

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

**Seventy-Seventh Session
March 13, 2013**

The Committee on Health and Human Services was called to order by Chair Marilyn Dondero Loop at 1:38 p.m. on Wednesday, March 13, 2013, 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 nelis.leg.state.nv.us/77th2013. 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 Marilyn Dondero Loop, Chair
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Teresa Benitez-Thompson
Assemblyman Wesley Duncan
Assemblyman Andy Eisen
Assemblywoman Michele Fiore
Assemblyman John Hambrick
Assemblyman Pat Hickey
Assemblyman Joseph M. Hogan
Assemblyman Andrew Martin
Assemblyman James Oscarson
Assemblywoman Peggy Pierce
Assemblyman Michael Sprinkle

COMMITTEE MEMBERS ABSENT:

Assemblyman Steven Brooks (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Kirsten Bugenig, Committee Policy Analyst
Janel Davis, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Kevin Schiller, Director, Department of Social Services, Washoe County
Amber Howell, Administrator, Division of Child and Family Services,
Department of Health and Human Services
Buffy Brown, Child Advocacy Attorney, Washoe Legal Services
Denise Tanata Ashby, Director, Children's Advocacy Alliance
Alex Ortiz, representing Clark County
Marlene Lockard, representing Nevada Women's Lobby and Nevada
Chiropractic Association
Melissa Krall, LSW, Director of Community Outreach and Coordinator of
Safe Kids, Washoe County
Jennifer L. Silverman, Attorney, Children's Attorney Project, Legal Aid
Center of Southern Nevada
Stephen Dahl, Attorney, Children's Attorney Project, Legal Aid Center of
Southern Nevada
Jon Sasser, representing Washoe Legal Services
John T. Jones Jr., representing Clark County Department of Family
Services and Nevada District Attorneys Association
Jeffrey Martin, Chief Deputy Attorney, Washoe County District Attorney
Lisa Ruiz Lee, Director, Clark County Department of Family Services
Regan J. Comis, representing Nevada Board of Medical Examiners

Chair Dondero Loop:

[Roll was called. Rules and protocol were stated.] I will now open the hearing on Assembly Bill 154. I will welcome Assemblyman Eisen to the table.

**Assembly Bill 154: Revises provisions concerning child death review teams.
(BDR 38-611)**

Assemblyman Andy Eisen, Clark County Assembly District No. 21:

This is probably a subject matter many of us are not familiar with. I have had the opportunity to become familiar with the process of child death review. I want to begin with some background on the child death review process and then go through the bill.

The current structure of child death review in the state of Nevada is a multilevel process. It begins at local jurisdictions in our counties with multidisciplinary teams who are charged with the responsibility of reviewing the deaths of children in their jurisdictions. These are not investigative teams. The goal is not to assess what happened with a particular child's death, but to look for potential preventive recommendations that could decrease the risk of another child dying in the same or similar circumstances.

Some of the recommendations that resulted from the work of child death review in the state of Nevada include public information campaigns about leaving children in parked cars, safe sleep positions, and pool safety. The current structure beyond the local teams includes two different entities at the state level: an administrative team and the Executive Committee to Review the Death of Children. Although it is an oversimplification, the current process functions with the local teams developing recommendations based on the reviews that they have held, sending those recommendations to the administrative team. The administrative teams are made up of representatives from public agencies who then refer them to the Executive Committee, comprised predominately of representatives of the local teams. The Executive Committee reviews those recommendations. There is a small amount of funding available, often through grants, that they can use to implement some of these recommendations. Particularly, the public information campaign sends funds to the administrative team who distributes them to the local teams.

Section 1 of the bill eliminates the definition of the administrative team from *Nevada Revised Statutes* (NRS) 432B.408 and moves multidisciplinary team's reporting requirements from the administrative team directly to the Executive Committee. Section 2 takes those members previously defined as members of the administrative team and includes them in the definition of the Executive Committee. Simply put, we are taking the administrative team and the Executive Committee and turning them into one entity. Instead of having two different groups discuss the recommendations, there will be one group at the state level.

The original bill text indicates that those currently described as administrative team members of the Executive Committee are nonvoting members. There is an amendment provided ([Exhibit C](#)) that clarifies the intent is not to take the vote away from anyone who is currently under the definition of the Executive Committee. Simply put, those who are currently under the definition of the Executive Committee are voting members and are a part of this newly defined Executive Committee purely as a result of their position within a state agency. They would have been on the administrative team currently and they are nonvoting members.

Chair Dondero Loop:

Are there any questions from the Committee?

Assemblyman Sprinkle:

Why would only half of the Executive Committee be voting members?

Assemblyman Eisen:

It turns out to be less than half of the Executive Committee. The Executive Committee is composed of some representatives of public agencies. The definition is unchanged in terms of who is on the Executive Committee. It is predominately the representatives of local teams. The administrative team includes some of those same representatives of public agencies. The intent behind this is to separate the decision making about policy, essentially deciding where this small amount of money will go, from those agencies who may implement that.

Each of the local teams has their own method for choosing a representative. The Clark County team has separate elections, one for the Chair and another for the representative to the state Executive Committee. Those who are representing local entities are involved in the actual vote to make the decision about what to do. Those folks currently on the administrative team are there to inform, but currently do not have a vote in the decisions of the Executive Committee. This bill does not change that.

Assemblywoman Benitez-Thompson:

Can you talk more about how these changes in the statute are going to reflect better public policy or better outcomes in terms of child death review panels? Also, how is this going to change the status quo in terms of types of policies we see coming out of the review panel now?

