

BACKGROUND PAPER 01-3

**A STUDY OF
INFANT ABANDONMENT LEGISLATION**

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December 2000

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I. INTRODUCTION

Over the past few years, the news media has reported on an increasing number of newborn infants who have been abandoned within hours of birth. Many of these children are found in disturbing places, such as garbage dumpsters and public toilets. Often, these infants have died before they are located. For example, three men fishing in the Mississippi River found one newborn in Minnesota. The baby girl, whose umbilical cord was still attached, was found floating in icy waters.¹ Even the State of Nevada is not exempt from these horrific news stories. In Humboldt County, two teenagers were prosecuted for running over their newborn infant with a pickup truck and burying the child near an Interstate 80 billboard sign.²

Although individual cases of abandoned infants receive frequent media attention, there are no solid statistics measuring the extent of infant abandonment. An informal search of newspaper articles on this issue was conducted by the Department of Health and Human Services (DHHS).³ The DHHS search found reports of 105 infants abandoned in public places in 1998; 33 of those infants were found dead. In 1991, there were 65 reported cases of abandoned infants and eight deaths. It is important to remember that figures were not collected for the years between 1991 and 1998, and this “increase” cannot be interpreted as a trend. Instead, it may simply reflect heightened media interest in the issue.

Very little information exists on the individuals who abandon newborn children. Research on neonaticide (the killing of a newborn on the day of its birth), as well as media reports of public abandonment, indicate that individuals who abandon newborns or commit acts of neonaticide are predominately very young, unmarried, physically healthy young women.⁴ Additionally, this problem cannot be limited to certain races, ethnicities, or incomes. However, a majority of these young women live either with their parents, guardians, or relatives and are oftentimes in denial. Generally, they made no plans for the care of their child and obtained no prenatal care. Some reasons cited for the killing or discarding of infants include: extramarital paternity, rape, illegitimacy, and perceiving the child as an obstacle to personal achievement.

The dramatic nature of media reports has prompted state legislatures across the United States, including Nevada, to take action in an attempt to reduce the number of abandoned newborn children. This background paper provides an overview of legislative activity in this area in an effort to assist Nevada legislators in better understanding this complicated and emotional issue.

¹ Cohen, Warren. “Keeping the Nation’s Newborns Safe: Policies to Stop Moms from Abandoning Newborns,” *U.S. News Online*, February 28, 2000, www.usnews.com. See Appendix A.

² Vogel, Ed. “Legislation Would Provide Alternative to Baby Dumping,” *Las Vegas Review Journal*, September 10, 2000, www.lvrj.com. See Appendix B.

³ Dailard, Cynthia (2000). “The Drive to Enact ‘Infant Abandonment’ Laws – A Rush to Judgment?” *The Guttmacher Report on Public Policy*, Vol. 3, No. 4, www.agi-usa.org/pubs/journals/gr030401.html. See Appendix C.

⁴ “Discarded Infants Fact Sheet” National Abandoned Infants Assistance Resource Center, August 2000, <http://socrates.berkeley.edu/~aiarc/discarded/discardfs.htm>. See Appendix D.

II. LEGISLATION

Abandoned infant legislation transcends traditional party lines. Many of the bills introduced in state legislatures across the United States are the result of bipartisan efforts to provide mothers with an opportunity to abandon newborn children in a safe manner, without the fear of prosecution. The following section provides a general overview of infant abandonment provisions, a summary of Texas law, which began the infant abandonment legislation trend, and also covers similar legislation enacted in other states. Additionally, a summary of current Nevada law pertaining to the abandonment of children is included.

A. General Overview

Approximately 25 states have introduced legislation in an attempt to prevent the abandonment of newborn infants. Further, the majority of states have enacted laws designed to provide an affirmative defense for mothers who wish to voluntarily surrender custody of newborn infants.

Other major topics addressed in abandoned infant laws generally include:

- Age of child;
- Custody, court procedures, and investigation procedures;
- Definition of a safe haven (i.e., hospitals, fire stations, police stations, emergency medical personnel [paramedics], child protective service agencies, and community pregnancy centers);
- Finance and publicity;
- Immunity for persons or entities accepting infants;
- Parental anonymity and parental rights;
- Persons or entities that may accept abandoned infants;
- Prosecution of parents; and
- Studies, reporting requirements, or task forces.

B. Overview of Texas Law

Texas was the first state to enact a law protecting infants. The law was passed in response to 13 abandoned babies in Houston, Texas, over a ten-month period in 1999, three of which were

found dead. Representative Geanie Morrison (R), District 30, sponsored the legislation, House Bill 3423, which was approved and signed into law in 1999.

In short, the legislation allows parents to turn over newborn infants, 30 days old or younger, to qualified medical personnel with complete anonymity and freedom from prosecution. The law directs emergency medical services personnel, once they have taken possession of the child, to perform any act necessary to protect the physical health and safety of the child. Additionally, they are directed to notify the Department of Protective and Regulatory Services (DPRS) within one business day of assuming custody of the child. However, no liability provisions for individuals who take possession of the child are included in the law. Upon receiving notification of the abandonment of a newborn child, DPRS is required to assume the care, control, and custody of the child in the same manner as a child taken into custody without a court order. Further, the law directs the courts to terminate the parent-child relationship upon finding that the child was voluntarily delivered by the parent to the emergency medical services provider without the intent to return for the child.⁵

Texas is also currently engaged in a public awareness campaign regarding infant abandonment. Representative Morrison's office, referenced above, is working with several other organizations, and with other states that are interested in enacting similar legislation. For example, the Baby Moses Project (www.babymoses.org), an organization affiliated with Representative Morrison's office, is responsible for publicizing responsible alternatives to infant abandonment. One of the primary goals of this organization is to educate the public on the importance of this issue. Appendix F is a list of frequently asked questions published by the Baby Moses Project.

C. Comparison of Other State Legislation

Other states appear to have used the Texas law as a model for drafting their own infant abandonment legislation. However, some states have expanded their requirements to include liability provisions for persons or entities that accept the infants, while others have increased the number of locations where a parent can leave their child without incurring criminal penalties. Other states have adapted the age requirement of the child who is abandoned, or have made provisions for publicity campaigns. The following section provides a summary of the major infant abandonment provisions in state legislation.

1. Age of Abandoned Child Requirements

The age threshold for abandoned infant legislation varies from state to state:

- Three days (72-hours) old or younger: Alabama, California, Colorado, Florida, Michigan and Minnesota;
- Five days old or younger: New York; and

⁵ Appendix E contains the full text of the Texas law.

- Thirty days old or younger: Connecticut, Indiana, Louisiana, New Jersey, South Carolina, Texas and West Virginia.

2. Safe Haven Locations

Locations where parents may abandon their children differ from state to state as well. The following chart provides locations designated as a safe haven.

State	EMS Providers	Fire Station	Hospital	Police Station	Other Location
Alabama	X				
California			X		X
Colorado		X	X		
Connecticut			X		
Florida		X	X		
Indiana	X				
Louisiana		X	X	X	X
Michigan	X	X	X	X	
Minnesota			X		
New Jersey			X	X	
New York ⁶					
South Carolina			X		
Texas	X				
West Virginia			X		X

3. Liability Provisions

In addition, several states have enacted liability provisions designed to give immunity from civil and criminal lawsuits that may be filed against any individual or entity accepting custody of a child, in accordance with provisions of abandoned infant laws. States enacting liability provisions include: Alabama, California, Colorado, Louisiana, Michigan, Minnesota, New Jersey, and South Carolina.

4. Public Information Provisions

Several states have included provisions that would require state agencies to develop and implement public information and education campaigns. These campaigns are designed to ensure that the public has knowledge of the provisions of the law, and that there is a safe alternative for the abandonment of infants. States enacting public information provisions include: Florida, Michigan, New Jersey, and New York.

⁶ The infant abandonment law passed in New York does not designate any specific location as a safe haven.

A table of the major provisions of passed legislation is included in Appendix G.

D. Current Nevada Law

Although Nevada does not have a law specific to infant abandonment, there are provisions relating to abandonment and neglect, generally. The following section provides a summary of current Nevada law as it pertains to child abandonment and neglect. Information on the criminal penalties for child abandonment, the termination of parental rights, and the protection of children are also included. Nevada does not currently have a law designed to provide immunity from prosecution to mothers who abandon infants. However, a bill draft request (BDR 736) will be introduced in the 2001 Session of the Nevada Legislature.

1. Criminal Penalties for Child Abandonment

Under current Nevada law, penalties for the abuse, neglect, or endangerment of a child are defined in *Nevada Revised Statutes* (NRS) 200.508.⁷ Abuse or neglect of a child may be a gross misdemeanor, a Category A felony, or a Category B felony, depending upon the circumstances, described below:

- Any person who willfully causes a child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect, or to be placed in a situation in which the child may suffer such pain and suffering, is guilty of a gross misdemeanor.
- Any person who causes substantial bodily harm to a child under the age of 14 years, and the harm is the result of sexual abuse or exploitation, is guilty of a Category A felony, punishable by imprisonment in prison for life with the possibility of parole.
- Any person who causes substantial bodily harm to a child as the result of abuse or neglect, or by placing the child in a situation in which the child may suffer pain and suffering is guilty of a Category B felony, punishable by imprisonment for two to 20 years.

The statute defines “abuse or neglect” as “a physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years.” Negligent treatment or maltreatment⁸ occurs if the child:

- Has been abandoned;
- Is without proper care, control, and supervision; or
- Lacks subsistence, education, shelter, medical care, or other care necessary for the well-being of the child because of the faults of habits of the person responsible for the welfare of the child.

⁷ See Appendix H

⁸ NRS 432B.140 (included in Appendix K).

2. Termination of Parental Rights

Chapter 128 of NRS contains the primary provisions under Nevada law governing the termination of parental rights. Specifically, subsection 2(a) of NRS 128.105⁹ provides the grounds for terminating parental rights on the basis of abandonment of a child. Abandonment of a child is defined in NRS 128.012¹⁰ as the conduct of one or both parents of a child “which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.”

A child is considered to be abandoned if:

- The child is left in the care and custody of another individual without provision for support and without communication for a period of six months; or
- The child is left under such circumstances that the identity of the parents is unknown and cannot be ascertained despite diligent searching, and the child is not claimed within three months of being found.

3. Child Protection Laws

Chapter 432B of NRS¹¹ contains the general provisions for the protection of children. Included in this section of law are provisions governing the following areas:

- Reports of abuse or neglect;
- Protective services and custody; and
- Civil proceedings, including protective custody hearings.

III. ARGUMENTS IN FAVOR OF AND AGAINST INFANT ABANDONMENT LEGISLATION

According to an issue brief written by the National Conference of State Legislatures, infant abandonment legislation is not without controversy. In summary, proponents claim that such laws will serve a preventative purpose and allow for an in-depth examination of the issue while opponents express doubts that the laws will impact its targeted population. Other supporting and opposing arguments are outlined as follows:

⁹ See Appendix I

¹⁰ See Appendix J

¹¹ See Appendix K

A. Supporting Arguments

Proponents contend that infant abandonment laws will:

- Reduce the risk that a newborn will be abandoned in a manner that may result in death;
- Protect parents who feel they have no option other than abandonment, but who want to deliver their newborn to a safe shelter;
- Offer young women an immediate alternative to abandoning their infants;
- Provide policymakers and the public time to seriously examine the issue and create system-wide reforms that include: (1) teenage pregnancy prevention programs; prenatal counseling; (2) health services; (3) adoption; and (4) other support programs; and
- Allow policymakers to perform a study of the women who abandon their infants to understand why this occurs (including family situation), to develop better prevention programs, to study the role of father, and to determine how often the pregnancy is the result of rape or sexual abuse.

B. Opposing Arguments

Critics raise the following concerns about:

- *Medical records:* Infant abandonment legislation generally does not require the parents to provide medical information after abandoning their child at a specific location. This may have serious future health implications for the infant;
- *Age threshold:* There is a lack of consensus regarding the age threshold for abandonment of the child and for providing subsequent services;
- *Parental anonymity:* Legislation does not adequately protect parent anonymity, which may discourage women from safely dropping off their infants;
- *Rights of the father:* Difficulties may arise regarding the establishment of paternity and the right of the father to claim the child;
- *Parental irresponsibility:* Legislation is reactive and does nothing to help a distraught parent overcome the pressures leading up to the abandonment of the child; and
- *Enhanced services and programs:* Legislation should be part of larger reform efforts to enhance services for women at risk, including programs that counsel pregnant women about private, confidential adoptions or other options.

Issue briefs on abandonment infant enacted legislation by the NCSL and Frequently Asked Questions by the Child Welfare League of America are included as Appendix L of this paper. These briefs offer further information on the arguments for and against the passage of infant abandonment legislation.

IV. CONCLUSION

Infant abandonment is primarily being addressed at the state level. However, the issue has been addressed by House Resolution 465 (see Appendix M), which was introduced by United States Representative Nancy Johnson (R) of Connecticut. This resolution, passed in April 2000, urges federal, state, and local governments to collect statistics in order to “focus attention and raise awareness of the problem of newborn babies abandoned in public places.” A similar measure was introduced and enacted in Tennessee, which established a task force to study the issue of infant abandonment.

At this time, however, no concrete evidence exists on whether or not infant abandonment programs or laws have had any success. Many of the laws recently passed are still in the implementation phase; therefore, little data exists to support either argument for or against infant abandonment programs.

The apparent increase in the number of abandoned infants reported by the media has sparked public interest. In turn, the increase in public interest has generated numerous political responses in the form of infant abandonment legislation across the United States. Although these programs are structured in a similar manner, the provisions included in the laws of each state may differ. As the different programs become implemented, the data supporting the validity of infant abandonment programs will become more substantial.

Nevada will be joining this debate in the 2001 Legislative Session. As referenced earlier, a bill regarding the decriminalization of infant abandonment has been introduced. Discussion will no doubt ensue about the merits of such legislation. In preparation for such conversation, this paper serves as an overview of the topic. Decision and policymakers, social and health care personnel, and judiciary and law enforcement representatives will need to understand the involved issues to reach a balance between the needs of the parents and the abandoned infant.

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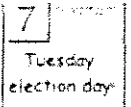
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U.S. News Online, 2/28/00 Article by Warren Cohen, “Keeping the Nation’s Newborns Safe: Policies to Stop Moms from Abandoning Newborns”



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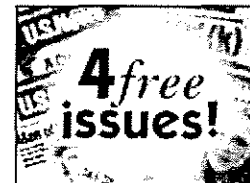
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U.S. News 2/28/00



Keeping the nation's newborns safe

Policies to stop moms from abandoning babies

By Warren Cohen

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Early one morning last November, three men in Red Wing, Minn., went fishing for walleye in the Mississippi River. Instead, they found the body of a newborn girl—umbilical cord still attached—floating in the icy waters. Fifty miles north of Red Wing, parishioners at the Cathedral of St. Paul vowed never to let that happen again: Led by the Rev. Andrew Cozzens, they persuaded local hospitals to allow women to anonymously drop off their newborns, no questions asked. The worshipers also persuaded local district attorneys not to prosecute women for abandoning their babies—a felony crime in most states.

Cozzens's "Safe Place for Newborns" program is expected to become law in Minnesota later this month. The action comes on the heels of a similar move in Texas; 14 other states, including California and New York, are also considering such measures. And Rep. Sheila Jackson Lee, a Texas Democrat, is considering introducing federal legislation that would require the Justice Department to gather statistics on abandoned babies. "Some lives might be saved," says Phillip Resnick, a professor of psychiatry at Case Western Reserve University Medical School and an expert on women who kill their newborns.

A forthcoming study by the Department of Health and Human Services will report that 105 babies of

newspaper.

and Human Services will report that 100 babies of 4 million born in 1998 were found abandoned in public places; 33 of the infants were dead or died after being discovered. In 1991, 65 babies were abandoned, of whom eight died. Authorities worry the situation may be even worse, noting there's no way to gauge the number of abandoned babies never found.

Horror in Houston. The Safe Place concept dates back to 1998, when Mobile, Ala., adopted such a policy after a pair of well-publicized abandonment cases. In one incident, a mother drowned her new baby in a toilet; in the other case, a woman left her newborn outside a social service agency nearby. The Texas Legislature acted last year after 13 babies during a 10-month period were abandoned in and around Houston. The law there encourages new mothers to anonymously hand over their infants to emergency medical technicians at firehouses or hospitals; it does not grant them immunity from prosecution, although it instructs legal authorities to consider the safe transfer.

The existing handful of programs are promoted through public-service announcements and toll-free hotlines. In Texas, billboards along highways exhort expectant moms: "Don't Abandon Your Baby!" The programs have been mostly funded by donations.

No one has dropped off a baby yet under the Texas or Minnesota programs. Two babies were handed over to hospitals in Mobile. One has been adopted and the other returned to its mother. Two other Alabama women contacted the program, which helped them put their babies up for adoption.

New mothers already have the option of giving up newborns for adoption within 72 hours after birth in many states. The new policies are aimed at panic-stricken teens and others who are out to conceal their pregnancies and get rid of their babies as quickly and quietly as possible. "These programs are trying to reach out to young women and say that there is help," says William Waldman, executive director of the American Public Human Services Association.

Not everyone agrees they will work, though. Skeptics fear such programs could make it too easy to abandon a baby; prevent prospective adoptive parents from tracing infants' medical histories; cause fathers to unwittingly lose their parental rights; and ignore the mothers' well-being. "I'd rather encourage people in those circumstances to talk to someone in a confidential setting about options so she can make a dignified choice rather than send out a message that she

can dump her kid and nothing will happen," says Joan Hollinger, an adoption expert and visiting law professor at the University of California-Berkeley.

But Cozzens says the alternative is too risky. "There are certainly going to be a lot of what ifs, but all of them don't add up to saving a human life," he says. "Mothers and fathers ultimately have a lot more rights if the baby is in a hospital rather than in a dumpster."

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APPENDIX B

Las Vegas Review Journal article dated Sunday, September 10, 2000, titled
“Legislation Would Provide Alternative to Dumping,” by Ed Vogel.

Sunday, September 10, 2000

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Legislation would provide alternative to baby dumping

Proposal, modeled after other states' laws, frees young mothers from criminal liability

By **ED VOGEL**

DONREY CAPITAL BUREAU

CARSON CITY -- When the rest of his class at Lowery High School in Winnemucca was graduating in 1996, 18-year-old honor student Juan Lopez sat down in an office in police headquarters and confessed to killing his infant child.

It happens every few months in big cities like Las Vegas and every few years in small towns like Winnemucca: A teen-age girl fears telling her parents she is pregnant and secretly gives birth. Typically she then asks her boyfriend to handle the problem -- which means dispose of the infant in any way possible.

Henderson police in July investigated the death of a newborn, found in the bedroom of the 15-year-old mother. "She concealed the pregnancy and had the child at home," Capt. Richard Perkins said. "Our officers believe she brought about the baby's death."

The case is now in the hands of the Clark County district attorney's office.

While statistics are hard to come by, law enforcement authorities estimate at least 100 babies are abandoned each year in the United States. About one-third of them die.

Sen. Ray Rawson, R-Las Vegas, plans to introduce a bill to the Legislature in the spring that frees young women of criminal liability if they turn their babies unharmed over to hospitals, health care clinics or school nurses. He is still working on specific details. Such measures are known as safe haven laws.

"Every year we see too many babies thrown away," Rawson said. "This bill is not going to save thousands of lives, but it may save some. Our objective is to save babies and save a couple from something they would regret the rest of their lives."

Texas Gov. George W. Bush last year signed the first safe haven bill into law. He and Texas legislators acted after Houston police in 1998 found 13 infants dead in trash bins.

Twelve other states passed their own versions of "baby dumping" laws during their legislative sessions earlier this year.

Humboldt County District Attorney David Allison can't wait for Nevada to pass such a law. He prosecuted Lopez and his 17-year-old girlfriend, Gabriella Dexter. The boy ran the infant over with his pickup and then buried it near an Interstate 80 billboard sign.

"When you are involved in cases like these it's a nightmare," Allison said. "We need to give these children an option and we need to get the information into the schools. High school students who are capable of having children need to know there is an alternative."

Lopez and Dexter both drew two-year sentences for their involvement in the child's death, Allison said. The two hid the killing for two years until a remorseful Lopez confessed to his church bishop. Without his confession, police never would have known about the death, Allison said.

While advocates for a baby dumping law may have good intentions, Sandi Durgin, chief of the Metropolitan Police Department's child abuse and neglect unit, doubts the law will work.

"You have 15-year-old juveniles who are afraid and unknowledgeable and unknowing," she said. "They aren't going to make it to a hospital."

Durgin said there generally are a couple of baby abandonment cases a year in the Las Vegas area involving teen-agers. Usually there is no criminal prosecution if the baby is not harmed, she said.

There is an expectation among parents of teens "that they have the perfect golden boy or girl," she added. "Unfortunately too many parents aren't listening. They are in total denial that their children are having sex."

Perkins, who serves as Assembly majority leader when not busy with police work, favors a safe haven law. But he anticipates a struggle in developing an acceptable version, since he figures any bill should require parents to give medical information.

"If we have babies abandoned, we'd rather see them abandoned where they are safe," Perkins said. "But there are a number of health conditions you would want to know about."

Rawson proposes giving the natural parents an option to provide medical and other background information. He also would allow the mothers six months to reconsider their decision. In the meantime, the infants would be placed in foster care.

Any bill saving lives has the unqualified support of Patricia Glenn, a leader in the Nevada Right to Life organization.

"I don't see anyone on our side objecting," she said. "In most of these cases the girls haven't gone to doctors during their pregnancies. They just panic and don't know what to do."

Planned Parenthood spokeswoman J.J. Straight figures her organization could support a baby dumping bill, as long as it carries legal protections for the mothers.

"My main fear is any law like this might villainize the woman," she said. "This is definitely not a partisan or a choice issue. It is a baby issue."

Straight questions whether the Legislature will allow a mother anonymously to give up her baby, without having to reveal personal health information. Without anonymity, she wonders whether mothers would take their babies to hospitals.

In California and New Jersey, a mother can turn a child less than a month old over to a hospital. In Florida, a mother has only three days to decide. New Jersey's law severs the rights of the natural parents when the infant is 45 days old.

The most notorious baby dumping case involved New Jersey's Melissa "Prom Mom" Dexter. She gave birth to her baby in a school bathroom stall in 1997 while taking a break from her class prom. She dumped the baby into a trash can and went back to the dance. Dexter received a 15-year prison sentence in 1998.

While the Texas law saved no babies in the first six months after it went into effect, a male infant was handed over anonymously on Aug. 19 to nurses at the Beth Israel Medical Center in Trenton, N.J.. He was the first baby turned over under New Jersey's Safe Haven Protection Act.

Previously a parent there faced a penalty of up to 10 years in prison for child abandonment.

Durgin said Las Vegas police rarely prosecute drug addicted mothers who leave hospitals after having their babies.

"Now you can take a child to a hospital and walk away," she said. "I don't believe the law would do any good for the drug addicts and for the young and immature. They are the ones in my opinion throwing babies into Dumpsters."

This story is located at:
http://www.lvrj.com/lvrj_home/2000/Sep-10-Sun-2000/news/14265425.html

APPENDIX C

Article titled “The Drive to Enact ‘Infant Abandonment’ Laws – A Rush to Judgment?” by Cynthia Dailard, “The Guttmacher Report on Public Policy,” dated August 2000, Vol. 3, No. 4



Volume 3, No. 4, August 2000

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Issues & Implications

The Drive to Enact 'Infant Abandonment' Laws--A Rush to Judgment?

By Cynthia Dailard

Within the past year, 14 states have enacted laws aimed at combating those apparently rare but highly publicized instances in which newborn infants are abandoned by their mothers and sometimes left to die. Given the tragic nature of such events, the appeal of such proposals--which promise to save babies by offering women a safe, confidential and lawful means to relinquish unwanted newborns--is understandable. That appeal is reflected in the unusual political alliances forming in favor of these bills, between conservative and liberal lawmakers, law enforcement officials and social service providers, and even, in some states, antiabortion and prochoice advocates.

Yet, this legislative trend has gathered steam in the absence of any systematic research or understanding of the issue, and questions about these laws abound. While, at a minimum, they may represent a societal recognition of the utter desperation that some women experience when confronted with the birth of a child they feel unable to care for, many experts believe that such proposals offer an unduly simplistic solution to exceedingly complex problems. Such problems, they say, call for a balanced and multifaceted response that emphasizes both the prevention of unintended pregnancies and births and the improvement of societal supports for women and families.

Scope of the Problem

While individual cases involving newborn babies abandoned in public places receive a tremendous amount of press attention, no one knows how frequently such events occur. The federal government does not count the number of babies abandoned in public places each year. However, the Department of Health and Human Services conducted an informal search of newspaper articles on the subject and found that in 1998, there were reports of 105 infants abandoned in public places; 33 of those infants were found dead. This compares to 65 reported cases of abandoned infants in 1991 and eight deaths.

Michael Kharfen, a spokesperson for the agency's Administration for Children and Families, is quick to point out that since figures were not gathered for the years between 1991 and 1998, this "increase" cannot be interpreted as a trend and may simply reflect heightened press interest in the issue. To put these figures into context, Kharfen notes that in 1998, there were 31,000 "boarder babies"--babies left in a hospital following delivery or deemed ineligible by child protective services to be released to a parent.

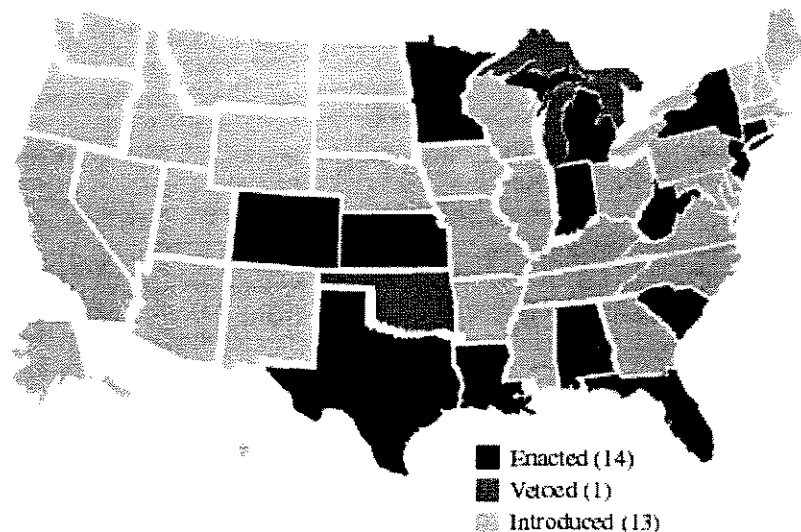
State Activity

In July 1999, Texas responded to a spate of reported infant abandonments in the state by passing a law that, according to its sponsors, would reduce the likelihood that such events would occur in the

future. Specifically, the Texas law--the first of its kind in the nation--allows a parent to place an infant younger than 30 days of age in the custody of designated emergency medical personnel. Any parent who relinquishes an unharmed infant under the terms of the law is guaranteed an affirmative defense to a charge of infant abandonment.

The idea spread like wildfire across the nation. Within a year, legislators in almost 30 states had introduced approximately 60 bills modeled on the Texas law; bills in 18 states had passed at least one committee. By August 2000, 14 states had laws in place (see map). These laws by and large follow the Texas model, differing only slightly from state to state. Variations include the class of individuals authorized to accept an infant and the limit on the infant's age, which ranges from three days (Alabama, Colorado, Florida, Michigan and Minnesota) to 45 days (Kansas). Florida, Minnesota, New Jersey, South Carolina and West Virginia explicitly guarantee parental anonymity. The laws in Connecticut, Kansas, Louisiana and Minnesota guarantee immunity from prosecution (rather than an affirmative defense, if charged with abandonment). A few states (Connecticut, Michigan, Minnesota and South Carolina) seek, but do not require, a medical history of the infant, and Connecticut takes the unusual step of providing the infant and parent with corresponding identification bracelets to aid in possible reunification at a later date.

STATE INFANT ABANDONMENT LEGISLATION



Note: The Texas law was enacted in 1999.

While Congress has not passed similar legislation, it also has not remained silent. In April, the House of Representatives unanimously passed a resolution offered by Rep. Nancy Johnson (R-CT) designed to "focus attention and raise awareness of the problem of newborn babies abandoned in public places." Citing the "unknown number of newborn babies...abandoned in dumpsters, trash bins, alleys, warehouses, and bathrooms," the resolution urges local, state and federal governments to collect statistics on the number of babies abandoned in public places. Additionally, Rep. Sheila Jackson Lee (D-TX) and nine cosponsors have introduced the Baby Abandonment Prevention Act, which would direct the attorney general to create a task force to collect information on incidents of baby abandonment, study the factors that cause parents to abandon their children and the outcomes of such events for both children and parents, and make recommendations to Congress to guide public policy formulation.

Complex Issues at Stake

State infant abandonment laws--which are sometimes also referred to as "safe haven" or "safe surrender" laws--are premised on the belief that fewer infants would be abandoned and left to die if

distraught young women who feel unprepared for motherhood had a safe place to anonymously leave their newborns without facing the risk of prosecution. Proponents promise that such laws will save the lives of newborns, prevent crimes from occurring and even make infants available for adoption.

Others, however, suggest that while these laws may be well-intentioned, they are unlikely to be effective, because few women will take advantage of them. The National Abandoned Infants Assistance Resource Center (NAIARC) is an organization created in 1988 to provide assistance to professionals working with infants and young children affected by drugs or HIV and their parents. According to a literature review prepared by NAIARC earlier this year, "women who kill and/or discard their infants generally have made no plans for the birth or care of their child....In the case of public abandonment, the women are often not mature enough to thoughtfully weigh their options or the consequences of their actions"; they are often frightened teenagers in a state of "massive denial" about their pregnancy. This implies that a law offering anonymity or immunity from prosecution is unlikely to have any effect on a new mother so traumatized that she would harm or abandon her infant. In fact, since the Texas law took effect, 12 infants have been illegally abandoned--and not one was turned in under the terms of the law.

Many adoption advocates also have concerns about these laws. Noting the trend in adoption practice toward giving adoptees more information about their birth families, Courteney Holden, executive director of Voice for Adoption, a national umbrella advocacy organization representing 70 groups working on adoption and child welfare issues, argues that adopted children fare better mentally if they have a sense of personal history. By protecting the anonymity of the birth parents, she says, infant abandonment laws represent a significant setback for adoption policy that disadvantages children by permanently denying them any sense of personal identity or even a way to trace their medical history.

Moreover, adoption and child welfare experts suggest that these laws are simply unnecessary. Joan Hollinger, a professor specializing in adoption law at the Boalt Hall School of Law, University of California at Berkeley, points out that laws in every state already allow women to voluntarily relinquish custody of infants in a safe, nonthreatening manner that protects the mother's privacy and makes infants available for adoption. She emphasizes that it is extremely rare for a state to prosecute a woman who leaves a healthy or unharmed infant in the hospital following a delivery and expresses no intent to return. In such cases, Hollinger says, the state's goal is not to be punitive but to take the steps necessary to place the children in permanent adoptive homes as quickly as possible.

Hollinger also believes that infant abandonment laws sidestep the issue and interests of fathers. She points out that fathers have a constitutional right to due process that obliges the state to make diligent efforts to locate the father of an abandoned infant before moving to terminate parental rights. By encouraging women to anonymously abandon their infants, the new laws, Hollinger worries, may create less of an incentive for the state child welfare advocates to search for fathers. "It is inappropriate," she says, "to fuel the stereotype that fathers--particularly unmarried fathers--are going to be absent and want nothing to do with their baby." Hollinger adds that even when a father may be unprepared for parenthood because of youth or other circumstance, he may have an extended family that could help or assume responsibility for the child.

Prevention Needed

Despite these various concerns, legislators and advocates representing a wide array of interests are publicly lining up in favor of infant abandonment laws. For many, it seems, a flawed approach is better than no approach, if the alternative is to appear "soft" on the issue.

Still, some within the advocacy world are struggling to define their position, and this may be particularly true within the reproductive rights community. According to Susan Yolen, director of public affairs and communication at Planned Parenthood of Connecticut, "people [in the reproductive rights community] don't know what to do--whether to jump on the bandwagon or to criticize these proposals." Her organization decided against taking a position on Connecticut's baby abandonment

bill when it came up for consideration early in 2000, in part because she and her colleagues believed it stemmed from an antichoice animus. Yolen says, "Whenever a baby is abandoned, we hear that the 'abortion culture' is promoting women to abandon their babies either before or after birth. The Connecticut bill was introduced by an antichoice sponsor. We felt that the bill would be ineffective, and we just didn't want to get into the fray."

However, Planned Parenthood of Orange and Durham Counties in North Carolina took a different position when an infant abandonment bill came up for consideration there. Kay Michaels, director of public affairs for the organization, said that while working to ensure that the bill (which, in her case, was sponsored by a prochoice member) offered the greatest protection to women, she also hoped to achieve two other goals. First, she hoped to build bridges and get to know some legislators with whom she had not worked in the past. Second, she hoped to convey that baby abandonment bills are a "band-aid" approach that do not get at the underlying problem of unintended pregnancy. Says Michaels, "How can we say that we are against saving babies? But we have to remind people that it is not just about babies but about women too." Although the bill died at the end of the legislative session, Michaels believes that her work paid off by giving her an opportunity to talk to members about the importance of family planning.

Indeed, a key point of agreement within the reproductive rights community is the need to focus society's attention on preventing such events from occurring in the first place. Katherine Kneer, chief executive officer of Planned Parenthood Affiliates of California, says this involves "investing in comprehensive sexuality education and family planning programs, as well as providing access to abortion services, so that sexually active teenagers--and all women--are better able to protect themselves against unintended pregnancy." Kneer says it also means working within communities to encourage parents to communicate with their children, so that pregnant teenagers do not feel so socially isolated that they hide their pregnancies from their families.

Many children's advocates join reproductive health proponents in their call for prevention. While the Children's Defense Fund (CDF) has not taken a formal position on infant abandonment laws, Mary Lee Allen, director of CDF's child welfare and mental health division, says she is hopeful that all the activity around these proposals in the states "will generate attention to the fact that women are not getting the supports they need to raise their children, because that is the true tragedy. These laws help women to drop their babies off but do nothing to provide supports to women and children before this happens. We need to use the interest and new alliances that have formed around these laws to build those supports." Allen continues, "It is very encouraging to see district attorneys and social service groups coming together around these laws. The sad thing would be if their interest ended there. Hopefully, it will be a catalyst to help build supports for pregnant women and women with young children."

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APPENDIX D

“Discarded Infants Fact Sheet”, National Abandoned Infants Assistance Resource Center,
August 2000.

BRIEF SUMMARY:

INFORMATION RELATED TO DISCARDED INFANTS

August, 2000

For the purposes of this summary the terms "discarded infant" or "public abandonment" will be used to describe a newborn child who has been abandoned in a public place other than a hospital without care or supervision. This is distinctly different from "boarder babies" and "abandoned infants", as defined in the Abandoned Infants Assistance Act (P.L. 104-235). Boarder babies are born in hospitals and medically cleared for discharge, but cannot be placed into the custody of their parents and have no other available placement. Abandoned infants are newborns who are not medically cleared for hospital discharge, but who are unlikely to leave the hospital in the custody of their biological parents. The press and policy makers do not consistently make a distinction between these populations and commonly refer to discarded infants as "abandoned infants." This summary will provide basic information on what we currently know about discarded infants and their families, and about the current legislation surrounding this issue.



**Download
a copy of the
Fact Sheet**

Profile of Mothers who Discard their Infants

Although states are required to submit data to the U.S. Department of Health and Human Services on the number of children who enter foster care as a result of abandonment in general, national statistics on the number of infants discarded in public places (i.e., dumpsters, trash bins, alleys, warehouses, bathrooms) are not kept. Current data on the number of discarded babies is based solely upon newspaper accounts and other media reports. The Department of Health and Human Services recently commissioned a survey of major newspapers and found that in 1998, 105 babies were found discarded in public places in the United States, of which 33 were found dead; and in 1991, 65 babies were discarded, of which 8 were found dead.

In discussing what we know about the families of discarded infants, it is difficult to separate its occurrence from the phenomenon of neonaticide (i.e., the killing of a neonate on the day of its birth). Due to the relatively small proportion of mothers who are identified or apprehended after having discarded their infant, research on the discarded infant population is limited. Therefore, the following information

comes, in large part, from research on neonaticide, as well as media reports of public abandonment cases. Available literature indicates that individuals who commit acts of neonaticide and public abandonment are predominantly very young, unmarried, physically healthy women who are pregnant for the first time and not addicted to substances. There is no indication that this problem is limited to certain races, ethnicities or incomes. The vast majority live either with their parent(s), guardian(s), or other relatives (Oberman, 1996). An even more fundamental similarity among these cases is the accused woman's seemingly self-imposed silence and isolation during pregnancy (Oberman, 1996). Massive denial is a prominent feature of this situation. Women who kill and/or discard their infants generally have made no plans for the birth or care of their child and get no prenatal care (Pitts & Bale, 1995). In the case of public abandonment, the women are often not mature enough to thoughtfully weigh their options or the consequences of their actions. Reasons for killing and/or discarding infants include extramarital paternity, rape, illegitimacy and perceiving the child as an obstacle to personal achievement.

Legislative Responses to this Issue

As a result of extensive, highly visible media coverage of the public abandonment of infants and the pursuant public outcry, legislators are feeling significant pressure to respond to this issue. As of this date, several states (i.e., TX, AL, CO, FL, IN, MN, NJ, NY, CT, MI, WV, LA, SC) have recently enacted laws designed to address the social problem of discarded infants by granting immunity from prosecution and anonymity to parents who relinquish the infant at safe havens (i.e., hospitals, fire stations, police stations) rather than leaving them in public places. Fourteen additional states introduced similar legislation during the past legislative session. Model programs have been launched in Houston, Mobile, Minneapolis, and Syracuse.

