

SENATE BILL NO. 342—COMMITTEE ON HEALTH AND EDUCATION

(ON BEHALF OF THE INTERIM STUDY ON THE PLACEMENT  
OF CHILDREN IN FOSTER CARE)

MARCH 23, 2009

Referred to Committee on Health and Education

**SUMMARY**—Expands the relatives who receive preference when a child is placed in the custody of a person other than the parent of the child by a court, an agency which provides child welfare services or other person. (BDR 38-478)

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

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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 the protection of children; expanding the relatives who receive preference when a child is placed in the custody of a person other than the parent of the child by a court, an agency which provides child welfare services or other person; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law requires courts, agencies which provide child welfare services and  
2 others to give preference to relatives within the third degree of consanguinity when  
3 placing a child in the custody of a person other than the parent. (NRS 62C.010,  
4 62E.120, 62E.170, 125.480, 432B.390, 432B.480, 432B.550) **Sections 1-7** of this  
5 bill expand the relatives who receive such preference to include relatives within the  
6 fifth degree of consanguinity. **Section 8** of this bill similarly authorizes such  
7 preference when placing a child whose parents have had their parental rights  
8 terminated. (NRS 128.110)



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

**Section 1.** NRS 432B.390 is hereby amended to read as follows:

432B.390 1. An agent or officer of a law enforcement agency, an officer of the local juvenile probation department or the local department of juvenile services, or a designee of an agency which provides child welfare services:

(a) May place a child in protective custody without the consent of the person responsible for the child's welfare if he has reasonable cause to believe that immediate action is necessary to protect the child from injury, abuse or neglect.

(b) Shall place a child in protective custody upon the death of a parent of the child, without the consent of the person responsible for the welfare of the child, if the agent, officer or designee has reasonable cause to believe that the death of the parent of the child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018.

2. When an agency which provides child welfare services receives a report pursuant to subsection 2 of NRS 432B.630, a designee of the agency which provides child welfare services shall immediately place the child in protective custody.

3. If there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, a protective custody hearing must be held pursuant to NRS 432B.470, whether the child was placed in protective custody or with a relative. If an agency other than an agency which provides child welfare services becomes aware that there is reasonable cause to believe that the death of a parent of a child is or may be the result of an act by the other parent that constitutes domestic violence pursuant to NRS 33.018, that agency shall immediately notify the agency which provides child welfare services and a protective custody hearing must be scheduled.

4. An agency which provides child welfare services shall request the assistance of a law enforcement agency in the removal of a child if the agency has reasonable cause to believe that the child or the person placing the child in protective custody may be threatened with harm.

5. Before taking a child for placement in protective custody, the person taking the child shall show his identification to any person who is responsible for the child and is present at the time the child is taken. If a person who is responsible for the child is not present at the time the child is taken, the person taking the child



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1 shall show his identification to any other person upon request. The  
2 identification required by this subsection must be a single card that  
3 contains a photograph of the person taking the child and identifies  
4 him as a person authorized pursuant to this section to place a child  
5 in protective custody.

6 6. A child placed in protective custody pending an  
7 investigation and a hearing held pursuant to NRS 432B.470 must be  
8 placed in a hospital, if the child needs hospitalization, or in a shelter,  
9 which may include, without limitation, a foster home or other home  
10 or facility which provides care for those children, except as  
11 otherwise provided in NRS 432B.3905. Such a child must not be  
12 placed in a jail or other place for detention, incarceration or  
13 residential care of persons convicted of a crime or children charged  
14 with delinquent acts.

15 7. A person placing a child in protective custody pursuant to  
16 subsection 1 shall:

17 (a) Immediately take steps to protect all other children  
18 remaining in the home or facility, if necessary;

19 (b) Immediately make a reasonable effort to inform the person  
20 responsible for the child's welfare that the child has been placed in  
21 protective custody;

22 (c) Give preference in placement of the child to any person  
23 related within the ~~third~~ *fifth* degree of consanguinity to the child  
24 who is suitable and able to provide proper care and guidance for the  
25 child, regardless of whether the relative resides within this State;  
26 and

27 (d) As soon as practicable, inform the agency which provides  
28 child welfare services and the appropriate law enforcement agency,  
29 except that if the placement violates the provisions of NRS  
30 432B.3905, the person shall immediately provide such notification.

31 8. If a child is placed with any person who resides outside this  
32 State, the placement must be in accordance with NRS 127.330.