Assemblyman Eisen:

The intent is not to necessarily change the kinds of recommendations, but to streamline the process. We may be able to avoid playing a game of "telephone" going from the local team to the administrative team to the Executive Committee back to the administrative team and back to the local team. We are trying to make some of those conversations more direct. The administrative team has had some opportunity to comment on these recommendations in the past. Having been in the midst of this, I did not see any particular reason that the conversation should be entirely separate from the deliberations of the Executive Committee about what to do. The intent is to improve the communication by decreasing the number of steps.

Chair Dondero Loop:

How many times does this team have to meet in the course of one year?

Assemblyman Eisen:

I believe those teams meet quarterly.

Chair Dondero Loop:

How many cases would that be to review?

Assemblyman Eisen:

The Executive Committee and the administrative team do not directly review the cases. They review the recommendations that come from the local teams. The local teams review the individual cases. In fact, any identifying data about individual cases is not transmitted to the state level teams because these are not investigative procedures; this is to develop recommendations. In the past year, our team has seen seven deaths related to inadequate control of asthma; therefore, a recommendation would be to improve education of health care providers and the public about the control of asthma. The individual reviews are not a matter for the state teams to address.

Chair Dondero Loop:

Thank you for the clarification.

Assemblyman Oscarson:

I notice the bill discusses voting rights. Could you elaborate on the types of things voted on, other than appointing members to the Executive Committee. Do you vote on policy for how the child death reviews take place? What are the voting responsibilities that members of your organization have?

Assemblyman Eisen:

The votes that would take place at the Executive Committee level have to do with deciding what sorts of recommendations to implement. Typically, there is a small amount of money available through grants for public information campaigns. It is a matter of making decisions about where the resources will be applied. The decisions about the reviews of individual cases are handled at the local team level. There are national standards for how these cases are reviewed. The definitions of the multidisciplinary teams currently exist within statutes and are not affected by this bill.

One of the decisions that the Clark County team made a few years ago was about whether or not we should be reviewing deaths of children that occurred outside of the county but among residents of Clark County. That was a decision made at the local level, so the votes we are talking about here, and the

ability to vote, has to do with the allocation of those resources and the emphasis of certain recommendations.

Chair Dondero Loop:

I will call forward those in support of A.B. 154.

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

In our business, child death is the ultimate failure. These teams are critical to what we do on a daily basis. In 2007, there was a Blue Ribbon Panel that was productive in terms of looking at how we do business. This is a weekly discussion within our agency in terms of how we manage and report child death.

I believe this bill is progress in the right direction in how we combine the teams, how we manage differently, and how we become more efficient. The key word is transparency. It is about how we operate as an agency. We have to look at ourselves and listen to others in order to improve our practice. I wish I could say that we are going to cross the finish line. I think we are getting closer to it, but this is part of a process that we owe to every child who has died, or had a near fatality, in our care. Nevada is a state that has one of the most progressive child death reporting processes across the country. I want to voice my support of this bill.

Amber Howell, Administrator, Division of Child and Family Services, Department of Health and Human Services:

We are also in support of the bill. There was a time when we needed both the administrative team and the Executive Committee. When the Blue Ribbon Panel created their findings, there was a lot of work that needed to be done. The administrative team was typically tasked with the policy-type changes that needed to be made, then referred to the Executive Committee for public awareness and managing the budget. Because it took so much time for those activities, there was a time when we would have different staff on the committees. Since we have been so productive over the last several years, we have received an A+ nationally for our child fatality processes. Now is a good time to combine those two teams. They are sometimes duplicative. Dr. Eisen used the analogy of playing "telephone," which is true. We are happy to merge any committees when it is the right time and we see that this would be appropriate.

Buffy Brown, Child Advocacy Attorney, Washoe Legal Services:

This bill does not directly deal with our agency and our lawyers' work, but it does indirectly deal with us in many ways. We are here to support the concept of the need to share information in this area. As a whole, Nevada does a good

job and this bill works in the direction to share information. We also support learning from experiences, and oftentimes it is a negative experience. I have been working with and around Mr. Schiller for many years, and I think one of the strengths of our system is those types of opportunities. This bill is important for streamlining that process.

Having worked in this area for a long time, a lot of the same people are on multiple committees, task forces, and groups. To the extent we can combine those groups to streamline and share information more efficiently, Washoe Legal Services and Advocacy Attorneys will always be supportive.

Denise Tanata Ashby, Director, Children's Advocacy Alliance:

We are here in support of this bill. We wanted to make sure the Committee was aware of Senate Concurrent Resolution No. 5 of the 76th Session. The bill required a review of the state's child welfare laws. It was referred to the Interim Committee on Child Welfare and Juvenile Justice. The Children's Advocacy Alliance worked in collaboration with a statewide group of stakeholders in the child welfare arena to review many of the laws in NRS 432B.403.

Child death review teams and the consolidation of the teams were recommendations our group put forward to the Legislative Committee on Child Welfare and Juvenile Justice. That recommendation is contained in Assembly Bill 81. While we are in full support of the provisions in this bill, we also want to make reference to another provision which was included in A.B. 81 regarding child death review teams. Essentially we are recommending not only to consolidate the state level teams, but also to ensure that the data collected concerning the death of a child for the purposes of the child death review teams could be used for research or be used to prevent future deaths of children so long as the data was aggregated and did not allow for the identification of any person. One of the issues that has come up over the years is concern about what data could be utilized for research or prevention services.

Chair Dondero Loop:

Do you wish to submit an amendment?

Denise Tanata Ashby:

Yes. I would request that we add in section 5, subsection 5 from A.B. 81. In addition, I have provided some information on policy brief safety and child death review teams ([Exhibit D](#)).