Proponents of such programs and legislation believe that humane options must be given to these scared, young women in an effort to provide safety for their unwanted babies. Even if one life is saved, they posit, the intervention could be considered a success. Critics, on the other hand, do not believe that government should be endorsing a reckless alternative to the traditional, planned adoption process that does not serve to ensure the health and welfare of the mother and infant during pregnancy, or the child's access to their medical or family history, and that could lead to an increase in the incidence of discarded infants. Lending to the arguments of those opposed to the "safe haven legislation", this alternative has not met with success in every instance. For example, 12 discarded children have been found in the state of Texas since the enactment of H.B. 3423, none of whom were left in safe places.

At the federal level, there have been two legislative actions. The first is House Resolution 465, introduced and passed in April, 2000, which suggests that local, state, and federal governments should collect and disseminate statistics on the number of newborn babies abandoned in public places. The second piece of

legislation is H.R. 4222, introduced on April 10, 2000 by Representative Sheila Jackson-Lee (D-Texas), and may be cited as the "Baby Abandonment Prevention Act of 2000". This bill is intended to provide for the establishment of a task force within the Bureau of Justice Statistics to gather information about, study, and report to the Congress regarding the incidence of public abandonment of infant children. References:

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Abandoned Infants Assistance Act of 1988, 42 U.S.C. 670.

Oberman, M (1996). Mothers Who Kill: Coming to Terms with Modern American Infanticide. American Criminal Law Review, 4(1), 1-110.

Pitt, S. & Bale, E. (1995). Neonaticide, Infanticide and Filicide: A Review of the Literature. Bulletin of the American Academy of Psychiatry Law, 23(3), 375-386.

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Revised 8/23/2000

APPENDIX E

Texas House Bill No. 3423

AN ACT

relating to the emergency possession of and termination of the parent-child relationship of certain abandoned children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 161.001, Family Code, is amended to read as follows:

Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD RELATIONSHIP.

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during

a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Chapter 264;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would

constitute a violation of one of the following Penal Code sections:

- (i) Section 19.02 (murder);
- (ii) Section 19.03 (capital murder);
- (iii) Section 21.11 (indecenty with a child);
- (iv) Section 22.01 (assault);
- (v) Section 22.011 (sexual assault);
- (vi) Section 22.02 (aggravated assault);
- (vii) Section 22.021 (aggravated sexual assault);
- (viii) Section 22.04 (injury to a child, elderly

individual, or disabled individual);

- (ix) Section 22.041 (abandoning or endangering

child);

- (x) Section 25.02 (prohibited sexual conduct);

- (xi) Section 43.25 (sexual performance by a child);

and

- (xii) Section 43.26 (possession or promotion of child

pornography);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services or an authorized agency for not less than six months, and:

(i) the department or authorized agency has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Protective and Regulatory Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code:

(i) in a manner that endangered the health or safety of the child, and failed to complete a court-ordered substance abuse treatment program; or

(ii) repeatedly, after completion of a court-ordered substance treatment program, in a manner that endangered the health or safety of the child;

(Q) knowingly engaged in criminal conduct that results in the parent's imprisonment and inability to care for the child for not less than two years from the date of filing the petition; ~~[or]~~

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription, as defined by Section 261.001; or

(S) voluntarily delivered the child to an emergency medical services provider under Section 262.301 without expressing an intent to return for the child [261.001(7)];
and

(2) that termination is in the best interest of the child.

SECTION 2. Chapter 262, Family Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EMERGENCY POSSESSION OF
CERTAIN ABANDONED CHILDREN

Sec. 262.301. ACCEPTING POSSESSION OF CERTAIN ABANDONED CHILDREN. (a)

An emergency medical services provider licensed under Chapter 773, Health and Safety Code, shall, without a court order, take possession of a child who is 30 days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(b) An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

Sec. 262.302. NOTIFICATION OF POSSESSION OF ABANDONED CHILD. (a) Not later than the close of the first business day after the date on which an emergency medical services provider takes possession of a child under Section 262.301, the provider shall notify the Department of Protective and Regulatory Services that the provider has taken possession of the child.

(b) The department shall assume the care, control, and custody of the child immediately on receipt of notice under Subsection (a).

Sec. 262.303. FILING PETITION AFTER ACCEPTING POSSESSION OF ABANDONED

CHILD. A child for whom the Department of Protective and Regulatory Services assumes care, control, and custody under Section 262.302 shall be treated as a child taken into possession without a court order, and the department shall take action as required by Section 262.105 with regard to the child.

SECTION 3. Section 22.041, Penal Code, is amended by adding Subsection (h) to read as follows:

(h) It is an affirmative defense to prosecution under Subsection (b) that the actor voluntarily delivered the child to an emergency medical services provider under Section 262.301, Family Code.

SECTION 4. (a) The change in law made by Section 161.001, Family Code, as amended by this Act, applies only to a suit for termination of the parent-child relationship filed on or after the effective date of this Act.

(b) A suit for termination of the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 5. (a) The change in law made by Section 22.041(h), Penal Code, as added by this Act, applies only to an offense that is committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 1999.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in

both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

President of the Senate

Speaker of the House

I certify that H.B. No. 3423 was passed by the House on April 29, 1999, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 3423 was passed by the Senate on May 20, 1999, by the following
vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

APPENDIX F

Saving Abandoned Newborns: Frequently Asked Questions About The Baby Moses Project

SAVING ABANDONED NEWBORNS: FREQUENTLY ASKED QUESTIONS ABOUT THE BABY MOSES PROJECT

The Baby Moses Project is a non-profit organization whose purpose is two fold: first, to save the lives of newborn infants, and second, to provide protection from prosecution for those mothers who choose a responsible alternative to abandonment. To accomplish this, the public must be informed of the passage of Texas HB 3423. This bill permits a mother to voluntarily relinquish the custody of her infant to an emergency medical service provider, who in turn, will give the child to the Texas Department of Protective and Regulatory Services for adoptive placement. In addition to being given anonymity, the mother will also be provided with an affirmative defense to abandonment prosecution.

1. How prevalent is abandonment in the United States?
2. What does HB 3423 do?
3. Why was HB 3423 passed in Texas?
4. Are there any official U.S. statistics on babies who would be deemed to be abandoned because they are found dead?
5. What is known about the abandoned or murdered babies and the persons who are responsible for abandonment or the homicides?
6. How did Texas end up passing a law to deal with abandonment and the resulting infanticide of babies?
7. What does Rep. Morrison's law do?
8. Why does Rep. Morrison's law use emergency medical services providers?
9. Why is most of the discussion about mothers abandoning children rather than fathers since the existing FBI statistics show fathers and other relatives commit homicide more often than mothers?
10. What do state laws say about the rights of fathers, especially those who are not married to the mothers of their babies?
11. Can mothers or fathers of babies change their minds about adoption?
12. How do people in Texas find a list of emergency medical service providers?
13. What are the goals of the Baby Moses Project?
14. Is Rep. Morrison's law a model for other states to follow?
15. What other jurisdictions currently have some approach similar to Rep. Morrison's law?
16. Who pays for the cost of the Morrison law and other similar projects?
17. In the past, the argument has been made that arrangements that allow parents to anonymously abandon their newborns will only encourage irresponsible behavior?
18. Should parents be forced to accept responsibility for their actions?
19. What happens once a baby is safe and in the hands of authorities?
20. Why does a public department have to be involved, since there are many private groups who are working in this area?
21. Is anyone opposed to this legislation?
22. Is there any truth to the claim being made on the internet that these new laws will provide an opening for people to steal babies from women and then dispose of them through adoption?
23. What is the attitude of the public toward such laws allowing anonymous abandonment of babies?
24. Bibliography

Please do not hesitate to contact Justin Unruh with any further questions.

How prevalent is abandonment in the United States?

Unfortunately, no one knows. Texas state Representative Geanie Morrison (R) Victoria, author of the United States' first bill to address the recent increase in baby abandonment, was unable to find reliable data. Texas, like most states, does not keep statistics specific to this issue. Although there are federal and state laws that pertain to abandonment, Rep. Morrison's H.B. 3423 is the first law that seeks to prevent abandonment by setting up a system where parents can safely leave their babies without fear of being prosecuted for child abandonment. Along with Rep. Morrison, U.S. Representative, Sheila Jackson Lee (D) Houston, became alarmed upon the news of a rash of abandonments in Houston, Texas. Over a 10 month period in 1999, 13 babies were abandoned in the Houston area, 5 in a two week period. Of those, three babies were not found in time. In her efforts to address this problem, Rep. Lee also found that the federal government does not keep statistics pertaining to this issue. "I was aghast to learn that we don't keep this data," the Associated Press reports Rep. Lee as saying. "If we're going to look at preventing these things - Is it a national problem and are there national answers? - we've got to know how many babies are being dumped."¹ *The Christian Science Monitor* quoted Rep. Lee after she began work on federal legislation to require statistics to be gathered as saying: "Some of the largest states don't keep data on abandoned babies. The only way we can provide a solution ... is to know the data."² It would appear, from a quick glance through news stories that are available on the internet, that abandonment is a national problem. In addition to the programs and bills being discussed in Alabama, California, Florida, Kentucky, Minnesota, North Carolina, West Virginia, New York, Pennsylvania and Texas³, there are news stories from Colorado, Illinois, and Montana, and high-profile cases in Delaware, the District of Columbia, Maryland and New Jersey.⁴

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What does HB 3423 do?

H.B. 3423, which became effective in Texas on Sept. 1, 1999, provides a mother with a responsible alternative to baby abandonment. H.B. 3423 is credited with starting the national movement to respond to baby abandonment by enacting laws to provide parents with an anonymous way to safely leave their babies in someone else's care.

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Why was HB 3423 passed in Texas?

The law was passed in Texas because of growing concern about the numbers of abandoned children: in the first 10 months of 1999, 13 babies were abandoned in Houston, Texas. Of the 13 children, three were found dead.⁵ Given the fact that babies were being abandoned at the rate of four children every quarter, and nearly 25 percent of the babies were found dead, it seemed to Texas leaders that action needed to be taken. If the Houston metropolitan area, with a population of 4.4 million, were to be typical of the situation in Texas, which has a population of 20 million, then the picture statewide could be 16 babies abandoned each quarter, four of whom were found dead. Annualized, that could mean 64 abandoned babies in Texas, of whom 16 might be found dead. If the same statistical estimates are applied to the U.S.

population of 272.7 million, the totals would be 13 times as large - 832 babies might have been abandoned, of whom 208 might have been found dead.⁶

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Are there any official U.S. statistics on babies who would be deemed to be abandoned because they are found dead?

Yes, there are data from the Bureau of Justice Statistics of the Department of Justice, based on Supplementary Homicide Reports of the Federal Bureau of Investigation (FBI). The FBI data cover 1976-98 and show that the number of victims of homicide under 1 year of age went from 206 in 1976 to 267 in 1998. As a percentage of victims under age 5, those less than 1 year went from 37.4% in 1976 to 41% in 1998.⁷ There is no way to determine what portion of the reported homicides of babies were due to abandonment.⁸

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What is known about the abandoned or murdered babies and the persons who are responsible for abandonment or the homicides?

In Houston, for example, despite attempts to locate parents, only four of 13 mothers were identified. Of the four, only one, a teenager whose baby died, was charged with a crime and she was prosecuted for murder. The homicide statistics show that the younger the child, the greater the risk for infanticide. As the Department of Justice report says, "The number of infanticides of children age 1 and younger has increased while the number for older children has remained relatively constant." The government says that a parent is the perpetrator in most homicides of children under age 5: 31% were killed by mothers, 31% were killed by fathers and 6% were killed by other relatives. Data on ethnicity of the children who were victims of homicide show that although Black children are over-represented (about 8 per 100,000 population as compared to about 2.5 per 100,000 population for White or Anglo children and less for "Other" racial groups), "Infanticide rates for -

- black children have fluctuated, but are currently lower than in earlier years
- white children have remained stable
- children of other racial groups have declined."⁹

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How did Texas end up passing a law to deal with abandonment and the resulting infanticide of babies?

The law is the result of the efforts of Texas State Representative Geanie W. Morrison, a Republican from District 30, in Victoria. The initial impetus came from Dr. John Richardson, of Cook Children's Hospital in Fort Worth, who read about the idea of providing safe shelter for babies of mothers in crisis in *National Adoption Reports*, the newsletter of the National Council For Adoption. Dr. Richardson enlisted the assistance of his niece, an Austin judge, who decided, acting as a private citizen, to seek out a state legislator who would take up the cause of abandoned babies. Rep.

Morrison shepherded the bill through the legislature as the prime sponsor.¹⁰ Among those publicly endorsing the Morrison legislation in addition to Dr. John Richardson and Judge Deborah Richardson were: Children's Medical Center, Dallas; Christus Santa Rosa Children's Hospital, San Antonio; Cook Children's Health Care System, Fort Worth; Tarrant County Hospital District, Fort Worth; Texas Hospital Association; Texas Pediatric Association. Gov. George W. Bush, who was supportive of Rep. Morrison's bill, signed H.B. 3423 on June 2, 1999. The law became effective on September 1, 1999.¹¹

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What does Rep. Morrison's law do?

The law, which is the first of its kind in the U.S. since the ending of the era of "foundling homes," which were a distinct improvement over "almshouses"¹², provides a responsible alternative, especially to mothers who find themselves in desperate situations, by allowing them to voluntarily deliver a newborn (under 30 days of age) baby to a licensed emergency medical services provider without threat of criminal prosecution. HB 3423 addresses two important issues: it significantly reduces the risk that a newborn will be abandoned in a perilous environment that may result in death and it protects the parents who feel they have no option other than abandonment, but who compassionately deliver their newborn to a safe shelter.

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Why does Rep. Morrison's law use emergency medical services providers?

In an attempt to conceal the pregnancy, it appeared that the majority of these mothers had received no prenatal care, making immediate medical attention critical. From what little is known about abandonment, because the practice is unlawful, it would appear that most babies are delivered by the mothers in secret because they desire to keep the fact of the pregnancy confidential. It is not unusual for babies delivered by mothers without assistance to develop various kinds of distress and we do not live in a society where women are prepared to deliver by themselves and also provide adequate care for their newborns. For these reasons, the law is designed to encourage those who feel they are forced or left no alternative but to abandon a baby rather than seek routine emergency care from a health facility to go to those who are trained to stabilize and transport those in need of immediate medical attention.

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Why is most of the discussion about mothers abandoning children rather than fathers since the existing FBI statistics show fathers and other relatives commit homicide more often than mothers?

Most of the focus is on mothers rather than fathers because, at least from the cases that have come to light, and because it is possible for women to conceal pregnancies and deliver alone, it is mostly women who are thought likely to abandon babies. Unless a woman's baby is taken from her by force or fraud, she is likely to be an accomplice. There is no intention to minimize the role and responsibility of fathers and other relatives of babies in any mention of mothers abandoning children. As the

tragic case in Delaware illustrated¹³ and as the FBI data prove, men are quite capable of infanticide.

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What do state laws say about the rights of fathers, especially those who are not married to the mothers of their babies?

Each state law varies, but generally a child's biological father, except in cases of assisted reproduction such as Donor Insemination, has the right to notice if his child is being placed for adoption because adoption involves the termination of parental rights. For instance, according to *Adoption Factbook III*¹⁴, which contains a chart of state laws compiled by Christine Adamec, Texas provides that fathers may give consent for children to be adopted prior to their birth. Texas also has a putative fathers' registry, which means that if a man does not put his name on the registry to say he wants to be heard on any adoption involving his nonmarital child, the court may proceed without his consent.

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Can mothers or fathers of babies change their minds about adoption?

Mothers may not give consent to an adoption in Texas until at least 48 hours after the baby is born. Either parent usually has 10 days to change their mind¹⁵. As a practical matter, this means that the new abandonment law in Texas could use a similar timetable to determine when the implied voluntary consent present in an abandonment may be revoked. The matters of consents, relinquishments and revocation of consents are among the topics that will be carefully examined when the Texas legislature reconvenes in 2001.

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How do people in Texas find a list of emergency medical service providers?

Rep. Morrison's office is maintaining, on an interim basis, a list of such providers and her offices may be contacted for referrals. Rep. Morrison's Austin office telephone is 512-463-0456 and her District office is (800) 687-0100 [for Texas callers only] or (361) 572-0196. Rep. Morrison is heading up the BABY MOSES PROJECT, which will be providing information, education and technical assistance about H.B. 3423 as well as similar legislative initiatives which have developed in response to the Texas law or independently.

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What are the goals of the Baby Moses Project?

The goals are to raise funds in order to provide an organized response to the outpouring of support for the idea of giving babies safe shelter and necessary services, not just in Texas but throughout the United States and anywhere people want to ensure that newborns may be anonymously and safely delivered to an EMT without their parents needing to fear legal prosecution. The Project will operate under

a foundation so that contributions will be deductible to the extent provided by federal law. It is hoped that a combination of contributed funds and volunteer services will result in the Morrison law spreading across America.

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Is Rep. Morrison's law a model for other states to follow?

Certainly, the idea is being considered by numerous other states and has received tremendous attention from the national media. But model laws or uniform acts are highly technical and usually are drafted over a period of years by organizations such as the National Conference of Commissioners on Uniform State Laws. In this instance, Rep. Morrison believes that her law is a good starting point but she is working with people all across America to gather ideas for improving the law. Rep. Morrison will be introducing a bill to improve upon H.B. 3423 in the next session of the Texas legislature, set for 2001.

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What other jurisdictions currently have some approach similar to Rep. Morrison's law?

At the present time, Rep. Morrison and the Baby Moses Project - an effort largely of Texans, working through a charitable foundation¹⁶ -- are aware of activities which are reportedly under way in these 25 states in addition to Texas.

*** ALABAMA PASSED HB 115** - State Representative Laura Hall filed HB 115, which overwhelmingly passed both the House and Senate and was signed into law by Governor Siegelman. Additionally, Jodi Brooks, a reporter for Mobile television station WPMI-TV, the local NBC affiliate, started a program in 1998 to address the problem on the local level. Ms. Brooks had covered too many stories about abandoned babies, many of who died. Ms. Brooks decided to put together a team to offer women the option of safely placing their children at the door of a church without having to fear being prosecuted for abandonment. Since the program started, no dead infants have been found and three mothers have brought in their babies for adoption¹⁷ A recently-rescued baby now awaits adoption.¹⁸ Meanwhile, the Mobile program, called "A Secret Safe Place for Newborns," states in its program materials that no questions will be asked, that newborns up to 72 hours can be dropped off at emergency rooms of participating hospitals with total secrecy, and police will not be called for abandonment. The Mobile program reportedly includes giving the mother an identity bracelet that will match her with her child in the event she changes her mind.¹⁹ Because of the response the Mobile program has received, Ms. Brooks says that a "template is being put together that will help other communities start similar programs."²⁰ Also see Alabama HJR 577

CALIFORNIA In California, State Senator James Brulte (R-Cucamonga) filed S.B. 1368, which has been passed by both the House and Senate. The bill will now be sent to the Governor where it is expected to receive final approval. The drive for the California legislation came from, Debi Faris of Yucaipa, who took it upon herself to begin burying abandoned babies who had died or were murdered. Faris has provided burial for 37 bodies of abandoned babies through her "Garden of Angels" project.²¹

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A Jan. 24 story, "Activist backs baby drop-off bill," reports that Sen. Brulte's bill "... is picking up steam, gathering the support from all corners of the political spectrum."²² An Associated Press story quoted Sen. Brulte as saying "We've had evidence that babies are being put into Dumpsters and sometimes we find them before they die, and sometimes we don't. And that presumes we find 100 percent of babies and I don't think we do...." The same news article quotes Elaine Leschiot, who prosecuted Melissa Drexler, the young woman who delivered a baby during her 1997 prom, wrapped the baby in a bag, and returned to the dance as saying "I don't think any of these girls are big killers," she said. "I think it's the embarrassment and shame, and they're self-centered."²³

*** COLORADO PASSED SB 171** - In Colorado, Senator Gloria Tanner authored and Rep. Gayle Berry sponsored SB 171 which was overwhelmingly passed by both the House and Senate. S.B. 171 was signed by Governor Owens and will take affect on June 3, 2000.

*** CONNECTICUT PASSED HB 5023** - In Connecticut, Rep. Marie Lopez Kirkley-Bey filed H.B. 5023, which passed both the House and Senate and was signed by Governor Rowland.

*** DELEWARE PASSED HB 555** - In Deleware, Representative Maier filed HB 555, which was overwhelmingly passed both the House and Senate. HB 555 was given final approval by Governor Carper on June 20, 2000.

*** FLORIDA PASSED HB 1901** - In Florida, HB 1901 which was substituted for SB 2080, was overwhelmingly passed by both the House and Senate. HB 1901 was signed into law by Governor Jeb Bush on June 2, 2000.

GEORGIA In Georgia, Representative Lynn Smith filed HB 1292, the "Safe Place for Babies Act". Rep. Smith's legislation was overwhelmingly passed by the Georgia House, but was not passed in the Senate.

ILLINOIS In Illinois, Senator Trotter proposed S.B. 1668 and has been referred to the Senate Rules Committee.

*** INDIANA PASSED SB 330** - In Indiana, state Senator Wolf filed SB 330 which was unanimously passed by the full legislature. The bill was signed by Governor O'Bannon and becomes effective, July 1, 2000.

KANSAS In Kansas, state Representative Kay O'Connor filed HB 2927 on February 9, 2000. The legislation is currently in the Appropriations committee. Due to the fact that this legislation has been referred to one of only a few committees that is blessed (free from filing deadlines), Rep. O'Connor feels confident that the legislation will meet with a favorable response.

KENTUCKY In Kentucky, Senator Bufford proposed S.B. 188, which was passed out of the Senate and now awaits passage in the House Judiciary Committee. H.B. 367 was also introduced "...to protect women from prosecution if they leave their babies with emergency workers."²⁵ Since the filing of this legislation, H.B. 546 has also been proposed to protect abandoned newborns.

* **LOUISIANA PASSED HB 223** During a Special Session called by Governor Foster, Representatives Cedrick Glover and Tony Perkins filed HB 223. Recognizing the need for such legislation, this bill was "fast tracked" and overwhelmingly approved by both the House and Senate. The bill was signed by Governor Foster on April 17, 2000.

MARYLAND In Maryland, the Montgomery County Board of Social Services, in response to a case involving an abandoned baby found in Germantown, a suburban community just outside Washington, D.C., where the infant narrowly escaped death after being put in the trash in subfreezing weather, voted at its Feb. 7, 2000, meeting in favor of a motion to send a letter to the County legislative delegation asking that a bill similar to H.B. 3423 be introduced in the state legislature.²⁶

* **MICHIGAN PASSED SB 1053** – In Michigan, Senator Joanne Emmons proposed S.B. 1053, which was overwhelmingly passed by both the House and Senate. S.B. 1053 has since been signed by Governor Engler.

* **MINNESOTA PASSED SB 2615** - In Minnesota, state Senator Leo Foley filed SB 2615, which passed both the Senate and House with tremendous support. Governor Ventura signed the bill into law on April 18, 2000. Minnesota also has, in Dakota County, near St. Paul, has a new program called "A Safe Place for Newborns," involving three hospitals in the county and the Roman Catholic Archdiocese of St. Paul and Minneapolis. According to the Associated Press, the program allows parents to leave babies anonymously at hospitals without fear of prosecution. A mother who brings in a newborn will be asked to volunteer medical information about the baby. She will be given an identity bracelet, as in the Mobile, Alabama, program, proving she is the mother in case she wants to reclaim her baby later. According to the AP, eventually the program is expected to expand throughout Minnesota.²⁷ According to Rev. Andrew Cozzens, co-chairman of the program, "Essential to the success of the program is protecting the woman's confidentiality. To get immunity from prosecution for abandonment, she must bring her newborn to the hospital within 72 hours. She has six months to work with child-welfare officials to reclaim the baby...community leaders agree that all the 'what ifs' don't add up to the price of a human life...."²⁸

NEBRASKA – In Nebraska, The Judiciary Committee, Chaired by Representative Kermit Brashear is currently in the process of conducting and interim study on newborn abandonment. L.R. 391 will be heard in mid October.

* **NEW JERSEY PASSED A6** - In New Jersey, Speaker of the House, Jack Collins filed A6, also known as the "Safe Haven for Babies" bill. The legislation was co-sponsored by Assemblywoman Charolette Vandervalk. A6 was unanimously passed by both the Assembly and the Senate, and has since been signed by Governor Whittman.

* **NEW YORK PASSED S 6688** – In New York S. 6688, known as, " the Abandoned Infant Protection Act," was passed by both the House and Senate and has since been signed into law by Governor Pataki. Additionally, in New York State, an effort of Nassau County [Long Island] Police Ambulance Medical Technicians (AMT) has been widely publicized, including an article in *The New York Times*. The AMT Children of Hope Infant Burial Foundation is similar to the Garden of Angels

project in California, but Tim Jaccard, Chairperson of the Children of Hope effort, has a more ambitious agenda than burying bodies. Material from Children of Hope states that in the United Kingdom, "...where the government has been monitoring the issue, statistics reveal a 300 percent increase in infant abandonment in the last decade." Jaccard says "Here in the United States, those working in the field estimate that 57 babies a day are abandoned across the country. That is an alarming 20,800 infants abandoned with about 6,900 of them found dead." Jaccard is focused on education and advertising as well: "Through the advertising of hot-line telephone numbers and various service agencies, the AMT's Children of Hope Foundation is providing these mothers, who feel shame and desperation, with the confidential and reassuring help they and their unborn need." Jaccard calls for both research and education: "We need a fuller picture of the circumstances of infant abandonment and to identify all those responsible for the pregnancy before we can effectively confront the issue.... We need to educate both teenage males and females especially on the responsibilities and consequences of their actions. We must try to save as many of the abandoned newborns as possible. This must begin at all phases of the pregnancy, before, during and after." The Nassau County effort has advertisements on buses, railroad approaches, in train stations, clinics and hospitals.²⁹ Jaccard says his group is exploring introduction of legislation similar to the Morrison law in New York.³⁰ Jaccard's group has an adoption referral option through a New York licensed, nonprofit child placement agency, Family Connections, Inc.³¹

NORTH CAROLINA In North Carolina, state Representative Phillip Haire has filed HB 1616, which has been referred to the Judiciary Committee.

OKLAHOMA In Oklahoma, state Representative Susan Winchester has filed HB 2148. The legislation was overwhelmingly approved by the House and Senate.

OHIO In Ohio, state Representative Winker has filed HB 660, which was unanimously passed by the House and now awaits passage in the Senate.

OREGON In Oregon, H.B 3402 has been proposed to address the alarming increase of newborns being abandoned across the country.

PENNSYLVANIA In Pennsylvania, HB 2321 has been filed and referred to the Judiciary Committee. In addition a program is in place in Pittsburgh. "In Pittsburgh, several dozen volunteers put "Baskets for Babies" in front of their homes, explaining babies would be safe if left there."³²

RHODE ISLAND – In Rhode Island, prompted by two recent newborn abandonments, Senator Catherine Graziano is expected to file legislation to address the problem. When asked in a recent article published in the *Providence Journal*, Sen. Graziano said, "I'm going to do my best to get [a bill] in during the next session."

*** SOUTH CAROLINA PASSED G.B. 4743** - Representative Smith filed G.B. 4743, which was overwhelmingly passed by both the House and the Senate. G.B. 4743 has now been signed by Governor Hodges.

TENNESSEE In Tennessee, HB 3112 was filed by Assemblyman Bill McAfee and has been referred to the House Judiciary Committee.

* **TEXAS PASSED HB 3423** - In Texas, state Representative Geanie W. Morrison filed HB 3423, which passed out of both the House and Senate without opposition. HB 3423 was signed into law by Texas Governor, George W. Bush, on June 2, 1999. This bill was the first of its kind passed in the United States to address the problem of abandonment.

UTAH – In Utah, Representative Patrice Arent is in the process of pre-filing legislation, which will be heard this coming January when the legislature reconvenes.

WASHINGTON STATE In Washington, Representative Pat Scott filed HB 1134, which has been referred to the Committee on Criminal Justice and Corrections. In addition, state Senator Jeanne Kohl-Welles is also drafting legislation. In a recent article, Senator Kohl-Welles, "The intent is not to legalize abandonment, or encourage teenagers to not act responsibly,"...The intent is to do what we can to make sure that no infant is going to die, that mothers don't leave a baby alone in a life-threatening situation."³³

* **WEST VIRGINIA PASSED GB 4300** - Representative Barbara Hatfield's G.B. 4300 was overwhelmingly passed by both the House and the Senate and has since been signed into law by the Governor.

OTHER STATES Other states that have local programs or are considering legislation include, Wisconsin, Mississippi, Maryland, Massachusetts, and New Mexico.

* **CONGRESSIONAL LEADERS PASS H.Res. 465** - The Baby Moses Project won a milestone victory on April 11, 2000 in our nation's Capitol. With overwhelming support from both sides of the aisle, Congresspersons Nancy Johnson of Connecticut (for herself, Mr. DeLay of TX, Mr. Goodling of PA, Mrs. Jones of Ohio, Mr. Callahan of AL, Mr. Camp of MI, Ms. Pryce of Ohio, Mr. Oberstar of MN, Mr. McNis of CO, Mr. Watkins of OK, Mr. Foley of FL, Mr. Smith of New Jersey, Mr. English of PA, Mr. Greenwood of PA, Ms. Canady of FL, and Ms. Jackson-Lee of TX) passed H.Res. 465, encouraging all states to follow Texas' lead in addressing the problem of newborn abandonment. In addition, H.Res. 465 stresses the importance for all states to gather and keep statistics, so that an accurate account of this problem can be monitored. This single event has brought a national recognition of an issue that until recently has gone largely unnoticed.

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Who pays for the cost of the Morrison law and other similar projects?

In Texas, Rep. Morrison says, it is considerably less expensive to treat a newborn that has been delivered to a Emergency Medical Service than it is to treat a child who has been unsafely abandoned in freezing or sweltering temperatures for countless hours. Weather is a significant factor, but by no means the most dangerous. Others include: lack of feeding; animals; insects; trash trucks - and the major determining factor, time. Babies who are safely given to properly trained personnel are much more likely to survive and to avoid permanent disabling injuries - injuries that might well need extensive and expensive medical treatment financed with taxpayers' dollars. Most important of all, the legislation is premised on the belief that there is not a price on a

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human life. Even apart from the clear benefits to society of eventually having a productive, taxpaying citizen, basic humane treatment of children demands that society's laws creatively address proven threats, such as abandonment. These services should properly be seen as part of the public health and public child welfare and protective services routinely provided by states.

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In the past, the argument has been made that arrangements that allow parents to anonymously abandon their newborns will only encourage irresponsible behavior?

The fact is that people unfortunately engage in a variety of risky behaviors in our society, including couples who are unable or unwilling to care for a child that has already been conceived. The Morrison law and others like it simply encourage women and others in positions of authority in the child's life to begin making responsible decisions by assuring that the baby is turned over to people who can provide proper medical and other care for the child. In no way does this law encourage a mother to act irresponsibly; rather, it provides a responsible alternative to baby abandonment, in effect saving the life of a newborn. Once that is accomplished, then society can take steps to see if the parents want to change their minds and try to regain legal custody if the parents are, should be or can be identified. If the parents do not come forward, or do not wish to regain custody, then a permanent, adoptive family should be found for the baby. The timing of services and actions should be based on the needs of the baby, not adult wishes.

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Should parents be forced to accept responsibility for their actions?

Not every person who is a biological parent, either the woman who gives birth or the male who provided the sperm, is willing or able to raise a child. Forcing those who are unwilling or unable to try to be parents is unsound social policy, experimenting with the lives of babies. The most responsible action most of these parents can take at this point in their lives is to ensure that their baby is in the hands of someone who can provide a caring, stable environment.

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What happens once a baby is safe and in the hands of authorities?

Many of the details are necessarily left to existing state and federal laws pertaining to child abuse and neglect, child welfare, foster care and adoption. Essentially, the idea is that once the baby is medically stable, the public department (in Texas, the Department of Protective and Regulatory Services) should arrange for the baby to be cared for by a qualified, licensed foster family. Ideally, this should be a family that is also licensed and has an approved home study to adopt so that if the parent or parents do not end up with custody of the child, and the court rules that the child may be adopted, the baby can stay with the family who has been nurturing her or him for weeks or months. In most instances, these foster care placements and adoptive placements will be handled by the public agency at little or no cost to the family that cares for the child.

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Why does a public department have to be involved, since there are many private groups who are working in this area?

Arranging foster care and adoptions is something that, in the laws of most states, requires the involvement of a licensed child-placing or adoption agency. There are literally thousands of crisis pregnancy centers, faith-based organizations and other voluntary groups, which can provide information, referrals and help to women in crisis. But most of these are not licensed to do adoption placements or provide the information to be given out to callers. In addition, the information on these web sites can be misleading or inaccurate. For instance, two of the high-profile groups in California known for their interest in abandoned children are not licensed to do placements, yet they give out information and act in ways similar to agencies. The difference is that if someone were to innocently follow their advice they could end up violating the law. In one instance, a California group says on its web site to women contemplating abandonment: "We can arrange a confidential adoption for you without your parents finding out, *if* you want to give up the baby. You don't need approval from your parents or the baby's father; we'll take care of the paperwork." This information is only partially accurate: the baby's father has very distinct legal rights in many instances. Other groups, including at least one in California, tells callers that one of their couples will fly in, pick up a baby, fly to California, and an adoption can be arranged without the father knowing anything. Among other considerations, such advice is contrary to the Interstate Compact on the Placement of Children, which has been agreed to and is part of the law of each of the states. Clearly, there is a role for groups such as these crisis pregnancy centers, as well as licensed private adoption agencies, and attorneys experienced in family and adoption law. But the ultimate responsibility is given, by statute, to the state agency in charge of social services, child protection services and adoption. The state agency may decide to contract out some of its responsibilities to others, but until the state agency has done this, other groups are at substantial legal peril if they act independently of pertinent regulations and statutes. We support all efforts to put an end to this tragic problem, but request a strict adherence to the law by which each state is governed.

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Is anyone opposed to this legislation?

Yes, there are individuals and some groups who have expressed opposition in various public forums. Following are some of the objections and responses.

On the internet, there is a discussion of these new programs on "About.com," a network of sites led by expert guides, called "New Option: Legal Abandonment." An article was posted on the "Adoption" GuideSite, which is hosted by Nancy "Sass" Stanfield, beginning Jan. 17, 2000. Ms. Stanfield identifies herself as a person who was adopted and who searched out her birth parents. Ms. Stanfield's article reflects the subjective viewpoints of those who believe in one-way searches for birth parents, especially in her description of the Morrison law. Ms. Stanfield raises five objections in a list of accusations which begin "Nowhere does the law...." The first objection is that the person doesn't identify her or their self - but that's the whole purpose of the law, to allow for anonymous but safe placing of a child with licensed medical

specialists. The second objection is that there is no relinquishment signed - but this is anonymous legal abandonment, not adoption, where voluntary relinquishments are signed. The third objection is that the person does not provide medical information - but that would hardly be expected when someone is anonymously depositing a baby. With respect for the newborn's life, it is better to have a baby that is safely delivered to an EMT without medical records than a baby found in a Dumpster with medical records by the corpse. The fourth objection is simply incorrect: H.B. 3423 does not need to state a period when a person abandoning a child may change their mind, as that period is already specified at length in Texas law. The fifth objection is also incorrect: H.B. 3423 does not need to require the state to try and obtain any information because such requirements are already built into the state's protective services laws and regulations.³⁴

There is also an article on "Foundling Asylums" in an Online Edition of The Catholic Encyclopedia, Copyright 1999, which is dated from 1909, that may be cited by some who oppose H.B. 3423 and similar approaches to abandonment. The article is about 100 years out of date, but does contain some very interesting historical information. In context, the article clearly stresses the fact that foundling homes and various approaches were meant to protect the lives of vulnerable infants. The article condemns the existence of institutions and devices that allow babies to be safely and anonymously deposited. One such idea, recently revived to prevent the death of abandoned babies in South Africa, was a revolving crib that allowed the baby to be brought inside while preserving the privacy of the person or persons who put the child in the crib. As the program in Johannesburg demonstrates, such approaches work because an average of one baby a month has safely been deposited in a large mail slot cut in the door of a Baptist church. This large South African city is the scene of about a dozen infants being found each year dead, in the garbage or exposed outside.³⁵ The article also argues that 18 months of "support" is given to mothers of babies. The experience of the U.S. with Aid to Families with Dependent Children has demonstrated that welfare is no solution and the numbers of neglected and abused children continues to rise, even in the aftermath of new initiatives to protect children. The three main objections to foundling homes 100 years ago were: "...the very high death rate in these places (sometimes more than 90 percent), ...the smaller expense of the family system, and...the obvious fact that the family is the natural home for young children." Today, babies are not maintained in large institutions. Family foster care is less expensive and widely used, even when the child has been abandoned. Indeed, in Minnesota and elsewhere some of the leading advocates of a more practical approach to the problem of abandonment - including guarantees of privacy and anonymity, as well as placement of children for adoption - are leaders of the Catholic Church.³⁶ Of course, the most important fact to keep in mind when dealing with abandonment, adoption and other issues is that for the last 50 years, starting first in Korea and more recently in Latin America, India, Vietnam, Eastern Europe and China, babies who are safely abandoned are being adopted by qualified, willing families.

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Is there any truth to the claim being made on the internet that these new laws will provide an opening for people to steal babies from women and then dispose of them through adoption?

There has been a large number of postings, under a number of headings but especially

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under "Re: Calif. Bill would make it "ok" to abandon babies". But even in that forum, the wild charges³⁷ have largely been dismissed.

To the charge that babies will be kidnapped and turned over for adoption, clearly there are procedures to protect against such abuses. The first place a person would turn if their baby disappeared would be to law enforcement officers, public agencies and the like. People who have missing babies will use the many means at their disposal.

