

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

**Seventy-Third Session
May 2, 2005**

The Committee on Health and Human Services was called to order at 1:35 p.m., on Monday, May 2, 2005. Chairwoman Sheila Leslie presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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. William Horne
Mrs. Ellen Koivisto
Mr. Garn Mabey
Ms. Bonnie Parnell
Ms. Valerie Weber

COMMITTEE MEMBERS ABSENT:

Mr. Joe Hardy (excused)
Ms. Peggy Pierce (excused)

GUEST LEGISLATORS PRESENT:

Senator Dennis Nolan, Clark County Senatorial District No. 9
Senator Maurice Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Barbara Dimmitt, Committee Analyst
Joe Bushek, Committee Attaché

OTHERS PRESENT:

Chad Smith, Executive Vice President, Las Vegas Athletic Clubs,
Las Vegas, Nevada

Jennifer Stoll-Hadayia, Public Health Program Manager, District Health
Department, Washoe County, Nevada

Janet Ford, Immunization Program Coordinator, Division of Community
and Clinical Health Services, District Health Department,
Washoe County, Nevada

Bill Gregory, Legislative Advocate, representing Station Casinos, Inc.

Melissa Nelson, Director, Corporate and Government Relations, Station
Casinos, Inc.

Sabra Smith-Newby, Legislative Advocate, representing the City of
Las Vegas, Nevada

Jone Bosworth, Administrator, Division of Family Services, Nevada
Department of Human Resources, State of Nevada

Mike Capello, Director, Department of Social Services, Washoe County,
Nevada

Kristin Erickson, Legislative Advocate, representing the Nevada Districts
Attorneys Association

Lieutenant Stan Olsen, Commander, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada;
and Legislative Advocate, representing the Nevada Sheriffs' and
Chiefs' Association

Chairwoman Leslie:

[Meeting called to order and roll called.] We'll open the hearing on S.B. 254.

Senate Bill 254 (1st Reprint): Makes various changes relating to child care facilities operated by businesses as auxiliary service provided for their customers. (BDR 38-1127)

Senator Dennis Nolan, Clark County Senatorial District No. 9:

I was approached by members of the athletic club associations in southern Nevada. It immediately struck a chord with me, because they were asking to address a situation that I had experienced on a number of different occasions, having a membership in an athletic club in southern Nevada. Currently, the child care facilities in health clubs—and this extends to other facilities, which are referred to as accommodation facilities—are defined in regulations and in S.B. 254. The first reprint of S.B. 254 brings that definition, which is in regulation, into compliance and statute. It redefines accommodation facility in

the statute. In Section 2, it parrots the language in regulation. That means the child care facility is operated by a business that is licensed to conduct business other than the provision of a care to children and, as an auxiliary service, provides for their customers of the primary business. It goes on to explain that is a child care facility. This would be typical of a health club, but there are also a number of other hotels that have these types of child care facilities. They are not fully licensed, full-day facilities.

[Senator Nolan, continued.] There's an exemption in statute for a number of different provisions that these temporary child care facilities have. One of the things that they are currently required to do is to receive immunization records from those children who are going to be in their facility for any period of time. These are facilities that, by definition, are currently only allowed to have children up to three hours at their facility. So, unlike a full-day child care facility, while they are required to collect immunization records, there's nobody that is required by statute to review those immunization records or to do anything with them. They collect them and stick them in a box. The first time I took my kids into one of these facilities and they asked for my immunization records, we didn't have them, so we took the kids home and didn't use the facility.

The next day, we came back and provided them with all of the immunization records. The person looked at them and stuffed them in a box. Not only are they not trained to look at them, but they don't do anything with them. This particular athletic club has other facilities around the town that we are entitled to use. I went to another one, and they asked me for the same immunization records, I said that they were on file at another location. They said, "I'm sorry; you have to have a separate copy for your child at each location, even if your child is there only half an hour." There really isn't a practical reason for requiring it. Children from out of state are not required to bring any immunization records. While you are lining up your kids who are in the public school system—and the public school system does have a very stringent review of immunization records—here there are kids coming through with Ebola, smallpox, and everything else from out of state. You don't know what they have. It is not a practical requirement.

Health clubs are just one of the accommodation facilities. I think the numbers were—maybe somebody here with the Division of Child and Family Services (DCFS) might help me out—of the approximately 900 licensed child care facilities in Nevada, only about 60 or 90 of these facilities are actually considered accommodation, where kids are staying in them less than three hours. The bill would eliminate that requirement for immunization records. The other part of the bill is with regard to the number of toilets that are required in these child care facilities for little kids. They took me on a tour of a club that

I'm not a member of. It was a brand-new facility that had a whole wall of little kids' bathrooms that weren't being used at all, of course. They have to have that number of restrooms because of the occupancy of kids. What isn't taken into account are those toddlers who are three and under and who don't use a toilet yet, but they still have to use those number of children, who may be 30 to 40 percent of the population of kids in that facility, and they have to construct restrooms for them that will never be used. They asked me if I would put that in the bill, and it made a lot of sense for me.

[Senator Nolan, continued.] Finally, the other thing is that parents aren't allowed to go back into the designated child care facility for any reason. If you have a toddler back there who has a problem or needs to use a restroom, the parent has to be called to come down, pick him up, and take him out of the child care facility, even though there are bathrooms with changing tables in there. The parents should be allowed to go in, change the child, and go on their way. Senate Bill 254 would address that as well. There are people here from the Station Casinos who have some other interests in this bill and some other concerns, which I'm open to listen to.

Chairwoman Leslie:

One thing you haven't touched on is the multi-level play equipment issue. Could you tell us what that's about?

Senator Nolan:

An amendment made to the bill, which was recommended by one of the members of the Senate committee, discussed the amount of space available in these facilities for children to play. There are formulas calculated based upon occupancy and the size of the toy. The amendment in Section 4, subsection 4 says that not more than 30 percent of the area designated as "play activity space," in an accommodation facility that begins operation after October 1, may consist of multi-level play equipment. That was an effort to accommodate parents who want to be able to come back and play with their children in this facility. They didn't think that the entire play space should be taken up by one huge multi-level play area.

