

**MINUTES OF THE
LEGISLATIVE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE
(Senate Bill 3, 2009 Session)
February 8, 2011**

The sixth meeting of the Legislative Committee on Child Welfare and Juvenile Justice (Senate Bill 3, 2009 Session) was held at 2:30 p.m. on February 8, 2011, at the Legislative Building, 401 South Carson Street, Room 3137, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, 555 East Washington Street, Room 4401, Las Vegas, Nevada.

COMMITTEE MEMBERS PRESENT:

Assemblywoman April Mastroluca, Chair
Senator Valerie Wiener, Vice Chair
Senator Barbara Cegavske
Senator Allison Copening
Assembly Jason Frierson
Assemblyman John Hambrick

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Rex Goodman, Program Analyst, Fiscal Analysis Division
Nicholas C. Anthony, Senior Principal Deputy Legislative Counsel
Sara L. Partida, Principal Deputy Legislative Counsel
Donna Thomas, Secretary, Fiscal Analysis Division

EXHIBITS:

[Exhibit A](#): Agenda
[Exhibit B](#): Attendance Record

I. ROLL CALL.

Chairwoman Mastroluca called the meeting of the Legislative Committee on Child Welfare and Juvenile Justice to order at 2:34 p.m. The secretary called roll; all members were present.

II. OPENING REMARKS – Assemblywoman April Mastroluca.

Chairwoman Mastroluca stated that the committee would review the progress of the negotiations related to the representation of the child welfare agency and role of the District Attorney in child protection cases previously discussed at the Legislative committee on Child Welfare and Juvenile Justice meeting on June 21, 2010.

III. APPROVAL OF MINUTES OF THE APRIL 14, 2010, MEETING.

Chairwoman Mastroluca asked for a motion to approve the minutes of April 14, 2010.

SENATOR COPENING MOVED FOR APPROVAL OF THE MINUTES OF THE APRIL 14, 2010, MEETING OF THE LEGISLATIVE COMMITTEE ON CHILD WELFARE AND JUVENILE JUSTICE.

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

IV. REPORT FROM THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE AND COUNTY MANAGER'S OFFICE CONCERNING NEGOTIATIONS RELATED TO REPRESENTATION OF THE CHILD WELFARE AGENCY AND ROLE OF THE DISTRICT ATTORNEY.

Constance Brooks, Senior Management Analyst, Clark County Manager's Office, stated that she was pleased to present that communication between the Department of Family Services (DFS) and the Office of the District Attorney has improved considerably, and the dispute resolution policy signed by former Clark County Manager Virginia Valentine and District Attorney David Roger, has proven to be a very effective resolution of differences. Ms. Brooks said that the dispute resolution policy allowed for disputes to be handled internally stressing clear communication and thoughtful consideration of all parties. Overall, Ms. Brooks reported that things were much better concerning the representation of the child welfare agency and the role of the District Attorney's Office, and considerable progress has been made over the last 18 months. Moving forward, Ms. Brooks noted that administrators from the Office of the District Attorney and DFS have met to address the systemic issues identified in the review of 82 cases identified by the District Attorney's Office. Ms. Brooks indicated that new policies were being developed with an emphasis on community involvement. Some of those policy areas included training, community partnerships, managing child maltreatment, as well as developing new case closure policies. Ms. Brooks stated that the county appreciated the opportunity to address this issue internally, as this approach has proven to be prudent and fruitful. Ms. Brooks respectfully requested that the Committee not pursue legislative changes regarding the District Attorney's representation of the public's interest in child welfare cases. She believed that local child welfare was continually evolving and the child welfare agency and stakeholders were committed to evaluating policies and procedures on an ongoing basis to make the system more effective.

Concluding her presentation, Ms. Brooks stated that Heather Richardson, DFS caseworker was available at the Grant Sawyer State Office Building in Las Vegas to respond to questions of the Committee. She explained that Ms. Richardson has worked for Clark County for five years and for DFS for three years, and provided out-of-home permanency services for DFS. She noted that when Ms. Richardson began her job as a caseworker for DFS, her caseload was at 22; currently her caseload was 44 due to staff

vacancies and budget cuts within the department. Ms. Brooks indicated that Ms. Richardson was one of the many dedicated DFS caseworkers providing services to Southern Nevada's children and families, and was available to address questions related to her day-to-day case management and oversight.