One line of argument, advanced in a Jan. 18 posting on the same subject on alt.adoption, criticized France for still allowing anonymous abandonments in the French civil code: "It is also heavily defended by the Catholic Church, among others. Also, the Muslim community in France has advocated for these laws to remain. Several French groups... have been formed to fight for an end to anonymous abandonment... Remember that records are open in France... the only question is whether [sic] or not there is any information in them."

The same individual, posting on Jan. 22, raised four separate objections. The first was that these laws are contrary to the Convention on the Rights of the Child. The fact is that the U.S. has not ratified that Convention and countries that have, such as France, China, Russia and others allow anonymous relinquishment.

The second is "there is no evidence that any birthmother who would toss a child into a dumpster would be in a position of bother to avail herself of the methodology for anonymous relinquishment provided for in these laws. The experience of one Baptist church in South Africa answers that objection: in five months, five babies have been saved.

The third is the claim that "...the beneficiaries of such a law are more likely to be unscrupulous adoption practitioners who would be able to protect unaccountable relinquishment practices under the guise of anonymous relinquishment." For this charge to have any validity, all the public departments with responsibility for protective services, foster care and adoption would need to be "unscrupulous" and, as publicly-accountable entities, they operate in a full disclosure mode.

The fourth is an ad hominem attack: "...the fact that members of the militant fringe of the far right, such as Operation Rescue and its front organisations, have come out in support of such laws should [be] all that one needs to say on the subject. Generally speaking, in my experience, when people widely believed to be apologists for terrorism support a law, beware the law..." There is wide, bipartisan support for these laws across all ideological lines, as is evident by the fact that the two leading political figures currently working on these matters in Texas are U.S. Rep. Lee, a Democrat, and State Rep. Morrison, a Republican.

Another set of objections is related to establishing the identity of the child in case a parent wanted the have the baby returned. But DNA testing, which is already used to determine paternity in some countries where questions have been raised about kidnapping and valid executions of relinquishment, is a solution far more practical and protective of anonymity and privacy than requiring a woman to accept a hospital or EMT identification band.

Another objection, posted to alt.adoption on Jan. 26 is that "These laws seem

designed to expedite the anonymous surrender of parental rights as much as save babies' lives." There is no evidence for such a charge: some of the new law's strongest supporters point to abandonment and loss of babies' lives as the primary concern which motivated them. The more the laws receive acceptance, the wilder grow the accusations, as in this material from a Jan. 26 posting: "I'm concerned about systemic accountability from corrupt child welfare systems. I wouldn't be surprised if given the option of Les Accouchements Sous X [anonymous abandonment and placement as practiced in France] in America, unscrupulous county workers start classifying babies they've simply lost the records for or can't be bothered with or for which they received a bribe "legally abandoned" or even for which Medical or Medicare improprieties may have occurred with (a big problem) when in fact no such abandonment occurred. Given past recent experience, I'm sure their partners in crime in the Police Dept will happily help them produce the requisite paperwork...." Such accusations are ludicrous on their face. There is no evidence that such incompetence, corruption and improprieties exist within the county public social service and police systems.

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What is the attitude of the public toward such laws allowing anonymous abandonment of babies?

Initially, there has been a very favorable response, even among some of the usual anti-adoption groups and individuals. The only poll which has been taken, which has very limitations because of the methodology (self-selection and not random selection of those who can vote, the fact that individuals can log on and vote more than one time, etc.), asked the question, "Would you vote for a law to make it legal to abandon a newborn at a hospital or fire station?" That poll, as of Jan. 30, had 502 total votes. Of those, 400, or 80%, were in favor of laws like Rep. Morrison's, 90, or 18%, were opposed, and 12, or 2%, responded "Don't know."³⁸

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1. Chris Fletcher, "13 Baby Abandonments Stun Houston," Dec. 29, 1999.
2. Stacy A. Teicher, "Rescuing babies from abandonment," Jan. 24, 2000, p. 3.
3. Activities in these jurisdictions are discussed below.
4. Amy Grossberg and Brian Peterson were convicted in a Delaware case. LaTrena Pixley was convicted of second degree murder in a District of Columbia proceeding. On Jan. 26, a Jamaican citizen living in Maryland abandoned her newborn. Melissa Drexler of New Jersey is presently serving time for the murder of her baby, who she delivered during her prom.
5. See Note 1.
6. These data projections are based on population statistics as of July 1, 1996, obtained from the U.S. Census Bureau, as imputed by William L. Pierce, Ph.D., President of the Richard C. Stillman Foundation for Adoption.
7. See <http://www.ojp.usdoj.gov/bjs/homicide/kidsage.txt>
8. Fletcher.
9. All data from the Bureau of Justice Statistics, see Note 7 for URL.
10. Catholic News Service, August 20, 1999.
11. See <http://www.capitol.state.tx.us/tlo/76R/witbill/HB03423S.HTM>

12. For a discussion of this history and the beginning of "boarding out" infants with foster parents in 1871, see, especially, Introduction, pages xxii ff., *The Encyclopedia of Adoption*, Christine Adamec and William Pierce, Facts on file, NY, 1991.
13. A young, unmarried White couple from affluent backgrounds delivered their baby in a motel room and the baby was allegedly killed by the father before being thrown in the trash.
14. Published in November, 1999, by the National Council For Adoption. Adamec's chart originally appeared in *The Complete Idiot's Guide to Adoption*, Alpha Books, 1998, at pages 120-124.
15. See Note 14.
16. The Richard C. Stillman Foundation for Adoption is hosting the project and providing various support to the project organizers so that 100 percent of all funds donated to the project go, overhead-free, for project goals. Other individuals involved in the project, which is still in formation, include Dr. John Richardson. Other groups supporting the project include the National Council For Adoption.
17. Stacy A. Teicher, "Rescuing babies from abandonment," *Christian Science Monitor*, Jan. 24, 2000, p. 3.
18. Ron Colquitt, "Abandoned baby awaits adoption procedures," *Mobile Register*, Oct. 20, 1999.
19. Nancy Stanfield, "New Option: Legal Abandonment," *About.com*, Jan. 17, 2000, at <http://adoption.about.com/home/adoption/library/weekly/aa011700a.htm>
20. Personal communication with William Pierce, Richard C. Stillman Foundation for Adoption, Jan. 30, 2000.
21. Personal communication with William Pierce, Richard C. Stillman Foundation for Adoption, Jan. 26, 2000.
22. Ted Gotsch, p. B1, Sun.
23. "Proposed California law may protect panicked mothers who discard infants," *Sacramento Bee*, Jan. 17, 2000.
24. See Note 7.
25. See Notes 7 and 9.
26. See draft Minutes, Board of Social Services, available from Galena Kuiper, Chair, Board of Social Services, or Trudy McNamara, staff to the Board.
27. "Abandoned Babies Program Launched," Jan. 5, 2000.
28. See Note 7.
29. Undated two-page statement, "FACTS YOU SHOULD KNOW ABOUT INFANT ABANDONMENT," A.M.T. Children of Hope Foundation Infant Burial, Inc. of the Nassau County Police Department.
30. Personal communication with William L. Pierce, President, Richard C. Stillman Foundation for Adoption. The A.M.T. Children of Hope Foundation was the recipient of a modest grant from the Stillman Foundation in 1999.
31. Letter from Jaccard to the Stillman Foundation, Jan. 11, 2000, in the files of the Stillman Foundation.
32. See Note 7.
33. "Proposals Seek Havens for Unwanted Babies," *Seattle Times*, August 21, 2000
34. See Note 16.
35. Pat Reber, *Associated Press*, "South African babies left in mail slot," Jan. 16, 2000.
36. See Note 7.
37. For instance, see "Ginger Root" and a posting on Jan. 25 on alt.adoption, message id: bJtj4.16550Sup4.326486@news1.rdc1.ab.home.com for the most outlandish fantasy.
38. See Note 9, as amended by the author, Nancy Stanfield.

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Please do not hesitate to contact Justin Unruh with any further questions.

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APPENDIX G

A table titled, “Recently Passed Infant Abandonment Legislation,” prepared by Kimberly M. Carrubba, Research Analyst, Legislative Counsel Bureau, Research Division

Recently Passed Infant Abandonment Legislation

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>Alabama</u> H.B. 115 Representative Laura Hall Became Law May 15, 2000 Effective August 1, 2000	72 hours old or younger	Child may be left with any emergency medical services provider. No person or entity subject to the provisions of this law can be held criminally or civilly liable.	(1) Perform any act necessary to protect the physical health and safety of the child; and (2) Notify the Department of Human Resources (DHR) no later than one business day.	(1) Assume care, control, and custody of child immediately upon receipt of notice; and (2) Responsible for all medical and associated costs incurred by the hospital, prior to the child being placed in care of the department.	No court requirements listed.	<u>Parental Rights:</u> (1) Provides an affirmative defense to prosecution of abandonment or neglect charges, for any person who complies with the provisions of this law.
<u>California</u> S.B. 1368 (Chapter 824, Session Laws 2000) Senator James L. Brulte Became Law September 28, 2000 Effective September 28, 2000	72 hours old or younger	Child may be left with any employee on duty at a public or private hospital emergency room or at other location designated by the board of supervisors. No person or entity subject to provisions of this law can be held criminally, civilly, or administratively liable.	(1) Take physical custody of child; (2) Provide medical screening examination of child; (3) Provide a specified medical information questionnaire to person surrendering child; (4) Place a coded identification bracelet on the child; and (5) Notify child protective services or county agency within 48 hours of taking custody of child.	(1) Assume temporary custody of child; (2) Notify the State Department of Social Services immediately; (3) File petition with court to allow child to become a dependent of the state; (4) Instruct counties of process to be used to ensure each child is determined to be eligible for MediCal benefits; and (5) File reports regarding the effect of the bill to the Legislature.	(1) Judge a child as being a dependent of the court if the child is not reclaimed within 14 days.	<u>Parental Rights:</u> (1) Provides an affirmative defense to prosecution of abandonment or neglect charges for any person who complies with provisions of law; and (2) Allows person who surrenders custody of child to reclaim child within 14 days.

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>Colorado</u> S.B. 00-171 Senator Gloria Travis Tanner Representative Gayle Berry Became Law June 3, 2000	72 hours old or younger	<p>Child may be left with a fire fighter at a fire station or with a hospital staff member at a hospital.</p> <p>No person or entity subject to the provisions of this law can be held criminally or civilly liable.</p>	<p>(1) Take temporary physical custody of the child;</p> <p>(2) Perform any act necessary to protect the physical health and safety of the child; and</p> <p>(3) Notify the law enforcement officer of the abandonment of the child.</p>	<p>(1) Assume temporary custody upon receipt of notice;</p> <p>(2) Place abandoned child with a potential adoptive family as soon as possible;</p> <p>(3) File a motion to terminate the rights of the parent; and</p> <p>(4) Submit monthly reports to the State Department of Human Services, who will submit them annually to the General Assembly.</p>	No court requirements listed.	<p><u>Parental Rights:</u></p> <p>(1) Provides an affirmative defense to prosecution of abandonment or neglect charges, for any person who complies with the provisions of this law;</p> <p>(2) No provisions for anonymity are made in this law; and</p> <p>(3) Rights of the parent are terminated, as soon as is lawfully possible.</p>
<u>Connecticut</u> H.B. 5023 Select Committee on Children Became Law June 1, 2000	30 days old or younger	<p>Child may be left with a designated member of a hospital emergency room nursing staff.</p> <p>No liability provisions are included in this law.</p>	<p>(1) Take physical custody of child upon determination that parent or agent does not intend to return;</p> <p>(2) Make inquiries about the identity of parent or guardian, and the medical history of child or parents;</p> <p>(3) Provide an identification bracelet to both the child and the parent or agent;</p> <p>(4) Provide an information pamphlet to the parent or agent; and</p> <p>(5) Notify the Department of Children and Families of custody of child within 24 hours.</p>	<p>(1) Assume care, control, and custody of the child, upon receipt of notice;</p> <p>(2) Take any action necessary under state law to achieve safety and permanency for the child;</p> <p>(3) Conduct an investigation to determine if reunification is acceptable, in the event that a parent or agent returns to claim child; and</p> <p>(4) Work in collaboration with the Attorney General to develop a public information program about the process established in this law.</p>	No court requirements listed.	<p><u>Parental Rights:</u></p> <p>(1) No charges of abandonment or neglect can be filed against the parent or agent who complies with the provisions of this law;</p> <p>(2) Parent or agent not obligated to provide name or identification to any hospital employee; and</p> <p>(3) Standing to participate in a custody hearing is granted to individuals who possess an identification bracelet.</p>

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<p><u>Florida</u> H. B. 1901 Committee on Family Law and Children Became Law June 2, 2000 Effective July 1, 2000</p> <p>S.B. 2082 Senator John Grant Became Law June 5, 2000 Effective July 1, 2000</p>	3 days old or younger	<p>Child may be left at a hospital or fire station.</p> <p>No liability provisions are included in this law.</p>	<p>(1) Perform any act necessary to protect the physical health and safety of the child; and</p> <p>(2) Immediately transport child to hospital.</p> <p>(3) Immediately notify a local child-placing agency or statewide central abuse hotline; or</p> <p>(4) Report any cases of suspected abuse or neglect to a law enforcement agency.</p> <p>(5) Hospitals are prohibited by law from disclosing the identity of the parent, should the identity be known; and</p> <p>(6) Any record of a parent who leaves a child in the custody of a hospital or fire station, in accordance with state law, is exempted from public record.</p>	<p>(1) Immediately seek an order of emergency custody of the child;</p> <p>(2) Place the child in a prospective adoptive home, if possible;</p> <p>(3) Assume responsibility for all medical and associated costs incurred by hospital for the care of the child;</p> <p>(4) Request assistance from law enforcement officials to investigate if the child is listed as a missing child;</p> <p>(5) Within seven days, initiate a diligent search to notify and obtain consent from a parent whose identity or location is unknown;</p> <p>(6) After 30 days, ensure all circumstances to file a petition to terminate parental rights have been met, and file the petition with the court; and</p> <p>(7) Conduct an investigation to determine if reunification is acceptable, in the event that a parent or agent returns to claim child.</p>	(1) Hold dependency proceedings, as determined appropriate.	<p><u>Parental Rights:</u></p> <p>(1) No charges of abandonment or neglect can be filed against the parent or agent who complies with the provisions of this law;</p> <p>(2) Law presumes that a parent who leaves a child in accordance with the provisions of this law consents to the termination of their parental rights;</p> <p>(3) Law establishes a statute of repose related to vacating, setting aside, or otherwise nullifying a judgment of adoption or an underlying judgment terminating parental rights for the nonrelinquishing parent.</p> <p>(a) One-year time limit on statute for any ground but excluding fraud; and</p> <p>(b) Two-year time limit on statute for fraud.</p> <p><u>Public Information:</u></p> <p>(1) Develop a media campaign to promote safe placement alternatives for newborn children.</p>

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>Indiana</u> S.B. 330 (Public Law 133, <i>Indiana Session Laws</i>) Senators Katie L. Wolf Johnny Nugent Became Law March 17, 2000 Effective July 1, 2000	30 days old or younger	Child may be left with any emergency medical services provider, including any firefighter, law enforcement officer, paramedic, emergency medical technician, or other person who provides emergency medical services. No liability provisions are included in this law.	(1) Take custody of child left voluntarily by parent who does not express intent to return for child; (2) Perform any act necessary to protect physical health and safety of child; and (3) Immediately notify local child protective service of custody of child.	(1) Assume care, control, and custody of child; (2) Treat child as taken into custody without a court order; (3) File petition with juvenile court to request hearing within following business day and appoint guardian ad litem; and (4) Not required to locate parents of child or reunify child with relatives.	(1) Hold initial hearing on petition on next business day after child is taken into custody by emergency medical services provider; and (2) Conduct and review permanency hearings for child.	<u>Parental Rights:</u> (1) Provides affirmative defense to prosecution of abandonment or neglect charges for any person who complies with provisions of law.
<u>Louisiana</u> H.B. 223 (2000 <i>Louisiana Act No.109</i>) Representative Cedric B. Glover Became Law April 17, 2000 Effective April 17, 2000	30 days old or younger	Child may be left with any licensed hospital, public health unit, fire station, police station, or pregnancy crisis facility. No person or entity subject to provisions of this law can be held criminally or civilly liable.	(1) Provide newborn with any necessary care, including emergency medical care; and (2) Notify Department of Social Services within 24-hours of relinquishment of child.	(1) Assume custody and control of child within 24-hours of notification; (2) Commence a thorough search of missing children listings to ensure that child has not been reported missing; (3) File petition in court to terminate parental rights of parents of child; (4) Adopt rules and regulations necessary to implement program; and (5) Evaluate program and submit written report to legislature to make recommendations for revisions and improvements to program.	(1) Issue order for immediate blood or tissue sampling to determine maternity or paternity; (2) Conduct hearing to determine maternity or paternity issue at earliest time available; and (3) Issue ruling on establishment or termination of parental rights.	<u>Parental Rights:</u> (1) Provides an affirmative defense to prosecution of abandonment or neglect charges for any person who complies with the provisions of law; (2) Relinquishment of a newborn may be grounds for the termination of parental rights; and (3) Mother or father of child may file petition with court in parish where child was left in order to revoke their intention to relinquish child.

State Bill Number Sponsored by, Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>Michigan</u> Safe Delivery of Newborns Law (S.B. 1052, 1053, 1187; H.B. 5543) Senators Shirley Johnson, Joanne G. Emmons, Bev Hammerstrom and Representative Patricia Birkholz Enrolled June 8, 2000	72 hours old or younger	Child may be left with any emergency service provider, such as a fire department, hospital or police station. No person or entity subject to the provisions of this law can be held criminally or civilly liable.	(1) Take the child into temporary protective custody and transfer the child to a hospital, if necessary; (2) Perform any act necessary to protect the physical health and safety of the child; (3) Inform the parent that by surrendering the child, the parent was releasing the child to be placed for adoption, and go over adoption law requirements; (4) Inform the parent that he or she would have 28 days to petition to regain custody of the child; (5) Provide the parent with a safe delivery pamphlet; (6) Make a reasonable attempt to obtain any relevant family or medical information, and identity of parent; (7) Inform the parent of the confidentiality of the information given; and (8) Notify a local child- placing agency of the abandonment of the child.	(1) Immediately assume the care, control, and custody of the child; (2) Immediately meet with the parent, if the parent is known and willing; (3) Make a temporary placement of the newborn with a prospective adoptive parent; (4) Immediately request assistance from law enforcement officials to investigate whether the child is a missing child; (5) Petition the court in the county where the prospective adoptive parent resides to provide authority to place the child and provide care of the child, within 48 hours of taking custody of child; and (6) Make a reasonable attempt to identify and locate a parent who did not surrender the child, within 28 days of taking custody.	(1) Determine whether a person filing a custody action is the child's biological parent; (2) Order each party claiming maternity or paternity to submit to a blood or tissue test; (3) Determine custody of the child on the basis of the child's best interest with the goal of achieving permanence for the child at the earliest possible date; and (4) Grant a custody order either granting legal or physical, or both, to the parent of the child, or terminating rights of the parent.	<u>Parental Rights:</u> (1) A parent who surrenders a child in accordance with this law, and who does not file a custody action within 28 days of the abandonment, is presumed to have knowingly released their parental rights to the child; (2) Provides an affirmative defense to prosecution of abandonment or neglect charges, for any person who complies with the provisions of this law; and (3) Provides that the surrender of a child in accordance with the provisions of this law are not considered to be reasonable cause to suspect child abuse or neglect, and are not subject to the reporting requirements of the Child Protection Law, unless there are signs of abuse. <u>Public Information:</u> (1) Establish a safe delivery program, to include a toll- free, 24-hour telephone line, and a pamphlet.

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>Minnesota</u> S.F. 2561 Became Law April 18, 2000 Effective Immediately	72 hours old or younger	Child may be left with any hospital employee. No person or entity subject to the provisions of this law can be held criminally or civilly liable.	(1) Make a reasonable attempt to obtain any relevant family or medical information; (2) Provide contact information for relevant social service agencies to the parent or person leaving the child; (3) Cannot make any inquiry as to the identity of the parent or person leaving the child; and (4) Notify the local welfare agency within 24 hours of taking custody of the child in accordance with law.	(1) Make any attempts to locate parents or relatives for reunification of family.	No court requirements listed.	<u>Parental Rights:</u> (1) No charges of abandonment or neglect can be filed against the parent or agent who complies with the provisions of this law; and (2) Parent or person leaving the child in accordance with the law is not required to provide identification.

State Bill Numb Sponsored Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>New Jersey</u> A.B. 6 (Chapter 58, <i>Chapter Laws</i> 2000) Assemblyman Jack Collins Assemblywoman Charlotte Vandervalk Became Law July 7, 2000	30 days old or younger	<p>Child may be left at a state, county, or municipal police station or at an emergency department of a licensed general hospital.</p> <p>No person or entity subject to the provisions of this law can be held criminally or civilly liable.</p>	<p>(1) Take possession of child without a court order;</p> <p>(2) Perform any act necessary to protect the physical health and safety of the child; and</p> <p>(3) Notify Division of Youth and Family Services within first business day after taking possession of child.</p>	<p>(1) Assume care, control and custody of child immediately upon receipt of notice;</p> <p>(2) Treat child as a child taken into possession without a court order;</p> <p>(3) Conduct thorough search of all listings of missing children to ensure that relinquished child is not reported missing;</p> <p>(4) Place child with potential adoptive parents as soon as possible.</p> <p>Not required to attempt reunification with parents or search for relatives.</p>	No court requirements listed.	<p><u>Parental Rights:</u></p> <p>(1) Provides an affirmative defense to prosecution of abandonment or neglect charges for any person who complies with the provisions of law; and</p> <p>(2) May voluntarily disclose name, identifying information of parent and/or background or medical information of child.</p> <p><u>Public Information:</u></p> <p>(1) Establish an educational and public information program to promote safe placement for newborns, confidentiality of the program, and adoption procedure information;</p> <p>(2) Establish a hotline to assist in making information about safe haven procedures widely available to the general public;</p> <p>(3) Provide information to all safe haven entities to be distributed to any person voluntarily relinquishing child;</p> <p>(4) Adopt rules and regulations to effectuate purposes of law; and</p> <p>(5) Report effect of safe haven procedures and make recommendations to legislature within 2 years.</p>

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>New York</u> S.B. 6688 (Chapter 156, <i>Session Laws</i> 2000) Senator Lorraine Hoffman Became Law July 18, 2000 Effective July 18, 2000	5 days old or younger	Person or entity not specified.	No requirements of person or entity specified.	No requirements of person or entity specified.	No court requirements specified.	<u>Parental rights:</u> (1) Provides an affirmative defense to prosecution of abandonment or neglect charges for any person who abandons a child with the intent that the child be safe from physical injury and cared for in an appropriate manner. <u>Public Information:</u> (1) Develop and implement a public information program to inform the general public of the provisions of law; (2) Create educational and informational materials; and (3) Establish a toll-free telephone hotline to provide information.

State Bill Numb Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
<u>South Carolina</u> H.B. 4743 Representative Don Smith Became Law June 6, 2000	30 days old or younger	<p>Child may be left with any hospital or hospital outpatient facility.</p> <p>No person or entity subject to the provisions of this law can be held criminally or civilly liable.</p>	(1) Take temporary physical custody without a court order; (2) Perform any act necessary to protect the physical health and safety of the child; (3) Provide information concerning the legal effect of leaving the child in accordance with this law to the parent or other person leaving the child; (4) Make a reasonable attempt to obtain information on the identity of the parents and the child's background and medical history; and (5) Notify Department of Social Services within 24 hours of taking temporary custody of the child.	(1) Assume care, control, and custody of the child within 24 hours of receiving notice from the hospital; (2) Publish and send notice to broadcast and print media in attempt to locate the parents of the child within 48 hours of taking legal custody of the child; (3) File a petition to terminate the rights of the parent within 48 hours of obtaining legal custody of the child. (4) Contact Law Enforcement Division to determine whether or not child is considered to be a missing child; and (5) Take appropriate measures to achieve public awareness of the provisions of the law.	(1) Hold a hearing on the petition to terminate parental rights between 30 and 60 days after DSS has obtained legal custody of the child; and (2) File the court order terminating the rights of the parent within 10 days after receiving the order from DSS.	<u>Parental Rights:</u> (1) Parent or person leaving the child in accordance with the law is not required to provide identification. (2) Any identifying information that is disclosed by the parent or person leaving the child in accordance with law is considered to be confidential, unless otherwise determined by a court; (3) No charges of abandonment or neglect can be filed against the parent or agent who complies with the provisions of this law; and (4) Immunity from prosecution does not extend to any prosecution involving the infliction of harm upon the infant, other than the harm of abandonment. <u>Miscellaneous Provisions:</u> (1) Law enforcement to conduct an investigation to determine whether the child is considered a missing child for a period of 30 days.

State Bill Number Sponsored by Became Law Effective	Major Provisions of Legislation					
	Age of Child	Person or Entity Authorized to Take Possession of Child	Requirements of Person or Entity Taking Possession of Child	Requirements of Child Protective Services Agency	Requirements of Court	Other Information
Texas H.B. 3423 Representative Geanie Morrison Became Law July 15, 1999 Effective September 1, 1999	30 days old or younger	Child may be left with any emergency medical services provider. No liability provisions are included in this law.	(1) Take possession of the child; (2) Provide any act necessary to protect the physical health and safety of the child; and (3) Notify the Department of Protective and Regulatory Services (DPRS) within one business day of taking possession of the child.	(1) Assume the care, control, and custody of the child upon receipt of notice from the provider; and (2) Treat the child as a child taken into custody without a court order.	(1) Terminate the parent- child relationship upon finding that the child was voluntarily delivered by the parent to an emergency services provider without the intent to return for the child.	<u>Parental Rights:</u> (1) Provides an affirmative defense to prosecution of abandonment or neglect charges, for any person who complies with the provisions of this law.
West Virginia H.B. 4300 Representative Barbara Hatfield Became Law March 21, 2000 Effective 90 Days After Approval	30 days old or younger	Child may be left with any hospital or health care facility. No liability provisions are included in this law.	(1) Take possession of the child; (2) Provide any act necessary to protect the physical health and safety of the child; and (3) Notify the Department of Health and Human Services no later than the close of the first business day after taking possession of the child.	(1) Assume the care, control, and custody of the child upon receipt of notice from the provider; (2) Treat the child as a child taken into custody without a court order; and (3) Petition the court for the termination of the parent's rights.	No court requirements listed.	<u>Parental Rights:</u> (1) Person relinquishing custody of the child, in accordance with law, may remain anonymous; and (2) Provides an affirmative defense to prosecution of abandonment or neglect charges, for any person who complies with the provisions of this law.

APPENDIX H

Nevada Revised Statutes 200.508

NRS 200.508 Abuse, neglect or endangerment of child: Penalties...

NRS 200.508 Abuse, neglect or endangerment of child: Penalties; definitions.

1. A person who:

(a) Willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect; or

(b) Is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect, is guilty of a gross misdemeanor unless a more severe penalty is prescribed by law for an act or omission which brings about the abuse, neglect or danger.

2. A person who violates any provision of subsection 1, if substantial bodily or mental harm results to the child:

(a) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) In all other such cases to which paragraph (a) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.

3. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Physical injury" means:

(1) Permanent or temporary disfigurement; or

(2) Impairment of any bodily function or organ of the body.

(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his normal range of performance or behavior.

(Added to NRS by 1971, 772; A 1975, 1141; 1977, 738, 1629; 1985, 1399; 1989, 866, 1510, 1512; 1995, 1193; 1997, 850, 1720; 1999, 470, 472)

NRS CROSS REFERENCES.

Hate crimes, additional penalty, NRS 41.690, 193.1675, 193.169

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NEVADA CASES.

Evidence allowed jury to find permanent cosmetically serious injuries as constituting substantial bodily harm in prosecution for child abuse. In prosecution for child abuse where defendant was charged with willfully holding his 8-year-old son over burning papers causing first and second degree burns to boy's stomach and hand, and doctor testified that disfigurement was permanent and could be cosmetically serious, conviction for child abuse resulting in substantial bodily harm (see NRS 200.508) was proper and defendant's contention that state had failed to prove that burns constituted substantial bodily harm was rejected on appeal. "Serious permanent disfigurement" within meaning of NRS 0.060 includes cosmetic disfigurement as well as injury that is functionally disabling, and it was jury's province to determine whether harm was serious as well as permanent. *Levi v. State*, 95 Nev. 746, 602 P.2d 189 (1979), cited, *Lomas v. State*, 98 Nev. 27, at 29, 639 P.2d 551 (1982), *Hardaway v. State*, 112 Nev. 1208, at 1211, 926 P.2d 288 (1996)

Statute was not unconstitutionally vague as applied to defendants in light of evidence concerning violence and severity of child's injuries. NRS 200.508, which authorizes criminal penalties for any adult who willfully causes or permits child to suffer "unjustifiable physical pain or mental suffering" as result of abuse or neglect was not unconstitutionally vague as applied to defendants in light of evidence concerning violence or force used and severity of child's injuries. It was untenable for defendants to claim that they could not have reasonably known their conduct was criminal. *Bludsworth v. State*, 98 Nev. 289, 646 P.2d 558 (1982), cited, *Sheriff, Washoe County v. Martin*, 99 Nev. 336, at 340, 662 P.2d 634 (1983), *Smith v. State*, 112 Nev. 1269, at 1277, 927 P.2d 14 (1996)

Offense of child abuse was not lesser included offense of murder. Offense of child abuse (see NRS 200.508) was not lesser included offense of murder, and punishment for both offenses did not constitute double jeopardy. *Bludsworth v. State*, 98 Nev. 289, 646 P.2d 558 (1982), cited, *Labastida v. State*, 112 Nev. 1502, at 1513, 931 P.2d 1334 (1996), distinguished, *Athey v. State*, 106 Nev. 520, at 523, 797 P.2d 956 (1990)

Evidence was sufficient to support finding that defendant caused child substantial bodily harm. In prosecution for child abuse and neglect resulting in substantial bodily harm under NRS 200.508, where evidence was presented at trial that (1) defendant shook child like rag doll while grasping her abdomen, which could have caused duodenal hematoma child suffered, (2) child was covered with bruises as result of beatings with fist, belt and hairbrush and was in state of malnutrition when she arrived at hospital, and (3) child suffered impairment to her digestive system and prolonged physical pain which were traceable to defendant's acts, evidence was sufficient to support finding that defendant caused child substantial bodily harm. *Childers v. State*, 100 Nev. 280, 680 P.2d 598 (1984), cited, *Athey v. State*, 106 Nev. 520, at 529, 797 P.2d 956 (1990), dissenting opinion.

Child abuse statute establishes general intent crime. In prosecution for child abuse and neglect, instruction given to jury that word "willfully," as used in NRS 200.508, implied purpose or willingness to commit act or make omission in question, and did not require intent to violate law or to injure another or to acquire any advantage, was proper because statute establishes crime for which only general intent to commit act or make omission is required. *Childers v. State*, 100 Nev. 280, 680 P.2d 598 (1984), cited, *Jenkins v. State*, 110 Nev. 865, at 870, 877 P.2d 1063 (1994), *Rice v. State*, 113 Nev. 1300, at 1306, 949 P.2d 262 (1997)

Specified circumstances provided sufficient evidence to convince jury of appellants' guilt beyond reasonable doubt of felony child abuse. At trial, evidence presented that victim suffered multiple head injuries while under appellants' care and custody. On appeal from judgments of conviction of felony child abuse, appellants claimed that at trial prosecution introduced no evidence which would allow jury to determine which appellant did act that caused victim's death and if jury could not determine which appellant performed fatal act, both were entitled to acquittal. Court held that child abuse statute encompasses acts of omission as well as acts of commission (see NRS 200.508). Both appellants were responsible for safety or welfare of victim (see NRS 200.508). Court held there was sufficient evidence to convince jury of appellants' guilt beyond reasonable doubt of felony child abuse where (1) doctor testified that victim might have survived if brought to hospital sooner, and (2) appellants allowed victim to suffer unjustifiable physical pain when they delayed in obtaining medical treatment. *King v. State*, 105 Nev. 373, 784 P.2d 942 (1989)

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Only one punishment may be imposed for murder by child abuse. Although NRS 200.030 (murder) and 200.508 (felony child abuse) both proscribe child abuse which results in death, nothing in those provisions specifically authorizes cumulative punishment, and legislature intended only one punishment for murder by child abuse. *Athey v. State*, 106 Nev. 520, 797 P.2d 956 (1990), distinguished, *Labastida v. State*, 112 Nev. 1502, at 1512, 931 P.2d 1334 (1996)

Section does not apply to transmission of illegal substances from mother to newborn child through umbilical cord. Provisions of NRS 200.508, which criminalize abuse, neglect or endangerment of child, do not apply to ingestion of illegal substances by pregnant woman and subsequent transmission of such substances from woman to newborn child through umbilical cord. Therefore, respondent could not be prosecuted for violation of statute after her child tested positive for methamphetamines shortly after his birth. *Sheriff, Washoe County v. Encoe*, 110 Nev. 1317, 885 P.2d 596 (1994)

Transportation of child in stolen vehicle. At trial of defendant for possession of stolen vehicle and willfully endangering child as result of neglect (see NRS 200.508), state presented testimony of police officer concerning proper police procedure upon encountering person in possession of stolen vehicle. On appeal, defendant contended that officer's testimony was irrelevant because such encounter did not occur in defendant's case. In rejecting contention of defendant, supreme court determined that testimony of officer helped state to establish that transportation of child in stolen vehicle places that child in situation where child may suffer physical or mental suffering. Without such testimony, jury might not have been fully aware of dangerousness of situation in which defendant had placed his daughter by transporting her in stolen vehicle. Consequently, testimony of officer was relevant and was properly admitted by district court. *Hughes v. State*, 112 Nev. 84, 910 P.2d 254 (1996)

Statute was not unconstitutionally vague as applied to defendant in light of evidence of child's physical pain and mental suffering. In prosecution for child abuse and neglect under NRS 200.508, where prosecution proved that (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he beat child; (3) defendant saw bruises on child's body when she gave child bath; (4) defendant knew child was listless and ill and had temperature during days before his death; and (5) defendant refused to take child to hospital because she feared child would be taken from her, it was untenable for defendant to claim that she was unaware that her conduct was criminal on ground that phrase "placed in situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect," as used in NRS 200.508, was unconstitutionally vague. Terms used in phrase were adequately defined such that defendant was provided with notice that her conduct was proscribed by law. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996)

State of mind required for criminal liability. Pursuant to definitions of "allow" and "permit" set forth in NRS 200.508, person may be criminally liable for abuse or neglect of child if he knows or has reason to know of abuse or neglect of child, but permits or allows child to be subject to that abuse or neglect. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996), cited, *Rice v. State*, 113 Nev. 1300, at 1318, 949 P.2d 262 (1997), dissenting opinion.

