

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-third Session
May 9, 2005**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Monday, May 9, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Assembly District No. 31

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Chris Escobar, Attorney
Rick Perry, Director, Church of Jesus Christ of Latter-day Saints Family Services
Eric Stovall, Attorney

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Cynthia Lu, Chief Deputy Public Defender, Public Defender, Washoe County
Angela Chalmers

Lucille Lusk, Nevada Concerned Citizens

Helen A. Foley

Susan Hallahan, Chief Deputy District Attorney, District Attorney, Washoe County

Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Nevada Supreme Court

CHAIR AMODEL:

The hearing is opened on Assembly Bill (A.B.) 51.

ASSEMBLY BILL 51 (1st Reprint): Provides certain procedures relating to agreements for postadoptive contact. (BDR 11-457)

ASSEMBLYMAN BERNIE ANDERSON (Assembly District No. 31):

I will present my written testimony ([Exhibit C](#)) explaining A.B. 51. When I read the Nevada Supreme Court's decision several sessions ago, I was struck by how difficult it must be for a parent to give up a child. The birth parents desire to place the child correctly, only to find the adoptive parents will not cooperate with the contract. At the same time, I do not want to discourage people from adopting and acting in a child's best interest. They should have all the legal support possible. I do not want anyone to be lied to, which has happened in some instances. There are always a few bad apples that cause problems.

CHAIR AMODEL:

The written testimony of Law Professor Annette Appell ([Exhibit D](#), original is on file at the Research Library) will be part of the record of today's hearing.

CHRIS ESCOBAR (Attorney):

As a practicing adoption attorney in Las Vegas, I believe A.B. 51 will clarify the issue raised by the Supreme Court. It fairly balances the rights of adoptive parents with the need to enforce contracts entered into between the natural and adoptive parents. On that basis, with the changes made by the Assembly subcommittee, it is appropriate A.B. 51 be passed.

SENATOR CARE:

What is the capacity of the contract in the event the natural mother or father is a minor?

MR. ESCOBAR:

Currently, minors have the ability to relinquish or consent to the adoption of their children. Although there is an argument that minors do not have the capacity because they are under the age of majority, in the adoption arena they have the ability to consent, which is a recognized exception to the typical rule that minors are unable to contract. If it is incorporated into the adoption decree by the judge, it will be enforceable.

RICK PERRY (Director, Church of Jesus Christ of Latter-day Saints Family Services):

I am present today to observe the proceedings. We participated on the Assembly side when A.B. 51 was proposed. There were many adoptive applicants who had concerns about the bill in its original form. We appreciate the work done by the Senate Committee on Judiciary and the Assembly subcommittee, who carefully listened to our testimony and incorporated our concerns into the revisions put into the bill.

Assembly Bill 51 permits postadoptive contact agreements, but we do not believe they will be commonly practiced. We do not want a lot of attention drawn to this option because we expect the majority of adoptive couples will find it difficult to enter into a legally binding contract. The bill provides an option for those who may feel it is a necessity or requirement.

SENATOR CARE:

Am I correct in my understanding that section 2 of A.B. 51 indicates there could be two contracts, one between the natural father and adoptive parents and one between the natural mother and adoptive parents?

MR. PERRY:

That is correct. They could also enter into a collective agreement, should it be their desire.

CHAIR AMODEI:

I understand section 2 of A.B. 51 says "may," which provides an option. You mentioned something about not emphasizing the option, or it would not be used often. Is that a preference on your part? Would you elucidate a little more.

MR. PERRY:

We oppose a regulation that would inform birth mothers of an option to enter into an enforceable postadoptive contact agreement. Latter-Day Saints (LDS) Family Services will not participate in enforceable contracts in which people could be taken to court for violating them. It is not something we intend to present. However, should a birth mother refuse to place her child for adoption unless there is a contract, it would be incumbent upon LDS Family Services, as an agency, to decide whether or not services would be provided to her. It is our hope these contracts will be entered into on rare occasions, with that understanding, we support A.B. 51 and the amendments. In any event, we will abide by the conditions should there be a contract.

ERIC STOVALL (Attorney):

I am a private attorney in Reno and a member of the American Academy of Adoption Attorneys. I practice adoption law and represent both adoption agencies and adoptive parents. I support A.B. 51.

