

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

**Seventy-Seventh Session
April 25, 2013**

The Senate Committee on Health and Human Services was called to order by Chair Justin C. Jones at 3:48 p.m. on Thursday, April 25, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Justin C. Jones, Chair
Senator Debbie Smith, Vice Chair
Senator Tick Segerblom
Senator Joseph P. Hardy
Senator Ben Kieckhefer

GUEST LEGISLATORS PRESENT:

Assemblyman Andy Eisen, Assembly District No. 21
Assemblyman Jason Frierson, Assembly District No. 8

STAFF MEMBERS PRESENT:

Todd Butterworth, Policy Analyst
Risa Lang, Counsel
Joyce Hinton, Committee Secretary

OTHERS PRESENT:

Buffy Brown, Washoe Legal Services
Kevin Schiller, Director, Department of Social Services, Washoe County
Denise Tanata Ashby, Executive Director, Children's Advocacy Alliance
Jill Marano, Deputy Administrator, Division of Child and Family Services,
Department of Health and Human Services
Jon Sasser, Legal Aid Center of Southern Nevada; Washoe Legal Services
Stephen Dahl, Legal Aid Center of Southern Nevada

Brigid Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County

Chair Jones:

The Committee will hear Assembly Bill (A.B.) 154.

ASSEMBLY BILL 154 (1st Reprint): Revises provisions concerning child death review teams. (BDR 38-611)

Assemblyman Andy Eisen (Assembly District No. 21):

Assembly Bill 154 revises provisions concerning child death review teams in the State. Currently, we have local teams at the county level comprised of representatives with a variety of multidisciplinary backgrounds. The teams include professionals in health care, social services, juvenile justice, child welfare and others. These teams review the deaths of all children in their respective jurisdictions. The teams are not an investigative body. The teams are put together to identify trends and to see if preventive actions can be taken to prevent the risk of similar deaths occurring in the future. These teams report their findings to an administrative team at the State level comprised of representatives of State agencies. The administrative team reviews the findings and passes them on to an executive committee at the State level. The executive committee is comprised of State and local team representatives. The executive committee determines what to do with recommendations. Often, the executive committee has grant funding to expend toward potential prevention measures. The executive committee issues directives to administrative and local teams for implementation. This process is confusing and redundant. The intent of A.B. 154 is to address the confusion and redundancy.

The bill combines the administrative team and executive committee at the State level into one entity. This removes a layer of bureaucracy and streamlines the process.

Section 1 adds a provision to ensure that multidisciplinary teams reviewing the death of a child can use de-identified aggregated data for research or prevention purposes.

Section 2 eliminates the administrative team as defined in existing statute.

Section 3 adds those members currently on the administrative team to the executive committee and appoints them as nonvoting members. The current members of the executive committee remain voting members while those being added to the executive committee are nonvoting members.

Buffy Brown (Washoe Legal Services):

I support A.B. 154. This bill streamlines the process while maintaining the integrity of an important function.

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

The Department of Social Services supports A.B. 154. The bill streamlines the current system.

Denise Tanata Ashby (Executive Director, Children's Advocacy Alliance):

The Children's Advocacy Alliance supports A.B. 154. The Committee has received my written testimony ([Exhibit C](#)) in support of A.B. 154.

Jill Marano (Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services):

The Division of Child and Family Services supports A.B. 154. This bill is a step toward streamlining the death review process.

Chair Jones:

The hearing on A.B. 154 is closed. The hearing on A.B. 155 is open.

ASSEMBLY BILL 155 (1st Reprint): Revises provisions governing reports of the abuse or neglect of a child. (BDR 38-610)

Assemblyman Andy Eisen (Assembly District No. 21):

Assembly Bill 155 proposes to revise provisions regarding reports of suspected maltreatment of a child. Chapter 432B of the *Nevada Revised Statutes* (NRS) includes provisions that define mandatory reporters. Mandatory reporters are individuals, by the nature of their work, required by law to report suspected child abuse or neglect. This bill revises provisions in chapter 432B, not to alter who is responsible, but to change how we define who is responsible and to ensure those individuals are informed of their responsibility.

Section 2, subsection 4, paragraph (a) clarifies which health care professionals are mandatory reporters. Failure to report is a crime, and it is essential that we

be clear to those responsible for reporting. For that reason, this bill changes the description of medical professionals to those licensed under the health care professional statutes. Rather than list titles of individual health care professionals, each NRS chapter that addresses health care professionals is listed in section 2, subsection 4, paragraph (a).