Statute was not unconstitutionally vague as applied to defendant in light of evidence of defendant's failure to obtain medical treatment for child. In prosecution for child abuse and neglect under NRS 200.508, where prosecution proved that (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he had beaten child; (3) defendant knew child had fever, was lethargic, vomited repeatedly, did not eat or drink and did not go to bathroom after beating; and (4) boyfriend suggested several times that child be taken to doctor, but defendant refused because she feared child would be taken from her, defendant could not claim that NRS 432B.140, which provides that person commits abuse or neglect of child if he willfully fails to provide medical care necessary for well-being of child when he was able to do so, was unconstitutionally vague because it failed to delineate factors to determine when treatment by medical professional was required. As applied to defendant's case, it was untenable for defendant to argue that she was unaware that her willful failure to obtain medical treatment for child was criminal pursuant to NRS 432B.140, as incorporated in NRS 200.508. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996), cited, *Rice v. State*, 113 Nev. 1300, at 1307, 949 P.2d 262 (1997)

Evidence sufficient to support finding of allowing child to be placed in situation where he suffered unjustifiable physical pain and substantial bodily harm. In prosecution for child abuse and neglect under NRS 200.508, there was sufficient evidence to convict defendant of willfully allowing child to be placed in situation in which he suffered unjustifiable physical pain and substantial bodily harm as result of abuse where (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he had beaten child; (3) defendant then went to sleep and allowed her boyfriend to continue to provide unsupervised care for child; and (4) on following day, defendant saw bruises on child, but allowed boyfriend to continue to care for child that day. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996)

Waiver of right to argue insufficient evidence to support conviction. In prosecution for child abuse and neglect under NRS 200.508, where defendant was charged with two separate counts of child abuse and neglect and jury returned general verdict form which did not specify upon which count it found defendant guilty, defendant waived her right to argue that sufficient evidence did not exist to convict defendant on second count where defendant, on appeal, only alleged that sufficient evidence did not exist to support conviction on first count. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996)

Evidence sufficient to support finding of failure to obtain medical treatment for child. In prosecution for child abuse and neglect under NRS 200.508, there was sufficient evidence to convict defendant of willfully allowing child to be placed in situation in which he suffered unjustifiable physical pain and substantial bodily harm by failing to provide medical care to child when defendant was able to do so where (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he beat child; (3) defendant saw bruises on child's body when she gave child bath; (4) defendant knew child was listless and ill and had temperature during days before his death, and (5) defendant refused to take child to hospital because she feared child would be taken from her. (See also NRS 432B.140.) *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996)

Acquittal of charge of felony child abuse did not bar conviction of second degree murder based on child neglect. Defendant's acquittal of

charge of felony child abuse (see NRS 200.508) did not bar her conviction of second degree murder (see NRS 200.030) based on child neglect because evidence indicated that defendant failed to prevent severe abuse of her child by child's father. Jury could have elected to give defendant benefit of leniency based on finding that defendant's involvement was much less than that of father. *Labastida v. State*, 112 Nev. 1502, 931 P.2d 1334 (1996)

Conviction of second degree murder and child neglect did not violate double jeopardy clause. Conviction of defendant of second degree murder pursuant to NRS 200.030 and child neglect pursuant to NRS 200.508 after her infant child was severely abused by child's father did not violate double jeopardy clause of U.S. 5th amendment (cf. Nev. Art. 1, § 8) even though defendant was acquitted of crime of child abuse which arose from same incident. Jury did not err in finding, based on evidence or leniency, that defendant's actions constituted child neglect but not child abuse. *Labastida v. State*, 112 Nev. 1502, 931 P.2d 1334 (1996)

Conviction for sexual assault and for child abuse by reason of sexual assault constituted double jeopardy. Defendant charged with sexual assault of child under 14 years of age in violation of NRS 200.366 could not also be convicted of child abuse by reason of sexual assault in violation of NRS 200.508 without violating constitutional prohibition against double jeopardy (see Nev. Art. 1, § 8) because, as conviction for sexual assault did not require proof of fact other than or in addition to facts necessary to prove child abuse by reason of sexual assault, sexual assault was lesser included offense of child abuse by reason of sexual assault. *Brown v. State*, 113 Nev. 275, 934 P.2d 235 (1997)

Mother who failed to seek medical care for child burned by father guilty of child neglect under circumstances. Mother convicted of child neglect (see NRS 200.508) appealed judgment of conviction on basis that there was insufficient evidence to sustain conviction that she neglected her infant by delaying seeking medical care for infant suffering from second degree burns inflicted by infant's father and severe malnutrition. However, there was more than ample evidence to establish that mother knew or should have known that infant was in need of medical care, that she unreasonably delayed in providing medical care, and that delay caused infant to suffer unjustifiable physical or mental suffering. Therefore, because jury could have easily concluded that baby was in desperate need of medical care and that delay in seeking medical care caused unjustifiable physical or mental suffering for baby, judgment of conviction was sustained. *Rice v. State*, 113 Nev. 1300, 949 P.2d 262 (1997)

Elements to establish child neglect based on delay in seeking medical attention. Same standards apply to proving child neglect based on delay in seeking medical treatment as for establishing child abuse based on delay in seeking medical treatment. Therefore, state has to prove that some time passed between time child was injured and time that medical attention was sought, and that, during this time, parent knew or should have known that child's injuries were serious enough to require immediate medical attention, yet did nothing. (See NRS 200.508.) *Rice v. State*, 113 Nev. 1300, 949 P.2d 262 (1997)

Where state introduced sufficient evidence to prove felony child neglect, district court did not err by failing to instruct jury on lesser included misdemeanor charge. On appeal of judgment of conviction for felony child neglect, defendant claimed that district court had obligation to instruct jury on lesser included offense of gross misdemeanor child neglect notwithstanding defendant's failure to request such instruction. Pursuant to NRS 200.508, person is guilty of felony child neglect if neglect causes substantial bodily harm. Supreme court found that state had introduced sufficient evidence of substantial bodily harm to show guilt above lesser offense clearly. Therefore, district court did not err in failing to instruct jury on lesser degree of child neglect and judgment of conviction was affirmed. *Rice v. State*, 113 Nev. 1300, 949 P.2d 262 (1997)

FEDERAL AND OTHER CASES.

Medical testimony failed to establish existence of delay between time of discovery of child's injuries and defendants' decision to seek medical care. In prosecution of defendants for child abuse based on alleged delay by defendants in seeking medical care for injured child (see NRS 200.508), medical evidence presented by state attempted to establish existence of delay between time when child's injuries became apparent and time defendants decided to call 911 for medical assistance. None of physicians who testified at trial indicated that significant amount of time had elapsed between time of child's injury and defendants' 911 call, and, although one physician who testified concerning battered child syndrome did conclude that defendants had delayed in seeking medical care, physician did not base his opinion on child's medical condition, but instead inferred delay from his belief that defendants gave discrepant history concerning child's injuries and that such history suggested child abuse. Decision of district court denying petition for writ of habeas corpus was therefore reversed and writ was ordered granted. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994)

Testimony of physician concerning battered child syndrome was insufficient to prove child abuse beyond reasonable doubt. In prosecution of defendants for child abuse based on alleged delay by defendants in seeking medical attention for injured child (see NRS 200.508), testimony of physician concerning battered child syndrome was insufficient to prove beyond reasonable doubt that delay occurred. Physician's opinion was based on abstract theory of how child abusers behave, rather than on medical evidence available in case. Testimony of physician therefore had little, if any, probative value concerning issue of how defendants in particular behaved, especially given lack of evidence that defendants abused child and fact no other physician who testified indicated that any significant amount of time elapsed between occurrence of child's

symptoms and decision of defendants to call 911. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994)

Failure by state to prove that defendants knew or should have known that child needed medical care. In prosecution of defendants for child abuse based on alleged delay by defendants in seeking medical care for injured child (see NRS 200.508), state failed to prove that defendants knew or should have known that child needed medical care after child fell asleep and later began foaming at mouth. Each physician who testified admitted that person's response to head injury such as that incurred by child varies. While most physicians at trial indicated that injury would have caused immediate impairment and some thought injury would likely cause immediate unconsciousness, none testified with certainty that child's injuries would have been so obvious that layman would have known that child was in imminent risk of harm. Testimony of defendant indicating that defendants sought medical attention as soon as they were aware of child's condition therefore remained uncontroverted. Decision of district court denying petition for writ of habeas corpus was therefore reversed and writ was ordered granted. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994), cited, *Rice v. State*, 113 Nev. 1300, at 1320, 949 P.2d 262 (1997), dissenting opinion.

Requirements to prove child abuse caused by delay in seeking medical treatment. In order to prove child abuse based on delay in seeking medical treatment (see NRS 200.508), state had to prove both that (1) some time passed between child's injuries and defendant's 911 call and attempted cardiopulmonary resuscitation and (2) during this time, defendant knew, or should have known, that child's injuries were serious enough to require immediate medical attention, yet defendant did nothing. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994), cited, *Rice v. State*, 113 Nev. 1300, at 1307, 949 P.2d 262 (1997)

(2) Is employed by, an agent of or under contract to perform services for, a medical facility; and

(3) Has responsibility to provide care to patients.

The term does not include a person who is not involved in the day-to-day operation or management of a medical facility unless that person has actual knowledge of the criminal neglect of a patient and takes no action to cure such neglect.

(Added to NRS by 1993, 2497; A 1995, 1192)

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Negligence ⇐ 144.

WESTLAW Topic No. 272.
C.J.S. Negligence §§ 1(13), 306.

ABUSE AND NEGLECT OF CHILDREN

NRS CROSS REFERENCES.

Guardians, disqualification for judicial determination of abuse or neglect, NRS 159.059

NRS 200.508 Abuse, neglect or endangerment of child: Penalties; definitions.

1. A person who:

(a) Willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect; or

(b) Is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect, is guilty of a gross misdemeanor unless a more severe penalty is prescribed by law for an act or omission which brings about the abuse, neglect or danger.

2. A person who violates any provision of subsection 1, if substantial bodily or mental harm results to the child:

(a) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) In all other such cases to which paragraph (a) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.

3. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Physical injury" means:

- (1) Permanent or temporary disfigurement; or
- (2) Impairment of any bodily function or organ of the body.

(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his normal range of performance or behavior.

(Added to NRS by 1971, 772; A 1975, 1141; 1977, 738, 1629; 1985, 1399; 1989, 866, 1510, 1512; 1995, 1193; 1997, 850, 1720; 1999, 470, 472)

NRS CROSS REFERENCES.

Hate crimes, additional penalty, NRS 41.690, 193.1675, 193.169

WEST PUBLISHING CO.

Infants \Leftarrow 20.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 95, 100 to 107.

NEVADA CASES.

Evidence allowed jury to find permanent cosmetically serious injuries as constituting substantial bodily harm in prosecution for child abuse. In prosecution for child abuse where defendant was charged with willfully holding his 8-year-old son over burning papers causing first and second degree burns to boy's stomach and hand, and doctor testified that disfigurement was permanent and could be cosmetically serious, conviction for child abuse resulting in substantial bodily harm (see NRS 200.508) was proper and defendant's contention that state had failed to prove that burns constituted substantial bodily harm was rejected on appeal. "Serious permanent disfigurement" within meaning of NRS 0.060 includes cosmetic disfigurement as well as injury that is functionally disabling, and it was jury's province to determine whether harm was serious as well as permanent. *Levi v. State*, 95 Nev. 746, 602 P.2d 189 (1979), cited, *Lomas v. State*, 98 Nev. 27, at 29, 639 P.2d 551 (1982). *Hardaway v. State*, 112 Nev. 1208, at 1211, 926 P.2d 288 (1996)

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Specified circumstances provided sufficient evidence to convince jury of appellants' guilt beyond reasonable doubt of felony child abuse. At trial, evidence presented that victim suffered multiple head injuries while under appellants' care and custody. On appeal from judgments of conviction of felony child abuse, appellants claimed that at trial prosecution introduced no evidence which would allow jury to determine which appellant did act that caused victim's death and if jury could not determine which appellant performed fatal act, both were entitled to acquittal. Court held that child abuse statute encompasses acts of omission as well as acts of commission (see NRS 200.508).

(1999)

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Both appellants were responsible for safety or welfare of victim (see NRS 200.508). Court held there was sufficient evidence to convince jury of appellants' guilt beyond reasonable doubt of felony child abuse where (1) doctor testified that victim might have survived if brought to hospital sooner, and (2) appellants allowed victim to suffer unjustifiable physical pain when they delayed in obtaining medical treatment. *King v. State*, 105 Nev. 373, 784 P.2d 942 (1989).

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Statute was not unconstitutionally vague as applied to defendant in light of evidence of defendant's failure to obtain medical treatment for child. In prosecution for child abuse and neglect under NRS 200.508, where prosecution proved that (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he had beaten child; (3) defendant knew child had fever, was lethargic, vomited repeatedly, did not eat or drink and did not go to bathroom after beating; and (4) boyfriend suggested several times that child be taken to doctor, but defendant refused because she feared child would be taken from her, defendant could not claim that NRS 432B.140, which provides that person commits abuse or neglect of child if he willfully fails to provide medical care necessary for well-being of child when he was able to do so, was unconstitutionally vague because it failed to delineate factors to determine when treatment by medical professional was required. As applied to defendant's case, it was untenable for defendant to argue that she was unaware that her willful failure to obtain medical treatment for child was criminal pursuant to NRS 432B.140, as incorporated in NRS 200.508. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996), cited, *Rice v. State*, 113 Nev. 1300, at 1307, 949 P.2d 262 (1997).

Evidence sufficient to support finding of allowing child to be placed in situation where he suffered unjustifiable physical pain and substantial bodily harm. In prosecution for child abuse and neglect under NRS 200.508, there was sufficient evidence to convict defendant of willfully allowing child to be placed in situation in which he suffered unjustifiable physical pain and

to instruct jury on lesser included offense of gross misdemeanor child neglect notwithstanding defendant's failure to request such instruction. Pursuant to NRS 200.508, person is guilty of felony child neglect if neglect causes substantial bodily harm. Supreme court found that state had introduced sufficient evidence of substantial bodily harm to show guilt above lesser offense clearly. Therefore, district court did not err in failing to instruct jury on lesser degree of child neglect and judgment of conviction was affirmed. *Rice v. State*, 113 Nev. 1300, 949 P.2d 262 (1997).

FEDERAL AND OTHER CASES.

Medical testimony failed to establish existence of delay between time of discovery of child's injuries and defendants' decision to seek medical care. In prosecution of defendants for child abuse based on alleged delay by defendants in seeking medical care for injured child (see NRS 200.508), medical evidence presented by state at trial failed to establish existence of delay between time when child's injuries became apparent and time defendants decided to call 911 for medical assistance. None of physicians who testified at trial indicated that significant amount of time had elapsed between time of child's injury and defendants' 911 call, and, although one physician who testified concerning battered child syndrome did conclude that defendants had delayed in seeking medical care, physician did not base his opinion on child's medical condition, but instead inferred delay from his belief that defendants gave discrepant history concerning child's injuries and that such history suggested child abuse. Decision of district court denying petition for writ of habeas corpus was therefore reversed and writ was ordered granted. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994).

Testimony of physician concerning battered child syndrome was insufficient to prove child abuse beyond reasonable doubt. In prosecution of defendants for child abuse based on alleged delay by defendants in seeking medical attention for injured child (see NRS 200.508), testimony of physician concerning battered child syndrome was insufficient to prove beyond reasonable doubt that delay occurred. Physician's opinion was based on abstract theory of how child abusers behave, rather than on medical evidence available in case. Testi-

mony of physician therefore had little, if any, probative value concerning issue of how defendants in particular behaved, especially given lack of evidence that defendants abused child and fact no other physician who testified indicated that any significant amount of time elapsed between occurrence of child's symptoms and decision of defendants to call 911. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994).

Failure by state to prove that defendants knew or should have known that child needed medical care. In prosecution of defendants for child abuse based on alleged delay by defendants in seeking medical care for injured child (see NRS 200.508), state failed to prove that defendants knew or should have known that child needed medical care after child fell asleep and later began foaming at mouth. Each physician who testified admitted that person's response to head injury such as that incurred by child varies. While most physicians at trial indicated that injury would have caused immediate impairment and some thought injury would likely cause immediate unconsciousness, none testified with certainty that child's injuries would have been so obvious that layman would have known that child was in imminent risk of harm. Testimony of defendant indicating that defendants sought medical attention as soon as they were aware of child's condition therefore remained uncontroverted. Decision of district court denying petition for writ of habeas corpus was therefore reversed and writ was ordered granted. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994), cited, *Rice v. State*, 113 Nev. 1300, 949 P.2d 262 (1997), dissenting opinion.

Requirements to prove child abuse caused by delay in seeking medical treatment. In order to prove child abuse based on delay in seeking medical treatment (see NRS 200.508), state had to prove both that (1) some time passed between child's injuries and defendant's 911 call and attempted cardiopulmonary resuscitation and (2) during this time, defendant knew, or should have known, that child's injuries were serious enough to require immediate medical attention, yet defendant did nothing. *Martineau v. Angelone*, 25 F.3d 734 (9th Cir. 1994), cited, *Rice v. State*, 113 Nev. 1300, 949 P.2d 262 (1997).

NRS 200.5081 District attorney may refer person suspected of violating NRS 200.508 for treatment or counseling.

1. A district attorney may, if the circumstances indicate that treatment or counseling is needed, refer a person who is suspected of violating a provision of NRS 200.508 to an appropriate public or private agency for treatment or counseling. The district attorney shall obtain the consent of the agency to which he intends to refer the person before doing so.

2. Nothing in this section limits the discretion of the district attorney to undertake prosecution of a person who has been referred for treatment or counseling pursuant to subsection 1.

(Added to NRS by 1981, 1228)

APPENDIX I

Nevada Revised Statutes 128.105 subsection 2(a)

WEST PUBLISHING CO.

Infants ⇐ 205.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 51, 52, 62 to 67.

NEVADA CASES.

Statutes do not permit appointment of counsel for parent who appeals from order terminating parental rights and granting adoption. In appeal from order terminating parental rights and granting adoption, where aunt and uncle of child sought adoption, where father, who was imprisoned in another state, appeared in proceedings by court-appointed counsel, and where court

awarded adoption rights to aunt and uncle, requests of father that appellate court permit him to file appeal without payment of filing fee because he was pauper and that appellate court appoint attorney to represent him for appeal were without merit because pauper privileges are provided by NRS 12.015 only for trial level of litigation and not for appeals and because appointment of counsel is permitted by NRS 128.100 only for one who petitions for termination of parental rights or for minor in proceedings and not for parent who appeals from order terminating parental rights and granting adoption. *Casper v. Huber*, 85 Nev. 474, 456 P.2d 436 (1969)

NRS 128.105 Grounds for terminating parental rights: Considerations; required findings. The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

1. The best interests of the child would be served by the termination of parental rights; and
2. The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:
 - (a) Abandonment of the child;
 - (b) Neglect of the child;
 - (c) Unfitness of the parent;
 - (d) Failure of parental adjustment;
 - (e) Risk of serious physical, mental or emotional injury to the child if he were returned to, or remains in, the home of his parent or parents;
 - (f) Only token efforts by the parent or parents:
 - (1) To support or communicate with the child;
 - (2) To prevent neglect of the child;
 - (3) To avoid being an unfit parent; or
 - (4) To eliminate the risk of serious physical, mental or emotional injury to the child; or
 - (g) With respect to termination of the parental rights of one parent, the abandonment by that parent.

(Added to NRS by 1975, 964; A 1981, 1755; 1985, 244; 1987, 173, 210; 1995, 215; 1999, 2027)

WEST PUBLISHING CO.

Infants ⇐ 156 to 159.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 31 to 62.

NEVADA CASES.

Termination of parental rights must be upheld upon finding of abandonment. Where appellate court held there was ample support in record for finding of abandonment, it was unnecessary for it to consider appellant's assignment of error challenging district court's finding that he was unfit person, since, regardless of his fitness or unfitness in other respects, judgment terminating his parental rights must be affirmed by reason of finding of abandonment. (See NRS 128.105.)

Carson v. Lowe, 76 Nev. 446, 357 P.2d 591 (1960), cited, *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 297, 738 P.2d 895 (1987)

Specific facts establishing parent as "unfit." It was not error for trial court to terminate parental rights of father pursuant to NRS 128.105 and find he made only token effort to avoid being declared unfit (see NRS 128.018), where there was ample evidence of, (1) unstable and chaotic home life resulting in placement of children in custody of welfare division because of neglect and abandonment, (2) father's failure, after repeated notice, to make support payments as ordered and to provide medical needs of children, and (3) his erratic attendance at court-ordered counseling sessions.

Spencer v. Welfare Division, 94 Nev. 627, 584 P.2d 669 (1978), cited, *Kobinski v. State, Welfare Division*, 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Finding of abandonment sufficient to terminate parental rights. Pursuant to subsection 1 of NRS 128.105, finding by court that parent has abandoned his child is sufficient ground, in and of itself, for termination of parental rights. *Pyborn v. Quathamer*, 96 Nev. 145, 605 P.2d 1147 (1980), cited, *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Finding that mother had abandoned child was not supported by substantial evidence. On appeal from judgment terminating mother's parental rights, findings that mother's conduct evinced settled purpose to forego custody and relinquish all claims to child, that she had left child in custody of guardians without more than "token efforts" to communicate with her for period in excess of 6 months, and therefore that she had abandoned child within meaning of NRS 128.012 and 128.105, were not supported by substantial evidence where (1) during part of 6-month period, mother had been under temporary restraining order prohibiting any contact with child; (2) during at least part of 6-month period mother had been seriously ill; and (3) mother had visited child often before death of child's father, during period when he had custody. *Chapman v. Chapman*, 96 Nev. 290, 607 P.2d 1141 (1980)

Standards for determining if parent unfit. To provide jurisdictional basis for termination of parental rights, parental unfitness must be shown to be severe and persistent and such as to render parent unsuitable to maintain parental relationship. (See NRS 128.105.) *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Weinper v. State, Dep't of Human Resources*, 112 Nev. 710, at 718, 918 P.2d 325 (1996), dissenting opinion, *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 728, 917 P.2d 949 (1996), *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1319, 929 P.2d 940 (1996), dissenting opinion, *Deck v. Department of Human Resources*, 113 Nev. 124, at 140, 930 P.2d 760 (1997), dissenting opinion, *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, at 148, 930 P.2d 1128 (1997)

Standards for determining parental neglect. To provide jurisdictional basis for termination of parental rights, neglect must be serious and persistent and sufficiently harmful to child so as to mandate forfeiture of parental rights. (See NRS 128.105.) *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1319, 929 P.2d 940 (1996), dissenting opinion.

Necessity of proving jurisdictional and dispositional grounds. Person who institutes proceedings to terminate parental rights must be able to prove clearly and convincingly that parent

provided some cause for termination (jurisdictional grounds) and that under no reasonable circumstances could child's best interest be served by sustaining parental tie (dispositional grounds). (See NRS 128.105.) *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *McGuire v. Welfare Div.*, 101 Nev. 179, at 181, 697 P.2d 475 (1985), *Daly v. Daly*, 102 Nev. 66, at 68, 715 P.2d 56 (1986), *Smith v. Smith*, 102 Nev. 263, at 267, 720 P.2d 1219 (1986), *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987), *Drury v. Lang*, 105 Nev. 430, at 434, 776 P.2d 843 (1989), *August H. v. State*, 105 Nev. 441, at 445, 777 P.2d 901 (1989), *Scalf v. State, Dep't of Human Resources*, 106 Nev. 756, at 758, 801 P.2d 1359 (1990), *Greeson v. Barnes*, 111 Nev. 1198, at 1200, 900 P.2d 943 (1995), *Weinper v. State, Dep't of Human Resources*, 112 Nev. 710, at 714, 918 P.2d 325 (1996), *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 726, 917 P.2d 949 (1996), *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996), dissenting opinion, *Deck v. Department of Human Resources*, 113 Nev. 124, at 137, 930 P.2d 760 (1997), *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 330, 933 P.2d 198 (1997), *Cooley v. State, Dep't of Human Resources*, 113 Nev. 1191, at 1196, 946 P.2d 155 (1997)

Failure of parental adjustment as basis for termination of parental rights. Failure of parental adjustment (see NRS 128.0126) may provide jurisdictional basis for termination of parental rights (see NRS 128.105). If child is removed from home, parent must exercise reasonably diligent efforts to seek child's return. Failure to make such efforts may result in court's finding that parent is unsuitable by reason of unfitness or neglect in form of failing or refusing to adjust after child was removed. Parent, however, still must be shown to be at fault in some manner and cannot be judged unsuitable by reason of failure to comply with requirements and plans that are unclear, not communicated to him, or which are impossible for him to abide by. *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987), *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996), dissenting opinion, *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, at 150, 930 P.2d 1128 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 333, 933 P.2d 198 (1997)

Phrase "token efforts" is unclear, but section as whole requires substantial abandonment, neglect, parental unfitness or child abuse. Although meaning of "token efforts" in subsection 6 of NRS 128.105 is unclear, section as whole means that termination of parental rights must be based upon substantial abandonment, neglect, parental unfitness or child abuse. *Champagne v.*

Welfare Div., 100 Nev. 640, 691 P.2d 849 (1984), cited, *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989)

Effect on appeal of invalidation of one jurisdictional ground where there are several such grounds. Where there were several jurisdictional grounds for terminating parental rights, invalidation by appellate court of one jurisdictional ground did not invalidate decree. (See NRS 128.105.) *Kobinski v. State, Welfare Division*, 103 Nev. 293, 738 P.2d 895 (1987)

Specific facts establishing grounds for terminating parental rights. Where children were placed in temporary protective custody to be returned to mother upon provision by her of residence, food, clothing and bedding for children which, despite assistance from welfare division, she never did, and where mother had problem with alcohol, never paid required child support, rejected required counseling, was unable to successfully complete course in effective parenting, had not improved significantly in 10 years of state intervention, and had visited children only 11 times in 2 1/2 years, and where there were adoptive placements available for each child, evidence was clear and convincing and sufficient to establish jurisdictional and dispositional grounds for termination of mother's parental rights. (See NRS 128.090 and 128.106.) Facts justified findings of abandonment, neglect, parental unfitness, token efforts to remedy parental shortcomings, and failure of parental adjustment under NRS 128.105, and that action taken was in children's best interest. *Kobinski v. State, Welfare Division*, 103 Nev. 293, 738 P.2d 895 (1987), cited, *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 729, 917 P.2d 949 (1996)

Six-month lapse in communication insufficient to support finding of abandonment. Six-month lapse in communication between non-custodial parent and children, without more, is insufficient as matter of law to support finding that parent has demonstrated settled purpose to abandon children. (See NRS 128.012 and 128.105.) *Drury v. Lang*, 105 Nev. 430, 776 P.2d 843 (1989)

Best interest of child was served by terminating father's parental rights where father was found to have abandoned child under circumstances. There was sufficient evidence to support district court's order to terminate father's parental rights on ground that father had abandoned child (see NRS 128.012) where, during 5-year period, father paid only \$60 in child support and his only contact with child was negligible. Although non-custodial parent may demonstrate his intent not to abandon child by providing financial support or by maintaining contact with child, or both, father did neither. Further, evidence showed that mother and stepfather had provided stable environment for child, and that father had made express and implied threats of death and bodily harm to mother, stepfather and maternal grandfather, and had threatened to abduct child. Therefore, in affirming

district court's order, supreme court found that best interest of child was served by terminating father's parental rights pursuant to NRS 128.105. *Greeson v. Barnes*, 111 Nev. 1198, 900 P.2d 943 (1995), cited, *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 332, 933 P.2d 198 (1997)

Jurisdictional and dispositional grounds for termination of parental rights existed where parent was unfit and failed to adjust to plan for reunification, and termination was in best interest of child. Appellant challenged termination of his parental rights, arguing that state failed to establish by clear and convincing evidence sufficient grounds for termination as set forth in NRS 128.105. Supreme court held that district court properly found that jurisdictional grounds existed for termination because there was clear and convincing evidence that appellant was unfit as parent, as demonstrated by his continued use of drugs and criminal activity during period in which child was in foster care (see NRS 128.106), and that appellant failed to adjust, as demonstrated by his failure to comply with terms and conditions of plan for reunification for nearly 3 years (see NRS 128.109). Further, district court properly found that termination was in best interest of child based on uncontradicted evidence that child was thriving in custody of foster parents. Therefore, order of district court terminating parental rights was affirmed. *Weinper v. State, Dep't of Human Resources*, 112 Nev. 710, 918 P.2d 325 (1996)

Order terminating parental rights of parent with history of chronic alcohol abuse was reversed where record indicated that alcoholism was not irremediable under circumstances. Although sole issues bearing on appellant's suitability as parent were her alcoholism (see NRS 128.106) and her ability to remain sober, evidence showed that appellant (1) had made significant progress to overcome alcoholism, (2) was successfully employed, (3) had established stable home environment with new husband who had stable job, had no criminal background and did not drink, and (4) had fully complied with terms and conditions of revised plan for reunification. Therefore, supreme court was unable to conclude that appellant's alcoholism was irremediable. Because there was not clear and convincing evidence to support finding that appellant was unfit as parent in accordance with NRS 128.105, supreme court reversed order to terminate appellant's parental rights. *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, 917 P.2d 949 (1996)

Order terminating parental rights of parent for failure to adjust was reversed where record indicated that parent made substantial effort to correct problem with abuse of alcohol. Parental rights of appellant, who had history of abuse of alcohol and whose child had been ward of state for approximately 22 months, were terminated pursuant to NRS 128.105 for failure of parental adjustment where district court determined that appellant was unable or unwilling within reasonable time to

substantially correct circumstances or conduct which led to placement of child outside of home (see NRS 128.0126). However, record showed that, with exception of 8 months when appellant made no or only partial attempt to adjust, appellant made substantial efforts to correct conduct and circumstances by entering rehabilitation program, remaining sober in compliance with revised plan for reunification, becoming successfully employed and establishing stable home life. Therefore, because there was not clear and convincing evidence of failure of parental adjustment, supreme court reversed order terminating appellant's parental rights. *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, 917 P.2d 949 (1996)

Termination of rights of mentally challenged parents based on unfitness of parents and parental failure to adjust. On appeal of termination of parental rights of mentally challenged parents, district court did not err in determining that parents were unfit pursuant to NRS 128.106 and that there was parental failure to adjust (see NRS 128.107), where (1) both children had mental deficiencies and special needs, (2) although parents made efforts towards becoming better parents, they persistently refused to recognize need for assistance, and (3) there was clear and convincing evidence that parents would be unable to meet intermediate and continuing needs of children. Therefore, order of district court terminating rights of parents pursuant to NRS 128.105 was affirmed. *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, 929 P.2d 940 (1996)

Termination of parental rights to mentally challenged children in foster care where natural parents were also mentally challenged. On appeal of termination of parental rights of mentally challenged parents, where (1) children, who were also mentally challenged and had special needs, spent most of their lives in foster care, (2) there was clear and convincing evidence that natural parents would be unable to meet immediate and continuing needs of children, and (3) foster parents indicated desire to adopt children, there was sufficient evidence for district court to determine that children had become integrated into foster family and that termination of parental rights of natural parents was in best interest of children (see NRS 128.108). Therefore, order of district court terminating parental rights pursuant to NRS 128.105 was affirmed. *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, 929 P.2d 940 (1996)

Termination of parental rights of mentally ill parent who failed to make necessary parental adjustments was affirmed. Where mother (1) had permanent mental condition of paranoid schizophrenia, (2) believed that medication prescribed to manage her condition had no effect on her, (3) made only token efforts to visit and develop relationship with her child, and (4) failed to provide nominal financial support as required by

reunification case plan, there was clear and convincing evidence of mother's failure to make necessary parental adjustments (see NRS 128.105). Therefore, district court had jurisdiction grounds to terminate her parental rights to child and termination of parental rights was affirmed. *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Where facts supported finding that putative father had abandoned child, termination of his parental rights was affirmed. Where putative father made no effort to establish himself as natural father other than signing affidavit of paternity only after action to terminate his parental rights was commenced, and putative father provided no support, gave no gifts and had little or no significant contact with child, there was clear and convincing evidence that putative father had abandoned child (see NRS 128.012). Therefore, there were jurisdictional grounds for termination of parental rights to child (see NRS 128.105) and order for termination of parental rights was affirmed. (See also NRS 128.095.) *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Termination of parental rights of mentally ill mother and putative father was in best interests of child under circumstances. District court did not err in finding that dispositional grounds existed (see NRS 128.105) to terminate parental rights of mother diagnosed with paranoid schizophrenia and putative father based on best interests of child where (1) psychiatric evaluations of mother concluded that she was not able to care for child on long-term basis, (2) as result of long periods of separation without any visits from parents, child was estranged from parents and reunion with them would likely prove to be traumatic to child, (3) child had integrated and bonded with family with which child had been staying, and enjoyed loving and nurturing environment in their home, and (5) family with which child had been staying was only family that child had ever known. Therefore, district court's order terminating parental rights of mother and father was affirmed. *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Where mother had irremedial inability to function as proper and acceptable parent, court could terminate her parental rights on ground that she was unfit parent. Where (1) mother had chronic instability in her employment, housing and contacts with child, (2) state found substitute care of child so that mother could find housing and employment and establish stability in her life, (3) despite reasonable efforts by state to reunite mother and child, mother did little to help establish stability in her life which she needed to care for child, and (4) foster parents, who were providing environment in which child was thriving, indicated desire to adopt child (see NRS 128.108), there was clear and convincing evidence of mother's irremedial inability to function as proper and acceptable parent and that termination of parental rights

would be in best interest of child. Therefore, court had jurisdictional and dispositional grounds to terminate parental rights of mother pursuant to NRS 128.105 on basis that mother was unfit parent. (See NRS 128.106.) *Recodo v. State*, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Termination of parental rights affirmed where mother was unwilling within reasonable time to correct substantially conditions which led to placement of child outside her home and termination of parental rights was in best interest of child. Where (1) child was adjudicated to be neglected and placed into foster care, (2) despite being given over 1 year to adjust, mother was unable or unwilling to correct substantially conditions that led to child being placed outside of her home (see NRS 128.109), (3) nothing in record indicated with any certainty that provision of additional services to mother would bring about lasting parental adjustment, and (4) foster parents who were providing environment in which child was thriving indicated desire to adopt child (see NRS 128.108), district court properly concluded that there was failure of parental adjustment and that termination of mother's parental rights was in best interest of child (see NRS 128.105). Therefore, termination of parental rights of mother was affirmed. *Recodo v. State*, Dep't of Human Resources, 113 Nev. 141, 930 P.2d 1128 (1997)

Finding that mother had abandoned children was supported by substantial evidence. In action to terminate mother's parental rights, where mother did not contact or provide support for children for period of 1 year, district court did not err in its finding that mother had abandoned her children within meaning of NRS 128.012 and 128.105, even though mother had undergone extreme emotional trauma following death of children's father, because actions of mother demonstrated clear intent to relinquish her parental rights. *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Finding of failure of parental adjustment was supported by clear and convincing evidence. In action to terminate mother's parental rights, where mother failed to: (1) maintain contact with children for period of 1 year; (2) provide support for her children; (3) maintain contact with division of child and family services of department of human resources; and (4) comply with plan to reunite family developed by division, there was clear and convincing evidence to support finding of failure of parental adjustment for purposes of

NRS 128.0126, 128.105 and 128.109. *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Best interests of children were served by terminating mother's parental rights. In action to terminate mother's parental rights, where mother did not contact or provide support for children for period of 1 year and children had resided in stable foster home for 4 years and no longer recognized biological mother, best interests of children were served by termination of mother's parental rights (see NRS 128.105). *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Jurisdictional grounds to terminate parental rights of teenage mother existed under circumstances. Where teenage mother (1) was immature, lacking of parental skills and could not provide stable home for child, (2) abandoned child by failing to provide financial or emotional support, (3) offered no argument to dispute whether she abused or neglected child or that she would not abuse or neglect child in future if parental rights were not terminated, (4) made little or no attempts to avail herself of aid from state, including, applying for welfare benefits and complying with case plan, and (5) continually placed child in unsanitary and dangerous living environment, district court reasonably could have found by clear and convincing evidence jurisdictional grounds to terminate parental rights in accordance with NRS 128.105, based on abandonment, abuse, neglect, failure of parental adjustment and only token efforts made by mother. Therefore, district court did not abuse its discretion in terminating parental rights of teenage mother. *Cooley v. State*, Dep't of Human Resources, 113 Nev. 1191, 946 P.2d 155 (1997)

Termination of teenage mother's parental rights was in best interest of child based on mother's immaturity, selfishness and indifference, and her inability and unwillingness to provide for child. District court did not abuse its discretion in finding that termination of parental rights of teenage mother would be in best interest of child where mother was unable or unwilling to provide for child's physical, mental and emotional development, and mother's immaturity, selfishness and indifference caused confusion and distress in child. Therefore, order terminating parental rights of teenage mother was upheld. (See NRS 128.105.) *Cooley v. State*, Dep't of Human Resources, 113 Nev. 1191, 946 P.2d 155 (1997)

NRS 128.106 Specific considerations in determining neglect by or unfitness of parent. In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

APPENDIX J

Nevada Revised Statutes (NRS) 128.012

NRS **128.005** Legislative declaration and findings.

NRS **128.005** Legislative declaration and findings.

1. The legislature declares that the preservation and strengthening of family life is a part of the public policy of this state.

2. The legislature finds that:

(a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination.

(b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this state.

(c) The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.

(Added to NRS by 1975, 963; A 1981, 1752)

NRS 128.012 "Abandonment of a child" defined.

NRS **128.012** "Abandonment of a child" defined.

1. "Abandonment of a child" means any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.

2. If a parent or parents of a child leave the child in the care and custody of another without provision for his support and without communication for a period of 6 months, or if the child is left under such circumstances that the identity of the parents is unknown and cannot be ascertained despite diligent searching, and the parents do not come forward to claim the child within 3 months after he is found, the parent or parents are presumed to have intended to abandon the child.

(Added to NRS by 1975, 963; A 1981, 1753)

WEST PUBLISHING CO.

Infants ¶ 158.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 31 to 62.

NEVADA CASES.

Termination of parental rights under child abandonment statute not in violation of due process. Termination of parental rights of divorced father under child abandonment statute, NRS 128.010 (cf. NRS 128.012), is not in violation of due process clauses of state and federal constitutions. *Carson v. Lowe*, 76 Nev. 446, 357 P.2d 591 (1960).

Where conduct of father evidenced settled purpose to forego parental custody and father left child with mother without support or communication for 1 year, there was ample support for finding of abandonment. In action by mother of minor child to terminate parental rights of father on theory of abandonment, where conduct of father evidenced settled purpose to forego all parental custody and relinquish all claims to child, and father left child in care and custody of mother without provision for his support and without communication for period of 1 year, there was ample support in record for finding of abandonment under both former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090. *Carson v. Lowe*, 76 Nev. 446, 357 P.2d 591 (1960), cited. *Casper v. Huber*, 85 Nev. 474, at 477, 456 P.2d 436 (1969), *Semaker v. Ehrlich*, 86 Nev. 277, at 279, 468 P.2d 5 (1970), *Pybom v. Quathamer*, 96 Nev. 145, at 147, 605 P.2d 1147 (1980), *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989), *Greeson v. Barnes*, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), see also *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997).

Facts sufficient to support finding of abandonment. On appeal from order terminating parental rights and granting adoption, where (1) father left mother and child shortly after birth of child, compelling mother to seek welfare assistance, (2) father paid monthly support for several months but was convicted of first degree murder and sentenced to prison in other state for 25 to 30 years, (3) mother placed child in care of her aunt and uncle, who instituted proceedings to adopt child, (4) mother executed relinquishment in favor of adoption, and (5) father,

in prison, objected to adoption but acknowledged that leaving child with aunt and uncle was satisfactory provided he could correspond with and visit child whenever able to do so, there was substantial evidence to support court's finding of abandonment (see NRS 128.012), and best interests of child were properly served by order of termination and granting of adoption. *Casper v. Huber*, 85 Nev. 474, 456 P.2d 436 (1969), cited. *Sernaker v. Ehrlich*, 86 Nev. 277, at 279, 468 P.2d 5 (1970), *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989), *Greeson v. Barnes*, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995)

Evidence was sufficient to support finding of abandonment and that termination of father's parental rights was in best interest of child. In action by mother of minor child to terminate parental rights of father, where both parties had remarried, and father had failed to provide support for several years, had visited child only once and telephoned once, and had broken promises to child, evidence was sufficient to support finding of abandonment under both former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090, and that termination of father's parental rights was in best interest of child. *Sernaker v. Ehrlich*, 86 Nev. 277, 468 P.2d 5 (1970), cited, *Whitaker v. Olsson*, 89 Nev. 157, at 157, 508 P.2d 1014 (1973), *Pyborn v. Quathamier*, 96 Nev. 145, at 146, 605 P.2d 1147 (1980), *Chapman v. Chapman*, 96 Nev. 290, at 292, 607 P.2d 1141 (1980), *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987), *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989), *Greeson v. Barnes*, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 332, 933 P.2d 198 (1997), see also *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, 929 P.2d 940 (1996), dissenting opinion.

