

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

**Seventy-Fifth Session
February 16, 2009**

The Committee on Health and Human Services was called to order by Chair Debbie Smith at 1:32 p.m. on Monday, February 16, 2009, 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/75th2009/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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Debbie Smith, Chairwoman
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Ty Cobb
Assemblyman Mo Denis
Assemblyman John Hambrick
Assemblyman Joseph (Joe) P. Hardy
Assemblywoman Sheila Leslie
Assemblywoman April Mastroluca
Assemblywoman Bonnie Parnell
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Chris Kanowitz, Committee Secretary
Darlene Rubin, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Diane J. Comeaux, Administrator, Division of Child and Family Services,
Department of Health and Human Services
Thomas D. Morton, Director, Department of Family Services, Clark County,
Las Vegas, Nevada
Kevin Schiller, Director, Department of Social Services, Washoe County,
Reno, Nevada
Barbara Legier, Deputy Administrator, Family Programs, Division of Child and
Family Services, Department of Health and Human Services
Juliana L. Ormsby, representing the Nevada Women's Lobby,
Carson City, Nevada

Chairwoman Smith:

[Roll called. Quorum present.] On today's agenda, we have one presentation and two bills to hear. I would like to welcome our first presenter, Diane Comeaux, who is the administrator of the Division of Child and Family Services in the Department of Health and Human Services.

**Diane J. Comeaux, Administrator, Division of Child and Family Services,
Department of Health and Human Services:**

I would like to give a brief overview of the Division of Child and Family Services, with the focus on child welfare. [Read PowerPoint ([Exhibit C](#)).]

Chairwoman Smith:

Regarding the statistics for the poverty rate, is this for the fiscal year or calendar? When are these dated?

Diane Comeaux:

They are for calendar year 2008.

Chairwoman Smith:

So this is pretty recent information?

Diane Comeaux:

Yes.

Chairwoman Smith:

Is the Nevada Initial Assessment (NIA) based on a national tool?

Diane Comeaux:

It is based on a national tool that we have brought to Nevada, and we have made it very specific for our laws.

Assemblyman Stewart:

Can you tell us where most of the requests for investigations of child neglect or abuse come from? With regard to the instrument that they use, what are some of the criteria that they use to judge whether there has been abuse? Finally, do they talk to the child separately?

Diane Comeaux:

I am not sure that we specifically track who the reports come from. I can tell you that we get a lot of reports from the school districts and relatives.

Thomas D. Morton, Director, Department of Family Services, Clark County, Las Vegas, Nevada:

I do not believe that we track reports exactly, although data does seem to be compiled. I would say the three largest reporting groups are law enforcement, school personnel, and medical personnel. They are the three largest groups of mandated reporters, per *Nevada Revised Statutes* (NRS), that would have to report to the Department.

There is a statewide intake policy, and there is a statewide substantiation policy. There is currently no statewide investigation policy, so I am going to respond to you in regard to Clark County policy and state policy. It is our policy that children be interviewed separately; however parental consent must be obtained, so a parent does have the right to be present when the child is interviewed. It is our general practice and intent to interview all children separately from the parents in order to ensure the integrity of the statements made by the child.

When you ask about the NIA, you actually ask about the criteria for substantiation, and to clarify, we worked collaboratively and statewide to implement a new allegation system, which went live in

October 2007. The new system redefined the allegations that would fit under the statutory language. In our policies, we have additional guidance as to the information needed to substantiate each of those allegations that we believe is consistent with state policy. The NIA and the safety assessment is our combined instrument to assess present, and, what the state calls, impending danger; current danger and ongoing danger is the more laicized way of saying it. The NIA itself contains six questions, the answers to which are used to understand the ongoing danger to a child. Just for simple frame of reference, present danger might be that you are driving on the ice, and your car is out of control, and you are spinning wildly. Obviously you are in present danger. Impending danger might be you are driving on an icy road, and there is a high probability that you could lose control, but it has not yet happened, but either are very dangerous situations. Both instruments are used to make a determination as to whether or not a safety intervention is needed.

There are two types of safety interventions. One is removal of the child and placement in out-of-home care on a temporary basis. The other is the construction of an in-home safety plan, which generally involves the engagement of relatives and neighbors and others who we believe to have protective capacities, and whose presence would ensure the safety of the child.

