

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-Third Session  
March 23, 2005**

The Committee on Health and Human Services was called to order at 1:37 p.m., on Wednesday, March 23, 2005. Chairwoman Sheila Leslie presided in Room 3138 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Ms. Sheila Leslie, Chairwoman  
Ms. Kathy McClain, Vice Chairwoman  
Mrs. Sharron Angle  
Ms. Susan Gerhardt  
Mr. Joe Hardy  
Mr. William Horne  
Mrs. Ellen Koivisto  
Mr. Garn Mabey  
Ms. Bonnie Parnell  
Ms. Peggy Pierce  
Ms. Valerie Weber

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Barbara Dimmitt, Committee Analyst  
Joe Bushek, Committee Attaché

**OTHERS PRESENT:**

Robert L. Crowell, Attorney, representing Teri and Eric Basa, Carson City, Nevada

Teri Basa, Private Citizen, Carson City, Nevada

Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada

Bobbie Gang, Legislative Advocate, representing Nevada Women's Lobby

Alice LeDesma, Supervisor, Child Care Services, Department of Social Services, Washoe County, Nevada

Pat Hedgecoth, Social Services Chief II, Division of Child and Family Services, Department of Human Resources, State of Nevada

Ernie Adler, Legislative Advocate, representing Rite of Passage Schools, Yerington, Nevada

Mary Walker, Legislative Advocate, representing Carson City, Douglas County and Lyon County

Jenny Welsh, Policy Analyst, Nevada Association of Counties, Carson City, Nevada

John Liveratti, Chief, Compliance Unit, Division of Health Care and Finance Policy, Department of Human Resources, State of Nevada

**Chairwoman Leslie:**

[Meeting called to order and roll called.] We'll go ahead and open the hearing on A.B. 200. This is Assemblywoman Parnell's bill.

**Assembly Bill 200: Prohibits child care facility and any employee or volunteer of child care facility from taking certain actions against child for disciplinary purposes. (BDR 38-930)**

**Assemblywoman Bonnie Parnell, Assembly District No. 40, Carson City:**

[Handed out [Exhibit B](#).] Assembly Bill 200 comes to you as a result of an incident that occurred at one of our local day care centers. Shortly, you will hear the story of what took place at that center. Assembly Bill 200 specifically prohibits a licensed child care facility from inflicting physical punishment on a child, including placing tape over a child's mouth. This bill makes it a misdemeanor to violate this prohibition.

As this bill is currently written, it also includes language that would make verbally abusing or threatening a child a misdemeanor, in addition to the physical abuse. However, I have submitted to you an amendment that will strike lines 8 and 9 from the text, so that the words "verbally abuse or threaten a child" are removed. The purpose of this amendment is to remove the

subjectivity of the proposed stricken language. Just so you know, though, current statute, NRS [*Nevada Revised Statutes*] 200.508, states that to verbally abuse or threaten a child is a violation of a regulation without criminal penalty. This amendment will not affect that statute.

[Assemblywoman Parnell, continued.] It clarifies that if a child care center were to inflict punishment, including taping a child's mouth shut, that would be considered a misdemeanor, but we felt that the subjectivity of "what does it mean to threaten; how do we prove that," probably should remain where it is currently in statute, and not be listed with a misdemeanor language. I hope that clarifies the reason for the amendment.

**Robert L. Crowell, Attorney, representing Teri and Eric Basa, Carson City, Nevada:**

You're going to hear the testimony of Teri Basa in a moment. I think that Assemblywoman Parnell meant to say the regulation she was referring to was not NRS 200.508. It is Nevada Administrative Code 432A.400 that says it's a violation of the day care facility to verbally threaten or abuse a child, but it is not currently stated so in the criminal code.

**Teri Basa, Private Citizen, Carson City, Nevada:**

[Read from [Exhibit C.](#)]

Our children, Brandon and Erica, are 5 and 3 years old. From approximately February or March 2002, to August 19, 2004, they attended a day care in Carson City.

