued pursuant and subject to regulations prescribed by the commission.
(d) Must contain the words "Nevada Special Fishing Permit" and the number of the permit printed on the face of the permit.
(e) May authorize no more than 15 members, patients or children, respectively, to fish.
3. Each institution or organization shall pay to the department an annual fee of $15 for each permit issued to the institution or organization pursuant to this section. The department shall not issue more than two permits per year to each institution or organization.
4. It is unlawful for any person other than a member, patient or child in one of these organizations or institutions to fish with a permit issued by the department pursuant to this section.
Sec. 130. NRS 644.460 is hereby amended to read as follows:
644.460 1. The following persons are exempt from the provisions of this chapter:
(a) All persons authorized by the laws of this state to practice medicine, dentistry, osteopathic medicine, chiropractic or podiatry.
(b) Commissioned medical officers of the United States Army, Navy, or Marine Hospital Service when engaged in the actual performance of their official duties, and attendants attached to those services.
(c) Barbers, insofar as their usual and ordinary vocation and profession is concerned, when engaged in any of the following practices:
(1) Cleansing or singeing the hair of any person.
(2) Massaging, cleansing, stimulating, exercising or similar work upon the scalp, face or neck of any person, with the hands or with mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions or creams.

2. Any school of cosmetology conducted as part of the vocational rehabilitation training program of the department of prisons or the [Nevada girls training] *Caliente youth* center:

(a) Is exempt from the requirements of paragraph (c) of subsection 2 of NRS 644.400.

(b) Notwithstanding the provisions of NRS 644.395, shall maintain a staff of at least one licensed instructor.

Sec. 131. NRS 432B.120 is hereby repealed.

Sec. 132. 1. The regulations of a board or division whose authority to adopt regulations has been transferred by this act to the youth and family services division of the department of human resources remain in effect as the regulations of the division until the division adopts new regulations.

2. A license issued by a board or division whose authority to issue such licenses has been transferred by this act to the youth and family services division of the department of human resources remains in effect until its prospective date of renewal, at which time it must be renewed by the division.

Sec. 133. The department of human resources may take reasonable steps before the effective date of this act to ensure that the provisions of this act are carried out in an orderly fashion.

Sec. 134. The legislative counsel shall, in preparing the supplement to Nevada Revised Statutes with respect to any section which is not amended by this act or is adopted or amended by another act, appropriately correct any reference to an officer or agency whose designation is changed by this act, according to the function performed.

TEXT OF REPEALED SECTION

432B.120 "Welfare division" defined. "Welfare division" means the welfare division of the department of human resources.

SUMMARY--Limits situations in which juvenile probation officer has powers of peace officer. (BDR 5-674)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to the juvenile courts; limiting the situations in which a juvenile probation officer has the powers of a peace officer; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 62.120 is hereby amended to read as follows:

62.120 1. In counties [having a population of] *whose population is* less than 250,000, the probation officer under the general supervision of the judge or judges and with the advice of the probation committee shall organize, direct and develop the administrative work of the probation department and detention home, including the social, financial and clerical work, and he shall perform such other duties as the judge [may direct.] *directs.* All information obtained in discharge of official duty by an officer or other employee of the court is privileged and must not be disclosed to anyone other than the judge and others entitled under this chapter to receive that information, unless otherwise ordered by the judge.

2. Probation officers and assistant probation officers have the same powers as peace officers [.] *when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power to arrest an adult criminal offender encountered while in the performance of those duties.*

3. Every effort must be made by [the various counties throughout the state] *a county* to provide sufficient personnel for the probation department to uphold the concept of separation of powers in the court process.

Sec. 2. NRS 62.122 is hereby amended to read as follows:

62.122 1. The probation officer under the general supervision of the director of juvenile services and with the advice of the probation committee shall organize, direct and develop the administrative work of the probation department and detention home, including the social, financial and clerical work, and he shall perform such other duties as the director of juvenile services [may direct.] *directs.* All information obtained in discharge of official duty by an officer or other employee of the court [shall be] *is* privileged and [shall] *must* not be disclosed to anyone other than the director of juvenile services and others entitled under this chapter to receive such information, unless [and until] otherwise permitted by the director of juvenile services.