Section 1.5 states that the Legislative Committee on Health Care will review and recommend any new NRS chapters to be added to the list of chapters in section 2, subsection 4, paragraph (a).

Section 2, subsection 4, paragraph (i) proposes to remove the language regarding information an attorney may have received from a client who is accused of abuse or neglect. This language has been moved to section 1.7, subsection 1. There is an additional provision in section 1.7, subsection 1. This provision relieves an attorney of the obligation to report as defined in this statute. The intent of section 1.7, subsection 2, paragraphs (a) and (b) is not to relieve a child's attorney from a responsibility to advocate for the health and safety of the child. We are creating a mechanism for the child's attorney to act to protect and advocate for the health and safety of the child other than the formal reporting process. This allows the attorney to maintain a level of confidence with his or her client in foster care. This seems counterintuitive, but it is not. There is an opportunity in this provision for an attorney to take steps to correct a problem that does not necessarily include a report to child protective services that results in an investigation. While the investigation may not seem like a bad thing, there may be a concern on the part of the child client that he or she will be investigated if there is a report, and that he or she will be subject to retaliation. This creates a pathway for the child's attorney to resolve the issue without putting the child at risk for retaliation. It is my expectation that no attorney would allow a child to be in a dangerous situation. This provides flexibility to the attorney so he or she can maintain confidentiality with the child client. We want to ensure that children are not keeping secrets. We want to ensure that an attorney can promise to keep a child client's secrets.

Senator Kieckhefer:

Please explain why section 1.7, subsection 1 only addresses those children in foster care. In addition, if an attorney makes a promise to keep everything that his or her child client says confidential, does this mean the attorney cannot report child abuse or neglect, or does this mean he or she is not obligated to report child abuse or neglect?

Assemblyman Eisen:

There are no reporting prohibitions in the bill. There is a reference to compliance with the Nevada Rules of Professional Conduct in section 1.7, subsection 2, paragraph (b). There is a distinction between safety and risk. Safety implies there is an imminent danger. Risk implies there is a problem, but there is not an imminent danger. This provision allows for an alternative pathway to resolution if it results in the best outcome for the child in the attorney's judgment.

There is difference when we are talking about children in foster care as opposed to children with their natural parents. A child with natural parents would not typically have an attorney. Children in foster care are children who have had their lives disrupted by the people they should have been able to trust—their parents—and that trust has been broken. This provision allows the attorney to assure the child of trust and confidence. We are concerned that if a child is told that anything they say may be subject to a report, the child may conceal information for fear it may cause reprisal.

Senator Kieckhefer:

Does abuse generally escalate in a home over the course of time?

Assemblyman Eisen:

It is common to see escalation. This bill provides an opportunity for intervention at an early stage. If the child trusts the attorney and feels comfortable in sharing everything with the attorney, the child may communicate instances of abuse or neglect. In addition, the attorney would be allowed to bring other resources into the home to help address problems before they escalate.

Senator Hardy:

Under section 1.7, is it presumed the victim is in a safe situation?

Assemblyman Eisen:

The issue is the relief from the requirement to report through a formal process. It does not relieve the attorney from taking action. Section 1.7 does not prohibit a report if a child is in danger. The Nevada Rules for Professional Conduct prohibit attorneys from allowing their clients to be in situations that present a likely risk of death or bodily injury.

Senator Hardy:

Are the Nevada Rules for Professional Conduct in NRS 432B.220, or is that in a document we do not have before us?

Assemblyman Eisen:

The Nevada Rules for Professional Conduct is a separate document. The NRS 432B.220 defines the process for reporting child maltreatment.

Senator Hardy:

Is there a misgiving in describing the victim as being safe in section 1.7, subsection 1, paragraphs (a) and (b)?

Assemblyman Eisen:

No, there is no misgiving. The language came out of meetings I had with representatives from children's attorneys and representatives from district attorneys. They were concerned about this provision as it was originally drafted. We agreed upon this language.

Senator Hardy:

Was there an agreement not to include language in the provision that the victim is safe?

Assemblyman Eisen:

No. There is no objection to adding language stating the victim is safe. However, the language in the bill already addresses this matter.

Chair Jones:

As an attorney, I can only counsel my clients the best way possible. I can assure them what they tell me is subject to absolute confidentiality. If it were not for the attorney-client privilege, I do not know if clients would have been comfortable sharing information with me. While I understand the goal is to protect children, I could not have done the job without the ability to assure children they could benefit from the confidentiality. This bill allows many people in this room to do their jobs as attorneys fighting for the rights of children.