Assemblywoman Mastroluca:

Regarding substantiations, the required response time frames are these: immediate, within 24 hours, 48 hours, 72 hours, or 10 days. Are the same time frames being used in Clark County and Washoe County?

Thomas Morton:

Clark County and Washoe County generally use the same response times. There are different response times in the rural counties, due to travel distances. In both Clark County and Washoe County, our response times are the following: three hours, which would be immediate; 24 hours, which would be Priority 2; and 72 hours, which would be Priority 3. Generally, Priority 3 referrals are somewhat benign, such as educational neglect. I do not mean to minimize educational neglect, but it is not life-threatening in the same context as physical or sexual abuse.

Assemblywoman Mastroluca:

So is there a reason that you would wait ten days, and what would constitute a situation that you would feel comfortable waiting ten days to respond?

Thomas Morton:

Locally, we do not have a ten-day provision in our policy, and unless that applies to the rural counties, I do not know where a ten-day provision would apply.

Kevin Schiller, Director, Department of Social Services, Washoe County, Reno, Nevada:

Currently, we do not utilize the ten-day response, and I would agree with Mr. Morton; our time frames for response are consistent with Clark County.

Diane Comeaux:

The rural counties have indicated that they are not currently using the ten-day response.

Assemblywoman Leslie:

Regarding the Differential Response, I am still looking for some kind of summary of which family resource centers are participating, what success we have had, how much money we are investing in it, and what some of the issues have been? I just do not have a feel for how well it is working.

Diane Comeaux:

I have not seen the statistics on that, but the Director's office tracks that information, so I will make sure you get it.

Kevin Schiller:

I do not have the statistics directly in front of me, but I know in Washoe County, the Children's Cabinet is a critical player in our delivery of Differential Response, along with some family resource centers in the community. We are having some challenges in that area. There is an exclusionary criterion that addresses minor, physical injuries. One of the areas that we are currently exploring, with the Children's Cabinet and the family resource centers, is how we can expand the referral base. I believe that as of last week, we were at 50-60 percent of capacity in that area, so we are really trying to expand our referral base. I believe part of it is a screening mechanism, and how we are screening those reports, and how we provide that information to them. I think it is very promising, and I think we are making positive strides.

Assemblywoman Leslie:

Is there anything we need to do with those criteria, in statute, or do you feel you have the necessary ability to change that criteria?

Kevin Schiller:

We have not made much progress on that. We are working with our local entities to see if there is a screening issue on our side. There is a research base to Differential Response, which was pretty significant when we moved it forward, so I think one of the difficulties is that if we change the criteria for screening too much, it will throw off the entire research side, which is looked at nationally. We are trying to maximize it further, and that is one of our priorities right now in the department.

Assemblywoman Leslie:

I would be interested in any preliminary information you have.

Thomas Morton:

There is a provision in NRS 432B.260, section 2(a), that requires the agency to immediately initiate an investigation if the report indicates that the child is five years of age or younger. This has been interpreted to require us to investigate all reports involving kids five years of age or younger, and therefore be unable to refer any cases involving kids five years and younger. I certainly understand the history of why the state may have enacted that legislation; children five years and younger are at very high risk for serious injury. On the other hand, not all reports would require an investigation. For example, in Minnesota, about 60 percent of all referrals in Olmsted County would be assigned to a Differential Response, but this provision, given the number of children aged zero through five, would prohibit that, I believe.

Assemblywoman Pierce:

One of your charts says that 5 percent of victims have prior substantiated referral, and 95 percent of victims do not. Is this information good or bad? Is there a trend from the last decade, or how does this compare to other states?

Diane Comeaux:

Actually, this is good. This information indicates that of the substantiated referrals that we did in 2008, 95 percent of those families did not have substantiation against them previously. The good news is that the child welfare systems are working to mitigate the issues with the families, and so we are not seeing a lot of families coming back, multiple times, with substantiations.

Assemblywoman Pierce:

Do you know how that statistic compares to other states?

Diane Comeaux:

I am sorry, I do not.

Assemblywoman Spiegel:

Have you seen increases in referrals this year as the economy has become worse?

Diane Comeaux:

No, we are not seeing the significant increases we had anticipated, in either referrals or children coming into care, yet, and we emphasize yet. We are not sure why there is, or could potentially be, a delay. Tom indicated that families are starting to increase their activities with social service programs, and there may be a delay as much as a year before we start seeing an increase in our caseloads, which makes us very nervous now that the Legislature is in session, and we are looking at the next two years' caseload.