I was the attorney in a 3-year case that inspired A.B. 51, wherein I observed the emotions and difficulties of adoptive parents versus natural parents. Their desires for the well-being of the child were amenable at first, but later went in opposite directions causing conflict. Assembly Bill 51 solves conflicts by providing a postadoptive contact agreement between the natural and adoptive parents at the beginning of the adoption process. It is an excellent way to head off problems. Also, in the future, if the adoptive parents wish to change the contact agreement, A.B. 51 would allow modification. Therefore, A.B. 51 provides a contact agreement for the parties with the potential to change it should it be in the best interest of the child.

SENATOR CARE:

If the adoptive parents move to another state and there is a dispute with the natural parent(s), which state would have redress?

MR. STOVALL:

The jurisdiction would be Nevada.

SENATOR CARE:

I am thinking in terms of uncooperative parents ten years down the road, wherein the redress for the natural parent would be the courts in Nevada and

the adoptive parents could attempt to enforce the agreement in the other jurisdiction. Is that the way it would work?

MR. STOVALL:

That is how I would proceed with it.

CYNTHIA LU (Chief Deputy Public Defender, Public Defender, Washoe County):

I submitted my prepared presentation ([Exhibit E](#)) in support of A.B. 51. A lot of work has gone into the bill through the Assembly and Assemblyman Anderson. In my field of practice, I represent parents in abuse and neglect cases under *Nevada Revised Statute* (NRS) 432B. Many of our cases result in recommendation for adoption for families who cannot be reunified. When given the option of a postadoptive contact agreement, many parents relinquish their parental rights rather than undergo a termination of parental rights trial. This has cleared up court and attorney time and there have been fewer trials since incorporating these agreements and adoption orders. Therefore, as a matter of practice in my arena, A.B. 51 would produce a forum where adoptive contact agreements would be used frequently.

I also think A.B. 51 protects birth and adoptive parents, as well as children. I am pleased we arrived at a bill that all groups, even in the private adoption arena, can support. This bill will have a positive effect in the State of Nevada.

ANGELA CHALMERS:

I submitted my written testimony ([Exhibit F](#)) which relates my tragic personal story. As Mr. Stovall explained, it was three years of court battles during which I was the plaintiff and he the defense attorney. Although he represented the adoptive parents and the agencies, Mr. Stovall has compassion for what I suffered. This is a case of two sides coming together, which means a lot. [Exhibit F](#) includes a copy of my postadoptive contact agreement.

I know these contact agreements are offered every day in the State to birth parents who must give up their children due to crisis situations. I hope you find the bill necessary, rational and reasonable, and I ask you to support it.

SENATOR CARE:

Mr. Stovall, do you agree with Mr. Escobar, or would you feel more comfortable if additional language clarifies that a minor birth parent would have the capacity to enter into one of these contact agreements?

MR. STOVALL:

Mr. Escobar was correct in saying there is no provision for a minor birth parent. However, language in the present statute allows a minor to sign a relinquishment or consent for adoption; reaching the age of majority would not be a reason to rescind or revoke it. It would not be wrong to add language that a minor could execute a postadoptive contact agreement which could prevent the problem of leaping between statutes. In my opinion, it is not absolutely necessary, but the addition would not be out of line.

LUCILLE LUSK (Nevada Concerned Citizens):

We support A.B. 51 in this form. The Assembly put a great deal of work into the original version of the bill which contained many concerns. This version of A.B. 51 provides a mechanism to enforce a postadoptive contact agreement, and protects the essential right of adoptive parents to make decisions they believe are best for their children. Assembly Bill 51 is now written to prevent unwarranted court challenges and eliminate the possibility of a birth parent using the court to create custody or visitation battles after an adoption is finalized. It is important to understand that no agency is required to utilize postadoptive contact agreements, which preserves all adoption options. Where postadoptive agreements are deemed helpful, such as in the case of State agencies, they will be available and used fairly often. For private agencies that prefer closed adoptions, they will not be used often, if at all.