Assemblyman Eisen:

Section 2, subsection 7 would require the entity that licenses or certifies individuals who are mandatory reporters to inform the individuals and receive an acknowledgement that the individual has been informed of his or her mandatory

reporter status. Section 2, subsection 8 does the same for those who are not licensed professionals, and the responsibility to provide this information is in the hands of the employer.

Section 3 proposes to increase the penalty for failure to report on the part of a mandatory reporter. Currently, failure to report is a misdemeanor. The first violation remains a misdemeanor and elevates subsequent violations to gross misdemeanors.

Section 3.5 came out of conversations with child protective services. There is currently a provision in statute requiring immediate initiation of an investigation of a report based solely on a child being 5 years of age or younger. This bill removes that provision, but maintains the provisions that an immediate investigation should be initiated if there is a high risk of serious harm to the child, if there has been a fatality or if the child is in a home where another child has died or has been seriously injured.

Section 4 is an effort to correct an unintentional oversight in the development of our safe haven statutes. I spoke with the original sponsor of those statutes. I was told the intent was to include language as in section 4 of A.B. 155. In Nevada, the safe haven law permits someone who appears to be 30 days of age or less to be brought to a safe place and delivered in a safe manner without the person being charged. This was an effort to provide a way out for parents who felt they could not take care of a child. The current statute is limited as to who can receive that safe haven baby. It did not include such entities as volunteer fire departments, and it did not provide for ambulance service.

Section 5 includes transitional language stating that those persons who are already licensed or employed as of October 1, 2013, must be informed upon the next renewal of their license. If the individual is an employee, he or she must be notified by December 31, 2013.

Senator Kieckhefer:

Section 2, subsection 4, paragraph (e) addresses those who are licensed or endorsed pursuant to chapters 391 or 641B of NRS. Are people who work in schools and who are currently mandatory reporters removed from this provision?

Assemblyman Eisen:

No, we are not removing anyone as mandatory reporters from the statutes. There are redundancies in the statutes. That is not unintentional. As we reviewed this in terms of licensees, we recognized that some of the descriptions were not necessarily licensees but were covered under another paragraph. Section 2, subsection 4, paragraph (l) addresses adult persons employed by an entity that provides organized activities for children. Any employee of a school would be a mandatory reporter regardless of his or her role.

Senator Hardy:

Does A.B. 155 address persons who suspect child abuse or neglect?

Assemblyman Eisen:

Yes. This does not change the standard of reporting. The standard is described in NRS 432B.220 and is reiterated in section 2, subsection 1 of the bill. This provision requires "reasonable cause" on the part of the reporter, not certainty.

Senator Hardy:

How is the confidentiality of a doctor different from that of an attorney?

Assemblyman Eisen:

There is a big difference. As a physician, my responsibility is exclusively to the interests of the child. I do not consider the desires or wants of the child. I advocate what is in the best interest of the child in terms of health and safety. The exception for the attorney provides the ability to prioritize the interests of the child. The attorney advocates for the child. It does not mean the attorney would not counsel the child for what he or she believes is best for the child, but the attorney does have the consideration for what the child desires. As a physician, I have to protect a child's health and safety. Attorneys must keep that in mind while advocating on behalf of the child.

Senator Hardy:

Is that the case if the victim is in a safe position?

Assemblyman Eisen:

Yes, that is the case if there is not an imminent danger to the child or if there is not a reasonable concern that the child may suffer death or serious harm. The reasonable risk of death or serious bodily injury is explicitly stated in the Nevada Rules of Professional Conduct.

Jon Sasser (Legal Aid Center of Southern Nevada; Washoe Legal Services):

The Legal Aid Center of Southern Nevada and Washoe Legal Services support A.B. 155. I appreciate the recognition in the bill of the unique role of the child's attorney. The attorney's job is not necessarily to advocate for what he or she believes to be in the best interest of the child, but to advocate for the child and advance the child's wishes within the restraints of ethical obligations. What you have before you is a well-crafted, narrow exception to the general rule of mandatory reporting.

This applies only to the information received as part of the attorney-client privilege. An attorney who sees a child with physical marks obtains this information from his or her own observation. This bill only addresses the abuse to that child, not to abuse that siblings or others may have witnessed. This is a narrow exception.