Chair Dondero Loop:

If you are not completely in support of a bill, you can sign in as opposed with provided amendments. Please work with the sponsor of the bill.

Alex Ortiz, representing Clark County:

We would like to provide our support for this measure. We believe that combining both teams will streamline and increase dialogue between the teams while offering better information to make the proper decision.

Chair Dondero Loop:

Is there anyone in opposition to the bill? [There was no one.] Is there anyone in the neutral position? [There was no one.] I will close the hearing on A.B. 154. I will open the hearing on Assembly Bill 155 and welcome back Assemblyman Eisen to the table.

Assembly Bill 155: Revises provisions governing reports of the abuse or neglect of a child. (BDR 38-610)

Assemblyman Andy Eisen, Clark County Assembly District No. 21:

This bill focuses primarily on those who are designated as mandatory reporters. Currently, 48 states have mandatory reporting laws that define specific professionals who are required to report suspected child abuse and neglect. Nevada is among those states. The District of Columbia, Territories of American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands have similar laws. The other two states, New Jersey and Wyoming, mandate that all adults report suspected child abuse or neglect.

This bill is brought forward not to change in Nevada who our mandatory reporters are, but to change how we define and inform those individuals. I would like to walk through the bill. I am going to begin with section 2 because it will make more sense. Section 2 of the bill revises *Nevada Revised Statutes* (NRS) 432B.220, which defines those individuals who are mandatory reporters by the nature of their profession, or have reasonable cause to believe that a child has been abused or neglected. These reports are required to be made to the entity that provides child welfare services, which would be the Department of Family Services or Department of Child and Family Services of the state.

Page 4 of the bill shows where the changes in the section begin. Section 4 of NRS 432B.220 begins to define those professionals who are mandatory reporters. Paragraph (a) focuses on health care professionals. You will see that the prior language to define those professionals by the name of their profession, for example, physician, dentist, dental hygienist, chiropractor, et cetera, has

been changed to transition from the use of the names of professions to the chapters in the NRS under which those individuals are licensed. There are a couple reasons for that. One is that this list was redundant, having been added to over the years. Note that in the current language, a physician, intern, resident, psychiatrist, et cetera, are all included. There are also some notable omissions. While athletic trainers are present on the list, physical therapists are not. There is currently a line that indicates anyone else providing medical services, licensed or certified in the state, is a mandatory reporter, but there are criminal penalties associated with failure to report. It was my feeling that specificity was appropriate for this section if people were going to be held to that standard.

The other reason for making this particular change is that we have, in recent years, added new health care professionals to licensing in the statutes. In the 2009 Legislative Session, behavior analysts, assisted behavior analysts, and certified autism behavior interventionists were added to NRS Chapter 641, but they were not added to this list. Under this new system of defining mandatory reporters, you will note that NRS Chapter 641 is listed. Those professionals would have been included in this list by the very nature of their being included in NRS Chapter 641.

Section 1 of the bill adds to the responsibilities of the Legislative Committee on Health Care to review if any new statutes were created in the NRS with new health care professionals and to make recommendations to the next legislature as to whether that chapter needs to be added to this list. The most recent example is the addition of NRS Chapter 640D: music therapists. This chapter was added, so they would not have been included in it automatically, but this charges the Interim Committee on Health Care to review that to see if new additions to this paragraph are recommended in the future.

In section 2, page 4 of the bill, there are similar changes in subsequent paragraphs. Again, this is not changing who the individuals mandated to report are, but it is changing how they are defined in making reference to the chapters in NRS under which they are licensed.

Line 42 is a change to what is a current exemption in the statute to the requirement to report. Currently, attorneys are required to report reasonable cause to believe a child has been abused or neglected unless the person who is or may be accused of the abuse and neglect is their client. That is protected under attorney-client privilege.

Beginning on line 43, the addition also lists the mandate for a report if the victim of the possible abuse or neglect is a child in foster care and is the client

of that attorney. The folks we are talking about are attorneys from the Children's Attorney Project (CAP) and those who are representing children in foster care. I would note that this does not prohibit such a report, but it removes the conflict between attorney-client privilege and the mandate to report for those attorneys. It does not exempt any other professionals in this circumstance nor does it exempt those attorneys from the requirement to report if the victim is someone other than their client. There have been some questions about this particular codicil in the bill and there are some representatives from CAP here today who can help address some of those questions. Fundamentally, I am the last person who would tell you that I think it is a good thing for someone to not report the possibility of child abuse or neglect.

In some circumstances, I recognize it may make the situation worse. There may be alternative pathways to resolution. We are seeking an opportunity for these CAP lawyers to seek what may be a better option in some limited circumstances. This does not relieve them of their responsibility to keep a child out of danger. Their ethical standards would prohibit them from leaving a child in a situation where they are in danger, but it allows them to potentially seek some other methods to resolve an issue.

Our current law regarding mandatory reporters contained nothing that requires mandatory reporters—those who are described in the preceding paragraphs—to be informed by anyone that they are mandatory reporters. This happens in certain circumstances, but it is not required in statute that information be passed along whether those are professional licensees or employees of an institute that provides services to children. Sections 7 and 8 of the bill address that issue.

Section 7 puts the responsibilities for informing professional licensees that they are mandatory reporters on the agency, board, bureau, or commission of the department that licenses those professionals. That is expected to be done at the time of initial licensure. For those who are currently licensed, it will be done at the next renewal.