2. Probation officers and assistant probation officers [shall] have the same powers as peace officers [.] *when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power*

to arrest an adult criminal offender encountered while in the performance of those duties.

Sec. 3. NRS 62.125 is hereby amended to read as follows:

62.125 The director of juvenile services **[**shall have**]** *has* the full power and authority of a peace officer in his judicial district **[**.**]** *when performing duties pursuant to this chapter, NRS 213.220 to 213.290, inclusive, or chapter 432B of NRS, including the power to arrest an adult criminal offender encountered while in the performance of those duties.*

SUMMARY--Directs Department of Human Resources to establish formula for sharing, between state and counties, costs of housing juveniles in certain facilities. (BDR R-675)

CONCURRENT RESOLUTION--Directing the Department of Human Resources to establish a formula for sharing, between the state and the counties, the costs of housing juveniles in certain facilities.

WHEREAS, Counties pay a large portion of the cost of housing a juvenile at a regional facility for children or at a regional halfway house for juveniles; and

WHEREAS, The cost of housing a juvenile in such a facility creates an incentive to place a juvenile in a more restrictive environment than may be necessary; and

WHEREAS, Placing a juvenile in a more restrictive environment than is necessary is contrary to the interests of both the juvenile and the state; and

WHEREAS, The State of Nevada has an interest in the health and welfare of all children residing in the state and has an interest in sharing, with counties, the burden of financing the costs of housing juveniles; now, therefore be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Department of Human Resources is hereby directed to determine the costs associated with committing a child to the custody of a regional facility for children, as defined in NRS 62.325, or to a facility deemed by a juvenile court to be a regional halfway house for juveniles, including, but not limited to, the costs of the child's support and maintenance and the provision of parole services to the child and facility; and be it further

RESOLVED, That the Department of Human Resources is directed to establish a formula in cooperation with affected entities, including, but not limited to, county governments, the Department of Education, the Youth Services Division and the Welfare Division of the Department of Human Resources, judges of the juvenile courts and juvenile probation officers, setting forth the percentage of the costs that the state shall pay, and the percentage of the costs the county of the child's residence shall pay; and be it further

RESOLVED, That before the adjournment of the 65th session of the Nevada Legislature, the Department of Human Resources shall prepare and submit a report on the formula established or on the progress thereof to the members of the Nevada Legislature; and be it further

RESOLVED, That the of the prepare and transmit a copy of this resolution to the Director of the Department of Human Resources.

SUMMARY--Encourages county school districts to seek sources of money for programs for children whose parents are employed after school hours. (BDR R-676)

CONCURRENT RESOLUTION--Encouraging the county school districts to seek sources of money for programs for children whose parents are employed after school hours.

WHEREAS, There has been a substantial increase in the United States of the number of households in which both parents are employed, whether by choice or by necessity, during the time their children are at home after school; and

WHEREAS, The growth of the two-income family has resulted in an increasing number of children who are without any direct adult supervision after school hours; and

WHEREAS, In response to this problem, the boards of trustees of the several county school districts have organized programs which give children whose parents are employed after school hours the opportunity to participate in various activities in a supervised and structured environment; and

WHEREAS, The cost of operating these programs continues to escalate because the number of children participating in the programs continues to increase; and

WHEREAS, For the health and safety of these children and to ensure their overall development as responsible adults it is essential that they are given the opportunity to participate in these programs; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the boards of trustees of the several county school districts are encouraged to seek sources of money to meet the escalating costs of operating the programs which provide children whose parents are employed during the time the children are home from school with the opportunity to participate in various activities in a supervised and structured environment; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the of the to the president of the board of trustees of each county school district in this state.

SUMMARY--Creates position in department of education to coordinate programs for preventing dropouts. (BDR 34-677)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to education; creating a position in the department of education to coordinate programs for preventing dropouts; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 385 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The position of coordinator of programs to prevent dropouts is hereby created within the department. The superintendent of public instruction shall:

(a) Appoint a coordinator;

(b) Assign the duties of the coordinator; and

(c) Supervise the activities of the coordinator.

