

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

**Seventy-Fourth Session  
March 14, 2007**

The Committee on Health and Human Services was called to order by Chair Sheila Leslie at 1:35 p.m., on Wednesday, March 14, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Sheila Leslie, Chair  
Assemblywoman Susan I. Gerhardt, Vice Chair  
Assemblyman Bob L. Beers  
Assemblyman Joseph P. (Joe) Hardy, M.D.  
Assemblywoman Ellen Koivisto  
Assemblywoman Kathy McClain  
Assemblywoman Bonnie Parnell  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Valerie E. Weber  
Assemblywoman RoseMary Womack

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Barbara E. Buckley, Clark County Assembly District  
No. 8

**STAFF MEMBERS PRESENT:**

Sarah J. Lutter, Committee Policy Analyst  
Katrina Zach, Committee Secretary

Minutes ID: 349



Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Barry Smith, Executive Director, Nevada Press Association, Carson City  
Darryl Martin, Assistant County Manager, Office of the County Manager,  
Clark County, Las Vegas, Nevada  
Thomas Morton, Director, Department of Family Services, Clark County,  
Las Vegas, Nevada  
Michael J. Willden, Director, Department of Health and Human Services,  
Carson City, Nevada  
Barbara Legier, Deputy Administrator, Division of Child and Family  
Services, Department of Health and Human Services, Carson City,  
Nevada  
Mike Capello, Director, Washoe County Department of Social Services,  
Reno, Nevada  
Glenn Campbell, Independent Child Welfare Activist, Private Citizen, Las  
Vegas, Nevada  
Robert Teuton, Assistant Director, Family Support Division, Clark County  
Office of the District Attorney, Las Vegas, Nevada  
Gary Peck, Executive Director, American Civil Liberties Union of Nevada,  
Las Vegas  
Deborah Agosti, Chair, Blue Ribbon Panel, Nevada  
Renee Ruiz, Government Affairs, Service Employees International Union,  
Las Vegas, Nevada

**Chair Leslie:**

The Committee will come to order, please. [Roll.] We will open the hearing on Assembly Bill 261.

**Assembly Bill 261: Makes various changes to provisions relating to child abuse and neglect. (BDR 38-870)**

**Assemblywoman Barbara E. Buckley, Clark County Assembly District No. 8:**

[Submitted ([Exhibit C](#)).] Assembly Bill 261 came from the Subcommittee to Oversee the Consultant to Study the Health, Safety, Welfare, and Civil and Other Rights of Children in the Care of Certain Governmental Entities or Private Facilities. This is probably the longest named subcommittee in legislative history. Assembly Bill 261 deals with the disclosure of records, and the purpose is to provide as much disclosure as possible with regard to children who suffer fatalities or near fatalities while in the care of the child welfare system.

The committee members were extremely frustrated when they tried to get information on what happened to children who died or who nearly died while in the custody and care of the welfare system. We felt stymied in our efforts to secure this information. On some occasions, we were told federal or state law prohibits the release of information. There were other times we were told the information should be released and was released, but it was released in such a cursory manner. If you called it perfunctory compliance, that would be kind. It was deplorable in its scantiness; the information provided did not tell you what happened to the child. Assembly Bill 261 seeks to reverse the trend of hiding this information, and allows all information that is allowed by federal law to be released to the public.

Since the bill's introduction, we have worked tirelessly to broaden it further. There is a mock-up of the bill. We contacted Joan Ohl from the Division of Children and Families at the United States Department of Health and Human Services, and she is familiar with the situation in Nevada. The chair of the Blue Ribbon Panel said that openness and transparency of Nevada's child welfare system is one of the top concerns of the federal government. They believe, as do we, that it will be one of the first steps in restoring trust in the system.

Assembly Bill 261 does three things. First, it authorizes the release of certain information to federal, state, and local agencies to assist in locating a missing child who is the subject of an investigation of alleged abuse or neglect. Second, it authorizes the release upon request of data or information concerning reports and investigations to any member of the general public if the child who is the subject of a report of abuse or neglect suffers a fatality or near fatality. The mock-up lists the items that need to be released: date of birth, date of incident, cause, whether the child welfare agency had contact with the child, whether the agency made a referral for child welfare services for the family, whether the agency took any other actions concerning the welfare of the family, the summary of the status of the child's case, and the agency's actions in response to the fatality or near fatality of the child. The exemptions include the identity of the child, the identity of the reporter, any privileged communications under law, and anything that may undermine a criminal investigation or prosecution.

Assembly Bill 263 has some provisions concerning the release of information. I would suggest that the Committee not process those provisions, and that we have one bill going out of the Assembly. By contrast, Assembly Bill 263 would prevent more information from being released, and would undermine or adversely affect an ongoing or future criminal investigation. "Any information that might cause mental or physical harm to a sibling or to anyone in the family" is a provision that is overbroad and would lead to a loophole the size of a truck. That is not contained in Assembly Bill 261. Please do not add "any information,

the release of which is prohibited by federal or state law.” The provision is self-defining and why we are in the situation we are in. We are trying to make it clear what should be released and what should not be released. An exception is “any information that may undermine the prosecution or right to a fair trial of alleged perpetrator.” Again, we are trying to make this clear so there is not future litigation.