Nevada is one of the few states that includes attorneys as mandatory reporters. When this statute was put into place, there was no such thing as a children's attorney in the role we play today advocating for the child as established in NRS 432B.

Ms. Brown:

Washoe Legal Services supports A.B. 155. The Committee has received my written testimony ([Exhibit D](#)).

I am an attorney who represents children in the foster care system. I worked as a juvenile hearing officer for abuse and neglect cases for the last 7 years. In addition, I was deputy district attorney who represented Washoe County Department of Social Services. I have seen this issue from a number of angles.

When the mandatory reporting requirements were put into statute, children's projects did not exist. Currently, there are child advocacy attorneys in Clark and Washoe Counties. We are asking to follow what other states have been doing for some time.

Attorneys have standards that were established by the American Bar Association and the National Association of Counsel for Children. Attorneys look to those standards as guidelines because they are not in our statutes.

Assembly Bill 155 allows attorneys to give undivided confidentiality to clients. A number of people are involved with child victims including: the child's attorney; social workers and the social workers' attorneys; mental counselors; foster parents; and school personnel. All of these people have a duty to represent and put forth what is in the child's best interest. The child's attorney is the only person around the child who represents what the child wants, believes and wishes. This is what separates the attorneys for children in the foster care system from attorneys appointed in a guardianship proceeding. A child in foster care has already been, in most cases, abused or neglected. As children's attorneys, we have experienced the child's concern about reliving the nightmare of being removed from a foster home. If a child is in a foster home, there is no obligation to correct problems once a report has been made and an investigation has begun. Generally, a foster child is removed from the foster home. However, during an investigation a foster child may remain in the foster home and be subject to retaliation. If an attorney had discretion in that situation, the attorney would have the opportunity to get a social worker involved. This bill gives attorneys the leeway to act without formally reporting.

Senator Hardy:

You use the term "child's attorney." Section 1.7, subsection 1 uses the term "an attorney." Is this distinction made in NRS 432B.220?

Ms. Brown:

The language in section 1.7, subsection 1, paragraphs (a) and (b) is the limiting factor on the attorney. The language in section 1.7, subsection 1 is already in existing statute. If parents tell an attorney they have abused their child, the attorney is not required to make a report. Section 1.7, subsection 1, paragraph (b) applies to the child's attorney.

Senator Hardy:

Since section 1.7, subsection 1, paragraph (a) is already in statute, do we need to include it in this bill?

Ms. Brown:

Yes.

Senator Hardy:

Do all children in foster care have attorneys?

Ms. Brown:

At this time, they do not. The statute does not require that attorneys be appointed.

The Nevada Rules of Professional Conduct, rule 1.6 requires the attorney shall reveal information regarding the representation if the result is reasonably certain death or bodily harm.

Assembly Bill 155 does not preclude the attorney from making a report. It does not relieve the attorney from doing something to protect the child.

Stephen Dahl (Legal Aid Center of Southern Nevada):

The investigation process starts with the Clark County Department of Family Services receiving a report of possible abuse. If the Department investigates, the child can be removed from the home. The State has an attorney, the parents have an attorney and then the child is appointed an attorney. The child's attorney is to be the voice of the child. The job of the child's attorney is not to express what he or she believes is in the best interest of the child. The attorney's job is to give voice to the child's feelings. For many children, the last time he or she spoke up about being abused or neglected resulted in being removed from their homes and put in different schools. This makes many children unhappy. Many children have told me they wished they had never said anything about the abuse or neglect. A child is not likely to speak if the child believes he or she will be removed from the home. That is the job of the child's attorney.

Attorneys for abused or neglected children are there to build and foster a trusting relationship with the child. Abused or neglected children are unlikely to tell us about abuse or neglect they have experienced if they know attorneys have to report. At some point, we may have to report because there are requirements. For example, sexual abuse is always considered substantial bodily harm and attorneys will report the matter.

These children have many people working for them. A child victim of abuse or neglect is looking for someone he or she can trust and someone to whom he or she can talk. A child needs the ability to have some say in how his or her case is handled. Children are capable of making those decisions.

The Legal Aid Center of Southern Nevada hopes the Committee will support A.B. 155. There is a limited exception for attorneys in the bill.

Mr. Schiller:

As a children's attorney, there is an inherent responsibility to evaluate whether the child has the competency and judgment to report on himself or herself. Children's attorneys are a critical element of our checks-and-balances system as we protect children. Reporting is the foundation for all we do.