Sam Bateman, Chief Deputy District Attorney, Clark County District Attorney's Office, voiced his support of the testimony of Ms. Brooks. He believed that the Committee was intimately aware of the representation issue from previous testimony presented at the interim committee meetings, and the District Attorney's Office has worked diligently to address the issues brought up during those meetings. Mr. Bateman recalled that former Chairman Bernie Anderson told him at the end of the 2009 Legislative Session that sometimes when legislation was presented it was good to have discussion on the issues. Often legislation was not needed, or statute did not need to be changed, because the discussion brought everyone to the table and issues were presented to stakeholders involved in the process, which allowed ongoing communication. Mr. Bateman believed a lot of progress has been made within the county, and many of the issues were specifically Clark County concerns. Stakeholders worked well together to address the issue of representation from the end of 2009 until currently, and would continue to work on the issues outlined by Ms. Brooks. Mr. Bateman was confident the county could get to a good place without further legislation on the District Attorney's representation of the public's interest in child welfare cases.

Mr. Bateman said he would be happy to answer questions from the Committee. He added that Teresa Lowry, Assistant District Attorney, Clark County District Attorney's Office, was the most knowledgeable person in this particular area and was in attendance if there were specific questions regarding representation of the child welfare agency and the role of the District Attorney.

Senator Cegavske praised Ms. Brooks and Mr. Bateman and was happy with the progress made on the issue regarding the District Attorney's representation of the public's interest in child welfare cases. She agreed that no new legislation was needed to address the issue.

Senator Copening asked Ms. Brooks if she would cite specifics on the improvements and processes that were implemented to make the process smoother.

Ms. Brooks replied that one of the main improvements being utilized that seemed to work well was the dispute resolution policy. She explained that the dispute resolution policy was a five-step process beginning with a communication overhaul with DFS supervisors, as well as District Attorney supervisors, and they work to staff the cases, which was followed by a graduated process to handle disputes within the respective departments. She indicated that up to this point only four cases have gone through the entire dispute resolution process.

Chairwoman Mastroluca asked Ms. Brooks when the dispute resolution policy went into effect. Ms. Brooks responded that the policy was signed in January 2010, and four cases have utilized the dispute resolution policy since implemented.

Chairwoman Mastroluca wondered about the 82 cases identified as problematic by the District Attorney's Office presented at the June 2010 meeting, which she recognized was over a five-year period. However, to have disputes in over 82 cases in a five-year period, and only 4 cases in 13 months used the dispute resolution policy, she thought was either due to an outstanding policy or something was not working the same.

Ms. Brooks replied that some of the cases that were brought forward were part of the DFS reform initiatives from the past three to four years, so the cases were already identified as cases that needed further review. In addition, the cases were prior to the implementation of the Safe Futures Act, so some cases were current, while others cases were older. With regard to the policy, Ms. Brooks believed that the four cases that she mentioned were new cases identified as problematic since the implementation of the dispute resolution policy.

Chairwoman Mastroluca asked about the dispute resolution process when there was a conflict between DFS and the District Attorney's Office.

Teresa Lowry, Assistant District Attorney, Clark County District Attorney's Office, clarified that the four cases that utilized the conflict resolution process used the complete process starting at Step 1, the case manager level, and moved up to Step 5, which contemplated a conversation between the Assistant District Attorney, Assistant Director or Director of DFS. She stated that the conflict process has been utilized multiple times, but never necessarily went beyond the supervisor level, attorney supervisor, public interest attorney team chief, or the Assistant District Attorney.

Ms. Lowry explained that the process started at the case manager level and contemplated a discussion between the case manager and the public interest attorney assigned to the unit. From that point the case went to the attorney team chief, and the public interest attorney would contact the DFS manager, assistant manager, supervisor, and caseworker to set up a second meeting to try to move the issue toward resolution. Ms. Lowry noted that the issue would go through the supervisory hierarchy, and would ultimately come to her or the Director if the conflict could not be resolved.

Chairwoman Mastroluca asked if the four cases referenced utilized the five-step dispute resolution policy explained by Ms. Lowry. Ms. Lowry replied that her understanding was that the four cases went through the five-step resolution process.

Chairwoman Mastroluca acknowledged Senator Leslie who was in attendance at the meeting.

Heather Richardson, Caseworker, Clark County Department of Family Services, stated that she has been trained on the dispute resolution conflict process, and from a case

management perspective, there was a greater level of communication with the District Attorney's Office since the process was implemented. She noted that she had a good relationship with the District Attorney's Office involved, and since the implementation of the resolution policy there were no more surprises in court, and discussions were held on the front end before getting in the courtroom and before the dispute resolution process was utilized if necessary.

Senator Copening asked about the status of the review of the 82 cases identified as being problematic by the District Attorney's Office.