Chairwoman Leslie:

There are some people signed in against the bill. Are you able to stay and hear their concerns? [Senator Nolan responded in the affirmative.]

Chad Smith, Executive Vice President, Las Vegas Athletic Clubs, Las Vegas, Nevada:

Regarding Senator Nolan's comments regarding the immunization records, we currently have four clubs in the Las Vegas area, with two more under

construction. The four clubs we have right now have a total of about 100,000 active members. All together, those members have about 20,000 children. You can imagine the problems inherent in having untrained personnel process all the immunization records for 20,000 children. When members and their children go to multiple clubs, trying to keep these things organized is an absolute nightmare.

[Chad Smith, continued.] There is nothing more frustrating than seeing a mother who has taken time out of her busy schedule, dropped the older kids off, and finally gotten to the club, and all of a sudden we can't find that one record out of the 20,000 that we have. We are forced to turn her smaller children away if we can't find the records. Otherwise, child care licensing in Las Vegas will fine us or shut us down.

It becomes an excessive burden for us, and we haven't seen the benefit of it. They want us to update our records of immunizations every year. When we discussed the problem with Senator Nolan, he agreed it might not make sense for an accommodation facility like ours.

We have two clubs in the city and two clubs in Clark County. Child care licensing in the city and county requests that we do not change the infants' diapers inside the facility. We used to do that, but as they prefer that we not, we stopped doing that. Now we realize that, for the most part, it's illegal for the parents to change their own kids' diapers in our facilities. This is because anybody who comes past our front desk has to have a health card and sheriff's card, including parents.

We want to be able to allow parents to go in, play with their kids, change their diapers, and do whatever they want. We want to have different programs—such as Mommy & Me classes—or different activities, where the parents can get involved with the children. Because we are considered child care as the regulations read right now, we are not allowed to do activities where parents are dealing with children in that space.

Both of those things would help us provide a better type of facility with more benefit for our members. That's why we asked for them. At our newest club, in the Green Valley area on the southeast side of Las Vegas, we put in a big three-story play structure, a soft-surface play structure with a bouncing area. It took us another three months after the club opened to get it approved, because child care licensing and the health department here had nothing in their regulations addressing child care facilities putting in big play structures like that. They do address it for fast food restaurants; they make it easy to entice children into those places. However, we had difficulty getting approval for putting that

sort of facility in the health club. Even then, there was some concern as to whether that would be deducted from allowable square footage or not.

[Chad Smith, continued.] We thought it would be helpful if that were put in the bill, along with clarification that it would not take away from the square footage. I'm not sure of the language that Senator Nolan put in regarding the 30 percent rule. Is it that you can't have a multi-level play station in the area, or if you do have multiple stories, it can't exceed 30 percent of the square footage of that first floor area?

Chairwoman Leslie:

The way I read it is that you can have a multi-level play area, but it can't cover more than 30 percent of the space. Is that right? [Senator Nolan responded in the affirmative.]

Chad Smith:

If 30 percent of the ground level is covered by the play space, but the second level and third level—you've probably seen in Chuck E. Cheese where tubes go over the whole building. Are you addressing the total square footage of the entire enclosure or just what it takes from the first floor footprint?

Senator Nolan:

Only the first floor footprint—the total floor space. It is not cubic feet, just floor space.

Chad Smith:

I want to clarify that, because the Health Department did originally want us to deduct the total square footage of the entire enclosure, which would become a nightmare for us. We are trying to do our best to provide a better service, do more facilities, and free ourselves up, so we can have fun with these kids and do greater activities than be stuck with the administration of paperwork and other things that don't seem to make sense.

Chairwoman Leslie:

I see your point, rereading the section. It says, "...not more than 30 percent of the area." I thought, as you did, that the area would be the footprint. If you are considering the area including the space above you, we may need to clarify that a little bit.

Assemblyman Horne:

Mr. Smith, I'll disclose that I am a member of the Las Vegas Athletic Club, as is my wife. We have brought our child to the child care facility. I have a couple of things. First, it seems to be our habit to go to the same club over and over. We

don't travel around the valley and say that we are going to try this facility today, and tomorrow we are going to try another facility. It seems that's pretty much what everyone does. Everybody says, "You belong to that? Which club do you go to?" We all have a specific club that we attend. The argument of having to have the records at multiple clubs seems to ring hollow.

[Assemblyman Horne, continued.] The second issue is that, with the club, we have a card they scan when we come in to make sure our dues are current, and it also says how long we have been members. Even the small club that I belong to up here while I'm in session has the same thing. I wonder if you've explored how hard it would be to put—if a member has a child or children—whether or not they have submitted their records and are current that year. You could update that every year; you have to bring in new records if you want to bring your child in. That would save all 20,000 pieces of paperwork for the kids for all of your facilities. Have you explored that area?

Chad Smith:

Yes, we actually have on both those fronts. To begin with, we know that close to 20 percent of our members do use multiple clubs on a regular basis. To try to identify which ones do it and which don't is very difficult. We end up having to create a system that allows them to use multiple clubs.

As far as tying in the computer system, we have just developed a whole different system for scanning those documents, and for the last four weeks, we have had two people scanning these things full-time trying to track them. That will alleviate some of the problem, but local child care people will then say that they want us to print out hard copies and have a folder at the front desk for every one of those kids with a hard copy of the immunizations, so when they stop by, they can see a hard copy of every one of those.

At our larger facilities, our Green Valley club and the new one in the northwest, we will have a capacity of 100 kids. Those 100 kids turn over on the average of about every 1 hour and 15 minutes. That's a lot of shuffling, printing, putting stuff back in, and being sure we have it. We are not afraid of doing what we need to do to develop this program, but our clubs sign up approximately 3,500 to 4,000 new members every single month. When we open two new clubs, that's a lot of scanning and tracking, and every year we need to tell the parents they need to give us updated forms. There's a process that goes along with it.

If I saw the benefit for the member, if it really made a difference and kept the kids more healthy, I would be in favor of it. I have four kids from 4 years old to 13 years old that use those facilities. I'm very conscious of it. However, we

don't really seem to be stopping anything or stopping any kids that come in there with any diseases. We don't even know what we are looking for. It seems like a lot of work for no real positive outcome.