There is another provision that is unusual, but provides that the information shall be supplied to a legislative auditor. The reason for this is two-fold. First, there have been issues raised by the welfare agencies that releasing information violates the Health Insurance Portability and Accountability Act of 1996 (HIPAA). If the information is given to a legislative auditor, HIPAA is not implicated according to our legal counsel. I do not think HIPAA applies, but if we are going to debate this for another two years, let us deal with it proactively. The second reason is that I fear this will happen again and again. I believe the reason why most of the information is not released is because it embarrasses the agency. It is human nature. Who wants to reveal something that embarrasses them? If the auditor gets to decide compliance with the objective factors, I believe we will have a fairer process. If the person or entity does not want the information to be released, I believe you will have inherent biases in the system. The legislative auditor is the best suggestion our legal counsel could recommend as we were brainstorming ways to make this work.

**Assemblyman Hardy:**

Page 3 of the mock-up says, “A child in serious or critical condition requiring the child to be hospitalized, to be taken to an emergency room or to receive other critical care.” We heard a lot of testimony about who goes to emergency rooms and who should not go to the emergency rooms. From a medical standpoint, we do not know whether a person needs to go to an emergency room until that person has been there. There is critical care versus non-critical care that happens in the emergency room. Is there a way to establish a medical auditor commission or peer-review organization? As a physician, I serve on peer-review committees where we have medical confidentiality. Have we expanded the peer-review committee concept to include these kinds of cases? I am not trying to avoid HIPAA as much as comply with HIPAA. Can the Division of Children and Families and other similar agencies be defined because of their function as a medical entity? Can we do something that would comply with HIPAA and be medically confidential?

**Assemblywoman Buckley:**

We certainly can look at all those issues as we take input on how to make the bill. On page 3 of the mock-up, it says, “As used in this section, ‘near fatality’ means an act that places a child in serious or critical condition.” That modifies

the treatment in the emergency rooms. If a child goes to the emergency room in a non-critical condition, by definition, that child does not fall in that category described on page 3. Again, maybe we can find better language to make that clearer.

With regard to peer review, there are a couple of measures on accountability in the child welfare system. Assemblywoman Gerhardt is sponsoring a bill to allow random audits on quality controls of files to make sure workers are seeing children. There is also talk about renegotiating Nevada's financial commitment. There are a number of measures that are looking at quality in the system. What Assembly Bill 261 is trying to do is get the records released. The peer review, whether it is medical care or child deaths, is handled in different measures. Is there any other body that could do it? The Press Association gave me an interesting idea: when an agency is giving the runaround on releasing records, there would be some sort of body that would intervene. It could solve a lot of agency problems across the board. It is an intriguing idea; it is the only idea that I think has potential. To be frank, who wants to do this?

**Chair Leslie:**

We need to look at Assembly Bill 261 in the context of what has happened in Nevada in the last six to eight months. If we did not have that experience, it might be different. I think Assemblywoman Buckley mentioned several instances where agencies interpreted the law differently. The process she outlined is, so far, the best process we have been able to come up with.

**Assemblyman Beers:**

I did not see a section in the mock-up that explains what happens if the agency continues to not release records.

**Assemblywoman Buckley:**

The open records penalties under existing law did not have to be reprinted because they are not being changed. As a practical matter, sometimes those are illusory. Most folks just want to know what happened. If a child starves to death, you want to know why it happened. Whether you are a member of the public, a relative of the child, a member of the media, or a member of a child welfare organization, you do not want to sue, you just want the records. They are there, but it is not as easy to get those penalties.

**Assemblywoman Gerhardt:**

I would like to thank you for this legislation. As you know, it was a bit frustrating for those of us who sat on the Blue Ribbon Panel last summer. Instead of getting information on some tragic cases from state agencies, we were getting information from the media. One of the goals of the Blue Ribbon

Panel was to change the public's perception, and I do not think that can happen without disclosure.

**Assemblyman Hardy:**

The mock-up states, "Federal, state, or local government entity or agency of such entity that needs access to the information to carry out its legal responsibilities." On the first page of the mock-up, it states, "Information provided pursuant to subsection 1 is not confidential and may be disclosed." I think this refers to releasing information to federal, state, or local agencies. Do we want the agency to share information with somebody? What becomes of the information? Is it kept confidential? Can it be shared to allay fears or worries?

**Assemblywoman Buckley:**

The section refers to a child who is missing. If a child in the child welfare system disappears from their home, the child welfare agency can release the name, age, and photograph of the missing child to any agency. That information is not confidential at all. We can double-check with our legal counsel to see if anyone else needs to be included, or if it needs to be made clear if the information can be released. Since the second paragraph makes the information non-confidential, legal counsel will probably say that the law enforcement agency would have no problem releasing it to Amber Alert, Missing Children's Network, or other similar entities.

**Assemblyman Hardy:**

Thank you. I think that is the intent. Regarding the abuse and neglect part, where do we stand on that portion of the confidentiality issue?

**Assemblywoman Buckley:**

That section begins with Section 3 of the bill, which has a list of specificities. All that can be revealed. There is a list of exceptions on page 3.

**Assemblyman Hardy:**

Section 3 states, "Any member of the general public upon request . . . ."

**Assemblywoman Buckley:**

That is correct. The auditor is a backstop, if you will. If people ask for information but cannot get it, we have another avenue.

