

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
February 10, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close, at 8:30 a.m., Tuesday, February 10, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William H. Hernstadt
Senator Sue Wagner

COMMITTEE MEMBERS ABSENT:

Senator William J. Raggio (Excused)

STAFF MEMBERS PRESENT:

Shirley LaBadie, Committee Secretary

The following bill drafting request was presented and received for committee introduction:

BDR 55-267* (S.B. 213)

Limits regulation to certain trust companies.

SENATE BILL NO. 182--Allows one member of state board of parole commissioners to sit as referee.

Mr. Bryn Armstrong, Chairman of the Nevada Board of Parole Commissioners, stated that S. B. 182 was introduced at the request of the board. He stated under the laws of the State of Nevada, a hearing representative who is a part-time lay person who conducts hearings in behalf of the board upon designation, may sit alone in certain kinds of cases and act as a referee. The hearing representative takes testimony, then makes a finding which must go to the full board for ratification. The law which created this board does not give the same privilege

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

to a single member of the full-time board. This bill would permit a single member of the Board of Parole Commissioners to sit as a referee, make a finding, then refer it back to the full board for ratification. The need for the bill is demonstrated by the fact that we anticipate holding in excess of 220 hearings each month. There are only three members, each member does his own research, goes to hearings and after 220 hearings of various kinds, the three members are taxed. The board plans to use more hearing representatives to reduce the fiscal impact of that many hearings. Last year the board held 1,620 hearings and as the prison population increases, more hearings will be required. The end of the bill is new, it requires the board to establish, by regulation, the kinds of hearings that can be delegated to referees or panels of two members. The law required the consideration of the seriousness and complexity of the crime in making assignments, but did not require regulations to be established. The full board would be required to hear crimes which are in the heinous class.

Senator Don Ashworth asked who establishes the rules and regulations required under NRS 213.110. Mr. Armstrong stated that the rules and regulations are there now, it is an informal assignment. The last paragraph of the bill will clarify the language.

Senator Wagner asked what percentage of the time is the recommendation from the current hearing representatives approved by the full board and what is the background of the present hearing representatives. Mr. Armstrong stated that the full board approves 99% of the decisions. He stated that currently the staff includes a retired state highway engineer, another is a retired employee from the Parole and Probation Department and in southern Nevada, it includes two former members of the part-time board. Recently the former recreation director for the City of Henderson was added.

SENATE BILL NO. 149--Revises provisions relating to abuse and neglect of children.

Mr. Bill LaBadie, Nevada State Welfare stated that he had with him, Ms. Mary Lee from the welfare department and Claudia K. Cormier from the Attorney General Office. Mr. LaBadie stated the reasons for the changes in the bill. See Exhibit C attached hereto.

The analysis of all changes to S. B. 149 by Ms. Mary Lee is attached as Exhibit D

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

NRS 62, Section 2

Ms. Lee stated one change in this section is that the petition could be prepared by either an attorney general or the district attorney. The reason is because the welfare division handles many of the child neglect and abuse cases and has ready access to deputy attorney generals, however this is not the case with district attorneys. This would save staff time and would provide better communication between the staff and attorneys.

Chairman Close asked who would be prosecuting the case. Ms. Lee stated the attorney general would in a civil case but not in criminal action. Chairman Close questioned if the attorney general had budgeted for the additional responsibility. Ms. Lee stated that they already have deputy attorney generals assigned to the welfare division, the department assumes that it could be handled without additional funds.

Senator Ford asked what the procedure is now in handling these cases. Ms. Lee stated the welfare division initiates the investigation; if it is decided to remove the child from the parents and place in foster care, the department contacts the district attorney to file the petition. Mr. LaBadie stated that in some counties the district attorney is very cooperative, in other counties they are not.

Chairman Close asked if Section 2 is changing the existing law. Ms. Lee stated the main change is the fact that the petition could be approved by a deputy attorney general. This section deals with child abuse cases, states that the welfare division or county designated agency or law enforcement or police may receive reports of child abuse and investigate such reports. The section is not changing procedures.

