

SENATE BILL NO. 86—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DIVISION OF CHILD AND FAMILY SERVICES)

PREFILED DECEMBER 15, 2008

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning children who are ordered to be placed in the custody of an agency which provides child welfare services by the juvenile court. (BDR 5-361)

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 children; revising provisions governing the detention of juveniles; revising provisions governing the placement of children into foster care by the juvenile court; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill provides that if a child who is alleged to be delinquent is detained for more than 24 hours, the juvenile court must determine whether there is reasonable cause to believe that it is contrary to the welfare of the child to return home or that it is in the best interests of the child to be placed outside his home. (NRS 62C.040) **Section 2** of this bill requires the juvenile court to make the same determination with respect to a child who is being detained because he is alleged to be in need of supervision to return home. (NRS 62C.050)

Chapter 62E of NRS sets forth the procedures upon the disposition of a case before the juvenile court. Existing law provides for a periodic review of the placement of a child who is placed in a foster home or other similar placement by the juvenile court. (NRS 62E.170) **Section 10** of this bill revises the determinations made during the periodic review and removes the requirement for a dispositional hearing within 18 months after the review.

Sections 4-9 of this bill provide additional procedures in such cases which are similar to requirements for children who enter the child welfare system because they are the subject of a report of abuse or neglect. (Chapter 432B of NRS) **Section 4** requires the juvenile court to appoint a guardian ad litem for such a child and sets forth the qualifications and duties for such a guardian. (See NRS 432B.500) **Section 5** requires the juvenile court to hold a hearing within 60 days after a child



is placed in a foster home or other similar placement to determine whether reasonable efforts have been made to preserve and reunify the family and to prevent or eliminate the need for the removal of the child from his home and to make it possible for the child to safely return home. (See NRS 432B.550) **Section 6** requires the Division of Child and Family Services of the Department of Health and Human Services to adopt a plan for the permanent placement of a child who is placed in its custody by a juvenile court and to make reasonable efforts to finalize the permanent placement of the child in accordance with that plan. (See NRS 432B.553) **Section 6** further requires the Division to include in such a plan the termination of parental rights in certain circumstances. (See NRS 432B.553) **Section 7** requires the juvenile court to hold a hearing concerning the permanent placement of a child who is placed in a foster home or other similar placement within 12 months after the child is first detained and annually thereafter, and within 30 days after determining that reasonable efforts to preserve and reunify the family of the child is not necessary. (See NRS 432B.590) **Section 8** requires any hearing held to consider the status of a child who has been placed in the custody of the Division of Child and Family Services by the juvenile court to include certain determinations. **Section 9** requires that any out-of-state placement of such a child be in accordance with the provisions of the Interstate Compact on the Placement of Children. (See NRS 127.330)

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

Section 1. NRS 62C.040 is hereby amended to read as follows:

62C.040 1. If a child who is alleged to be delinquent is taken into custody and detained, the child must be given a detention hearing before the juvenile court:

(a) Not later than 24 hours after the child submits a written application;

(b) In a county whose population is less than 100,000, not later than 24 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined;

(c) In a county whose population is 100,000 or more, not later than 6 hours after the commencement of detention at a police station, lockup, jail, prison or other facility in which adults are detained or confined; or

(d) Not later than 72 hours after the commencement of detention at a facility in which adults are not detained or confined,

↳ whichever occurs first, excluding Saturdays, Sundays and holidays.

2. A child must not be released after a detention hearing without the written consent of the juvenile court.

3. If a child is detained pursuant to this section for 24 hours or more, the juvenile court must determine whether there is reasonable cause to believe that it is contrary to the welfare of the



child to return home or that it is in the best interests of the child to be placed outside his home.

Sec. 2. NRS 62C.050 is hereby amended to read as follows:

62C.050 1. Except as otherwise provided in this section, if a child who is alleged to be in need of supervision is taken into custody and detained, the child must be released not later than 24 hours, excluding Saturdays, Sundays and holidays, after the child's initial contact with a peace officer or probation officer to:

(a) A parent or guardian of the child;

(b) Any other person who is able to provide adequate care and supervision for the child; or

(c) Shelter care.

2. A child does not have to be released pursuant to subsection 1 if the juvenile court:

(a) Holds a detention hearing;

(b) Determines that the child:

(1) Has threatened to run away from home or from the shelter;

(2) Is accused of violent behavior at home; or

(3) Is accused of violating the terms of a supervision and consent decree; and

(c) Determines that ~~[the child needs to be detained to make an alternative placement for the child.]~~ *there is reasonable cause to believe that it is contrary to the welfare of the child to return home or that it is in the best interests of the child to be placed outside his home.*

➔ The child may be detained for an additional 24 hours but not more than 48 hours after the detention hearing, excluding Saturdays, Sundays and holidays.