Assemblyman Horne:

Are you saying that with this regulation, children have to have immunization records in order to be there? Since that has been there, do you still have children that are contracting diseases or illnesses that would normally not be gotten otherwise from children that are not immunized? They're still getting it? It sounds like your argument is that we don't see kids getting sick and we don't see a problem, so let's eliminate it. I'm not following your logic.

Chad Smith:

We are not aware of any cases of children getting sick from the diseases that kids are being immunized against. The only thing we are able to do is when a child comes in with a runny nose, if that's the only visible sign that the kid is sick. Hopefully, the parents are honest with us. They know one of our rules is that you can't bring your children into child care if they're sick. We do our best to monitor them. If we see any outward signs, we talk to the parent and don't allow those children in. As far as the immunization, we haven't seen any diseases from any of those or any positive outcome from that, except for what we do that has nothing to do with the immunization records.

Assemblyman Horne:

That would seem because they are only accepting immunized children.

Chairwoman Leslie:

Let me follow up on that point. Do you accept children from out of the area on guest passes or something like that? Senator Nolan testified that out-of-state children aren't required to bring their immunization records. Is that your understanding also?

Chad Smith:

I haven't seen a lot of instances where we allow them. If there were special exceptions, we would deal with them on a case-by-case basis. Our members are predominantly local. If they are visiting from out of town, they don't usually come with their children. They are business travelers. We don't have a lot of youths coming who are not regular members.

Chairwoman Leslie:

What makes me most sympathetic to your argument is the fact that I can't even read my own child's immunization record. I have had to call the health department to help me understand what the codes are. The child care facilities

don't train your staff? I wouldn't be able to look at one and tell you what immunizations a child has had.

Chad Smith:

There is no training. We are supposed to have the immunizations on record for them to look at. I have talked to the health department because I'm trying to understand how we can better do our job. If it makes sense, let's do it the right way. When you ask them how many occurrences there have been of any of these diseases in the town, they say they are very rare, and you might usually find them in areas such as San Diego, where they are close to a border. A lot of that is because there has been an immunization program over the last 20 years. That's why the public school district monitors all the local kids. There are other child care facilities, but it would be the same thing if your children went in and played at a McDonald's play area, where there are 10 or 20 kids playing with them. How do you know those kids had their shots? You don't. At what point is it an excessive burden on someone when there's not a significant benefit?

Assemblyman Mabey:

I have a concern about allowing the parents in the accommodation facility. Was there any concern on the Senate side? It seems to me that if I took my child to one of these when I worked out, I don't know that I would want other parents in there with them.

Senator Nolan:

Yes, there was quite a bit of discussion about that. Of course, we are concerned about the health and well-being of the other children in there as well. Although we like to think that all parents are good parents, we know there are some bad actors out there. The exceptions—and I'll have to take a look again at the way the language came out on this—were supposed to be such that parents could take their own children and take care of their physical needs in a restroom. The restrooms are required to have individual bathroom stalls, so that they are not multi-use restrooms. This is so that parents who are taking their child into these are supposed to be able to change their diapers in there by themselves. That was the first consideration.

The other consideration was parents participating in these youth activities with the kids. It makes a lot more sense that those types of activities be conducted with the children, in an area designated for children, with the parents with them in a one-on-one supervised capacity. In other words, you have a large open room, and you have mothers with these little toddlers and somebody who is conducting the event. It was our understanding that it would be the health clubs' intentions as well to have the parents come back to take care of the children's needs. If they were to participate in some kind of organized activity, it

would be in a supervised, open, one-on-one parent and child type of thing. That should be desirable from the perspective of their own liability, of which they are very cognizant.

Jennifer Stoll-Hadayia, Public Health Program Manager, District Health Department, Washoe County, Nevada:

[Read from prepared testimony, [Exhibit B.](#)]

We are opposed to Section 3 of S.B. 254, which would exempt children in accommodation facilities from providing proof of required immunizations for vaccine-preventable diseases. In the interest of public health, we recommend that Section 3 be removed from this bill. As we are aware, unimmunized children pose a greater risk of transmitting serious vaccine-preventable diseases to other children and adults, regardless of the setting. The close interaction among children attending child care in a business facility does not differ from the close interaction among children in licensed child care facilities located in more traditional settings. Sharing of any indoor space for as little as five hours a week with a child who is infected with a disease—whether or not they have symptoms at the time—puts other children and adults at risk for disease.

Immunization requirements for child care facilities are an important safeguard that protects all children that attend the facility, their parents, child care operators, and the community. Section 3 of S.B. 254 would eliminate this safeguard and potentially create an unhealthy environment—not only for the children, but also for the employees and the patrons of the facility.

Section 3 places the community potentially at risk for disease with its only benefit being a seemingly convenient option for some parents. However, the reality is that the majority of parents believe in the public health benefits of immunization. They do immunize their children and want their children in facilities where other children are immunized. Passing S.B. 254 as written, and exempting children from being immunized in a specific child care facility, would be the same as exempting children from being safely belted into a car seat only on a specific street, although they had to be belted safely everywhere else in the community.

[Jennifer Stoll-Hadayia, continued.] For these reasons, and to protect the health of the children in our community, we urge the Committee to strike Section 3 of S.B. 254.

Chairwoman Leslie:

How did you come up with five hours per week being the threshold? That seems to be the difference between a fitness center and McDonald's, where children are playing on the same kind of equipment.

Janet Ford, Immunization Program Coordinator, Division of Community and Clinical Health Services, District Health Department, Washoe County, Nevada:

The five-hour figure was taken from our communicable disease investigation manual. If we were to have a case of pertussis in a day care setting, any other child that shared room space for five hours that week would have to be prophylaxed with antibiotic therapy because they would be considered a direct contact to the pertussis case. It doesn't take very much to pass that very contagious disease.

Chairwoman Leslie:

I'm struggling with the difference between a McDonald's and a fitness center.