On Friday, August 20, 2004, Erica's teacher came into my work and told me the day before, Thursday, August 19, 2004, the owner of the day care had taped Erica's mouth shut with purple masking tape. According to the teacher, the owner came into the children's room where the teacher was preparing the children for naptime and was annoyed that the children were still talking. The owner got angry with the children and told them she would tape the next child's mouth shut with the purple masking tape if they said anything. At that time, my daughter Erica giggled; the owner turned to her and said, "Do you think that's funny?" And [she] put purple masking tape over her mouth, laid her down on her mat, and covered her head over with her blanket. Another little boy laughed, and she taped his mouth shut also. Erica and the other little boy were both 3 years old at the time. This incident happened right after lunch, and Erica was congested from a cold.

[Teri Basa, continued.] The teacher said that she left the room because she was shocked that this had happened. When she come back into the room approximately five minutes later, she saw the children lying on their mats, Erica with her head still covered over. The young boy was sleeping, and she knelt down to pull the tape off. He woke up, and she told him, "Everything's okay; go back to sleep." Next, she went over to Erica. The teacher pulled the covers off of Erica, and she was asleep. Erica's fingers were at her mouth, but she had not pulled the tape off. The teacher pulled the tape off of her mouth, and my daughter woke up also. Again, the teacher said, "It's okay; go back to sleep." The owner of the day care told the teacher that if the parents asked about the incident, she should tell them that they were just playing a game.

The same day, Thursday, August 19, 2004, the teacher called the Health Department and filed a report about the incident. The Health Department took immediate action, and went to the police department, Monday, August 23, 2004, to file a complaint.

I told my husband, Eric, and we went directly over to the day care to ask the owners about the incident. They said that there was tape, but that the children had asked for it, and that it was just a game. When I asked my daughter Erica about the incident, she told me the exact same story that her teacher had told me earlier that day. Several other children told their parents the same story that the teacher had told. Not one child confirmed the owner's story.

The following Monday, August 23, 2004, Erica and I went to the police department to file a complaint. Ultimately, I was told by the police that they had been told by the Carson City District Attorney's Office that the taping of a child's mouth closed is not considered corporal punishment under the law and, therefore, was not criminal or considered child abuse. We were told the day we filed the report that the sergeant did not believe taping of a child's mouth is considered corporal punishment. That is why we are here today, to ask you to make it clear that child care givers cannot tape a child's mouth closed with any kind of tape, and that if they do so, it will be deemed corporal punishment.

**Chairwoman Leslie:**

Thank you for your testimony and being courageous enough to bring this personal experience forward, so we can take a look at the law and make sure that it adequately protects children. I hope your daughter is doing well.

**Teri Basa:**

She is. She's very strong.

**Chairwoman Leslie:**

I have a question. Maybe this is better directed at you, Mr. Crowell. Right now, is it that there's a loophole in the law? Would we be clarifying the law? It seems kind of insane that we have to be that specific, to say, "You can't tape a child's mouth shut." What exactly are we doing?

**Robert Crowell:**

That's a good question. In my opinion, I believe that the taping of a child's mouth, or anyone under 18, represents a violation of the criminal statute, and that would be the violation of NRS 200.508, subsection 1. I will tell that you I've had some discussions with the district attorney's office and the District Attorneys Association, and I believe that I could prevail on that opinion. In Mrs. Basa's case, the investigating authorities had some thought in their mind as to whether or not this act constituted infliction of corporal punishment. That is the genesis of how it got here, but let me explain a little bit further.

Right now, under *Nevada Administrative Code* (NAC) chapter 432A—that deals with day care centers—there's an administrative regulation, and Assemblywoman Parnell spoke to that. I think it's important for me to highlight two lines of that regulation. NAC 432A.400 says that you can suspend, deny, or revoke a license of a day care operator for, among other things, inflicting physical punishment in any manner or form upon any child, or verbally abusing or threatening a child. That language seems awfully similar to what you see in A.B. 200 right now.

The difference, Madam Chair, is that violation of the regulation is not a crime. It is grounds for revocation or suspension of the license, and what this bill would clarify that putting tape on a child's mouth does constitute infliction of punishment for purposes of revocation. It makes that clear. And secondarily, what it would do would be to criminalize that activity. The criminal side of that activity is under the statute that I just referred to, and that is NRS 200.508. That statute is a general statute that says you cannot inflict unjustifiable physical pain or mental suffering on a person under 18, without being specific as to what it is.

