

SENATE BILL NO. 303—SENATOR HAMMOND

MARCH 16, 2015

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the protection of children. (BDR 38-1036)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the protection of children; revising provisions relating to the circumstances under which a child is considered to be in need of protection; revising provisions concerning proceedings related to the termination of parental rights; revising the powers and duties of the Legislative Committee on Child Welfare and Juvenile Justice; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the circumstances under which a child is or may be in need of protection. (NRS 432B.330) Those circumstances are considered, without limitation, by: (1) an agency which provides child welfare services to determine whether to file a petition in juvenile court alleging that a child is in need of protection; and (2) the juvenile court in an adjudicatory hearing to determine whether a child was in need of protection at the time the child was removed from the home. (NRS 62A.180, 432B.050, 432B.340, 432B.410, 432B.490, 432B.510, 432B.530) Under existing law, a child may be in need of protection if the person responsible for the welfare of the child is responsible for the abuse or neglect of another child who resided with that person. (NRS 432B.330) **Section 1** of this bill provides that a child is, rather than may be, in need of protection if the child is in the care of a person responsible for the welfare of the child and another child has been subjected to abuse by that person, unless the person has successfully completed a plan for services that was recommended by an agency which provides child welfare services to address the abuse of the other child. **Section 1** also provides that a child may be in need of protection if the child is in the care of a person responsible for the welfare of the child and another child has been subjected to abuse by that person, regardless of whether the person has successfully completed such a plan for services.



* S B 3 0 3 R 2 *

Existing law sets forth the grounds necessary to terminate parental rights, including, without limitation, conduct of a parent or parents that demonstrates a risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents. (NRS 128.105) **Section 3** of this bill requires a court to consider certain factors if the child has been out of the care of his or her parent or guardian for at least 12 consecutive months, before making a finding that parental conduct satisfies that provision. **Section 4** of this bill revises the conditions a court is required to consider in determining neglect by or unfitness of a parent for the purpose of proceedings regarding the termination of parental rights.

Sections 4.3 and 4.5 of this bill add: (1) reviewing issues relating to the provision of foster care; and (2) proposing recommended legislation concerning that issue to the powers and duties of the Legislative Committee on Child Welfare and Juvenile Justice.

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

Section 1. NRS 432B.330 is hereby amended to read as follows:

432B.330 1. A child is in need of protection if:

(a) The child has been abandoned by a person responsible for the welfare of the child;

(b) The child has been subjected to abuse or neglect by a person responsible for the welfare of the child;

(c) The child is in the care of a person responsible for the welfare of the child and another child has ~~died~~:

(1) *Died* as a result of abuse or neglect by that person; *or*

(2) *Been subjected to abuse by that person, unless the person has successfully completed a plan for services that was recommended by an agency which provides child welfare services pursuant to NRS 432B.340 to address the abuse of the other child;*

(d) The child has been placed for care or adoption in violation of law; or

(e) The child has been delivered to a provider of emergency services pursuant to NRS 432B.630.

2. A child may be in need of protection if the person responsible for the welfare of the child:

(a) Is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(b) Fails, although the person is financially able to do so or has been offered financial or other means to do so, to provide for the following needs of the child:

(1) Food, clothing or shelter necessary for the child's health or safety;

(2) Education as required by law; or



1 (3) Adequate medical care; ~~for~~
2 (c) Has been responsible for the ~~abuse or~~ neglect of a child
3 who has resided with that person ~~for~~; or

4 *(d) Has been responsible for the abuse of another child*
5 *regardless of whether that person has successfully completed a*
6 *plan for services that was recommended by an agency which*
7 *provides child welfare services pursuant to NRS 432B.340 to*
8 *address the abuse of the other child.*

9 3. A child may be in need of protection if the death of a parent
10 of the child is or may be the result of an act by the other parent that
11 constitutes domestic violence pursuant to NRS 33.018.

12 4. A child may be in need of protection if the child is identified
13 as being affected by prenatal illegal substance abuse or as having
14 withdrawal symptoms resulting from prenatal drug exposure.