Senator Wagner asked under what circumstance would the welfare division recommend not to file a petition. Ms. Lee stated if it is found the child has been abused or neglected, but a relative is able to provide a suitable home. The child may be placed with a relative or responsible person, rather than go through the court process.

Section 3

Ms. Lee stated that this allows a physician, peace officer, probation officer or protective services worker to take the child into protective custody without parental consent if that person believes the child is in imminent danger or harm. If the removal is done in good faith, the person removing the child would be protected from criminal or civil liability. If the child is not in imminent danger, court approval is needed.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Chairman Close questioned why the language on line 20 only deals with serious harm and does not restrict it to bodily harm. Ms. Lee stated that a child can be in serious harm without it being bodily harm. Chairman Close stated that it is not a good idea to take children out of homes by welfare or any other agency unless there is some serious imminent threat to that child. Ms. Lee stated that a child would not be removed in cases of mental abuse, but a baby that was left unattended could be in some danger, even though it might not suffer bodily harm.

Chairman Close stated he did not feel the child should be removed from home unless there is an indication that leaving him alone in the past has resulted in some harm to the child. This is an inappropriate intervention into family matters. The statement is too broad and anything can be considered serious harm.

Mr. LaBadie stated that a decision to remove a child from the home is very difficult for a caseworker because a wrong decision could result in death.

Senator Hernstadt asked how the department makes a determination of when to remove a child from a home. Mr. LaBadie stated it would depend on the environment of the home. If there are repeated reports from neighbors of small children left alone, and the heating system and wiring are bad, the department would step in. If after the investigation, there appears to be no problem, there would be no action taken by the department.

Senator Wagner asked from what sources does the department get the information to proceed with an investigation. Mr. LaBadie stated that 6% came from medical personnel, 14% came from schools, 18% from the courts, 16% from relatives, the percentages range from 1% to 18%. Ms. Lee stated that the reporting of this information is not being changed, the wording "Sexual Exploitation" is being added to the definition of child abuse.

Ms. Lee Stated that currently only law enforcement officers and probations officers may remove children from their parents with parental consent. The department receives the initial report of abuse, conduct an investigation, try to determine if the child is in danger, and decide whether to remove the child or leave him in the home. If the report sound serious, a law enforcement official will accompany the welfare worker to interview the complaint.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Senator Don Ashworth questioned why physicians are immune from civil or criminal liability. Ms. Lee stated that they are able to make the determination if the child has been abused previously from x-rays and determine from hearing the parents' account of the injury if the story is true. The physician will not release the child if it appears that there has been child abuse and informs the parents that the local authorities will be contacted.

Section 4

Ms. Lee stated that Section 4 is to protect the rights of parents and the child, to prevent the welfare department from removing children indiscriminately. The petition in paragraph one provides that in an emergency situation and approval of the court cannot be obtained prior to removal, the child may be held temporarily in a shelter home pending the outcome of the investigation. Ms. Lee stated that an emergency shelter care is either a foster home or facility to provide temporary care for children that have been removed. This is only an immediate type of action in an emergency situation.

Section 5

Ms. Lee stated that Section 5 defines shelter care, it is a new term that has not been used in NRS.

Section 6

Ms. Lee stated that abuse had been added to the definition, as to the jurisdiction the court has under NRS 62. The definition is currently not mentioned in NRS 62, it only refers to neglect. The definition from NRS 200.5011 has been cross referenced to NRS 62.

Chairman Close questioned the language on line 17, which is restricting a person responsible for the child's welfare. Ms. Lee stated that if the person is not responsible for the child's welfare, it would not by definition be sexual abuse, it would be sexual assault. The difference is that a person responsible for the welfare of a child would be charged with sexual abuse, if not responsible, sexual assault. Chairman Close stated that the bill does not specify this intent. The bill would have to be amended to permit the department to have the jurisdiction whether the person responsible has committed the offense or the person responsible for the child has allowed another person to commit the offense.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Section 7

Ms. Lee stated that the changes made were from the Legislative Counsel Bureau to change language.