So, this bill—you're right—would make it a misdemeanor and clarify the language of NRS 200.508—that taping someone's mouth does indeed constitute a crime. I know it is a long way around, but that's what is going on here. Bottom line is that I think right now, even though it is not specific, you could construe the law to say that it is a crime, and second, most definitely, I

believe that the health care authorities in Carson City have the right when someone tapes somebody's mouth, under existing administrative regulations, to revoke or suspend a license.

**Chairwoman Leslie:**

That was actually quite helpful for me. Is this something that occurs frequently? Was this an aberration here in Carson City? In your research, what have you encountered?

**Assemblywoman Parnell:**

How do you know? It could be going on someplace, and unless a child reports it, or if somebody happens to see it and says something to a parent, I think it's virtually impossible to know the exact numbers that are going on. But, I think the real concern here was, if there is suspicion for it not to be a gray area for the judicial interpretation or investigative interpretation, and when you look at the term "inflicting physical punishment," then somebody has to make a decision about whether taping a child's mouth clearly comes under that definition.

I think we felt comfortable coming before the Committee, just as we felt you all would be extremely concerned, and we definitely feel that this does constitute it, and we would like it to be known that if a report is made, and if a child goes home and reports a story or a parent gets information about something, then we know that action will take place and we'll have resolution. At this point, I think that area is a little too gray for those of us who shudder at the thought of sending our children or grandchildren off to the care of someone and having something like that happen.

**Assemblyman Hardy:**

Are there statutes about taping mouths anyway on anyone? I mean, I'm concerned about the medical aspect of aspiration or suffocation. We talk about the congestion that the child has. But, that's the concern that I have.

**Robert Crowell:**

Certainly, your legal staff can confirm that, but I don't believe there's anything in the statute that speaks to that taping. I can specifically tell you that, in my conversations with law enforcement, the effect of taping someone's mouth, and particularly the effect on congestion and effect on breathing, brings home the fact that, if you're not inflicting corporal punishment as a crime of abuse, you are definitely committing a crime of battery.

**Assemblyman Horne:**

When speaking with the district attorney, how does this fall short of a criminal battery?

**Robert Crowell:**

I don't know exactly how to answer this, but I guess when all else fails—I don't know who is in the room here—sometimes the truth is the best statement. Here is what I believe is happening. I believe that, regardless of whether this bill lives, dies, passes, or whatever, the district attorney's office is going to take this matter up, at least under NRS 200.508 or under some form of battery. I believe they're going to do that. Why they haven't done that to date is not for me to say. Why certain investigators have told my client that this does not reflect or does not constitute corporal punishment, I have no idea. I wasn't privy to those conversations. I can tell you that, since August 2004, we are here today in the same position we were then. With that in mind, my recommendation is the same as what Teri Basa said. If we need to nudge folks along and make sure that the world knows that taping people's mouths—particularly kids' mouths—is wrong and we need to criminalize it, let's do it through this bill and make sure that doesn't happen again.

**Chairwoman Leslie:**

It may seem obvious to all of us. Obviously, it wasn't that obvious to the day care center. I appreciate you bringing this forward.

**Lucille Lusk, Chairman, Nevada Concerned Citizens, Las Vegas, Nevada:**

I had difficulty knowing whether to sign in to support or oppose this legislation, because we clearly agree that taping a child's mouth shut is outrageous. We have some concerns, however, about the ambiguity of some of the other language. Assemblywoman Parnell has already addressed removing the language regarding threatening from the bill, so I won't address that. But, we have some concerns about the unintended consequences of moving into the criminal code with language such as "inflicting physical punishment in any manner or form." It's such open language that we're concerned that something like taking a child by the arm and moving him to his seat when he's being disruptive could fall under that definition. Now I will say, in listening to what has already been said, that clearly something does need to be done. I wonder if some possibilities might be adding taping a mouth shut to the definition of child abuse, or the definition of unjustifiable suffering, or even the definition of battery, because it's not only a child care facility where this kind of abuse can take place. It can take place in other institutions as well. We will leave that with you and offer to work with Ms. Parnell or anyone else in trying to find a solution.