Janet Ford:

The difference is that the McDonald's is not a child care facility licensed by the Washoe County Social Services. We can get our arms around licensed day care facilities because we know they are breeding grounds for disease. We can't get our arms around the entire planet, but we can do something about licensed day care facilities.

Assemblyman Mabey:

I'm a physician but not a pediatrician, so I'm not up to date on all of these. I'm just going down through this. Has there been a case of diphtheria in the state? I wouldn't think so. Tetanus? Probably not. Pertussis? That would be the concern. Polio? No. Rubella? No. How many cases of pertussis have we had in the state of Nevada in the past year?

Janet Ford:

In 2004 we had 12 cases of pertussis, and we fare pretty well compared to the country as a whole. There are huge pertussis outbreaks, largely in day care and school settings. Pertussis is on the rise in this country and has been for the last several years. It is a real concern. The benefit of immunizations is that we don't see these diseases. They are still there. Our children aren't protected, and to unlodge this would be taking a step in the wrong direction.

Assemblyman Mabey:

In schools, if parents don't want to immunize their children, what do the schools do?

Janet Ford:

The State of Nevada has two different allowable exemptions. One would be a valid medical exemption if your child is allergic to a component of the vaccine, or if there is some underlying condition that would prohibit safe immunization with a particular vaccine. That's allowed with a physician's note. The other is religious exemptions. Total medical and religious exemptions only amount to about 1 or 2 percent of the children in our schools and day cares. Otherwise, greater than 95 percent of those kids are up to date on their immunizations when they are legislatively required.

Assemblyman Mabey:

If a parent had a religious reason they didn't want to do this, could they still go to one of these athletic clubs?

Janet Ford:

Yes. They have to show up with a written statement stating that their child is not immunized by virtue of their religious beliefs, signed by the parent. We usually defer those to the Washoe County Social Services licensing folks.

Assemblywoman Angle:

I'm most concerned about this idea that they collect the records, but they don't do anything with them. That's frustrating for me. If you are going to collect them and not use them, what is the purpose of collecting? It's feel-good security rather than being really secure. I want you to address that.

Janet Ford:

Therein, to me, lies the problem. Passing legislation not to require immunization records doesn't fix the problem; it eliminates having to fix the problem. The problem is that licensed day care staffs at the health clubs aren't trained. In Washoe County, we have free training that is 90 minutes long. We offer credit to all licensed providers.

We also have tools that make it very easy to quickly scan by age and see if children are up to date. Also, a totally unimmunized child won't be able to provide any kind of an immunization record. That the parents have immunized at all usually indicates that they believe in immunizations and their children are somewhat protected. It's unrealistic to require a 16-year-old, part-time employee of a workout facility to know exactly what is required by age. There are some safeguards that can easily be in place. I think it's a doable thing,

especially here in Washoe County with what we have in the way of training and tools provided.

Jennifer Stoll-Hadayia:

The collection of the immunization records, in and of itself, is not a futile exercise. In the case of a communitywide outbreak of disease, it allows the Health District to follow up on contacts to potential disease. They do serve a purpose for us should we have a larger population wide outbreak of disease.

Chairwoman Leslie:

That made sense. That's the first thing that has made sense to me so far. What about out-of-state kids? Why do we not require immunizations from them? Is it because, in theory, they will be there just once?

Jennifer Stoll-Hadayia:

I don't think we can respond to that.

Chairwoman Leslie:

Is that the requirement in Washoe County as well?

Janet Ford:

I don't know how licensing in Washoe County handles that. I think they need to provide a record, even for drop-ins. We have plenty of kids who move here from out of state. Out-of-state kids are immunized as well, and their parents usually have records when they are seeking day care.

Assemblywoman Weber:

Is this situation unique to Nevada? What do other states do? There are health clubs in every state. Do we even know what our neighboring states are doing?

Chad Smith:

We have operated over 400 clubs across the United States. Nevada, as far as we can find—and we checked with our national trade associations—is the only state that has health clubs whose child accommodation facilities are regulated and monitored as child care facilities. California, Utah, Arizona, Illinois, and Idaho were the ones I spoke to within the last couple of weeks. They are entertained by the notion. Again, we have an unusual situation here in this state.

Chairwoman Leslie:

Ladies, did you provide this testimony in the Senate? [Ms. Ford responded in the negative.] Why not?

Janet Ford:

We were aware at that time that amendments could be made to this bill.

Chairwoman Leslie:

Let me say this publicly, because you are not the first ones. If people have a problem with a bill, they need to speak up when the bill is heard and not wait and dive-bomb it on the other side. I speak for every legislator. It happens to all of us. It is frustrating at this point to get major objections to a bill now when you didn't raise them before.

Bill Gregory, Legislative Advocate, representing Station Casinos, Inc.:

Addressing your last comment about testifying, we did not testify in the Senate, but we only oppose the amendment that was made. That will be our testimony.

Melissa Nelson, Director, Corporate and Government Relations, Station Casinos, Inc.:

To echo what Bill Gregory said, we did not oppose the bill in its original form because it specified health clubs. Currently, we do operate accommodation facilities at three of our facilities, with one more coming on line, for a total of four accommodation facilities at our various properties around the valley. We require all these immunization records, and we are operating at and actually exceeding the level of what is required of an accommodation facility. When we have parents dropping off their kids for three-plus hours to take advantage of the amenities at our properties, we have no problem with meeting the standards we currently have. We feel this would lessen those, and we definitely have concerns with that.

Chairwoman Leslie:

I thought you were speaking to the amendment. Isn't the amendment the part that has to do with the play equipment?

Melissa Nelson:

The amendment changed them from health care facilities and made them all accommodation facilities.

Sabra Smith-Newby, Legislative Advocate, representing the City of Las Vegas, Nevada:

We are in opposition. We did not provide testimony on the other side.

Chairwoman Leslie:

Opposition in general, or to something in specific?

Sabra Smith-Newby:

Our business licensing department under finance has prepared some testimony which basically goes this way: Recordkeeping, square footage, and toilet requirements for these accommodation facilities are already substantially less than the minimum required for fully licensed child care facilities. No logical reason exists why the children cared for in health clubs should be any less prone to communicable diseases or require less room than those in other accommodation facilities. No one would expect them to be less likely to need a toilet in these facilities either.

