

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-sixth Session
April 4, 2011**

The Senate Committee on Health and Human Services was called to order by Chair Allison Copening at 3:36 p.m. on Monday, April 4, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 5100, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Allison Copening, Chair
Senator Valerie Wiener, Vice Chair
Senator Sheila Leslie
Senator Ruben J. Kihuen
Senator Joseph (Joe) P. Hardy
Senator Ben Kieckhefer
Senator Greg Brower

GUEST LEGISLATORS PRESENT:

Senator Barbara K. Cegavske, Clark County Senatorial District No. 8
Steven A. Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Marsheilah Lyons, Policy Analyst
Risa Lang, Counsel
Stephanie Robbins, Committee Assistant
Annette Ramirez, Committee Secretary

OTHERS PRESENT:

Rebecca Gasca, American Civil Liberties Union of Nevada
Thomas D. Morton, Director, Clark County Department of Family Services
Connie S. Bisbee, State Board of Parole Commissioners, Department of Public Safety

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Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections
Elisa P. Cafferata, President/CEO, Nevada Advocates for Planned Parenthood Affiliates
Rex Reed, Administrator, Offender Management Division, Department of Corrections
Brian M. Patchett, President/CEO, Easter Seals Southern Nevada
Robin Kincaid, Director of Training, Nevada PEP
Ed Guthrie, Executive Director, Opportunity Village
Mary Wherry, R.N., M.S., Manager, Public Health and Clinical Services, Health Division, Department of Health and Human Services
Heidi Gansert, Chief of Staff, Office of the Governor
Robert A. Burns, Managing Partner, Therapy Management Group, LLC
Sally Cannon, Director, Early Intervention; Foundation for Positively Kids
Vishnu Subramaniam, Chief of Staff, AFSCME Local 4041
Terri Barber, Chief Legislative Advocate, City of Henderson
Renny Ashleman, City of Henderson
Richard Perkins, City of Henderson
Amber Howell, Deputy Administrator, Family Programs, Division of Child and Family Services, Department of Health and Human Services
Dan Musgrove, City of North Las Vegas
Brian Fitzgerald, Recreation Manager, Douglas County Parks and Recreation Department
Cadence Matijevich, City of Reno
Kathy Clewett, City of Sparks
Alex Ortiz, Clark County
Andy Belanger, Las Vegas Valley Water District
Stephen Harsin, City of Las Vegas

CHAIR COPENING:

We will open the hearing on Senate Bill (S.B.) 370.

SENATE BILL 370: Makes various changes to provisions governing children who are placed with someone other than a parent. (BDR 38-909)

STEVEN A. HORSFORD (Clark County Senatorial District No. 4):

Thank you for the opportunity to present S.B. 370. This legislation seeks to restore and strengthen families in Nevada and provides more support for children in foster care until family bonds can be restored. I was moved to

introduce this legislation after chairing an interim committee on the placement of children in foster care. We had a process where we went out to interview and talk with children in care. We also invited them to the Legislature to testify at one of our hearings. After hearing the tragic stories of many children who are separated from a parent, siblings or caring relatives, it hit me that we are not doing the best we can for these children in all circumstances. These children are removed from a family structure and placed with strangers. It is a traumatic experience for many of our children in this situation. It is one that affects them emotionally, physically and academically. Senate Bill 370 reorders priorities in our child welfare systems so that family comes first. That is in the best interest of a child. I am not saying there are not good foster homes, or there are not reasons to remove children from their parents. There are situations when that is exactly what has to happen. Foster care can never truly be a replacement for parents or family. There is no question that many children are placed in foster care because of abuse or neglect at home. Senate Bill 370 seeks to provide alternatives to keep these children in some kind of a family structure through kinship care or placement in foster care with siblings so family bonds can remain. This legislation also recognizes that most tragic of all are children with no family members who can care for them, and they must be placed in foster care. For these children, S.B. 370 seeks to give them extra support while they are in foster care. This means support in their schools, support to receive medical care, and in cases where there is an incarcerated parent, allowing them to maintain contact with that parent in circumstances where they can remain safe.

I would like to provide the Committee with an overview of how S.B. 370 would put family first. Senate Bill 370 would establish priorities for how social service agencies would place children after they are taken into protective custody. The legislation would retain current law in that a child needing hospitalization would receive that care. After that, rather than putting a child in foster care, or a children's home, a child would be placed with a parent if that parent did not participate in the abuse or neglect of the child. If there is no suitable parent, agencies would seek to place the child with a relative, either in-state or out-of-state, if that relative is found suitable to care for the child. If no relative can care for the child, agencies would seek to place the child with an individual who has been close to the child. We have all known good friends we would trust with our own children. Only after these alternatives have been exhausted would a child be placed in foster care. In this event, agencies would make every effort to place siblings in the same foster home.