Section 8 of the bill is a similar section for those who are not professional licensees and would not be licensed by an entity of the state. That responsibility rests with their employer at the time of hire. Or, if that person is already hired at the time this bill becomes law, they would have until the end of this calendar year to provide that information. In both circumstances, the entity charged with informing the mandatory reporter of the responsibility simply has to deliver that information, have it acknowledged, and keep a record of that acknowledgement.

As a side note, there are a number of entities that provide education which is not part of the statute proposed here. The Nevada Partnership for Training has a free online educational module that is available. It is not required that anyone go through that education, but it is there, and I would hope that both the professional licensing boards and employers of mandatory reporters would refer those who may inform to some places where they can get information about what their responsibilities are.

Currently, a failure to report reasonable cause by a mandatory reporter about a child who is suspected to have been abused or neglected is a misdemeanor. Section 3 would change that penalty so that the first violation would be a misdemeanor and subsequent violations would become gross misdemeanors. I think that a repeated failure to live up to this duty deserves a more significant consequence.

Last, is a distantly related matter. Section 4 has to do with the Safe Haven Infant Protection Act. Currently, the law allows for a child who is under 30 days of age to be turned over by the parent to a number of entities and done so in a safe manner. If those provisions are followed, the parent is immune from charges of abuse or neglect. The idea here is that we would rather see someone turn the child over to a hospital or an obstetrics center or a firefighting agency than to tragically leave that child in a dumpster somewhere, which we have unfortunately seen in this state in recent years.

The changes were simply in acknowledgement of what I believe were some unintentional oversights in the initial legislation. One is that in the current law, among the qualified recipients of a safe haven baby are public firefighting agencies, and we do have areas of the state that do not have a firefighting agency, so this adds a volunteer fire department to that list. It also provides a private ambulance service to create the opportunity that a 15-year-old mother, for example, who wishes to turn a child over, under this provision, could pick up the phone and dial 9-1-1 and the ambulance could come and accept the baby and take it to the hospital for evaluation and enter it into state custody.

The last section is simply the transitory language that I referred to previously for those mandatory reporters who are already licensed or employed. The last thing I would like to mention is a matter of a fiscal note. You will see on the Nevada Electronic Legislative Information System (NELIS) there was a fiscal note presented by the State Board of Medical Examiners ([Exhibit E](#)). There is also a letter ([Exhibit F](#)) from the State Board of Medical Examiners rescinding that fiscal note. There was a misinterpretation about the expectations of the legislation by the Board.

Assemblyman Martin:

In section 4, it states, "a provider of emergency services shall take immediate possession of a child who is or appears to be not more than 30 days old." To the average person, that is hard to determine. What would be the objection to saying 60 or 90 days, or a child period, to encourage cooperation in this situation? I realize you are trying to deal with "dumpster babies," but it seems like very tight timing and contrary to what you are trying to accomplish. Can you elaborate?

Assemblyman Eisen:

That is the current language in NRS 432B.630. That is not a change in this bill, but the reality is that limit was chosen to give some time for a child to be turned over to authorities for care. We now have similar laws in all 50 states. The last state to implement this legislation was the state of Nebraska in 2006. Nebraska made a small oversight in their legislation initially and did not put an upper limit of age. People were literally bringing in teenagers to turn them over. This is the consequence of having a unicameral legislature, but they have since gone back and fixed that. All states have some limit, some are 30 days or 60 days. Thirty days was the age chosen for Nevada. The idea is not so much the matter of someone deciding later that they did not want to take care of a child, but the classic scenario of a teenager hiding pregnancy from her parents and not knowing what to do. This would create a way to keep that baby safe rather than find the baby abandoned.

Assemblyman Oscarson:

I think it is outstanding that you have now put into language that you have to obtain written documentation so people know they are mandatory reporters. A lot of times, that is not the case. Many people may be mandatory reporters, but do not know. I am glad that you have made that a part of employee records.

Assemblyman Sprinkle:

Dr. Eisen, you and I have talked a lot about this. This is an outstanding bill and I like the provisions. When we talk about the lawyers, children are already clients of theirs, correct? Why do we need this clarifying language when current statute already states lawyers with clients are exempt, but this is specifically talking about children who are in the foster system?

Assemblyman Eisen:

The difference is that the current language exempts the attorneys from the requirement to report if their client is or may be accused of the abuse or neglect—that they would be the abuser. If this is a CAP attorney who is representing a child in foster care who may be the victim of neglect, it allows

them to search for alternative pathways to resolve that. They would not be mandated to report, and they would not be prohibited from reporting under this provision, but it allows them to maintain confidentiality with their client who is the child. The current language is if their client is the person accused of committing the abuse or neglect.

Assemblywoman Spiegel:

I think this is a good bill. I like the provisions about the mandatory reporting. In section 2, subsection 7, when we are talking about people being given notice that they need to be mandatory reporters, either at the time of initial licensure or the time of initial employment, what do you think about having that renewed annually at a performance review? That way, they are reminded of this obligation.

Assemblyman Eisen:

I would not object to any increased frequency in providing this information. My goal was to take the first step from no obligation to inform those licensees or employees to a process by which they could be made aware. I would be open to discussing a requirement for recurrent provision of that information.

Chair Dondero Loop:

As a former employee of Clark County School District, I can tell you that they did a great job explaining to all of us that we were mandatory reporters as employees. I wanted to point out that some of that is already occurring.

Is there anyone in support of A.B. 155?

Marlene Lockard, representing Nevada Women's Lobby and Nevada Chiropractic Association:

Both entities are in strong support of this measure. Thank you.