Adoption of this bill would allow child care for extended periods in facilities that are substantially below what the city and State licensing boards have already established as minimum standards. We understand there are a lot of hoops they have to jump through, but obviously the care of children is very important.

Chairwoman Leslie:

It sounds like you are opposed to everything in the bill. Is that right?

Sabra Smith-Newby:

Unfortunately, it sounds that way. We are still in the "moderately opposed" category.

Chad Smith:

Last week, we went in for a variance from the health department, because it requires us to do that if we want to do anything outside of regulations or the *Nevada Revised Statutes*. The health department agreed that it is unnecessary for us to provide bathrooms for infants or toddlers. They worked out language that said we needed to have one changing station with one lavatory for each one of the 15 children, rather than a full-service bathroom. They feel that this should be changed as well, and they want to change that in the local regulation. Child care licensing said it was a public health issue and they disagreed, but we have a tendency to lean more on what the health department says as far as public health goes. They think it makes sense and that the regulation should be revised.

Senator Nolan:

You always like to try to address people's opposition on the front end so you don't have to bring it over to the other house with issues. I think we'll leave it in your capable hands. It's just a question of what is reasonable and what is not reasonable and what works and doesn't work. If, truly, the requirement that we have in statute upon these different facilities to collect and store immunizations is somehow stemming from some type of outbreak of pertussis, then maybe it needs to be there. However, I think you heard enough testimony today that it's

not doing what it was intended to do, and we are unfairly burdening this particular business, which is providing an otherwise good service to the public.

Chairwoman Leslie:

We'll close the hearing on S.B. 254. There is a revised agenda: S.B. 197 is not going to be heard today. It is on the work session. We will open the hearing on S.B. 296.

Senate Bill 296 (1st Reprint): Revises provisions governing abuse or neglect of children. (BDR 38-372)

Jone Bosworth, Administrator, Division of Child and Family Services (DCFS), Nevada Department of Human Resources, State of Nevada:

[Read from prepared testimony, [Exhibit C](#).]

I'm here to speak to the amended S.B. 296 that revises provisions governing abuse or neglect of children, and to recommend a final revision to the bill. DCFS requested this bill to add provisions to the child protection statutes from the federal Child Abuse Prevention and Treatment Act (CAPTA) of 1974 (42 USC 5101). DCFS receives funding under CAPTA and must comply with the important new regulations and requirements regarding infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

DCFS also requested revisions regarding the Central Registry to allow employers to access child abuse and neglect information under certain circumstances.

Sections 1 through 5 of S.B. 296 pertain to the Central Registry. The revisions to the Central Registry were requested to reflect urban child welfare county agencies' use of the UNITY [Unified Nevada Information Technology for Youth] system, which is our child welfare information system, following the passage of A.B. 1 of the 17th Special Session. The amendment adds a necessary provision in Section 2, new subsection (2), that allows child welfare employees to access information in the Central Registry while in the performance of their official duties. Senate Bill 296 contains a new section that will allow prospective employers, under certain conditions, to contact DCFS for information regarding substantiated reports of child abuse.

[Jones Bosworth, continued.] Today, DCFS also requests removal of the clause on page 2, Section 2, lines 26 to 27, that reads: "(a) if the employer is required by law to conduct a background investigation of a person for employment purposes; or..." We believe this is too restrictive, because employers who may require criminal background checks may not require a child abuse/neglect registry investigation. The Central Registry captures substantiated child maltreatment that may not have also led to a criminal conviction that would be identified through a criminal background investigation.

Sections 6 through 15 of the amended bill pertain to infants. The bill adds language from CAPTA regarding "the needs of infants born and identified as being affected by illegal substances or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health care providers involved in the delivery of such infants notify the child protective services (CPS) system of the occurrence of such condition of such infants."

Under CAPTA, "the notification to child protective services about the occurrence of such condition of such infants shall not be construed to require prosecution for any illegal action." The intent of CAPTA requirements for such notification is to ensure that appropriate services and referrals are made for the mother and for the infant. The child welfare agencies will be able to develop a plan of safe care for "the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms."

Chairwoman Leslie:

I'm still trying to get through the part about the illegal substance. We are not criminalizing prenatal substance abuse, are we?

Jones Bosworth:

Absolutely not. The intent of this is to require, as the federal government has, that if a mother gives birth in the hospital, a medical professional—typically, it's due to actual drug screening—notifies child protective services. The intent is that CPS would help develop a plan of care to ensure safety of the child when the mother leaves the hospital.

Chairwoman Leslie:

I have to read that part again.

Assemblyman Mabey:

It seems like when I delivered a baby and I was concerned about this, the nurse would call CPS. Tell me what happens now if I suspect drug abuse.

Jone Bosworth:

Actually, we have no guarantee under Nevada statute that a medical professional will, in fact, report to us at this point. That is what we are intending to prevent by requiring those medical professionals to get in touch with CPS.

Chairwoman Leslie:

Where in the bill does it do that?

Jone Bosworth:

Page 5, Section 8, subsection (3).

Chairwoman Leslie:

Are we adding another requirement? Are we clarifying the duty to report of medical professionals? Is that what this is doing?

Jone Bosworth:

Yes, this enhances. Medical professionals are mandatory child abuse reporters under the current statutes. This includes, in Nevada statute, the prenatal illegal substance abuse and the requirement to report a reasonable suspicion of that.

Assemblyman Mabey:

What happens now? Let's say I don't have to do it, but I do; what happens?

Jone Bosworth:

What happens now is notification to the appropriate CPS or child welfare agency. They would come and explore with the mother and do an assessment with the mother as to what kinds of services might be helpful to her to ensure that the child can be safe. I know that one of the concerns is that this, somehow, will promote the removal of infants from new mothers in hospitals. I don't believe that's the federal statute's intent, nor would it be the intent of DCFS in proposing this.

Assemblyman Horne:

I have concerns about Section 2, page 2, subsection (b): "If the person who is the subject of a background investigation by the employer provides written authorization for the release of the information..." What if they don't provide written authorization?