Termination of parental rights upheld if based on substantial evidence. Termination of parental rights will be upheld on appeal if there is substantial evidence in record to support abandonment under former NRS 128.010 (cf. NRS 128.012). *Sernaker v. Ehrlich*, 86 Nev. 277, 468 P.2d 5 (1970), cited. *Pyborn v. Quathamier*, 96 Nev. 145, at 146-147, 605 P.2d 1147 (1980), see also *Kobinski v. State, Welfare Div.*, 103 Nev. 293, 738 P.2d 895 (1987), *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989), *Greeson v. Barnes*, 111 Nev. 1198, 900 P.2d 943 (1995), *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, 917 P.2d 949 (1996), *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, 930 P.2d 1128 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Finding that mother had abandoned child was not supported by substantial evidence. On appeal from judgment terminating mother's parental rights, findings that mother's conduct evinced settled purpose to forego custody and relinquish all claims to child, that she had left child in custody of guardians without more than "token efforts" to communicate with her for period in excess of 6 months, and therefore that she had abandoned child within meaning of NRS 128.012 and 128.105, were not supported by substantial evidence where (1) during part of 6-month period, mother had been under temporary restraining order prohibiting any contact with child; (2) during at least part of 6-month period mother had been seriously ill; and (3) mother had visited child often before death of child's father, during period when he had custody. *Chapman v. Chapman*, 96 Nev. 290, 607 P.2d 1141 (1980)

Evidence sufficient to support finding of abandonment. In action to terminate parental rights, where (1) parents were arrested on charges involving narcotics, burglary and child abuse, (2) children were frequently left unattended, (3) father had unbridled temper and was chronic abuser of alcohol and controlled substances, (4) parents did not, although they were required to do so, support children while they were in custody of state, and (5) children told welfare workers that they wanted new life and new mother and father, there was substantial evidence to support finding that children suffered serious and continued neglect and were abandoned by their parents (see NRS 128.012). Trial court, therefore, did not abuse its discretion in finding that best interests of children would be served by terminating parental rights. *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited. *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989)

Abandonment as ground for termination of parental rights. In action to terminate parental rights of father who was transsexual, there was clear and convincing evidence that both jurisdictional and dispositional grounds existed to justify issuance of order of termination where (1) physician who examined child testified that there was serious risk of emotional or mental injury to child if she were required to be in her father's presence, that there are children who are not able to accept parent as transsexual, and that alternatives such as psychological or psychiatric counseling may not be successful and would risk emotional injury, (2) child, who had requisite capacity to express her desires, said that she did not want to see her father and that it would be disturbing to her if she were required to do so, and (3) father paid no support for child for over 1 year, and what communication there was with child during that time was described as "token." (See NRS 128.012 and 128.107.) *Daly v. Daly*, 102 Nev. 66, 715 P.2d 56 (1986)

Specific conduct which does not demonstrate intent to abandon child. In action for termination of father's parental rights, where parents were divorced, but father exercised his visitation rights when he could, called his daughter every 2 to 6 months, and occasionally sent her gifts and cards at Christmas and on her birthday, father's parental rights could not be terminated on ground of abandonment because his conduct did not demonstrate requisite intent to abandon his daughter. (See NRS 128.012.) *Smith v. Smith*, 102 Nev. 263, 720 P.2d 1219 (1986), cited. *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 727, 917 P.2d 949 (1996)

Six-month lapse in communication insufficient to support finding of abandonment. Six-month lapse in communication between noncustodial parent and children, without more, is insufficient as matter of law to support finding that parent has demonstrated settled purpose to abandon children. (See NRS 128.012 and 128.105.) *Drury v. Lang*, 105 Nev. 430, 776 P.2d 843 (1989)

Evidence that contact between parent and child was negligible and that amount parent paid for child support was de minimis was sufficient to support finding that parent had abandoned child. There was sufficient evidence to support district court's order to terminate father's parental rights on ground that father had abandoned child (see NRS 128.012) where, during 5-year period, father paid only \$60 in child support and his only contact with child was negligible. Although noncustodial parent may demonstrate his intent not to abandon child by providing financial support or by maintaining contact with child, or both, father did neither. Further, evidence showed that mother and stepfather had provided stable environment for child, and that father had made express and implied threats of death and bodily harm to mother, stepfather and maternal grandfather, and had threatened to abduct child. Therefore, in affirming district court's order, supreme court found that best interest of child was served by terminating father's parental rights pursuant to NRS 128.105. *Greeson v. Barnes*, 111 Nev. 1198, 900 P.2d 943 (1995), cited, *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 332, 933 P.2d 198 (1997).

Termination of parental rights based on abandonment which was not supported by clear and convincing evidence of abandonment was reversed. In hearing for termination of parental rights, there was not clear and convincing evidence that mother's conduct demonstrated settled purpose to forego parental custody and relinquish all claims to child as required to constitute abandonment of child pursuant to NRS 128.012 where mother (1) made significant strides to overcome problems with alcohol abuse, (2) found suitable housing and employment, (3) was out of contact with child for less than 6 months, (4) was briefly absent from state due in part to belief that she would be unable to regain custody of her child who was in foster care, (5) made several attempts to contact division of child and family services of department of human resources, and (6) made it abundantly clear that she would oppose petition to terminate her parental rights. Because there was not clear and convincing evidence to support jurisdictional finding that mother had abandoned child, order to terminate parental rights of mother based on abandonment was reversed. *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, 917 P.2d 949 (1996).

Facts sufficient to support finding that putative father had abandoned child. Where putative father made no effort to establish himself as natural father other than signing affidavit of paternity only after action to terminate his parental rights was commenced, and putative father provided no support, gave no gifts and had little or no significant contact with child, there was clear and convincing evidence that putative father had abandoned child (see NRS 128.012). Therefore, there were jurisdictional grounds for termination of parental rights to child (see NRS 128.105) and order for termination of parental rights was affirmed. (See also NRS 128.095.) *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997).

Failure to maintain contact with children and provide support sufficient to support finding of abandonment. In action to terminate mother's parental rights, where mother did not contact or provide support for children for period of 1 year, district court did not err in its finding that mother had abandoned her children within meaning of NRS 128.012 and 128.105, even though mother had undergone extreme emotional trauma following death of children's father, because actions of mother demonstrated clear intent to relinquish her parental rights. *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997).

NRS 128.105 Grounds for terminating parental rights: Considera...

NRS 128.105 Grounds for terminating parental rights: Considerations; required findings. The primary consideration in any proceeding to terminate parental rights must be whether the best interests of the child will be served by the termination. An order of the court for the termination of parental rights must be made in light of the considerations set forth in this section and NRS 128.106 to 128.109, inclusive, and based on evidence and include a finding that:

1. The best interests of the child would be served by the termination of parental rights; and
2. The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:
 - (a) Abandonment of the child;
 - (b) Neglect of the child;
 - (c) Unfitness of the parent;
 - (d) Failure of parental adjustment;
 - (e) Risk of serious physical, mental or emotional injury to the child if he were returned to, or remains in, the home of his parent or parents;
 - (f) Only token efforts by the parent or parents.

- (1) To support or communicate with the child;
 - (2) To prevent neglect of the child;
 - (3) To avoid being an unfit parent; or
 - (4) To eliminate the risk of serious physical, mental or emotional injury to the child; or
 - (g) With respect to termination of the parental rights of one parent, the abandonment by that parent.
- (Added to NRS by 1975, 964; A 1981, 1755; 1985, 244; 1987, 173, 210; 1995, 215; 1999, 2027)

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NEVADA CASES.

Termination of parental rights must be upheld upon finding of abandonment. Where appellate court held there was ample support in record for finding of abandonment, it was unnecessary for it to consider appellant's assignment of error challenging district court's finding that he was unfit person, since, regardless of his fitness or unfitness in other respects, judgment terminating his parental rights must be affirmed by reason of finding of abandonment. (See NRS 128.105.) *Carson v. Lowe*, 76 Nev. 446, 357 P.2d 591 (1960), cited, *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 297, 738 P.2d 895 (1987)

Specific facts establishing parent as "unfit." It was not error for trial court to terminate parental rights of father pursuant to NRS 128.105 and find he made only token effort to avoid being declared unfit (see NRS 128.018), where there was ample evidence of, (1) unstable and chaotic home life resulting in placement of children in custody of welfare division because of neglect and abandonment, (2) father's failure, after repeated notice, to make support payments as ordered and to provide medical needs of children, and (3) his erratic attendance at court-ordered counseling sessions. *Spencer v. Welfare Division*, 94 Nev. 627, 584 P.2d 669 (1978), cited, *Kobinski v. State, Welfare Division*, 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Finding of abandonment sufficient to terminate parental rights. Pursuant to subsection 1 of NRS 128.105, finding by court that parent has abandoned his child is sufficient ground, in and of itself, for termination of parental rights. *Pyborn v. Quathamier*, 96 Nev. 145, 605 P.2d 1147 (1980), cited, *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987)

Finding that mother had abandoned child was not supported by substantial evidence. On appeal from judgment terminating mother's parental rights, findings that mother's conduct evinced settled purpose to forego custody and relinquish all claims to child, that she had left child in custody of guardians without more than "token efforts" to communicate with her for period in excess of 6 months, and therefore that she had abandoned child within meaning of NRS 128.012 and 128.105, were not supported by substantial evidence where (1) during part of 6-month period, mother had been under temporary restraining order prohibiting any contact with child; (2) during at least part of 6-month period mother had been seriously ill; and (3) mother had visited child often before death of child's father, during period when he had custody. *Chapman v. Chapman*, 96 Nev. 290, 607 P.2d 1141 (1980)

Standards for determining if parent unfit. To provide jurisdictional basis for termination of parental rights, parental unfitness must be shown to be severe and persistent and such as to render parent unsuitable to maintain parental relationship. (See NRS 128.105.) *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Wemper v. State, Dep't of Human Resources*, 112 Nev. 710, at 718, 918 P.2d 325 (1996), dissenting opinion, *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 728, 917 P.2d 949 (1996), *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1319, 929 P.2d 940 (1996), dissenting opinion, *Deck v. Department of Human Resources*, 113 Nev. 124, at 140, 930 P.2d 760 (1997), dissenting opinion, *Reed v. State, Dep't of Human Resources*, 113 Nev. 141, at 148, 930 P.2d 1128 (1997)

Standards for determining parental neglect. To provide jurisdictional basis for termination of parental rights, neglect must be serious and persistent and sufficiently harmful to child so as to mandate termination of parental rights. (See NRS 128.105.) *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1319, 929 P.2d 940 (1996), dissenting opinion.

Necessity of proving jurisdictional and dispositional grounds. Person who institutes proceedings to terminate parental rights must be able to prove clearly and convincingly that parent provided some cause for termination (jurisdictional grounds) and that under no reasonable circumstances could child's best interest be served by sustaining parental tie (dispositional grounds). (See NRS 128.105.) *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *McGuire v. Welfare Div.*, 101 Nev. 179, at 181, 697 P.2d 479 (1985), *Daly v. Daly*, 102 Nev. 66, at 68, 715 P.2d 56 (1986), *Smith v. Smith*, 102 Nev. 263, at 267, 720 P.2d 1219 (1986), *Kobinski v. State, Welfare Div.*, 103 Nev.

293, at 296, 738 P.2d 895 (1987), *Drury v. Lang*, 105 Nev. 430, at 434, 776 P.2d 843 (1989), *August H. v. State*, 105 Nev. 441, at 445, 777 P.2d 901 (1989), *Scaif v. State, Dep't of Human Resources*, 106 Nev. 756, at 758, 801 P.2d 1359 (1990), *Greeson v. Barnes*, 111 Nev. 1198, at 1200, 900 P.2d 943 (1995), *Weinper v. State, Dep't of Human Resources*, 112 Nev. 710, at 714, 918 P.2d 325 (1996), *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 726, 917 P.2d 949 (1996), *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996), dissenting opinion, *Deck v. Department of Human Resources*, 113 Nev. 124, at 137, 930 P.2d 760 (1997), *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, at 148, 930 P.2d 1128 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 330, 933 P.2d 198 (1997), *Cooley v. State, Dep't of Human Resources*, 113 Nev. 1191, at 1196, 946 P.2d 155 (1997)

Failure of parental adjustment as basis for termination of parental rights. Failure of parental adjustment (see NRS 128.0126) may provide jurisdictional basis for termination of parental rights (see NRS 128.105). If child is removed from home, parent must exercise reasonably diligent efforts to seek child's return. Failure to make such efforts may result in court's finding that parent is unsuitable by reason of unfitness or neglect in form of failing or refusing to adjust after child was removed. Parent, however, still must be shown to be at fault in some manner and cannot be judged unsuitable by reason of failure to comply with requirements and plans that are unclear, not communicated to him, or which are impossible for him to abide by. *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987), *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, at 1315, 929 P.2d 940 (1996), dissenting opinion, *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, at 150, 930 P.2d 1128 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 333, 933 P.2d 198 (1997)

Phrase "token efforts" is unclear, but section as whole requires substantial abandonment, neglect, parental unfitness or child abuse. Although meaning of "token efforts" in subsection 6 of NRS 128.105 is unclear, section as whole means that termination of parental rights must be based upon substantial abandonment, neglect, parental unfitness or child abuse. *Champagne v. Welfare Div.*, 100 Nev. 640, 691 P.2d 849 (1984), cited, *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989)

Effect on appeal of invalidation of one jurisdictional ground where there are several such grounds. Where there were several jurisdictional grounds for terminating parental rights, invalidation by appellate court of one jurisdictional ground did not invalidate decree. (See NRS 128.105.) *Kobinski v. State, Welfare Division*, 103 Nev. 293, 738 P.2d 895 (1987)

Specific facts establishing grounds for terminating parental rights. Where children were placed in temporary protective custody to be returned to mother upon provision by her of residence, food, clothing and bedding for children which, despite assistance from welfare division, she never did, and where mother had problem with alcohol, never paid required child support, rejected required counseling, was unable to successfully complete course in effective parenting, had not improved significantly in 10 years of state intervention, and had visited children only 11 times in 2 1/2 years, and where there were adoptive placements available for each child, evidence was clear and convincing and sufficient to establish jurisdictional and dispositional grounds for termination of mother's parental rights. (See NRS 128.090 and 128.106.) Facts justified findings of abandonment, neglect, parental unfitness, token efforts to remedy parental shortcomings, and failure of parental adjustment under NRS 128.105, and that action taken was in children's best interest. *Kobinski v. State, Welfare Division*, 103 Nev. 293, 738 P.2d 895 (1987), cited, *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, at 729, 917 P.2d 949 (1996)

Six-month lapse in communication insufficient to support finding of abandonment. Six-month lapse in communication between noncustodial parent and children, without more, is insufficient as matter of law to support finding that parent has demonstrated settled purpose to abandon children. (See NRS 128.012 and 128.105.) *Drury v. Lang*, 105 Nev. 430, 776 P.2d 843 (1989)

Best interest of child was served by terminating father's parental rights where father was found to have abandoned child under circumstances. There was sufficient evidence to support district court's order to terminate father's parental rights on ground that father had abandoned child (see NRS 128.012) where, during 5-year period, father paid only \$60 in child support and his only contact with child was negligible. Although noncustodial parent may demonstrate his intent not to abandon child by providing financial support or by maintaining contact with child, or both, father did neither. Further, evidence showed that mother and stepfather had provided stable environment for child, and that father had made express and implied threats of death and bodily harm to mother, stepfather and maternal grandfather, and had threatened to abduct child. Therefore, in affirming district court's order, supreme court found that best interest of child was served by terminating father's parental rights pursuant to NRS 128.105. *Greeson v. Barnes*, 111 Nev. 1198, 900 P.2d 943 (1995), cited, *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 332, 933 P.2d 198 (1997)

Jurisdictional and dispositional grounds for termination of parental rights existed where parent was unfit and failed to adjust to plan for reunification, and termination was in best interest of child. Appellant challenged termination of his parental rights, arguing that state failed to establish by clear and convincing evidence sufficient grounds for termination as set forth in NRS 128.105. Supreme court held that district court properly found that jurisdictional grounds existed for termination because there was clear and convincing evidence that appellant was unfit as parent, as demonstrated by his continued use of drugs and criminal activity during period in which child was in foster care (see NRS 128.106), and that appellant failed to adjust, as demonstrated by his failure to comply with terms and conditions of plan for reunification for nearly 3 years (see NRS 128.109). Further, district court properly found that termination was in best interest of child based on uncontradicted

evidence that child was thriving in custody of foster parents. Therefore, order of district court terminating parental rights was affirmed. *Weinpe v. State, Dep't of Human Resources*, 112 Nev. 710, 918 P.2d 325 (1996)

Order terminating parental rights of parent with history of chronic alcohol abuse was reversed where record indicated that alcoholism was not irremediable under circumstances. Although sole issues bearing on appellant's suitability as parent were her alcoholism (see NRS 128.106) and her ability to remain sober, evidence showed that appellant (1) had made significant progress to overcome alcoholism, (2) was successfully employed, (3) had established stable home environment with new husband who had stable job, had no criminal background and did not drink, and (4) had fully complied with terms and conditions of revised plan for reunification. Therefore, supreme court was unable to conclude that appellant's alcoholism was irremediable. Because there was not clear and convincing evidence to support finding that appellant was unfit as parent in accordance with NRS 128.105, supreme court reversed order to terminate appellant's parental rights. *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, 917 P.2d 949 (1996)

Order terminating parental rights of parent for failure to adjust was reversed where record indicated that parent made substantial effort to correct problem with abuse of alcohol. Parental rights of appellant, who had history of abuse of alcohol and whose child had been ward of state for approximately 22 months, were terminated pursuant to NRS 128.105 for failure of parental adjustment where district court determined that appellant was unable or unwilling within reasonable time to substantially correct circumstances or conduct which led to placement of child outside of home (see NRS 128.0126). However, record showed that, with exception of 8 months when appellant made no or only partial attempt to adjust, appellant made substantial efforts to correct conduct and circumstances by entering rehabilitation program, remaining sober in compliance with revised plan for reunification, becoming successfully employed and establishing stable home life. Therefore, because there was not clear and convincing evidence of failure of parental adjustment, supreme court reversed order terminating appellant's parental rights. *Montgomery v. State, Dep't of Human Resources*, 112 Nev. 719, 917 P.2d 949 (1996)

Termination of rights of mentally challenged parents based on unfitness of parents and parental failure to adjust. On appeal of termination of parental rights of mentally challenged parents, district court did not err in determining that parents were unfit pursuant to NRS 128.106 and that there was parental failure to adjust (see NRS 128.107), where (1) both children had mental deficiencies and special needs, (2) although parents made efforts towards becoming better parents, they persistently refused to recognize need for assistance, and (3) there was clear and convincing evidence that parents would be unable to meet intermediate and continuing needs of children. Therefore, order of district court terminating rights of parents pursuant to NRS 128.105 was affirmed. *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, 929 P.2d 940 (1996)

Termination of parental rights to mentally challenged children in foster care where natural parents were also mentally challenged. On appeal of termination of parental rights of mentally challenged parents, where (1) children, who were also mentally challenged and had special needs, spent most of their lives in foster care, (2) there was clear and convincing evidence that natural parents would be unable to meet immediate and continuing needs of children, and (3) foster parents indicated desire to adopt children, there was sufficient evidence for district court to determine that children had become integrated into foster family and that termination of parental rights of natural parents was in best interest of children (see NRS 128.108). Therefore, order of district court terminating parental rights pursuant to NRS 128.105 was affirmed. *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, 929 P.2d 940 (1996)

Termination of parental rights of mentally ill parent who failed to make necessary parental adjustments was affirmed. Where mother (1) had permanent mental condition of paranoid schizophrenia, (2) believed that medication prescribed to manage her condition had no effect on her, (3) made only token efforts to visit and develop relationship with her child, and (4) failed to provide nominal financial support as required by reunification case plan, there was clear and convincing evidence of mother's failure to make necessary parental adjustments (see NRS 128.105). Therefore, district court had jurisdiction grounds to terminate her parental rights to child and termination of parental rights was affirmed. *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Where facts supported finding that putative father had abandoned child, termination of his parental rights was affirmed. Where putative father made no effort to establish himself as natural father other than signing affidavit of paternity only after action to terminate his parental rights was commenced, and putative father provided no support, gave no gifts and had little or no significant contact with child, there was clear and convincing evidence that putative father had abandoned child (see NRS 128.012). Therefore, there were jurisdictional grounds for termination of parental rights to child (see NRS 128.105) and order for termination of parental rights was affirmed. (See also NRS 128.095.) *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Termination of parental rights of mentally ill mother and putative father was in best interests of child under circumstances. District court did not err in finding that dispositional grounds existed (see NRS 128.105) to terminate parental rights of mother diagnosed with paranoid schizophrenia and putative father based on best interests of child where (1) psychiatric evaluations of mother concluded that she was not able to care for child on long-term basis, (2) as result of long periods of separation without any visits from parents, child was estranged from parents and reunion with them would likely prove to be traumatic to child, (3) child had integrated and bonded with family with which child had been staying, and enjoyed loving and nurturing environment in their home, and (5) family with which child had been staying was only family that

child had ever known. Therefore, district court's order terminating parental rights of mother and father was affirmed. *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Where mother had irremedial inability to function as proper and acceptable parent, court could terminate her parental rights on ground that she was unfit parent. Where (1) mother had chronic instability in her employment, housing and contacts with child, (2) state found substitute care of child so that mother could find housing and employment and establish stability in her life, (3) despite reasonable efforts by state to reunite mother and child, mother did little to help establish stability in her life which she needed to care for child, and (4) foster parents, who were providing environment in which child was thriving, indicated desire to adopt child (see NRS 128.108), there was clear and convincing evidence of mother's irremedial inability to function as proper and acceptable parent and that termination of parental rights would be in best interest of child. Therefore, court had jurisdictional and dispositional grounds to terminate parental rights of mother pursuant to NRS 128.105 on basis that mother was unfit parent. (See NRS 128.106.) *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, 930 P.2d 1128 (1997)

Termination of parental rights affirmed where mother was unwilling within reasonable time to correct substantially conditions which led to placement of child outside her home and termination of parental rights was in best interest of child. Where (1) child was adjudicated to be neglected and placed into foster care, (2) despite being given over 1 year to adjust, mother was unable or unwilling to correct substantially conditions that led to child being placed outside of her home (see NRS 128.109), (3) nothing in record indicated with any certainty that provision of additional services to mother would bring about lasting parental adjustment, and (4) foster parents who were providing environment in which child was thriving indicated desire to adopt child (see NRS 128.108), district court properly concluded that there was failure of parental adjustment and that termination of mother's parental rights was in best interest of child (see NRS 128.105). Therefore, termination of parental rights of mother was affirmed. *Recodo v. State, Dep't of Human Resources*, 113 Nev. 141, 930 P.2d 1128 (1997)

Finding that mother had abandoned children was supported by substantial evidence. In action to terminate mother's parental rights, where mother did not contact or provide support for children for period of 1 year, district court did not err in its finding that mother had abandoned her children within meaning of NRS 128.012 and 128.105, even though mother had undergone extreme emotional trauma following death of children's father, because actions of mother demonstrated clear intent to relinquish her parental rights. *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Finding of failure of parental adjustment was supported by clear and convincing evidence. In action to terminate mother's parental rights, where mother failed to: (1) maintain contact with children for period of 1 year; (2) provide support for her children; (3) maintain contact with division of child and family services of department of human resources; and (4) comply with plan to reunite family developed by division, there was clear and convincing evidence to support finding of failure of parental adjustment for purposes of NRS 128.0126, 128.105 and 128.109. *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Best interests of children were served by terminating mother's parental rights. In action to terminate mother's parental rights, where mother did not contact or provide support for children for period of 1 year and children had resided in stable foster home for 4 years and no longer recognized biological mother, best interests of children were served by termination of mother's parental rights (see NRS 128.105). *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Jurisdictional grounds to terminate parental rights of teenage mother existed under circumstances. Where teenage mother (1) was immature, lacking of parental skills and could not provide stable home for child, (2) abandoned child by failing to provide financial or emotional support, (3) offered no argument to dispute whether she abused or neglected child or that she would not abuse or neglect child in future if parental rights were not terminated, (4) made little or no attempts to avail herself of aid from state, including, applying for welfare benefits and complying with case plan, and (5) continually placed child in unsanitary and dangerous living environment, district court reasonably could have found by clear and convincing evidence jurisdictional grounds to terminate parental rights in accordance with NRS 128.105, based on abandonment, abuse, neglect, failure of parental adjustment and only token efforts made by mother. Therefore, district court did not abuse its discretion in terminating parental rights of teenage mother. *Cooley v. State, Dep't of Human Resources*, 113 Nev. 1191, 946 P.2d 155 (1997)

Termination of teenage mother's parental rights was in best interest of child based on mother's immaturity, selfishness and indifference, and her inability and unwillingness to provide for child. District court did not abuse its discretion in finding that termination of parental rights of teenage mother would be in best interest of child where mother was unable or unwilling to provide for child's physical, mental and emotional development, and mother's immaturity, selfishness and indifference caused confusion and distress in child. Therefore, order terminating parental rights of teenage mother was upheld. (See NRS 128.105.) *Cooley v. State, Dep't of Human Resources*, 113 Nev. 1191, 946 P.2d 155 (1997)

mother. Although supreme court acknowledged that child had never been in mother's care, order for termination of parental rights was based on mother's failure to make necessary adjustments, so evidence of neglect was not necessary predicate to termination of parental rights. Further, mother had been provided notice and counsel at initial proceeding shortly after child's birth and at termination hearing. Therefore, requirements of due process were met and order terminating her parental rights was affirmed. *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

Putative father who was omitted from reunification case plan was not denied procedural due process where father showed little interest in child and made little effort to establish paternity. On appeal of termination of paren-

tal rights pursuant to NRS ch. 128, putative father argued that his procedural due process rights were violated by respondent's failure to provide for reunification of child and putative father within case plan established to reunify mother and child. In affirming termination of parental rights of putative father, supreme court found that respondent had provided appellant with due process and fulfilled its statutory obligation (see NRS 128.107) because it informed putative father of means by which he could establish paternity and because of appointment of counsel at termination hearing. Without further contact by putative father and with virtually no demonstrated interest by putative father in child, respondent was under no obligation to provide putative father with case plan. *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997)

NRS 128.005 Legislative declaration and findings.

1. The legislature declares that the preservation and strengthening of family life is a part of the public policy of this state.
2. The legislature finds that:
 - (a) Severance of the parent and child relationship is a matter of such importance in order to safeguard the rights of parent and child as to require judicial determination.
 - (b) Judicial selection of the person or agency to be entrusted with the custody and control of a child after such severance promotes the welfare of the parties and of this state.
 - (c) The continuing needs of a child for proper physical, mental and emotional growth and development are the decisive considerations in proceedings for termination of parental rights.

(Added to NRS by 1975, 963; A 1981, 1752)

NRS 128.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 128.011 to 128.018, inclusive have the meanings ascribed to them in those sections.

[1:161:1953]—(NRS A 1965, 335; 1975, 965; 1977, 185; 1987, 173; 1995, 783)

NRS 128.011 "Abandoned mother" defined. A mother is "abandoned" if the father or putative father has not provided for her support during her pregnancy or has not communicated with her for a period beginning no later than 3 months after conception and extending to the birth of the child.

(Added to NRS by 1975, 964)

NRS 128.012 "Abandonment of a child" defined.

1. "Abandonment of a child" means any conduct of one or both parents of a child which evinces a settled purpose on the part of one or both parents to forego all parental custody and relinquish all claims to the child.

2. If a parent or parents of a child leave the child in the care and custody of mother without provision for his support and without communication for a period of 1 month, or if the child is left under such circumstances that the identity of the parents is unknown and cannot be ascertained despite diligent searching, and the parents do not come forward to claim the child within 3 months after he is found, the parent or parents are presumed to have intended to abandon the child.

(Added to NRS by 1975, 963; A 1981, 1753)

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Termination of parental rights under child abandonment statute not in violation of due process. Termination of parental rights of divorced father under child abandonment statute, NRS 128.010 (cf. NRS 128.012), is not in violation of due process clauses of state and federal constitutions. *Carson v. Lowe*, 76 Nev. 446, 357 P.2d 591 (1960)

Where conduct of father evidenced settled purpose to forego parental custody and father left child with mother without support or communication for 1 year, there was ample support for finding of abandonment. In action by mother of minor child to terminate parental rights of father on theory of abandonment, where conduct of father evidenced settled purpose to forego all parental custody and relinquish all claims to child, and father left child in care and custody of mother without provision for his support and without communication for period of 1 year, there was ample support in record for finding of abandonment under both former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090. *Carson v. Lowe*, 76 Nev. 446, 357 P.2d 591 (1960), cited, *Casper v. Huber*, 85 Nev. 474, at 477 P.2d 436 (1969), *Sernaker v. Ehrlich*, 86 Nev. 277, at 279, 468 P.2d 5 (1970), *Pyborn v. Quatham*, 96 Nev. 145, at 147, 605 P.2d 1147 (1980), *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989), *Greeson v. Barnes*, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), see also *Deck v. Department of Human Resources*, 113 Nev. 124, 930 P.2d 760 (1997), *Gonzales v. Department of Human Resources*, 113 Nev. 324, 933 P.2d 198 (1997)

Facts sufficient to support finding of abandonment. On appeal from order terminating parental rights and granting adoption, where (1) father left mother and child shortly after birth of child, compelling mother to seek welfare assistance, (2) father paid monthly support for several months but was convicted of first degree murder and sentenced to prison in other state for 25 to 30 years, (3) mother placed child in care of her aunt and uncle, who instituted proceedings to adopt child, (4) mother executed relinquishment in favor

of adoption, and (5) father, in prison, objected to adoption but acknowledged that leaving child with aunt and uncle was satisfactory provided he could correspond with and visit child whenever able to do so, there was substantial evidence to support court's finding of abandonment (see NRS 128.012), and best interests of child were properly served by order of termination and granting of adoption. *Casper v. Huber*, 85 Nev. 474, 456 P.2d 436 (1969), cited, *Sernaker v. Ehrlich*, 86 Nev. 277, at 279, 468 P.2d 5 (1970), *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989), *Greeson v. Barnes*, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995)

Evidence was sufficient to support finding of abandonment and that termination of father's parental rights was in best interest of child. In action by mother of minor child to terminate parental rights of father, where both parties had remarried, and father had failed to provide support for several years, had visited child only once and telephoned once, and had broken promises to child, evidence was sufficient to support finding of abandonment under both former provisions of NRS 128.010 (cf. NRS 128.012) and NRS 128.090, and that termination of father's parental rights was in best interest of child. *Sernaker v. Ehrlich*, 86 Nev. 277, 468 P.2d 5 (1970), cited, *Whitaker v. Olsson*, 89 Nev. 157, at 157, 508 P.2d 1014 (1973), *Pyborn v. Quatham*, 96 Nev. 145, at 146, 605 P.2d 1147 (1980), *Chapman v. Chapman*, 96 Nev. 290, at 292, 607 P.2d 1141 (1980), *Kobinski v. State, Welfare Div.*, 103 Nev. 293, at 296, 738 P.2d 895 (1987), *Drury v. Lang*, 105 Nev. 430, at 433, 776 P.2d 843 (1989), *Greeson v. Barnes*, 111 Nev. 1198, at 1203, 900 P.2d 943 (1995), *Gonzales v. Department of Human Resources*, 113 Nev. 324, at 332, 933 P.2d 198 (1997), see also *Bush v. State, Dep't of Human Resources*, 112 Nev. 1298, 929 P.2d 940 (1996), dissenting opinion.

Termination of parental rights upheld if based on substantial evidence. Termination of parental rights will be upheld on appeal if there is substantial evidence in record to support abandonment under former NRS 128.010 (cf. NRS 128.012). *Sernaker v. Ehrlich*, 86 Nev. 277, 468 P.2d 5 (1970), cited, *Pyborn v. Quatham*, 96 Nev. 145, at 146-147, 605 P.2d 1147 (1980), see also *Kobinski v. State, Welfare Div.*, 103 Nev. 293, 738 P.2d 895 (1987), *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989), *Greeson v. Barnes*,

APPENDIX K

Chapter 432B of *Nevada Revised Statutes*

CHAPTER 432B - PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

CROSS REFERENCES

Abuse, neglect or endangerment of child, penalties, NRS 200.508, 200.5081
Administrative Procedure Act, NRS ch. 233B
Central and regional registries, NRS 432.100-432.130
Child and family services, division of, NRS 232.400-232.465
Domestic violence, NRS 33.030, 171.136, 171.137, 178.484
Fetal alcohol syndrome, request for and use of certain information, NRS 442.410
Guardians, disqualification for judicial determination of child abuse or neglect, NRS 159.059
Husband and wife privilege inapplicable, NRS 49.295
Juvenile courts, NRS ch. 62
License plates for support of exploited children, NRS 482.3793
Maintenance and special services for children, NRS 432.010-432.085
Physician defined, NRS 0.040
Population defined, NRS 0.050
Sexual abuse of child—
 Assistance to victims, NRS 217.480
 Limitation of actions, NRS 171.095
 Testing of arrestee for exposure to AIDS or syphilis, NRS 441A.320
 Videotaped deposition of child, NRS 174.227
Termination of parental rights, NRS ch. 128
Victims of crime, aid to, NRS ch. 217

REVISER'S NOTES.

Ch. 455, Stats. 1985, the source of this chapter, contains a preamble not included in NRS, which reads as follows:
"Whereas, The legislature finds that there are abused or neglected children within this state who need protection; and
Whereas, The legislature finds that there is a need for the prevention, identification and treatment of abuse or neglect of children; and
Whereas, It is the purpose of this act to establish judicial procedures to protect the rights of parents and children and to provide a system for the services necessary to protect the welfare and development of abused or neglected children and, if appropriate, to preserve and stabilize the family;"

Ch. 508, Stats. 1999, contains a preamble and other provisions not included in NRS, which are effective through June 30, 2001, and read as follows:

"Whereas, The system for providing protective services for children in this state is bifurcated, with services being provided both by county agencies and the division of child and family services of the department of human resources; and

Whereas, There are disparities between the payments made to providers of those services by the county agencies and the division; and

Whereas, Because of such disparities and because the county agencies and the division contract with different providers of foster care, the placement of a child in foster care is frequently disrupted to place the child with a different provider of foster care; and

Whereas, Frequently changing the placement of children in foster care is not in the best interests of those children; and

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Whereas, On November 19, 1997, Congress enacted the Adoption and Safe Families Act of 1997, which, as a condition to the receipt of federal money, requires a plan for the permanent placement of a child in foster care to be established no later than 12 months after a child has been placed in foster care; and

Whereas, To comply with this federal law requires diligent effort on the part of the county agencies and the division from the time that a child first enters the system for providing protective services; and

Whereas, The bifurcated system for providing protective services to children in this state does not uniformly provide the continuity in care and services that are necessary to establish a plan for the permanent placement of those children within the time frame required by federal law;

Section 1. 1. A county that is required to provide protective services to children in that county pursuant to NRS 432B.325 may enter into an agreement with the division of child and family services of the department of human resources to establish a pilot program to provide continuity of care for children who receive protective services. A pilot program established pursuant to such an agreement may provide:

(a) For the county and the division of child and family services jointly to furnish services relating to the assessment of a child and planning for the provision of protective services to the child;

(b) For a child to be in the joint custody of the county and the division of child and family services;

(c) For continuity in the placement of a child in foster care;

(d) That the rate of payment by the county for foster care and shelter care must be equal to the rate of payment by the division of child and family services for foster care and shelter care;

(e) For continuity in the management of a case for the provision of protective services to a child; and

(f) For services designed to carry out a plan for the permanent placement of a child established pursuant to NRS 432B.590 or the Adoption and Safe Families Act of 1997, Public Law 105-89.

2. Notwithstanding any specific statute to the contrary, for the purpose of a pilot program established pursuant to an agreement entered into pursuant to this section, the division of child and family services may deviate from the rate of payment for foster care approved by the legislature.

Sec. 2. On or before November 30, 2000, the division of child and family services of the department of human resources shall submit a report to the director of the legislative counsel bureau for transmittal to the appropriate legislative committee. The report must include the following information for each agreement entered into pursuant to section 1 of this act:

1. The number of children involved in the pilot project established pursuant to the agreement;

2. A description of the services provided to those children that includes:

(a) The name of the agency that provided the services; and

(b) The costs incurred by the agency that provided the services.

3. If available, the disposition of the cases of those children; and

4. An analysis of the benefits, if any, to the children involved in the pilot project and to the families of those children."

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WESTLAW Topic No. 211.

C.J.S. Infants §§ 31, 33, 42, 50, 51, 53, 54.

ATTORNEY GENERAL'S OPINIONS.

Name of person reporting child abuse and name of child concerned remain confidential after death of abused child. NRS ch. 432B provides for protection of children from abuse and neglect. NRS 432B.220 requires that certain persons and agencies discovering evidence of child abuse or neglect report information regarding suspected child abuse to appropriate state agency. Information, investigations and reports made pursuant to NRS 432B.220 are confidential in order to encourage reporting and may be released only to persons specified in NRS 432B.290. Nondisclosure law makes information itself privileged, therefore names of persons making report and names of children concerned remain confidential and protected from general dissemination to public even after death of abused child. AGO 88-15 (12-14-1988)

GENERAL PROVISIONS

NRS 432B.010 Definitions.