Melissa Krall, LSW, Director of Community Outreach and Coordinator of Safe Kids, Washoe County:

I want to speak in favor of the portion specific to the changes including volunteer personnel, especially in many of our rural jurisdictions as well as the private Emergency Medical System (EMS) companies in our state that tend to be the face people identify as an emergency service agency. We are in support of the language change of this bill so the public knows that they have many options if they choose to access the Safe-Haven Infant Protection law.

Jennifer L. Silverman, Attorney, Children's Attorney Project, Legal Aid Center of Southern Nevada:

We represent abused and neglected children in the foster care system. We are here to support the provision in A.B. 155 that would no longer require children's attorneys to be mandated reporters of abuse or neglect without the client's consent. I urge the Committee to make changes in section 2, subsection 4, paragraph (i) to allow vital attorney-client confidentiality. I will provide a legal context and tell you about the importance of attorney-client confidentiality in our practice. [Continued to read from prepared testimony [Exhibit G.](#)]

As Assemblyman Eisen stated, children's attorneys still may report. It is our duty to protect our children. In Nevada's Rules of Professional Conduct, Rule 1.6 of the ethical rules is called "Confidentiality of Information." We owe our clients the duty of confidentiality. There is an exception built into our ethical rule to protect our clients. Rule 1.6 (b) (1) states that a lawyer may reveal information "to prevent reasonably certain death or substantial bodily harm." [Continued to read from prepared testimony [Exhibit G.](#)]

Stephen Dahl, Attorney, Children's Attorney Project, Legal Aid Center of Southern Nevada:

As Ms. Silverman has explained, when we have an abuse and neglect case, the children in those cases end up with a fairly large team of support. Frankly, most of those people see the child on a more regular basis than the attorney does. The case worker, social worker, skills worker, et cetera, usually meet with the child on a weekly basis. In my experience—and I will admit it is very limited—it would be a rare circumstance that the attorney is the only person on the list of people working with a child who is aware of the abuse or potential abuse. We have to ask the question, "Why would the child only confide in his attorney about something like this?" The reason is there is a difference between the attorney and everyone else involved. The attorney works for the child; we have no other loyalties, we do not answer to anyone else, and that is what we try to convey to our client. We say to them, "You can trust us, you can tell us anything, and it will stay between us; we will work together for the best solution."

In short, we try to build the same relationship of confidence and trust with our clients that you would want and expect to have if you had an attorney. [Continued to read from prepared testimony [Exhibit H.](#)]

There needs to be one person in the system who the child feels they can rely on 100 percent of the time. Keep in mind that the attorney-client privilege is fairly limited. For example, it does not apply to nonverbal children or children who are incapable of understanding consent. It covers what our client says or writes to

us. If we see signs of abuse that are not covered by the privilege, we would report them. It is only our conversations with our clients, and they can rely on us to keep them private. Our primary responsibility is to protect our clients. [Continued to read from prepared testimony [Exhibit H.](#)]

As a CAP attorney, I have experiences with my clients every day that I do not think would happen if my clients did not believe I would keep their confidence. Yesterday, I received a phone call from a young lady. She was going to call her caseworker, but she wanted to talk to her attorney first about a troubling situation. She wanted to make sure that she had the facts straight. If she knew before she could call her caseworker that I had to be on the phone with the caseworker, I would not have received that phone call.

I have a client who has run away a couple of times. Both times, she has called me so I could arrange to get her back into a safer place. She would not have made those phone calls if she believed that the first thing I was going to do was essentially rat her out and send someone out to take matters into my hands. Last time, it took half the day and a dozen phone calls, but we got her back into a safe place and we are still working on the case together. This could not have happened if we did not have that trust. If we break that trust, we are finished as attorneys. Most of you I think intuitively know this. If you break a promise to a 12-year-old, the trust is lost.

We support the bill as it is written.

Buffy Brown, Child Advocacy Attorney, Washoe Legal Services:

I have been in several different roles in this system, most recently as a child's attorney. In the time I have been in this role, I have been in the position of representing social services and in the role of juvenile master. These issues did not hit home quite as strongly in those positions as they do in this one. When I have to sit down in front of a child, and at that initial meeting of introducing myself, telling them who I am and where I fit in amongst the many people that they have met over the course of the last several weeks, and I start talking to them about the relationship that we will have, there are a couple of things they start to pay attention to in that initial meeting.

First, I tell them that I will represent them through the whole case. They always respond with, "Are going to be with me until the end?" And I say, "Yes." Second, is when I start talking about our conversations and the fact that our conversations are kept secret, unless they want me to tell. When I get to the part when I tell them about the exception or the part that not everything they tell is going to be kept secret, their face changes. You see them take that tone,

posture, and demeanor that says she is just another one of these people who is going to make decisions about me without me.

I do not believe that is the true role of the people in our system. I believe that they all have the best interest of that child at heart, but from the child's perspective, they feel disempowered. When I have to explain to them that exception, they go back to feeling disempowered. When I can represent them fully just like they see their parents represented, children want that too. When I can provide that, it gives children empowerment over their lives.

When I first started this job, I thought children did not get to make decisions; they have parents. This idea of empowerment and their presence in this system did not play as strong of a role to me as it did over the course of these years. These are children whose entire lives have been turned upside down, and everyone but them is making decisions for and about them. They are searching for someone to trust; they are searching for someone to be on their side; someone they can have confidence in; and someone who will stick with it. When we have to go against that confidence with some of the very most important information, it throws the trust out the door.

After working in different roles, I am in full support of this bill. If we need to tighten up the language and make it clear that a nonverbal child would not fit in, then we can do that. We try not to represent nonverbal children because, as an attorney, it is hard to take direction from somebody who cannot give you any direction. If we need to make it clearer in those respects, we will work with any of the stakeholders to come up with that language. The attorney-client relationship is the cornerstone of our legal system. It is that way for everybody else. I do not know why it would not be that way for a child just because they are a child.