**Assemblywoman Pierce:**

Regarding the list on page 2, why was gender not included in the list?

**Assemblywoman Buckley:**

I will add that to the list. I will continue to make the list and then we will run it by federal officials again. We would like to leave room for all information, but we do not want to jeopardize our federal funding. It is a good thing that the federal government is urging us to disclose more information.

**Chair Leslie:**

I think we are trying to strike a balance between protecting children and protecting their personal information. I think this bill gets us a long way there. I do intend to process the confidentiality issues in Assembly Bill 261, but we can debate Section 3 and Section 14 of Assembly Bill 263, and other sections that relate to the work we are doing in Assembly Bill 261. It is easier to talk about all those issues together. For the Committee's edification, we received a bill on the Floor today about legislative auditors, and it will be referred to the Committee on Health and Human Services. The bill will be heard in a couple of weeks.

Assemblywoman Buckley, do you have any more comments?

**Assemblywoman Buckley:**

No. Thank you for your consideration.

**Barry Smith, Executive Director, Nevada Press Association:**

I would like to mention that this is Sunshine Week. We are doing our part in Nevada to make that true, but it does not only have to do with blue skies and nice weather, it is also about open government, open records, open meetings, and so on.

[Read ([Exhibit D](#)).]

**Chair Leslie:**

It is my understanding that you are supporting Assemblywoman Buckley's mock-up.

**Barry Smith:**

Yes. I am perfectly willing to work on any other ideas, but this is also a good solution.

**Chair Leslie:**

Are there any questions for this witness? [There was no response.] Thank you.

**Darryl Martin, Assistant County Manager, Office of the County Manager,  
Clark County:**

In regards to openness, Clark County has its challenges on this subject. On behalf of the Office of the County Manager and the Clark County Commission, we fully support Assembly Bill 261.

**Thomas Morton, Director, Department of Family Services, Clark County:**

I would like to add my compliments and gratitude for Assemblywoman Buckley's bill. I think Assembly Bill 261 will take positive steps toward increasing transparency and restoring public confidence in the child welfare system. The bill leaves out children who are in the custody of Clark County or Nevada who die of natural or accidental causes. The bill as drafted speaks specifically of children who are associated with abuse and neglect, but does not speak of children who were previously abused and neglected, and who are currently in the custody of the State. People wonder what happened to those kids, and I believe there is a public interest in knowing about that population.

**Chair Leslie:**

Thank you. Does Clark County support Assemblywoman Buckley's mock-up?

**Darryl Martin:**

We are fully supportive.

**Michael J. Willden, Director, Department of Health and Human Services:**

The Department of Health and Human Services supports Assembly Bill 261. Assemblywoman Buckley said there are two or three additional exemptions on our version of what information cannot be released, but I do not think those are insurmountable.

Section 3 states, "Data or information concerning reports and investigations thereof. . . must be made public . . . ." I assume this means the child welfare agencies are held accountable to release the information. We developed a website over the last year to release information, and we are working to make the website a more robust source of data. It appears that the information we sent to the legislative auditor may be a subset of all fatality information. Assembly Bill 261 states, "At any time that a child who has contact with the agency or is in custody of the agency . . . ." For example, if someone abuses or neglects a child at a local casino, which results in a fatality and the family is not known, is that a case that should be sent to the legislative auditor? We want to be clear if the intent is to have a subset of fatalities or to have all fatalities.

**Assemblyman Stewart:**

Is there a time frame in providing this information?



**Michael J. Willden:**

I do not know if there is a time frame.

**Barbara Legier, Deputy Administrator, Division of Child and Family Services,  
Department of Health and Human Services:**

The current policy requires notification and a preliminary report within 24 hours of being notified of the fatality. The secondary report is required when the investigative process is concluded.

**Chair Leslie:**

When will the information need to be released?

**Michael J. Willden:**

The law does not state a release time. The policy is 24 hours for the preliminary report, and a full report is made when the investigation is completed.

**Assemblyman Hardy:**

The full completion of the investigation may be a fluid thing. Is it ever fully completed?

**Michael J. Willden:**

They are all eventually fully completed. Sometimes investigations involve the child welfare agencies, the coroner, or law enforcement. Investigations may have a number of components. Until all those processes are worked out, the final report is not posted.

**Assemblywoman Gerhardt:**

In regard to Mr. Willden's scenario where something tragic happens to a child who is visiting from out of state, I think we want those things disclosed. If we include some information but exclude other information, we will run into problems. Nevadans want to know if a child lost his or her life while in the state of Nevada.

**Assemblywoman Buckley:**

That is the pleasure of the Committee. I can argue it either way. I argue that there is no need for that because the county will release the information anyway. The county had no connection to a child who ends up hurt or dead.

**Chair Leslie:**

Mr. Willden, do you support Assemblywoman Buckley's mock-up on Assembly Bill 261?

**Michael J. Willden:**

Absolutely. The Department of Health and Human Service's position is clear. We want transparency, the ability to release information publicly, and to hold child welfare agencies accountable. We just want to see this legislation move. I want to make sure there was not a compelling or overwhelming reason against our list of exemptions. Right now, I do not have a compelling reason to argue.

**Chair Leslie:**

Right, because I did not hear a reason, but if you come up with one, please let us know.