NRS 432B.010 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 432B.020 to 432B.110, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1985, 1368; A 1991, 1920; 1993, 2705; 1995, 786)

NRS 432B.020 "Abuse or neglect of a child" defined.

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NRS 432B.020 "Abuse or neglect of a child" defined.

1. "Abuse or neglect of a child" means:

(a) Physical or mental injury of a nonaccidental nature;

(b) Sexual abuse or sexual exploitation; or

(c) Negligent treatment or maltreatment as set forth in NRS 432B.140, of a child caused or allowed by a person responsible for his welfare under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

2. A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this state in lieu of medical treatment. This subsection does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62.231.

3. As used in this section, "allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.

(Added to NRS by 1985, 1368)

NRS CROSS REFERENCES.

Guardians, disqualification for appointment, NRS 159.059

ADMINISTRATIVE REGULATIONS.

Interpretation of "nonaccidental," NAC 432B.020

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Infants \approx 156 to 159.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 31 to 62.

NRS 432B.030 "Agency which provides protective services" defin...

NRS 432B.030 "Agency which provides protective services" defined. "Agency which provides protective services" means:

1. The local office of the division of child and family services; 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.

(Added to NRS by 1985, 1369; A 1993, 2705)

NRS 432B.040 "Child" defined.

NRS 432B.040 "Child" defined. "Child" means a person under the age of 18 years.

(Added to NRS by 1985, 1369)

NRS 432B.050 "Court" defined.

NRS 432B.050 "Court" defined. "Court" means

1. In any judicial district that includes a county whose population is 100,000 or more, the family division of the district court; or

2. In any other judicial district, the juvenile division of the district court.

(Added to NRS by 1985, 1369; A 1991, 2186)

NRS CROSS REFERENCES.

"Population" defined. NRS 0.050

NRS 432B.060 "Custodian" defined.

NRS 432B.060 "Custodian" defined. "Custodian" means a person or a governmental organization, other than a parent or legal guardian, who has been awarded legal custody of a child.

(Added to NRS by 1985, 1369)

NRS 432B.065 "Division of child and family services" defined.

NRS 432B.065 "Division of child and family services" defined. "Division of child and family services" means the division of child and family services of the department of human resources.

(Added to NRS by 1993, 2705)

NRS 432B.067 "Indian child" defined.

NRS 432B.067 "Indian child" defined. "Indian child" has the meaning ascribed to it in 25 U.S.C. § 1903.

(Added to NRS by 1995, 786)

NRS 432B.068 "Indian Child Welfare Act" defined.

NRS 432B.068 "Indian Child Welfare Act" defined. "Indian Child Welfare Act" means the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901 et seq.).

(Added to NRS by 1995, 786)

NRS 432B.070 "Mental injury" defined.

NRS 432B.070 "Mental injury" defined. "Mental injury" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of his ability to function within his normal range of performance or behavior.

(Added to NRS by 1985, 1369)

NRS 432B.080 "Parent" defined.

NRS 432B.080 "Parent" defined. "Parent" means a natural or adoptive parent whose parental rights have not been terminated.

(Added to NRS by 1985, 1369)

NRS 432B.090 "Physical injury" defined.

NRS 432B.090 "Physical injury" defined. "Physical injury" includes, without limitation:

1. A sprain or dislocation;
2. Damage to cartilage;
3. A fracture of a bone or the skull;
4. An intracranial hemorrhage or injury to another internal organ;
5. A burn or scalding;
6. A cut, laceration, puncture or bite;

7. Permanent or temporary disfigurement; or
 8. Permanent or temporary loss or impairment of a part or organ of the body.
- (Added to NRS by 1985, 1369; A 1997, 848)

NRS 432B.100 "Sexual abuse" defined.

NRS 432B.100 "Sexual abuse" defined. "Sexual abuse" includes acts upon a child constituting:

1. Incest under NRS 201.180;
2. Lewdness with a child under NRS 201.230;
3. Annoyance or molestation of a child under NRS 207.260;
4. Sado-masochistic abuse under NRS 201.262;
5. Sexual assault under NRS 200.366;
6. Statutory sexual seduction under NRS 200.368;
7. Open or gross lewdness under NRS 201.210; and
8. Mutilation of the genitalia of a female child, aiding, abetting, encouraging or participating in the mutilation of the genitalia of a female child, or removal of a female child from this state for the purpose of mutilating the genitalia of the child under NRS 200.5083.

(Added to NRS by 1985, 1369; A 1991, 54; 1997, 677)

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Infants \Leftarrow 20.
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C.J.S. Infants §§ 100 et seq.

NRS 432B.110 "Sexual exploitation" defined.

NRS 432B.110 "Sexual exploitation" defined. "Sexual exploitation" includes forcing, allowing or encouraging a child:

1. To solicit for or engage in prostitution;
2. To view a pornographic film or literature; and
3. To engage in:
 - (a) Filming, photographing or recording on videotape; or
 - (b) Posing, modeling, depiction or a live performance before an audience,which involves the exhibition of a child's genitals or any sexual conduct with a child, as defined in NRS 200.700.

(Added to NRS by 1985, 1369)

NRS 432B.121 Definition of when person has "reasonable cause t...

NRS 432B.121 Definition of when person has "reasonable cause to believe" and when person acts "as soon as reasonably practicable." For the purposes of this chapter, a person:

1. Has "reasonable cause to believe" if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.
2. Acts "as soon as reasonably practicable" if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would act within approximately the same period under those facts and circumstances.

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(Added to NRS by 1999, 3526)

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WESTLAW Topic No. 211.

C.J.S. Infants §§ 95, 100 to 107.

NRS 432B.130 Persons responsible for child's welfare.

NRS 432B.130 Persons responsible for child's welfare. A person is responsible for a child's welfare under the provisions of this chapter if he is the child's parent, guardian or foster parent, a stepparent with whom the child lives, an adult person continually or regularly found in the same household as the child, or a person directly responsible or serving as a volunteer for or employed in a public or private home, institution or facility where the child actually resides or is receiving child care outside of his home for a portion of the day.

(Added to NRS by 1985, 1370; A 1989, 439)

NRS 432B.140 Negligent treatment or maltreatment.

NRS 432B.140 Negligent treatment or maltreatment. Negligent treatment or maltreatment of a child occurs if a child has been abandoned, is without proper care, control and supervision or lacks the subsistence, education, shelter, medical care or other care necessary for the well-being of the child because of the faults or habits of the person responsible for his welfare or his neglect or refusal to provide them when able to do so.

(Added to NRS by 1985, 1370)

NEVADA CASES.

Evidence sufficient to show that children were neglected. Where parents were unable to protect children from each other and failed to teach children basic social skills or to provide any guidance to children regarding basic toilet functions and hygiene, evidence was sufficient to show that children were neglected (see NRS 432B.140). *August H v. State*, 105 Nev. 441, 777 P.2d 901 (1989)

Statute was not unconstitutionally vague as applied to defendant in light of evidence of defendant's failure to obtain medical treatment for child. In prosecution for child abuse and neglect under NRS 200.508, where prosecution proved that (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he had beaten child; (3) defendant knew child had fever, was lethargic, vomited repeatedly, did not eat or drink and did not go to bathroom after beating; and (4) boyfriend suggested several times that child be taken to doctor, but defendant refused because she feared child would be taken from her, defendant could not claim that NRS 432B.140, which provides that person commits abuse or neglect of child if he willfully fails to provide medical care necessary for well-being of child when he was able to do so, was unconstitutionally vague because it failed to delineate factors to determine when treatment by medical professional was required. As applied to defendant's case, it was untenable for defendant to argue that she was unaware that her willful failure to obtain medical treatment for child was criminal pursuant to NRS 432B.140, as incorporated in NRS 200.508. *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996), cited. *Rice v. State*, 113 Nev. 1300, at 1307, 949 P.2d 262 (1997)

Evidence sufficient to support finding of failure to obtain medical treatment for child. In prosecution for child abuse and neglect under NRS 200.508, there was sufficient evidence to convict defendant of willfully allowing child to be placed in situation in which he suffered unjustifiable physical pain and substantial bodily harm by failing to provide medical care to child when defendant was able to do so where (1) boyfriend of defendant beat child immediately before his death, thereby inflicting multiple bruises on child's chest and abdomen; (2) boyfriend told defendant that he beat child; (3) defendant saw bruises on child's body when she gave child bath; (4) defendant knew child was listless and ill and had temperature during days before his death, and (5) defendant refused to take child to hospital because she feared child would be taken from her. (See also NRS 432B.140.) *Smith v. State*, 112 Nev. 1269, 927 P.2d 14 (1996)

NRS 432B.150 Excessive corporal punishment may constitute abus...

NRS 432B.150 Excessive corporal punishment may constitute abuse or neglect. Excessive corporal punishment may result in physical or mental injury constituting abuse or neglect of a child under the provisions of this chapter.

(Added to NRS by 1985, 1370)

NRS 432B.153 Presumptions concerning custody and visitation wh...

NRS 432B.153 Presumptions concerning custody and visitation when parent of child is convicted of first degree murder of other parent of child.

1. The conviction of the parent of a child for murder of the first degree of the other parent of the child creates a rebuttable presumption that sole or joint custody of the child by the convicted parent is not in the best interest of the child. The rebuttable presumption may be overcome only if:

(a) The court determines that:

- (1) There is no other suitable guardian for the child;
- (2) The convicted parent is a suitable guardian for the child; and
- (3) The health, safety and welfare of the child are not at risk; or

(b) The child is of suitable age to signify his assent and assents to the order of the court awarding sole or joint custody of the child to the convicted parent.

2. The conviction of the parent of a child for murder of the first degree of the other parent of the child creates a rebuttable presumption that rights to visitation with the child are not in the best interest of the child and must not be granted if custody is not granted pursuant to subsection 1. The rebuttable presumption may be overcome only if:

(a) The court determines that:

- (1) The health, safety and welfare of the child are not at risk; and
- (2) It will be beneficial for the child to have visitations with the convicted parent; or

(b) The child is of suitable age to signify his assent and assents to the order of the court awarding rights to visitation with the child to the convicted parent.

3. Until the court makes a determination pursuant to this section, no person may bring the child into the presence of the convicted parent without the consent of the legal guardian or custodian of the child.

(Added to NRS by 1999, 743; A 1999, 2975)

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Divorce ⇐ 298.

Infants ⇐ 19.

Parent and Child ⇐ 2.

WESTLAW Topic Nos. 134, 211, 285.

C.J.S. Divorce § 620.

C.J.S. Infants §§ 11 to 15, 17 to 19, 22 to 23, 26 to 29.

C.J.S. Parent and Child §§ 16, 19.

NRS 432B.157 Presumption concerning custody when court determi...

NRS 432B.157 Presumption concerning custody when court determines that parent or other person seeking custody of child is perpetrator of domestic violence.

1. Except as otherwise provided in NRS 125C.210 and 432B.153, a determination by the court after an

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evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking custody of a child has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that it is not in the best interest of the child for the perpetrator of the domestic violence to have custody of the child. Upon making such a determination, the court shall set forth:

- (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
- (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

2. If after an evidentiary hearing held pursuant to subsection 1 the court determines that more than one party has engaged in acts of domestic violence, it shall, if possible, determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

- (a) All prior acts of domestic violence involving any of the parties;
- (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
- (c) The likelihood of future injury;
- (d) Whether, during the prior acts, one of the parties acted in self-defense; and
- (e) Any other factors that the court deems relevant to the determination.

In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies to each of the parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 1 applies only to the party determined by the court to be the primary physical aggressor.

3. A court, agency, institution or other person who places a child in protective custody shall not release a child to the custody of a person who a court has determined pursuant to subsection 1 has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child unless:

- (a) A court determines that it is in the best interest of the child for the perpetrator of the domestic violence to have custody of the child; or
- (b) Pursuant to the provisions of subsection 2, the presumption created pursuant to subsection 1 does not apply to the person to whom the court releases the child.

4. As used in this section, "domestic violence" means the commission of any act described in NRS 33.018.

(Added to NRS by 1999, 743)

WEST PUBLISHING CO.

Divorce ⇐ 298.

Infants ⇐ 19.

WESTLAW Topic Nos. 134, 211.

C.J.S. Divorce § 620.

C.J.S. Infants §§ 11 to 15, 17 to 19, 22 to 23, 26 to 29.

NRS 432B.160 Immunity from civil or criminal liability; presum...

NRS 432B.160 Immunity from civil or criminal liability; presumption.

- 1. Immunity from civil or criminal liability extends to every person who in good faith:

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- (a) Makes a report pursuant to NRS 432B.220;
 - (b) Conducts an interview or allows an interview to be taken pursuant to NRS 432B.270;
 - (c) Allows or takes photographs or X-rays pursuant to NRS 432B.270;
 - (d) Causes a medical test to be performed pursuant to NRS 432B.270;
 - (e) Provides a record, or a copy thereof, of a medical test performed pursuant to NRS 432B.270 to an agency that provides protective services to the child, a law enforcement agency that participated in the investigation of the report of abuse or neglect of the child or the prosecuting attorney's office;
 - (f) Holds a child pursuant to NRS 432B.400 or places a child in protective custody;
 - (g) Refers a case or recommends the filing of a petition pursuant to NRS 432B.380; or
 - (h) Participates in a judicial proceeding resulting from a referral or recommendation.
2. In any proceeding to impose liability against a person for:
- (a) Making a report pursuant to NRS 432B.220; or
 - (b) Any of the acts set forth in paragraphs (b) to (h), inclusive, of subsection 1,
- there is a presumption that the person acted in good faith.
- (Added to NRS by 1985, 1378; A 1987, 1154; 1999, 60, 3526)

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Physicians and Surgeons ⇐ 15(9).

WESTLAW Topic No. 299.

C.J.S. Physicians, Surgeons, and Other Health Care Providers §§ 58, 60, 70, 97 to 100.

NRS 432B.170 Sharing information with state or local agencies.

NRS 432B.170 Sharing information with state or local agencies. Nothing in the provisions of NRS 432.100 to 432.130, inclusive, or this chapter prohibits an agency which provides protective services from sharing information with other state or local agencies if:

1. The purpose for sharing the information is for the development of a plan for the care, treatment or supervision of a child who has been abused or neglected or of a person responsible for the child's welfare;
 2. The other agency has standards for confidentiality equivalent to those of the agency which provides protective services; and
 3. Proper safeguards are taken to ensure the confidentiality of the information.
- (Added to NRS by 1985, 1378)

ADMINISTRATION

NRS 432B.180 Duties of division of child and family services.

NRS 432B.180 Duties of division of child and family services. The division of child and family services 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 division of child and family services; and
7. Evaluate the plans submitted for approval pursuant to NRS 432B.395.
(Added to NRS by 1985, 1370; A 1987, 1439; 1993, 2705)

NRS 432B.190 Regulations to be adopted by division of child an...

NRS 432B.190 Regulations to be adopted by division of child and family services. [Effective through June 30, 2001.] The division of child and family services 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. Carrying out the provisions of NRS 432B.260, including, without limitation, the qualifications of persons with whom agencies which provide protective services enter into agreements to provide services to children and families;
6. The management and assessment of reported cases of abuse or neglect;
7. The protection of the legal rights of parents and children;
8. Emergency shelter for a child;
9. The prevention, identification and correction of abuse or neglect of a child in residential institutions;
10. Evaluating the development and contents of a plan submitted for approval pursuant to NRS 432B.395;
11. Developing and distributing to persons who are responsible for a child's welfare a pamphlet that sets forth the procedures for taking a child for placement in protective custody and the legal rights of persons who are parties to a proceeding held pursuant to NRS 432B.410 to 432B.590, inclusive, during all stages of the proceeding; and
12. Making the necessary inquiries required pursuant to NRS 432B.397 to determine whether a child is an Indian child.

(Added to NRS by 1985, 1370; A 1987, 1439; 1991, 922; 1993, 2706; 1995, 787; 1997, 2471)

ADMINISTRATIVE REGULATIONS.

Protection of children from abuse and neglect. NAC ch. 432B

NRS 432B.190 Regulations to be adopted by division of child an...

NRS 432B.190 Regulations to be adopted by division of child and family services. [Effective July 1, 2001.] The division of child and family services 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;
9. Evaluating the development and contents of a plan submitted for approval pursuant to NRS 432B.395;
10. Developing and distributing to persons who are responsible for a child's welfare a pamphlet that sets forth the procedures for taking a child for placement in protective custody and the legal rights of persons who are parties to a proceeding held pursuant to NRS 432B.410 to 432B.590, inclusive, during all stages of the proceeding; and
11. Making the necessary inquiries required pursuant to NRS 432B.397 to determine whether a child is an Indian child.

(Added to NRS by 1985, 1370; A 1987, 1439; 1991, 922; 1993, 2706; 1995, 787; 1997, 2471, effective July 1, 2001)

NRS 432B.200 Toll-free telephone number for reports of abuse o...

NRS 432B.200 Toll-free telephone number for reports of abuse or neglect. The division of child and family services 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.

(Added to NRS by 1985, 1371; A 1993, 2706)

NRS 432B.210 State, political subdivisions and agencies to coo...

NRS 432B.210 State, political subdivisions and agencies to cooperate with agencies which provide protective services. An agency which provides protective services must receive from the state, any of its political subdivisions or any agency of either, any cooperation, assistance and information it requests in order to fulfill its responsibilities under NRS 432.100 to 432.130, inclusive, and this chapter.

(Added to NRS by 1985, 1379)

NRS 432B.215 Acquisition and use of information concerning pro...

NRS 432B.215 Acquisition and use of information concerning probationers and parolees.

1. An agency which provides protective services and the division of child and family services may request the division of parole and probation of the department of motor vehicles and public safety for information concerning a probationer or parolee that may assist the agency or the division of child and family services in carrying out the provisions of this chapter. The division of parole and probation shall provide such information upon request.

2. The agency which provides protective services or the division of child and family services may use the information obtained pursuant to subsection 1 only for the limited purpose of carrying out the provisions of this chapter.

(Added to NRS by 1997, 835)

REPORTS OF ABUSE OR NEGLECT

NRS 432B.220 Persons required to make report; when and to whom...

NRS 432B.220 Persons required to make report; when and to whom reports are required; any person may make report; report and written findings if reasonable cause to believe death of child caused by abuse or neglect.

1. Any person who is described in subsection 3 and who, in his professional or occupational capacity, knows

or has reasonable cause to believe that a child has been abused or neglected shall:

(a) Except as otherwise provided in subsection 2, report the abuse or neglect of the child to an agency which provides protective services or to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse or neglect of the child involves an act or omission of:

(a) A person directly responsible or serving as a volunteer for or an employee of a public or private home, institution or facility where the child is receiving child care outside of his home for a portion of the day, the person shall make the report to a law enforcement agency.

(b) An agency which provides protective services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission, and the investigation of the abuse or neglect of the child must be made by an agency other than the one alleged to have committed the act or omission.

3. A report must be made pursuant to subsection 1 by the following persons:

(a) A physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, 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.

4. A report may be made by any other person

5. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a child has died as a result of abuse or neglect, the person shall, as soon as reasonably practicable, 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. The written findings must include, if obtainable, the information required pursuant to the provisions of subsection 2 of NRS 432B.230.

(Added to NRS by 1985, 1371; A 1987, 2132, 2220; 1989, 439; 1993, 2229; 1999, 3526)

NEVADA CASES.

Former provisions of section were unconstitutionally vague. Because former provisions of NRS 432B.220 which required that report of suspected child abuse be made "immediately" vested in prosecuting authorities unbridled discretion to determine whether report of suspected child abuse was made quickly enough, section failed to inform persons who were subject to its terms what conduct would render them liable to criminal sanctions and, therefore, was unconstitutionally vague. *Sheriff, Washoe County v. Sferazza*, 104 Nev. 747, 766 P.2d 896 (1988)

ATTORNEY GENERAL'S OPINIONS.

Name of person reporting child abuse and name of child concerned remain confidential after death of abused child. NRS ch. **432B** provides for protection of children from abuse and neglect. NRS 432B.220 requires that certain persons and agencies discovering evidence of child abuse or neglect report information regarding suspected child abuse to appropriate state agency. Information, investigations and reports made pursuant to NRS 432B.220 are confidential in order to encourage reporting and may be released only to persons specified in NRS 432B.290. Nondisclosure law makes information itself privileged, therefore names of persons making report and names of children concerned remain confidential and protected from general dissemination to public even after death of abused child. AGO 88-15 (12-14-1988)

NRS 432B.230 Method of making report; contents.

NRS 432B.230 Method of making report; contents.

1. A person may make a report pursuant to NRS 432B.220 by telephone or, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, by any other means of oral, written or electronic communication that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the report. If the report is made orally, the person who receives the report must reduce it to writing as soon as reasonably practicable.

2. The report must contain the following information, if obtainable:

- (a) The name, address, age and sex of the child;
- (b) The name and address of the child's parents or other person responsible for his care;
- (c) The nature and extent of the abuse or neglect of the child;
- (d) Any evidence of previously known or suspected abuse or neglect of the child or the child's siblings;
- (e) The name, address and relationship, if known, of the person who is alleged to have abused or neglected the child; and
- (f) Any other information known to the person making the report that the agency which provides protective services considers necessary.

(Added to NRS by 1985, 1372; A 1999, 3528)

NRS 432B.240 Penalty for failure to make report.

NRS 432B.240 Penalty for failure to make report. Any person who knowingly and willfully violates the provisions of NRS 432B.220 is guilty of a misdemeanor.

(Added to NRS by 1985, 1373)

NRS 432B.250 Persons required to report prohibited from invoking...

NRS 432B.250 Persons required to report prohibited from invoking certain privileges. Any person who is required to make a report pursuant to NRS 432B.220 may not invoke any of the privileges set forth in chapter 49 of NRS:

- 1. For his failure to make a report pursuant to NRS 432B.220;
- 2. In cooperating with an agency which provides protective services or a guardian ad litem for a child; or

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3. In any proceeding held pursuant to NRS 432B.410 to 432B.590, inclusive.
(Added to NRS by 1985, 1378; A 1999, 3528)

NRS 432B.255 Admissibility of evidence.

NRS 432B.255 Admissibility of evidence. In any proceeding resulting from a report made or action taken pursuant to the provisions of NRS 432B.220, 432B.230 or 432B.340 or in any proceeding where such report or the contents thereof is sought to be introduced in evidence, such report or contents or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter would otherwise be privileged against disclosure under chapter 49 of NRS.

(Added to NRS by 1965, 548; A 1971, 804)—(Substituted in revision for NRS 200.506)

NRS 432B.260 Action upon receipt of report. [Effective through...

NRS 432B.260 Action upon receipt of report. [Effective through June 30, 2001.]

1. Upon the receipt of a report concerning the possible abuse or neglect of a child, an agency which provides protective services or a law enforcement agency shall promptly notify the appropriate licensing authority, if any. A law enforcement agency shall promptly notify an agency which provides protective services of any report it receives.

2. Upon receipt of a report concerning the possible abuse or neglect of a child, an agency which provides protective services or a law enforcement agency shall immediately initiate an investigation if the report indicates that:

- (a) The child is 5 years of age or younger;
- (b) There is a high risk of serious harm to the child; or
- (c) The child is dead, is seriously injured or has visible signs of physical abuse.

3. Except as otherwise provided in subsection 2, upon receipt of a report concerning the possible abuse or neglect of a child or notification from a law enforcement agency that the law enforcement agency has received such a report, an agency which provides protective services shall conduct an evaluation not later than 3 days after the report or notification was received to determine whether an investigation is warranted. For the purposes of this subsection, an investigation is not warranted if:

- (a) The child is not in imminent danger of harm;
- (b) The child is not vulnerable as the result of any untreated injury, illness or other physical, mental or emotional condition that threatens his immediate health or safety;
- (c) The alleged abuse or neglect could be eliminated if the child and his family receive or participate in social or health services offered in the community, or both; or
- (d) The agency determines that the:
 - (1) Alleged abuse or neglect was the result of the reasonable exercise of discipline by a parent or guardian of the child involving the use of corporal punishment, including, without limitation, spanking or paddling; and
 - (2) Corporal punishment so administered was not so excessive as to constitute abuse or neglect as described in NRS 432B.150.

4. If the agency determines that an investigation is warranted, the agency shall initiate the investigation not later than 3 days after the evaluation is completed.

5. Except as otherwise provided in this subsection, if the agency determines that an investigation is not warranted, the agency may, as appropriate:

- (a) Provide counseling, training or other services relating to child abuse and neglect to the family of the child, or

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refer the family to a person that has entered into an agreement with the agency to provide those services; or

(b) Conduct an assessment of the family of the child to determine what services, if any, are needed by the family and, if appropriate, provide any such services or refer the family to a person that has entered into a written agreement with the agency to make such an assessment.

If an agency determines that an investigation is not warranted for the reason set forth in paragraph (d) of subsection 3, the agency shall take no further action in regard to the matter and shall expunge all references to the matter from its records.

6. If an agency which provides protective services enters into an agreement with a person to provide services to a child or his family pursuant to subsection 5, the agency shall require the person to notify the agency if the child or his family refuse or fail to participate in the services, or if the person determines that there is a serious risk to the health or safety of the child.

7. An agency which provides protective services that determines that an investigation is not warranted may, at any time, reverse that determination and initiate an investigation.

8. An agency which provides protective services and a law enforcement agency shall cooperate in the investigation, if any, of a report of abuse or neglect of a child.

(Added to NRS by 1985, 1373; A 1989, 440; 1997, 2472; 1999, 2910)

ADMINISTRATIVE REGULATIONS.

Agencies which provide family assessment services, NAC 432B.135-432B.1368

NRS 432B.260 Initiation of investigation and notification of c...

NRS 432B.260 Initiation of investigation and notification of certain agencies upon receipt of report; cooperation in investigation; exception. [Effective July 1, 2001.]

1. Upon receipt of a report concerning the possible abuse or neglect of a child, an agency which provides protective services or a law enforcement agency shall promptly notify the appropriate licensing authority, if any, and, within 3 working days, initiate an investigation. A law enforcement agency shall promptly notify an agency which provides protective services of any report it receives.

2. An agency which provides protective services and a law enforcement agency shall cooperate in the investigation, if any, of a report of abuse or neglect of a child.

3. If an agency which provides protective services or a law enforcement agency determines pursuant to an investigation initiated pursuant to this section that the:

(a) Alleged abuse or neglect was the result of the reasonable exercise of discipline by a parent or guardian of the child involving the use of corporal punishment, including, without limitation, spanking or paddling; and

(b) Corporal punishment so administered was not so excessive as to constitute abuse or neglect as described in NRS 432B.150,

the agency which provides protective services or the law enforcement agency shall take no further action in regard to the matter and shall expunge all references to the matter from its records.

(Added to NRS by 1985, 1373; A 1989, 440; 1997, 2472; 1999, 2910, 2911, effective July 1, 2001)

NRS 432B.270 Interview of child; photographs, X-rays and medic...

NRS 432B.270 Interview of child; photographs, X-rays and medical tests.

1. A designee of an agency investigating a report of abuse or neglect of a child may, without the consent of and

outside the presence of any person responsible for the child's welfare, interview a child concerning any possible abuse or neglect. The child may be interviewed at any place where he is found. The designee shall, immediately after the conclusion of the interview, if reasonably possible, notify a person responsible for the child's welfare that the child was interviewed, unless the designee determines that such notification would endanger the child.

2. A designee of an agency investigating a report of abuse or neglect of a child may, without the consent of the person responsible for a child's welfare:

- (a) Take or cause to be taken photographs of the child's body, including the areas of trauma; and
- (b) If indicated after consultation with a physician, cause X-rays or medical tests to be performed on a child.

3. Upon the taking of any photographs or X-rays or the performance of any medical tests pursuant to subsection 2, the person responsible for the child's welfare must be notified immediately, if reasonably possible, unless the designee determines that the notification would endanger the child. The reasonable cost of these photographs, X-rays or medical tests must be paid by the agency providing protective services if money is not otherwise available.

4. Any photographs or X-rays taken or records of any medical tests performed pursuant to subsection 2, or any medical records relating to the examination or treatment of a child pursuant to this section, or copies thereof, must be sent to the agency providing protective services, the law enforcement agency participating in the investigation of the report and the prosecuting attorney's office. Each photograph, X-ray, result of a medical test or other medical record:

(a) Must be accompanied by a statement or certificate signed by the custodian of medical records of the health care facility where the photograph or X-ray was taken or the treatment, examination or medical test was performed, indicating:

- (1) The name of the child;
- (2) The name and address of the person who took the photograph or X-ray, performed the medical test, or examined or treated the child; and
- (3) The date on which the photograph or X-ray was taken or the treatment, examination or medical test was performed;

- (b) Is admissible in any proceeding relating to the abuse or neglect of the child; and
- (c) May be given to the child's parent or guardian if he pays the cost of duplicating them.

5. As used in this section, "medical test" means any test performed by or caused to be performed by a provider of health care, including, without limitation, a computerized axial tomography scan and magnetic resonance imaging.

(Added to NRS by 1985, 1373; A 1999, 61)

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Physicians and Surgeons ¶ 15(9)

WESTLAW Topic No. 299

C.J.S. Physicians, Surgeons, and Other Health Care Providers §§ 58, 60, 70, 97 to 100.

NRS 432B.280 Confidentiality of reports and records of reports...

NRS 432B.280 Confidentiality of reports and records of reports and investigations.

1. Reports made pursuant to this chapter, as well as all records concerning these reports and investigations thereof, are confidential.

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2. Any person, law enforcement agency or public agency, institution or facility who willfully releases data or information concerning such reports and investigations, except:

- (a) Pursuant to a criminal prosecution relating to the abuse or neglect of a child; or
- (b) As authorized pursuant to NRS 432B.290,

is guilty of a misdemeanor.

(Added to NRS by 1985, 1373; A 1999, 2032)

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Infants — 133.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NRS 432B.290 Release of data or information concerning reports...

NRS 432B.290 Release of data or information concerning reports and investigations; penalty. [Effective through June 30, 2001.]

1. Except as otherwise provided in subsections 2, 5 and 6, data or information concerning reports and investigations thereof made pursuant to this chapter may be made available only to:

(a) A physician, if the physician has before him a child who he has reasonable cause to believe has been abused or neglected;

(b) A person authorized to place a child in protective custody, if the person has before him a child who he has reasonable cause to believe has been abused or neglected and the person requires the information to determine whether to place the child in protective custody;

(c) An agency, including, without limitation, 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 welfare of the child;

(d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of the abuse or neglect of a child;

(e) A 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 information identifying the subjects of a report must not be made available to him;

(g) The attorney and the guardian ad litem of the child;

(h) A grand jury upon its determination that access to these records is necessary in the conduct of its official business;

(i) A federal, state or local governmental entity, or an agency of such an entity, that needs access to the information to carry out its legal responsibilities to protect children from abuse and neglect;

(j) A person or an organization that has entered into a written agreement with an agency which provides protective services to provide assessments or services and that has been trained to make such assessments or provide such services;

(k) A team organized pursuant to NRS 432B.350 for the protection of a child;

(l) A team organized pursuant to NRS 432B.405 to review the death of a child;

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(m) 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;

(n) The persons who are the subject of a report;

(o) An agency that 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;

(p) 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 that 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;

(q) The division of parole and probation of the department of motor vehicles and public safety for use pursuant to NRS 176.135 in making a presentence investigation and report to the district court or pursuant to NRS 176.151 in making a general investigation and report;

(r) Any person who is required pursuant to NRS 432B.220 to make a report to an agency which provides protective services or to a law enforcement agency;

(s) The rural advisory board to expedite proceedings for the placement of children created pursuant to NRS 432B.602 or a local advisory board to expedite proceedings for the placement of children created pursuant to NRS 432B.604; or

(t) The panel established pursuant to NRS 432B.396 to evaluate agencies which provide protective services.

2. Except as otherwise provided in subsection 3, data or information concerning reports and investigations thereof made pursuant to this chapter may be made available to any member of the general public if the child who is the subject of a report dies or is critically injured as a result of alleged abuse or neglect, except that the data or information which may be disclosed is limited to:

(a) The fact that a report of abuse or neglect has been made and, if appropriate, a factual description of the contents of the report;

(b) Whether an investigation has been initiated pursuant to NRS 432B.260, and the result of a completed investigation; and

(c) Such other information as is authorized for disclosure by a court pursuant to subsection 4.

3. An agency which provides protective services shall not disclose data or information pursuant to subsection 2 if the agency determines that the disclosure is not in the best interests of the child or if disclosure of the information would adversely affect any pending investigation concerning a report.

4. Upon petition, a court of competent jurisdiction may authorize the disclosure of additional information to the public pursuant to subsection 2 if good cause is shown by the petitioner for the disclosure of the additional information.

5. An agency investigating a report of the abuse or neglect of a child shall, upon request, provide to a person named in the report as allegedly causing the abuse or neglect of the child:

(a) A copy of:

(1) Any statement made in writing to an investigator for the agency by the person named in the report as allegedly causing the abuse or neglect of the child; or

(2) Any recording made by the agency of any statement made orally to an investigator for the agency by

the person named in the report as allegedly causing the abuse or neglect of the child; or

(b) A written summary of the allegations made against the person who is named in the report as allegedly causing the abuse or neglect of the child. The summary must not identify the person responsible for reporting the alleged abuse or neglect.

6. An agency which provides protective services shall disclose the identity of a person who makes a report or otherwise initiates an investigation pursuant to this chapter if a court, after reviewing the record in camera and determining that there is reason to believe that the person knowingly made a false report, orders the disclosure.

7. Any person, except for:

(a) The subject of a report;

(b) A district attorney or other law enforcement officer initiating legal proceedings; or

(c) An employee of the division of parole and probation of the department of motor vehicles and public safety making a presentence investigation and report to the district court pursuant to NRS 176.135 or making a general investigation and report pursuant to NRS 176.151,

who is given access, pursuant to subsection 1 or 2, to information identifying the subjects of a report and who makes this information public is guilty of a misdemeanor.

8. The division of child and family services shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1985, 1374; A 1993, 2706; 1997, 835, 849, 2473, 2476; 1999, 559, 1193, 2033, 2043, 3529)

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Infants ~~432B~~ 133.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

ATTORNEY GENERAL'S OPINIONS.

Name of person reporting child abuse and name of child concerned remain confidential after death of abused child. NRS ch. 432B provides for protection of children from abuse and neglect. NRS 432B.220 requires that certain persons and agencies discovering evidence of child abuse or neglect report information regarding suspected child abuse to appropriate state agency. Information, investigations and reports made pursuant to NRS 432B.220 are confidential in order to encourage reporting and may be released only to persons specified in NRS 432B.290. Nondisclosure law makes information itself privileged, therefore names of persons making report and names of children concerned remain confidential and protected from general dissemination to public even after death of abused child. AGO 88-15 (12-14-1988)

NRS 432B.290 Release of data or information concerning reports...

NRS 432B.290 Release of data or information concerning reports and investigations; penalty. [Effective July 1, 2001.]

1. Except as otherwise provided in subsections 2 and 3, data or information concerning reports and investigations thereof made pursuant to this chapter may be made available only to:

(a) A physician, if the physician has before him a child who he has reasonable cause to believe has been abused or neglected;

(b) A person authorized to place a child in protective custody, if the person has before him a child who he has reasonable cause to believe has been abused or neglected and the person requires the information to determine whether to place the child in protective custody;

(c) An agency, including, without limitation, 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 welfare of the child;
 - (d) A district attorney or other law enforcement officer who requires the information in connection with an investigation or prosecution of the abuse or neglect of a child;
 - (e) A 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 information identifying the subjects of a report must not be made available to him;
 - (g) The attorney and the guardian ad litem of the child;
 - (h) A grand jury upon its determination that access to these records is necessary in the conduct of its official business;
 - (i) A federal, state or local governmental entity, or an agency of such an entity, that needs access to the information to carry out its legal responsibilities to protect children from abuse and neglect;
 - (j) A team organized pursuant to NRS 432B.350 for the protection of a child;
 - (k) A team organized pursuant to NRS 432B.405 to review the death of a child;
 - (l) 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;
 - (m) The persons who are the subject of a report;
 - (n) An agency that 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;
 - (o) 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 that 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;
 - (p) The division of parole and probation of the department of motor vehicles and public safety for use pursuant to NRS 176.135 in making a presentence investigation and report to the district court or pursuant to NRS 176.151 in making a general investigation and report;
 - (q) The rural advisory board to expedite proceedings for the placement of children created pursuant to NRS 432B.602 or a local advisory board to expedite proceedings for the placement of children created pursuant to NRS 432B.604; or
 - (r) The panel established pursuant to NRS 432B.396 to evaluate agencies which provide protective services.
2. An agency investigating a report of the abuse or neglect of a child shall, upon request, provide to a person named in the report as allegedly causing the abuse or neglect of the child:
- (a) A copy of:
 - (1) Any statement made in writing to an investigator for the agency by the person named in the report as allegedly causing the abuse or neglect of the child; or
 - (2) Any recording made by the agency of any statement made orally to an investigator for the agency by the person named in the report as allegedly causing the abuse or neglect of the child; or
 - (b) A written summary of the allegations made against the person who is named in the report as allegedly

causing the abuse or neglect of the child. The summary must not identify the person responsible for reporting the alleged abuse or neglect.

3. An agency which provides protective services shall disclose the identity of a person who makes a report or otherwise initiates an investigation pursuant to this chapter if a court, after reviewing the record in camera and determining that there is reason to believe that the person knowingly made a false report, orders the disclosure.

4. Any person, except for:

(a) The subject of a report;

(b) A district attorney or other law enforcement officer initiating legal proceedings; or

(c) An employee of the division of parole and probation of the department of motor vehicles and public safety making a presentence investigation and report to the district court pursuant to NRS 176.135 or making a general investigation and report pursuant to NRS 176.151,

who is given access, pursuant to subsection 1, to information identifying the subjects of a report and who makes this information public is guilty of a misdemeanor.