Chairwoman Smith:

I would like to note for the record that Director Michael Willden is in the audience. I would like to open the hearing on Assembly Bill 76.

Assembly Bill 76: Revises provisions governing the placement of children who are in the custody of an agency which provides child welfare services. (BDR 38-332)

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

Assembly Bill 76 is a bill that makes various changes to *Nevada Revised Statutes* Chapter 432B, child welfare, concerning background check requirements. The intent of the bill is to ensure the state's compliance with the Adam Walsh Child Protection and Safety Act of 2006, requiring all child welfare agencies to conduct checks of the fingerprint-based National Crime Information Database (NCID), and a child abuse/neglect screening in every state of residence in the preceding five years for every prospective foster and adoptive parent. This additional information will assist child welfare agency staff in assessing caregiver capacity to maintain children safely in their homes. The Division of Child and Family Services (DCFS) recently received information regarding the Adam Walsh Act, which moves us to require an amendment (Exhibit D) to A.B. 76.

Section 1, subsection 2 of the bill, as written, requires a preliminary Federal Bureau of Investigation (FBI) Interstate Identification Index name-based check of the records of criminal history. This type of background check is not a requirement of the Adam Walsh Child Protection and Safety Act, but is used to conduct background checks for emergency placements. The Adam Walsh Act

pertains specifically to screening criteria for prospective foster and adoptive parents, requiring a national fingerprint-based criminal background check.

Section 1, subsection 4, eliminates the language "Each licensing authority in this State" and changes it to "The Division" as having the responsibility for conducting the child abuse and neglect screening. Screening is a DCFS administrative responsibility, rather than a local child welfare agency responsibility. Additionally, we request to add provisions to establish an administrative fee to conduct child abuse and neglect screening at the request of other states and counties. This will allow Nevada to offset some of the expense incurred when other states and counties charge Nevada child welfare agencies a fee, generally ranging from \$15.00 to \$25.00 per request, when Nevada requests child abuse and neglect screenings.

In section 2, subsection 7, we request to change the "third degree" of consanguinity to "fifth degree" of consanguinity. This change will allow the agencies to place children with persons related to the child within the fifth degree of consanguinity and promote preference in placement with relatives. This proposal is consistent with the recommendations of the Interim Study on the Placement of Children in Foster Care, S.B. No. 356 of the 74th Session, which supports the increased use of relatives as placement resources and use in decision making. Specifically, the interim committee suggested proposing legislation to support policy change to expand the relative definition in NRS 432B.480 and NRS 432B.550, from the "third degree" of consanguinity to the "fifth degree" of consanguinity.

In Section 3, we are requesting a removal of all changes because current language imposes additional background check requirements related to an emergency placement. Current statute permits a name-based check of records of criminal history in an emergency situation to determine whether the person investigated has been arrested for, or convicted of, any crime. Emergency placements are not required to meet the criteria for a fingerprint-based criminal background check, as specified under the Adam Walsh Act.

Chairwoman Smith:

One of the other committees talked about the delay in fingerprint results. I wonder how that fits into this and how those problems would be solved in this environment. They were talking about instances that were taking up to four months to receive fingerprint results.

Barbara Legier:

As long as we have been able to remove the requirement for the fingerprint-based check from emergency placements, the child welfare agencies

have been able to receive that information back in time to do the necessary work. The biggest problem is requiring the fingerprint check for emergency placements; we do not have time to wait that long.

Chairwoman Smith:

Regarding screening outside the state for five years, how do you do that without a fiscal note or any extra requirements for staff? It seems that it is very labor intensive.

Barbara Legier:

When we looked at the amount of requests processed and the fees, the cost was negligible. We have a central registry database that does not take much time to check. I believe that for ten requests, it took less than ten minutes in one day. So the time that it takes to actually find that information and complete the task is not too labor intensive.

Chairwoman Smith:

Regarding the fee to offset some of the charges, it would be charged to whom?

Barbara Legier:

The child welfare agencies, or the state, are charged a fee by certain other states when making a request for a five-year check. If we have five members of a family, and there are five background checks that have to be run for five years, that can become a significant fee running anywhere from \$15.00 to \$25.00 per check.