**Michael J. Willden:**

As Assemblywoman Buckley indicated, we are being careful with interfacing with federal officials to make sure we are complying with the Child Abuse Prevention and Treatment Act (CAPTA). I have been told Assembly Bill 261 complies with CAPTA.

**Assemblyman Hardy:**

There is a legal term for a substitute parent. In other words, when the child welfare agency is in charge of a child, there is a parental duty. Whatever a parent knows, then the agency or the investigative body should have the ability to access that knowledge. If I am a parent of a child who dies, I would like to have access to the knowledge surrounding the death. Whatever mom wants to know, I want mom to know it.

**Chair Leslie:**

I do not hear a question there.

**Michael J. Willden:**

I understand the comment and I agree. We want to be as open and transparent as we can.

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

The Washoe County Department of Social Services is in full support of Assembly Bill 261, and we look forward to working with Assemblywoman Buckley. We definitely support the concept of transparency.

**Chair Leslie:**

Thank you very much. Let us hear from Las Vegas.

**Glenn Campbell, Independent Child Welfare Activist, Private Citizen:**

I have a website called familycourtchronicles.com, and I spend a lot of time in family court. I support Assembly Bill 261. My concern is that the bill's scope is

narrow, and I wish the scope was wider. We are looking at a small population of children: children who are dead, children who nearly died, or children who are missing. That still leaves the same statutes for all other children. Most children do not die, or they do not go missing, but this provision casts absolutely no light on that. It does not address certain changes in other parts of law. Although the records remain closed as they have always been, the courtrooms are open. Although citizens cannot view records, they can go to Foster Care Reviews and listen to caseworkers and judges. The statute is still the same statute as it was before these courtrooms were open.

For instance, if a journalist goes to family court and decides to do a report on parents who claim they were abused by an agency, the journalist will investigate the agency, but the agency cannot say anything. The way to update the current law is by giving agencies the tools to respond to these allegations. Even though the agency cannot release information, the information will get out some other way. Let us reread this law and think about what tools we can give to the agency, not about ways to bash the agency when someone dies. Let us think about situations where allegations were made against an agency, but the agency is hamstrung to respond. I know the Committee is walking a tight line because you have to keep federal officials satisfied, but let us think about a provision that would allow the agency to respond to allegations.

I am supporting the bill, but I am disappointed it does not go far enough. I wish we could look more broadly at openness for every child. There has to be confidentiality, but you also have to address the real world situation. In the Internet era, information will get out, and the agency has to respond. Let us think about a provision that allows the agency to respond to non-fatality cases.

**Robert Teuton, Assistant Director, Clark County Office of the District Attorney,  
Family Support Division:**

[Submitted ([Exhibit E](#)).] We support the bill, and we would ask that Section 2 be expanded in two regards. First, the information of a missing child, such as age and physical description, can only be released by a child welfare agency to a law enforcement agency, and then the agency can release it to the public. We suggest that the child welfare agency have the authority to release the missing child information directly to the public rather than going through a secondary agency. Secondly, the statute states release of information only occurs when a missing child is the subject of an investigation on abuse or neglect or is in protective custody. We suggest that be expanded to include children who are in foster care, guardianships, or otherwise under the purview of the juvenile court.

**Chair Leslie:**

That is interesting. Assemblywoman Buckley is here and we encourage you to speak to her about those suggestions.

**Gary Peck, Executive Director, American Civil Liberties Union of Nevada:**

I am here to testify on Assembly Bill 263, but after listening to the discussion, I felt compelled to note that we would like to submit any concerns we might have about the privacy interests that are in play. I think Assembly Bill 261 does an excellent job of trying to balance privacy interests, transparency, and accountability, and ACLU supports transparency and accountability in this area. As you know, we have been working on these issues with Clark County and the State of Nevada.

I am concerned when I hear talk about possible violations of HIPAA, and the language of Assembly Bill 261 and Assembly Bill 263. Assembly Bill 261 has an exemption that may undermine a criminal investigation or pending criminal investigation while Assembly Bill 263 includes a phrase regarding the right to a fair trial of an alleged perpetrator. I intend to submit both bills to our attorneys who work in these areas. I do not anticipate that we will have serious concerns, but I would like to reserve the right to submit written concerns we might have to the Committee.

**Chair Leslie:**

We certainly welcome that as long as it is done quickly. Is there anyone who would like to testify in favor of or against Assembly Bill 261? [There was no response.] Seeing none, I will close the hearing on Assembly Bill 261.

We will open the hearing on Assembly Bill 263.

**Assembly Bill 263: Makes various changes to provisions governing the abuse and neglect of children. (BDR 38-598)**

**Assemblyman Hardy:**

The last three lines on page 16 and the first three lines on page 17 of Assembly Bill 263 could be melded into emergency room and critical care kind of language.

**Assemblywoman Buckley:**

That language was originally in Assembly Bill 261, but I can just imagine the hoops because you have to get a doctor or nurse to certify. Who will want to do that? You will have to examine the patient of a near fatality to see the medical records. Who is going to pay? Using only records to identify the depth

of the case seems less costly and less intrusive than requiring a formal declaration. That is why there is a difference.

**Chair Leslie:**

Assembly Bill 263 is the Department of Health and Human Service's bill.