Ms. Brooks replied that the 82 cases were resolved. She noted the review of those cases was conducted by employees and staff of DFS, with oversight from the county manager's office, outside legal counsel, as well as staff from the District Attorney's Office, and several policy initiatives were developed as a result of the review of the cases.

Senator Cegavske stated that she has heard from child welfare advocates that employees like Ms. Richardson should be commended, because their efforts, knowledge and skills in the negotiations and discussions on behalf of children really helped the process.

Senator Leslie asked if it was crystal clear who legally represented DFS and the social workers.

Mr. Bateman replied that the Civil Division of the Office of the Attorney General generally represented DFS in case of a lawsuit. He noted that in NRS 432B hearings, which was the basis of the initial legislation in 2009, it was his understanding that currently the District Attorney represented the public according to statute, and the social worker did not necessarily have an attorney representing them in court. He noted that the majority of time when the District Attorney was in agreement as to what should happen, because they filed the petition with consultation from DFS, they were essentially announcing their position for all intents and purposes. He stated that social workers did not have a separate attorney as legal counsel in NRS 432B hearings, but he believed they operated in a sense that they were advocating that position in court on behalf of the public.

Senator Leslie stated her concern remained the same that social workers did not have representation or an attorney. She asked if the District Attorney's Office would defend the social worker and the public, or just defend the public in a case where the District Attorney was representing the public and disagreed with the social worker.

Mr. Bateman replied that he would have to defer to Ms. Lowry to what might happen in NRS 432B hearings when the case has gone through the dispute resolution process. He said it was his understanding that the District Attorney's Office was not getting into that position in court because they utilized an internal dispute resolution policy.

Ms. Lowry stated that the models utilized in the child welfare system, the agency representation model or the public interest model, do not contemplate attorney representation for the social worker. She explained that the agency model contemplates representation of the agency or the governmental entity – in this case the county, which presently exists through the Civil Division of the District Attorney's Office. The issues occurred when the social worker was not following their own internal policies and procedures, which was one of the things that the dispute resolution process ferrets out very well. The process was determining if social workers were following their own internal policies and procedures, utilizing their own risk and safety tools appropriately, and following the directives of their own management supervisors and directors. Ms. Lowry said there was not a model that contemplates representation of the social worker, but rather the public or the county, and in this case, there was public representation, as well as the Civil Division providing advice and counsel to the county and then to DFS.

Senator Leslie responded that she was still not satisfied because she did not believe one legal entity could have two clients, whether the District Attorney's Office called it the social worker or the county, it was still the county. She believed that a lot of progress has been made and she appreciated the hard work of Clark County, but her concern was the same that social workers did not have legal representation or an attorney.

Chairwoman Mastroluca said it seemed the District Attorney's Office would only advise the social worker once they get to Step 5 of the dispute resolution policy process, which caused her concern because the state budget had funding for counties, specifically for an attorney for the agency. She noted there was issue if the District Attorney's Office was not using that money to pay for an attorney for the agency, but to pay for an attorney for the public. She echoed Senator Leslie's concerns and appreciated the work and the improvements that have been made since the 2009 Legislative Session. However, it was not the answer they were looking for or the resolution that was needed. She stated that the conversation would continue outside of the Committee because she did not believe the issues were resolved.

Ms. Lowry clarified that the conversation between the attorneys and the social workers was not limited to Step 5 of the dispute resolution process and conversation was ongoing at every level of the process. She noted that often attorneys would speak on behalf of the social worker, so the attorney had an ethical duty to the court to relay information and opinions in regard to the case, which occurred throughout the entire process. Additionally, Ms. Lowry stated the District Attorney's Office had attorneys designated and dedicated to DFS utilizing state funding.

Chairwoman Mastroluca asked what happened when there was a difference of opinion between DFS and the attorney representing the public.

Ms. Lowry replied that if the case gets through the dispute resolution process then the judge would ultimately be the arbiter of those positions.

Ms. Richardson offered from the perspective of a caseworker in the field that social workers were in a precarious position since they no longer had legal representation in court. She indicated that recently an attorney for a parent threatened to sue not only the county and DFS, but her personally. She stressed that the level of liability for a social worker was incredible and many of the judges and hearing masters looked to the attorneys, who they believed were experts, and if there was a disagreement, the dispute resolution process was good in addition to prior conversations to candidly speak about the case.

Senator Cegavske asked if staff involved in a case were trained on the dispute resolution policy before representing someone in court.

