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

Seventy-Eighth Session
February 25, 2015

The Committee on Health and Human Services was called to order by Chair James Oscarson at 1:33 p.m. on Wednesday, February 25, 2015, 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 website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Oscarson, Chair
Assemblywoman Robin L. Titus, Vice Chair
Assemblyman Nelson Araujo
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Jill Dickman
Assemblyman David M. Gardner
Assemblyman John Hambrick
Assemblywoman Amber Joiner
Assemblyman Brent A. Jones
Assemblyman John Moore
Assemblywoman Ellen B. Spiegel
Assemblyman Michael C. Sprinkle
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senate District No. 12

STAFF MEMBERS PRESENT:

Kirsten Coulombe, Committee Policy Analyst
Risa Lang, Committee Counsel
Marsheilah Lyons, Supervising Principal Research Analyst, Research Division, Legislative Counsel Bureau
Nancy Weyhe, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Michael Hackett, Member, Nevada Food Allergy & Anaphylaxis Alliance
Caroline Moassessi, Member, Nevada Food Allergy & Anaphylaxis Alliance
Leila Moassessi, Private Citizen, Reno, Nevada
Colin Chiles, Senior Director, State Government Relations, Mylan Inc., Canonsburg, Pennsylvania
James Porter, Member, Nevada Athletic Trainers Association, Las Vegas, Nevada
Kacey Larsen, Private Citizen, Carson City, Nevada
Daniel R. Spogen, M.D., Professor, Chair, Family and Community Medicine, University of Nevada School of Medicine
Diane McGinnis, Private Citizen, Beatty, Nevada
Tracy D. Green, M.D., Chief Medical Officer, Division of Public and Behavioral Health, Department of Health and Human Services
Deborah J. Pontius, Private Citizen, Lovelock, Nevada
Bobbi Shanks, Private Citizen, Elko, Nevada
Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County
Lisa Ruiz-Lee, Director, Department of Family Services, Clark County
Kevin Schiller, Director, Department of Social Services, Washoe County
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services

Chair Oscarson:
[Roll was taken. Committee rules and protocol were explained.] We have a few committee bill draft request introductions. Bill draft request 38-419 was requested by the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs.

BDR 38-419— Revises provisions relating to the program to provide devices for telecommunication to persons with impaired speech or hearing. (Later introduced as Assembly Bill 200.)

This measure makes various changes to the program to provide devices for telecommunication to persons with impaired speech or hearing. Introduction of the bill does not mean you do or do not support it, it just means we are introducing the bill through the Committee. May I have a motion?

ASSEMBLYMAN THOMPSON MOVED FOR COMMITTEE INTRODUCTION OF BDR 38-419.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE.)

Chair Oscarson:
The second bill draft request we want to introduce is BDR 38-552.

BDR 38-552—Makes various changes to certain advisory committees in the field of health care. (Later introduced as Assembly Bill 199.)

It was requested on behalf of the Sunset Subcommittee of the Legislative Commission. [Read description of BDR.] I will entertain a motion to introduce BDR 38-552.

ASSEMBLYMAN HAMBRICK MOVED FOR COMMITTEE INTRODUCTION OF BDR 38-552.

ASSEMBLY TROWBRIDGE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN BENITEZ-THOMPSON WAS ABSENT FOR THE VOTE.)

Chair Oscarson:
We will now open the hearing on Assembly Bill 158.

Assembly Bill 158: Authorizes certain entities to obtain and provide or administer auto-injectable epinephrine in certain circumstances. (BDR 40-66)

Senator Joseph P. Hardy, Senate District No. 12:
I am going to have Marsheilah Lyons present, and I will present comments when she is done.

Marsheilah Lyons, Supervising Principal Research Analyst, Research Division, Legislative Counsel Bureau:
I am a staff member of the Legislative Counsel Bureau and cannot advocate for or oppose any legislation that comes before this or any other body, but I did provide staff support to the Legislative Committee on Health Care which consisted of Assemblywoman Benitez-Thompson, Senator Hardy, Senator Woodhouse, former Assemblywoman Marilyn Dondero-Loop, former Senator Justin Jones—who served as Vice Chair and Chair, respectively— and Chair Oscarson.

The Legislative Committee on Health Care heard testimony regarding the effectiveness of Senate Bill 453 of the 77th Session, which authorized the use of emergency epinephrine at schools in Nevada. Several school districts provided information regarding their use of EpiPens in emergency situations since passage of S.B. 453. [Continued reading from (Exhibit C).]

At the Chair's direction I can walk the Committee through the provisions of the bill.

Chair Oscarson:
Thank you, we would appreciate that.

Marsheilah Lyons:
Section 3 of the bill authorizes an authorized entity to obtain an order from a physician for auto-injectable epinephrine. It defines an authorized entity as a public or private entity other than a public or private school where allergens capable of causing an anaphylaxis may be present on the premises of the entity or in connection with the activities conducted by the entity. [Ms. Lyons continued to read the provisions of the bill (Exhibit C), pages 3 and 4.]

Senator Hardy:
On page 3, line 14, a "natural person" is probably better than a "person." Sometimes we understand a "person" to be a different entity such as a corporation. I would look at those types of things.

On line 33 when it talks about the "board," it would be the respective Board of Medical Examiners or the State Board of Osteopathic Medicine.

On page 4, "nationally recognized organization" on line 1, would probably be the American Red Cross or a similar type of organization that provides training. After that word "organization" on line 4, I would understand that would be a physician, an osteopathic physician, or a nurse that would be capable of training. Those would be the things that I would point out. They are little things that you may or may not feel the need to do.

The pharmacist is in here to be able to fill the prescription or the order for the injectable epinephrine.

You are probably aware that peanut allergy is in the news now. The current thinking is, knowing that the doctor is always right no matter how often they change their mind, a peanut allergy is a very common thing and a source for anaphylaxis.

My father was attending the wedding luncheon for my oldest son and ate a piece of unlabeled candy and started having difficulty breathing. I took him to the emergency room at a speed that may have exceeded the posted speed limit. I dropped him off at the emergency room and told the emergency personnel what he had eaten. They gave him a shot of epinephrine, and when they were finished monitoring him, he was able to make the reception later that night.

The nut allergy is very common, the peanut in particular. The first time you have an anaphylactic reaction, you do not know that you have the allergy until you have the reaction. It is a critical thing for us to have opportunities to treat people, and this is one opportunity that we can do. If we have, for instance, major places that invite people from all over the world to come, it may be wise for us to treat them as quickly as we can so we save lives. With that, I would be happy to answer any questions.

Assemblyman Sprinkle:
I was on the Interim Committee and remembered those conversations that you told us about, the use of epinephrine in the school since we passed this two years ago. How many of those were used on children who had already been diagnosed with severe allergic reactions, and that was in their files at the schools?

Marsheilah Lyons:
I do not have that information, but I can reach out to the school districts and get it to you.

Assemblyman Sprinkle:
Senator Hardy, do you know the number of prehospital cerebrovascular accidents, hypertensive emergencies, or cardiac-type events that occur in relation to the number of anaphylactic or allergic reactions that occur prehospital in the United States?

Senator Hardy:
No.

Assemblyman Trowbridge:
Senator Hardy, what is the normal possibility of an overdose from the use of this particular drug?

Senator Hardy:
I do not know the exact number. We have what we call adrenaline or epinephrine in our system, so we make that ourselves. What we do as physicians or emergency technicians or nurses in a school where someone is having an anaphylactic reaction, we give a set dose that makes your heart go faster, and it usually makes your blood pressure go up, which is a good thing when you are in anaphylaxis. There are side effects as well as effects, and we anticipate that those effects will far outweigh any risk of the side effects.

If you are going to give this to anybody, the next thing you do is you take them to the hospital. There are two reasons: the potential side effects that could happen, and because epinephrine is quickly metabolized. Just because you give one shot does not mean they do not need other things to follow up.

Assemblyman Gardner:
On page 3, section 5, it talks about the provider of emergency medical services and provider of health care, and I see it lists various people who do it. Later in some of the sections there are protections for physicians who do things. Are there any protections for the provider of health care or provider of emergency medical services? I did not see that in the bill. Is it somewhere else? Did I miss it? Are we protecting these people as well?