**Michael J. Willden, Director, Department of Health and Human Services:**

[Submitted ([Exhibit F](#)).] Assembly Bill 263 is one of three pieces of legislation that was debated and recommended by the Blue Ribbon Panel. As the members have heard, over the last year the Blue Ribbon Panel dealt with child fatalities in Nevada. We received a report on child fatalities in Nevada in April 2006. The Blue Ribbon Panel looked at three pieces of legislation. One deals with licensing child care institutions, and the others deal with external quality control. The Committee should have a handout entitled A.B. 263 Testimony. The section on missing children and release of information is similar to the provisions in Assembly Bill 261. There are two or three issues we can certainly iron out.

The bill came from a federal requirement to comply with the Child Abuse Prevention and Treatment Act (CAPTA). We also looked at issues from the Child and Family Services Review, and we have been under a two-year improvement plan, which ended in February 2006. Federal officials clearly indicated that current law does not comply with CAPTA, so we are under the gun to develop something that does comply with CAPTA.

I will explain what we are trying to accomplish. On the bottom of page 2 of the handout ([Exhibit F](#)), Sections 1 and 8 deal with administration. The Division of Child and Family Services (DCFS) will have the ability to function as an oversight child welfare agency and they will enforce the federal and state laws.

Section 1 makes amendments that indicate DCFS is the cognizant agency for the development of juvenile programs and child welfare services, and the Department of Health and Human Services will enforce those standards. The existing legislation states the Department of Health and Human Services establishes state plans, and there is language for enforcement. In regard to Section 8, there is discussion about the enforcement of standards and regulations if a child welfare agency does not comply. The Blue Ribbon Panel was firm on putting standards and enforcement remedies in place. On page 5 of Assembly Bill 263, the Department of Health and Human Services can withhold money, impose an administrative fine, provide direct supervision, and require an agency to take disciplinary action. We certainly do not want to implement any of these enforcement remedies until after an appropriate corrective action period.

Section 3 of the bill is the missing children section and I believe it is the same as Assemblywoman Buckley's bill. We also noted the gender issue that Assemblywoman Pierce brought up.

Sections 4, 5, 6, 17, 18, and 19 deal with child death multidisciplinary teams (MDTs). The handout ([Exhibit F](#)) shows how many child fatalities have been reviewed. In 2006, there were 176 suspicious fatalities and 384 child fatalities. Section 4 allows the State to create and organize an MDT so we do not have to go through local child welfare agencies. Section 5 deals with disclosure of records. The information discussed by MDTs is highly confidential, so the disclosure of information is discouraged. Section 6 deals with the open meeting law. There are different teams within an MDT: a local team, an executive team, and an administrative team. The state administrative team is subject to the open meeting law, which means they cannot meet in private to discuss any sensitive information. If they meet in private to discuss child-specific information, they will be violating confidentiality rules. In Section 18, we had issues on who appoints MDTs, and we want to clarify that the director of a child welfare agency can provisionally appoint members to an MDT, but those appointments are subject to the review of the executive committee. It is a two-step appointment process.

Sections 7, 10, 11, 12, and 13 deal with child fatality reports and investigations. Sometimes there are cases that are not prosecuted but some people feel those cases need to be prosecuted. The intent of Section 7 is to allow a review process of those cases. The language in Section 10 emphasizes cross-reporting between law enforcement, child welfare agencies, and the medical examiner during the investigative and reporting process. Section 11 includes a provision for when we should initiate an investigation, as there is not a similar provision in state law. I do not think this happens, but according to current law, you could wait several days to initiate an investigation. There were interviews with abused or neglected children, but not all siblings were interviewed, so Section 12 requires that all siblings be interviewed.

Section 9 deletes a reference that is not used in the statute because of the Adoption and Safe Families Act of 1997 (ASFA). Section 14 discusses public disclosure of child fatality. This provision is a little different than Assembly Bill 261, but I think it is substantially the same as to what information should be released. Assemblywoman Buckley's bill has four exemptions, while Assembly Bill 263 has seven exemptions. Section 15 is a new provision that deals with a single child fatality. The existing provision does not allow an investigation as there are no siblings to protect, but the new provision states an investigation should be done, regardless of whether there are living siblings or not. Mike Capello points out there may be future siblings. Section 16 states

information should be reported to the Central Registry, and Section 20 is a clean up related to the ASFA.

That is the gist of Assembly Bill 263. There are two sections that are similar to Assembly Bill 261 and many sections are the work of the Blue Ribbon Panel. I would like to thank the Blue Ribbon Panel. Many hours were spent reviewing these types of recommendations. As we have said before, there is still a lot of work to be done, and I would encourage the Committee to support this legislation.

**Chair Leslie:**

Thank you, Mr. Willden. I think that is an excellent way to present it.

**Barbara Legier, Deputy Administrator, Division of Child and Family Services,  
Department of Health and Human Services:**

[Submitted ([Exhibit G](#)).] The packet includes information on how we would like to amend Assembly Bill 263. We would like to omit the word "alleged."

**Chair Leslie:**

What section is this in?

**Barbara Legier:**

This is in Section 14.

**Chair Leslie:**

This has to do with material in Assembly Bill 261.

**Barbara Legier:**

Yes.

**Michael J. Willden:**

Assembly Bill 261 has that same amendment in it.

**Chair Leslie:**

Are both pages related to that? Or is it a different one?