Chairwoman Smith:

So you are referring to charging other states when they request Nevada to do background checks, correct?

Barbara Legier:

Correct.

Assemblyman Hardy:

In section 1, subsection 2(b), regarding the five-year screening, does that mean we conduct the five-year screening, or do we get results from the screening? Some states are not quick in giving us back results because doing so may affect their fiscal note. So do we actually have to receive things back from this person who has lived in five different states in the last five years?

Barbara Legier:

Yes, that is correct. We have to receive it from the child welfare agency that we made the request of.

Assemblyman Hardy:

When we do the screening, is it a fingerprint-based screening?

Barbara Legier:

There are two kinds of checks. One is the fingerprint-based, and the other is a child abuse/neglect registry check, so we use both of those.

Assemblyman Hardy:

So they can do that fairly quickly because all the states have a registry?

Barbara Legier:

Most of them do. There is a requirement for all states to have a central registry by 2011.

Assemblyman Hardy:

So in 2011, if there is not a central registry, then what do we do?

Barbara Legier:

We look at our information, and we go with the background check, and it may be that the local child welfare agencies may try to obtain other information.

Assemblyman Hardy:

So this would not preclude placement if a state does not cooperate or a state does not have a registry that has the ability to allow them to cooperate?

Barbara Legier:

I have not heard of our staff not being able to place a child.

Thomas Morton:

Primarily, the Adam Walsh Act applies to the licensure of homes, and we do not place children in foster homes, or any non-relative homes, until the home is licensed. The NRS does provide the authority for placement with relatives prior to licensure, but not with any other person prior to licensure. Therefore, to the extent we have not received clearance from another state, it does create an impediment for licensing a new home. In Clark County, we have 50 licenses waiting for clearances from states outside of Nevada, which means we cannot approve the licenses and place children in those homes.

Assemblyman Hardy:

How long have those licenses been waiting to clear?

Thomas Morton:

Some of those licenses have been waiting for two to three months. When we do not get a timely reply, we notify the state office and the division. The division then notifies the regional office of the Administration for Children and Families, and where it goes from there, I have no idea.

Assemblyman Hardy:

I am concerned that there is a mechanism or system that we would be doing away with to get a person licensed. I would not want to be dependant on someone else who is unable to, or is not going to, cooperate with us to get the appropriate place, person, or facility licensed. Is that a reasonable concern?

Thomas Morton:

I think the dilemma is that there are potential federal penalties for not complying with the Adam Walsh Act, and therefore, you have a choice of giving up federal funding or enacting the legislation and complying with the Act.

Assemblyman Hardy:

Is the penalty on Nevada when we do not get information back from another state, or is the federal penalty on the state that does not give us the information?

Barbara Legier:

We have never incurred a penalty of this kind yet. If the background checks take a long period of time or if there is a lack of compliance, we have been assured, at the federal level, that the federal government will intercede on our behalf to gain the cooperation of other states.

Chairwoman Smith:

Regarding conducting a child abuse and neglect screening, "conducting a screening" sounds different from "running a check," so I think since we are amending the bill, we can come up with some different language that says exactly what we are doing. I thought that "screening" meant some kind of interviewing process, along with whatever kind of background check, so it would be helpful if you could work on that language to clarify that issue for us.

Assemblywoman Parnell:

Are we close to having a federal database that would have this information automatically available across the country?

Barbara Legier:

There was an attempt to establish a nationwide, central registry. I am not sure why that has not been accomplished yet.

Thomas Morton:

My only knowledge is that Congress never provided funding, so financing is an issue. There are also impediments because some states do not have state central registries. That creates a problem as well, because in those states you literally have to go county to county, meaning that we would inquire of the county office, as opposed to the state office.

Chairwoman Smith:

What is the registry that someone uses when they are selling a gun, and they run a check on a customer on the spot? What is the difference between that registry and these?

Thomas Morton:

I think the difference is that the FBI maintains a National Crime Information Center (NCIC) database. When you apply to buy a gun and your name and social security number is run, it is run against that database to see if you have any felony convictions, and if you do, you would not be eligible to buy a gun. We are talking about an entirely different database that would have to be constructed, and the FBI does not maintain child abuse and neglect data.

Assemblywoman Mastroluca:

When you are talking about putting a child in the unlicensed home of a relative in the third or fifth degree of consanguinity, what about any residents in that home who are unrelated to the child? Are there background checks on them?