HELEN FOLEY:

I am the mother of two adopted children. In the Assembly, there was a lot of emotion and drama involving A.B. 51. While we appreciate the attempts of the Washoe County Public Defenders Office to streamline and fast-track these adoptions, we saw some problems. When a parent's rights are terminated, it means they are unfit; in many situations, it is their death penalty for parenting. Therefore, an attempt to work out a quick deal with abusive or neglectful parents and have it binding in court until the child is 18 years of age is a serious matter.

An adoptive mother who testified during Assembly hearings said the baby girl she adopted at the age of 18 months had been left without food or water for 4 days. If the birth mother had been mandated to have a postadoptive contact agreement, or would not relinquish her rights and go to court, it would have been a scary situation and the adoptive mother would not have agreed. The court system has safeguards with judges, social workers and others who

determine what is truly in the best interest of the child. The case of a newborn with an abusive parent may not get into the court system and the relinquishment may happen right away. However, a judge may not be immediately involved to look at the factors, or a social worker to delve into the fitness of the mother to determine whether she would have the ability to ever see the child again.

We were frightened that agencies would be mandated to inform a birth mother of her right to a postadoptive contact agreement. I cannot imagine anything more difficult in life than giving up a child. Even if the natural parent wants to give the baby up and run away, if told they had the right to a postadoptive contact agreement, the vast majority of mothers would do it. Consequently, the adoptive parents would have the court over their heads for 18 years because a contract was signed. The parents did not divorce, it is not a child custody issue and the adoptive parents are 100-percent parents of the child. It was a scary situation thinking the best interest of the child would be determined by a court for the next 18 years.

We worked closely with the subcommittee, Assemblywoman Francis Allen, Assemblymen Bernie Anderson and Marcus Conklin. We feel A.B. 51 is a good resolution. If someone signs a contract, it should mean something. When individuals who relinquish the rights to their children believe they will have the opportunity to see their children, receive pictures or whatever, it should be mandated. We support the postadoptive contact agreement when the situation is appropriate. We are also pleased social service agencies, such as Catholic Charities or LDS Social Services, are not mandated to provide this information to an adoptive mother. If the birth mother wants it, the agency can decide whether or not to move forward; otherwise, the birth mother is free to go elsewhere to obtain the contract.

SENATOR WIENER:

Would the agency have the discretion to make the offer of a postadoptive contact agreement to the natural parent if it is deemed appropriate, or would it be only upon request of the relinquishing parent?

MS. FOLEY:

Each agency is different and may determine whether or not they want to get into postadoptive contact agreements. Catholic Charities encouraged adoptive parents to be as open as they wished. Many times adoptive parents are linked

with the birth mother prior to birth and may have as open an adoption as the birth mother desires. If the birth mother tells the agency she wants to relinquish the rights to her baby, but would like to receive occasional pictures, or see the child x number of times, or any other type of thing, the agency will find a couple willing to have that type of relationship.

Some agencies feel comfortable with a postadoptive contact agreement as part of the adoption decree; however, it would depend on the circumstances. Catholic Charities would be flexible and allow some postadoptive contact agreements. I have a postadoptive contact agreement with my second child, although it is not part of the record. The birth mother's rights were terminated, she relinquished the child, and her public defender in southern Nevada wanted a postadoptive contact agreement. Ironically, Catholic Charities had never done one before, and I lobbied against it last Session.

Early in the process of A.B. 51, we were told postadoptive contact agreements would be voluntary. The day before I was due to receive my baby, a postadoptive contact agreement was sprung on me. That was not voluntary. I could not refuse the child. There was so much at stake. It is important for adoptive families to understand the process and know about the possibility of the agreement before they become invested in the child. Assembly Bill 51 is good legislation. There should be no lies when a child is relinquished. People should know what they are getting into and have the court back it up.

CHAIR AMODEI:

From testimony, it seems some of the private agencies have no intention of making the postadoptive contact agreement part of their advisement. I am not making a policy statement; but it seems odd to put a law into place that will not be used. Maybe I misunderstood the testimony. If something is put in statute, it should not be done with a wink, a nod and the hope nobody reads that section of the law.