**Barbara Legier:**

Page 2 is the amendment to Nevada Revised Statutes (NRS) 432B.180 of Assembly Bill 263.

**Chair Leslie:**

For the Committee members, Section 8 of Assembly Bill 263 does not overlap with Assembly Bill 261.

**Barbara Legier:**

Page 2 is what Mr. Willden was talking about when we met with the child welfare agencies earlier today. It relates to the personnel action and this is how we would amend the language.

**Chair Leslie:**

Do all the child welfare agencies agree with this language?

**Barbara Legier:**

Yes.

**Michael J. Willden:**

Yes, we talked about it with the agencies. I do not know if they will agree with the language in item D or the penalties we want to do, but they clearly agreed with us this morning that we would not enforce any penalties until there is appropriate corrective action.

**Assemblywoman Parnell:**

We had a discussion about the differences between the coroner and the medical examiner.

**Michael J. Willden:**

You might want to hear from Mike Capello. Last night, Mr. Capello and I went over the Blue Ribbon Panel findings with the Washoe County Commission and we tried to get approval from the Commission to hire additional social workers. Deborah Agosti was there. I think you want to leave the coroner versus the medical examiner model in the statute. Washoe County is moving from the coroner model to the medical examiner model in July 2006, I believe.

**Chair Leslie:**

It was interesting to see the reaction to the study. People attacked the study instead of fixing the problem. I appreciate what Washoe County did.

**Michael J. Willden:**

If you were at the Washoe County Commission meeting last night, the press was not reflective of the tone of the meeting. There was definitely support for change. Sometimes it is very hard to be reviewed externally and there has been a lot of frustration for many months. The tone of the Commission meeting was different than what was reported in the newspaper. I thought the tone was positive.

**Chair Leslie:**

Their actions did not reflect the tone of the newspaper article.



**Deborah Agosti, Chair, Blue Ribbon Panel:**

I put together a document relating to Section 7 of Assembly Bill 263. I would like to note that NRS 172.175 permits a grand jury to inquire into any and all matters affecting the morals, health, and general welfare of the inhabitants of the county. It is lesser known to the public that the grand jury can perform an investigatory function in determining indictments and presentments in criminal cases and can also make inquiries pursuant to the statute mentioned here. I would like to add that judicially, this statute has been interpreted as being distinct from the grand jury's more well-known function of formally accusing a person of a public offense.

I regret and apologize that Section 7 of Assembly Bill 263 misstates the intention of the Blue Ribbon Panel. The Blue Ribbon Panel is composed of a southern committee and a northern committee, and the southern committee focused on this problem more than the northern committee. When I say committee, I am referring to the committee that addressed the issues in Clark County.

[Read ([Exhibit H](#)).]

It is my own belief that this mechanism would be marvelous to compare the statistics that are reported to the State of Nevada to determine whether or not there is any accuracy at all. The State of Nevada suffered embarrassment at the federal level for failing to accurately report the number of child fatalities as the result of abuse or neglect. This is an extremely serious matter. Whether the district attorneys of Washoe County take these cases seriously or not, there is a perception that there are varying levels of interest for these cases. I do not believe the district attorneys of the State of Nevada are jaded or are ignoring these cases. The purpose behind this proposal is to assure and assist accountability, as well as the public's perception, that these cases are receiving the appropriate reviews they deserve.

I did not intend to comment on other aspects of Assembly Bill 263. Regarding the differences of Assembly Bill 261 and Assembly Bill 263, the Committee approved the language in the latter, but certainly that was without benefit of weighing alternatives that may improve it. The legislative process is here for that purpose and I think we need to poll members of the Blue Ribbon Panel concerning the additional safeguards outlined in Assembly Bill 261 to ensure disclosure. We would likely support those.

**Chair Leslie:**

Thank you for all the work you have put into this.

**Deborah Agosti:**

It is my pleasure. It is difficult work to go through, but as a volunteer in this project, it was a wonderful opportunity.

**Chair Leslie:**

With your background and expertise, you certainly lent a lot to the process. We do appreciate it. The district attorneys in Clark County, I believe, are not bound by the grand jury. When they file a written report, would they file the same way as a district attorney who is bound by a grand jury?

**Deborah Agosti:**

For administrative ease, you could file it all to the court as a report and certainly authorize that as statute. The public understands that court documents are public records. In Washoe County, the grand jury reports investigations. The grand jury sits under the oversight of the judges and I think it is a good place for it to be. It should be uniform statewide, whether or not a grand jury is convened in White Pine County, for example.

**Chair Leslie:**

Exactly, and I think that is why we should make that clear. Why do you feel Section 6 is so important? What is your thinking behind that?

**Deborah Agosti:**

Section 6 applies to multidisciplinary teams when they come together to discuss a specific case. This is from my point of view as a judge who, for 24 years, has not had to operate under strictures of the open meeting law. Our Deputy Attorney General was there for all our meetings, which were open meetings. It was quite an experience. In fact, I got to be quite good at it by the end. I came away from the experience with high regard and respect for the public meeting law. It certainly lends to public confidence that the business of the public is being done for all to see. Frankly, I did not feel I had to play to a certain audience as a result of having these meetings.