33 **Sec. 2.** NRS 432B.480 is hereby amended to read as follows:

34 432B.480 1. At each hearing conducted pursuant to  
35 NRS 432B.470:

36 (a) At the commencement of the hearing, the court shall advise  
37 the parties of their right to be represented by an attorney and of their  
38 right to present evidence.

39 (b) The court shall determine whether there is reasonable cause  
40 to believe that it would be:

41 (1) Contrary to the welfare of the child for him to reside at  
42 his home; or

43 (2) In the best interests of the child to place him outside of  
44 his home.



1    ➤ The court shall prepare an explicit statement of the facts upon  
2    which each of its determinations is based. If the court makes an  
3    affirmative finding regarding either subparagraph (1) or (2), the  
4    court shall issue an order keeping the child in protective custody  
5    pending a disposition by the court.

6    (c) The court shall determine whether the child has been placed  
7    in a home or facility that complies with the requirements of NRS  
8    432B.3905. If the placement does not comply with the requirements  
9    of NRS 432B.3905, the court shall establish a plan with the agency  
10   which provides child welfare services for the prompt transfer of the  
11   child into a home or facility that complies with the requirements of  
12   NRS 432B.3905.

13   2. If the court issues an order keeping the child in protective  
14   custody pending a disposition by the court and it is in the best  
15   interests of the child, the court may:

16   (a) Place the child in the temporary custody of a grandparent,  
17   great-grandparent or other person related within the ~~third~~ fifth  
18   degree of consanguinity to the child who the court finds has  
19   established a meaningful relationship with the child, with or without  
20   supervision upon such conditions as the court prescribes, regardless  
21   of whether the relative resides within this State; or

22   (b) Grant the grandparent, great-grandparent or other person  
23   related within the ~~third~~ fifth degree of consanguinity to the child a  
24   reasonable right to visit the child while he is in protective custody.

25   3. If the court finds that the best interests of the child do not  
26   require that the child remain in protective custody, the court shall  
27   order his immediate release.

28   4. If a child is placed with any person who resides outside this  
29   State, the placement must be in accordance with NRS 127.330.

30   **Sec. 3.** NRS 432B.550 is hereby amended to read as follows:

31   432B.550 1. If the court finds that a child is in need of  
32   protection, it may, by its order, after receipt and review of the report  
33   from the agency which provides child welfare services:

34   (a) Permit the child to remain in the temporary or permanent  
35   custody of his parents or a guardian with or without supervision by  
36   the court or a person or agency designated by the court, and with or  
37   without retaining jurisdiction of the case, upon such conditions as  
38   the court may prescribe;

39   (b) Place him in the temporary or permanent custody of a  
40   relative or other person who the court finds suitable to receive and  
41   care for him with or without supervision, and with or without  
42   retaining jurisdiction of the case, upon such conditions as the court  
43   may prescribe; or

44   (c) Place him in the temporary custody of a public agency or  
45   institution authorized to care for children, the local juvenile



1 probation department, the local department of juvenile services or a  
2 private agency or institution licensed by the Department of Health  
3 and Human Services or a county whose population is 100,000 or  
4 more to care for such a child.

5 ➡ In carrying out this subsection, the court may, in its sole  
6 discretion and in compliance with the requirements of chapter 159  
7 of NRS, consider an application for the guardianship of the child. If  
8 the court grants such an application, it may retain jurisdiction of the  
9 case or transfer the case to another court of competent jurisdiction.

10 2. If, pursuant to subsection 1, a child is placed other than with  
11 a parent:

12 (a) The parent retains the right to consent to adoption, to  
13 determine the child's religious affiliation and to reasonable  
14 visitation, unless restricted by the court. If the custodian of the child  
15 interferes with these rights, the parent may petition the court for  
16 enforcement of his rights.

17 (b) The court shall set forth good cause why the child was  
18 placed other than with a parent.

19 3. If, pursuant to subsection 1, the child is to be placed with a  
20 relative, the court may consider, among other factors, whether the  
21 child has resided with a particular relative for 3 years or more before  
22 the incident which brought the child to the court's attention.

23 4. Except as otherwise provided in this subsection, a copy of  
24 the report prepared for the court by the agency which provides child  
25 welfare services must be sent to the custodian and the parent or legal  
26 guardian. If the child was delivered to a provider of emergency  
27 services pursuant to NRS 432B.630 and the location of the parent is  
28 unknown, the report need not be sent to that parent.