MS. FOLEY:

I appreciate your concern; however, I had the opposite concern with the original bill. Although voluntary, if every agency must offer people the opportunity to have a postadoptive contact agreement, in a way, it almost becomes mandatory. The Las Vegas Yellow Pages has page after page of attorneys in California and adoption agencies in Utah encouraging people to come to them, promising all expenses will be paid for the pregnancy, and so forth. I suppose

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these entities will now mention postadoptive contact agreements, and those who want them will go to those agencies and/or attorneys. I am equally sure if a mother went to an agency that did not deal in postadoptive contact agreements and she asked for one, they would tell her it was not their policy and suggest other locations. In any event, the word will get out, and people will become knowledgeable when faced with the situation.

CHAIR AMODEI:

The hearing is closed on A.B. 51 and opened on A.B. 473.

[ASSEMBLY BILL 473 \(2nd Reprint\)](#): Revises certain provisions governing payment of child support. (BDR 11-1373)

SUSAN HALLAHAN (Chief Deputy District Attorney, District Attorney, Washoe County):

I will present my written testimony ([Exhibit G](#)) in support of A.B. 473.

SENATOR WIENER:

This is the second reprint of A.B. 473; would you explain what happened in earlier iterations?

MS. HALLAHAN:

In essence, the first proposal attempted to mirror the language of the intra-statute, which indicates interest is mandatory unless the court finds the obligor, the responsible parent, would experience undue hardship. The Assembly Committee on Judiciary was concerned with giving the court such broad discretion by allowing it to waive a penalty because it would be like a late fee which would encourage timely payment. With the help of the Nevada Trial Lawyers Association and the State Welfare Division, we attempted to reword the language to limit the payment to more specific circumstances. The present language was proposed, with the assistance of the Legislative Counsel Bureau, to limit the payment to the way the employer sends the money, which is the cause of the delay in payment and outside the control of the responsible parent.

SENATOR CARE:

What hammer is used when the employer resists?

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MS. HALLAHAN:

Currently under NRS 31A, the employer is required to send each payment within a certain period of time. If they fall outside that time period, the court can be asked to hold the employer in contempt, and the sanction is a \$1,000 fine against the employer for each payment not sent on a timely basis.

CHAIR AMODEI:

What is the Committee's pleasure on A.B. 473?

SENATOR WIENER MOVED TO DO PASS A.B. 473.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MCGINNESS AND NOLAN WERE ABSENT FOR THE VOTE.)

The hearing is closed on A.B. 473 and opened on Assembly Concurrent Resolution (A.C.R.) 2.

ASSEMBLY CONCURRENT RESOLUTION 2: Requests Nevada Supreme Court to review manner in which district courts receive and decide petitions to open files and records of courts in adoption proceedings and report its findings to Legislature. (BDR R-883)

RON TITUS (Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Nevada Supreme Court):

We are not opposed to doing the study; though happy to do it, we are a little disappointed the Legislature feels it has to pass a resolution to have us do so.

SENATOR CARE:

Has the Legislature ever told another branch of government to do a study upon its own records? It makes me uncomfortable unless there is a precedent.

CHAIR AMODEI:

Assembly Concurrent Resolution 2 was the request of an interim committee. The objective is to have the Nevada Supreme Court take a look at the issue and

come to whatever conclusion it sees fit. Would you be willing to discuss it with the Chief Justice and other members of the Court?

Ms. LUSK:

This was not our bill, but we participated in the discussions in the Assembly. There has been a great deal of conflicting information regarding what happens when a petition goes to court for opening adoption records. The genesis was simply to find out what really happens from an authoritative source. We have no particular desire to pass an unnecessary resolution, but we would like to see the information.

Mr. TITUS:

We will do the study whether or not A.C.R. 2 passes. If the Committee would like a letter from the Chief Justice or me, it will be provided. The study will not be difficult because we have already done some preliminary planning.

CHAIR AMODEI:

For the record, would you indicate whatever work product you accomplish will be ready for evaluation by the 2007 Legislature?

Mr. TITUS:

Yes, I will indicate such.

CHAIR AMODEI:

What is the pleasure of the Committee in regard to A.C.R. 2?

SENATOR CARE MOVED TO INDEFINITELY POSTPONE A.C.R. 2.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR WIENER VOTED NO.
SENATOR NOLAN WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:

There being no further business to come before the Committee, the hearing is adjourned at 10 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____