That being said, I believe the sentiment of the Blue Ribbon Panel is that there is great merit when issues of confidentiality are constant when multidisciplinary teams meet. A meeting conducted in a public format may inhibit the ability of the multidisciplinary team to effectively address the issues. They are not there to make a decision as to how a case should be decided, but they are certainly there to review one or more cases. It is difficult for them to review confidential files in a public format. Perhaps you could require a written report from every multidisciplinary team and require public disclosure of the report. Ultimately, the business of the multidisciplinary team, I think, can serve a very important public purpose.

**Assemblywoman Gerhardt:**

It was a pleasure to serve with Deborah Agosti and she did a wonderful job leading our group. I agree with her suggestion of taking a better version of the bill. I am sure if we discussed it with the other members they would also agree.

**Assemblyman Hardy:**

Are near fatalities addressed in this statute?

**Deborah Agosti:**

No. When we are talking about the grand jury aspect of this bill we are dealing with fatalities. Ultimately, we need to know how many children we have lost in a year, for any reason, be it stillborn, accident, illness, abuse, neglect, or intentional act. We need to be able to account for our children and that is why that section, which I regret does not reflect the thinking of the committee, would provide an important way to address all fatalities in Nevada. We can narrow down the figure of all fatalities to abuse or neglect cases.

**Chair Leslie:**

Are there any more questions for Ms. Agosti?

**Deborah Agosti:**

Thank you for your time and attention to this very serious issue.

**Barry Smith, Executive Director, Nevada Press Association:**

In regard to Section 6, the open meeting law does not apply. We are trying to shed some light, not pull the blinds. It is my understanding that there are two things that are not to be released according to federal law: law enforcement investigative reports and medical records. My point is that you can hold an open meeting, comply with the provisions of state law, and be able to close the portion of the meeting that deals with confidential records. It is a big difference between closing portions of a meeting to discuss confidential information and holding a completely closed meeting.

**Chair Leslie:**

Look in Section 6 of Assembly Bill 263 where it states, "An administrative team organized pursuant to... may hold a closed meeting or close a portion of a meeting to discuss or consider confidential information." What is wrong with that?

**Barry Smith:**

The part that says, ". . . may hold a closed meeting . . . ."

**Chair Leslie:**

Is it the first part?

**Barry Smith:**

That is right.

**Chair Leslie:**

What would your suggestion be?

**Barry Smith:**

I would strike those words or "close a portion of a meeting." It is really line 19 in Section 6: ". . . not subject to any provision of chapter 241 of NRS." NRS 432B.40 in line 15 creates executive committee protocols, training, reports, and an expense account in a general fund. It is far too broad in trying to exempt things from the open meeting law.

**Chair Leslie:**

I take it you understand how Deborah Agosti explained it, and that you do not have a problem with that.

**Barry Smith:**

Yes, I understand. There are portions of the discussion that need to be confidential. It is a question of whether we can keep certain parts confidential, and keep other parts open for the public.

**Chair Leslie:**

I like your suggestion of providing a summary so that there is a record. I think that is what the Nevada Press Association would be most interested in.

**Barry Smith:**

That would be a good alternative.

**Chair Leslie:**

Is there anything else you would like to say about Assembly Bill 263?

**Barry Smith:**

The other things I mentioned were mentioned earlier by Assemblywoman Buckley.

**Assemblywoman Gerhardt:**

I am concerned about how members of the multidisciplinary team are chosen.

**Chair Leslie:**

I am completely open to exploring that.

**Assemblywoman Gerhardt:**

I volunteered to continue as a member of the multidisciplinary team. There was never a good definition that would allow a member of the Legislature to be a member of that team. I am not sure if it is a good idea to have someone continuing a role in that process.

**Chair Leslie:**

I would ask you to present something in writing to the Committee, and we can certainly take that up during work session. Let Mr. Willden know where you are headed so he has an opportunity to review it.

**Glenn Campbell, Independent Child Welfare Activist:**

I support Assembly Bill 263 with the exception of Section 7, which sounds like we are second-guessing the district attorney. The district attorney is elected by the people, and the people have certain confidence that he will enforce the law. If the district attorney does not have sufficient evidence of a child fatality case to prosecute the person who he thinks did it, he cannot proceed with the case. It is a very hard situation because everyone is crying for justice, but sometimes there is no evidence. By including this provision, we are placing an unnecessary burden on the district attorneys. Essentially we are giving him a vote of no confidence and forcing him to appeal to a higher authority when in fact he is the highest authority. We rely on the district attorney to enforce the law, and if he decides that he cannot prosecute the case, I think we have to trust him.

**Robert W. Teuton, Assistant Director, Family Support Division, Clark County Office of the District Attorney:**

While we support Assembly Bill 263, there are two areas we would like to address. During the Blue Ribbon Panel meetings, there were complaints about prosecuting child deaths. We discovered the complaints had not been submitted to us. I do not know if Section 7 addresses that issue. Section 10 requires a child welfare agency to report to a law enforcement agency if there is a child fatality, and both of those agencies are required to report to the coroner and medical examiner. We suggest that Section 10 be amended to require the medical examiner or coroner to report to the district attorney so the district attorney has knowledge of every child fatality and is able to oversee the actions of the child welfare agency and law enforcement agency.

In NRS 432B.510, it states that if the child welfare agency submits the case to petition to the district attorney, and the district attorney declines to sign the petition or pursue the case, the child welfare agency has the option of requesting the attorney general to review the case. If the attorney general feels there is sufficient evidence, then the attorney general is authorized by law to proceed in the civil action.