Senator Hardy:
Yes, there are protections for those people. One of the things that we have noted is that for a nurse who gives this at a school, we want to give the nurse this protection as well. Page 7, lines 7 through 13, is the same type of language we are proposing, where the pharmacist is not liable for any error or omission concerning the acquisition, possession, et cetera. Those are the types of things that we want to make sure that a person has a Good Samaritan protection for.

We have heard if we extend this Good Samaritan liability protection to nurses in the school, we may find more nurses willing to do it; we would be very acceptable to such a friendly amendment.

Assemblyman Gardner:
That was my point. If these people are going to be doing it, I believe we should be giving them the same protections we are giving to doctors and the pharmacists. If you can find it in there that would be great; if not, I think it would be a good idea to add it.

Assemblywoman Titus:
On an overview, I am in support of this concept. I work with the Lyon County School District; I am the one who writes them their prescriptions. I am the one who has established their protocols. I just renewed their protocol on when they would give epinephrine and when they would repeat it and what signs and symptoms, et cetera, would require administering it. I am anxious about this particular bill about the actual requirement for certification or what type of education they are going to have in order to administer it, who is going to set up their protocols to administer it, and where those documents are going to be stored. Are they responsible for keeping those to prove that these people have been certified? I am in favor of the concept but worried about the actual procedure and the logistics of this.

Senator Hardy:
Those are very reasonable things, and I may have said we accept friendly amendments. That is really what we do. Physicians and health care providers and anybody that gives this wants to have that documented, so anything we do in an entity, we need to hold them accountable for the recordkeeping as well as the training.

Assemblyman Sprinkle:
I have a follow-up to the question just asked. Page 3, line 14, says that the entity can allow a person other than an owner, employee, or agent of the authorized entity who is trained to recognize the symptoms of anaphylaxis, which may include family members of a person who suffers from allergies capable of causing anaphylaxis. What kind of proof is there going to be in the moment of a crisis situation that this person really does have that training? Or is the person just simply trying to be a Good Samaritan or something like that? How is that entity going to know that the person is trained as they are giving up this prescribed medication to somebody who just came up and said, "Hey, I know what to do, give it to me"?

Senator Hardy:
Realistically the people who are going to be trained in an entity, that "natural person" that I would refer to instead of a "person," would likely be like a first aid person identified in a casino, for instance. They have people who are there and available. That is where people would naturally go; people would say, "I have a problem," and the people on the floor who are walking around would say, "We know exactly who to call, call the emergency medical technician who has been trained." This is what I think is happening, and they are loaded for whatever happens. I think it behooves us to not only act quickly but accurately and have the people identified and whatever entity it is, going along with Assemblywoman Titus' comments, to be documented as to who they are, the same as in the school; who is the nurse that has documented to have been trained and accepts that responsibility.

Assemblyman Sprinkle:
That was one of the things that alleviated my concerns two years ago. The concern that I have now is that the requirements are different for this bill. While they may have people that are employees that are certified to do this, what happens if that person calls in sick that day? There are not the same types of protections that we put in place with the schools two years ago.

As a doctor could you, in layman's terms, talk to me about the indications overall for epinephrine and, most importantly, the contraindications when this medication should not be given to any individual and what some of the effects are on the body when a person is given a dose of epinephrine?

Senator Hardy:
In sports, we talk about how he was on epinephrine, so we expect him to shoot the basketball better, to steal the ball, to run faster, to do all the things that adrenaline does to somebody. We expect your breathing to be better, to open up your airways, to decrease the physiologic shutdown of the breathing because of swelling, the same as with your upper airway. Many people who have an anaphylactic reaction, for instance to peanuts or something, will get an itching of the throat, a swelling of their upper airway in their posterior pharynx and their large airways, and then it will go down into their lungs and they will have wheezing and difficulty breathing. Ultimately, they will turn blue and they will die. The good news is we give adrenaline even as a shot into the heart with a big, long needle sometimes to get a heart going. So the absolute contraindication with adrenaline would probably be, not even death, but it would be somebody who has excessive hypertension for instance. When you are trying to figure out what somebody has, you are not necessarily going to have a blood pressure cuff on you, and so by the time you do your two-and-a-half-minute response to an emergency that you get from the local

emergency medical technicians, that two and a half minutes becomes a very critical two and a half minutes. That is the shorthand version.

Assemblywoman Titus:
When you have a prescription medication, there are blackbox warnings and there are absolute contraindications. The good news for the EpiPens is that there are no blackbox warnings and no absolute contraindications. There are cautions, but there are no absolute contraindications. In the moment of crisis, a person would not have to worry about that. Having done all of the above including the intra-thoracic cardiac injections, you do what you have to do at the moment. With this drug, I am not worried about them hurting somebody and causing some irreversible bad outcome. That is the good news. I think it just needs some clarification, and we could work together to alleviate my concerns about the documentation and those types of things. I have some forms that I use for the Lyon County School system that make me comfortable as a provider, and a signature on that prescription to make sure that they have some criteria when they give it, and they have to meet certain criteria before they would use that; at least it has some checks and balances in the use of this.

Assemblyman Araujo:
Have you discussed what the next steps would be should epinephrine be injected into the child? Is there a referral to the doctor immediately or preceding the injection, or is the child left to go on with the remainder of his day?

Senator Hardy:
Yes, the thing you do first is you act quickly, and then you send them to the hospital. When I say send them to the hospital, I do not mean the doctor's office, unless you are in Smith Valley. You get them where someone can watch them and follow them. The effect of epinephrine is short-term, and so you want to make sure that they are okay: at 10 minutes, 20 minutes, 30 minutes, and 2 hours later. There are other medicines, steroids, or antihistamines that you do, but the temptation is to put somebody on an antihistamine that first of all is not absorbed quick enough and second of all does not get to the physiologic need quickly.

Assemblywoman Benitez-Thompson:
I would like to clarify on section 5 and then section 2, for the Legislative record, so that we capture good intent. As I understand section 5, subsection 1, lines 25-33, as long as an entity has maintained the requirement of having at least one person trained on epinephrine injections, they are not liable for any errors or omissions. Does that include willful noncompliance with any of the statutes? Willful noncompliance with maintaining doses that have not expired, reordering them every year, and keeping up with policy and procedure?

Senator Hardy:
If you look at "willful" on page 4, lines 32 and 33, realistically epinephrine expires, so you want to replace it. If the Committee wanted to look at that in such a way as to make sure that there was an expectation—which from the doctor's standpoint there ought to be and that is part of the training—that it has an expiration date on it. When you look at the expiration date, you want to be replacing that; so there is an expectation to do something that is appropriate.

If I could go back a little ways I would say if you do not have this, or if the person is sick that day and you just do not have it, which is where we are now, that is not necessarily a good place.

Assemblywoman Benitez-Thompson:
For the record, the intent is that the entity must keep up and have nonexpired epinephrine on the facility; if they did not and an incident occurred, then that would not be covered under section 5.

Senator Hardy:
If I understand you, that is correct. If we purport to be ready for an emergency and we are not, then we probably are negligent in not being ready for what we said we were ready for. I think that gets to Assemblyman Sprinkle's comment that if you are sick today and someone else is not available, then there ought to be more than one person trained to do this.

Assemblywoman Benitez-Thompson:
The intent on the training mandate as it applies to this section is that there be one person trained on shift or working at a time; if a business is open Monday through Fridays 8 a.m. to 5 p.m., there is always consistently one trained employee on duty.

Senator Hardy:
That is correct. I would say this is voluntary; nobody has to do this. If a business or an entity says they do not want to do this, they do not have to do this. This is not something we are mandating anybody to do.

Assemblywoman Benitez-Thompson:
Regarding section 2, for some of the entities I thought that we could spell it out more for the record. You say a restaurant and a recreation area, so anyone who wanted to opt in then, could. Even though grocery stores are not specifically listed, it could be a grocery store or grocery chain, or if local, municipal or city parks wanted to opt in, they could; so you mean this in the broadest terms possible. For the record, let it reflect that there were big hands stretched out. [Senator Hardy's arms were stretched out in an all-encompassing manner.]