5. The division of child and family services shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1985, 1374; A 1993, 2706; 1997, 835, 849, 2473, 2476; 1999, 559, 561, 1193, 2033, 2035, 2043, 3529, 3531, effective July 1, 2001)

NRS 432B.300 Determinations to be made by investigation of rep...

NRS 432B.300 Determinations to be made by investigation of report. [Effective through June 30, 2001.]

Except as otherwise provided in NRS 432B.260, an agency which provides protective services shall investigate each report of abuse or neglect received or referred to it to determine:

1. The composition of the family, household or facility, including the name, address, age, sex and race of each child named in the report, any siblings or other children in the same place or under the care of the same person, the persons responsible for the children's welfare and any other adult living or working in the same household or facility;

2. Whether there is reasonable cause to believe any child is abused or neglected or threatened with abuse or neglect, the nature and extent of existing or previous injuries, abuse or neglect and any evidence thereof, and the person apparently responsible;

3. If there is reasonable cause to believe that a child is abused or neglected, the immediate and long-term risk to the child if he remains in the same environment; and

4. The treatment and services which appear necessary to help prevent further abuse or neglect and to improve his environment and the ability of the person responsible for the child's welfare to care adequately for him.

(Added to NRS by 1985, 1375; A 1997, 2475)

NRS 432B.300 Determinations to be made by investigation of rep...

NRS 432B.300 Determinations to be made by investigation of report. [Effective July 1, 2001.]

Each agency which provides protective services shall investigate each report of abuse or neglect received or referred to it to determine:

1. The composition of the family, household or facility, including the name, address, age, sex and race of each child named in the report, any siblings or other children in the same place or under the care of the same person, the persons responsible for the children's welfare and any other adult living or working in the same household or facility;

2. Whether there is reasonable cause to believe any child is abused or neglected or threatened with abuse or

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neglect, the nature and extent of existing or previous injuries, abuse or neglect and any evidence thereof, and the person apparently responsible;

3. If there is reasonable cause to believe that a child is abused or neglected, the immediate and long-term risk to the child if he remains in the same environment; and

4. The treatment and services which appear necessary to help prevent further abuse or neglect and to improve his environment and the ability of the person responsible for the child's welfare to care adequately for him.

(Added to NRS by 1985, 1375; A 1997, 2475, effective July 1, 2001)

NRS 432B.310 Report to central registry upon completion of inv...

NRS 432B.310 Report to central registry upon completion of investigation. [Effective through June 30, 2001.] Except as otherwise provided in subsection 5 of NRS 432B.260, the agency investigating a report of abuse or neglect of a child shall, upon completing the investigation, report to the central registry:

1. Identifying and demographic information on the child alleged to be abused or neglected, his parents, any other person responsible for his welfare and the person allegedly responsible for the abuse or neglect;

2. The facts of the alleged abuse or neglect, including the date and type of alleged abuse or neglect, the manner in which the abuse was inflicted and the severity of the injuries; and

3. The disposition of the case.

(Added to NRS by 1985, 1375; A 1999, 2912)

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WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NRS 432B.310 Report to central registry upon completion of inv...

NRS 432B.310 Report to central registry upon completion of investigation. [Effective July 1, 2001.] Except as otherwise provided in subsection 3 of NRS 432B.260, the agency investigating a report of abuse or neglect of a child shall, upon completing the investigation, report to the central registry:

1. Identifying and demographic information on the child alleged to be abused or neglected, his parents, any other person responsible for his welfare and the person allegedly responsible for the abuse or neglect;

2. The facts of the alleged abuse or neglect, including the date and type of alleged abuse or neglect, the manner in which the abuse was inflicted and the severity of the injuries; and

3. The disposition of the case.

(Added to NRS by 1985, 1375; A 1999, 2912, effective July 1, 2001)

NRS 432B.320 Waiver of full investigation of report.

NRS 432B.320 Waiver of full investigation of report.

1. An agency which provides protective services may waive a full investigation of a report of abuse or neglect of a child made by another agency or a person if, after assessing the circumstances, it is satisfied that:

(a) The person or other agency who made the report can provide services to meet the needs of the child and the family, and this person or agency agrees to do so; and

(b) The person or other agency agrees in writing to report periodically on the child and to report immediately

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any threat or harm to the child's welfare.

2. The agency which provides protective services shall supervise for a reasonable period the services provided by the person or other agency pursuant to subsection 1.

(Added to NRS by 1985, 1375)

PROTECTIVE SERVICES AND CUSTODY

NRS 432B.325 County whose population is 100,000 or more to pro...

NRS 432B.325 County whose population is 100,000 or more to provide protective services for children in county. Each county whose population is 100,000 or more shall provide protective services for the children in that county and pay the cost of those services. The services must be provided in accordance with the standards adopted pursuant to NRS 432B.190.

(Added to NRS by 1987, 1439)

NRS CROSS REFERENCES.

"Population" defined, NRS 0.050

NRS 432B.330 Circumstances under which child is or may be in n...

NRS 432B.330 Circumstances under which child is or may be in need of protection.

1. A child is in need of protection if:

(a) He has been abandoned by a person responsible for his welfare;

(b) He is suffering from congenital drug addiction or the fetal alcohol syndrome, because of the faults or habits of a person responsible for his welfare;

(c) He has been subjected to abuse or neglect by a person responsible for his welfare;

(d) He is in the care of a person responsible for his welfare and another child has died as a result of abuse or neglect by that person; or

(e) He has been placed for care or adoption in violation of law.

2. A child may be in need of protection if the person responsible for his welfare:

(a) Is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;

(b) Fails, although he is financially able to do so or has been offered financial or other means to do so, to provide for the following needs of the child:

(1) Food, clothing or shelter necessary for the child's health or safety;

(2) Education as required by law; or

(3) Adequate medical care; or

(c) Has been responsible for the abuse or neglect of a child who has resided with that person.

3. A child may be in need of protection if the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

(Added to NRS by 1985, 1371; A 1991, 52; 1999, 830)

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NRS 432B.340 Determination that child needs protection but is ...

NRS 432B.340 Determination that child needs protection but is not in imminent danger.

1. If the agency which provides protective services determines that a child needs protection, but is not in imminent danger from abuse or neglect, it may:

(a) Offer to the parents or guardian a plan for services and inform him that the agency has no legal authority to compel him to accept the plan but that it has the authority to petition the court pursuant to NRS 432B.490 or to refer the case to the district attorney or a law enforcement agency; or

(b) File a petition pursuant to NRS 432B.490 and, if a child is adjudicated in need of protection, request that the child be removed from the custody of his parents or guardian or that he remain at home with or without the supervision of the court or of any person or agency designated by the court.

2. If the parent or guardian accepts the conditions of the plan offered by the agency pursuant to paragraph (a) of subsection 1, the agency may elect not to file a petition and may arrange for appropriate services, including medical care, care of the child during the day, management of the home or supervision of the child, his parents or guardian.

(Added to NRS by 1985, 1376)

NEVADA CASES.

Provision of plan for services is discretionary. Welfare division is under no statutory obligation to provide parents with plan for services to help family before filing petition for temporary custody of children. Provision of such plan is discretionary (see NRS 432B.340). *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989)

NRS 432B.350 Teams for protection of child.

NRS 432B.350 Teams for protection of child. An agency which provides protective service may organize one or more teams for protection of a child to assist the agency in the evaluation and investigation of reports of abuse or neglect of a child, diagnosis and treatment of abuse or neglect and the coordination of responsibilities. Members of the team serve at the invitation of the agency and must include representatives of other organizations concerned with education, law enforcement or physical or mental health.

(Added to NRS by 1985, 1376)

NRS 432B.360 Voluntary placement of child with agency or institution.

NRS 432B.360 Voluntary placement of child with agency or institution.

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 division of child and family services shall adopt regulations to carry out the provisions of this section.

(Added to NRS by 1985, 1376; A 1993, 2707)

NRS 432B.370 Determination that child is not in need of protec...

NRS 432B.370 Determination that child is not in need of protection. If an agency which provides protective services determines that there is no reasonable cause to believe that a child is in need of protection, it shall proceed no further in that matter.

(Added to NRS by 1985, 1377)

NRS 432B.380 Referral of case to district attorney and recomme...

NRS 432B.380 Referral of case to district attorney and recommendation to file petition. If the agency which provides protective services determines that further action is necessary to protect a child who is in need of protection, as well as any other child under the same care who may be in need of protection, it may refer the case to the district attorney for criminal prosecution and may recommend the filing of a petition pursuant to NRS 432B.490.

(Added to NRS by 1985, 1377)

NRS 432B.390 Placement of child in protective custody.

NRS 432B.390 Placement of child in protective custody.

1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services or a designee of an agency which provides protective services:

(a) May place a child in protective custody without the consent of the person responsible for the child's welfare if he has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.

(b) Shall place a child in protective custody upon the death of a parent of the child, without the consent of the person responsible for the welfare of the child, if the agent, officer or designee has reasonable cause to believe that the death of the parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

2. If there is reasonable cause to believe that the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, a protective custody hearing must be held pursuant to NRS 432B.470, whether the child was placed in protective custody or with a relative. If an agency other than an agency which provides protective services becomes aware that there is reasonable cause to

believe that the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, that agency shall immediately notify the agency which provides protective services and a protective custody hearing must be scheduled.

3. An agency which provides protective services shall request the assistance of a law enforcement agency in the removal of the child if it has reasonable cause to believe that the child or the person placing the child in protective custody may be threatened with harm.

4. Before taking a child for placement in protective custody, the person taking the child shall show his identification to any person who is responsible for the child and is present at the time the child is taken. If a person who is responsible for the child is not present at the time the child is taken, the person taking the child shall show his identification to any other person upon request. The identification required by this subsection must be a single card that contains a photograph of the person taking the child and identifies him as a person authorized pursuant to subsection 1 to place a child in protective custody.

5. A child placed in protective custody pending an investigation and a hearing held pursuant to NRS 432B.470 must be placed in a hospital, if the child needs hospitalization, or in a shelter, which may include a foster home or other home or facility which provides care for those children, but the child must not be placed in a jail or other place for detention, incarceration or residential care of persons convicted of a crime or children charged with delinquent acts.

6. A person placing a child in protective custody shall:

(a) Immediately take steps to protect all other children remaining in the home or facility, if necessary;

(b) Immediately make a reasonable effort to inform the person responsible for the child's welfare that the child has been placed in protective custody;

(c) Give preference in placement of the child to any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this state; and

(d) As soon as practicable, inform the agency which provides protective services and the appropriate law enforcement agency.

7. If a child is placed with any person who resides outside this state, the placement must be in accordance with NRS 127.330.

(Added to NRS by 1985, 1377; A 1989, 268; 1991, 1182; 1993, 467; 1999, 830)

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Infants \Leftarrow 154.1.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 31, 36 to 40, 43 to 44, 51 to 52, 55, 62

NRS 432B.393 Preservation and reunification of family of child...

NRS 432B.393 Preservation and reunification of family of child to prevent or eliminate need for removal from home and make safe return to home possible.

1. Except as otherwise provided in this section, an agency which provides protective services shall make reasonable efforts to preserve and reunify the family of a child to prevent or eliminate the need for his removal from his home and to make it possible for his safe return to his home.

2. In determining the reasonable efforts required by subsection 1, the health and safety of the child must be the

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paramount concern. The agency which provides protective services may make reasonable efforts to place the child for adoption or with a legal guardian concurrently with making the reasonable efforts required pursuant to subsection 1. If the court determines that continuation of the reasonable efforts required by subsection 1 is inconsistent with the plan for the permanent placement of the child, the agency which provides protective services shall make reasonable efforts to place the child in a timely manner in accordance with that plan and to complete whatever actions are necessary to finalize the permanent placement of the child.

3. An agency which provides protective services is not required to make the reasonable efforts required by subsection 1 if the court finds that:

(a) A parent or other primary caretaker of the child has:

(1) Committed, aided or abetted in the commission of, or attempted, conspired or solicited to commit murder or voluntary manslaughter;

(2) Caused the abuse or neglect of the child, or of another child of the parent or primary caretaker, which resulted in substantial bodily harm to the abused or neglected child;

(3) Caused the abuse or neglect of the child, a sibling of the child or another child in the household, and the abuse or neglect was so extreme or repetitious as to indicate that any plan to return the child to his home would result in an unacceptable risk to the health or welfare of the child; or

(4) Abandoned the child for 60 or more days, and the identity of the parent of the child is unknown and cannot be ascertained through reasonable efforts;

(b) A parent of the child has, for the previous 6 months, had the ability to contact or communicate with the child and made no more than token efforts to do so;

(c) The parental rights of a parent to a sibling of the child have been terminated by a court order upon any basis other than the execution of a voluntary relinquishment of those rights by a natural parent, and the court order is not currently being appealed;

(d) The child or a sibling of the child was previously removed from his home, adjudicated to have been abused or neglected, returned to his home and subsequently removed from his home as a result of additional abuse or neglect; or

(e) The child is less than 1 year of age, the father of the child is not married to the mother of the child and the father of the child:

(1) Has failed within 60 days after learning of the birth of the child, to visit the child, to commence proceedings to establish his paternity of the child or to provide financial support for the child; or

(2) Is entitled to seek custody of the child but fails to do so within 60 days after learning that the child was placed in foster care.

(Added to NRS by 1999, 2031)

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Adoption \approx 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6 to 9, 13 to 17, 23 to 24

NRS 432B.395 Plan of efforts to prevent or eliminate need for ...

NRS 432B.395 Plan of efforts to prevent or eliminate need for removal of child from home and make safe return to home possible. An agency which provides protective services shall submit annually to the division of

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child and family services for its approval a plan to ensure that the reasonable efforts required by subsection 1 of NRS 432B.393 are made by that agency.

(Added to NRS by 1987, 1439; A 1993, 2708; A 1999, 2037)

ADMINISTRATIVE REGULATIONS.

Evaluation and contents of plan. NAC 432B.040. 432B.050

NRS 432B.396 Establishment of panel to evaluate extent to which...

NRS 432B.396 Establishment of panel to evaluate extent to which agencies which provide protective services are effectively discharging their responsibilities; regulations. The division of child and family services shall:

1. Establish a panel comprised of volunteer members to evaluate the extent to which agencies which provide protective services are effectively discharging their responsibilities for the protection of children.

2. Adopt regulations to carry out the provisions of subsection 1 which must include, without limitation, the imposition of appropriate restrictions on the disclosure of information obtained by the panel and civil sanctions for the violation of those restrictions.

(Added to NRS by 1999, 2031)

WEST PUBLISHING CO.

Adoption ~~2~~ 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6 to 9, 13 to 17, 23 to 24

NRS 432B.397 Inquiry to determine whether child is Indian child...

NRS 432B.397 Inquiry to determine whether child is Indian child; report to court; training regarding requirements of Indian Child Welfare Act.

1. The agency providing protective services for a child that is taken into custody pursuant to this chapter shall make all necessary inquiries to determine whether the child is an Indian child. The agency shall report that determination to the court.

2. An agency that provides protective services pursuant to this chapter shall provide training for its personnel regarding the requirements of the Indian Child Welfare Act.

(Added to NRS by 1995, 786)

ADMINISTRATIVE REGULATIONS.

Inquiry by agency. NAC 432B.263

NRS 432B.400 Temporary detention of child by physician.

NRS 432B.400 Temporary detention of child by physician. A physician treating a child or a person in charge of a hospital or similar institution may hold a child for no more than 24 hours if there is reasonable cause to believe

that the child has been abused or neglected and that he is in danger of further harm if released. The physician or other person shall immediately notify a law enforcement agency or an agency which provides protective services that he is holding the child.

(Added to NRS by 1985, 1378)

NRS 432B.405 Child death review teams.

NRS 432B.405 Child death review teams.

1. An agency which provides protective services:
 - (a) May organize one or more multidisciplinary teams to review the death of a child; and
 - (b) Shall organize one or more multidisciplinary teams to review the death of a child upon receiving a written request from an adult related to the child within the third degree of consanguinity, if the request is received by the agency within 1 year after the date of death of the child.
2. Members of a team organized pursuant to subsection 1 serve at the invitation of the agency and must include representatives of other organizations concerned with education, law enforcement or physical or mental health.
3. Each organization represented on such a team may share with other members of the team information in its possession concerning the child who is the subject of the review, siblings of the child, any person who was responsible for the welfare of the child and any other information deemed by the organization to be pertinent to the review.
4. Before establishing any child death review team, an agency shall adopt a written protocol describing its objectives and the structure of such a team.

(Added to NRS by 1993, 2051)

WEST PUBLISHING CO.

Infants ⇐ 271.

WESTLAW Topic No. 211.

CIVIL PROCEEDINGS

General Provisions

NRS 432B.410 Exclusive original jurisdiction; action does not ...

NRS 432B.410 Exclusive original jurisdiction; action does not preclude prosecution.

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.
 2. Action taken by the court because of the abuse or neglect of a child does not preclude the prosecution and conviction of any person for violation of NRS 200.508 based on the same facts.
- (Added to NRS by 1985, 1379; A 1991, 2186; 1995, 787)

NRS CROSS REFERENCES.

Abuse, neglect or endangerment of child, NRS 200.508

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Infants ⇐ 196.

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WESTLAW Topic No. 211.
C.J.S. Infants §§ 42, 53, 54.

NRS 432B.420 Right to representation by attorney; appointment ...

NRS 432B.420 Right to representation by attorney; appointment of attorney for Indian child and parent; compensation of attorney; appointment of attorney as guardian ad litem.

1. A parent or other person responsible for the welfare of a child who is alleged to have abused or neglected the child may be represented by an attorney at all stages of any proceedings under NRS 432B.410 to 432B.590, inclusive. Except as otherwise provided in subsection 2, if the person is indigent, the court may appoint an attorney to represent him. The court may, if it finds it appropriate, appoint an attorney to represent the child.

2. If the court determines that the parent of an Indian child for whom protective custody is sought is indigent, the court:

- (a) Shall appoint an attorney to represent the parent;
- (b) May appoint an attorney to represent the Indian child; and
- (c) May apply to the Secretary of the Interior for the payment of the fees and expenses of such an attorney, as provided in the Indian Child Welfare Act.

3. Each attorney, other than a public defender, if appointed under the provisions of subsection 1, is entitled to the same compensation and payment for expenses from the county as provided in NRS 7.125 and 7.135 for an attorney appointed to represent a person charged with a crime. Except as otherwise provided in NRS 432B.500, an attorney appointed to represent a child may also be appointed as guardian ad litem for the child. He may not receive any compensation for his services as a guardian ad litem.

(Added to NRS by 1985, 1379; A 1987, 1308; 1995, 787; 1999, 2037)

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Infants ¶ 205.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51 to 67.

ATTORNEY GENERAL'S OPINIONS.

Appointment of attorney for indigent parents not required. NRS 432B.420 does not require court conducting hearing on protective custody of child to appoint attorney to represent indigent parents. (N.B., opinion issued before effective date of amendment of NRS 432B.420 in 1995.) AGO 95-11 (6-27-1995)

Circumstances under which appointment of attorney for indigent parents is appropriate. Appointment of attorney pursuant to NRS 432B.420 to represent indigent parents at hearing on protective custody of child is appropriate if it is likely that hearing may lead to criminal proceeding. (N.B., opinion issued before effective date of amendment of NRS 432B.420 in 1995.) AGO 95-11 (6-27-1995)

NRS 432B.425 Notification of tribe if proceedings involve Indi...

NRS 432B.425 Notification of tribe if proceedings involve Indian child; transfer of proceedings to Indian child's tribe. If proceedings pursuant to this chapter involve the protection of an Indian child, the court shall:

1. Cause the Indian child's tribe to be notified in writing at the beginning of the proceedings in the manner provided in the Indian Child Welfare Act. If the Indian child is eligible for membership in more than one tribe, each tribe must be notified.

2. Transfer the proceedings to the Indian child's tribe in accordance with the Indian Child Welfare Act.

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3. If a tribe declines jurisdiction, exercise its jurisdiction as provided in the Indian Child Welfare Act.
(Added to NRS by 1995, 786)

NRS 432B.430 Restriction on admission of persons to proceeding...

NRS 432B.430 Restriction on admission of persons to proceedings. Except as otherwise provided in NRS 432B.457, only those persons having a direct interest in the case, as ordered by the judge or master, may be admitted to any proceeding held pursuant to NRS 432B.410 to 432B.590, inclusive.

(Added to NRS by 1985, 1379; A 1997, 1345)

NRS 432B.440 Assistance by agency which provides protective se...

NRS 432B.440 Assistance by agency which provides protective services. The agency which provides protective services shall assist the court during all stages of any proceeding in accordance with NRS 432B.410 to 432B.590, inclusive.

(Added to NRS by 1985, 1385)

NRS 432B.450 Expert testimony raising presumption of need for ...

NRS 432B.450 Expert testimony raising presumption of need for protection of child. In any civil proceeding had pursuant to NRS 432B.410 to 432B.590, inclusive, if there is expert testimony that a physical or mental injury of a child would ordinarily not be sustained or a condition not exist without either negligence or a deliberate but unreasonable act or failure to act by the person responsible for his welfare, the court shall find that the child is in need of protection unless that testimony is rebutted.

(Added to NRS by 1985, 1379)

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Infants <= 172.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 58 to 61.

NRS 432B.451 Qualified expert witness required in proceeding t...

NRS 432B.451 Qualified expert witness required in proceeding to place Indian child in foster care.

1. Any proceeding to place an Indian child in foster care pursuant to this chapter must include the testimony of at least one qualified expert witness as provided in the Indian Child Welfare Act.

2. For the purposes of this section, "qualified expert witness" includes, without limitation:

(a) An Indian person who has personal knowledge about the Indian child's tribe and its customs related to raising a child and the organization of the family; and

(b) A person who has:

(1) Substantial experience and training regarding the customs of Indian tribes related to raising a child; and

(2) Extensive knowledge of the social values and cultural influences of Indian tribes.

(Added to NRS by 1995, 786)

NRS 432B.455 Determination of appropriate person to take custo...

NRS 432B.455 Determination of appropriate person to take custody of child: Appointment and duties of

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special master.

1. If the court determines that a child must be kept in protective custody pursuant to NRS 432B.480 or must be placed in temporary or permanent custody pursuant to NRS 432B.550, the court may, before placing the child in the temporary or permanent custody of a person, order the appointment of a special master from among the members of the State Bar of Nevada to conduct a hearing to identify the person most qualified and suitable to take custody of the child in consideration of the needs of the child for temporary or permanent placement.

2. Not later than 5 calendar days after the hearing, the special master shall prepare and submit to the court his recommendation regarding which person is most qualified and suitable to take custody of the child.

(Added to NRS by 1997, 1344)

NRS 432B.457 Determination of appropriate person to take custo...

NRS 432B.457 Determination of appropriate person to take custody of child: Involvement in and notification of person with special interest in child; testimony by person with special interest in child.

1. If the court or a special master appointed pursuant to NRS 432B.455 finds that a person has a special interest in a child, the court or the special master shall:

(a) Except for good cause, ensure that the person is involved in and notified of any plan for the temporary or permanent placement of the child and is allowed to offer recommendations regarding the plan; and

(b) Allow the person to testify at any hearing held pursuant to this chapter to determine any temporary or permanent placement of the child.

2. For the purposes of this section, a person "has a special interest in a child" if:

(a) The person is:

(1) A parent or other relative of the child;

(2) A foster parent or other provider of substitute care for the child;

(3) A provider of care for the medical or mental health of the child; or

(4) A teacher or other school official who works directly with the child; and

(b) The person:

(1) Has a personal interest in the well-being of the child; or

(2) Possesses information that is relevant to the determination of the placement of the child.

(Added to NRS by 1997, 1344; A 1999, 2038)

NRS 432B.460 Courts not deprived of right to determine custody...

NRS 432B.460 Courts not deprived of right to determine custody or guardianship. This chapter does not deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or to determine the custody or guardianship of children in cases involving divorce or problems of domestic relations.

(Added to NRS by 1985, 1385)

NRS 432B.465 Full faith and credit to judicial proceedings of ...

NRS 432B.465 Full faith and credit to judicial proceedings of Indian tribe. Each court in this state which exercises jurisdiction pursuant to this chapter in a case involving an Indian child shall give full faith and credit to the judicial proceedings of an Indian tribe to the same extent that the Indian tribe gives full faith and credit to the judicial proceedings of the courts of this state.

(Added to NRS by 1995, 786)

Hearing on Protective Custody

NRS 432B.470 Hearing required; notice.

NRS 432B.470 Hearing required; notice.

1. A child taken into protective custody pursuant to NRS 432B.390 must be given a hearing, conducted by a judge, master or special master appointed by the judge for that particular hearing, within 72 hours, excluding Saturdays, Sundays and holidays, after being taken into custody, to determine whether the child should remain in protective custody pending further action by the court.

2. Notice of the time and place of the hearing must be given to a parent or other person responsible for the child's welfare:

(a) By personal service of a written notice;

(b) Orally; or

(c) If the parent or other person responsible for the child's welfare cannot be located after a reasonable effort, by posting a written notice on the door of his residence.

3. If notice is given by means of paragraph (b) or (c) of subsection 2, a copy of the notice must be mailed to the person at his last known address within 24 hours after the child is placed in protective custody.

(Added to NRS by 1985, 1380)

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Infants — 198.204.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 51 to 67.

NRS 432B.480 Court to advise parties of rights; order to conti...

NRS 432B.480 Court to advise parties of rights; order to continue custody or release child.

1. At the commencement of the hearing on protective custody, the court shall advise the parties of their right to be represented by an attorney and of their right to present evidence.

2. If the court finds, as a result of the hearing that there is reasonable cause to believe:

(a) That the child may be harmed if released from protective custody; or

(b) A parent or other person responsible for the child's welfare is not available to care for the child, the court shall issue an order keeping the child in protective custody pending a disposition by the court.

3. If the court issues an order keeping the child in protective custody pending a disposition by the court and it is in the best interests of the child, the court may:

(a) Place the child in the temporary custody of a grandparent, great-grandparent or other person related within the third degree of consanguinity to the child who the court finds has established a meaningful relationship with the child, with or without supervision upon such conditions as the court prescribes, regardless of whether the relative resides within this state; or

(b) Grant the grandparent, great-grandparent or other person related within the third degree of consanguinity to the child a reasonable right to visit the child while he is in protective custody.

4. If the court finds that the best interests of the child do not require that the child remain in protective custody, the court shall order his immediate release.

5. If a child is placed with any person who resides outside this state, the placement must be in accordance with

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NRS 127.330.

(Added to NRS by 1985, 1380; A 1987, 1194; 1991, 1183)

ATTORNEY GENERAL'S OPINIONS.

Court not required to appoint attorney for parents. NRS 432B.480 requires court conducting hearing on protective custody of child to inform parents of their right to be represented by attorney at that hearing. Section does not entitle parents to have attorney appointed by court to represent them. AGO 95-11 (6-27-1995)

NRS 432B.490 Procedure following hearing or investigation.

NRS 432B.490 Procedure following hearing or investigation.

1. An agency which provides protective services:

(a) In cases where the death of a parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, shall within 10 days after the hearing on protective custody initiate a proceeding in court by filing a petition which meets the requirements set forth in NRS 432B.510;

(b) In other cases where a hearing on protective custody is held, shall within 10 days after the hearing on protective custody, unless good cause exists, initiate a proceeding in court by filing a petition which meets the requirements set forth in NRS 432B.510 or recommend against any further action in court; or

(c) If a child is not placed in protective custody, may, after an investigation is made under NRS 432B.010 to 432B.400, inclusive, file a petition which meets the requirements set forth in NRS 432B.510.

2. If the agency recommends against further action, the court may, on its own motion, initiate proceedings when it finds that it is in the best interests of the child.

3. If a child has been placed in protective custody and if further action in court is taken, an agency which provides protective services shall make recommendations to the court concerning whether the child should be returned to the person responsible for his welfare pending further action in court.

(Added to NRS by 1985, 1380; A 1999, 832)

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Infants ¶ 154.1.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 31, 36 to 40, 43 to 44, 51 to 52, 55, 62

Hearing on Need of Protection for Child

NRS 432B.500 Appointment of guardian ad litem after filing of ...

NRS 432B.500 Appointment of guardian ad litem after filing of petition.

1. After a petition is filed that a child is in need of protection pursuant to NRS 432B.490, the court shall appoint a guardian ad litem for the child. The person so appointed:

(a) Must meet the requirements of NRS 432B.505 or, if such a person is not available, a representative of an agency which provides protective services, a juvenile probation officer, an officer of the court or another volunteer.

(b) Must not be a parent or other person responsible for the child's welfare.

2. No compensation may be allowed a person serving as a guardian ad litem pursuant to this section.

3. A guardian ad litem appointed pursuant to this section shall:

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- (a) Represent and protect the best interests of the child until excused by the court;
 - (b) Thoroughly research and ascertain the relevant facts of each case for which he is appointed, and ensure that the court receives an independent, objective account of those facts;
 - (c) Meet with the child wherever the child is placed as often as is necessary to determine that the child is safe and to ascertain the best interests of the child;
 - (d) Explain to the child the role of the guardian ad litem and, when appropriate, the nature and purpose of each proceeding in his case;
 - (e) Participate in the development and negotiation of any plans for and orders regarding the child, and monitor the implementation of those plans and orders to determine whether services are being provided in an appropriate and timely manner;
 - (f) Appear at all proceedings regarding the child;
 - (g) Inform the court of the desires of the child, but exercise his independent judgment regarding the best interests of the child;
 - (h) Present recommendations to the court and provide reasons in support of those recommendations;
 - (i) Request the court to enter orders that are clear, specific and, when appropriate, include periods for compliance;
 - (j) Review the progress of each case for which he is appointed, and advocate for the expedient completion of the case; and
 - (k) Perform such other duties as the court orders.
- (Added to NRS by 1985, 1379; A 1999, 2039)

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Infants — 205.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51 to 67.

NRS 432B.505 Qualifications of special advocate for appointment...

NRS 432B.505 Qualifications of special advocate for appointment as guardian ad litem.

1. To qualify for appointment as a guardian ad litem pursuant to NRS 432B.500 in a judicial district that includes a county whose population is less than 100,000, a special advocate must be a volunteer from the community who completes an initial 12 hours of specialized training and, annually thereafter, completes 6 hours of specialized training. The training must be approved by the court and include information regarding:

- (a) The dynamics of the abuse and neglect of children;
- (b) Factors to consider in determining the best interests of a child, including planning for the permanent placement of the child;
- (c) The interrelationships between the family system, legal process and system of child welfare;
- (d) Skills in mediation and negotiation;
- (e) Federal, state and local laws affecting children;
- (f) Cultural, ethnic and gender-specific issues;
- (g) Domestic violence;
- (h) Resources and services available in the community for children in need of protection;
- (i) Child development;

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- (j) Standards for guardians ad litem;
- (k) Confidentiality issues; and
- (l) Such other topics as the court deems appropriate.

2. To qualify for appointment as a guardian ad litem pursuant to NRS 432B.500 in a judicial district that does not include a county whose population is less than 100,000, a special advocate must be qualified pursuant to the standards for training of the National Court Appointed Special Advocate Association or its successor. If such an association ceases to exist, the court shall determine the standards for training.

(Added to NRS by 1999, 2031)

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Adoption — 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6 to 9, 13 to 17, 23 to 24.

NRS 432B.510 Execution and contents of petition; representatio...

NRS 432B.510 Execution and contents of petition; representation of interests of public. [Effective through June 30, 2001.]

1. A petition alleging that a child is in need of protection may be signed only by:

- (a) A representative of an agency which provides protective services;
- (b) A law enforcement officer or probation officer; or
- (c) The district attorney.

2. The district attorney shall countersign every petition alleging need of protection, and shall represent the interests of the public in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the attorney general. If the attorney general determines that a petition should be filed, he shall countersign the petition and shall represent the interests of the public in all subsequent proceedings.

3. Every petition must be entitled, "In the Matter of, a child," and must be verified by the person who signs it.

4. Every petition must set forth specifically:

- (a) The facts which bring the child within the jurisdiction of the court as indicated in NRS 432B.410.
- (b) The name, date of birth and address of the residence of the child.
- (c) The names and addresses of the residences of his parents and any other person responsible for the child's welfare, and spouse if any. If his parents or other person responsible for his welfare do not reside in this state or cannot be found within the state, or if their addresses are unknown, the petition must state the name of any known adult relative residing within the state, or if there is none, the known adult relative residing nearest to the court.
- (d) Whether the child is in protective custody, and if so, the agency responsible for placing the child in protective custody and the reasons therefor.

5. When any of the facts required by subsection 4 are not known, the petition must so state.

(Added to NRS by 1985, 1381; A 1997, 2475)

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Infants — 197, 200.

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NRS 432B.510 Petition alleging need of protection: Signatures ...

NRS 432B.510 Petition alleging need of protection: Signatures and verification; contents. [Effective July 1, 2001.]

1. A petition alleging that a child is in need of protection may be signed only by:
 - (a) A representative of an agency which provides protective services;
 - (b) A law enforcement officer or probation officer; or
 - (c) The district attorney.
2. The district attorney shall countersign every petition alleging need of protection, and shall represent the petitioner in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the attorney general. If the attorney general determines that a petition should be filed, he shall countersign the petition and shall represent the petitioner in all subsequent proceedings.
3. Every petition must be entitled, "In the Matter of, a child," and must be verified by the person who signs it.
4. Every petition must set forth specifically:
 - (a) The facts which bring the child within the jurisdiction of the court as indicated in NRS 432B.410.
 - (b) The name, date of birth and address of the residence of the child.
 - (c) The names and addresses of the residences of his parents and any other person responsible for the child's welfare, and spouse if any. If his parents or other person responsible for his welfare do not reside in this state or cannot be found within the state, or if their addresses are unknown, the petition must state the name of any known adult relative residing within the state, or if there is none, the known adult relative residing nearest to the court.
 - (d) Whether the child is in protective custody, and if so, the agency responsible for placing the child in protective custody and the reasons therefor.
5. When any of the facts required by subsection 4 are not known, the petition must so state.
(Added to NRS by 1985, 1381; A 1997, 2475, effective July 1, 2001)

NRS 432B.515 Electronic filing of certain petitions and report...

NRS 432B.515 Electronic filing of certain petitions and reports.

1. A court clerk may allow any of the following documents to be filed electronically:
 - (a) A petition signed by the district attorney pursuant to NRS 432B.510; or
 - (b) A report prepared pursuant to NRS 432B.540.
2. Any document that is filed electronically pursuant to this section must contain an image of the signature of the person who is filing the document.
(Added to NRS by 1997, 893)

NRS 432B.520 Issuance of summons; authorizing the assumption o...

NRS 432B.520 Issuance of summons; authorizing the assumption of custody by court and removal of child from certain conditions; authorizing the attachment of child and placement of child in protective custody.

1. After a petition has been filed, the court shall direct the clerk to issue a summons requiring the person who has custody or control of the child to appear personally and bring the child before the court at a time and place

stated in the summons. If the person so summoned is other than a parent or guardian of the child, then the parent or guardian, or both, must also be notified by a similar summons of the pendency of the hearing and of the time and place appointed.

2. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

3. Each summons must include notice of the right of parties to counsel at the adjudicatory hearing. A copy of the petition must be attached to each summons.

4. If the person summoned resides in this state, the summons must be served personally. If the person summoned cannot be found within this state or does not reside in this state, the summons must be mailed by registered or certified mail to his last known address.

5. If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the court may order, by endorsement upon the summons, that the person serving it shall at once deliver the child to an agency which provides protective services in whose custody the child must remain until the further order of the court.

6. If the summons cannot be served or the person who has custody or control of the child fails to obey it, or:

(a) In the judge's opinion, the service will be ineffectual or the welfare of the child requires that he be brought forthwith into the custody of the court; or

(b) A person responsible for the child's welfare has absconded with him or concealed him from a representative of an agency which provides protective services, the court may issue a writ for the attachment of the child's person, commanding a law enforcement officer or a representative of an agency which provides protective services to place the child in protective custody.

(Added to NRS by 1985, 1381; A 1991, 922)

NRS 432B.530 Adjudicatory hearing on petition; disposition.

NRS 432B.530 Adjudicatory hearing on petition; disposition.

1. An adjudicatory hearing must be held within 30 days after the filing of the petition, unless good cause is shown.

2. At the hearing, the court shall inform the parties of the specific allegations in the petition and give them an opportunity to admit or deny them. If the allegations are denied, the court shall hear evidence on the petition.

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

4. The court may require the child to be present in court at the hearing.

5. If the court finds by a preponderance of the evidence that the child is in need of protection, it shall record its findings of fact and may proceed immediately or at another hearing held within 15 working days, to make a proper disposition of the case. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and, if the child is in protective custody, order the immediate release of the child.

(Added to NRS by 1985, 1382)

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Infants — 203, 204.

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without supervision by the court or a person or agency designated by the court, and with or without retaining jurisdiction of the case, upon such conditions as the court may prescribe;

(b) Place him in the temporary or permanent custody of a relative or other person who the court finds suitable to receive and care for him with or without supervision, and with or without retaining jurisdiction of the case, upon such conditions as the court may prescribe;

(c) Place him in the temporary custody of a public agency or institution authorized to care for children, the local juvenile probation department, the local department of juvenile services or a private agency or institution licensed by the department of human resources to care for such a child; or

(d) Commit him to the custody of the superintendent of the northern Nevada children's home or the superintendent of the southern Nevada children's home, in accordance with chapter 423 of NRS.

In carrying out this subsection, the court may, in its sole discretion, consider an application pursuant to chapter 159 of NRS for the guardianship of the child. If the court grants such an application, it may retain jurisdiction of the case or transfer the case to another court of competent jurisdiction.

2. If, pursuant to subsection 1, a child is placed other than with a parent:

(a) The parent retains the right to consent to adoption, to determine the child's religious affiliation and to reasonable visitation, unless restricted by the court. If the custodian of the child interferes with these rights, the parent may petition the court for enforcement of his rights.