Kevin Schiller:

When we go into a household of an aunt and uncle, for example, and they have other adults living in that home, as part of the process, those adults will factor into the screening, and ultimately, the placing of the child. When you move into the licensure component, you continue to screen in compliance with NRS and the *Nevada Administrative Code* (NAC), specific to what they must comply with.

Assemblyman Stewart:

Does this mean that we are not in the bottom ten percent for keeping good records? Is it correct that we are doing better than most states in this database?

Barbara Legier:

We have met the requirements that the federal government has imposed upon states, and I think our central registry data is in good shape.

Assemblyman Hardy:

For the record, it would be nice to put "felony" in the issue of the federal database.

Chairwoman Smith:

We were talking on the side about the issue of the federal database and why we would not use that database initially, because you do get initial information about felons. I would like to continue exploring that issue as we work on the bill, and because we obviously have several amendments, so perhaps when we hold a work session, we can further discuss the federal database.

Thomas Morton:

We are generally in agreement with all the language proposed for the amendment. We do have some concern about one section of the bill as proposed: section 2, subsection 7. It appears to us that the intent of section 2, which really relates to NRS 424.090, defines exceptions to the provisions of the chapter. Exceptions would include that certain placements do not have to be licensed, and it defines care provided by a neighbor for a short period of time as care provided by a legal guardian, et cetera. However, subsection 7, as proposed, states "voluntarily provided to a minor." All the children who I have placed with relatives are placed subsequent to an allegation of child maltreatment, which resulted in an investigation and a safety determination that it was necessary to take protective custody of that child. This was followed by a hearing within 72 hours, in which the court ruled it was contrary to the welfare of that child to return the child home, and ultimately the court ruled that the child should remain in foster care until certain corrective measures can be taken. Voluntary placements are generally construed as placements initiated at the request of a parent, and I would say that section 2, subsection 7 of the bill is in no way voluntary on the part of the parent.

Chairwoman Smith:

It sounds more that the person providing the care is providing it "willingly," not "voluntarily," so that it wasn't done voluntarily on behalf of the parent. Is that the point you are making?

Thomas Morton:

I think the problem here is that there is such a thing as voluntary placements, and to construe the language of the bill into a voluntary placement would be a huge misconstruction of statute, and I would urge the Committee to consider moving the language above subsection 6, and to excise the word "voluntarily." If the intent is just to say that these temporary emergency placements with relatives do not have to meet the licensing criteria, then you could simply say "care is provided to any minor child who is the custody of the agency, et cetera, if the caregiver has not been licensed, pursuant to the provisions of this chapter, et cetera."

Chairwoman Smith:

Would you offer that amendment in writing?

Thomas Morton:

Yes, Madam Chair, I will.

Chairwoman Smith:

Is there anyone else to testify for Assembly Bill 76? [There was no response.] Is there anyone to testify in opposition or anyone neutral? [There was no response.] Seeing none, I will close the hearing on A.B. 76 and open the hearing on Assembly Bill 83.

Assembly Bill 83: Makes various changes concerning the reporting and investigation of allegations of child abuse and neglect. (BDR 38-333)

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

The intent of this bill is to ensure compliance with the federal Child Abuse Prevention and Treatment Act (CAPTA), which was reauthorized in 2003. Federal CAPTA section 106(b)(2)(a) requires a state to have in effect and to enforce a state law, or have in effect and operate a statewide program, relating to child abuse and neglect that includes a method of referral to child protective services and other appropriate services to address the needs of infants born and identified as being affected by illegal substances, or having withdrawal symptoms resulting from pre-natal drug exposure; CAPTA section 106(b)(2)(b), requires the development of a plan of safe care for the infant born and identified as being affected by illegal substances or having withdrawal symptoms; CAPTA section 106(b)(2)(c), requires the development of procedures for the immediate screening, risk and safety assessment, and prompt investigation of such reports; CAPTA section 106(b)(2)(d) requires triage procedures for the appropriate

referral of a child not at risk of imminent harm; and CAPTA section 106(b)(2)(e) provides for the procedures for immediate steps to be taken to ensure and protect the safety of the abused or neglected child and of any other child under the same care, who may also be in danger of abuse or neglect, and ensure that their placement is in a safe environment.

