

SENATE BILL NO. 293—SENATOR CEGAVSKE

MARCH 16, 2009

JOINT SPONSOR: ASSEMBLYWOMAN MASTROLUCA

Referred to Committee on Health and Education

SUMMARY—Makes various changes concerning the protection of children. (BDR 38-701)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to children; making various changes to provisions governing the court-ordered admission of a child to a locked facility; revising provisions governing proceedings on a petition alleging that a child is in need of protection; requiring a court to provide a hearing to determine whether to include rights to visitation of siblings in a decree of adoption; requiring the development of policies concerning certain psychotropic medications given to children who are in the custody of agencies which provide child welfare services; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the procedure for petitioning a court to order the admission of certain children with emotional disturbances to a locked facility for treatment. (NRS 432B.607-432B.6085) **Section 2.5** of this bill clarifies that as used in those provisions, "court-ordered admission of a child" includes a child for whom a petition is filed to continue placement after an emergency admission. **Section 2.7** of this bill requires each agency which provides child welfare services to establish appropriate policies to ensure that children in the custody of the agency have timely access to clinically appropriate psychotropic medication. **Section 11** of this bill requires the Division of Child and Family Services of the Department of Health and Human Services to adopt consistent policies with respect to access to such medication by children in division facilities.

Existing law governs the requirements for a petition alleging that a child is in need of protection and provides that the district attorney shall countersign each



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such petition and represent the interests of the public in all subsequent proceedings. (NRS 432B.510) **Section 2.9** of this bill requires an agency which provides child welfare services to represent the best interests of the child in all proceedings and revises the provisions governing the district attorney to require that the district attorney represent the interests of the agency which provides child welfare services in all subsequent proceedings.

Section 4 of this bill requires a petition for the court-ordered admission of a child with an emotional disturbance into a locked facility to be filed within 5 days after an emergency admission or the child must be released. (NRS 432B.6075)

Section 5 of this bill clarifies that the court proceeding for the court-ordered admission of a child who is alleged to be a child with an emotional disturbance must include an evidentiary hearing. (NRS 432B.6076) **Section 6** of this bill expands the manner in which a person is allowed to oppose a petition for the court-ordered admission of a child into a locked facility to include an opposition stated verbally in court. (NRS 432B.6077) **Section 7** of this bill provides that if a court authorizes a second evaluation team to examine a child who is subject to a court-ordered admission to a locked facility, the second examination must be conducted within 5 business days by a team that is not affiliated with, employed by or otherwise connected to the facility where the child has been admitted. (NRS 432B.6078) **Section 8** of this bill requires a court to apply the same standards in considering a petition to renew a court-ordered admission of a child as were applied to the original petition. (NRS 432B.608) **Section 9** of this bill extends the time for developing a plan for the care, treatment and training of a child subject to a court-ordered admission to a locked facility from 5 to 10 days after the child is admitted to the facility, and removes the requirement that the plan include certain criteria which the child must satisfy before discharge. (NRS 432B.6081)

Section 10 of this bill requires a court to conduct a hearing to determine whether to grant visitation rights to a sibling as part of an adoption decree when the adoption is of a child in the custody of an agency which provides child welfare services. **Section 11** further requires the agency which provides child welfare services to provide the court that is conducting the adoption proceedings with a copy of any existing order for visitation with a sibling of the child and allows certain interested parties to petition to participate in the determination as to whether to include visitation rights in the adoption decree.

Section 12 of this bill requires the Legislative Committee on Health Care to study issues relating to the use of psychotropic medications by children in the custody of agencies which provide child welfare services.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 2.3. Chapter 432B of NRS is hereby amended by adding thereto the provisions set forth as sections 2.5 and 2.7 of this act.

Sec. 2.5. *“Court-ordered admission of a child” includes, without limitation:*

1. A child who is in the custody of an agency which provides child welfare services and who is not in a facility whom the court orders to be admitted to a facility; and



2. A child who has been placed in a facility under an emergency admission and whom the court orders to be admitted for the purpose of continuing the placement.

Sec. 2.7. Each agency which provides child welfare services shall establish appropriate policies to ensure that children in the custody of the agency have timely access to clinically appropriate psychotropic medication. The policies must include, without limitation, policies concerning:

1. The use of psychotropic medication in a manner that has not been tested or approved by the United States Food and Drug Administration, including, without limitation, the use of such medication for a child who is of an age that has not been tested or approved or who has a condition for which the use of the medication has not been tested or approved;

2. Prescribing any psychotropic medication for use by a child who is less than 4 years of age;

3. The concurrent use by a child of three or more classes of psychotropic medication; and

4. The concurrent use by a child of two psychotropic medications of the same class.

Sec. 2.9. NRS 432B.510 is hereby amended to read as follows:

432B.510 1. A petition alleging that a child is in need of protection may be signed only by:

(a) A representative of an agency which provides child welfare services;

(b) A law enforcement officer or probation officer; or

(c) The district attorney.