Assemblywoman Spiegel:

If the attorney sees evidence of physical abuse, that would be fair to disclose and that would not violate the trust. Is that correct?

Buffy Brown:

I think the reference you are speaking about is the issue of information that we gain in other ways other than those communications between us and our client. If it is information that we gain in other ways that is not strictly covered by the attorney-client confidentiality, those types of things would be disclosed. Even if a child discloses to us that they are being, or have been, abused or neglected, we will not keep that secret.

We have to keep in mind that we are an attorney and a counselor at law. Part of that obligation is counseling the child in terms of dealing with the right way to disclose information and the right time, and ultimately whether to disclose that information. If it is information that we gather in another way, it is still going to make that child upset, but it is not going to be something that involved our confidential relationship.

Chair Dondero Loop:

If you are supporting the bill, you need to support it the way it is cleanly. If anyone has an amendment, we will put that in an opposed or neutral category.

Jon Sasser, representing Washoe Legal Services:

We talked with Mr. Schiller today before the hearing. As Ms. Brown said, if there is a way to tighten up the language to make sure that we are not covering nonverbal children and to make sure that in dangerous situations we are going to put the child's safety first, we would be happy to talk to Mr. Schiller and others about that.

Chair Dondero Loop:

We will now hear opposition for A.B. 155.

John T. Jones Jr., representing Clark County Department of Family Services and Nevada District Attorneys Association:

We are in full support of this bill, with the exception of section 2, subsection 4, paragraph (i). Any efforts on behalf of employers to educate employees on their requirements to report child abuse and neglect have our support. Clark County Department of Family Services specifically is more than willing to ramp up public awareness and educational components that will help both employers and governmental agencies comply with this new law. In that respect, we are fully supportive of this and Assemblyman Eisen's efforts with this bill.

I am an attorney and I completely understand the importance of the attorney-client privilege. It is engrained in attorneys almost as soon as they step foot in law school. There is another important principle at play here and that is the duty to report the abuse or neglect of a child. The Department of Family Services throughout the state of Nevada has a duty to do what is in the best interest of a child. It is our position that it is always in the best interest of the child to report allegations of abuse or neglect.

I have worked with both CAP attorneys, Mr. Stahl and Ms. Silverman. They are great people and do great work for their clients. The reasons they stated children cannot trust us and they feel that children cannot speak freely and lose confidence, or that there is a chilling effect, are the exact excuses that doctors,

members of the clergy, therapists, and counselors who work with children on a regular basis also give. It would be inexcusable for us to say that they are not required to report allegations of abuse or neglect.

In Clark County specifically, we had 15,189 referrals last year for abuse and neglect. Of those, 74 percent came from mandatory reporters. The mandatory reporter law is an important, if not essential, component in Clark County in finding and proving allegations of abuse and neglect.

I want to talk about Rule 1.6 in the Nevada Rules of Professional Conduct, which was referred to by the CAP attorneys. It gives some exceptions in situations where an attorney "may" disclose confidential information. One is to comply with another law or court order, and that is the mandatory reporter law; that is the exception that a child's attorney can give right now when they are given a confidential statement from a client. If we take that away, the only other section that would apply is Rule 1.6, section (c) which states "to result in reasonably certain death or substantial bodily harm." This would be the exception that an attorney would have to comply with in order to release that information: reasonably certain death or substantial bodily harm.

We have often heard that a CAP attorney is not going to leave a child in danger. My question would be if they do not disclose the statement of abuse and neglect on behalf of the child, how are they going to remove a child from that situation? The CAP attorneys are not allowed to remove; they do not have physical custody of a child to remove them from placement. They would have to go through the agency. We are saying that it is working in Nevada. The statements they are making with respect to their clients would apply to virtually every other field in which confidentiality is important. In this case, there is something more important, and that is children.

Jeffrey Martin, Chief Deputy Attorney, Washoe County District Attorney:

My comments are restricted to the same provision that Mr. Jones was referencing. Section 2, subsection 4 (i) is in regard to child abuse and neglect. I have worked in child welfare for about 12 years. I have dedicated my career to helping abused and neglected children. I see children coming into foster care and they are traumatized, hurt, and embarrassed. They want to go home and they love their parents. We understand this. If our government has taken steps to enter a family's life and take those children for their protection, then the government, and the system as a whole, should have the affirmative obligation to protect these children. If we do not protect these children, we are failing them. When I first saw this provision, I thought, how can social services protect a child if we do not know the threat exists. Do we know how imminent it is? We do not know. Sometimes we receive a report, it is investigated, and

it turns out to be something different or something larger than we initially thought it was.

The law also shifts the burden to the child to protect their own health and safety because it says if an attorney has acquired that knowledge from the client who is the victim, then they can report with the consent of their client. That means the duty for reporting is on the child, which means they are essentially looking out for their own health and safety. The question is how comfortable are we with this? Can a 3-year-old make this decision, or a developmentally delayed 16-year-old? Where do we draw the line? The purpose of the system is that these children cannot make these decisions for themselves. The government has had to take affirmative steps to come in and protect the children.