Monitoring children in foster care would be expanded in other important areas. First, schools would be required to develop individualized plans of instruction with identifiable goals for these children, taking into account their backgrounds and special circumstances. Schools would be required to report to foster parents on the child's academic progress as well as to the court supervising the child's care. In addition, because so many children in foster care are placed on medication, we need a better system for gauging how the medication is affecting these children. Foster homes would be required to request from prescribing physicians a written explanation of how a medication is expected to affect a child and provide that same information to the supervising social services agency and supervising court. This is intended to safeguard against children having adverse effects from medication and to determine whether the medication is effective in helping with behavioral or other issues. Finally, for children who have been placed with someone other than a parent, S.B. 370 would ensure that a child has contact with a parent who has been incarcerated. This is not only good for the child, but for the parent. There are certain circumstances where this would not be warranted. Seventy percent of the people in prison today in Nevada are there because of a drug- or alcohol-related offense. Some are not the dangerous-violent offenders we want to keep away from children; they are people who made mistakes and they should pay for their mistakes. But, should that mean the child also pays by being separated and having no contact with their parent? To this end, the Department of Corrections (DOC) would be required to allow an inmate to videoconference with his or her child if the child would like that contact. In addition, if the child wants to be reunited with the parent, the State Board of Parole Commissioners (BPC), Department of Public Safety, would be required to establish a plan for family reunification as a part of the parole process. These provisions are intended to maintain family bonds while a parent is incarcerated and ultimately to restore these families. This legislation is about trying to give children the most important thing in their lives, the support of family or friends, and extra help for children until those bonds can be restored.

I would like to follow through each of the sections of the bill to highlight them for the Committee. Section 1 of S.B. 370 is directory language indicating that the two new sections will be added in chapter 424 of the *Nevada Revised Statutes* (NRS). Section 2 requires a licensed foster care provider who enrolls a foster child in school to request the school district to develop an individualized plan of instruction for the child. In this way, the school district is made aware that the child is in foster care and is required to develop a plan to ensure the

child remains on track. In addition, section 2 requires the licensed foster care provider to provide the licensing authority with a copy of the plan of instruction and any written reports about the academic process of the child. This is so the case worker, or other person assigned to the child, may follow the child's academic process. Section 3 requires a licensed foster care provider to obtain a written explanation from a medical professional who provides a prescription for medication for a foster child, about the need for the medication and provide a copy to child welfare services. Section 4 revises NRS 432B.390 which addresses emergency placement of children who are removed from their homes and placed in protective custody. This section provides an order of priority for placing a child outside the home. It allows for placement with fictive kin, a person who is not related to the child, but with whom the child has a significant, emotional and positive relationship. When a child is removed from his or her home and placed in custody of a person other than the parent of the child, existing law requires a semiannual review of the placement to be conducted by the court.

Section 5 of S.B. 370 requires the agency with custody to include in the report provided to the court as part of the semiannual review, a copy of the individualized plan of instruction, as well as any written reports concerning the academic progress of the child. Section 6 of the bill requires the director of the DOC to allow a prisoner to maintain contact with his or her child who has been placed with a person other than the other parent, if the child is willing to maintain such contact. Section 6 requires the director of the DOC to allow such a prisoner to have access through videoconferencing to maintain this contact. Section 7 requires the BPC to determine whether the prisoner has a minor child who has been placed with someone other than the other parent, and whether the child is willing and allowed to participate in a plan to reunify the prisoner with the child. If the child is willing and allowed, then the BPC is required to establish a plan as part of the condition for releasing the prisoner on parole. Section 8 requires the school district that is informed of a foster child being enrolled to develop an individualized plan of instruction for the child with a goal of achieving academic success. It further requires the school district to review the individualized plan at least twice each academic year and make any necessary adjustments to those goals. After each review, the school district shall provide a written report to the licensee who operates the foster home. The foster care provider is responsible for providing a copy of the written report to the child care agency. Finally, section 9 makes the provisions of this bill effective on July 1, 2011.

Let me conclude by saying there are a lot of other Legislators who have worked on child welfare issues in past legislative sessions. All of us are concerned about the well-being of children in Nevada. I have learned we have more work to do in this regard. Nevada ranks fifth in the country for the removal of children from the home and placed in foster care. Are we always doing what is best for the child when we put them in a system that may be as broken as the home from which they came? I have been a strong proponent for child welfare and believe in our systems in the State and local levels. We have a lot of committed men and women who work with young people to make the system better. We have a lot of foster parents who open up their homes to provide for care to children in need. I urge us to consider moving forward to do things to help a child be placed with fictive kin, a family friend or someone who has that bond, thereby reducing the amount of dollars and turmoil we realize by placing children in foster care. Then, we will be measured on how we have treated the most vulnerable among us, who are our children.

SENATOR WIENER:

How many minors are placed in foster care in Nevada?

SENATOR HORSFORD:

I do not know the exact number of children who are in foster care.

SENATOR WIENER:

How many people in the corrections system have minor children?

SENATOR HORSFORD:

This is an interesting question. I do not know if that is part of what is asked in the enrollment process.

SENATOR BROWER:

We all appreciate you diving into this issue and bringing this forward.

SENATOR KIECKHEFER:

I have a question about the individualized plan of instruction. If a child is placed in foster care outside of that child's attendance zone for their school, does that child have to change schools?

SENATOR HORSFORD:

It depends. My understanding is you are zoned based on where you reside. The child would attend school where the foster parent or group home is zoned. I am not sure of waivers or a process for flexibility. There should be some individualized attention to this population of young people. The children in special education get an individualized education program (IEP) now. I am sure there are people at the school district who can confirm that. Now that children are in our care, we should determine a way to ensure they have the best opportunity to succeed and it starts with good education.

SENATOR KIECKHEFER:

On the issue of fictive kin, I am concerned about the definition since I have not experienced it in other places in statute. Where does the burden fall, based on this definition, in regard to who would decide is the appropriate person for the child's care? Is it the case worker who would be handling the child's case? From whom are they taking recommendations?