Section 8

Ms. Lee stated that this adds that in neglect proceedings, either the deputy attorney general or the district attorney may represent the state. In cases of delinquency, only a district attorney would prosecute.

Section 9

Ms. Lee stated that this adds that in neglect cases when the petition has been filed and the court wants the child taken into custody, custody would be given to the welfare division or a county designated agency. Senator Wagner questioned if in this section, the authority of the welfare division is being expanded. Ms. Lee stated yes, however the current work load would not be increased. Mr. LaBadie added, that if the trend continues as to the number of investigations, somewhere down the line the department may not have enough staff.

Senator Ford pointed out that a comma should be inserted on page 6, line 5, after need of supervision to clarify the meaning.

Section 10

Ms. Lee stated that Section 10 adds a reference to Section 3 of this act, regarding taking a child into custody. It excludes protective custody from detention proceedings for delinquents and children in need of supervision. The other changes are from the Legislative Counsel Bureau.

Section 11

Ms. Lee stated that this section requires the appointment by the court of a social worker, juvenile probation officer, attorney or other person to represent the child when a neglect petition has been filed. See additional information on changes in Exhibit D. One change is that Public Law 93-247, which is a Child Abuse and Treatment Act, requires that to be eligible for 100% Federally Funded Grant, the state would need to have some type of provision for a guardian ad litem in neglect proceedings. Ms. Lee stated that federal funds of \$52,672 would be lost if this section is not enacted.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Senator Wagner asked if the \$52,672 grant is earmarked for a specific purpose. Ms. Lee stated it is to improve the provisions of child neglect and services within the state. The department would have to determine how to spend the money, part of it must be used for guardian ad litem.

Senator Keith Ashworth asked for what period of time the grant was for. Ms. Lee stated it was for one year and the program has been in effect since 1975. The department has not participated in the program because it was not eligible because of the guardian ad litem requirement.

Section 12

Ms. Lee stated that some of the changes are from the Legislative Counsel Bureau. In subsection 3, currently the court only may order an examination of the parent with parental consent. The department would like to change this to allow the examination without parental consent. Occasionally parents are not cooperative in child abuse cases to have an examination made.

Section 13

Ms. Lee stated that the department has added sexual exploitation to the definition of abuse and neglect. This is a requirement to become eligible for the federal grant. Senator Wagner stated that it appeared much of the bill had been designed to solicit the \$52,672 and the federal government could possibly stop funding the program at some time.

Senator Hernstadt questioned if there was anything in the bill, setting aside the \$52,672, that would be needed to continue the daily operating functions of the welfare division. Ms. Lee stated there are a number of things. Most of the changes in NRS 62 are to improve functioning of the daily operation.

Senator Keith Ashworth asked if the bill was changed eliminating the federal grant, which sections would be involved. Ms. Lee stated that sections 11, 13, and 16 are included to obtain the federal money.

Senator Don Ashworth questioned the definition of sexual exploitation and whether the acts it described would come under sexual abuse. Ms. Lee stated that if the language, sexual exploitation, was removed, it would not. Senator Don Ashworth stated the language was needed in the law.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Senator Wagner asked if the requirement in Section 11 was added to obtain the grant. Ms Lee stated that it is a requirement of the federal government. The current statute provides for an attorney to represent the child.

Ms. Lee stated that in Section 13, paragraph 1, line 37, the statute currently states that a person practicing their religious beliefs in good faith cannot be accused of child abuse or neglect. The new language is more specific. Chairman Close questioned if the language as written would take away the jurisdiction of the department. Ms. Lee stated this was not the intention and had been pointed out by someone else.

The meeting was recessed at 10:45 a.m. and scheduled for additional testimony after the daily session.

The meeting reconvened at 11:15 a.m.

Ms. Lee stated that during the recess, it was brought to her attention the possibility of getting around the religious language. It was not the departments' intent to prevent the court from ordering medical treatment but to prevent prosecution of the parents on that basis. What was suggested, is that under Section 6, page 3, line 10, if that was left in, the court would still have the authority to intervene in these cases.