Assemblyman Thompson:
My question piggybacks on my colleague's question. It seems that anybody can opt in. What are some of the associated costs? Are there specific costs associated with the training and then the actual cost of the pens? Do you have a guesstimation? The reason I ask this is that small businesses, mom and pop businesses, would of course think this is the right thing to do, but what would the cost be?

Senator Hardy:
You will hear testimony from other people who will answer that question.

Assemblyman Hambrick:
As it is written now, the bill is more general in that if an individual has an episode in school, we now assume that the school has something available. Would an individual that has an allergic reaction to this and has a history of it carry their own epinephrine pen? Obviously, then the school authority would have to know that the individual has it either in a purse or in a locker. Are we assuming that this is a very first-time episode and the school nurse or the administration of the school has to make a decision, not realizing this is a first episode?

Senator Hardy:
We have done that before: carry your own inhaler, carry your own EpiPen. I would let the schools address that because you will probably be hearing from them too.

Assemblywoman Benitez-Thompson:
When we talk about an authorized entity, we define an authorized entity in section 2. Does an entity need to become authorized, or is there a process through which an entity becomes authorized? I wanted to make clear for the record how exactly we meant "authorized entity."

Senator Hardy:
An authorized entity would probably be somebody who is willing to do it who requests an order from a physician and does the proper training and gets the certificate from somebody who has been authorized to train, so those people would become the authorized entity. Those people who are willing to not only get it but to train people to use would be "authorized entities," so it would not be a list that I would require the state to keep, for instance, as much as they could put a little sign in their window that says, "We have the ability to treat."

Assemblywoman Benitez-Thompson:
In effect, we are making the physician or the pharmacy the de facto authorizer; they can give the EpiPen. If, for example, a Little League coach wants to do this, he can opt in, but he has to come to either the pharmacist or the physician showing he has done training and then he can get the EpiPen and be considered an authorized entity?

Senator Hardy:
I do not envision the team or the entity coming to the physician's practice and saying, Yes, I have done everything, as much as talking with the physician or the nurse practitioner or the physician assistant and saying, I would like to do this. The physician assistant, nurse practitioner, or physician would then say, Here is your prescription. Go to the pharmacy, get it, and be trained, and these are the things you can do to be trained. I do not see this as an increased bureaucracy as much as an effective willingness to participate in a life-saving event.

Assemblywoman Benitez-Thompson:
It would be on the participating agent to keep this kind of certificate of training on hand, so should there be an issue down the road, they would be able to produce that and that is sufficient. That would not need to be shown to the pharmacist or to whomever gives them the prescription? I know I am beginning the question of process here, but since we were so diligent in using the term "authorized agent," I did not want to assume there was a process or that there was one already in place. I wanted to ensure that your good intent was followed through.

Senator Hardy:
If I were going to be an authorized entity, I would keep records of when I got it, when the expiration date was, what my training was, et cetera.

Assemblywoman Titus:
To address the concerns of Assemblywoman Benitez-Thompson: pharmacists do not release this medication when somebody comes to them asking for an EpiPen. They can only release the medication if the person has a prescription from a provider that is licensed to write a prescription. The physician assistant, nurse practitioner, or physician would be the ones they would have to approach first to make that decision. Before I write a prescription, I would want to make sure that the person I am writing the prescription to, who is going to fill that prescription, is qualified to have ownership of that prescription. The pharmacist does not dispense without a prescription.

Assemblywoman Benitez-Thompson:
I wanted to make sure that we were capturing the good doctor's intent, since we are creating new *Nevada Revised Statutes* and it is a new process in place. I do not want there to be any assumptions whether we used status quo or we were creating a new process. I want to make sure that we were outlining, for the record, what the intent was.

Senator Hardy:
On page 2, line 13, it talks about a physician or osteopathic physician and then uses the word board. Then on page 4 it talks about the process, from the top of the page down to the middle of the page on section 4, subsection 2: "Upon completion of the training required pursuant to subsection 1, a person must be issued a certificate on a form developed or approved by the board to evidence completion of the training." The board is the Board of Medical Examiners or the Osteopathic Board if it is a physician of osteopathic medicine. There is a process that you would like to go through to make sure you are not only trained but you are capable of doing what you are doing and you are responsible.

Assemblyman Sprinkle:
Regarding the liability protection that is built into this: The requirements are that somebody goes through a formalized standard of training and actually gets a certificate or some sort of proof that they completed the course or training, and that would then be at these specific locations so we know who is identified as the people that have been trained in this. Has there been any discussion in regard to what happens if this person chooses not to perform his duties in an allergic reaction case after having received training? My concern is that I have a duty to respond when I notify somebody who I am and what my training is. This person has gone through the training. What happens if he chooses not to do what he has been trained to do?

Senator Hardy:
This bill talks about people who are not as well-trained as you are, that do not have the certificates that you do, that do not have the obligation that you do, do not have the courage that you do. You are looking at people who may have never given a shot but who are trained to give a shot. It is not an intra-thoracic shot. People may be afraid, but I do not know of anybody who has been sued for not using an EpiPen that they had in their possession in some way. I am unaware of that liability.

Assemblyman Sprinkle:
We are trying to do something new here, so that case would not have occurred before now. That is why I am posing the question: What happens with this

with people having gone through some type of formalized training? Are they still going to be covered under the liability protections that are built into the bill now?

Senator Hardy:
I am going to defer to people who are going to come up after us.

Assemblywoman Benitez-Thompson:
I want to thank you for bringing this bill because I know that it can be very hard to present bills on behalf of an interim committee on top of all your own bills. Thank you for being the one to pick up the ball and carry it.

Chair Oscarson:
We need to also thank Senator Smith, who championed this originally to get it to the school level. I will now take testimony in support of A.B. 158.

Michael Hackett, Member, Nevada Food Allergy & Anaphylaxis Alliance:
I am here today as a volunteer on behalf of the Nevada Food Allergy & Anaphylaxis Alliance (NFAAA). Joining me are Caroline Moassessi, a founding member of NFAAA, and her daughter Leila, who will demonstrate for the Committee the ease in which auto-injectable epinephrine is administered. Nevada Food Allergy & Anaphylaxis Alliance supports A.B. 158. Last session I worked with Ms. Moassessi and NFAAA on legislation that required public schools to implement training programs on how to safely stock, store, and administer auto-injectable epinephrine in the event of an anaphylactic event.

Too often Nevada finds itself at or near the bottom of most good lists, but the actions of the 2013 Legislature and this Committee, in particular, put Nevada at the top of a very good list when we became just the fourth state in the nation to pass such legislation. Now 46 states have laws that require or allow public schools to stock and administer auto-injectable epinephrine. On behalf of myself, the parents and the children, our sincere thanks.

As was spoken to by Ms. Lyons, since A.B. 43 was enacted there have been several incidents in Clark and Washoe County schools where auto-injectable epinephrine was administered because of an anaphylactic attack, thereby preventing a bad or even fatal outcome. As was pointed out, the bill before you today, in our opinion, is a logical progression from last session's success. Although most first-time allergic reactions occur in schools, reactions to food, bee stings, and other allergens are not confined to children or schools, as Caroline will point out in her testimony.

Assembly Bill 158 will benefit all Nevadans who suffer potentially life-threatening allergies. It is enabling legislation for authorized entities to develop and implement programs to be used on the premises of that entity once they have been trained by an approved training organization, similar to what public schools have done already.

Being able to administer epinephrine as quickly as possible when someone is suffering an anaphylactic reaction is essential. Sometimes treatment delayed can be treatment denied. To date three states, Rhode Island, Florida and Oregon, have passed entity legislation like that before you today. Another 18 states have legislation pending this session, including Nevada, Arizona, Georgia, Indiana, Kentucky, Missouri, Oklahoma, Utah, and West Virginia. In closing, we hope you will support A.B. 158, or, as we are calling it among our group, the SAVE Act: Safe Access to Vital Epinephrine.