**Chairwoman Leslie:**

I think you bring up a good point. If a teacher did it, or somebody else, we'd be just as concerned. We'll note that, and we will ask to you work with Assemblywoman Parnell, and discuss this further with her.

**Bobbie Gang, Legislative Advocate, representing Nevada Women's Lobby:**

We do support the bill with the amendment. We had a concern about the words "verbally abuse" or "threaten," because we thought it was vague and would be hard to interpret. We're pleased to see the amendment presented, and we encourage you to pass the amendment and the bill.

**Chairwoman Leslie:**

Could somebody from social services, either from the State or a county social service agency, come forward? I want to ask you a couple questions.

What about Ms. Lusk's idea? Is this something we need to amend to the child abuse statutes, to make it clear that it is abuse to tape a child's mouth? If a parent did this, is that something that you would investigate?

**Alice LeDesma, Supervisor, Child Care Services, Department of Social Services, Washoe County:**

Generally, certainly we support any type of clarification. I have had incidents very similar to this that we have investigated, certainly, as corporal punishment and physical abuse, as defined under our regulations, and have substantiated those. Not in the last year, and they have been very similar—the same explanations, kids talking. It would be helpful for clarification, but we've done it anyway, so I don't know that it hasn't been ambiguous so far.

**Chairwoman Leslie:**

Okay, that is helpful. And Pat, is that something from your perspective that would be helpful as well?

**Pat Hedgecoth, Social Services Chief II, Division of Child and Family Services, Department of Human Resources, State of Nevada:**

We've had similar incidents as well, but one of the things that comes to mind is if you put that into child care regulations—NAC [*Nevada Administrative Code*] 432A—it would be that you could suspend or revoke a license. It would not necessarily constitute abuse or neglect. If you put it into NAC 432B, then you've already said it was abuse and neglect, because at times when you look at the abuse and neglect in terms of any kind of prosecution, it's the leaving bruises, that kind of thing.



**Chairwoman Leslie:**

We'd ask you, maybe, to be available to Assemblywoman Parnell and Mr. Crowell to talk about how we might best address this issue. I think it's clear we need to clarify it somewhere, but I'm leaning towards putting it in the definition. That's helpful for me to know you have seen this happen as well, so it does seem to be more than just a problem that Mrs. Basa ran into. This is something that has happened throughout the state, and so maybe we need to take a look at adding it to the definition.

**Ernie Adler, Legislative Advocate, representing Rite of Passage Schools, Yerington, Nevada:**

I didn't hear some of the other testimony, because I was in another meeting. They support this bill, but they would like to have some clarification on such things as physical exercise exemption, and things such as kids running laps, or push-ups.

**Chairwoman Leslie:**

You tape people's mouths when they run laps?

**Ernie Adler:**

No, they don't tape people's mouths, but as any other physical abuse.

**Chairwoman Leslie:**

What line are you looking at?

**Ernie Adler:**

"Inflict physical punishment." For some of the athletic programs, there's a question whether that would apply.

**Chairwoman Leslie:**

I understand.

**Ernie Adler:**

I'm just throwing that out. The other thing is, one of the things that comes up in some of these programs is the psychiatric physical restraints, where a kid is hurting himself or potentially another person. I think that kind of needs to be clarified.

**Chairwoman Leslie:**

I'm not sure that would fall under physical punishment, though.

**Ernie Adler:**

Maybe just clarify for the record that's not included, because that's come up in some states. Some states have approved physical restraints, psychiatric restraints, and others have not really spoken to that issue, and then it becomes a problem for staff, as to whether you bundle a child up if he's lashing out at another child.

**Chairwoman Leslie:**

I'm not sure that would fall under the definition of child care facility.

**Ernie Adler:**

Sometimes, in child care facility, that does fall under the definition.

**Chairwoman Leslie:**

In Chapter 432?

**Ernie Adler:**

Well, if a kid is acting out, how do you—I'm just bringing that up.

**Chairwoman Leslie:**

We'll close the hearing on A.B. 200. We'll take this up at a future work session after Assemblywoman Parnell has a chance to think about the amendment. We do thank all the family members from Carson City for coming forward and participating in your democracy. We appreciate you being here today.