Senator Don Ashworth asked Mr. Darrell Luce, Christian Science Church what his opinion was. Mr. Luce stated that if this is left in, and there is a reference to the definition, it would be agreeable.

Senator Wagner pointed out that because in some special circumstances a child has never been tested for mental retardation and a normal range has been established, how could this preclude the neighbors from reporting an unusual behavior problem. Ms. Lee stated that the department would make an investigation, if the child's behavior is unusual, the child would be tested. The department would not make the determination if the child needed to be tested, it would be based on professional judgment.

Ms. Lee stated that in paragraph 3, the language is to pin down the definition of what is negligent treatment and maltreatment. Chairman Close stated that as it is written, it implies that the child is being negligently treated because the family is poor. Anytime there is a lack of subsistence, then he is negligently treated and that comes under child abuse and neglect. Ms. Lee stated that this was not the original intent of the bill.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Chairman Close stated that it appeared the bill had been drafted using the model act and the committee would find great fault with these acts because they are prepared by people who are not living locally or realistic. Ms. Lee stated that the main part of the definitions which were added came from the model act. The reason they were added is because people have found in actual practice in applying the law that it is vague.

Ms. Lee stated that in paragraph 4, the language is to define what is meant by a person responsible for the child's welfare, not only the parents, but a foster parent, guardian or some person in charge of or employed by a private residential home or facility having physical custody of the child.

Ms. Lee stated that paragraph 5, is a definition of physical injury. Chairman Close questioned if a single minor injury could warrant an investigation by the department. Ms. Lee stated that it warrants the department making an investigation to determine what further action may be necessary. Chairman Close stated the definition does not specify the intent of the bill.

Ms. Lee stated that in paragraph 8, the intent of the language, of a child, does not refer specifically to depicting, but to encouraging the obscene, or pornographic filming of a child.

Section 14

Ms. Lee stated that in Section F, the section is being added to require an additional group of people to report suspected cases of child abuse and neglect that are not required by law to do so.

Chairman Close questioned if this would discourage parents with a problem from contacting one of these groups. Ms. Lee stated some parents might be discouraged, but the ones that are seeking help have reached the point where it is necessary to change their behavior and would probably not be discouraged.

Senator Wagner questioned if the department has some specific groups in mind that are not currently reporting child abuse cases. Ms. Lee stated, yes. The attitude of these groups is that the public agencies that are mandated to investigate are not doing so. As a result they are reluctant to report because no action will be taken.

Section 15 and 16

Refer to Exhibit D.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Mr. Darrell Luce, Christian Science Church, stated that in two of the references, the wording is being changed. The original wording of the bill was put in at his request several years ago. The new wording is agreeable to him.

Mr. Ned Solomon, Deputy Director, Clark County Juvenile Court, stated the bill is not necessary to accomplish what is being done in juvenile court in Clark County. If the bill becomes law, some changes are needed to make it more consistent. The provisions are in other areas of the law.

Mr. Solomon suggested the following changes:

Page 2, line 7. This should be deleted. This is provided for in NRS 62.170 and 200.502, Section 1. Children can be removed from a situation that is threatening to them. This would cause a delay in getting a court order.

Line 19, page 2, the language, a petition has been filed for continued shelter care, should be deleted and add, unless it has been ordered by the court at a protective custody hearing.

Line 21, page 2, delete, if a petition is filed and add, if an order has been made.

Line 23, page 2, remove, a preliminary hearing on continued shelter care. The court must hold a preliminary hearing if one is requested. The following language would be added, a review before the judge or master within 7 days on continued shelter care.

Line 25, page 2. Delete all of this section.

Page 8, line 24, the language states, If neglect is alleged, need to have added in here, delinquency, need of supervision or neglect.

Line 37. The language of the statute as written is agreeable, the specificity of the wording may cause some problems.


Ms. Colleen Lindstrom, Director of For Kids Sake of Nevada, stated the group is a non-profit organization dedicated to the prevention of child neglect and abuse in Nevada. It is privately funded and operated with a total volunteer staff. Ms. Lindstrom objected to the bill because of the requirement of reporting child abuse from private groups. The concept of the group is that people who contact them are not threatened with being reported. By writing into the law that it must be reported, it will deter people from contacting them for help. The group has reported cases which they felt were serious.