Jone Bosworth:

That's a good question, if that's a requirement of the employer—for example, an employer who provides services for vulnerable Nevadans. I was required to undergo a NCANDS [National Child Abuse and Neglect Data System] check to serve in my position as the Administrator of DCFS, and if I had refused to do so, it would have been my employer's choice not to hire me.

Assemblyman Horne:

In all likelihood, they wouldn't hire you. Is this only dealing in that realm of employment, or is this expanded to other areas of employment where employers would do a background check?

Jone Bosworth:

I think that we want to encourage other employers to do NCANDS checks for the very reason that criminal convictions may not always occur when you have substantiated child abuse. For example, in a nursing home with vulnerable adults, an employer may want to require that that facility run a NCANDS check before hiring someone to work with those vulnerable adults. I think what we are really trying to promote is increased safety. For anyone working with children or others who could be considered vulnerable, the employer could then—while not required by law—run this Central Registry check to make sure there was no substantiated child maltreatment in that prospective employee's past.

Assemblywoman Parnell:

I have a couple of concerns with that. Say I'm 21, I'm the father, and I do something that is reported to this, and 10 years later, that shows up everywhere I go from then on. I have a problem with that. My reaction to this is: what does this really do for doctor/patient confidentiality? If I go to a doctor, that's a relationship I have with my physician that I honor and respect. To me, this proposed legislation is interfering with that relationship. That makes me feel uncomfortable.

Jone Bosworth:

Those are good questions. First, I would like to direct your attention to page 3. I think you're expressing concern about whether or not this would follow someone for a long period in their life. If you look under Section 4, subsection 2, after 10 years, the Central Registry record will be deleted. That will not follow you throughout your life. I think, too, it is the employer's choice as to whether or not they want to weigh the information carefully. This does not mandate that you cannot hire a person with a registry-substantiated child abuse or neglect. I think all the time employers make decisions about “was this eight years ago, when you were 21?” They would have the ability to make that

determination. This doesn't interfere with the prospective employer/employee relationship.

[Jones Bosworth, continued.] For the second component of that, under current statutes, physicians are already mandatory reporters of suspected child abuse/neglect. I don't think that this alters their relationship, in terms of patient/client confidentiality that currently exists.

Chairwoman Leslie:

Would you say that it clarifies the responsibility of reporting a drug-affected baby? They should be doing it now as mandatory reporters. This clarifies it?

Jones Bosworth:

Yes. I think this clarifies it with respect to infants born with identified prenatal illegal substance abuse.

Chairwoman Leslie:

There's a lot in this bill to mull over.

Assemblyman Horne:

I am conflicted. I would like the higher protection for people who would serve in these areas of employment, but I'm also concerned about instances where child abuse or neglect could be substantiated, but the person of interest or investigation may not be the person who is responsible for the substance abuse or neglect. When I was in law school, I practiced in our child welfare clinic. I had a client whose child had been physically abused. That was substantiated, but what was not substantiated was whether she, her boyfriend, or an older sibling had done it. The way I read this, the mother and the boyfriend could be negatively affected if they were seeking employment somewhere. That unintended result is what gives me pause.

Jones Bosworth:

I don't have a response to that except to reiterate that the employer has the option of weighing that information. In the case of your past client, they would have been able to talk to the prospective employer who got that information. They would have had an opportunity to discuss it, and it would have been up to the employer to decide whether or not to hire her.

Mike Capello, Director, Department of Social Services, Washoe County, Nevada:

One of the things that CAPTA required several years ago that wasn't in place before is that anyone who is substantiated through the administrative process is advised of that. We send letters by registered mail. They are advised of their right to appeal that decision through the standard fair hearing process, where

the rules of evidence under the fair hearing process, as set out in NRS [*Nevada Revised Statutes*], are followed. There is really a prescribed process for those individuals to be notified, notified of their right to appeal, and to have a fair hearing in front of an independent hearing officer, where those decisions are made outside of the family court process. There are protections in place to ensure that the criteria used to determine or substantiate whether someone is abused or neglected are subject to that kind of review.

Chairwoman Leslie:

Jone, these are CAPTA requirements. What happens if we did not accept any of these? Do the feds withhold our funds? [Ms. Bosworth replied in the affirmative.] How much money is at risk?

Jone Bosworth:

I had that off the top of my head on the Senate side, but it slipped my mind now. I believe it is \$1 million. We can get that information to you.

Chairwoman Leslie:

Would the amendment you are suggesting still keep us in compliance with the CAPTA requirements? [Ms. Bosworth replied in the affirmative.]

We'll close the hearing on that bill and move to the third and final bill of the day, S.B. 402.

Senate Bill 402 (1st Reprint): Makes various changes concerning protection of children from abuse and neglect. (BDR 38-1306)

Chairwoman Leslie:

The description of S.B. 402 sets the topic but doesn't really tell us much. This is a committee bill from the Senate. We will take testimony in opposition to the bill. You don't have to explain it section by section because it is not your bill, but can you tell us generally what the bill is about?

Kristin Erickson, Legislative Advocate, representing the Nevada District Attorneys Association:

Senate Bill 402 basically adds a new section to the statute to provide training to people employed by child welfare agencies who will be investigating abuse and neglect of children. Upon making contact with someone who may be a suspect of abuse or neglect, they are being asked to provide the constitutional, statutory, federal, and State rights to this suspect who is being investigated. This is pursuant to the training that they will have received.

[Kristen Erickson, continued.] We have a couple issues with that. First of all, the protection of our children is of utmost importance. Training child welfare workers in aspects of the law and then asking them to relay that information to suspects of child abuse and neglect may pose a chilling effect on investigations. They are advising the suspects of their federal constitutional rights and their statutory rights. By doing that, they may be encouraging them not to cooperate with investigating officials.

Our second concern regarding this piece of legislation is that by advising them of their constitutional and statutory rights, they may be getting precariously close to providing legal advice or at least being accused of acting as an attorney. Those are our concerns at this time.

Chairwoman Leslie:

So, the bill is about training employees of the child welfare agency to advise people who are suspected of child abuse and neglect as to their legal rights. Is that right?