2. *An agency which provides child welfare services shall represent the best interests of the child in all proceedings.* The district attorney shall countersign every petition alleging need of protection, and shall represent the interests of the ~~[public]~~ *child welfare agency* in all proceedings. If the district attorney fails or refuses to countersign the petition, the petitioner may seek a review by the Attorney General. If the Attorney General determines that a petition should be filed, he shall countersign the petition and shall represent the interests of the ~~[public]~~ *child welfare agency* in all subsequent proceedings.

3. Every petition must be entitled "In the Matter of, a child," and must be verified by the person who signs it.

4. Every petition must set forth specifically:

(a) The facts which bring the child within the jurisdiction of the court as indicated in NRS 432B.410.

(b) The name, date of birth and address of the residence of the child.



(c) The names and addresses of the residences of his parents and any other person responsible for the child's welfare, and spouse if any. If his parents or other person responsible for his welfare do not reside in this State or cannot be found within the State, or if their addresses are unknown, the petition must state the name of any known adult relative residing within the State or, if there is none, the known adult relative residing nearest to the court.

(d) Whether the child is in protective custody and, if so:

(1) The agency responsible for placing the child in protective custody and the reasons therefor; and

(2) Whether the child has been placed in a home or facility in compliance with the provisions of NRS 432B.3905. If the placement does not comply with the provisions of NRS 432B.3905, the petition must include a plan for transferring the child to a placement which complies with the provisions of NRS 432B.3905.

5. When any of the facts required by subsection 4 are not known, the petition must so state.

Sec. 3. NRS 432B.607 is hereby amended to read as follows:

432B.607 As used in NRS 432B.607 to 432B.6085, inclusive, *and section 2.5 of this act*, unless the context otherwise requires, the words and terms defined in NRS 432B.6071 to 432B.6074, inclusive, *and section 2.5 of this act* have the meanings ascribed to them in those sections.

Sec. 4. NRS 432B.6075 is hereby amended to read as follows:

432B.6075 **1.** A proceeding for a court-ordered admission of a child alleged to be a child with an emotional disturbance who is in the custody of an agency which provides child welfare services to a facility may be commenced by the filing of a petition with the clerk of the court which has jurisdiction in proceedings concerning the child. The petition may be filed by the agency which provides child welfare services without the consent of a parent of the child. The petition must be accompanied:

~~(1)~~ **(a)** By a certificate of a physician, psychiatrist or licensed psychologist stating that he has examined the child alleged to be a child with an emotional disturbance and has concluded that the child has an emotional disturbance and, because of that condition, is likely to harm himself or others if allowed his liberty; or

~~(2)~~ **(b)** By a sworn written statement by the petitioner that:

~~(a)~~ **(1)** The petitioner has, based upon his personal observation of the child alleged to be a child with an emotional disturbance, probable cause to believe that the child has an emotional disturbance and, because of that condition, is likely to harm himself or others if allowed his liberty; and



1 ~~[(b)]~~ (2) The child alleged to be a child with an emotional
2 disturbance has refused to submit to examination or treatment by a
3 physician, psychiatrist or licensed psychologist.

4 *2. If a petition filed pursuant to this section is to continue the*
5 *placement of the child after an emergency admission, the petition*
6 *must be filed not later than 5 days after the emergency admission*
7 *or the child must be released.*

8 **Sec. 5.** NRS 432B.6076 is hereby amended to read as follows:

9 432B.6076 1. Except as otherwise provided in NRS
10 432B.6077, if the court finds, after proceedings for the court-
11 ordered admission of a child alleged to be a child with an emotional
12 disturbance who is in the custody of an agency which provides child
13 welfare services to a facility ~~[(b)]~~, *including, without limitation, an*
14 *evidentiary hearing:*

15 (a) That there is not clear and convincing evidence that the child
16 with respect to whom the hearing was held exhibits observable
17 behavior such that he is likely to harm himself or others if allowed
18 his liberty, the court shall enter its finding to that effect and the child
19 must not be admitted to a facility.