SENATE COMMITTEE ON JUDICIARY
February 10, 1981

Ms. Claudia Cormier, Attorney General Office, stated that in checking what additional staff would be required if this bill is passed, it appeared that one additional deputy attorney general would be required in Clark County. In the northern part of the state, the work load could be absorbed by the two existing positions. This presumes that all of these cases would be referred to the attorney general office. In Clark County there are three deputies in the district attorney's office that handle these petitions. Mr. LaBadie stated that because the work load in these offices is so heavy, the welfare division would like to handle the petitions if staff is available.

There being no further business, the meeting adjourned at 12:05 p.m.

Respectfully submitted by:


Shirley LaBadie, Secretary

APPROVED BY:


Senator Melvin D. Close, Chairman

DATE: February 10, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Tuesday, Date February 10, Time 8:30 a.m.

S. B. 149--Revises provisions relating to abuse and neglect of children.

S. B. 150--Replaces "and/or" with an appropriate term in Nevada Revised Statutes.

S. B. 182--Allows one member of state board of parole commissioners to sit as referee.

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: February 10, 1981

<u>PLEASE PRINT</u>	<u>PLEASE PRINT</u>	<u>PLEASE PRINT</u>	<u>PLEASE PRINT</u>
<u>NAME</u>	<u>ORGANIZATION & ADDRESS</u>		<u>TELEPHONE</u>
Med Salomon	Clark County Juvenile Ct		549-3611
Dorell Luce	Christian Science Church		384-4155
Colleen Lindstrom	For Kids State of Nevada		332-1543
George Lindstrom	For Kids State of Nevada		332-1543
Brui Armstrong	Public Bldg - 39 E. 1st St. Reno, NV		555-5049
Fred Brewer	Youth Services Division		885-5972
W. Sabovic	W. Sabovic		4771
Mary Gill	" "		" "

1. Currently Chapter 62 (Juvenile Court Act) makes no reference to child abuse, only to child neglect.

Child abuse and neglect as defined in Chapter 200.5011 will be defined in Chapter 62.

2. The need exists to develop separate procedures for the handling of Child Abuse and Neglect cases as opposed to cases relating to Children in Need of Supervision (CHINS) and delinquents.

The bill defines the role of the Welfare Division or authorized county agency as it relates to investigating reports of abuse and neglect, taking children into protective custody, filing of a petition and defining the circumstances under which the court may order the examination of the parents and children.

3. For the State of Nevada to be eligible for an annual 100% Federal Child Abuse Grant (for FY '81 the amount would have been \$52,672) it is necessary to:

- A. Appoint a person to represent the child in all civil child abuse court proceedings; and
- B. Expand upon and clarify the definition of child abuse and neglect including the addition of sexual exploitation to the definition of child abuse and neglect, and clarifying that persons practicing religious beliefs may use non-medical treatment for care of the child.

4. There is a need to allow adoptions, child care and foster home licensing staff access to the Child Abuse Central Registry to check for a history of child abuse.

5. Certain categories of people who should report suspected cases of child abuse are not mandated to do so.

The bill will require reports by employees or volunteers of child abuse telephone hot lines, suicide prevention agencies and information and referral agencies.

SB 149

Section 2 - 4

Set up procedures for handling CA/N that are separate from procedures for delinquents & CHINS

Section 2 -

investigation as required by NRS 200.502

petition prepared & signed by DA or AG

added AG - Welfare Div ~~states~~ has ready access to

AG - save staff time & better communication network

between filing attorney & working investigating CA/N

Section 3

allows physician, peace officer, probation officer or protective services worker to take child into protective custody $\bar{\bar{}}$ parental consent if it is believed child is in imminent danger or serious harm if done in good faith is immune from civil or criminal liability of child ~~not~~ in immediate danger can only remove from parent $\bar{\bar{}}$ court's approval