3. A child does not have to be released pursuant to this section if the juvenile court:

(a) Holds a detention hearing; and

(b) Determines that the child:

(1) Is a ward of a federal court or held pursuant to a federal statute;

(2) Has run away from another state and a jurisdiction within that state has issued a want, warrant or request for the child; or

(3) Is accused of violating a valid court order.

➔ The child may be detained for an additional period as necessary for the juvenile court to return the child to the jurisdiction from which the child originated or to make an alternative placement for the child.

4. For the purposes of this section, an alternative placement must be in a facility in which there are no physical restraining devices or barriers.



1 **Sec. 3.** Chapter 62E of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 4 to 9, inclusive, of this
3 act.

4 **Sec. 4. 1.** *After a child whom the juvenile court has ordered*
5 *into the custody of the Division of Child and Family Services is*
6 *placed in a foster home or other similar placement, the juvenile*
7 *court shall appoint a guardian ad litem for the child. The person*
8 *so appointed:*

9 (a) *Must meet the requirements set forth in NRS 432B.505 or,*
10 *if such a person is not available, must be a representative of an*
11 *agency which provides child welfare services, a juvenile probation*
12 *officer, an officer of the juvenile court or another volunteer.*

13 (b) *Must not be a parent or other person responsible for the*
14 *child's welfare.*

15 2. *No compensation may be allowed a person serving as a*
16 *guardian ad litem pursuant to this section.*

17 3. *A guardian ad litem appointed pursuant to this section*
18 *shall:*

19 (a) *Represent and protect the best interests of the child until*
20 *excused by the juvenile court;*

21 (b) *Thoroughly research and ascertain the relevant facts of*
22 *each case for which he is appointed, and ensure that the juvenile*
23 *court receives an independent, objective account of those facts;*

24 (c) *Meet with the child wherever the child is placed as often as*
25 *is necessary to determine that the child is safe and to ascertain the*
26 *best interests of the child;*

27 (d) *Explain to the child the role of the guardian ad litem and,*
28 *when appropriate, the nature and purpose of each proceeding in*
29 *his case;*

30 (e) *Participate in the development and negotiation of any plans*
31 *for and orders regarding the child, and monitor the*
32 *implementation of those plans and orders to determine whether*
33 *services are being provided in an appropriate and timely manner;*

34 (f) *Appear at all proceedings regarding the child;*

35 (g) *Inform the juvenile court of the desires of the child, but*
36 *exercise his independent judgment regarding the best interests of*
37 *the child;*

38 (h) *Present recommendations to the juvenile court and provide*
39 *reasons in support of those recommendations;*

40 (i) *Request the juvenile court to enter orders that are clear,*
41 *specific and, when appropriate, include periods for compliance;*

42 (j) *Review the progress of each case for which he is appointed,*
43 *and advocate for the expedient completion of the case; and*

44 (k) *Perform such other duties as the juvenile court orders.*



1 **Sec. 5. 1.** *Within 60 days after a child whom the juvenile*
2 *court ordered into the custody of the Division of Child and Family*
3 *Services is placed in a foster home or other similar placement, the*
4 *juvenile court shall hold a hearing to determine whether:*

5 *(a) Except as otherwise provided in subsection 2, the Division*
6 *of Child and Family Services has made reasonable efforts to*
7 *preserve and reunify the family of the child and to prevent or*
8 *eliminate the need for his removal from his home and to make it*
9 *possible for the child to safely return to his home; or*

10 *(b) No such efforts were required in the particular case*
11 *because of exigent circumstances.*

12 **2.** *The Division of Child and Family Services is not required*
13 *to make the reasonable efforts pursuant to paragraph (a) of*
14 *subsection 1 if the juvenile court finds that:*

15 *(a) A parent or other primary caretaker of the child has:*

16 *(1) Committed, aided or abetted in the commission of, or*
17 *attempted, conspired or solicited to commit, murder or voluntary*
18 *manslaughter;*

19 *(2) Caused the abuse or neglect of the child, or of another*
20 *child of the parent or primary caretaker, which resulted in*
21 *substantial bodily harm to the abused or neglected child;*

22 *(3) Caused the abuse or neglect of the child, a sibling of the*
23 *child or another child in the household, and the abuse or neglect*
24 *was so extreme or repetitious as to indicate that any plan to return*
25 *the child to his home would result in an unacceptable risk to the*
26 *health or welfare of the child; or*