Kristin Erickson:

That is certainly one aspect of the bill, and it is the aspect we are most concerned with.

Chairwoman Leslie:

What section is that in?

Kristin Erickson:

Specifically, page 2, Section 2, line 12; on page 3, Section 3, line 14; and also page 4, Section 5, line 30. Those sections each deal with legal rights.

Chairwoman Leslie:

Was this issue discussed in the Senate?

Kristin Erickson:

Unfortunately, this particular bill happened to slip under our radar, and we weren't even aware of it until this morning.

Lieutenant Stan Olsen, Commander, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada; and Legislative Advocate, representing Nevada Sheriffs' and Chiefs' Association:

We will echo the concerns of the District Attorneys Association. We don't have any issue if somebody wants to develop or send out a pamphlet that advises people of this. If we have to go in and tell somebody up front during an

investigation, even if they are not a suspect yet, they are going to shut down on us and we will have problems with the investigation.

Chairwoman Leslie:

Wasn't there also an issue about nonattorneys providing legal advice?

Stan Olsen:

The district attorney and I discussed a concern about that, but there has been a bill every session about people who are not attorneys giving legal advice and such. It steps on some other toes. Our concern is being able to show who the suspect is and being able to charge the appropriate person. In the beginning, it's a very broad investigation until we narrow down who the suspect may be. With this bill, we will just have everybody running away from us.

Chairwoman Leslie:

Since you did not present this testimony in the Senate, I would ask each of you to go back to Senator Washington, since it came from his committee, and make sure he is aware of your objections to the specific sections. Can someone else tell us about the pamphlet? Jone, is your office involved in developing the pamphlet?

Jone Bosworth, Administrator, Division of Child and Family Services, Nevada Department of Human Resources:

Yes, we did provide testimony on the Senate side, and yes, the child welfare agencies in Nevada do in fact, when they go out to do an assessment or investigation with families, currently provide them information. That is, this is contained within the training that we give to child protective service workers. We don't have the right to enter your house. We explain that we are there to talk with you about some concerns; some allegations have been made about child abuse or neglect. That is the first component of it. We already provide that training for our staff, and we do already have written materials on the rights of parents if they become involved with CPS.

Chairwoman Leslie:

Are you saying between the lines that you don't think this is necessary since you already do it? Does this bill go beyond that? It says the information has to be available in English and any other languages you determine are appropriate. Is the information that is outlined in this bill consistent with what you are already doing?

Jone Bosworth:

I'm not sure that it is completely consistent. It is important to recognize that we need to have the information in English and other languages so we can communicate effectively with clients. The Division also raised, on the Senate side, some concerns about requiring child welfare workers to know the law well enough or to be perceived as, in effect, Mirandizing families when we go out and talk with them. This is something we don't want to put our social workers in a position of doing.

Chairwoman Leslie:

That was the other part of the bill. In terms of the information in the pamphlet, is it in regulation now that every child welfare agency has to do that, or is it just done?

Jone Bosworth:

Theresa Anderson [Deputy Director, Division of Child and Family Services] is here, and she reminded me that under CAPTA, we are supposed to advise our social workers to provide this information to families. In our current information that we provide, I am not sure it gets to the constitutional rights, but we—and also the two child welfare agencies in the urban centers—currently do provide this information.

Chairwoman Leslie:

Washoe County and Clark County already do it? [Ms. Bosworth responded in the affirmative.] What would be your position on this part of the bill? Because of CAPTA, does it need to be in the law? Is it sufficient the way things are right now?

Jone Bosworth:

From a legal standpoint, I think that as long as we are in compliance with CAPTA through administrative agency procedures, we are probably all right. I'm not sure that needs to be in statute to be in compliance.

Chairwoman Leslie:

That's what I was getting at. Senator Washington, we are on S.B. 402, and we heard some objections to the legal part of the bill. The District Attorneys Association and the Sheriffs' and Chiefs' Association will be talking to you about that, because they said this bill skipped under their radar, but we would be happy to take any testimony that you have.

Senator Maurice Washington, Washoe County Senatorial District No. 2:

That's unfortunate; we did post it on the agenda. They should have been watching the agenda and paying attention. Actually, this bill came to us, and I

really don't remember who sponsored the bill. I don't know if DCFS did it or not. I think it was Washoe County Child Protective Services.

Chairwoman Leslie:

It's a CASA [Court Appointed Special Advocates] Foundation bill.

Senator Washington:

This bill provides a pamphlet of information for those parents who have been charged or have allegations of child abuse or neglect. The pamphlet has to be stated in English and a language that they can understand. It also provides some contact information for agencies that might be able to assist, aid, or help them—whether it's Clark County or Washoe County legal services—and how they might obtain the charges that have been levied against them. It's a simple pamphlet. It provides for training of workers. The line workers actually present this information to those who are being accused of these allegations. It's a simple bill and it's a simple pamphlet.

Assemblyman Horne:

This does walk terribly close to unauthorized practice of law. It's not illegal to give legal information as opposed to legal advice. When you place somebody in that position, particularly a social worker or whatever, the person on the other end who is receiving the information doesn't tend to yield at that stage. You give them a piece of information, and they press you wanting more. I think it may lead to a well-intended worker giving advice instead of information. That's where the problem lies. If you say, "The law says this," that's just giving you the information. If the person then says, "Then should I do this? What should I do?" Because of them seeking the help, you step over the line. That's the danger here.

Senator Washington:

From the testimony that we received concerning this bill, the worker in this case—from CPS or maybe DCFS—goes out to investigate or levy the allegations against the individual being charged with child abuse or neglect. They have been trained to hand out this pamphlet and provide them with the information. They are not giving legal advice, because that is neither their realm nor their field of expertise. The pamphlet will have the information about who they may contact if they are seeking legal advice. According to the testimony, in order to cover any liability, this training would provide these individuals the necessary response if an inquiry is made for legal advice or legal information. Their response would be, "It's in the pamphlet. Here is the information provided for you. Here are the people or the agencies that you can contact."