Children come in to us and they do not necessarily want to disclose sexual abuse with us. It is possible that they might, but they are embarrassed and ashamed. As a system, if we end up placing a child back into that situation because of a lack of mandatory reporting, we failed that child. I cannot tell you how strongly I feel about this. Under NRS 432B.250 you can assert the privileges pursuant to these reports of child abuse and neglect. Again, Child Protective Services (CPS) needs to be able to do their job. They need to investigate. We receive a little information and it turns into a bigger deal and it leads to something bigger. We are not talking about some form of alternative dispute resolution or ratting out a child. In these cases, the state has taken on the responsibility for the health, safety, and welfare of these children. I think we need to affirm that as a system. The attorneys have the same limitations as a doctor would. I am sure physicians want full disclosure so they can treat their patients, but the reality is, there are limitations. There are limitations on all privileges; we think this one should be limited as well. We are in opposition to specifically section 2 of this bill.

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

I am going to speak as a social worker and not as an attorney. I would like to emphasize that children being represented in our system is critical. In the 2011 Legislative Session, we talked about every child being represented. I would echo that today. We want children represented in our system which, unfortunately, is an imperfect system. It is a system of checks and balances; it is a system where I could have one report that may lead to me intersecting and protecting a child; and another series of 32 reports where I do not have enough to intersect in a child's life.

Reporting is the foundation of all that we do. I emphasize the issue of children's attorneys because they are so critical in everything we do. I can

appreciate everything that has been said today, even specific to the delicacy of that relationship. It is delicate when you have your client sitting before you. When we remove a child from their home and we do not know what to do and how to explain it to them, those children's attorneys are critical in being their voice. I would tell the Committee it is an intersection between that child and the attorney. A foundational system is built on reporting, whether that is from the school system or a physician.

I will be the first to tell you that people do not report. When people do not report, the weight of that falls to us to determine what our next steps are going to be. We support this bill with the exception of that provision. How do we infuse some components and add an amendment that addresses the safety aspect? When I hear the word "may" while reading legal statute, "may" is a may—it is not a "must." I understand that intersection. I also understand that one report on one child can lead to six other victims based on the same concern. The issue becomes that it influences other lives.

I do not envy your position today, but at another level, this is child welfare; this is the struggle we have every day in figuring out how to protect children. With vulnerable kids, which all of them are, how do we determine that? If every child is going to be represented by a children's attorney, in my world, that would ultimately apply to 700 children. I am willing to work with this language so that it meets the needs of those intersecting obligations.

Chair Dondero Loop:

I am struggling with the word "secret." The reason is because I, like many other parents, have always told their children no one can ask you to keep a secret from your parents; no one can tell you not to tell something to your teacher. Now we are telling children that they can keep a secret and we will keep that secret. I do not know the answer, but I am struggling with that word. Maybe it is semantics; it may not come out of somebody's mouth like that, but as social workers and attorneys on both sides of this bill, I would like to know if that is the word that you use and how you move forward when you tell children all of sudden they can keep a secret. Is there anyone in opposition in Las Vegas?

Lisa Ruiz Lee, Director, Clark County Department of Family Services:

I would like to highlight some of the testimony that has been offered today. Clark County is pleased with the majority of this bill. Over the last few years, we have seen more and more cases where it is evident that those who were charged as mandatory reporters did not know they were mandatory reporters. They did not know what that meant and they did not know how to go about the reporting. In some of these recent cases, the outcomes have been catastrophic.

Anything we can do to tighten up the mandated reporting in order to keep the children in our community safe is absolutely critical.

The language in this bill tightly wraps obligations to report and establishes a mechanism for those who receive state licensure or for those who are employed to be notified of that mandatory reporting requirement. With that said, we oppose the bill in its current form primarily because of the language around attorney-client privilege. As Kevin Schiller indicated, I would not minimize the importance of attorneys in our system. There are many leverage points in the child welfare system where natural tension exists, and that is how we should operate because each of us has a different role, responsibility, and obligation in terms of child protection. It is critical that where there is information that children are unsafe, child welfare agencies are provided that information because our duty and obligation is to investigate. At the end of the day, in those cases where something goes horribly wrong, the public and federal government comes to us to look for answers in terms of what we did and did not know with regard to that child or family.

Once a child is in foster care, the lives of many other children may be on the line. When a child is placed in out-of-home foster care, the abuse may not just be occurring with that one child, but may be occurring with other children who are in the home. I would hate for us, as a child welfare agency, to not have access to the comprehensive information we need in order to keep children safe.

Chair Dondero Loop:

Are there questions or comments from the Committee?

Assemblyman Hambrick:

I have a legal question for either Ms. Brown or Mr. Sasser. We are talking about the decision process as an attorney. I would like to have some background information.

Ms. Brown, I understand the attorney-client privilege; however, there can be different scenarios. For example, say your client is a 17-year-old who is able to sit down and have a conversation and can develop a confidence with the individual representing them. When we start talking about nonverbal communication, are you now saying that a six-year-old can explain and communicate satisfactorily with their attorney? That could almost be nonverbal communication. I do not want to get into technicalities, but for a six-year-old to understand the consequence of what may or may not happen; where would an attorney determine what would be attorney-client privilege when you have doubt whether that child has the capability of understanding the consequences

of keeping a secret. I agree with the Chair that "secret" is a tough word for parents.

How does one determine verbal communication between a 17-year-old and a 6-year-old who does not have the capability to understand the paradigm and dynamic of the discussion?

Buffy Brown:

We are dealing with those questions every day. It is a perfectly fair question about how to deal with those types of issues between a 17-year-old and a 6-year-old. I will start by saying that sometimes 17-year-olds do not make the best choices, but then, neither do 22-year-olds. In the higher ages, it is easier to say that we can explain things to them and then listen to what they say. When you get lower in age, the subject has been referenced by the National Association of Council for Children and the American Bar Association Ethical Guidelines although it has not been put into law, but they guide a lot of what we do in terms of moving forward and how we practice.