15 5. *As used in this section:*

16 (a) *"Abuse" means:*

17 (1) *Physical or mental injury of a nonaccidental nature; or*

18 (2) *Sexual abuse or sexual exploitation,*

19 *↳ of a child caused or allowed by a person responsible for the*
20 *welfare of the child under circumstances which indicate that the*
21 *child's health or welfare is harmed or threatened with harm. The*
22 *term does not include the actions described in subsection 2 of*
23 *NRS 432B.020.*

24 (b) *"Allow" means to do nothing to prevent or stop the abuse*
25 *or neglect of a child in circumstances where the person knows or*
26 *has reason to know that a child is abused or neglected.*

27 (c) *"Neglect" means abandonment or failure to:*

28 (1) *Provide for the needs of a child set forth in paragraph*
29 *(b) of subsection 2; or*

30 (2) *Provide proper care, control and supervision of a child*
31 *as necessary for the well-being of the child because of the faults or*
32 *habits of the person responsible for the welfare of the child or the*
33 *neglect or refusal of the person to provide them when able to do*
34 *so.*

35 *↳ The term does not include the actions described in subsection 2*
36 *of NRS 432B.020.*

37 **Sec. 2.** (Deleted by amendment.)

38 **Sec. 3.** NRS 128.105 is hereby amended to read as follows:

39 128.105 **1.** The primary consideration in any proceeding to
40 terminate parental rights must be whether the best interests of the
41 child will be served by the termination. An order of the court for
42 the termination of parental rights must be made in light of the
43 considerations set forth in this section and NRS 128.106 to 128.109,
44 inclusive, and based on evidence and include a finding that:



~~[(1)]~~ (a) The best interests of the child would be served by the termination of parental rights; and

~~[(2)]~~ (b) The conduct of the parent or parents was the basis for a finding made pursuant to subsection 3 of NRS 432B.393 or demonstrated at least one of the following:

~~[(a)]~~ (I) Abandonment of the child;

~~[(b)]~~ (2) Neglect of the child;

~~[(c)]~~ (3) Unfitness of the parent;

~~[(d)]~~ (4) Failure of parental adjustment;

~~[(e)]~~ (5) Risk of serious physical, mental or emotional injury to the child if the child were returned to, or remains in, the home of his or her parent or parents;

~~[(f)]~~ (6) Only token efforts by the parent or parents:

~~[(1)]~~ (I) To support or communicate with the child;

~~[(2)]~~ (II) To prevent neglect of the child;

~~[(3)]~~ (III) To avoid being an unfit parent; or

~~[(4)]~~ (IV) To eliminate the risk of serious physical, mental or emotional injury to the child; or

~~[(e)]~~ (7) With respect to termination of the parental rights of one parent, the abandonment by that parent.

2. Before making a finding pursuant to subparagraph (5) of paragraph (b) of subsection 1, if the child has been out of the care of his or her parent or guardian for at least 12 consecutive months, the court shall consider, without limitation:

(a) The placement options for the child;

(b) The age of the child;

(c) The developmental, cognitive and psychological needs of the child;

(d) Whether the child has formed a strong positive attachment or bond with the substitute caregiver; and

(e) Whether the removal of the child from the care of the substitute caregiver is likely to result in psychological harm to the child.

Sec. 4. NRS 128.106 is hereby amended to read as follows:

128.106 In determining neglect by or unfitness of a parent, the court shall consider, without limitation, the following conditions which may diminish suitability as a parent:

1. Emotional illness, mental illness or mental deficiency of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time. The provisions contained in NRS 128.109 apply to the case if the child has been placed outside his or her home pursuant to chapter 432B of NRS.

2. Conduct toward a child of a physically, emotionally or sexually cruel or abusive nature.



3. Conduct that violates any provision of NRS 200.463, 200.4631, 200.464 or 200.465.

4. Excessive use of intoxicating liquors, controlled substances or dangerous drugs which renders the parent consistently unable to care for the child.

5. Repeated or continuous failure by the parent, although physically and financially able, to provide the child with adequate food, clothing, shelter, education or other care and control necessary for the child's physical, mental and emotional health and development, but a person who, legitimately practicing his or her religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent parent.

6. Conviction of the parent for commission of a felony, if the facts of the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care and control to the extent necessary for the child's physical, mental or emotional health and development.

7. ~~Unexplained injury or death of a~~ *Whether the child, a sibling of the child ~~or~~ or another child in the care of the parent suffered a physical injury resulting in substantial bodily harm, a near fatality or fatality for which the parent has no reasonable explanation and for which there is evidence that such physical injury or death would not have occurred absent abuse or neglect of the child by the parent.*

8. Inability of appropriate public or private agencies to reunite the family despite reasonable efforts on the part of the agencies.