20 (b) That there is clear and convincing evidence that the child
21 with respect to whom the hearing was held is in need of treatment in
22 a facility and is likely to harm himself or others if allowed his
23 liberty, the court may order the admission of the child for the most
24 appropriate course of treatment. The order of the court must be
25 interlocutory and must not become final if, within 30 days after the
26 admission, the child is unconditionally released from the facility
27 pursuant to NRS 432B.6084.

28 2. Before issuing an order for admission or a renewal thereof,
29 the court shall explore other alternative courses of treatment within
30 the least restrictive appropriate environment as suggested by the
31 evaluation team who evaluated the child, or other persons
32 professionally qualified in the field of psychiatric mental health,
33 which the court believes may be in the best interests of the child.

34 **Sec. 6.** NRS 432B.6077 is hereby amended to read as follows:

35 432B.6077 1. An agency which provides child welfare
36 services shall not place a child who is in the custody of the agency
37 in a facility, other than under an emergency admission, unless the
38 agency has petitioned the court for the court-ordered admission of
39 the child to a facility pursuant to NRS 432B.6075.

40 2. If a petition for the court-ordered admission of a child filed
41 pursuant to NRS 432B.6075 is accompanied by the information
42 described in *paragraph (b) of* subsection ~~[(2)]~~ 1 of NRS 432B.6075,
43 the court shall order a psychological evaluation of the child.

44 3. If a court which receives a petition filed pursuant to NRS
45 432B.6075 for the court-ordered admission to a facility of a child



1 who is in the custody of an agency which provides child welfare
2 services determines pursuant to subsection 2 of NRS 432B.6076 that
3 the child could be treated effectively in a less restrictive appropriate
4 environment than a facility, the court must order the placement of
5 the child in a less restrictive appropriate environment. In making
6 such a determination, the court may consider any information
7 provided to the court, including, without limitation:

8 (a) Any information provided pursuant to subsection 4;

9 (b) Any suggestions of psychologists, psychiatrists or other
10 physicians who have evaluated the child concerning the appropriate
11 environment for the child; and

12 (c) Any suggestions of licensed clinical social workers or other
13 professionals or any adult caretakers who have interacted with the
14 child and have information concerning the appropriate environment
15 for the child.

16 4. If a petition for the court-ordered admission of a child who
17 is in the custody of an agency which provides child welfare services
18 is filed pursuant to NRS 432B.6075:

19 (a) Any person, including, without limitation, the child, may
20 oppose the petition for the court-ordered admission of the child by
21 filing a written opposition with the court ~~or~~ *or stating the*
22 *opposition in court;* and

23 (b) The agency which provides child welfare services must
24 present information to the court concerning whether:

25 (1) A facility is the appropriate environment to provide
26 treatment to the child; or

27 (2) A less restrictive appropriate environment would serve
28 the needs of the child.

29 **Sec. 7.** NRS 432B.6078 is hereby amended to read as follows:

30 432B.6078 1. Not later than 5 days after a child who is in the
31 custody of an agency which provides child welfare services has
32 been admitted to a facility pursuant to NRS 432B.6076, the agency
33 which provides child welfare services shall inform the child of his
34 legal rights and the provisions of NRS 432B.607 to 432B.6085,
35 inclusive, *and section 2.5 of this act*, 433.456 to 433.543, inclusive,
36 and 433.545 to 433.551, inclusive, and chapters 433A and 433B of
37 NRS and, if the child or the child's attorney desires, assist the child
38 in requesting the court to authorize a second examination by an
39 evaluation team that includes a physician, psychiatrist or licensed
40 psychologist *who are not employed by, connected to or otherwise*
41 *affiliated with the facility* other than a physician, psychiatrist or
42 licensed psychologist who performed an original examination which
43 authorized the court to order the admission of the child to the
44 facility. *A second examination must be conducted not later than 5*
45 *business days after the court authorizes the examination.*



2. If the court authorizes a second examination of the child, the examination must:

(a) Include, without limitation, an evaluation concerning whether the child should remain in the facility and a recommendation concerning the appropriate placement of the child which must be provided to the facility; and

(b) Be paid for by the governmental entity that is responsible for the agency which provides child welfare services, if such payment is not otherwise provided by the State Plan for Medicaid.

Sec. 8. NRS 432B.608 is hereby amended to read as follows:

432B.608 1. If the court issues an order for the admission to a facility of a child who is in the custody of an agency which provides child welfare services pursuant to NRS 432B.6076, the admission automatically expires at the end of 90 days if not terminated previously by the facility as provided for in subsection 2 of NRS 432B.6084.

2. At the end of the court-ordered period of treatment, the agency which provides child welfare services, the Division of Child and Family Services or any facility may petition to renew the admission of the child for additional periods not to exceed 60 days each.