SENATOR HORSFORD:

That is a great question and one I think your Committee needs to drill down. There are times when there is a small child who will not be able to identify a family member or friend who has that emotional bond or relationship. For older children, it might be easier to identify that individual. Ultimately, it would rest with the child welfare agencies to ensure the child is placed with a person who is responsible, has the ability to care for the child and meets that child's needs emotionally and financially. This provision opens the door for that to be considered as a more viable option.

CHAIR COPENING:

I will try to answer Senator Kieckhefer's question about education because I worked with Child Focus, an organization that helps children in the foster care system. I started a mentoring program with them where we took children entering the freshman year and mentored them all through high school. It was our experience that they bounced around to different foster homes, and wherever that foster home was located was where they were zoned for attending school. This causes them to get further and further behind in their academic studies. The other issue is the new foster parents do not generally have the time to drive the child to the original school they attended.

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

A bill was passed in a previous session about foster care that allowed a foster care student to stay at a particular school. The problem is the transportation to the school.

CHAIR COPENING:

That is one of the issues I was hoping to amend. Maybe we need to look at this on a larger scale to create a program that travels with the child to whatever school that child attends.

SENATOR HORSFORD:

I agree. About one-third of children in foster care have an IEP and so I am not asking for another plan; they need some care. We need to tighten the language so the legislative intent is clear.

SENATOR HARDY:

There should not be a Health Insurance Portability and Accountability Act (HIPAA) violation because it is foster care. I would like that assurance from someone who has the legal knowledge.

On page 2, line 17, the word "affect" should be "effect," so it is the effect of the medicine on the child and not the "affect" of the medicine on the child. It may be my medical background that looks at those two words differently.

Everybody gets upset when the child is not placed with a family member or fictive kin. As I look at these methods and priorities, I suspect the social service people are still allowing the process for qualifying as a foster parent. There still has to be a forum, a home visit and requirements for a safe place.

SENATOR HORSFORD:

On your point about "affect" and "effect," I think you are correct. Please make that adjustment as you see fit. The intent is the negative effect that certain prescriptions may have.

To your point on the process for fictive kin, I will listen to the experts on this matter. We need to be careful not to make this process so restrictive that an unnecessary burden is created. The goal should be to place a child, removed from the custodial parent, in a safe and responsible environment and take all the necessary precautions.

SENATOR LESLIE:

I was wondering about your intent in section 6. Were you thinking the child's caseworker would make the determination about the videoconferencing relationship? What ages were you contemplating the children would be who would participate in this?

SENATOR HORSFORD:

I do not have an idea for that. I would say as early as it is reasonable for both the child and the parent. If children are too young, there would not be a lot of value as opposed to children who can verbally express themselves. I would be open to hearing from the experts on this.

SENATOR LESLIE:

Children also mature at different ages, and so I was wondering what you had been thinking.

REBECCA GASCA (American Civil Liberties Union of Nevada):

I am here in full support of this bill and with acknowledgment that foster children are likely to be involved in the criminal justice system. In addition, we would like to iterate fully our support for the component of incarcerated parents insofar as this bill would support the maintenance of their contact. There is a program in a couple of states around the nation that allows incarcerated women to stay with their children. In one state, 24 women have gone through that program and have not recommitted any crime. It was found to support their rehabilitation and reintegration into society. Some issues raised earlier in testimony are in question by the Committee with regard to privacy for those children and the types of medications they may be using. We share some of those concerns.

SENATOR WIENER:

In section 3, where it refers to the medication, would it be a requirement to know the full medication schedule for the child?

SENATOR HORSFORD:

That is a great point. There are other companion bills unrelated to foster care that relate to the issue of full transparency of medications with which your Committee is dealing. I think we should treat this process similarly, and we want people to understand the type of medication being prescribed.

SENATOR WIENER:

One of my concerns, especially for this population, because they bounce around, it is easy to have a partial record. They are most likely not to have those records blended so we know the full picture of what they are experiencing.

SENATOR HARDY:

Is the ACLU aware of any laws we could copy that protect children in the foster family or fictive kin family and how that would be put into statute to protect them?

MS. GASCA:

I am not aware of any specific statutes that are in existence in other states. I do know that Assemblyman Jason M. Frierson has a bill this Session in regard to the rights of foster children. It lays out their rights to understand everything related to their privacy, health care, education, proper representation, etc. There are specific State laws that mandate minors have confidential access to health care, and things like that should be incorporated into this bill. I would be happy to offer my services to see if I can find more information on this subject.

The subcommittee of the Senate Committee on Health and Human Services is dealing with S.B. 43 and knows these issues are coming up and you are dealing with those in depth. This mirrors some concerns in regard to Senator Breeden's bill which would require that doctors may or may not need to put symptoms on prescriptions and therefore on pill vials. I would encourage the Committee to look at these issues holistically.

[SENATE BILL 43](#): Makes various changes relating to electronic health records.
(BDR 40-443)

CHAIR COPENING:

Ms. Lyons just pulled up a definition from Texas for fictive kin that we will send to legal counsel. It might help with that particular definition.

THOMAS D. MORTON (Director, Clark County Department of Family Services):

We are generally in support of and respect the policy intent of S.B. 370. In regard to section 4, subsection 6, paragraph (b), I want to express some concern about establishing an absolute priority for placement. We have cases in sexual abuse where we have a non-offending parent, such as a mother, in denial

that the abuse occurred, who blames the daughter for disclosure of the abuse. This may or may not be an appropriate placement. In paragraph (c) where it says " ... regardless of whether the relative resides within this State." The only consideration there is whether or not the Interstate Compact on the Placement of Children regulations can be followed because we need to go through the other state to get the family approved. This may or may not allow us to make an immediate placement. I have a simple recommendation in regard to page 4, lines 8 and 9 where it says " ... in the following order of priority:" I would add ", unless otherwise contrary to the welfare of the child." This would allow both the agency and the court to identify circumstances where this absolute priority might be accepted.