29 5. In determining the placement of a child pursuant to this  
30 section, if the child is not permitted to remain in the custody of his  
31 parents or guardian:

32 (a) It must be presumed to be in the best interests of the child to  
33 be placed together with his siblings.

34 (b) Preference must be given to placing the child with any  
35 person related within the ~~third~~ fifth degree of consanguinity to the  
36 child who is suitable and able to provide proper care and guidance  
37 for the child, regardless of whether the relative resides within this  
38 State.

39 ➡ Any search for a relative with whom to place a child pursuant to  
40 this section must be completed within 1 year after the initial  
41 placement of the child outside of his home. If a child is placed with  
42 any person who resides outside of this State, the placement must be  
43 in accordance with NRS 127.330.

44 6. Within 60 days after the removal of a child from his home,  
45 the court shall:



(a) Determine whether:

(1) The agency which provides child welfare services has made the reasonable efforts required by paragraph (a) of subsection 1 of NRS 432B.393; or

(2) No such efforts are required in the particular case; and

(b) Prepare an explicit statement of the facts upon which its determination is based.

**Sec. 4.** NRS 62C.010 is hereby amended to read as follows:

62C.010 Except as otherwise provided in this title and NRS 484.383:

1. A peace officer or probation officer may take into custody any child:

(a) Who the officer has probable cause to believe is violating or has violated any state or local law, ordinance, or rule or regulation having the force of law; or

(b) Whose conduct indicates that the child is in need of supervision.

2. If a child is taken into custody:

(a) The officer shall, without undue delay, attempt to notify, if known, the parent or guardian of the child;

(b) The facility in which the child is detained shall, without undue delay:

(1) Notify a probation officer; and

(2) Attempt to notify, if known, the parent or guardian of the child if such notification was not accomplished pursuant to paragraph (a); and

(c) Unless it is impracticable or inadvisable or has been otherwise ordered by the juvenile court, the child must be released to the custody of a parent or guardian or another responsible adult who has signed a written agreement to bring the child before the juvenile court at a time stated in the agreement or as the juvenile court may direct. The written agreement must be submitted to the juvenile court as soon as possible. If the person fails to produce the child at the time stated in the agreement or upon a summons from the juvenile court, a writ may be issued for the attachment of the person or of the child requiring that the person or child, or both, be brought before the juvenile court at a time stated in the writ.

3. If a child who is taken into custody is not released pursuant to subsection 2:

(a) The child must be taken without unnecessary delay to:

(1) The juvenile court; or

(2) The place of detention designated by the juvenile court and, as soon as possible thereafter, the fact of detention must be reported to the juvenile court; and



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(b) Pending further disposition of the case, the juvenile court may order that the child be:

(1) Released to the custody of a parent or guardian or another person appointed by the juvenile court;

(2) Detained in a place designated by the juvenile court, subject to further order of the juvenile court; or

(3) Conditionally released for supervised detention at the home of the child in lieu of detention at a facility for the detention of children. The supervised detention at the home of the child may include electronic surveillance of the child.

4. In determining whether to release a child pursuant to this section to a person other than a parent or guardian, the juvenile court shall give preference to any person who is related to the child within the ~~third~~ fifth degree of consanguinity if the juvenile court finds that the person is suitable and able to provide proper care and guidance for the child.

**Sec. 5.** NRS 62E.120 is hereby amended to read as follows:

62E.120 In determining whether to place a child in the custody of a person other than a parent or guardian, the juvenile court shall give preference to any person who is related to the child within the ~~third~~ fifth degree of consanguinity if the juvenile court finds that the person is suitable and able to provide proper care and guidance for the child.

**Sec. 6.** NRS 62E.170 is hereby amended to read as follows:

62E.170 1. Except as otherwise provided in this section, if the juvenile court places a child in a foster home or other similar institution, the juvenile court shall review the placement at least semiannually for the purpose of determining whether:

(a) Continued placement or supervision is in the best interests of the child and the public; and

(b) The child is being treated fairly.

2. In conducting the review, the juvenile court may:

(a) Require a written report from the child's protective services officer, welfare worker or other guardian of the child which includes, but is not limited to, an evaluation of the progress of the child and recommendations for further supervision, treatment or rehabilitation.

(b) Request any information or statements that the juvenile court deems necessary for the review.

3. The juvenile court shall hold dispositional hearings not later than 18 months after the review required by subsection 1, and at least annually thereafter.