Let's bring it back to Committee, then, and go into our work session. Today, we only have one bill on work session, and we'll ask Ms. Dimmitt to lead us through that. That's A.B. 57.

**Assembly Bill 57:** Repeals certain provisions concerning money provided to counties which are unable to pay nonfederal share of expenses for institutional care of medically indigent persons pursuant to State Plan for Medicaid. (BDR 38-175)

**Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:**

Assembly Bill 57 was requested on behalf of the Division of Health Care Financing and Policy. Testimony indicated that the repeal of the fund for the institutional care of the medically indigent is being done, because there's a replacement mechanism for relieving counties of excess cost or costs that they cannot afford for the county match program, which requires counties to match

the nonfederal share of medical expenses for certain institutionalized Medicaid-eligible individuals.

[Barbara Dimmitt, continued.] There was no testimony in opposition to this bill directly. The testimony definitely supported the stop-loss arrangement that has been established to replace the fund. However, there were some concerns about repealing the authority for the fund when there wasn't a corresponding statutory definition for the stop-loss arrangement. Mary Walker, representing Carson City, Douglas County, and Lyon County; and Andrew List of NACO [Nevada Association of Counties] have proposed amendments to A.B. 57 to accomplish this purpose, by defining the stop-loss agreement. The text of that amendment is in the packet ([Exhibit D](#)).

**Mary Walker, Legislative Advocate, representing Carson City, Douglas County, and Lyon County:**

[Handed out [Exhibit D](#).] Thank you very much for having your staff give a thorough explanation of this. We do have another mechanism in place; it's been in the Governor's budget last session and then again for this year. It basically requires the counties to pay up to the equivalent of an eight cent property tax for the fifty-fifty match long-term care program. Above eight cents, the state pays for. All this amendment does is codify what the agreement is, and is already funded in the Governor's budget.

**Jenny Welsh, Policy Analyst, Nevada Association of Counties, Carson City, Nevada:**

As drafted, A.B. 57 deletes language that created a fund for counties to access when they could not meet their Medicaid match payment. In the last biennium, the State agreed to cap the county's responsibility for Medicaid, matching payments at an amount up to eight cents ad valorem tax. The same agreement has been reached for this budget cycle. The counties would like to take this opportunity to thank the State for entering into this partnership with the counties to pay for the long-term care of the citizens of this state. Our amendment to A.B. 57 simply puts this agreement into statute.

**John Liveratti, Chief, Compliance Unit, Division of Health Care and Finance Policy, Department of Human Resources, State of Nevada:**

We appreciate the work that NACO and Mary Walker did in writing this amendment, and we are in support of it.

**Assemblywoman Koivisto:**

If the state is going to pay this money, from whence does the state get the money?

**John Liveratti:**

We would bill Health Care Finance, CMS [Centers for Medicare and Medicaid Services], for 50 percent, and the rest of it would come from the General Fund.

**Assemblyman Hardy:**

General Fund money would be supplemented from the federal match as well?

**John Liveratti:**

Yes.

**Chairwoman Leslie:**

How has it worked in the past, just to remind us again?

**John Liveratti:**

Well, I think what happened in the past was it was capped at that amount, and the counties came to the Legislature for the additional money.

**Chairwoman Leslie:**

So we've been paying for it out of General Fund?

**John Liveratti:**

You've been paying for it in total, without the 50 percent match. My understanding is now with that put in our budget, once it gets everybody paying at the 8 percent, whatever it goes over, then we would pay the rest. It would be matched at fifty-fifty.

**Chairwoman Leslie:**

We should come out ahead?

**John Liveratti:**

We should.

**Chairwoman Leslie:**

That's what we all hope for.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 57.

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

[Meeting adjourned at 2:13 p.m.]

RESPECTFULLY SUBMITTED:

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Julie Morrison  
Committee Manager

APPROVED BY:

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Assemblywoman Sheila Leslie, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Health and Human Services

**Date:** March 23, 2005

**Time of Meeting:** 1:30 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
A.B. 200	B	Assemblywoman Bonnie Parnell	Proposed amendment
A.B. 200	C	Teri Basa	Written Testimony
A.B. 57	D	Mary Walker/Carson City, Douglas County, Lyon County	Proposed amendment