CONNIE S. BISBEE (Board of Parole Commissioners, Department of Public Safety): We understand the heart behind this, and we maintain a neutral position. There are concerns on the part of the BPC in regard to section 7 in terms of the BPC's requirements. I am concerned that we would be confusing civil issues with criminal issues. We have inmates who have as many as eight to ten children. One woman we saw not long ago had 11 children in 7 different placements. I am trying to think of how we would even process this. The actual contact with the BPC and the inmate is approximately 30 minutes. If we were trying to comply with this, we would first need to determine where we would get this information. This could be done through a board report provided by the DOC. They would have to ask inmates questions in areas such as determining whether they have children, where these children are located and if they have an interest in having a reunification plan. That would be an impact on the DOC. Once we had this information, we would have to do investigative work to find out if the child is willing or allowed to participate in a reunification plan. We have a limited staff as it is, and so we have not given you a fiscal note at this point because we have not figured out if we could possibly do this yet. I cannot imagine we could do this with less than an investigator, to investigate where these children were, and whether or not they would be appropriate for a reunification plan. Then, first, there is the process of a reunification plan.

I spoke with Assemblyman Frierson who is one of the cosponsors of this bill. We wondered if perhaps in terms of a reunification plan, it would be more appropriate for this responsibility to be placed under Child Protective Services (CPS), Division of Child and Family Services (DCFS), Department of Health and Human Services (DHHS), those who are qualified and educated to do those things. I want to caution you about making this a condition of parole. You

would need to think about what to do if parole is violated. Is your intent to put a condition on parole that could result in the parent participant being returned to prison for failure to comply with that condition of parole? I have confidentiality concerns in the greater picture of dealing with foster care and the parolee's privacy. We are willing to do whatever you want us to do. We are not sure how we would do it. It certainly looks like there would be a fiscal impact.

I spoke briefly with Chief Bernard W. Curtis, Division of Parole and Probation, Department of Public Safety, about how to monitor that compliance. So, I will go back to whether you really want to put a parolee in a position where not complying could mean a return to the institution.

SENATOR HARDY:

There is probably some stipulation about sexual offenders, but I do not see it. Is there someplace where we address sexual offenders required to stay some distance from the child?

MS. BISBEE:

The only place I see that vaguely addresses that issue is under section 6, subsection 1, where it says " ... if the child is willing and allowed to maintain such contact."

SENATOR HARDY:

That gets back to the CPS issue. Usually a court order puts distance between the sexual offender and the child in foster care.

MS. BISBEE:

Sometimes it is just the obvious things. There are some cases where victims of child sexual abuse are allowed contact with their perpetrator. From the BPC's perspective, we would be very cautious to allow that in terms of a parole agreement.

SENATOR HARDY:

So would I.

MS. BISBEE:

Occasionally a judge will say that they approve of that contact and the BPC will honor it.

CHAIR COPENING:

I am reading section 6, subsection 1, where it says "Except as otherwise provided by law or by order of the court," Would that satisfy what you are talking about, Senator Hardy?

SENATOR HARDY:

I think that answers my question. Sometimes the child is not the victim, but is the victim's brother or sister who may or may not have been abused. That is where I want to make sure we are not trying to put a child in jeopardy, even if it is not the same child who was abused.

CHAIR COPENING:

We may look to add in the language Mr. Morton offered for section 4, subsection 6 of "unless otherwise contrary to the welfare of the child."

SENATOR LESLIE:

I agree with a lot of what you have said. Child Protective Services already has to do a reunification plan where appropriate. I agree that this is not written well and think there is an issue with parole. Is there something more the BPC could be doing when they review a case, such as to inquire if there are children and ask about the reunification plan?

MS. BISBEE:

That is part of the parole hearing process. We do ask what their plan is, and they will tell us if it is to return to family. That is when we would find out if the family was the victim of the crime and we would tell them it may not be approved.

SENATOR LESLIE:

For most of them, that is not the case.

MS. BISBEE:

No, that is not the case for most of them. It is for some of them.

SENATOR LESLIE:

When you ask them about their plan, do you specifically ask about the child?

MS. BISBEE:

Not specifically, unless their child was a victim of their crime. In that case we do ask about the child. Generally, this would not come up. During a presentence investigation, they do ask about the family.

SENATOR LESLIE:

I am looking for ways the system could be changed to focus on the children. I would like you to think about the appropriate role for the BPC. I agree that it is not this. We do not need the BPC doing reunification plans. We do need you to help us facilitate the relationship and to consider that.

MS. BISBEE:

We would be delighted to do so. Part of my conversation with Assemblyman Frierson was that the BPC has a role in it. Upon receiving a request for reunification plan from CPS, the BPC will make that a part of their parole condition. That is something with which the BPC could easily comply. I just have the one caution about placing this on the parole order as a condition of parole, because parole can be revoked on it.