It has been my observation that children's attorneys find a way to reach out to ensure they protect the child. Attorneys do this at the same time that the Department of Social Services has information to respond. The attorneys are well equipped to assess the competency of the child. These children are in our system based upon an adjudicated petition of abuse or neglect. For children in foster care where there are issues occurring in either a substitute care setting or in the system, the system is not perfect. We want to ensure that safety is paramount.

Ms. Tanata Ashby:

The Children's Advocacy Alliance supports A.B. 155. The Committee has received my written testimony ([Exhibit E](#)). This bill will not only clarify which individuals are required to report the abuse or neglect of a child but will also provide mechanisms to educate and inform mandatory reporters of their responsibility. In addition, section 3.5 of this bill includes language recommended by the NRS 432B workgroup to the Legislative Committee on Child Welfare and Juvenile Justice.

Chair Jones:

The hearing on A.B. 155 is closed. The hearing on A.B. 174 is open.

ASSEMBLY BILL 174 (1st Reprint): Revises provisions governing proceedings relating to the abuse or neglect of a child. (BDR 38-991)

Assemblyman Jason Frierson (Assembly District No. 8):

I have been a Chief Deputy District Attorney with the Child Welfare Division for 9 months. In the course of my duties, I have represented the agency in removing children who have been in abusive situations. By law, we are required to file petition within 10 days based on what gave rise to that removal. If a petition is filed a day late, some attorneys argue the petition should be

dismissed. The statute is silent about what happens when the 10-day deadline is missed. In the criminal context, a criminal complaint that is late results in release of the defendant. In the child welfare context, the child is sent home to a dangerous situation if we dismiss a complaint. I was shocked this would be argued. It is the agency's position that the child remain in protective custody. Assembly Bill 174 attempts to create a structure to deal with this matter.

In speaking with stakeholders, there was a concern about removing the timeline. It is my intention that jurisdictions develop ways to accommodate this effort. This bill addresses what is in the best interest of the children.

Brigid Duffy (Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County):

Assembly Bill 174 addresses the need to ensure that children who have been removed from unsafe situations are not returned home without some judicial oversight. There is a provision in existing statute for good cause in the delay of a petition. For example, good cause could be used if a staff member fell ill. What this provision does not address is workload or human error.

Following an investigation of abuse or neglect under NRS 432B.390, if child protective services determines there is reasonable cause to believe a child is in need of protection or that present or impending danger exists, the child is removed and placed in protective custody. In 2012, Clark County conducted 8,463 investigations. Of those investigations, 2,647 children were placed in protective custody. The NRS 432B.470 allows for a 72-hour hearing or a protective custody hearing. At the 72-hour hearing, the court determines whether it is contrary to the welfare of the child to remain in his or her home or if it is in the best interest of the child to remain outside the home. Once the court determines to continue protective custody of a child pursuant to statute, the agency has 10 days to commence further proceedings or a petition with allegations of abuse or neglect. We have a 10-day timeline because we are dealing with issues of child custody. It is important to expedite things so children do not languish in foster care. However, statute does not provide a remedy in the event the 10-day filing is missed. It is difficult to believe the remedy would be to send the child back to a dangerous living situation.

Assembly Bill 174 allows judicial oversight, effectively a second protective custody hearing. It allows each jurisdiction the flexibility to develop its own procedures to schedule the hearing. The court would determine: if the unsafe

conditions in the home had been addressed; if the child is no longer vulnerable to any safety threat; if the parent has some protective capacity; and if the district attorney can continue prosecution of the petition with the child in the home.

Mr. Schiller:

The Washoe County Department of Social Services supports A.B. 174.

Mr. Sasser:

The Legal Aid Center of Southern Nevada and Washoe Legal Services support A.B. 174. The local flexibility addressed in the bill satisfies the initial concerns we had.

Ms. Marano:

The Division of Child and Family Services supports A.B. 174.

Senate Committee on Health and Human Services
April 25, 2013
Page 15

Chair Jones:

The hearing on A.B. 174 is closed. The meeting is adjourned at 5:02 p.m.

RESPECTFULLY SUBMITTED:

Sara Weaver,
Committee Secretary

APPROVED BY:

Senator Justin C. Jones, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 154	C	2	Denise Tanata Ashby	Written Testimony
A.B. 155	D	1	Buffy Brown	Written Testimony
A.B. 155	E	1	Denise Tanata Ashby	Written Testimony