Caroline Moassessi, Member, Nevada Food Allergy & Anaphylaxis Alliance:
I am respectfully requesting your support of A.B. 158, the SAVE Act as we are calling it. Nevada Food Allergy & Anaphylaxis Alliance membership includes individual parents, allergists, and the Northern Nevada Asthma and Food Allergy Parent Education Group, and the Food Allergy Parent Education Group located in Reno and Las Vegas respectively. We are parents of food-allergic children, and we are very passionate about anything related to epinephrine and the safety of people with food allergies. Allergic reactions can develop quickly and can kill. [Continued to read from Exhibit D.]

Now I am going to assist my daughter Leila, who is going to demonstrate two different types of epinephrine auto-injectors.

Chair Oscarson:
Leila, I was engaged in this last session, we have talked over the interim, and I have to tell this Committee and this audience that you, Leila Moassessi, are responsible for saving those children's lives. Given your persistence and perseverance working with Senator Smith to bring this to us and to continue to move it forward, you have significant responsibility for those children being with their moms and dads today. I believe your example is amazing, and I thank you for that.

Leila Moassessi, Private Citizen, Reno, Nevada:
I am 11 years old and I go to Elizabeth Lenz Elementary School. I have had life-threatening food allergies since I have been 5, and I am allergic to tree nuts. I have been carrying my epinephrine auto-injectors for a long time. Today I will be showing how to use two epinephrine auto-injectors. [Leila demonstrated the use of the EpiPen and the Auvi-Q.] Thank you for your time.

Chair Oscarson:
Any questions from the Committee? [There were none.] Is there anyone else you have in the audience that would like to speak?

Colin Chiles, Senior Director, State Government Relations, Mylan, Inc., Canonsburg, Pennsylvania:
Mylan is one of the distributors of one of the auto-injectors (Exhibit E). Our pens cost from $300 to $350 for a two-pack. It depends on where you are getting it from. We also offer a $100 co-pay coupon or $100 cash-off if somebody is either paying cash or has a high-deductible plan.

Assemblyman Thompson:
What is the cost for training, as specified?

Colin Chiles:
The training that I have gone through recently was through the American Red Cross. It is an online training program that provides both training on recognizing the signs and symptoms of anaphylaxis and the actual administration of the auto-injector. That online training is currently $20.

Chair Oscarson:
Three hundred dollars is not much of a price to pay to have your child home at night with you, is it?

Are there any other questions from the Committee? [There were none.] Is there anyone else in support?

James L. Porter, Member, Nevada Athletic Trainers Association, Las Vegas, Nevada:
I am representing the Nevada Athletic Trainers Association in support of A.B. 158. We believe there was an inadvertent error of omission in not including Nevada licensed athletic trainers into the primary emergency medical services on page 3, lines 37 to 40.

Currently, at 70 percent of the Nevada youth and interscholastic athletic practices and events, the primary provider of emergency medical services on-site is a Nevada-licensed athletic trainer. The other 30 percent depend upon the response from public emergency medical services off-site. [Continued to read (Exhibit F).]

The issue that comes in is that school nurses are not assigned to or are not present at the majority of interscholastic and youth sports activities that occur in Nevada. In the Clark County School District, very rarely do we see a nurse

even after noon. From approximately 1:30 p.m. until 5:30 p.m., the primary emergency personnel that responds to emergencies is the Nevada licensed athletic trainer.

We have provided you with a detailed competency that explains the educational process for licensed athletic trainers in the state of Nevada (Exhibit G). In Clark County, where I supervise the majority of the athletic trainers in the high schools here under a contract, we are not employees of the school district; we are contracted through a company called Select Physical Therapy. Our people go through an annual skills-testing procedure to make sure that they can recognize and manage anaphylaxis (Exhibit H).

At the present time, we are dependent upon the athletes to have their pens with them because we are not allowed under NRS Chapter 639 to carry or possess the auto-injectable pen unless a school nurse deems us trained by the school district and it demonstrates that in writing. We are not allowed to carry those even though we are the primary emergency provider after school.

We are asking that you amend A.B. 158 to include listing Nevada-licensed athletic trainers as primary emergency providers. I can speak only to the 45 athlete trainers that I supervise. Our medical director, Dr. Matthew Otten, has already agreed in writing to provide a prescription, and we would maintain the epinephrine per the standards of care in the industry and would have them available not only for interscholastic sports but also for youth sports. In Clark County, my 45 athlete trainers provide services to over 130 additional youth sports activities, such as the volleyball and soccer tournaments that occurred in which we provide care to over 4,000 high school athletes involved in soccer and volleyball.

We are coming up on the spring season, which is outdoor sports. We expect to see bee stings. The athletic trainers are out supervising the fields at the high school I work at, which is Cimarron-Memorial High School. On two occasions in the last year I have had to have the groundspeople come out and remediate a bee nest from the football field and the soccer field.

Chair Oscarson:
Back to Carson City.

Kacey Larsen, Private Citizen, Carson City, Nevada:
I have been a Nevada resident for almost 20 years. I am a registered nurse and a busy mom of a 5-year-old who has food allergies. My daughter was diagnosed with food allergies when she was 4 months old. [Ms. Larsen read from prepared text (Exhibit I).]

Assemblyman Thompson:
When you look at being a Good Samaritan, but in this situation these people would be trained, how do we get over that hurdle of people concerned about liability? You spelled it out quite well—it is life-threatening—so if a person is a layperson, not a non-medical professional, how do we get over that hurdle? You do want people to be there for our children, but some people might feel like, Oh, once I step in, I am in to try and help.

Kacey Larsen:
My personal opinion is if you see someone in front of you choking, would you react?

Assemblyman Thompson:
Absolutely.

Kacey Larsen:
Would you react even if you had not been shown specifically how to do the Heimlich maneuver?

Assemblyman Thompson:
Yes. You would do whatever you could.

Kacey Larsen:
I would propose that if you saw a child not breathing in front of you, you would do your best to help.

Assemblyman Thompson:
Right. I am trying to see how we can increase the number of people, because it is optional for this laundry list.

Kacey Larsen:
As far as the liability, any parent who has a child who has been diagnosed with a food allergy has to learn, just as I learned. I am a nurse, so I had a heads-up on that, but my husband is not medically trained and he learned and could respond appropriately as well. I feel it is very easy to teach the general public when you see someone not breathing in front of you.

Chair Oscarson:
I think the food allergy network has cast their net wide and far trying to make sure people are aware of these issues and to let them know where training can take place. Senator Smith is very engaged with the Nevada Food Allergy & Anaphylaxis Alliance group, and they have done a magnificent job making sure

that people are aware of the signs and symptoms and what to do. We can always do better with the education part.

Daniel R. Spogen, M.D., Professor, Chair, Family and Community Medicine, University of Nevada School of Medicine:
Assembly Bill 158 allows certain trained individuals to administer subcutaneous epinephrine to individuals experiencing a potential life-threatening allergic reaction, which we call anaphylaxis. These auto-injectors have been available for years. They can administer life-saving adrenaline simply and safely. [Dr. Spogen read from prepared text (Exhibit J).] I would urge this Committee to approve A.B. 158.

Chair Oscarson:
Any questions? [There were none.] Any others in support of A.B. 158?

Diane McGinnis, Private Citizen, Beatty, Nevada:
I am speaking on behalf of my rural constituents. I am the only provider for 45 miles; the closest physician is 75 miles away from my clinic in Beatty, Nevada. The next closest is in Las Vegas, which is a two-hour drive. I am very much in support of this. I am also a volunteer firefighter. Sometimes our fire department responds separately from our ambulance. Currently, emergency medical technicians (EMT) at the ambulance level are not allowed to use injectable epinephrine, and there may be a change coming up on that. Advanced EMTs and paramedics can, so I am envisioning this would allow EMTs to carry and be able to inject. In a rural volunteer situation, oftentimes they may be at the local grocery stores when it goes off so I would like to be able to say that that is something that would be very helpful for our rural or frontier constituents.