JEFFREY MOHLENKAMP (Deputy Director, Support Services, Department of Corrections):

The DOC has signed in as neutral on S.B. 370. My only comments are about sections 6 and 7. I want to comment on the question about inmates who had a sexual offense. We do have this identified in our internal operating procedures as part of our administrative regulations. I think the distinction between what we have and what is in S.B. 370 is the bill provides the court needs to indicate someone cannot have this type of contact. Our current process states there is to be no contact unless the court orders that they are allowed to have contact. In regard to section 6, subsection 1, where it says " ... allow a prisoner to maintain contact ... ," we are not sure what the word "allow" means. Is it allowed by the court or allowed by our internal regulations? We would need to have that defined. In section 6, subsection 2, with regard to the videoconferencing capabilities, the DOC does have videoconferencing already. We support the BPC and also do a limited amount of telemedicine. We do not believe we have the capabilities to support this initiative fully without additional costs. We have attached a fiscal note to this bill. The size and scope of the fiscal note will be determined on how the bill proceeds. It will depend on whether the DOC will be required to have video visitation available in all of our facilities and institutions, or whether the locations will be restricted, or whether

there is an ability for participants to pay a portion of the costs, etc. There will be some cost to the DOC. The question is whether it can be passed on to those participating, limited by nature of where we do it, etc.

In regard to section 7, if instead of the BPC, the DOC is required to provide the legwork necessary to identify children who require reunification, then it would be a burden on the DOC, and we do not have the resources. Under NRS 209.417 and 209.419 there are some items that will require modification if this bill proceeds. Those restrict our ability to allow inmates to have telecommunications other than through the inmate telephone system.

ELISA P. CAFFERATA (President/CEO, Nevada Advocates for Planned Parenthood Affiliates):

I will be brief because I have submitted my testimony ([Exhibit C](#)) and many of the issues have been covered in earlier discussion. We support all the work you are doing to help foster children be more successful and have more successful outcomes. At the same time, we know some children transition out of the program without ever being reunified with their families. We want to ensure that nothing in this bill would undermine minors' HIPAA protections or their legal right to access confidential care as outlined in State law.

REX REED (Administrator, Offender Management Division, Department of Corrections):

There was a question about the number of inmates who have children. I thought I would try to answer that. We do collect data on the number of inmates who have children, but it is very difficult to tell you how many of these children are minors. We simply ask if they have children. We have a lot of inmates who are over 45 years old, so their children could be adults themselves. If you wanted that kind of data from us, it would hard for us to get it. We can give you the number of inmates who have children, if they report them. A lot of inmates do not like to report anything we ask them.

CHAIR COPENING:

That would be good if you could help us with a figure for minor children.

MR. REED:

Again, that would be difficult. We could try to get a figure for minor children. My only thought is that we could look at the age of inmates and extrapolate that if they are less than 40 years old, they probably would have minor children.

CHAIR COPENING:

That seems it may be a little bit skewed, and I am not sure that would provide us with the figure we need.

MR. REED:

We will get you the raw number of how many inmates have children.

CHAIR COPENING:

I will volunteer to work on this bill. I close the hearing on S.B. 370 and open the hearing on S.B. 382.

SENATE BILL 382: Establishes provisions relating to early intervention services for infants and toddlers with disabilities. (BDR 40-630)

SENATOR BARBARA K. CEGAVSKE (Clark County Senatorial District No. 8):

This bill designates the Health Division (HD), DHHS as the agency in Nevada to cooperate with the federal government to provide early intervention services to infants and toddlers with disabilities and to their families. This measure also amends existing provisions relating to early intervention services to reflect the term defined in the federal law. The bill requires the HD to provide early intervention services to infants and toddlers with disabilities and to their families using private providers deemed qualified by the HD. The measure also authorizes the parent or guardian of an infant or toddler with a disability to choose whether he or she wants services provided directly through the HD or through a contracted provider. We have a proposed amendment ([Exhibit D](#)) that has been agreed upon by the parties who had concerns about part of the information in S.B. 382.

BRIAN M. PATCHETT (President/CEO, Easter Seals Southern Nevada):

Easter Seals Disability Services (ESDS) is an organization that has been around since 1919 and has been in Nevada since 1950. In 1919, ESDS was the first organization to begin providing rehabilitation services to children with disabilities. I have submitted written testimony ([Exhibit E](#)).

This bill does a couple of things, and we have offered a proposed amendment [Exhibit D](#) as part of this. We need to put early intervention services into State law. We are clarifying what we would like to see happen with the HD's responsibilities and Part C of the Individuals with Disabilities Education Act (IDEA Part C) administered by the Aging and Disability Services Division (ADSD)

as indicated in section 5 of the proposed amendment. The bill addresses some of the issues related to autism which are also in section 6 of the proposed amendment. The part I would like to focus on is in section 7 concerning choice. What currently exists is a system of early intervention being provided across Nevada. There is the Nevada Early Intervention Services (NEIS) which is providing early intervention services for about 16,000 children. Then you have community providers such as ESDS, Therapy Management Group and Positively Kids that are providing services to approximately 900 kids. You can choose one of the community providers to serve the child. Those who are being served by the State do not necessarily have that choice. We would like to provide the family the best choice for their child. The intent of this bill is to give parents that choice, and through that we build a better system. As of the beginning of March, there were 230 children on the waiting list with NEIS. There was a certain amount of money budgeted for community providers in the last biennium, and the rest was for NEIS. That creates a waiting list. When you have providers in the community that are able to serve children who are on that list, we could have served those 230 children. We do not want children to have to wait.