27 *(4) Abandoned the child for 60 or more days, and the*
28 *identity of the parent of the child is unknown and cannot be*
29 *ascertained through reasonable efforts;*

30 *(b) The parent or other primary caretaker of the child has, for*
31 *the previous 6 months, had the ability to contact or communicate*
32 *with the child and made no more than token efforts to do so;*

33 *(c) The parental rights of a parent to a sibling of the child*
34 *have been terminated by a court order upon any basis other than*
35 *the execution of a voluntary relinquishment of those rights by a*
36 *natural parent, and the court order is not currently being*
37 *appealed; or*

38 *(d) The child or a sibling of the child was previously removed*
39 *from his home, adjudicated to have been abused or neglected,*
40 *returned to his home and subsequently removed from his home as*
41 *a result of additional abuse or neglect.*

42 **3.** *The juvenile court shall prepare an explicit statement of*
43 *the facts upon which its determination pursuant to subsection 1 is*
44 *based.*



1 **Sec. 6. 1. If a child whom the juvenile court has ordered**
2 *into the custody of the Division of Child and Family Services is*
3 *placed in a foster home or other similar placement, the Division*
4 *shall:*

5 (a) *Adopt a plan for the permanent placement of the child for*
6 *review by the juvenile court at a hearing; and*

7 (b) *Make reasonable efforts to finalize the permanent*
8 *placement of the child in accordance with the plan adopted*
9 *pursuant to paragraph (a).*

10 2. *For purposes of subsection 1, "reasonable efforts" have*
11 *been made if the agency which provides child welfare services that*
12 *has custody of the child has exercised diligence and care in*
13 *arranging appropriate and available services for the child, with*
14 *the health and safety of the child as its paramount concerns. The*
15 *exercise of such diligence and care, includes, without limitation,*
16 *obtaining necessary and appropriate information concerning the*
17 *child for the purposes of NRS 127.152, 127.410 and 424.038.*

18 3. *In determining whether reasonable efforts have been made*
19 *pursuant to subsection 1, the juvenile court shall:*

20 (a) *Evaluate the evidence and make findings based on whether*
21 *a reasonable person would conclude that reasonable efforts were*
22 *made;*

23 (b) *Consider any input from the child;*

24 (c) *Consider the efforts made and the evidence presented since*
25 *the previous finding of the court concerning reasonable efforts;*

26 (d) *Consider the diligence and care that the agency is legally*
27 *authorized and able to exercise;*

28 (e) *Recognize and take into consideration the legal obligations*
29 *of the agency to comply with any applicable laws and regulations;*

30 (f) *Base its determination on the circumstances and facts*
31 *concerning the particular family or plan for the permanent*
32 *placement of the child at issue;*

33 (g) *Consider whether the provisions of subsection 4 are*
34 *applicable; and*

35 (h) *Consider any other matters the court deems relevant.*

36 4. *An agency which provides child welfare services may*
37 *satisfy the requirement of making reasonable efforts pursuant to*
38 *this section by taking no action concerning a child or making no*
39 *effort to provide services to a child if it is reasonable under the*
40 *circumstances to do so.*

41 5. *If a child is not residing in his home and has been placed*
42 *in a foster home or other similar placement for 14 or more of the*
43 *immediately preceding 20 months, the Division of Child and*
44 *Family Services shall include the termination of parental rights to*



1 *the child in the plan for the permanent placement of the child,*
2 *unless the agency determines that:*

3 (a) *The child is in the care of a relative;*

4 (b) *The plan for the child requires the Division of Child and*
5 *Family Services to make reasonable efforts pursuant to section 5*
6 *of this act to reunify the family of the child, and the Division has*
7 *not provided to the family, consistently within the period specified*
8 *in the plan for the child, such services as the Division deems*
9 *necessary for the safe return of the child to his home; or*

10 (c) *There are compelling reasons, which are documented in*
11 *the plan for the child, for concluding that the filing of a petition to*
12 *terminate parental rights to the child would not be in the best*
13 *interests of the child.*

14 **Sec. 7. 1.** *The juvenile court shall hold a hearing*
15 *concerning the permanent placement of a child who is placed in a*
16 *foster home or other similar placement pursuant to section 6 of*
17 *this act:*

18 (a) *Not later than 12 months after the initial placement of the*
19 *child in a foster home or other similar placement and annually*
20 *thereafter.*

21 (b) *Within 30 days after making any of the findings set forth in*
22 *subsection 2 of section 5 of this act necessary to show that the*
23 *Division of Child and Family Services is not required to make*
24 *reasonable efforts to preserve and reunify the family of the child.*