Chairwoman Leslie:

Is there anyone else who would like to testify for or against S.B. 402? Seeing none, we will close the hearing on S.B. 402 and move to our work session ([Exhibit D](#)). We will begin with S.B. 23.

Senate Bill 23 (1st Reprint): Authorizes certain persons with physical disabilities to use signature stamps under certain circumstances. (BDR 38-690)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 23 concerns signature stamps and making them legal under certain circumstances. The testimony included a statement by Jack Mayes, Executive Director of the Nevada Disability Advocacy and Law Center, who explained that the idea for this bill came from a woman who used a signature stamp routinely because she had multiple sclerosis, a disability that made it difficult for her to sign her name. She was not allowed to use this stamp when she was trying to vote. Further investigation indicated that in Nevada, these stamps were typically not considered to be used as replacement for a signature. The Committee received additional testimony in support. It received no testimony in opposition. So far, no proposed amendments have been received.

ASSEMBLYWOMAN PARNELL MOVED TO DO PASS
SENATE BILL 23.

ASSEMBLYWOMAN KOIVISTO SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy and
Assemblywoman Pierce were not present for the vote.)

Chairwoman Leslie:

We will go to S.B. 24 ([Exhibit D](#)).

Senate Bill 24: Increases period of validity of expedited service permits for certain persons with disabilities. (BDR 38-691)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:

Senate Bill 24 increases the period of validity for expedited service permits for persons with disabilities. Currently, the expedited service permits are good for two years. They are obtained from the Department of Motor Vehicles (DMV), which is the same place people obtain special driver's license plates, stickers,

and placards for people with disabilities, allowing them to park in areas reserved for the handicapped. Robert Desruisseaux, community advocate for the Northern Nevada Center for Independent Living, testified on behalf of this bill, which was proposed on behalf of the Legislative Committee for Persons with Disabilities. He stated that this legislation would conform the two expiration dates to eliminate extra trips to the DMV.

[Barbara Dimmitt, continued.] During the hearing, Ms. Parnell asked who or what defined a permanent disability for purposes of obtaining one of these permits. On the next page, you'll see two sections of NRS [*Nevada Revised Statutes*]. These are the exact same definitions used in obtaining the parking placards or permits. You have to be unable to walk as defined, and your disability has to be certified by a physician as being irreversible. There was no testimony in opposition, and no amendments have been received.

Chairwoman Leslie:

That definition of permanent disability is what we were looking for.

ASSEMBLYMAN HORNE MOVED TO DO PASS SENATE BILL 24.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy and Assemblywoman Pierce were not present for the vote.)

Chairwoman Leslie:

We will go to S.B. 68 ([Exhibit D](#)).

Senate Bill 68: Revises provisions concerning licensure of facilities which provide surgical treatment for refractive errors of eye. (BDR 40-263)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:

This bill adds two types of surgical procedures to the procedures that require a surgical treatment facility to be licensed under the Health Division. Jeanette Belz, Nevada Ophthalmological Society, testified that the bill amends the law to include conductive keratoplasty and implantation of an intraocular lens. One thing that the bill also did was to require additional procedures or treatments that met the approval of the U.S. Food and Drug Administration (FDA) to be included through regulatory additions.

[Barbara Dimmitt, continued.] Assemblyman Mabey questioned whether or not the FDA actually approved procedures or techniques, because as a physician, he felt that these things were gradually developed and didn't necessarily have to have FDA action. Assemblyman Hardy expressed similar concerns. As a result, Senator Titus has submitted a proposed amendment ([Exhibit E](#)) to S.B. 68 that would delete subsection 5 of Section 1 of the bill, lines 5 through 7. That was the provision that referred to the FDA. In substitution, the bill would add another sentence that says, "Any other procedures as may be established by the Health Division by regulation." Presumably, this would go through the normal regulatory process.

Chairwoman Leslie:

Dr. Mabey, what do you think of that amendment? Does that answer your concern?

Assemblyman Mabey:

I think it's much better.

ASSEMBLYWOMAN McCLAIN MOVED TO AMEND AND DO PASS
SENATE BILL 68.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy and
Assemblywoman Pierce were not present for the vote.)

Chairwoman Leslie:

We'll go to S.B. 197.

Senate Bill 197 (1st Reprint): Provides for establishment of State Program for Fitness and Wellness and Advisory Council on State Program for Fitness and Wellness. (BDR 40-36)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:

Testimony received by Alexander Haartz indicated that the experience of the Division, with a similar type of program involving arthritis prevention and control, had provided opportunities for Nevada to bring in federal and private grant funds. We did receive additional testimony in support, but no testimony in opposition. No amendments have been received.

ASSEMBLYWOMAN McCLAIN MOVED TO DO PASS
SENATE BILL 197.

ASSEMBLYWOMAN WEBER SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy and
Assemblywoman Pierce were not present for the vote.)

Chairwoman Leslie:

The last bill of the day is S.C.R. 3.

**Senate Concurrent Resolution 3 (1st Reprint): Designates the second
Wednesday in April as "Service Animal Recognition Day." (BDR R-693)**

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:

Testimony was heard from a number of organizations listed in your work
session document ([Exhibit D](#)). We did not receive any testimony in opposition,
nor have any amendments been received to date.

ASSEMBLYWOMAN PARNELL MOVED TO DO ADOPT
SENATE CONCURRENT RESOLUTION 3.

ASSEMBLYWOMAN ANGLE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Hardy and
Assemblywoman Pierce were not present for the vote.)

Chairwoman Leslie:

Is there any other business to come before the Committee? Seeing none, we are adjourned [at 2:58 p.m.].

RESPECTFULLY SUBMITTED:

Julie Morrison
Committee Manager

APPROVED BY:

Assemblywoman Sheila Leslie, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 2, 2005

Time of Meeting: 1:35 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 254	B	Janet Ford / Washoe County District Health Department	Prepared testimony
S.B. 296	C	Jone Bosworth / Division of Child and Family Services	Prepared testimony
S.B. 23 S.B. 24 S.B. 68 S.B. 197 S.C.R. 3	D	Barbara Dimmitt / LCB	Work Session Document
S.B. 68	E	Senator Titus	Proposed amendment