Ms. Brooks replied that it was her understanding that staff from the District Attorney's Office, as well as DFS, were trained on the dispute resolution policy. She stated that no one would be without the proper education and training on the dispute resolution policy in order to mitigate any disputes or conflicts that could arise.

V. PUBLIC COMMENT.

Janice Wolf, Directing Attorney, Children's Attorney Project (CAP), Legal Aid Center of Southern Nevada, stated that the child welfare system does not function well if there was dysfunction between the agency and the District Attorney's Office. She questioned whether the dispute resolution policy eliminated that dysfunction to a level that satisfied everyone involved. After reviewing the dispute resolution policy, Ms. Wolf said there were some aspects that still remained unclear and seemed outside the scope of the dispute resolution policy. For example, she wondered how a policy such as the one in place would resolve the issues that commonly arise in court where the potential differences between the agency and the District Attorney's Office on legal issues were outside the ambit of the dispute resolution policy. She indicated that one possible issue was when the court entered a lack of reasonable efforts finding, and sometimes a judge or hearing master would enter a finding that the agency has not make reasonable efforts to preserve or reunify the family. These findings were sometimes the result of a written or orally argued motion by either a CAP attorney or parent's attorney, or more importantly as a sua sponte ruling from the bench, and the question became who could object or appeal a lack of reasonable efforts finding. Ms. Wolf said the issue of whether the District Attorney has standing to object or appeal to a lack of reasonable effort finding has already gone to the Nevada Supreme Court in the way of two writs of mandamus in different cases. In both cases, the Supreme Court said that only the agency had such standing, so if the agency was not represented in court, she wondered who made the objection if the court entered the finding of lack of reasonable efforts. In addition, if no one in court has the standing to object, who files the writ of mandamus and writes the appeal. Ms. Wolf stated the court's reasoning in the writ of mandamus case was that the reasonable efforts, or lack thereof, was a money issue and the District Attorney had no beneficial interest in the fight. Therefore, there was the question of a way to resolve the issues if this model of representation continued. By the same reasoning, Ms. Wolf asked who would object when the court ordered the agency to pay

for an independent psychiatric evaluation for a child being prescribed psychotropic medication. She wondered if the District Attorney could object to the county being ordered to pay for the evaluation. She understood why the county might not want to be ordered to pay for an evaluation, but why would a public interest lawyer not want a child to be accurately diagnosed or properly medicated and by the same reasoning, in the lack of reasonable effort case, could they raise those objections. Ms. Wolf noted that currently there was a struggle with another issue in terms of this type of conflict, which had to do with fictive kinship. She noted that DFS always wanted to place children with close family friends, non-related people, who pass background checks as soon as possible rather than placing a child in foster care with strangers. She noted the District Attorney has taken the position, based upon its interpretation of the statute, that they could not place a child with a non-related person prior to an adjudication. She said that the state agency, DCFS, had a policy that approved and supports such placements, and CAP was trying to work out those issues. However, in the meantime if the District Attorney was not representing the agency or the county, who was giving legal advice to the agency.

Ms. Wolf noted that the idea of the District Attorney being the public interest lawyer and not the county or the agency lawyer, raised other questions about such things as, Electronic Discovery, who redacts confidential information from Electronic Discovery from the DFS files. Under the current practice, the District Attorney redacts the confidential information from the DFS files before turning them over to counsel or the parent's attorney, and she wondered if they could do that under this model. Under the dispute agency model, the public was represented by counsel at the negotiating table, but the agency was not, and there was nothing in the dispute resolution policy that references the civil deputies. Ms. Wolf stated that CAP understood that most of the resolutions were resolved at the earliest step and she wondered whether that was in fact a level playing field. Ms. Wolfe did not see the results of how disputes were resolved, and with only one interest represented by counsel, she wondered whether that was a fair way to resolve the issues.

Concluding, Ms. Wolf stated when looking at some of the legal issues that seem to fall outside the scope of the dispute resolution policy and not related to specific cases such as the 82 cases that brought the issue forward, but related to other issues like legal rulings from the bench against DFS that cannot be anticipated or have not been anticipated, did it still mean that in addition to having a child's attorney and parents attorney, there must be a prosecutorial attorney representing the public, as well as an agency attorney to deal with other issues. The Children's Attorney Project wondered if the state was paying for both attorneys, should the county pay for one and the state pay for the other, and whether it was cost effective to have two attorneys in this situation.

VI. ADJOURNMENT.

The meeting was adjourned at 3:09 p.m.

Respectfully submitted,

Donna Thomas, Committee Secretary

APPROVED:

Assemblywoman April Mastroluca, Chairwoman

Date: _____

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