

**PROPOSED REGULATION OF THE DIVISION OF CHILD AND
FAMILY SERVICES OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

LCB File No. R095-18

July 17, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 62B.212; §§6 and 7, NRS 62B.250.

A REGULATION relating to child welfare; establishing factors for a juvenile court to consider before committing a child to certain public or private institutions or agencies; establishing protocols that such an institution or agency is required to follow under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Division of Child and Family Services of the Department of Health and Human Services to adopt regulations that establish: (1) factors for a juvenile court to consider before committing a child to a public or private institution or agency, including, without limitation, a facility for the detention of children; and (2) protocols that such an institution or agency is required to follow when placing a child to ensure that each child who is so committed is placed in a manner that is appropriate for the gender identity or expression of the child. (NRS 62B.212)

Section 3 of this regulation defines the term “gender identity or expression” to mean a gender-related identity, appearance, expression or behavior of a person, regardless of the person’s assigned sex at birth. (NRS 0.034) Existing regulations define the term “institution” to mean, with certain limited exceptions, a facility where a child is held before or after adjudication to be in need of supervision or a delinquent child pursuant to title 5 of NRS. (NAC 62B.050) Existing regulations also define the term “agency” to mean any public or private agency, organization or institution detaining or otherwise having custody or control of a child pursuant to title 5 of NRS. (NAC 62B.020)

Section 4 of this regulation prescribes the factors that a juvenile court is required by statute to consider before committing a child to such an institution or agency. **Section 5** of this regulation sets forth standards and requires each such institution or agency to establish a procedure that, at a minimum, ensures those standards are met.

Section 2 of this regulation defines the term “abuse or neglect” in the same manner as that term is defined in existing law governing the protection of children from abuse and neglect.

(NRS 432B.020) The term is defined in **section 2** for the purposes of specific minimum standards set forth in **section 5**.

Section 7 of this regulation amends existing regulations so that the term “abuse or neglect” as defined in **section 2** also applies to the requirement that such an agency ensure its employees who come into direct contact with children receive training in certain subjects, including instruction concerning the proper reporting of abuse or neglect. (NAC 62B.100)

Section 1. Chapter 62B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Abuse or neglect” has the meaning ascribed to “abuse or neglect of a child” in NRS 432B.020.*

Sec. 3. *“Gender identity or expression” has the meaning ascribed to it in NRS 0.034.*

Sec. 4. *Pursuant to NRS 62B.212, a juvenile court shall consider the following factors before committing a child to an institution or agency:*

1. The gender identity or expression of the child;

2. Whether the institution or agency to which the juvenile court wishes to commit the child has a procedure that complies with section 5 of this regulation; and

3. The ability of the institution or agency to meet the needs of the child.

Sec. 5. *1. Each institution or agency shall establish a procedure that, at a minimum, ensures:*

(a) A determination of the gender identity or expression or sexual orientation of a child who is held at the institution or in the custody or control of the agency is made in a manner that is primarily based on self-reporting from the child and is respectful and developmentally appropriate.

(b) Responsiveness to the gender identity or expression of a child who is held at the institution or in the custody or control of the agency with regard to, without limitation:

(1) A determination concerning arrangements for housing, including, without limitation, arrangements for housing that:

(I) Align with the gender identity or expression of the child;

(II) Take into consideration the wishes of the child; and

(III) Take into consideration the health and safety of the child; and

(2) Access to privacy while showering, changing clothes and using the bathroom facility.

(c) A child who is held at the institution or in the custody or control of the agency is free from abuse or neglect and bullying or harassment that is based on the gender identity or expression of the child.

(d) The staff of the institution or agency is instructed on how to detect, respond to and protect a child who is held at the institution or in the custody or control of the agency from any threatened or actual abuse or neglect, bullying or harassment.

(e) The staff of the institution or agency is instructed on how to communicate effectively and professionally with and about a child who is held at the institution or in the custody or control of the agency, regardless of the gender identity or expression or sexual orientation of the child.

(f) Resources necessary to support the gender identity or expression and sexual orientation of all children held at the institution or in the custody or control of the agency are identified and provided to the children.

(g) Except as otherwise provided in this paragraph or as otherwise required by state or federal law, the gender identity or expression or sexual orientation of a child who is held at the institution or in the custody or control of the agency is not disclosed without the consent of

the child. The gender identity or expression or sexual orientation of a child who is held at the institution or in the custody or control of the agency may be disclosed in limited circumstances, as recommended by a mental health professional, without the consent of the child if the superintendent of the state facility for the detention of children or the director of juvenile services has determined, based on the recommendation of the mental health professional, that such a disclosure is in the best interest of the child and the disclosure is limited to the circumstances recommended by the mental health professional.

(h) The staff of the institution or agency is prohibited from conducting a physical examination of the genitals or pubic area of a child who is held at the institution or in the custody or control of the agency solely to determine the gender of the child.

(i) A child who is held at the institution or in the custody or control of the agency is not placed in isolation or restrictive settings based on the gender identity or expression or sexual orientation of the child, including, without limitation, the use of such a placement as a means of protecting the child.

2. As used in this section:

(a) "Director of juvenile services" has the meaning ascribed to it in NRS 62A.080.

(b) "Mental health professional" means a person licensed in the State of Nevada as a psychiatrist, psychologist, marriage and family therapist, clinical professional counselor or clinical social worker.

(c) "Superintendent of the state facility for the detention of children" means the person appointed to the position created pursuant to NRS 63.100.

Sec. 6. NAC 62B.010 is hereby amended to read as follows:

62B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 62B.020 to 62B.060, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 62B.100 is hereby amended to read as follows:

62B.100 1. An agency that operates an institution shall ensure that each employee who comes into direct contact with children who are in custody receives training in accordance with NRS 62B.250. The training must consist of instruction concerning:

- (a) The topics listed in subsection 1 of NRS 62B.250;
- (b) Proper reporting of suspected ~~child~~ abuse or neglect;
- (c) Proper reporting and investigation of sexual harassment or sexual misconduct consistent with the requirements set forth in the federal Prison Rape Elimination Act of 2003, 34 U.S.C. §§ 30302 et seq., and 28 C.F.R. §§ 115.5 et seq.;
- (d) The conditions and limitations of the use of corrective room restriction set forth in NRS 62B.215;
- (e) The plan for care of children in the institution during disasters developed pursuant to NRS 62B.220;
- (f) Trauma-informed care of children; and
- (g) Data collection.

2. In addition to the instruction required by subsection 1, an agency that operates an institution shall ensure that the training required by subsection 1 and NRS 62B.250 for an employee who has supervisory duties over other employees includes instruction concerning:

- (a) The provisions of the “Juvenile Detention Facility Standards” adopted by the Juvenile Justice Commission; and

(b) The disproportionate contact of children belonging to a racial or ethnic minority group with the juvenile justice system.

3. As used in this section, “trauma-informed care” means an approach to the delivery of care to a child that takes into account the impact of trauma on the child and emphasizes physical, psychological and emotional safety for both providers and children.