(b) The court shall set forth good cause why the child was placed other than with a parent.

3. If, pursuant to subsection 1, the child is to be placed with a relative, the court may consider, among other factors, whether the child has resided with a particular relative for 3 years or more before the incident which brought the child to the court's attention.

4. A copy of the report prepared for the court by the agency which provides protective services must be sent to the custodian and the parent or legal guardian.

5. In determining the placement of a child pursuant to this section, if the child is not permitted to remain in the custody of his parents or guardian, preference must be given to placing the child:

(a) With any person related within the third degree of consanguinity to the child who is suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this state.

(b) If practicable, together with his siblings.

Any search for a relative with whom to place a child pursuant to this section must be completed within 1 year after the initial placement of the child outside of his home. If a child is placed with any person who resides outside of this state, the placement must be in accordance with NRS 127.330.

(Added to NRS by 1985, 1383; A 1987, 1195, 1991, 1183, 1359, 1936; 1993, 468; 1999, 2040)

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Infants \Leftarrow 221, 222.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NEVADA CASES.

Order for temporary custody of minor children not appealable. Order of district court directing that minor children of appellant remain in temporary custody of welfare division (see NRS 432B.550) was not final order and was subject to review and modification by court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see N.R.A.P. 3A). *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

Decision concerning temporary custody of children will not be disturbed on appeal absent manifest abuse of discretion. Supreme court will

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WESTLAW Topic No. 211.
C.J.S. Infants §§ 51 to 67.

NEVADA CASES.

Preponderance of evidence is sufficient to support order for temporary custody of minor child. Order for temporary custody of minor child differs significantly from order terminating parental rights, and, therefore, petition for temporary custody need not be supported by clear and convincing evidence, but only by lesser standard of preponderance of evidence (see NRS 432B.530). *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989)

NRS 432B.540 Report by agency which provides protective service...

NRS 432B.540 Report by agency which provides protective services; plan for placement of child; recommendation to terminate parental rights.

1. If the court finds that the allegations of the petition are true, it shall order that a report be made in writing by an agency which provides protective services, concerning the conditions in the child's place of residence, the child's record in school, the mental, physical and social background of his family, its financial situation and other matters relevant to the case.

2. If the agency believes that it is necessary to remove the child from the physical custody of his parents, it must submit with the report a plan designed to achieve a placement of the child in a safe setting as near to the residence of his parent as is consistent with the best interests and special needs of the child. The plan must include:

(a) A description of the type, safety and appropriateness of the home or institution in which the child could be placed, a plan for ensuring that he would receive safe and proper care and a description of his needs;

(b) A description of the services to be provided to the child and to a parent to facilitate the return of the child to the custody of his parent or to ensure his permanent placement;

(c) The appropriateness of the services to be provided under the plan; and

(d) A description of how the order of the court will be carried out.

3. If the child is not residing in his home, the agency shall include as a part of the plan for the permanent placement of the child, established pursuant to NRS 432B.590, a recommendation to terminate parental rights unless it determines that initiating a petition for the termination of parental rights is not in the best interests of the child. If the agency conclusively determines that initiating a petition for the termination of parental rights is not in the best interests of the child, it shall include a full explanation of the basis for the determination as part of the plan.

(Added to NRS by 1985, 1382; A 1995, 362; 1999, 2039)

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Infants \approx 208.
WESTLAW Topic No. 211.
C.J.S. Infants §§ 51 to 85.

NRS 432B.550 Determination of custody of child by court.

NRS 432B.550 Determination of custody of child by court.

1. If the court finds that a child is in need of protection, it shall determine whether the agency which provides protective services has made the reasonable efforts required by subsection 1 of NRS 432B.393. The court may, by its order, after receipt and review of the report from the agency which provides protective services:

(a) Permit the child to remain in the temporary or permanent custody of his parents or a guardian with or

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not disturb decision of district court concerning temporary custody of children (see NRS 432B.550) unless decision is affected by manifest abuse of discretion. August H. v. State, 105 Nev. 441, 777 P.2d 901 (1989)

NRS 432B.555 Restriction on release of child to custodial pare...

NRS 432B.555 Restriction on release of child to custodial parent or guardian who has been convicted of abuse, neglect or endangerment of child. In any proceeding held pursuant to NRS 432B.410 to 432B.600, inclusive, if the court determines that a custodial parent or guardian of a child who has been placed in protective custody has ever been convicted of a violation of NRS 200.508, the court shall not release the child to that custodial parent or guardian unless the court finds by clear and convincing evidence presented at the proceeding that no physical or psychological harm to the child will result from his release to that parent or guardian.

(Added to NRS by 1995, 805)

NRS 432B.560 Additional orders by court: Treatment; conduct; v...

NRS 432B.560 Additional orders by court: Treatment; conduct; visitation; support.

1. The court may also order:

(a) The child, a parent or the guardian to undergo such medical, psychiatric, psychologic or other care or treatment as the court considers to be in the best interests of the child.

(b) A parent or guardian to refrain from:

(1) Any harmful or offensive conduct toward the child, the other parent, the custodian of the child or the person given physical custody of the child; and

(2) Visiting the child if the court determines that the visitation is not in the best interest of the child.

(c) A reasonable right of visitation for a grandparent of the child if the child is not permitted to remain in the custody of his parents.

2. The court shall order a parent or guardian to pay to the custodian an amount sufficient to support the child while the child is in the care of the custodian pursuant to an order of the court. Payments for the obligation of support must be determined in accordance with NRS 125B.070 and 125B.080, but must not exceed the reasonable cost of the child's care, including food, shelter, clothing, medical care and education. An order for support made pursuant to this subsection must:

(a) Require that payments be made to the appropriate agency or office;

(b) Provide that the custodian is entitled to a lien on the obligor's property in the event of nonpayment of support; and

(c) Provide for the immediate withholding of income for the payment of support unless:

(1) All parties enter into an alternative written agreement; or

(2) One party demonstrates and the court finds good cause to postpone the withholding.

3. A court that enters an order pursuant to subsection 2 shall ensure that the social security number of the parent or guardian who is the subject of the order is:

(a) Provided to the welfare division of the department of human resources.

(b) Placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

(Added to NRS by 1985, 1383; A 1987, 1196; 1991, 1339; 1993, 543; 1997, 2267; 1999, 2685)

WEST PUBLISHING CO.

Infants ⇐ 221.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NRS 432B.570 Motion for revocation or modification of order.

NRS 432B.570 Motion for revocation or modification of order.

1. A motion for revocation or modification of an order issued pursuant to NRS 432B.550 or 432B.560 may be filed by the custodian of the child, the governmental organization or person responsible for supervising the care of the child, the guardian ad litem of the child or a parent or guardian. Notice of this motion must be given by registered or certified mail to all parties of the adjudicatory hearing, the custodian and the governmental organization or person responsible for supervising the care of the child.

2. The court shall hold a hearing on the motion and may dismiss the motion or revoke or modify any order as it determines is in the best interest of the child.

(Added to NRS by 1985, 1383)

WEST PUBLISHING CO.

Infants ⇐ 230.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NRS 432B.580 Semiannual review by court of placement of child.

NRS 432B.580 Semiannual review by court of placement of child.

1. Except as otherwise provided in this section, if a child is placed pursuant to NRS 432B.550 other than with a parent, the placement must be reviewed by the court at least semiannually. Unless the parent, guardian or the custodian objects to the referral, the court may enter an order directing that the placement be reviewed by a panel appointed pursuant to NRS 432B.585.

2. An agency acting as the custodian of the child shall, before any hearing for review of the placement of a child, submit a report to the court, or to the panel if it has been designated to review the matter, which includes an evaluation of the progress of the child and his family and any recommendations for further supervision, treatment or rehabilitation. A copy of the report must be given to the parents, the guardian ad litem and the attorney, if any, representing the parent or the child.

3. The court or the panel shall hold a hearing to review the placement, unless the parent, guardian or custodian files a motion with the court to dispense with the hearing. If the motion is granted, the court or panel may make its determination from any report, statement or other information submitted to it.

4. Notice of the hearing must be given by registered or certified mail to:

(a) All the parties to any of the prior proceedings; and

(b) Any persons planning to adopt the child, relatives of the child or providers of foster care who are currently providing care to the child,

except a parent whose rights have been terminated pursuant to chapter 128 of NRS or who has voluntarily relinquished the child for adoption pursuant to NRS 127.040.

5. The court or panel may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 4 an opportunity to be heard at the hearing.

6. The court or panel shall review:

- (a) The continuing necessity for and appropriateness of the placement;
- (b) The extent of compliance with the plan submitted pursuant to subsection 2 of NRS 432B.540;
- (c) Any progress which has been made in alleviating the problem which resulted in the placement of the child; and
- (d) The date the child may be returned to, and safely maintained in, his home or placed for adoption or under a legal guardianship.

7. The provision of notice and an opportunity to be heard pursuant to this section does not cause any person planning to adopt the child, or any relative or provider of foster care to become a party to the hearing.

(Added to NRS by 1985, 1384; A 1991, 1360; 1999, 2041)

WEST PUBLISHING CO.

Infants ¶ 230, 231.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NEVADA CASES.

Order for temporary custody of minor children not appealable. Order of district court directing that minor children of appellant remain in temporary custody of welfare division (see NRS 432B.550) was not final order and was subject to review and modification by court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see N.R.A.P. 3A). *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

NRS 432B.585 Appointment of panel to conduct semiannual review...

NRS 432B.585 Appointment of panel to conduct semiannual review permitted. For the purposes of conducting the semiannual review required by NRS 432B.580, the judge or judges of the court may by mutual consent appoint a panel of three or more persons. The persons so appointed shall serve without compensation and at the pleasure of the court.

(Added to NRS by 1991, 1358)

NRS 432B.590 Annual hearing on disposition of case; when presu...

NRS 432B.590 Annual hearing on disposition of case; when presumption that best interests of child will be served by termination of parental rights arises.

1. Except as otherwise provided in NRS 432B.600, the court shall hold a hearing concerning the permanent placement of a child:

- (a) Not later than 12 months after the initial removal of the child from his home and annually thereafter.
- (b) Within 30 days after making any of the findings set forth in subsection 3 of NRS 432B.393.

Notice of this hearing must be given by registered or certified mail to all of the persons to whom notice must be given pursuant to subsection 4 of NRS 432B.580.

2. The court may require the presence of the child at the hearing and shall provide to each person to whom notice was given pursuant to subsection 1 an opportunity to be heard at the hearing.

3. At the hearing, the court shall establish a plan for the permanent placement of the child and determine

whether:

- (a) The child should be returned to his parents or other relatives;
- (b) The child's placement in the foster home or other similar institution should be continued; or
- (c) It is in the best interests of the child to initiate proceedings to:
 - (1) Terminate parental rights pursuant to chapter 128 of NRS so that the child can be placed for adoption; or
 - (2) Establish a guardianship pursuant to chapter 159 of NRS.

If the court determines that it is in the best interests of the child to terminate parental rights, the court shall use its best efforts to ensure that the procedures required by chapter 128 of NRS are completed within 6 months after the date the court makes that determination, including, without limitation, appointing a private attorney to expedite the completion of the procedures.

4. If a child has been placed outside of his home and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.

5. This hearing may take the place of the hearing for review required by NRS 432B.580.

6. The provision of notice and an opportunity to be heard pursuant to this section does not cause any person planning to adopt the child, or any relative or provider of foster care to become a party to the hearing.

(Added to NRS by 1985, 1384; A 1991, 1360; 1995, 362; 1999, 2042)

REVISER'S NOTE.

Ch. 218, Stats. 1995, the source of the provision that sets forth the presumption that child's best interests will be served by termination of parental rights, contains the following provision not included in NRS:

"The calculation of the number of months that a child has resided outside his home, for the purposes of NRS 128.109 and 432B.590, as amended by this act, must not include any months before January 1, 1995."

ADMINISTRATIVE REGULATIONS.

Permanent placement of child, NAC 432B.261

Termination of parental rights, NAC 432B.262

WEST PUBLISHING CO.

Infants — 230, 231.

WESTLAW Topic No. 211.

C.J.S. Infants §§ 57, 69 to 85.

NEVADA CASES.

Order for temporary custody of minor children not appealable. Order of district court directing that minor children of appellant remain in temporary custody of welfare division (see NRS 432B.550) was not final order and was subject to review and modification by court (see NRS 432B.580 and 432B.590). Such orders are not appealable on substantive grounds (see N.R.A.P. 3A). *August H. v. State*, 105 Nev. 441, 777 P.2d 901 (1989), cited, AGO 95-11 (6-27-1995)

NRS 432B.600 Authorizes court to dispense with annual hearings...

NRS 432B.600 Authorizes court to dispense with annual hearings on disposition of case if permanent placement is approved by court; notification of court by agency of removal of child or change of plan; resumption of annual hearings by court.

1. If the permanent placement of a child has been approved by the court, the court may enter an order dispensing with the annual hearings otherwise required by NRS 432B.590. The order must indicate that the plan for the placement of the child provides for his permanent placement in the home of a specific relative, foster parent or

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adoptive parent, unless the court determines that identification of that person would create a risk of harm to the child.

2. If the child is subsequently removed from his permanent placement or the plan for his permanent placement is subsequently changed, the agency acting as the custodian of the child shall notify the court within 30 days after the removal or change. The court shall, after receiving the notification, resume the annual hearings required by NRS 432B.590. The court shall review the permanent placement of the child not later than 6 months after the date of the removal of the child or the change in the plan, whichever is earlier.

(Added to NRS by 1991, 1359)

ADVISORY BOARDS TO EXPEDITE PROCEEDINGS FOR PLACEMENT OF CHILDREN

WEST PUBLISHING CO.

Adoption — 3, 4.

WESTLAW Topic No. 17.

C.J.S. Adoption of Persons §§ 6 to 9, 13 to 17, 23 to 24.

NRS 432B.602 Rural advisory board to expedite proceedings for ...

NRS 432B.602 Rural advisory board to expedite proceedings for placement of children: Creation; terms; vacancies; members serve without compensation; duties. [Effective upon the division of child and family services of the department of human resources being notified of the creation of three or more local advisory boards to expedite proceedings for the placement of children pursuant to NRS 432B.604.]

1. The rural advisory board to expedite proceedings for the placement of children, consisting of two members from each local advisory board created by a district court pursuant to NRS 432B.604, is hereby created within the division of child and family services.

2. After the initial terms, the members of the rural advisory board serve terms of 4 years. Any member of the rural advisory board may be reappointed. If a vacancy occurs during the term of a member, the district court that created the local advisory board from which the member was appointed shall appoint a person to replace that member for the remainder of the unexpired term.

3. Members of the rural advisory board serve without compensation, except that necessary travel and per diem expenses may be reimbursed, not to exceed the amounts provided for state officers and employees generally, to the extent that money is made available for that purpose.

4. The division of child and family services shall provide the rural advisory board with administrative support and shall provide any information requested by the rural advisory board to the rural advisory board within 10 working days after receiving the request for information.

5. The rural advisory board shall:

- (a) At its first meeting and annually thereafter, elect a chairman from among its members.
- (b) Meet at least four times annually and may meet at other times upon the call of the chairman.
- (c) Review the findings of each local advisory board created pursuant to NRS 432B.604.
- (d) Prepare and make available to the public an annual report, including, without limitation, a summary of the activities of the rural advisory board.

(Added to NRS by 1999, 2029, effective upon the division of child and family services of the department of human resources being notified of the creation of three or more local advisory boards to expedite proceedings for

the placement of children pursuant to NRS 432B.604)

NRS 432B.604 Local advisory boards to expedite proceedings for...

NRS 432B.604 Local advisory boards to expedite proceedings for placement of children: Creation; members; terms; vacancies; members serve without compensation; duties.

1. The district court in each judicial district that includes a county whose population is less than 100,000 shall create a local advisory board to expedite proceedings for the placement of children. The district court shall appoint to the local advisory board:

- (a) One member who is representative of foster parents;
- (b) One member who is representative of attorneys in public or private practice;
- (c) One member who is employed by the division of child and family services;
- (d) One member who is either employed by the public school system and works with children on a regular basis, or works in the field of mental health and works with children on a regular basis; and
- (e) One member who is a resident of the judicial district in which the local advisory board is created.

2. The district court shall provide for initial terms of each member of the local advisory board so that the terms are staggered. After the initial terms, the members of the local advisory board shall serve terms of 4 years. Any member of the local advisory board may be reappointed. If a vacancy occurs during the term of a member, the district court shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term. The district court may remove a member from the local advisory board if the member neglects his duty or commits malfeasance in office.

3. The district court shall appoint two members of the local advisory board to serve on the rural advisory board created pursuant to NRS 432B.602.

4. Members of a local advisory board serve without compensation, and necessary travel and per diem expenses may not be reimbursed.

5. The division of child and family services shall provide each local advisory board with administrative support and shall provide any information requested by a local advisory board to the local advisory board within 10 working days after receiving the request for information.

6. Each local advisory board shall:

- (a) At its first meeting and annually thereafter, elect a chairman from among its members.
- (b) Review each case referred to it pursuant to NRS 432B.606, and provide the referring court and the office of the attorney general with any recommendations to expedite the completion of the case.
- (c) Twice each year, provide a report of its activities and any recommendations to expedite the completion of cases to the district court, the division of child and family services and the legislature, or the legislative commission when the legislature is not in regular session.

7. A local advisory board may review other cases as deemed appropriate by the district court.

(Added to NRS by 1999, 2030)

NRS 432B.606 Referral of case by court to local advisory board.

NRS 432B.606 Referral of case by court to local advisory board. If the court has not approved the permanent placement of a child within 12 months after the initial removal of the child from his home, it shall refer the case to the local advisory board created pursuant to NRS 432B.604, if such a local advisory board was created for that judicial district, to obtain recommendations from the local advisory board to expedite the completion of the case.

(Added to NRS by 1999, 2031)

SEXUAL ABUSE OR SEXUAL EXPLOITATION OF CHILDREN UNDER AGE OF 18 YEARS

NRS 432B.610 Training of certain peace officers for detection ...

NRS 432B.610 Training of certain peace officers for detection and investigation of and response to cases of sexual abuse or sexual exploitation of children.

1. The peace officers' standards and training commission shall:

(a) Require each category I peace officer to complete a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18 years.

(b) Not certify any person as a category I peace officer unless he has completed the program of training required pursuant to paragraph (a).

(c) Establish a program to provide the training required pursuant to paragraph (a).

(d) Adopt regulations necessary to carry out the provisions of this section.

2. As used in this section, "category I peace officer" means:

(a) Sheriffs of counties and of metropolitan police departments, their deputies and correctional officers;

(b) Personnel of the Nevada highway patrol appointed to exercise the police powers specified in NRS 481.150 and 481.180;

(c) Marshals, policemen and correctional officers of cities and towns;

(d) Members of the police department of the University and Community College System of Nevada;

(e) Employees of the division of state parks of the state department of conservation and natural resources designated by the administrator of the division who exercise police powers specified in NRS 289.260;

(f) The chief, investigators and agents of the investigation division of the department of motor vehicles and public safety; and

(g) The personnel of the division of wildlife of the state department of conservation and natural resources who exercise those powers of enforcement conferred by Title 45 and chapter 488 of NRS.

(Added to NRS by 1993, 1335; A 1995, 559; 1999, 2429)

NRS CROSS REFERENCES.

Nevada Boat Act, NRS ch. 488

Wildlife, NRS Title 45

NRS 432B.620 Certification of peace officers who regularly inv...

NRS 432B.620 Certification of peace officers who regularly investigate cases of sexual abuse or sexual exploitation of children.

1. A peace officer assigned to investigate regularly cases of sexual abuse or sexual exploitation of children under the age of 18 years must be certified to carry out those duties by the peace officers' standards and training commission.

2. The peace officers' standards and training commission shall require each peace officer assigned to investigate regularly cases of sexual abuse or sexual exploitation of children under the age of 18 years to complete, within 1 year after he is assigned to investigate those cases and each year thereafter, a program of training for the detection and investigation of and response to cases of sexual abuse or sexual exploitation of children under the age of 18

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years.

3. If a law enforcement agency does not have a peace officer who is certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to NRS 432B.610, it may consult with a peace officer of another law enforcement agency who is so certified.

4. The peace officers' standards and training commission shall:

(a) Establish the program of training required pursuant to subsection 2.

(b) Adopt regulations necessary to carry out the provisions of this section.

5. The provisions of this section do not prohibit a peace officer who is not certified to investigate cases of sexual abuse or sexual exploitation of children under the age of 18 years pursuant to NRS 432B.610 from testifying or presenting evidence at any proceeding relating to the sexual abuse or sexual exploitation of a child under the age of 18 years.

(Added to NRS by 1993, 1336; A 1999, 2430)

APPENDIX L

National Conference of State Legislatures, Issue Briefs on Abandoned Infant Enacted Legislation 1999 – 2000, September 11, 2000, and Child Welfare League of America, Frequently Asked Questions – Baby Abandonment

Child Welfare Project

Infant Abandonment (as of September 1, 2000)

ABANDONED INFANT ENACTED LEGISLATION 1999 - 2000

September 11, 2000

In 1999, Texas was the first state to introduce and pass abandoned infant legislation. During the 2000 session, 24 states introduced similar legislation. The following lists enactments in a total of 13 states during 1999 (Texas only) and 2000. All refer to the voluntary surrendering of **unharm**ed infants.

ALABAMA

2000 Session HB115 - Creates an affirmative defense to prosecution if parents voluntarily delivers a child, 72 hours or younger, to a licensed hospital emergency room. Requires the hospital to notify the department, which is then responsible for reimbursing the hospital for all medical and other costs. Provides for immunity.

COLORADO

2000 Colo. Session SB 171 - Provides for an affirmative defense against a charge of child abandonment if a parent surrenders a child, 30 days old or younger, to a firefighter or hospital. Specifies duties of firefighters and hospital staff who take custody of children. Requires annual report to the legislature regarding abandoned children.

CONNECTICUT

2000 Public Act No. 00-207, SHB No. 6111 - Allows hospital emergency room staff to take custody of an infant, 30 days or younger, voluntarily surrendered by a parent. Allows the hospital to request the name of the parent and medical history information; the parent is not required to provide this information. Allows the hospital to provide the parent with a numbered identification bracelet to link the parent to the infant, but the bracelet does not authorize the person who possesses it to take custody of the infant on demand. Possession of the bracelet creates a presumption that the parent has standing to participate in a custody hearing and does not create a presumption of maternity, paternity or custody. Requires the department to prepare a public information program on this process.

FLORIDA

2000 Session HB 1901 - Creates an affirmative defense in a criminal action for child abuse if a parent surrenders an infant, 3 days old or younger, to a hospital. Specifies duties of hospital. Provides immunity. Allows the parent to remain anonymous. Requires hospitals to offer the parent material to gather health and medical information on the infant, but does not require the parent to complete the material. Requires the department to develop the material which must also include written notification that failure to contact the department within 30 days with a claim of parental rights will result in involuntary termination of parental rights proceedings and adoption placement. Requires the receiving hospital to immediately contact the emergency infant-adoption hotline for availability of a child-placing agency. Specifies duties of child-placing agencies and procedures for emergency custody orders. Specifies procedures for parental rights claims. Requires the department to develop a media campaign to promote safe placement alternatives for newborn infants.

INDIANA

2000 Session SB 330 - Creates a defense to a child neglect prosecution if a parent surrenders an infant, 30 days old or younger, to an emergency medical services provider. Requires the provider to immediately notify child protective services who must treat the infant as a child taken into custody without a court order. Specifies court proceedings. Creates a rebuttable presumption that it is not in the child's best interests to locate the child's parents or reunify the child's family if the child was abandoned in this manner.

LOUISIANA

2000 La. Acts. HB 223 - Provides for an affirmative defense against charges of abandonment in cases where a newborn, 30 days old or younger, has been relinquished to a designated emergency care facility. Specifies authority and responsibilities of emergency care facilities that accept relinquished newborns. Specifies proceedings for mother/father parental rights claims. Requires a written report to the legislature.

MINNESOTA

2000 Minn. Laws. SB 2615 - Provides for immunity from prosecution for leaving an unharmed newborn, 72 hours old or younger, at a hospital. Specifies procedures to be followed by a hospital receiving such a newborn. Provides immunity.

MICHIGAN

2000 Session Enrolled SB 1063 - Creates an affirmative defense to prosecution if a parent surrenders an infant, 72 hours old or younger, to an emergency service provider.

NEW JERSEY

2000 Session Chapter 58 - Creates an affirmative defense to prosecution if a parent voluntarily delivers a child, 30 days old or younger, to a hospital emergency room. Provides for confidentiality and immunity for hospital staff. Requires the Commissioner of Human Services and the Commissioner of Health and Senior Services to establish a public information program to promote safe placement alternatives for newborns, which is to include a 24-hour, toll free hotline. Requires a report to the governor and the legislature. Appropriates \$500,000 to establish the public information program and the hotline.

NEW YORK

2000 Session SB6688 - Creates an affirmative defense to prosecution if a parent surrenders an infant, 5 days old or younger, to an appropriate person or a suitable location and promptly notified an appropriate person. Requires the department to develop and implement a public information program that may include a toll-free hotline.

SOUTH CAROLINA

2000 Session HB-743 - Requires a hospital to take possession of an infant, 30 days old or younger, who is voluntarily delivered, with no intent to return. Grants a parent immunity from prosecution. Allows anonymity for the parent or person delivering the child but requires the hospital to request medical information. Outlines hospital and department authority and responsibilities. Requires the department to publish notice and send a news release to broadcast and print media in the area with information on the infant, including permanency plan hearing date and location. Provides immunity for hospital staff. Requires the department to develop public awareness of the program.

TEXAS

Session 1999 HB3423 - Creates an affirmative defense to prosecution if a parent voluntarily surrenders an infant, 30 days old or younger, to an emergency medical services provider.

WEST VIRGINIA

Session 2000 HB43400 - Creates an affirmative defense to prosecution if a parent voluntarily delivers a child to a hospital or health care facility. Specifies hospital responsibilities.

ANALYSIS OF LEGISLATION INTRODUCED IN THE 2000 SESSION

In addition to the 12 states that enacted abandoned infant laws during the 2000 session, the following 12 states introduced legislation:

CALIFORNIA (AB1764; 8/8 Re-ref to Cmte)

DELAWARE (HB555; Senate LOT)

GEORGIA (HB 1365 died in committee)

ILLINOIS (SB1668; still pending)

KANSAS (HB2838)

MISSOURI (HB2134; 4/11 public hearing)

NORTH CAROLINA (H1616; Ref Judiciary)

OHIO (HB660; 4/12 Conference Cmte.)

OKLAHOMA (HB2148; Conf. Cmte. Reject)

PENNSYLVANIA (HB 2321; still pending)

The following is a brief analysis of the major provisions of selected states' introduced bills:

WHO MAY ACCEPT THE INFANTS

Most states would require a hospital or emergency medical services provider, without a court order, to take custody of **unharm**ed infants voluntarily delivered to their facilities by parents, guardians or other persons with no expressed intent to return. They would be required to perform any act necessary to protect the physical health and safety of the child and to immediately notify child protective services or law enforcement. Several states added fire and police stations to the list of locations allowed to accept infants.

PROSECUTION OF PARENTS

Following Texas' lead, most of the states proposed to create an affirmative defense to prosecution if the parent voluntarily delivers the infant to the provider. Other states either specified that no parent would be prosecuted if the child is voluntarily delivered to a provider or that such actions would not constitute child abandonment.

AGE OF CHILD

The age of the child varied from 72 hours or younger in Alabama, Florida, Georgia, Kentucky, Minnesota, and West Virginia to 24 months or younger in Oklahoma.

PARENTAL ANONYMITY

Several states directly address anonymity of the parent or person voluntarily delivering a child to a specified facility. The **Georgia** bill would require the hospital employee to inform the parent that they may remain anonymous. **South Carolina** would allow a hospital to ask the mother or other person about the mother's or newborn's medical history; however, the mother is not required to provide any information, including her name. **Illinois** would require the hospital to ask the parent for pertinent medical information, including information on the use of controlled substances. **Kentucky** would allow any person who brings a newborn to an emergency room to remain anonymous and leave at any time without being pursued or followed except when there are indicators of child physical abuse or child neglect.

IMMUNITY FOR HOSPITAL AND EMERGENCY STAFF

Many of the states would provide immunity from civil and/or criminal liability for hospital, emergency and other workers who accept these infants.

CUSTODY/COURT PROCEDURES/PARENTAL RIGHTS/CPS INVESTIGATIONS

A few of the bills deal with court procedures, timelines, custody, termination of parental rights and father's rights. For example, **Illinois** would terminate parental rights, make the child a ward of the state and let the child be immediately available for adoption. The bill would allow the non-relinquishing parent to file a custody petition for the child within 30 days after the hospital receives the child. The non-relinquishing parent must prove, based on a preponderance of the evidence, that he or she is a parent of the child and did not consent to relinquishment. If a parent fails to file within 30 days, he or she is forever barred from filing for custody and all of the parents' rights are terminated.

FINANCE AND PUBLICITY

California's proposal creates a state mandated local program, in which the state reimburses local agencies for certain costs mandated by the state. **Illinois** would require the state to reimburse the hospital for the actual expenses incurred in accepting and caring for the child. **Kentucky** would appropriate \$100,000 for fiscal year 2000-2001 and \$50,000 for fiscal year 2001-2002. **Florida, Kentucky, New Jersey and New York** would require a media campaign or public notice.

STUDIES, TASK FORCES

Tennessee's bill called for a study of the issue.

PROS AND CONS

Proponents believe that these laws will significantly reduce the risk that a newborn will be abandoned in a manner that may result in death. They also feel that the laws will protect parents who feel they have no option other than abandonment, but want to deliver their newborn to a safe shelter. Others hope that the laws may offer young women an immediate alternative to abandoning their infants, while giving policymakers and the public time to seriously examine the issue and create system-wide reform that would include teen pregnancy prevention programs, prenatal counseling, health services, adoption and other support programs. Additionally, there is a need for study of the women who abandon their infants to understand why this occurs and to develop better prevention programs. There are also many questions about the fathers' role, the mother's family situation and how often the pregnancy is the result of rape or sexual abuse.

Critics have raised several issues:

- Because no records would be kept, there is no way to establish parentage for medical or other purposes. Lack of medical records may have serious future health implications for the infant. Of course, the response to this is that there are no medical records for any of the infants abandoned in public or dangerous places.
- What limit should there be on the child's age? Why should the programs be limited to newborns? Why 72 hours versus 1 month? How easy will it be for a variety of emergency services workers to determine whether an infant is 30 days old or 35 days old?
- Will requiring a name discourage women from safely dropping off their infants?
- The father's rights are not considered.
- This legislation may encourage parental irresponsibility and does nothing to help a distraught parent overcome whatever pressures caused the parent to drop off a newborn.
- While the legislation is probably a good idea, it needs to be a part of a larger reform to enhance services for women at risk and increase accessibility to programs that counsel pregnant women about confidential private adoptions.

State Experience:

State experience with this type of legislation is very limited. **Texas** was the first state to enact the legislation in 1999; several infants have been abandoned in the state after the law was passed, none in accordance with the new law. Lawmakers now recommend legislation include funding to cover the costs of publicizing the programs. For more information on Texas' experience, visit www.babymoses.org for a description of their legislation and official U.S. statistics on abandoned babies.

On Thursday, August 17th, a 2 day-old healthy baby boy was safely abandoned through the **New Jersey Safe Haven Infant Protection Act** (2000 Session Chapter 58). The Department of Human Services has custody of the boy and will not seek the identity of the mother.

Conference:

The Child Welfare League of America is holding an **Abandoned Baby Symposium** at the Holiday Inn on the Hill, Washington, D.C. on October 12-13, 2000. For more information, please call 202-638-2952.

For additional information regarding Infant Abandonment, please contact the Child Welfare Project staff at 303/830-2200.

[Child Welfare Home Page](#)

National Conference of State Legislatures
INFO@NCSL.ORG (autoresponse directory)

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Baby Abandonment

Frequently Asked Questions

1. *What is baby abandonment?*

In the last year, we have seen a growing national concern regarding baby abandonment. For the purposes of this discussion, baby abandonment is discarding or leaving alone for an extended period of time an infant under the age of 12 months in a public/private setting with the intent to relinquish the infant.

2. *How prevalent is baby abandonment in the United States?*

Unfortunately, no one knows for certain how prevalent it is, as states and counties are not uniformly maintaining data. Further, the federal government lacks a formal process for gathering specific data on the issue. Historically, states have seen only a few cases involving abandoned babies each year, so figures are lumped into broader categories of abuse or neglect. The best available assessment of the scope of baby abandonment nationwide comes from a 1999 HHS-commissioned database search of major newspapers, which found 65 published reports of abandoned babies in 1991, and 108 reports in 1998. In 1991, eight abandoned babies were found dead; 33 were found dead in 1998.

3. *Why is this issue of growing national concern?*

Abandoned children have always been a concern in this country and states have criminal and child abuse laws to address it. The growing concern seems to stem from a realization that despite the existing legal framework, babies are being abandoned and harmed; many even die. Texas experienced an unprecedented rash of baby abandonment in 1999, with 13 babies being abandoned in 10 months. Only one parent, a 15-year-old girl, was criminally charged. This string of abandonments garnered significant media and political attention.

4. *Is baby abandonment illegal?*

Although state laws vary, all states have laws that prohibit leaving a baby unprotected and unsupervised.

5. *What is known about the abandoned babies and their birth parents?*

No research has been conducted that identifies the population of parents who abandon their babies. Information is available about individual cases, but it is not a sufficient sample from which to make valid conclusions.

6. *Why do we only hear about mothers abandoning their babies? What about fathers?*

Media and political officials have focused on mothers because most reported cases have involved mothers. Fathers may be directly or indirectly involved, but there is no evidence of that at this time.

7. *How have states responded to this problem?*

Seven states have passed legal abandonment legislation, and many more are in the process. The intent is to give parents an avenue to safely turn over their child to a third

party.

8. *Which was the first state to pass such legislation?*
Texas was the first state to enact legal abandonment legislation in September 1999. The law (House Bill 3423) enables parents to relinquish their babies to an emergency medical technician at a fire station, police station, or hospital within 30 days of birth and avoid prosecution. The law does not require the parent(s) leaving the baby to identify themselves.
9. *In general, what does legal abandonment legislation entail?*
Legislation varies from state to state, but all laws or proposals diminish or remove the threat of criminal prosecution against parents who leave their newborn infants with designated caregivers, as identified by the law. Some provide for anonymity, others require an attempt at establishing the identity of a parent as well as some minimal information about the baby's history.
10. *What happens once a baby is turned over to the appropriate authorities?*
That is dependent upon the state's laws regarding child abuse and neglect, foster care, and adoption. Generally, once a baby is medically stable, the state arranges for care in a foster or adoptive home.
11. *What are some of the concerns being raised about legal abandonment legislation?*
There is apprehension among some individuals and organizations that the adoption process may be jeopardized due to a lack of pertinent information, such as the baby's medical history or a legal relinquishment of parental rights. There is also concern that legal abandonment laws may condone irresponsible behavior by allowing parents to abandon their children.
12. *Won't laws allowing babies to be abandoned anonymously in fact contribute to the growing number of such incidents?*
In general, the legislation is meant to encourage responsible behavior by individuals unwilling or unable to care for their babies by assuring that the child is left with caregivers who can provide appropriate care.
13. *What are CWLA's views on this issue?*
CWLA is concerned about the increasing number of baby abandonment cases since 1991, the lack of uniform data, and the absence of a comprehensive response at the national level. CWLA is currently developing a multifaceted response to the lack of information on baby abandonment. We will be disseminating a carefully designed survey to child welfare state officials, analyzing the results, developing a summary report, convening focus groups, organizing a national forum, and issuing recommendations for policy and practice at the local and national levels.

Additional Resources

- National Conference of State Legislatures:
www.ncsl.org/programs/ASI/babies.htm
www.ncsl.org/programs/cyf/AInfants.htm
- Baby Moses Project:
www.babymoses.org
- Abandoned Infants Assistance Resource Center:
socrates.berkeley.edu/~aiarc/

For additional information, contact Lupe Hittle, Director of CWLA Florence Crittenton

Services, at lhittle@cwla.org.

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APPENDIX M

United States House of Representatives, House Resolution (H.R.) 465

H. Res. 465

In the House of Representatives, U.S.,

April 11, 2000.

Whereas April is Child Abuse Prevention Month, which provides Congress the opportunity to focus attention and raise awareness of the problem of newborn babies abandoned in public places;

Whereas the Department of Health and Human Services reports that, in 1998, 31,000 babies were delivered and abandoned in hospitals by mothers;

Whereas an unknown number of newborn babies are abandoned in dumpsters, trash bins, alleys, warehouses, and bathrooms;

Whereas the Department of Health and Human Services conducted an informal survey of major newspapers and found that, in 1998, 105 babies were found abandoned in public places in the United States, of which 33 were found dead, and that, in 1991, 65 babies were abandoned, of which 8 were found dead;

Whereas national statistics on the number of infants abandoned in public places are not kept, though States are required to submit data to the Department of Health and Human Services on the number of children who enter foster care as a result of abandonment in general;

Whereas Texas is the only State to have enacted a law designed to address this social problem, though 24 other States are considering such legislation, including Alabama, California, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Maryland, Minnesota, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, Connecticut, Oregon, Illinois, Ohio, Wisconsin, Mississippi, Michigan, and New Mexico; and

Whereas there are innovative model programs in Houston, Mobile, Minneapolis, and Syracuse that protect mothers who take newborns to hospitals or some other safe haven rather than dumping them in a trash bin or leaving them on a doorstep: Now, therefore, be it

Resolved, That local, State, and Federal statistics should be kept on the number of babies abandoned in public places.

Attest:

Clerk.