I will talk about the whys of early intervention. The years from birth to three years old are some of the most critical years for child development. I have seen the difference that early intervention makes. I have been to many homes where children have physical or other types of limitations. We provide an early intervention service through qualified staff made up of therapists and developmental specialists. We start to work with the family and see dramatic changes. Those changes made from birth to three years of age will impact the rest of their lives. Furthermore, parents are learning how to cope and advocate for their children in that early age. For every \$1 we spend on early intervention we save \$7 down the road. I should also add that all of the community providers are held to the same federal standards and they are all meeting or exceeding those standards. I have submitted "Advantages of Providing Informed Parent Choice" ([Exhibit F](#)) in regard to these issues.

ROBIN KINCAID (Director of Training, Nevada PEP):

I am the parent of a child with disabilities. I am director of training with Nevada PEP where we provide families with information and training on special education, early intervention and support families to be partners with schools and service providers. For years, Nevada PEP has worked with a statewide accountability group for people with disabilities to eliminate the waiting for early

intervention services. This group has long supported clear separation of the IDEA Part C monitoring for compliance and the actual provision of early intervention services. This legislation provides for clear separation in duties. This legislation also provides for parents to be given all program options for making informed choices when trying to access early intervention programs for their infant or toddler.

ED GUTHRIE (Executive Director, Opportunity Village):

The Opportunity Village board of directors would like these children with severe disabilities not to need our services when they grow into adulthood because they have received adequate services in early childhood programs. We are supportive with the provision of these services. We believe that families should have choices and they should be counseled by professionals in making these choices.

SENATOR LESLIE:

To Senator Cegavske or Ms. Gansert, have you signed off on the change to have the ADSD administer IDEA Part C? Is the DHHS in favor of that?

MARY WHERRY, R.N., M.S. (Manager, Public Health and Clinical Services, Health Division, Department of Health and Human Services):

My understanding is that when the bill was written, there was a misunderstanding about where the ADSD's role was with IDEA Part C versus that of the HD. Mr. Patchett has explained that their intent is not to move the IDEA Part C back under the HD but to leave it with ADSD so we do not have the fox watching the henhouse issue.

HEIDI GANSERT (Chief of Staff, Office of the Governor):

I am here to testify in support of S.B. 382. We believe early intervention services are very important and that parents should have a choice for their children.

ROBERT A. BURNS (Managing Partner, Therapy Management Group, LLC):

I am in support of S.B. 382. I represent one of the community partners, and we provide services in the Las Vegas Valley for children from birth to three years old. It is our contention this bill is important for two primary reasons. Families know their children best, and families should be given an opportunity to be directly involved in the decisions that affect their children. The ability for them to choose gives the State the latitude to mitigate the waiting

list, should there be a waiting list. The community partners have been allotted a budget to serve children and to date have helped about 900 children. We come under the same federal guidelines as does NEIS and are meeting or exceeding federal standards.

SALLY CANNON (Director, Early Intervention; Foundation for Positively Kids):
I am one of the providers in southern Nevada. During the 18 months that we have been a provider, we have furnished services to 180 children who have exited from our program. Currently, we have 200 children to whom we are providing services. Out of those 200 children, we have very happy families, and we have never had a complaint. We just went through a State audit and our lowest score was a 97 percent. We are 100 percent in support of S.B. 382. Parents are the biggest advocates for their children, and parents should have choices.

SENATOR HARDY:

In regard to the payment issues, are we looking at Medicaid and multiplying our dollars with matching Federal Medical Assistance Percentages with any of these?

MR. BURNS:

We bill the State and we are allowed to recover some Medicaid dollars. We are unable to bill insurance companies if the families deny us that opportunity.

SENATOR HARDY:

So when we place 200 children on the waiting list, we will have an increased Medicaid budget that will need to be matched in the State.

MR. BURNS:

The State is spending a certain amount of dollars to provide these services. If you afford the parents a choice, we would ask that a rate study be done to confirm whether or not the community partners are able to provide these same services at less cost than the State or at a greater cost. There may be a possibility to serve more children for the same dollars spent.

SENATOR HARDY:

You would like to expand the public-private partnership that may deliver the care without the increased burden on State salaries and State public benefits, etc.

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MR. BURNS:
Absolutely.

SENATOR KIECKHEFER:
You are not allowed to bill private insurance companies under the federal rules for the IDEA Part C. Is that correct?

MR. BURNS:
That is correct. We are not allowed to bill without parents' permission. It is not contingent upon their ability to pay; it is contingent upon their desire to pay.

CHAIR COPENING:
Are there situations where you may serve a child and you request a parent to allow you to bill their insurance and they say no? Do they say no because they would have to pay a particular deductible? And who pays it if they say no?

MR. BURNS:
It is a federal mandate that this service be provided at no expense to the family. The families who have insurance are offered an opportunity to pay if they would like, but if not, then we cannot insist and we cannot bill.

SENATOR KIECKHEFER:
There are families who have private insurance and use early intervention services and do not authorize billing. Then they utilize their own insurance services to supplement what they receive from NEIS. If we billed all insured individuals, I would be interested to see whether or not we would recoup the money we get from the federal government, and then we may be able to improve our own program to be free of the restraints of the federal government.

MR. PATCHETT:
What Senator Kieckhefer has said is accurate. There are several states that have been successful in helping access private insurance and also with sliding fee schedules. There is some flexibility within this. We have not approached that as a State. Ultimately, the goal we have is to serve as many children as possible.