Upon consultation with the county child welfare agencies across the state, the National Child Welfare Resource Center on Legal and Judicial Issues, the National Training Institute and the Child Study Center, DCFS is requesting an amendment ([Exhibit E](#)) to A.B. 83 as follows. Section 1 of this bill refers to NRS 432B.020 and defines abuse and neglect. We have proposed language changes to our original bill draft request (BDR) to ensure our child protective response and assessment of risk and safety complies with CAPTA requirements. We also request to add the definition of "substance" to this section.

Our request for language changes in sections 3, 4, 6, 8, 9, and 10 of the bill applies to the role and responsibility of the child protective system. Changes in these sections are to carry through the proposed definition changes requested in section 1 to all relevant sections of the bill. Our recommendations for change also clarify the safety response related to caregiver incapacity and a chronic pattern of conduct in which the health and welfare of a child is harmed or imminently harmed due to substance abuse. Additional language changes in these sections are in response to our consultation with the National Child Welfare Resource Center on Legal and Judicial Issues, to more clearly articulate CAPTA requirements regarding a plan of safe care for newborns and to remove language that was too vague or too broad in scope. More specifically, the bill and proposed changes address the method of making a report and address when information is needed by a child welfare agency, such as the effect of substance abuse on an infant or the nature of the withdrawal symptoms, as determined by a physician.

This bill also creates a non-investigative response opportunity by a child welfare agency for family preservation activities through the development and monitoring of a plan of safe care, increasing the flexibility of action to be taken upon receipt of a notification, referral, or report. The proposed changes further clarify that a notification, referral, or report regarding an infant born affected by prenatal substance abuse or withdrawal symptoms shall not require the initiation of an investigation or prosecution of the parent, as a result of the child's condition.

Chairwoman Smith:

It seems like this has been an issue for some time, and I wonder why this is just now coming forward. In the presentation ([Exhibit C](#)), it talked about putting us in compliance with federal legislation, that has been in place since 1997 or 1998, so I am just curious why it has taken us so long to get to this point.

Barbara Legier:

We introduced language changes regarding the plan of safe care in the previous legislative session, which was approved, and now we are further clarifying the language for the child welfare agencies and mandatory reporters, so this is an improvement in what we are trying to do.

Assemblywoman Leslie:

How does this fit in with the Drug Endangered Children (DEC) model concept? Is there some overlap here?

Barbara Legier:

There is some overlap related to the terminology of the chronic pattern of conduct in the parent, caregiver, or guardian that would render them incapable of protecting a child.

Assemblywoman Leslie:

So are we looking at putting a different definition in for Drug Endangered Children?

Barbara Legier:

This language would be inserted into the child abuse and neglect definition as another option. We currently do not have that level of specificity.

Assemblywoman Leslie:

This legislation does not address counties having protocols for how to deal with endangered children. Some of the language includes making sure that the children are screened and receive appropriate treatment, but I thought that in the DEC model we were looking at having more specific protocols.

Barbara Legier:

I am not familiar with DEC language, but this is our first step to adopt more of that language and protocol.

Assemblywoman Leslie:

I have a bill draft that I have not seen yet, but it addresses the DEC language. I have been working with some of the agencies, so I would like to determine if

we still need it, or if we can combine them in this amendment. I think we can be doing a better job of screening these children and other people in the family.

Assemblyman Hardy:

A newborn who has withdrawal symptoms would draw our attention to, and allow us to look at, the mother and what the mother was doing before delivery, correct?

Barbara Legier:

That would be correct. What we are looking at is prenatal substance abuse that would result in the infant being born drug-affected or suffering withdrawal symptoms. Our goal is to write a plan of safe care to ensure that infant's safety.

Assemblyman Hardy:

What substances fall under this language? For example, we tell people to take antihistamines, and they get sleepy. If the child is sleepy when he is born, am I going to assume he is drug-affected?

Barbara Legier:

The definition for substance was given to us by the National Child Welfare Resource Center for Legal and Judicial Issues, which has surveyed all of the states, and there are about 15 states that use similar language to this.

Assemblyman Hardy:

So what do the other 35 do?

Barbara Legier:

They are behind.

Assemblyman Hardy:

Is this good or bad?

Barbara Legier:

This is bad.

Assemblyman Hardy:

I think there is probably a better way to do it, although I am not going to suggest what it is, but I do like the intent and I like the concept of this amendment.