2. The coordinator of programs to prevent dropouts shall:

(a) Investigate the availability and feasibility of state and local options to prevent dropouts;

(b) Contact persons, and public and private agencies and organizations in the various communities to establish programs for the prevention of dropouts;

(c) Monitor new and existing programs for the prevention of dropouts administered by school districts and other agencies or organizations in the various communities;

(d) Coordinate state and local efforts to prevent dropouts; and

(e) Make recommendations concerning the state's establishment, administration and participation in programs for the prevention of dropouts.

3. For the purposes of this section, "dropout" means any pupil who withdraws from school either voluntarily or at the request of the school district.

Sec. 2. The provisions of this act expire by limitation on July 1, 1991.

SUMMARY--Establishes program to prevent dropouts. (BDR 34-678)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to education; establishing a program to award money to prevent dropouts; requiring the superintendent of public instruction to administer the program; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *1. The program to prevent dropouts is hereby established.*

2. Money available for the program must be used to finance programs proposed by school districts to:

(a) Graduate 100 percent of the pupils within their respective school districts; and

(b) Offer a variety of alternative methods and procedures for the prevention of dropouts.

A proposed program must provide an effective system for monitoring and reporting the progress of the program.

3. The superintendent of public instruction shall administer the program and may adopt regulations for that purpose. The superintendent may consult with any public officer or private person in the state who may have an interest in education or in the program.

4. The superintendent shall establish and maintain such records for the program as are required by generally accepted accounting practices.

Sec. 3. *1. A school district may apply for money from the fund to prevent dropouts by filing a request with the superintendent of public instruction.*

2. Money may be awarded to school districts only upon the approval of the state board.

3. Continued financing of a school district's program must be based upon the success of the program to prevent dropouts.

Sec. 4. *1. There is hereby established a fund to prevent dropouts.*

2. The superintendent of public instruction shall administer the fund.

3. Money available for the program to prevent dropouts must be deposited in the state treasury for credit to the fund.

4. The superintendent of public instruction may accept gifts and grants for the fund and use those gifts and grants for the purposes established in subsection 2 of section 2 of this act.

5. Any interest or income earned on the money in the fund must be credited to the fund.

6. All money in the fund must be used for the program to prevent dropouts.

7. Each expenditure from the fund must be paid as other claims against the state are paid.

8. Money appropriated to the fund may not be considered in the negotiation of the salaries of persons employed by the school districts.

SUMMARY--Revises manner of treatment of child in need of supervision to require additional efforts to modify child's behavior. (BDR 5-679)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the juvenile courts; limiting the circumstances under which a child in need of supervision may be adjudged a delinquent; expanding the possible means and the efforts required to modify such a child's behavior; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 62 of NRS is hereby amended by adding thereto a new section to read as follows:

In addition to the information required pursuant to NRS 62.130, a petition alleging that a child is in need of supervision must contain a list of the local programs to which the child was referred, and other efforts taken in the community, to modify the child's behavior. No court may decree that a child is in need of supervision unless it expressly finds that reasonable efforts were taken in the community to assist the child in ceasing the behavior for which he is alleged to be in need of supervision.

Sec. 2. NRS 62.040 is hereby amended to read as follows:

62.040 1. Except as otherwise provided in this chapter, the court has exclusive original jurisdiction in proceedings:

(a) Concerning any child living or found within the county who is in need of supervision because he:

(1) Is a child who is subject to compulsory school attendance and is an habitual truant from school;

(2) Habitually disobeys the reasonable and lawful demands of his parents, guardian, or other custodian, and is unmanageable; or

(3) Deserts, abandons or runs away from his home or usual place of abode,

and is in need of care or rehabilitation. The child must not be considered a delinquent.

(b) Concerning any child living or found within the county who has committed a delinquent act. A child commits a delinquent act if he [:

(1) Commits] *commits* an act designated a crime under the law of the State of Nevada except murder or attempted murder, or violates a county or municipal ordinance or any rule or regulation having the force of law . [; or

(2) Violates the terms or conditions of an order of court determining that he is a child in need of supervision.]