VISHNU SUBRAMANIAM (Chief of Staff, AFSCME Local 4041):
We are opposed to S.B. 382 for several reasons. This bill spells out that parents can obtain early intervention services directly through the HD or through any contract provider. Our concern is that the HD already gives parents a choice.

Currently, parents can choose between the HD and contract providers. So why is the additional statutory language mandating this needed? The current system works. The HD advises people of early intervention services provided by the State and by private providers. Putting this into statutory language serves no real purpose other than mandating the State to use private providers in the future. If a time comes when there are no waiting lists, we may not need private providers. This language would mandate the State to continue to provide early intervention services through private providers.

CHAIR COPENING:

Can you address the waiting list situation we have heard about?

MR. SUBRAMANIAM:

For a period of time, there was a waiting list because there was a delay in hiring providers and therapists. That has since been cleared up, and every month that waiting list has been going down. There are approximately 75 people on that waiting list, and it should go down to zero in a couple of months.

CHAIR COPENING:

Are you referring these people to other entities to assist them? Why are they on a waiting list if we have other facilities that can help them?

MR. SUBRAMANIAM:

There was a time we were not entering into contracts quickly enough with therapists providing these services. We have since contracted with various therapists, and the waiting list has been going down.

CHAIR COPENING:

Did the State hire the therapists?

MR. SUBRAMANIAM:

Yes. The State hired them in the last couple of months.

CHAIR COPENING:

You just said that parents have a choice and you tell them about the other options that are out there. For the children on the waiting list, were the parents not choosing to use those other facilities?

MR. SUBRAMANIAM:

It would be better for the HD to answer that.

MS. WHERRY:

We had 289 children on the waiting list. The waiting list was not completely resolved as we had hoped it would be in 2010, because the State was doing all of the screening of children and determining if they were eligible for the program. The staff we use to provide services on the individualized family service plan are the same staff we use to do a multidisciplinary team to determine if the child meets eligibility requirements. We were doing all of them for the private sector and for the HD, so we got behind. Starting in June 2010, we had the private sector start to pick up some of the duties we do. Now the community providers are determining eligibility for the program, and then they develop the Individualized Family Service Plan (IFSP). In the past, the HD was developing all of the IFSPs. Once we turned that over, the waiting list started to decrease. Our challenge is we do not pay enough for speech therapy, physical therapy and occupational therapy, so we cannot recruit most of those providers. We ended up contracting with providers to provide the services on our IFSP. We contract mostly with speech and language pathologists.

SENATOR KIECKHEFER:

As a parent who has been to NEIS, it is not clear at all times that private services are available. I think it is important we make sure parents do know that private services are available. I do not see how you can be against reinforcing something that is already in State law. All this language says is that parents need to be informed. It does not change the current rules.

MR. SUBRAMANIAM:

Parents are told and parents do have the choice. When they come in, they are given the choice between private providers and State-provided services.

SENATOR LESLIE:

How would this change the HD's practice?

MS. WHERRY:

All the new monies we received last Session were devoted to building up the private sector. We fulfilled what we intended to do with those monies we received last biennium. This biennium, we think we have enough money to

cover the current caseload. Our intention is to continue to support the private sector and not to grow the State.

SENATOR LESLIE:

My question is how does this change what you are doing now?

MS. WHERRY:

It does not change what we are doing now. All new dollars that have come to the program are obligated to the private sector, and we are not growing the State.

SENATOR LESLIE:

Does section 2 change what you are doing?

MS. WHERRY:

No.

SENATOR LESLIE:

Is it because you already use other providers for early intervention services that you determine are qualified and you already provide early intervention services to infants and toddlers?

MS. WHERRY:

Yes.

SENATOR LESLIE:

Why is this bill needed? What will change as a result of this? If the issue is that parents are not getting notified of the choice, this does not help with that. We need to figure out a way to make sure parents know they have choice.

MS. WHERRY:

I can understand the private sector's frustration. We can only refer as many as we have capacity for. Our budget was based on funding between the number of children we anticipated would be under Medicaid versus those who are not under Medicaid. However many children we can move out to the private sector or accept at the HD is based on how many dollars we have in the budget. We take the costs for those eligible and the total number of available slots, and we cannot exceed that. We have learned through experience that IDEA Part C's projection is that about 40 percent of all referrals do not end up in actual IFSP.

In that case, we have built our budget to assume that 60 percent of all children who come into the system will have an IFSP and therefore have that cost associated with them per month. Some months those children may not convert to an IFSP, and so a private sector provider may not have as many children in their caseload that month.

SENATOR LESLIE:

I understood through our budget subcommittee what the issue was with the waiting list. The private sector feels that the State is holding onto children and that is not the case. There is a role for the private sector. If parents are not being adequately informed, then we need to work on that.

MR. BURNS:

We have a situation where the State's side has funding and is at capacity. The private side does not have funding and is not at capacity. Part of the private side's frustration is that we have the ability to serve more children, but we do not have the funding. We see the State's side has the funding, but they do not have the means to diminish the waiting list. The frustration on the parents' part is that they sit in groups and hear there are not people waiting for services on the private side and hear there are people waiting on the NEIS side. It creates a situation that is quite confusing to parents.

MR. SUBRAMANIAM:

There are funding and priority care issues. This statute does not address any of those things.

SENATOR HARDY:

Are you suggesting we need to put in a sunset clause?

MR. SUBRAMANIAM:

I am just saying we are currently doing this practice and this would essentially mandate the State to continue to provide services to private providers. In the future we may not need to provide those services through private contracted companies.