Chairwoman Smith:

Does this put any new requirement on physicians regarding reporting, or their responsibility?

Barbara Legier:

Physicians are mandatory reporters, and I think that this amendment clarifies the type of information we are looking for when they make a report of this kind. In another section of the bill, it says that if a doctor is going to make this kind of report, to give as much information as possible about the condition of the infant.

Assemblywoman Parnell:

I am confused. Referring to the amendment language, you just said that this is specific to "at birth, prenatal activity" by a parent. When I read the language, it says "refers to health or welfare of a child," and to me, a child is very different from an infant. This wording concerns me. I also have some difficulty with the definition of substance "including, but not limited to, over-the-counter, or prescription medications." That definition seems extremely broad to me. I am also concerned about who we are protecting here. Is it truly an infant, or does it expand beyond the age of infancy?

Barbara Legier:

The intent of the bill is to focus on newborns who are born drug-affected or who experience withdrawal symptoms. In talking with the National Child Welfare Resource Center for Legal and Judicial Issues, they strongly recommended that we include legal drugs and over-the-counter drugs that are abused, even if they are prescriptions, citing that nationally there is more abuse of those kinds of drugs than of illegal substances. That was the rationale for including that phrase in the definition.

Chairwoman Smith:

This amendment is hard to follow in comparison to the bill. We will try to get a clear understanding of the changes, but I think right now it is hard to compare, and there is so much detail in this legislation about how individuals are affected. I will now take testimony in opposition to A.B. 83.

Thomas D. Morton, Director, Department of Family Services, Clark County, Las Vegas, Nevada:

We have a number of concerns about this bill, as drafted and as amended. We have had discussions with the Division of Child and Family Services in regard to our concerns, and some have been addressed, but there are significant, remaining concerns. We have not seen any of the documentation, referred to

by Ms. Legier, from the National Child Welfare Resource Center on Legal and Judicial Issues or the National Resource Center on Child Maltreatment. Our first knowledge of this bill came after it was released by the division.

The amendment to section 1(b) of the bill requests to change the language to read as follows: "The health or welfare of a child is harmed or imminently threatened with harm because the parent, guardian or other person who exercises control or supervision of the child engages in a pattern of conduct that renders the parent, guardian or other person incapable of caring for the immediate and ongoing needs of the child, due to an incapacity resulting from substance abuse." I think that the current provisions of NRS are quite adequate to address this situation. Our legal analysis by our district attorneys could find no basis in CAPTA for moving to the language being proposed by the division. We believe that the current language is CAPTA compliant. We have not seen a discrepancy between the current language and the language referred to in CAPTA that would show any deficiencies and would require this language.

In specific regard to this section, it makes no reference to the availability of another non-impaired caregiver. For example, if I have a parent who habitually abuses some substance, but there is another parent in the family who does not, and who provides adequate care, the provision of this section would seem to de facto say that the child is being maltreated simply because of the pattern of behavior of one caregiver, not because of the actual care situation for that particular child. I think that this is concerning because, since the definitions of maltreatment in NRS are used to define what is reported, it raises the question whether every substance treatment professional in Nevada, who is a mandated reporter, would now have to refer every client who comes to him for treatment of a substance abuse problem by inference that they are a substance-abusing caregiver. If the client has a child, this section would seem to de facto state that he is a child abuser or neglecter.

We also have concern about the definition of substance, and again, I have not seen the reference material to which Ms. Legier referred to. I would just point out that it is extraordinarily broad. The CAPTA specifically spoke to controlled substances, not prescription drugs. Herbal remedies are not regulated by the Federal Drug Administration (FDA), and as such, there are no regulatory warnings for women. These legal and over-the-counter herbal remedies can be used in excess and might harm the child and produce the effects that are discussed in this bill.

I would also say that we have received absolutely no information or analysis as to how many children in Nevada this would affect. We have tried to obtain this information, but the Health Department has been unable to provide us with any

information as to how many children may be born substance-affected, particularly with this broad definition. Fundamentally, we really do not know if we are talking about 100 children per year, 1,000 children per year, or 10,000 per year who suddenly would need to be referred to the department.