I would like to propose that you consider amending the language that says physicians and osteopathic physicians and possibly athletic trainers to include nurse practitioners and physician assistants as well. The nurse practitioners are covered in the liability portion but not in the prescribing side. Could we add the nurse practitioners and physician assistants to be involved in the prescribing? It specifically says physician. Both Assemblywoman Titus and Senator Hardy mentioned in their testimony that nurse practitioners and physician assistants can prescribe. I can prescribe them to my patients, so I would like to be able to have that included, if possible, in the language as well. That would be section 3, lines 12 to 13, and that area, and work on the other places where that language should be there.

I too have an allergy. Mine is not food; it is to ants. I teach wilderness medicine and oftentimes when I am out on a wilderness expedition it would be

nice for people, Boy Scouts for instance, to be able to have an option to have the scoutmaster be trained and be able to carry that, the same as with athletic events. When you are out on an expedition like that—and many of them happen in Nevada since we have so many great places for youths to travel—it would be nice to be able to have them under that umbrella. I would like to be able to prescribe and train somebody for that.

Like Dr. Spogen from the School of Medicine, I did not bring my EpiPen with me today; it is in the car. I hope to not have any ants inside the building, but sometimes we do forget or sometimes the pens are awkward-sized. I am wearing a suit and I do not have any pockets in my suit, so it would nice to be able to have places in public like the automated external defibrillators (AED), where pens are available.

Assemblyman Sprinkle:
You said that you are also a volunteer firefighter, and those that are trained to the EMT Basic level, which is still emergency medical technician certification, are not currently allowed to use the auto-injectors or administer epinephrine. Do you know why that is?

Diane McGinnis:
I believe it is the national EMT standard. They are talking about making changes to that; they can coach somebody that already has the prescription to use it, but the person has to have their own auto-injector already. I believe you had a demonstration of the Auvi-Q and how it works like an AED and talks people through it. I did this in my clinic with a young man who is seven years old who has an issue. I handed it, without any words, to his four-year-old sibling, and his four-year-old sibling was able to figure out how to use it. The EMTs are trained to coach but they are not allowed to give it right now.

Assemblywoman Spiegel:
It seems like you cover a large range. Thinking logistically, it made me wonder if you cover Yucca Mountain and other remote, isolated places that can be difficult to get to.

Diane McGinnis:
Yes and no. Yucca Mountain is on the Nevada National Security Site and they do have their own responders on site; they have their own fire department with two different fire areas. I do sometimes get workers' compensation patients from that area that come in with injuries, and it would be feasible that if somebody were on one side of the Test Site they may come to me as opposed to getting to their people.

Assemblywoman Spiegel:
As you read the bill, it talks about private or public places. If there is a workplace that has a cafeteria but it is a private workplace or a federal project, would that worksite be covered by this?

Risa Lang, Legal Analyst:
They would be able to obtain this.

Chair Oscarson:
Any other questions or comments? [There were none.] Any others in support of A.B. 158? [There were none.] Anyone in opposition? [There was no one.] Anyone neutral?

Tracey D. Green, M.D., Chief Medical Officer, Division of Public and Behavioral Health, Department of Health and Human Services:
I thought I might provide a little data about the efficacy of Senate Bill No. 453 of the 77th Session and what has been happening over the last two years and to provide information and to note Senator Smith's endeavors.

All school districts have established an educational program, and they all are carrying or have available to them epinephrine. In the original bill there was the opportunity for the school nurse to designate other trained employees to both carry and administer the epinephrine pen. We do know there are nurse extenders within the school districts that are using this, so perhaps that might meet the requirements for physical trainers that Mr. Porter talked about.

Additionally, 24 doses were administered in Clark County. I would consider that to be 24 lives saved, so I think this definitely works. Charter schools have released their information as well. They have not had to administer any doses, and we are still collecting the Washoe County data.

In S.B. No. 453 of the 77th Session there was a section that I would offer as a friendly amendment that described the comprehensive action plan concerning anaphylaxis and was a little more prescriptive as to the educational requirements that could be provided. I would offer that to Senator Hardy, to expand on what the specifics are of that educational piece that would be required.

There have been some challenges, but the State Health Officer and I, the Chief Medical Officer, have issued 17 standing orders to 17 school districts that were either unable to or did not have physicians in their communities that were willing to be the prescribers for these EpiPens. That is the data we have to date from the last session bill.

Deborah J. Pontius, Private Citizen, Lovelock, Nevada:
I am a school nurse in Pershing County School District. I am a nationally certified school nurse, and I am the chief school nurse for Pershing County. I am also an epinephrine resource school nurse, a national designation from the National Association of School Nurses, which assists school nurses in implementing epinephrine auto-injector policies across the nation. I have been in the forefront of implementing Senate Bill 453 of the 77th Session in the last two years within my state and beyond.

I am neutral to this bill. I do encourage it; however, I find that this bill is an opportunity to correct what I feel is an inadvertent piece that was left out of the previous bill. I am submitting for your consideration an amendment (Exhibit K) that is similar in language to the protections that are currently in the law for physicians and pharmacists to cover both school nurses and staff to whom they delegate because this language is not currently in the law. I believe such language would encourage more staff to become trained and more school nurses to feel comfortable with the delegation of this medical procedure as we remain responsible for our delagatees' actions.

I would also like to answer a couple of the questions that came through from the earlier testimony. At the end of last school year, as Dr. Green testified, 24 doses of epinephrine were provided. Twelve of those were to students or to staff who had undiagnosed allergies. The remaining 12 were students or staff members that did have a diagnosed allergy but did not carry an epinephrine auto-injector with them, which we find as school nurses to be extremely common. In my own school district I did not have a need to provide any epinephrine in the last two years, but I know in Elko Bobbi Shanks, the chief school nurse, had two opportunities to use their epinephrine auto-injector, and one of those was to an undiagnosed person.

Talking with my fellow chief school nurse colleagues around the state, we see that about 50 percent of the time it is a student who, for varying reasons, is not carrying their own auto-injector. Most families are very responsible and provide an epinephrine auto-injector for their children that have allergies. Unfortunately, there are those families that do not, and we do not want those children to go without the necessary medication.

One of the big concerns we have among the districts in implementing this law, is the liability that school employees, including both the school nurse and the unlicensed staff delegates, would incur should a dose be administered to an undiagnosed person and there either be a bad outcome or an angry parent of a possible unnecessary injection. [Read from prepared text (Exhibit K).]

The current law clearly protects the physician and the pharmacist from any liability for the order to an entity rather than to a specific person. The bill before you includes protection for additional entities and their employees who stock and become trained to administer this medication, but there is no similar protection for school district employees. I believe that by including this proposed amendment to protect school employees from liability in administering this medication, it would make more people available to respond to an anaphylaxis emergency to children and staff members, because we did have staff members who were unwilling to volunteer for this because of perceived liability.

I would also like to concur with the previous testimony of Diane McGinnis to include the advanced practice registered nurse (APRN) and the physician assistant (PA) because they are legally authorized to order epinephrine for a person to allow them to order it for an entity as well. I am in a rural community. My primary care providers are PAs and APRNs, and it is extremely difficult for me to provide a physician who can sign an order for this. I am one of the seven people that Dr. Green needed to sign the orders for because I could not find a physician who would do that. I encourage the change in this language in order to protect school district employees as well as to encourage the inclusion of mid-level providers as those that can provide prescription to the entities.

Bobbi Shanks, Private Citizen, Elko, Nevada:
I am the school nursing coordinator for the Elko County School District. Here is an example of why this amendment would be very helpful. We implemented this training in the schools, and as some of my nurses were out doing the training, I received several phone calls from teachers asking, are we liable if we sign those papers saying we have been trained? Are we liable? It is a question whether the Good Samaritan law protects you if you are an employee and you have been trained. Having that protection written in would be very helpful in having those people in schools willing to accept the training.

There has been discussion about the cost of EpiPens, and Mylan has been very helpful for schools with their EpiPen4Schools program in which they have a grant program where they have provided free EpiPens for each school in every school district if you have applied. That has been very helpful.