(c) Concerning any child in need of commitment to an institution for the mentally retarded.

2. This chapter does not deprive justices' courts and municipal courts in [any county having a population of] *a county whose population is* 250,000 or more of original jurisdiction to try juveniles charged with minor traffic violations but:

(a) The restrictions set forth in subsection 3 of NRS 62.170 are applicable in those proceedings; and

(b) Those justices' courts and municipal courts may, upon adjudication of guilt of the offenses, refer any juvenile to the juvenile court for disposition if the referral is deemed in the best interest of the child and where the minor is unable to pay the fine assessed or there has been a recommendation of imprisonment.

In all other cases prior consent of the judge of the juvenile division is required before reference to the juvenile court may be ordered. Any child charged in a justice's court or municipal court pursuant to this subsection must be accompanied at all proceedings by a parent or legal guardian.

Sec. 3. NRS 213.220 is hereby amended to read as follows:

213.220 1. It is the policy of this state to rehabilitate *youthful* offenders, to effect a more even administration of justice and to increase the public welfare of the citizens of this state.

2. It is the purpose of NRS 213.220 to 213.290, inclusive, to reduce the necessity for commitment of youthful offenders to state correctional institutions by strengthening and improving local supervision of [persons placed on probation by] *children under the jurisdiction of* the juvenile and district courts of this state.

Sec. 4. NRS 213.230 is hereby amended to read as follows:

213.230 As used in NRS 213.220 to 213.290, inclusive:

1. *"Child" means:*

(a) An offender who was less than 18 years of age when he violated a state law; and

(b) A person under the jurisdiction of a juvenile court pursuant to paragraph (a) or (b) of subsection 1 of NRS 62.040.

2. Department" means the department of human resources.

[2.] *3.* "Juvenile court" means the juvenile court of any judicial district.

[3.] *4.* "Special supervision program" means a [probation] program meeting the standards prescribed pursuant to NRS 213.220 to 213.290, inclusive, for the rehabilitation of [offenders who were less than 18 years of age at the time of violating any state law, which does include:] *children, which includes:*

(a) A degree of supervision substantially above the usual; and

(b) The use of new techniques rather than routine [supervision techniques.] *techniques for supervision.*

Sec. 5. NRS 213.240 is hereby amended to read as follows:

213.240 From any legislative appropriation for such *a* purpose and in accordance with the provisions of NRS 213.220 to 213.290, inclusive, the state shall share the cost of supervising [offenders] *children* in special supervision programs established in any county participating under NRS 213.220 to

213.290, inclusive . [, who would otherwise be committed to a state-operated juvenile institution.]

Sec. 6. NRS 213.250 is hereby amended to read as follows:

213.250 1. [Any] *A* juvenile court may [make application] *apply* to the department to participate under NRS 213.220 to 213.290, inclusive, for the sharing of the cost of special supervision programs.

2. The application [shall:] *must:*

(a) Be in the form prescribed by the department;

(b) Include a plan or plans for providing special supervision programs; and

(c) Include assurances that [such funds] *the money* will not be used to replace local [funds] *money* for existing programs for [delinquent youth.] *children.*

Sec. 7. NRS 213.270 is hereby amended to read as follows:

213.270 1. The juvenile court shall use the amount received under NRS 213.220 to 213.290, inclusive, for the purposes described in NRS 213.220 to employ necessary probation officers who shall carry caseloads substantially less than required for normal or routine supervision, and to initiate new techniques and services of an innovative nature for [delinquent youth.] *children.*

2. The department shall determine the applicable costs to the state in calculating amounts to be paid to a juvenile court.

Sec. 8. NRS 244.162 is hereby amended to read as follows:

244.162 The board of county commissioners may establish, in [any county where funds are] *a county where money is* expended under the provisions of NRS 213.220 to 213.290, inclusive, special supervision programs for the rehabilitation of [youthful offenders] *children* in accordance with the provisions of NRS 213.220 to 213.290, inclusive.