We suggest adopting that language and allowing an agency to have statutory authority to pursue their case with the attorney general rather than having a grand jury do the investigation.

Section 8 empowers the Division of Child and Family Services (DCFS) to impose a number of sanctions on local child welfare agencies. We do not agree that DCFS should be directing a local child welfare agency to discipline employees. First of all, employees have the right to an investigation before there is discipline. We do concur with the concept that DCFS could discipline the agency rather than directing the agency to discipline the employees in situations where it appears there is employee misconduct. In regards to earlier remarks on corrective action periods, there needs to be a provision that directs DCFS to adopt regulations on due process to give the agency the ability to refute, defend, and appeal sanctions before they are actually imposed.

**Chair Leslie:**

Are there questions for Mr. Teuton? [There was no response.] We may be contacting you to further explore some of these options.

**Gary Peck, Executive Director, American Civil Liberties Union of Nevada:**

I am here to speak about Section 7 of Assembly Bill 263. We believe it raises very serious constitutional issues and it is not just a policy concern. We do not always agree with the judgments of prosecutors, yet we recognize that prosecutorial discretion is the cornerstone of the entire criminal justice system. This proposed incursion on that discretion poses serious problems, and it is a slippery slope that I hope this Legislature will not go down. Deborah Agosti's recommendations, as I understand them, help to address and correct some of the problems that exist in Section 7. I hope this section will be rewritten in the work session to avoid separation of power issues. If this bill were to be passed in its current form, it would be an invitation to endless litigation. It would be utterly counterproductive and an obstacle to achieving the objectives the Legislature seeks to achieve.

With respect to Section 6, we support the Nevada Press Association's recommendations on language that would limit the exceptions to public meeting laws. We also agree with the suggestion that there be annual summary reports.

Lastly, we will look at Section 14 more carefully in respect to the balance of privacy versus public accountability and transparency. We agree very much with Assemblywoman Buckley's remarks and with the notion that there should not be a set of rules that create loopholes.

**Renee Ruiz, Government Affairs, Service Employees International Union:**

The Service Employees International Union supports Assembly Bill 261 and Assembly Bill 263. We would like to commend the Legislature for their commitment to bringing transparency to the child welfare system. Child welfare workers agree that transparency and public disclosure will assist them in their work to protect vulnerable children in Nevada.

We have concerns with a section in Assembly Bill 263 that appears to jeopardize workers' rights to due process. We are not opposed to disciplinary actions against a worker. The workers should have remedies up to and including termination, but only when due process has been served. We do not feel the child welfare system is in crisis because of the actions of individuals. The child welfare system needs to address complex issues, and it will take time and dedication to repair those issues. Again, we would like to applaud the Legislature for their attention to the child welfare system crisis.

**Chair Leslie:**

We will look at that section during the work session.

**Thomas Morton, Director, Department of Family Services, Clark County:**

The Clark County Department of Family Services supports Assembly Bill 263 and we look forward to Mr. Willden's proposed changes. I urge the Legislature to consider children who die of natural causes or accidental death. The inability for us to disclose information about children who die of natural or accidental causes creates a specter with the public as to whether any of our actions may have been negligent. Again, I would urge your consideration on including language in the bill that would allow us to release information about these children.

**Chair Leslie:**

It is a little different than Assemblywoman Buckley's example. Thanks for bringing that up again. We will make sure we take a look at that.

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

The Washoe County Department of Social Services supports Assembly Bill 263. As Mr. Willden mentioned, we talked about the aftermath of corrective action periods. I am also concerned about disciplinary action on employees at child welfare agencies. Finally, I served as a chair of the Administrative Review Team for Child Deaths. I experienced frustration at not being able to get into the nuts and bolts of certain cases. If the committee is allowed to close a portion of a meeting when they are discussing confidential information, it would be helpful. I do not think, as a member, that it was our intent to completely close the meeting, but it was to enable us to gain better insight into recommendations related to the case.

**Chair Leslie:**

If you feel the need to consult with the Nevada Press Association and come up with a more specific suggestion, please get it to our staff. We will definitely look at that issue during work session. Is there any more testimony? [There was no response.] Seeing none, I will close the hearing on Assembly Bill 263. It is a complicated bill. If you need to clarify your suggestions, we would appreciate it in writing. This meeting is adjourned. [3:28 p.m.]

RESPECTFULLY SUBMITTED:

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Katrina Zach  
Committee Secretary

APPROVED BY:

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Assemblywoman Sheila Leslie, Chair

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



**EXHIBITS**

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

**Date:** March 14, 2007

**Time of Meeting:** 1:35 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A	Committee on Health and Human Services	Agenda
	B	Committee on Health and Human Services	Attendance Roster
AB 261	C	Assemblywoman Barbara E. Buckley	Proposed Amendment
AB 261	D	Barry Smith, Nevada Press Association	Testimony
AB 263	E	Robert W. Teuton, Clark County Office of the District Attorney	Memorandum
AB 263	F	Michael J. Willden, Department of Health and Human Services	Testimony
AB 263	G	Barbara Legier, Department of Health and Human Services	Proposed Amendment
AB 263	H	Deborah Agosti, Blue Ribbon Panel	Testimony