Section 4, subsection 3, in the amended language says "A notification and referral to an agency which provides child welfare services pursuant to this subsection shall not be construed to require initiation of an investigation...." However, in the amended language, section 6, subsection 2, paragraph e, DCFS states that it wants to amend section 6, subsection 6, with the following statement, "Any agency which provides child welfare services shall develop a plan of safe care for an infant any time that it receives a notification, referral or report...." In essence, the implication of this language is that every time I am notified, I should send out one of my staff to do a risk and safety assessment and to develop a plan of safe care, which appears to be mandatory under this language, regardless of whether a plan of safe care is needed. There is an unknown cost, but I would point out that where it says no fiscal impact, there is potentially a huge fiscal impact on local departments, in regard to our need to respond.

The last comment I would make is that I am not clear under what authority I would respond. Our interpretation of NRS is that we have the authority to initiate an action where there is an accepted report of abuse and neglect that meets the statutory criteria. I have no authority, necessarily, to go out where there is no alleged abuse or neglect and impose a requirement upon a mother that she submit to a risk and safety assessment and a safe plan of care, which is why our district attorney raised a number of constitutional questions about the implication of this particular language.

We are certainly empathetic to issues about children who are born substance-affected. I would argue that to go beyond the CAPTA language and include a whole array of substances, many of which are over-the-counter and accepted herbal remedies et cetera, and then to place upon the obstetrician the responsibility for determining whether the child is substance-affected at the time of birth, based on very limited information at that time, seems very unrealistic. Therefore, I urge the Committee to consider this bill and the proposed amendments with extreme caution.

Assemblyman Hardy:

I agree with what Mr. Morton is saying because the symptoms are non-specific. Perhaps the baby does not act normally, but you may not know what the baby may or may not have.

Assemblywoman Leslie:

Is it your position that this bill is not needed at all? We should just leave the language as it is?

Thomas Morton:

I have not seen any information that clearly outlines to me how our current statute is deficient, relative to CAPTA or the Adoption and Safe Families Act (ASFA), and where the language is in either of those federal laws that requires us to change the current language. I would say that I remain open to being persuaded, but until presented with that information, I would argue that not only is this not needed; its extraordinary expansion of responsibility is very concerning.

Assemblywoman Leslie:

I would encourage you to all work together on this. I think we need to do more for the DEC program, and I am not giving up. We have had this problem with CAPTA before, and there has been a difference of opinion about how far it goes. I think there needs to be more dialogue between the major child welfare agencies and the state, before we go further with this.

Thomas Morton:

I think the question is, should this be a public health response, which is nonintrusive and nonlegalistic, and be supportive of parents initially before we use a legalistic intervention?

Chairwoman Smith:

Is there anyone else who would like to testify regarding A.B. 83?

Juliana L. Ormsby, representing the Nevada Women's Lobby, Carson City, Nevada:

I am not in support or opposition to this legislation, but we do want to raise some concerns we have. There may be a life-saving reason that a woman has a prescription that she needs to take while she is pregnant, and the bill and amendment seem too broad in terms of defining what a woman can take when she is pregnant. We also have an issue in Nevada with access to prenatal care for women, and if a woman does not have access to prenatal care, we may get into a guessing game after the baby is born, trying to figure what substances were ingested. There is no universally accepted definition of what substance abuse is, and the bill makes reference to prenatal abuse, so it needs to be further defined. We are not in opposition, and we respect the intent of this bill, and clearly we want to protect drug endangered children, but we have some questions that need to be answered.

Chairwoman Smith:

I would like to put this bill in a subcommittee because this is a very important and complex issue and has serious ramifications for the endangered child, the parent, and the agencies, so I will form a subcommittee with Assemblywoman Pierce as the chairwoman, and with Assemblyman Hardy and Assemblywoman Mastroluca as committee members, to see if we can come to some consensus on this bill. I will close the hearing on A.B. 83.

Is there any public comment on any other issue today? [There was no response.] Are there any comments from committee members? [There was no response.] Seeing none, this meeting is adjourned [at 2:54 p.m.].

RESPECTFULLY SUBMITTED:

Chris Kanowitz
Committee Secretary

APPROVED BY:

Assemblywoman Debbie Smith, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: February 16, 2009

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign-in sheets
	C	Diane J. Comeaux	PowerPoint Presentation
A.B. 76	D	Diane J. Comeaux	Memorandum proposing amendment to AB 76
A.B. 83	E	Diane J. Comeaux	Memorandum proposing amendment to AB 83