Assemblyman Thompson:
With S.B. 453 of the 77th Session, I think the grant program was a big part of how we were going to get at least two pens in every school, so are you saying that grant program is still going on? That was one of the questions we had

two years ago; we will get this started, but now is it going to be up to the individual schools to keep replenishing the pens?

Bobbi Shanks:
That program is still going on. We have it for this year and we had it for the previous year. The grant provides the initial EpiPen. Then if you use it and have to replace it you are responsible for that cost, but there is a discounted price with that.

Colin Chiles:
To clarify the program, it is run year by year, so it was extended for the current school year. I believe that there will be an announcement that the program will be extended one more year. We do have a policy change I thought I would address; if the pens are used or happen to become expired during the school year, they can reapply and we will restock now. That was something that we changed as the program developed.

Chair Oscarson:
Is there any other neutral testimony? [There was none.] I will close the hearing. We will open the hearing on Assembly Bill 102.

Assembly Bill 102: Revises provisions relating to child welfare. (BDR 38-196)

Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County:
I oversee attorneys that handle child welfare, abuse, and neglect issues and represent the Division of Child and Family Services (DCFS). I have other attorneys that handle our delinquency side, so you will see me on bills coming out of those issues. Today I have the pleasure of being asked to introduce Assembly Bill 102. It is a bill that came out of the Legislative Committee on Child Welfare and Juvenile Justice. During the interim Committee, the Office of the District Attorney and the Clark County Department of Family Services were asked to present on some issues at the request of the Chair. One of those issues that we presented had to do with *Nevada Revised Statutes* (NRS) 432B.393, so what I am going to present to you are the amendments on the Nevada Electronic Legislative Information System, not the original bill (Exhibit L). These amendments have been discussed with the Chair of that Interim Committee and accepted. Later in the presentation, I will explain to you some opposition expressed regarding one of the amendments and then offer some suggestions.

On section 1, subsection 3, we are recommending that we add an evidentiary burden to the finding that the Department of Family Services or child welfare

agency is not required to make reasonable efforts; the evidentiary burden would be by clear and convincing evidence.

The purpose behind that is when you look at NRS 128.05, which is our termination of parental rights statute, there are certain factors that the court shall consider to determine whether or not to terminate a parent's parental rights. First, of course, the primary consideration would be best interest of the child. Then you have to look at parental fault. An independent ground of parent fault is a finding pursuant to NRS 432B.393, subsection 3. In theory, the state could go into court and ask for a finding to not make reasonable efforts to reunify a family based upon what the federal government calls aggravated circumstances, and then take that finding to a different court and terminate the parent's rights based upon that finding.

However, to terminate parental rights is a pretty high burden of proof. It is clear and convincing evidence. To be fair to the families that we serve and to be fair to our community, we thought it would only be fair to make sure that the findings that we are requesting from the court meet that same evidentiary burden. The other purpose for that is we found ourselves litigating very little on the front end of cases, meaning we go in and we do things very quickly on the front end of cases and then, when we get to termination of parental rights and moving toward adoption, we get stalled relitigating everything that started in the beginning. We are trying to end that.

Last week you had a fabulous presentation regarding child welfare, so I am going to give you a little more minutiae so you can understand what "reasonable efforts" are. Under the federal Adoption and Safe Families Act of 1997, a child welfare agency is required to make reasonable efforts for a few things. First: to prevent the removal of a child from the home, so before even removing a child the state has to make reasonable efforts to prevent that removal, if appropriate. There may be circumstances where no efforts could potentially be made. Then they have to make reasonable efforts to make it possible for the safe return of that child. You can see all of these factors within NRS 432B.393, subsection 1; so to prevent the removal, and then reasonable efforts to make sure that the child is safe to go home.

If at some point it becomes obvious to the court that we cannot return the child safely to the home, we develop other permanency plans for that child. Those permanency plans can include guardianship, adoption, relative placement, or long-term foster care—what we call other planned permanent living arrangement. At that point, DCFS has to make reasonable efforts to finalize that plan. What the federal government also said in the Adoption and Safe Families Act of 1997 is that there are circumstances where it is not

appropriate to make reasonable efforts to reunify. Some of those things that the federal government requires are outlined in subsection 3. There are others that the federal government allowed the state to use their discretion to add in, so some of these are federal requirements and some of them are what this great state has decided would be the drop-dead line that we do not want to provide reasonable efforts to these parents based upon these circumstances. The intent of the Committee was to make sure that we have a clear evidentiary burden for the state, so that when we go to termination of parental rights we are not litigating whether or not we are terminated parental rights de facto under a low burden of proof. Instead we can go in and say, "We have already made findings pursuant to clear and convincing evidence," which is our termination of parental rights standard and therefore is a ground to terminate parental rights.

At the time we did our amendment, changing subsection 3, we felt that then subsection 7 became redundant. [Read from subsection 7, lines 24-31 (Exhibit L).]

Now that we have placed the evidentiary burden of "clear and convincing evidence," if this Committee approves this bill, we do not feel specific evidence would be necessary because now we are finding by "clear and convincing evidence."

"Clear and convincing evidence" is a burden of proof such as beyond a reasonable doubt, preponderance of the evidence. "Specific evidence" is not a burden of proof; it is the type of evidence that you supply. You can think of circumstantial evidence and specific evidence so when we would go in to have a finding made that we do not want to provide reasonable efforts to a parent based on the fact that they have had prior termination of parental rights, we would offer our "specific" piece of evidence which would be the court order that terminated their parental rights whenever that may be.

Now that we have this high burden of proof that the court has that list of information they have to consider under subsection 3, then of course court orders are generated because we file motions, at least in Clark County, to waive reasonable efforts or the requirement to provide reasonable efforts courts would make orders.

Assemblywoman Benitez-Thompson:
You talked about what could be considered "reasonable efforts," and then you mentioned "previous termination of parental rights." Am I reading this right that if a parent has a prior termination of parental rights then you would not have to do reasonable efforts in the future, even if that termination was ten years ago and it is now ten years in the future and there is another child?

Brigid Duffy:
That is correct if the court makes a finding that there has been a prior termination of parental rights or any of those other aggravating factors. It does not give a time limit on when that termination of parental rights happened.

Going into the amendments, I am aware that there may be opposition to striking subsection 7 in its entirety, based upon a perception that it serves a purpose. The state reached out to me—DCFS—to discuss subsection 7. We had some conversations regarding ways to clean up the language to ensure that the specific intent that was in place in 2013 is actually being followed with ways to clean up this specific language. I will continue to work with the state to make sure that is there.

With regard to whether or not "reasonable efforts" have been made, I would agree that the court needs to make those on a case-by-case basis based upon specific evidence and expressly stated in their court order. However, I believe that is mostly covered already by subsections 4 and 5, which tell you that "In determining whether reasonable efforts have been made pursuant to subsection 4, the court shall: (a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;" [subsection 5, lines 41-45 (Exhibit L)] and considers a whole list of things.

In my opinion subsection 7 has already taken place in subsection 5, by laying out what the court shall consider, that the court shall make findings and it is based on specific information in that case.

There was a comment by Assemblywoman Joiner during the Child Welfare presentation regarding children cycling in and out of foster care. The Director recently made a comment that you are going to hear about a bill later on that is going to address that. In the bill she was discussing the federal government did put some drop-dead timelines on what children should have to go through before we say "enough is enough." In the federal government specifically, prior terminations of parental rights is considered an aggravated circumstance, and the federal government did not put time frames on that either.

This is with the understanding that most of the families that come in under subsection 3 have already received services from the Clark County Department of Family Services to correct the circumstances that are causing them to have children removed. By expediting the front end of the cases, we are helping children not to have to cycle through, and we are getting them to permanency in a timely manner. As I stated earlier, we are relitigating our motions that we file when we go to a termination of parental rights trial because there is not

a specific evidentiary burden, and we respect the fact that we do not want to terminate somebody's parental rights without using the highest burden of proof that we have, which is "clear and convincing evidence" in civil cases.

It is only fair to match those up so there is no question about what a court is doing when they make those findings. Then when we go to a "termination of parental rights" trial, they should be very clear that because we have this finding that we have met the parental fault ground and now we only need to prove "best interest."