25 2. *Except as otherwise provided in this subsection, notice of*
26 *the hearing must be given by registered or certified mail to the*
27 *parent or parents of the child, the guardian ad litem of the child*
28 *and the attorney, if any, representing the parent or the child. If the*
29 *parent of the child has not appeared in the action, the report need*
30 *not be given to that parent.*

31 3. *The juvenile court may require the presence of the child at*
32 *the hearing and shall provide to each person to whom notice was*
33 *given pursuant to subsection 2 an opportunity to be heard at the*
34 *hearing.*

35 4. *At the hearing, the juvenile court shall review any plan for*
36 *the permanent placement of the child adopted pursuant to section*
37 *6 of this act and determine:*

38 (a) *Whether the Division of Child and Family Services has*
39 *made the reasonable efforts required by subsection 1 of section 5*
40 *of this act; and*

41 (b) *Whether, and if applicable when:*

42 (1) *The child should be returned to his parent or placed*
43 *with other relatives;*

44 (2) *It is in the best interests of the child to:*



(I) Initiate proceedings to terminate parental rights pursuant to chapter 128 of NRS so that the child can be placed for adoption;

(II) Initiate proceedings to establish a guardianship pursuant to chapter 159 of NRS; or

(III) Establish a guardianship in accordance with NRS 432B.466 to 432B.468, inclusive; or

(3) The Division of Child and Family Services has produced documentation of its conclusion that there is a compelling reason for the placement of the child in another permanent living arrangement.

↪ The court shall prepare an explicit statement of the facts upon which each of its determinations is based. If the court determines that it is in the best interests of the child to terminate parental rights, the court shall use its best efforts to ensure that the procedures required by chapter 128 of NRS are completed within 6 months after the date the court makes that determination, including, without limitation, appointing a private attorney to expedite the completion of the procedures. The provisions of this subsection do not limit the jurisdiction of the court to review any decisions of the agency with legal custody of the child regarding the permanent placement of the child.

5. If a child has been placed outside of his home and has resided outside of his home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.

6. The hearing held pursuant to subsection 1 may take the place of the hearing for review required by NRS 62E.170.

Sec. 8. In any hearing held to consider the status of a child whom the juvenile court has ordered into the custody of Division of Child and Family Services and who has been placed in a foster home or other similar placement, the juvenile court shall determine whether the physical, psychological and sociological needs of the child are being met. The health and safety of the child must be given paramount concern in any such review.

Sec. 9. If a child whom the juvenile court has ordered into the custody of the Division of Child and Family Services is placed with any person who resides outside of the State of Nevada, the placement must made be in accordance with the provisions of NRS 127.330.

Sec. 10. NRS 62E.170 is hereby amended to read as follows:

62E.170 1. Except as otherwise provided in this section, if a child whom the juvenile court ~~[places a child]~~ has ordered into the custody of the Division of Child and Family Services is placed in a



1 foster home or other similar ~~institution,~~ *placement*, the juvenile
2 court shall review the placement at least semiannually for the
3 purpose of determining whether:

4 (a) ~~Continued placement or supervision is in the best interests~~
5 ~~of the child and the public; and~~ *It is contrary to the welfare of the*
6 *child for him to reside at his home;*

7 (b) *It is in the best interests of the child to place him outside of*
8 *his home;*

9 (c) *Reasonable efforts have been made to preserve or reunify*
10 *the family or to establish a permanent placement for the child as*
11 *required pursuant to section 6 of this act;*

12 (d) The child is being treated fairly ~~[-];~~

13 (e) *The child should be returned to his parent or guardian or*
14 *other relative;*

15 (f) *The placement of the child in the foster home or other*
16 *similar placement should be continued; and*

17 (g) *The child should be placed for adoption or under a legal*
18 *guardianship.*

19 2. *Except as otherwise provided in this subsection, the*
20 *juvenile court shall cause a copy of the report submitted pursuant*
21 *to paragraph (a) of subsection 3 to be given by registered or*
22 *certified mail to the parent or parents of the child, the guardian ad*
23 *litem of the child and the attorney, if any, representing the parent*
24 *or the child. If the parent of the child has not appeared in the*
25 *action, the report need not be given to that parent.*

26 3. In conducting the review, the juvenile court ~~may;~~ *shall:*

27 (a) Require a written report from the ~~child's protective services~~
28 ~~officer, welfare worker or other guardian~~ *Division of Child and*
29 *Family Services that has custody* of the child which includes, but is
30 not limited to, an evaluation of the progress of the child and
31 recommendations for further supervision, treatment or
32 rehabilitation.

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

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

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

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

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

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



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

~~—5.]~~ 4. 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.]~~ 5. 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.]~~ 6. 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 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. 11. This act becomes effective upon passage and approval.