3. For each renewal, the petition must set forth the specific reasons why further treatment in the facility would be in the best interests of the child ~~[-]~~ *and the court shall apply the same standards when considering a petition to renew the admission of the child as were applied for the original petition for the court-ordered admission of the child.*

Sec. 9. NRS 432B.6081 is hereby amended to read as follows:

432B.6081 A facility which provides care, treatment or training to a child who is in the custody of an agency which provides child welfare services and who is admitted to the facility pursuant to NRS 432B.6076 shall develop a plan, in consultation with the child, for the continued care, treatment and training of the child upon discharge from the facility. The plan must:

1. Be developed not later than ~~[-]~~ *10* days after the child is admitted to the facility;

2. Be submitted to the court after each period of admission ordered by the court pursuant to NRS 432B.6076 in the manner set forth in NRS 432B.608; and

3. Include, without limitation:

(a) The anticipated date of discharge of the child from the facility;

(b) ~~[The criteria which must be satisfied before the child is discharged from the facility, as determined by the medical~~



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~~professional responsible for the care, treatment and training of the child in the facility;~~

~~—(e)~~ The name of any psychiatrist or psychologist who will provide care, treatment or training to the child after the child is discharged from the facility, if appropriate;

~~(d)~~ (c) A plan for any appropriate care, treatment or training for the child for at least 30 days after the child is discharged from the facility; and

~~(e)~~ (d) The suggested placement of the child after the child is discharged from the facility.

Sec. 10. Chapter 127 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a child who is in the custody of an agency which provides child welfare services is placed for adoption, the agency must provide the court which is conducting the adoption proceedings with a copy of any order for visitation with a sibling of the child that was issued pursuant to NRS 432B.580 and the court must conduct a hearing to determine whether to include an order for visitation with a sibling in the decree of adoption.

2. Any interested party in the adoption, including, without limitation, the adoptive parent, the adoptive child, a sibling of the adoptive child, the agency which provides child welfare services or a licensed child-placing agency may petition the court to participate in the determination of whether to include an order of visitation with a sibling in the decree of adoption.

3. The sole consideration of the court in making a determination concerning visitation with a sibling pursuant to this section is the best interest of the child.

Sec. 11. NRS 433B.130 is hereby amended to read as follows:

433B.130 1. The Administrator shall:

(a) Administer, in accordance with the policies established by the Commission, the programs of the Division for the mental health of children.

(b) Appoint the administrative personnel necessary to operate the programs of the Division for the mental health of children. The Commission must approve the credentials, training and experience of deputy administrators and administrative officers appointed for this purpose.

(c) Delegate to the administrative officers the power to appoint medical, technical, clerical and operational staff necessary for the operation of any division facilities.

(d) Establish appropriate policies to ensure that children in division facilities have timely access to clinically appropriate psychotropic medication that are consistent with the policies established pursuant to section 2.7 of this act.



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2. If the Administrator finds that it is necessary or desirable that any employee reside at a facility operated by the Division or receive meals at such a facility, perquisites granted or charges for services rendered to that person are at the discretion of the Governor.

3. The Administrator may accept children referred to the Division for treatment pursuant to the provisions of NRS 458.290 to 458.350, inclusive.

4. The Administrator may enter into agreements with the Administrator of the Division of Mental Health and Developmental Services of the Department for the care and treatment of clients of the Division of Child and Family Services at any facility operated by the Division of Mental Health and Developmental Services.

Sec. 12. During the 2009-2011 interim, the Legislative Committee on Health Care shall study the policies adopted pursuant to section 2.7 of this act and NRS 433B.130, as amended by section 11 of this act, and the use of psychotropic medication by children in the custody of agencies which provide child welfare services, including, without limitation, children in the custody of a facility operated by the Division of Child and Family Services of the Department of Health and Human Services. The study must include, without limitation, issues concerning:

1. The use of psychotropic medication in a manner that has not been tested or approved by the United States Food and Drug Administration, including, without limitation, the use of such medication for a child who is of an age that has not been tested or approved or who has a condition for which the use of the medication has not been tested or approved;

2. Prescribing any psychotropic medication for use by a child who is less than 4 years of age;

3. The concurrent use by a child of three or more classes of psychotropic medication;

4. Whether children in the custody of agencies which provide child welfare services have timely access to clinically appropriate psychotropic medication; and

5. The concurrent use by a child of two psychotropic medications of the same class.

Sec. 13. This act becomes effective on July 1, 2009.