Assemblyman Thompson:
Parents love their children and children love their parents but, unfortunately, there are issues that occur where children may have to be temporarily removed. I am glad that you are putting in the "clear and convincing evidence." I think it is so important that, as a state agency or a county agency and so on, that we take our time because as you said when you are terminating parental rights you are terminating. That is as devastating as anything in a child's world or a parent's world. I appreciate your breaking it down to us about what are some of the key areas that you look for "reasonable efforts," meaning preventing the removal from the home, making sure that it is safe return to the home. I am echoing what you are saying; it is something I am very passionate about.

Brigid Duffy:
It may seem odd that the state is recommending a high burden of proof for ourselves in a motion. We believe it is the right thing to do for children and families because it sets the tone up front and at the end they know what to expect, and we do not have this, "Wait, I did not know that this would be the outcome." I appreciate your consideration of A.B. 102.

Chair Oscarson:
Any questions or comments?

Lisa Ruiz-Lee, Director, Department of Family Services, Clark County:
We believe that setting this "clear and convincing" standard creates an opportunity for parents and sets a standard that is the highest burden of proof on their behalf. At the same time, it allows us to provide for the best interests of children, which really is what this section of statute is designed to do; it is designed to set forward standards in which you can manage your time frames in child welfare cases under the most extreme circumstances for children. That was the intent of the federal law provisions and that is the intent of the state law provision as well. We are supportive of the bill as it is with its amendments, knowing that we may still have some refinements that need to be made in order to capture the state requests.

Kevin Schiller, Director, Department of Social Services, Washoe County Social Services:
I would emphasize that our primary goal when we place children is to reunify them so we have a very difficult job. The day we remove is the same day we are talking about: how do we get these children home? The standard with termination of parental rights is equated to the death penalty. One of the things that is important to note is this is in very specific, certain circumstances, so when we are expediting that what it is about is trying to find permanency for that child that has been though a system. We try to not just meet federal requirements but to hit the best interests [of the child] after we have attempted those reasonable efforts in that reunification.

Chair Oscarson:
Questions from the Committee? [There were none.] Any other persons wishing to testify in support? [There was no one.] Anyone in opposition?

Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services:
I am a member of the Legal Aid Center of Southern Nevada and Washoe Legal Services. Both of those nonprofit law firms have units that represent the children in these processes where they have been abused and neglected. Our job is to try and ascertain the wishes of those children and advocate for their wishes with both the Agency and with the courts.

Sometimes those children want to remain with their parents and sometimes they want to leave, so their wishes may differ under the circumstances. We originally liked the bill the way that it came out. It would have increased the burden of proof to "clear and convincing evidence" in two instances: one, section 3, which the amendment would continue to do; and section 4, to prove that there had been reasonable efforts made before moving on to other options. However, in conversations and emails with Ms. Duffy and in reviewing the Interim Committee's report and communications with the Chair of the Interim Committee, I now agree that was not the intent of the Interim Committee. The Interim Committee only wanted to change that "clear and convincing evidence" as relates to subsection 3, whether reasonable efforts have to be attempted. I cannot support the bill as originally drafted because that goes beyond the intent of the Interim Committee, and I have not asked the Committee to do that.

As to Ms. Duffy's amendment, I would support it in part and I do have some continuing issues with it in part. I am totally happy to continue to have the "clear and convincing evidence" standard in subsection 3 about the agencies' ability not to pursue reasonable efforts. I do object to her amendment which would remove subsection 7, both as existed in the original bill and as exists in

current law. I disagree that it is redundant. That is what the court must put in its order, and it relates both to subsection 3 and subsection 4, and that is in the statute that came out of Senate Bill 98 of the 77th Session on an amendment suggested by vote, Ms. Duffy, and the state. I appreciate hearing that there is some discussion with the state about the need to alter that amendment on subsection 7.

The main concern remaining with the bill is the intent behind changing the "clear and convincing evidence" standard in subsection 3. As Ms. Duffy said, their intent is they do not want to, after having gone through and had the court decide they do not have to make reasonable efforts now if they are trying to terminate parental rights, in essence the death penalty later on, they do not want to have to prove again during the death penalty case what they have already proved, maybe months or maybe years before.

We often see cases in which parents, even though they messed up badly at one point in time, actually get their lives together and they may have tried a number of other options after that decision not to pursue reasonable efforts and now that the parents are doing a better job, our clients—the children—want to be with those parents; they do not want those parental rights terminated. We feel that it is important that at that second stage, that death penalty case, that they have to prove that there is a current reason today to terminate those parental rights.

Assemblyman Thompson:
I am not understanding which side is which; I understand that Mr. Sasser has some concerns but is this bill not saying that we are going to do everything possible before we terminate parental rights? Does this bill not strengthen that? Or am I hearing or reading something differently? Because I thought that is what we were talking about.

Brigid Duffy:
The way the question was phrased; "Do everything before we terminate parental rights," that is the reasonable efforts part, so we provide reasonable efforts and reasonable efforts are defined within 432B.393 as efforts that are reasonable that a reasonable person would believe looking at the health and safety of the child as paramount concern. When we, as an agency, make the determination that we are going to seek a motion to be granted to not provide those reasonable efforts we are, at that point, saying that we believe that these children need to move to a permanency plan of adoption as fast as possible because one of these enumerated aggravated circumstances exists: that may be that they have prior terminations, that these children have been in and out of the system several times before, that there is pervasive sexual abuse in the

home, that the child has been the victim of substantial bodily harm, that there has been extreme and repetitious abuse and neglect.

If those factors exist, what we are saying by proposing this bill is, when we go to ask the court to make a finding that we do not have to work with these parents, we believe it is only fair that they make that finding by the highest evidentiary burden of proof in the civil case that matches the termination of parental rights standard, because right now there is not a burden of proof.

Eleven states across our county have the same burden of proof of clear and convincing evidence because it matches their termination of parental rights statute. What will happen is, if the court does not make a finding by an evidentiary standard—removing children when we adjudicate them, we only adjudicate them in need of protection by a preponderance of the evidence—that is a really low burden. It is more likely than not that those children have been abused and neglected. When I learned about it in law school, if I have two equal bases of evidence and a feather falls on one hand, on the state's hand, then I have met that preponderance burden, just that little slight extra edge to the state.

Thus, without an evidentiary standard for what a court must find when making an aggravated circumstance finding under subsection 3, we are perplexed. It could be a preponderance and now we are moving; we have a standard of proof in NRS 128.105 that says it is a factor to terminate parental rights if we have this finding. With that we need it to equal so we are not arguing that this was "preponderance" and now it is "clear and convincing evidence" because it is a basis to terminate parental rights. We are offering to parents that we want to have to litigate, within the first 60 days of a case, whether or not we are going to be providing reasonable efforts and then moving toward termination of parental rights within 30 days, up front and not a year down the road.

Assemblyman Thompson:
The child is stabilized, correct?

Brigid Duffy:
Potentially, yes.

Assemblyman Thompson:
What is the rush? Should we not take even more time to try and reunify that family? The child is stabilized and safe in a foster parent home or something like that. We know that the immediate needs and safety of the child are being taken care of, so why is it the divisions now feel like that it is a rush?

Brigid Duffy:
It is not now. This is not changing the current statute as it is, it is only adding an evidentiary burden of proof. The federal government says the state has to have certain findings of aggravated circumstances where we are not required to work with families. It is to prevent children from cycling in and out of the system. There are certain circumstances that the federal government says we have to in law, and they are in here; and then the state, in its discretion, has added more. The factors for which we do not have to provide reasonable efforts have been in statute for quite some time as a requirement under the Adoption and Safe Families Act, and then under our own state's requirement.

We are now trying to clarify that when a court makes those findings that we are not going to provide reasonable efforts, that it is not taken lightly. It is taken as seriously as a termination of parental rights case. It is the same thing as a termination of parental rights. Does that clarify it?