SENATOR HARDY:

Do you want to put a sunset clause in this of four years because we still have an economy issue, or do you want to just say you do not like it?

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MR. SUBRAMANIAM:

We would just say that this is already being done, and there is no need for additional statutory language.

CHAIR COPENING:

We will close the hearing for S.B. 382 and open the hearing for S.B. 53.

SENATE BILL 53: Excludes locations where programs are operated by a local government to supervise children from certain licensing requirements.
(BDR 38-242)

TERRI BARBER (Chief Legislative Advocate, City of Henderson):

Originally we had sought to get an exemption from the licensing requirement in the statute "before, after and out-of-school recreation programs." This afternoon we would like to bring forward for your consideration a proposed amendment ([Exhibit G](#)) to S.B. 53.

RENNY ASHLEMAN (City of Henderson):

We brought this bill because, although for many years the State had the legal authority and obligation to inspect and license our facilities, they had not done so. That was because there was legislative intent, when the language was changed, that we not be included. Examination by the State's attorneys indicated to them that they had to do the inspections no matter what the intent might have been. We met with the DHHS and they asked us if we could work out a compromise with them. The principal problem we had with being under them was that the facilities need to conform to certain rules and our facilities are almost entirely in the school districts for before- and after-school programs. Obviously the school district is not going to modify its gymnasiums and other buildings to suit us so we can run our school programs there. Since they are for the very same children who are going to that school later in the day, there is no apparent reason they should do so. There are approximately 30,000 children in various programs throughout the State. We worked out a method of working with the State on this issue, [Exhibit G](#).

RICHARD PERKINS (City of Henderson):

I am here to support S.B. 53 with the proposed amendment. Safety programs have been around in our State for a long time, being the primary responsibility of local government. We want to keep our children safe. It is a rare event when State government regulates local government in these relationships. The

findings in the law show there should have had some regulation all along, at least at this minimal level. This would help strengthen the current laws and bring a lot of harmony to these activities.

SENATOR WIENER:

Who participated in developing the proposed amendment?

MS. BARBER:

We held two meetings, one in the north and one in the south, with providers of programs statewide. We went through the *Nevada Administrative Code* line by line and analyzed the items we could physically comply with and the ones we could not. Where we could not comply we wrote something else we could do. We have sign-in sheets from everyone who participated in both of the meetings. We took the final document from the north and the final document from the south and combined them to arrive with the proposed amendment, [Exhibit G](#).

SENATOR WIENER:

Can you give us a sense of who those people were from the sign-in sheets?

MS. BARBER:

They were primarily folks who provide before-, after- or out-of-school programs through government facilities, mostly parks and recreation directors throughout the State. We had a couple of anomalies; "public-government" operations who conduct these kinds of programs, like the Springs Preserve Foundation's after-school programs in southern Nevada.

CHAIR COPENING:

Who from the Bureau of Services for Child Care, DCFS, DHHS, worked with you, and have they approved this?

MS. BARBER:

We met with Mike Willden, Melissa Fall and Amber Howell. They were very helpful in providing us with some things that needed to be included in the program and gave us guidance. We did send this proposed amendment to them.

CHAIR COPENING:

Did you get feedback from them, and did they approve it?

MS. BARBER:

I do not want to say they approved it, but they looked at it and provided feedback to us.

MR. ASHLEMAN:

They had no objections to it, and we gave them every opportunity to tell us about any problems they might have.

AMBER HOWELL (Deputy Administrator, Family Programs, Division of Child and Family Services, Department of Health and Human Services):

We did meet with them, and we have been in contact during the drafting of the proposed amendment. We are in support of what they drafted.

DAN MUSGROVE (City of North Las Vegas):

We appreciate the work the City of Henderson did on this. We appreciate being at this point and hope for approval of all involved.

BRIAN FITZGERALD (Recreation Manager, Douglas County Parks and Recreation Department):

I am here in support of S.B. 53 in its amended form. We represent about ten percent of those families served in the State.

CADENCE MATIJEVICH (City of Reno):

We are here in support of S.B. 53. I want to thank the City of Henderson and DHHS for their work with us on the bill. The City of Reno respectfully requests the Committee's support for this very important bill.

Kathy Clewett (City of Sparks):

We are completely on board and look for your support of S.B. 53.

Alex Ortiz (Clark County):

Our Clark County parks and recreation staff were also involved in this discussion, and we also want to thank the City of Henderson and DHHS for their involvement in helping to put together this legislation.

ANDY BELANGER (Las Vegas Valley Water District):

We also support S.B. 53 for the reasons mentioned.

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STEPHEN HARSIN (City of Las Vegas):
We are also in support of S.B. 53 and appreciate all of the work the City of Henderson has done on this.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 53.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED (SENATOR KIHUEN WAS ABSENT FOR THE
VOTE).

* * * * *

CHAIR COPENING:
There being no further business to come before the Senate Committee on Health and Human Services, the meeting is adjourned at 5:43 p.m.

RESPECTFULLY SUBMITTED:

Annette Ramirez,
Committee Secretary

APPROVED BY:

Senator Allison Copening, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 370	C	Elisa Cafferata	Written Testimony
S.B. 382	D	Brian Patchett	Proposed Amendment
S.B. 382	E	Brian Patchett	Written Testimony
S.B. 382	F	Brian Patchett	Advantages of Providing Informed Parent Choice
S.B. 53	G	Terri Barber	Proposed Amendment