9. *As used in this section, "near fatality" has the meaning ascribed to it in NRS 432B.175.*

Sec. 4.5. NRS 128.109 is hereby amended to read as follows:

128.109 1. If a child has been placed outside of his or her home pursuant to chapter 432B of NRS, the following provisions must be applied to determine the conduct of the parent:

(a) If the child has resided outside of his or her home pursuant to that placement for 14 months of any 20 consecutive months, it must be presumed that the parent or parents have demonstrated only token efforts to care for the child as set forth in *subparagraph (6) of paragraph ~~(a)~~ (b)* of subsection *~~2~~ 1* of NRS 128.105.

(b) If the parent or parents fail to comply substantially with the terms and conditions of a plan to reunite the family within 6 months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment as set forth in *subparagraph (4) of paragraph ~~(a)~~ (b)* of subsection *~~2~~ 1* of NRS 128.105.



2. If a child has been placed outside of his or her home pursuant to chapter 432B of NRS and has resided outside of his or her home pursuant to that placement for 14 months of any 20 consecutive months, the best interests of the child must be presumed to be served by the termination of parental rights.

3. The presumptions specified in subsections 1 and 2 must not be overcome or otherwise affected by evidence of failure of the State to provide services to the family.

Sec. 4.7. NRS 218E.715 is hereby amended to read as follows:
218E.715 The Committee shall evaluate and review issues relating to:

1. The provision of child welfare services in this State, including, without limitation:

(a) Programs for the provision of child welfare services;

(b) Licensing and reimbursement of providers of foster care;

(c) *The provision of foster care, including, without limitation, reunification of foster children with a birth parent and adoption of foster children by a foster parent;*

(d) Mental health services; and

~~[(d)]~~ (e) Compliance with federal requirements regarding child welfare; and

2. Juvenile justice in this State, including, without limitation:

(a) The coordinated continuum of care in which community-based programs and services are combined to ensure that health services, substance abuse treatment, education, training and care are compatible with the needs of each juvenile in the juvenile justice system;

(b) Individualized supervision, care and treatment to accommodate the individual needs and potential of the juvenile and the juvenile's family, and treatment programs which integrate the juvenile into situations of living and interacting that are compatible with a healthy, stable and familial environment;

(c) Programs for aftercare and reintegration in which juveniles will continue to receive treatment after their active rehabilitation in a facility to prevent the relapse or regression of progress achieved during the recovery process;

(d) Overrepresentation and disparate treatment of minorities in the juvenile justice system, including, without limitation, a review of the various places where bias may influence decisions concerning minorities;

(e) Gender-specific services, including, without limitation, programs for female juvenile offenders which consider female development in their design and implementation and which address the needs of females, including issues relating to:

(1) Victimization and abuse;



- 1 (2) Substance abuse;
- 2 (3) Mental health;
- 3 (4) Education; and
- 4 (5) Vocational and skills training;

5 (f) The quality of care provided for juvenile offenders in state
6 institutions and facilities, including, without limitation:

- 7 (1) The qualifications and training of staff;
- 8 (2) The documentation of the performance of state
- 9 institutions and facilities;
- 10 (3) The coordination and collaboration of agencies; and
- 11 (4) The availability of services relating to mental health,

12 substance abuse, education, vocational training and treatment of sex
13 offenders and violent offenders;

14 (g) The feasibility and necessity for the independent monitoring
15 of state institutions and facilities for the quality of care provided to
16 juvenile offenders; and

17 (h) Programs developed in other states which provide a system
18 of community-based programs that place juvenile offenders in more
19 specialized programs according to the needs of the juveniles.

20 **Sec. 4.9.** NRS 218E.720 is hereby amended to read as follows:
21 218E.720 1. The Committee may:

22 (a) Conduct investigations and hold hearings in connection with
23 its duties pursuant to NRS 218E.715 and exercise any of the
24 investigative powers set forth in NRS 218E.105 to 218E.140,
25 inclusive;

26 (b) Request that the Legislative Counsel Bureau assist in the
27 research, investigations, hearings and reviews of the Committee;
28 and

29 (c) Propose recommended legislation concerning child welfare
30 and juvenile justice to the Legislature ~~and~~ *including, without*
31 *limitation, recommended legislation concerning the provision of*
32 *foster care as described in paragraph (c) of subsection 1 of*
33 *NRS 218E.715.*

34 2. The Committee shall, on or before January 15 of each odd-
35 numbered year, submit to the Director for transmittal to the
36 Legislature a report concerning the evaluation and review conducted
37 pursuant to NRS 218E.715.

38 **Sec. 5.** This act becomes effective on July 1, 2015.