Assemblyman Thompson:
It will have to marinate on me. This is some serious business, and I really have to feel very comfortable about this because we are talking about terminating parental rights. Now I am hearing the time clock part of it, and that is the most disturbing part about this work. Sometimes we have had bills presented where we are trying to speed up the clock so other people can adopt other people's children, and I do not want to see that.

Brigid Duffy:
This is not about speeding up the clock for adoption. I recognize where that is coming from in your experience and my experience. This is about permanency for children. What we have indicators of is that, when children go into the home and then out of the home then back in the home, we have already provided families with efforts over and over and over again. Now we have to focus on that permanency of those children so they are not coming in and out of foster care, which is not healthy for them.

Where we have parents who have had their parental rights terminated on other children because maybe they are on their fifth drug child and we have already provided them resources over and over and over again, we have to now focus instead on this particular child and this particular child's circumstances to create a healthy life for that child. In every case we are required to make reasonable efforts to reunify parents. We have a set of circumstances that are in the law, the basis of the federal law and our own state statute. These are circumstances where we do not have to make those efforts and those are enumerated in subsection 3. The child's attorney's perspective is interesting,

because they may have part of a case where a child would want this part, this statute, and then part of the case where the child would not want this statute.

It would be fair to make sure that there is recognition that there are children that are represented by legal aid in both Washoe County and Clark County that do not want to go home because they have cycled in and out of foster care many times or because their parents are completely unfit, based upon the sexual abuse that has taken place in the home or that their sibling suffered multiple broken ribs, subdural hematomas, and ultimately substantial bodily harm. Of course we had children that want to go home under any cost, but I think there should also be a voice that is representing the fact that there are other children that may not want to. It is very important to note that our children's attorneys are not representing the best interests of our children. They are representing the child's legal interest in what they want.

We are coming from the perspective that—we being the Department of Family Services and the District Attorney's Office on their behalf—this bill ensures that we are looking out for the child's best interests. That is what Director Ruiz-Lee has said as well, that there comes a point where the focus needs to be on the child. Those points are outlined by our federal government and our state statute and we are taking it one step further to say, "Make it difficult for us to do that." We want to be right when we make that ultimate decision that this is enough. We want to be right by the highest burden of proof. That is what we are putting out there for you all to decide.

Chair Oscarson:
Assemblyman Thompson, I have a suggestion if you are open to it. How about we have you meet with both parties and see if you can work something out when it comes to these concerns? You would be able to maybe get some of your questions answered more clearly as well. We have had great success in having a member of the Committee meet with the two parties and see if we can figure out a way to come to terms, if you are both amenable to that. Assemblyman Thompson is asking the questions that a lot of us have, and I think since he has verbalized them perhaps he can be the person.

Jon Sasser:
I do not think I disagree with anything that Ms. Duffy said, at least the part that relates to the bill. Adding the clear and convincing evidence standard to section 3 makes it harder for the agency not to pursue reasonable efforts. It makes the court find that by clear and convincing evidence rather than the lower standard today, and we are in complete agreement with that. I like that.

My only concern is that my understanding is the motive for that, which I think she acknowledged in her testimony, is not only do they want to be held to higher standards but they do not want to repeat it in a separate process at the termination of parental rights hearing under a separate part of NRS 128.105. That is where we differ. Just because they did not pursue reasonable efforts based on one of these things, for example, the parent abandoned the child for 60 or more days and the identity of the parent of the child is unknown and cannot be ascertained through reasonable efforts. That is one reason that they do not have to pursue reasonable efforts. Years later, however, the parent has resurfaced long after this and is working with the child and the child wants to continue with that parent. If this parent is back in their life, just because they abandoned them for 60 days 5 years ago, should that mean that the court should not look at whether there are current grounds as opposed to these older grounds?

We would like to work with the parties to see if there may be some tweaking in the language regarding what is current or what is not in terms of termination of parental rights. That is our issue. I do not have any problem with her increasing the burden of proof in subsection 3.

Chair Oscarson:
How many times has this happened? Is it happening in great numbers that you are taking away parental rights? Could you clarify that?

Lisa Ruiz-Lee:
We file a waiver of reasonable efforts on very, very few cases that come in. We are talking probably about less than 3 percent of the total cases that come to us. These are the cases that absolutely need those aggravated circumstances causes. These are the cases in which you have substantial bodily harm, repeated sex abuse, multiple incidences of abuse and neglect. It is not something we as an agency or any of the child welfare agencies take lightly. This is not something that we routinely do on every case because, as Assemblyman Thompson referenced, our first and primary goal, even under federal law, is reunification. These are the cases in which we look at the totality of the family history and make a determination that, based upon the family history and the circumstances that are related to the current abuse case, we have very little hope of intervening to correct the family dynamics to the point that the children can be reunified.

The other important part to note is that we can do this today. I can file motions to waive reasonable efforts today for all of those things; I have to go before a court and get a court to approve that. What we are saying is, set us a higher standard or a higher burden of proof for those cases. I still have to go to court.

I still have to have a court which reviews the evidence that we present to them and agrees that we have met the clear and convincing evidence standard. I can do it today and I can do it with no burden of proof and I can get a court to agree with me.

What we are saying is we believe that the standards should be higher. We believe that standard should be higher because as you move through the life of a case, with all due respect around the litigation issues, let us talk about what litigation means to a child: it means time. Time matters to children. I have several cases, I have a four-year-old boy and a newborn; the four-year-old has been in and out of foster care four times in the last four years. At some point in time you reach a point in the life of that case where you know you are not going to be able to make a meaningful difference in the life of the family in order to keep them whole and healthy.

It really is an ability to be able to move those cases forward in a way that makes sense for children and it is about their best interests. We file, on average, about 500 termination of parental rights (TPR) orders a year. We process about 500 adoptions a year. That matches the TPR filings. That number is perfectly in line with an agency of our size and with the number of children that we provide services to. But this question really is around the waiver of reasonable efforts, and they are not filed that often today with the court. It is only under the most extreme and aggravated circumstances as defined by statute.

Jon Sasser:
I think that makes my case. I do not have any problem with the convincing evidence on the waiver of reasonable efforts, but of these 500 termination of parental rights that are filed each year, only a very small percentage are cases that involved a previous determination that you do not have to determine reasonable efforts. Why not have the TPR court in that second preceding look at the current situation today rather than saying you have grounds based on some hearing that might have happened years ago? That is my point.

Chair Oscarson:
I would encourage you all to meet with Assemblyman Thompson. He will let you know and get in touch with you, or you get in touch with him, and have him discuss that.

Assemblyman Thompson:
How do we report this out to everyone? I am being the outspoken one today. I do not know if other people's wheels are turning as well, so how do we report back what is being said behind my closed doors?

Chair Oscarson:
You come back to the Committee on what you have met on and discuss it during work session.

Assemblyman Thompson:
Okay, will do.

Chair Oscarson:
Opposition? [There was none.] Neutral? [There was none.] Seeing no further testimony, I will close the hearing. Any further public comment? Seeing no public comment, the meeting is adjourned [at 3:40 p.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Weyhe
Committee Secretary

APPROVED BY:

_____
Assemblyman James Oscarson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: February 25, 2015 **Time of Meeting: 1:33 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 158	C	Marsheilah Lyons, Legislative Council Bureau	Written Testimony
A.B. 158	D	Caroline Moassessi, Nevada Food Allergy & Anaphylaxis Alliance	Written Testimony
A.B. 158	E	Colin Chiles, Mylan, Inc.	Written Testimony
A.B. 158	F	James Porter, Nevada Athletic Trainers Association	Written Testimony
A.B. 158	G	James Porter, Nevada Athletic Trainers Association	Athletic Training Education Competencies Handout
A.B. 158	H	James Porter, Nevada Athletic Trainers Association	Management of Anaphylaxis Athletic Training Acute Skills Handout
A.B. 158	I	Kacey Larsen, Private Citizen	Written Testimony
A.B. 158	J	Daniel R. Spogen, M.D.	Written Testimony
A.B. 158	K	Deborah J. Pontius, Private Citizen	Written Testimony
A.B. 102	L	Brigid J. Duffy, Chief Deputy District Attorney, Juvenile Division, Clark County	Proposed Amendment