The burden on the child's attorney is quite great because one of the guidelines tells us to take a lot of classes on child development and communication and use those skills to try and determine what a child is really saying with their communication and to try and determine whether or not they have a full understanding of what you are telling them so that you can get accurate guidance from them.

I referenced that children who are nonverbal or developmentally unable to make those decisions is something we want to make more clear. Strict guidelines would not necessitate that, but I think it would make everyone feel more comfortable. Anytime we have a cutoff in age—a six-year-old versus a seven-year-old—there is always a gray area. For example, NRS today says that a 14-year-old can consent to adoption. How did we choose age 14? Any time we are right around that age we begin to think, does this child understand what they are saying? It comes back to the fact that we have to use our best judgment. I will tell you most of the time we are going to encourage that child to disclose to somebody.

In response to the question about a secret, as a parent and a person who has worked in this world, we are telling children: do not keep secrets. And that is exactly the role we are trying to fulfill—to give them an opportunity to not keep everything secret. At least tell somebody so that we can use our education, training, and experience to try and come up with a solution that is best for that child. Is it going to work every time? No, but the alternative is that child keeps a secret because they are afraid to tell somebody. It is the opposite of that in

terms of the secret that we try to tell children, do not keep a secret—nobody can tell you. We are trying to prevent them from feeling obligated to not tell about something bad that has happened to them. We are trying to tell them to feel comfortable telling their parents everything.

In these scenarios where children have been removed from their parents, most of the time they are already distrusting them in some way. The trust is already gone. We are trying to tell children to be willing to share and to not keep a secret from somebody. At least that somebody would be us, and if it is going to be an issue of something that is going to cause the child substantial bodily harm, that ethical rule in one section says "may" in terms of the specific information that has been gained between the attorney and the client; another subsection says the attorney "shall" disclose if they reasonably believe there is a crime that will result in death or substantial bodily harm. So it is not a "may," it is a "shall" in that circumstance.

It is a long way around trying to answer a difficult question about the age and the decision-making along the way. We fear that it is preventing children from being fully open and disclosing to that one person who we have to work with that child, and we have to have that relationship with them. Otherwise, it is hard to say what role we play that is different from a Court Appointed Special Advocate (CASA) that is doing what is in the child's best interest. We are not a CASA, we are lawyers first and foremost in terms of representing that child. We are also human beings and ones that are obligated to disclose something that is going to result in substantial bodily harm or death. Short of that, we use the skills, training, and knowledge that we have to come up with the best solution for the child under our care. We use our skill as a counselor to encourage that child to allow us to disclose on their behalf or for them to disclose to somebody else.

Chair Dondero Loop:

Thank you. Is anyone in the neutral position?

Regan J. Comis, representing Nevada Board of Medical Examiners:

Upon initial reading of the bill, we were concerned there was going to be a fiscal impact ([Exhibit E](#)). After further review, we were able to remove that fiscal note. We have submitted a letter disclosing that information ([Exhibit F](#)).

Chair Dondero Loop:

Thank you for being patient and putting that on the record. Dr. Eisen, do you have any final comments?

Assemblyman Eisen:

This bill has been a lot of work on behalf of a lot of people to get to this point. I wanted to address the section that has been in contention. As a pediatrician and child advocate, this is an issue that I have struggled with myself. I have asked some of the same questions that were asked here today and tried to come to what I thought was the best language. There is certainly room to fine-tune the language to put everyone's mind at ease.

A comment was made earlier regarding our obligation as a system to protect the child and was necessitated by the child's failure to protect himself or herself. I wanted to make it clear that the kind of failure that leads to this situation is not a failure on the part of the child. It is a failure on the part of the parent or guardian. One of the big issues that is difficult for all of us to deal with is that of broken trust. Most of us are lucky enough to be able to trust our parents, grandparents, and family members. The children in this position are children for whom that trust has been destroyed. They are desperately in need of people who they can trust.

It is important to note that there is a responsibility on the part of everyone in the system involved with these children whether that be medical personnel or social workers to look out solely for their best interests. Their attorneys from the Child's Attorney Project are the only individuals who are charged with the responsibility of balancing the child's best interest with the child's wishes. These are situations in which these children and adolescents have lost all control over their lives. They have been removed from their homes and their world has been turned upside down in a way that thankfully very few of us have ever experienced. This is one place in their life where they might have some modicum of control. It is not an intention to create an absolute seal around those conversations; it does not apply to nonverbal communication or information gained outside of conversations between the attorney-client relationship; it does not apply to other children in the home who are not clients of that attorney.

It is very limited in scope and is intended purely to provide one person who has to take into consideration not just what they feel their judgment is in the child's best interest—although they do consider that—but also to consider the child's wishes and to give him or her some small control of his or her own life. I am happy to work with all parties involved to fine-tune this language so that it addresses everyone's concerns and we can move forward with this.

Chair Dondero Loop:

Thank you. Is there any public comment? [There was none.] I will close the hearing on A.B. 155. This meeting is adjourned [at 3:09 p.m.].

RESPECTFULLY SUBMITTED:

Janel Davis
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn Dondero Loop, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: March 13, 2013

Time of Meeting: 1:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 154	C	Assemblyman Eisen	Proposed Amendment
A.B. 154	D	Denise Tanata Ashby	Policy Brief Safety and Child Death Review Teams
A.B. 155	E	Doug Cooper/State Board of Medical Examiners	Fiscal Note
A.B. 155	F	Doug Cooper/State Board of Medical Examiners	Letter rescinding fiscal note
A.B. 155	G	Jennifer Silverman	Testimony
A.B. 155	H	Steven Dahl	Testimony