$\bar{\bar{}}$ increasing # of reports of CA/N being investigated & greater ^{time} demand on law enforcement; Welfare Div or county designated agency needs to be able to remove children $\bar{\bar{}}$ parental consent

currently if complaint sounds serious must get law enforcement official to accompany do not want police powers

have varying legal opinions re usual authority to remove children

Sec 4

To protect parents rights must petition court for continued protective custody \leq 48 hours excluding weekends/holidays of removal

Parents have right to hearing so that within 10 days of removal must petition ^{court} to have child adjudicated as neglected child or must return child home again protect parents & child's rights

Section 5

defines shelter care

Section 6

Redefines neglect to correspond to definition of abuse & neglect in NRS 200.5011

delete 1-2 of 62040 since are included in def in 200.5011

Chapter 62 down & currently cover abuse - only has neglect under jurisdiction of juv court

Section 7

language changes made by Legis Council Bureau

Sec 8

= 3 adds that ^{either DA or A} may ~~also~~ represent state in neglect proceedings

Other changes - Legis Council Bureau

Sec 9

add that in neglect cases when petition has been filed & court wants child taken into custody custody will be given to Welf or county designated agency

write it up
if be added
function

Sec 10

add reference to Sec 3 of this act - taking child into custody

excludes protective custody from detention proceedings for ~~of~~ delinquents + CHINS

other changes - Legis Coun Bureau

Section 11

Requires appointment by the court of social worker juvenile probation officer attorney or other person to represent child when neglect petition has been filed if 1st 2 agency employing will bear the cost of attorney appointed - parent responsible for fee unless are indigent then cost pd by the court

1st reason for this - Child Abuse Prevention & Treatment

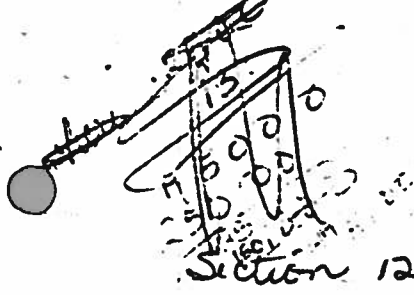
Act Public Law 93-247 - requires it to be eligible

for Federal Grant to the state - to improve provision of
FOR FY 81 ^{100% federal} grant would have been \$ 5,2672 ^{CAINS Soc}

2nd reason - more emphasis on being made to rights of child - by filing neglect petition for removal of child from parents - are often effecting child's rights so child has right to representation

social Note relates to this section - actual cost depend on who court appoints

Clark Co has volunteer guardian ad litem program already - by utilizing that program or if utilize P.O.'s or S.W.'s no additional cost to counties



Section 12

- 1. Cross reference to Section 2 -
- Other changes in 1 & 2 Dept's Council Bureau
- 3. Current can order examination of parent only \bar{c} parental consent
- Change allows ordering examination of the child or parent with or \bar{s} parental consent

Section 13

add sexual exploitation to definition of abuse & neglect
 Public Law 93-247 was amended by Congress in 1978.
 Congress allocated additional funds for sexual abuse programs. To be eligible sexual exploitation must be added to the state statute re CAIN

Clarify that a person ^{with} in good faith in practice of religious beliefs fails to provide specific medical treatment for a child is not ^{guilty of} child abuser

Clarify definition of abuse & neglect by adding definitions of mental injury, negligent treatment or mistreatment, physical injury, person responsible for child's welfare & sexual exploitation

sexual abuse - delete infamous crimes against nature since that must be between consenting adults
 * add sado-masochistic abuse

Section 14

add to who must report CAIN
 had included a group that did have contact \bar{c} children who have been abused & neglected e.g.

employers, employees & volunteers for child abuse hot lines,
suicide prevention ~~for~~ agencies & agencies who provide
information & referrals to other community resources

Section 15

add that agencies authorized to license foster homes,
day care centers or investigate adoptive applicants
have access to information concerning investigations
of CA/N

would like to be able to prevent known child abusers
from getting foster home or day care licenses or
from adopting children

Section 16

Changes to NRS 432.090 to correspond to same as
NRS.200.5011