4. The juvenile court shall hold each dispositional hearing to determine whether:



(a) The child should be returned to his parent or guardian or other relatives;

(b) The child's placement in the foster home or other similar institution should be continued;

(c) The child should be placed for adoption or under a legal guardianship; or

(d) The child should remain in the foster home or other similar institution on a long-term basis.

5. The provisions of this section do not apply to the placement of a child in the home of the child's parent or parents.

6. This section does not limit the power of the juvenile court to order a review or similar proceeding under subsection 1 other than semiannually.

7. In determining the placement of the child pursuant to this section, the juvenile court shall give preference to any person who is related to the child within the ~~third~~ *fifth* degree of consanguinity if the juvenile court finds that the person is suitable and able to provide proper care and guidance for the child.

**Sec. 7.** NRS 125.480 is hereby amended to read as follows:

125.480 1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.

3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application.

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

(c) To any person related within the ~~third~~ *fifth* degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.



1       4. In determining the best interest of the child, the court shall  
2 consider and set forth its specific findings concerning, among other  
3 things:

4       (a) The wishes of the child if the child is of sufficient age and  
5 capacity to form an intelligent preference as to his custody.

6       (b) Any nomination by a parent or a guardian for the child.

7       (c) Which parent is more likely to allow the child to have  
8 frequent associations and a continuing relationship with the  
9 noncustodial parent.

10       (d) The level of conflict between the parents.

11       (e) The ability of the parents to cooperate to meet the needs of  
12 the child.

13       (f) The mental and physical health of the parents.

14       (g) The physical, developmental and emotional needs of the  
15 child.

16       (h) The nature of the relationship of the child with each parent.

17       (i) The ability of the child to maintain a relationship with any  
18 sibling.

19       (j) Any history of parental abuse or neglect of the child or a  
20 sibling of the child.

21       (k) Whether either parent or any other person seeking custody  
22 has engaged in an act of domestic violence against the child, a  
23 parent of the child or any other person residing with the child.

24       5. Except as otherwise provided in subsection 6 or NRS  
25 125C.210, a determination by the court after an evidentiary hearing  
26 and finding by clear and convincing evidence that either parent or  
27 any other person seeking custody has engaged in one or more acts of  
28 domestic violence against the child, a parent of the child or any  
29 other person residing with the child creates a rebuttable presumption  
30 that sole or joint custody of the child by the perpetrator of the  
31 domestic violence is not in the best interest of the child. Upon  
32 making such a determination, the court shall set forth:

33       (a) Findings of fact that support the determination that one or  
34 more acts of domestic violence occurred; and

35       (b) Findings that the custody or visitation arrangement ordered  
36 by the court adequately protects the child and the parent or other  
37 victim of domestic violence who resided with the child.

38       6. If after an evidentiary hearing held pursuant to subsection 5  
39 the court determines that each party has engaged in acts of domestic  
40 violence, it shall, if possible, then determine which person was the  
41 primary physical aggressor. In determining which party was the  
42 primary physical aggressor for the purposes of this section, the court  
43 shall consider:

44       (a) All prior acts of domestic violence involving either party;



(b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;

(c) The likelihood of future injury;

(d) Whether, during the prior acts, one of the parties acted in self-defense; and

(e) Any other factors which the court deems relevant to the determination.

➤ In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.

7. As used in this section, "domestic violence" means the commission of any act described in NRS 33.018.

**Sec. 8.** NRS 128.110 is hereby amended to read as follows:

128.110 1. Whenever the procedure described in this chapter has been followed, and upon finding grounds for the termination of parental rights pursuant to NRS 128.105 at a hearing upon the petition, the court shall make a written order, signed by the judge presiding in the court, judicially depriving the parent or parents of the custody and control of, and terminating the parental rights of the parent or parents with respect to the child, and declaring the child to be free from such custody or control, and placing the custody and control of the child in some person or agency qualified by the laws of this State to provide services and care to children, or to receive any children for placement.

2. If the child is placed in the custody and control of a person or agency qualified by the laws of this State to receive children for placement, the person or agency, in seeking to place the child:

(a) May give preference to the placement of the child with any person related within the ~~third~~ *fifth* degree of consanguinity to the child whom the person or agency finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(b) Shall, if practicable, give preference to the placement of the child together with his siblings.

➤ Any search for a relative with whom to place a child pursuant to this subsection must be completed within 1 year after the initial placement of the child outside of his home.

**Sec. 9.** This act becomes effective on July 1, 2009.

