

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

**Seventy-sixth Session
February 15, 2011**

The Senate Committee on Health and Human Services was called to order by Chair Allison Copening at 3:33 p.m. on Tuesday, February 15, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Allison Copening, Chair
Senator Valerie Wiener, Vice Chair
Senator Sheila Leslie
Senator Ruben J. Kihuen
Senator Joseph (Joe) P. Hardy
Senator Ben Kieckhefer
Senator Greg Brower

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Capital Senatorial District

STAFF MEMBERS PRESENT:

Risa Lang, Counsel
Marsheilah Lyons, Policy Analyst
Shauna Kirk, Committee Secretary

OTHERS PRESENT:

Tracey D. Green, M.D., State Health Officer, Health Division, Department of Health and Human Services
Amber Howell, Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services
Amber Joiner, Director of Governmental Relations, Nevada State Medical Association

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Jennifer Hadayia, MPA, Public Health Program Manager, District Health
Department, Washoe County
Nicole Bungum, Southern Nevada Health District
Christopher Roller, Senior Advocacy Director, American Heart Association
Linda Cuddy, Coordinator, CASA of Douglas County
Rebecca Gasca, American Civil Liberties Union of Nevada
Frances Doherty, District Judge, Family Division, Department 12, Second
Judicial District
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's
Office

CHAIR COPENING:

We will open the meeting with Senate Bill (S.B.) 27.

SENATE BILL 27: Requires employees of certain child care facilities to complete training each year relating to the lifelong wellness, health and safety of children. (BDR 38-24)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

You have been given a copy of a proposed amendment to S.B. 27 ([Exhibit C](#)). Throughout the interim, I had regular conversation with Dr. Tracey Green, Public Health Officer, and Richard R. Whitley, Administrator, of the Health Division, Department of Health and Human Services (DHHS). We talked about the ways we could change the direction we are heading with childhood obesity. The consensus was to work with children before they get into the schools would be helpful. This bill targets those who are employed in a child-care facility, and who currently are required to have 15 hours of continuing education each year. In the original bill, there are several categories where education is required.

The proposed amendment addresses the confusion in drafting. As originally written, it would appear they would need to be instructed in each category every year, and that is not my intention. The amendment addresses the 15 hours of continuing education, which is already here. It does not address current statutorily required areas of instruction. It does add a requirement for at least two hours of training devoted to the lifelong wellness, health and safety of children. I added "at least" in hopes that in regulations a decision as to whether or not to have two or more hours would be made. This is the one requirement that would be annual. You will see additional language of "... and must include training relating to childhood obesity, nutrition and physical activity." The

obesity rate among the young is high and climbing. My mantra has always been that our children who grow into adults will bust the health-care system with health-care needs. When I chaired the Legislative Committee on Health Care Subcommittee to Study Medical and Societal Costs and Impacts of Obesity, we repeatedly heard testimony that obesity either causes or exacerbates almost every medical condition. I urge your support for proposed amendment 5683 which replaces the bill.

SENATOR HARDY:

Can you give us a definition of what a child-care facility is?

SENATOR WIENER:

There are others here who will testify on those kinds of applications in this measure.

SENATOR HARDY:

We are not defining or narrowing down any particular approved curriculum.

SENATOR WIENER:

Dr. Green will address that. There is no fiscal impact, and that was a concern. There is curriculum available online for the people who would be taking the "at least" two hours of instruction every year.

TRACEY D. GREEN (M.D., State Health Officer, Health Division, Department of Health and Human Services):

I have prepared testimony that I will read ([Exhibit D](#)).

SENATOR KIECKHEFER:

Are there other programs available? It does not spell out what exactly needs to be included at this level of education. Is there a risk that we are not making it clear what we expect of people?

DR. GREEN:

There are a number of standard national U.S. Department of Agriculture trainings that are available free of charge. In addition, we have a number of trainings through the Nevada Association for the Education of Young Children. These are types of national trainings. We will hit the topics that are important and mandatory now. We are also creating modules through the American Recovery and Reinvestment Act funds. We hope most of our child-care

providers will choose to take our free options online, so we know the direction they will be headed.

SENATOR WIENER:

My thought when drafting this was to get specific enough that we set the guideline. That is why I put "at least two hours," because it might be determined through regulatory processes that four hours or six hours would be better. More specifics could be defined through regulations if necessary, but the framework could be set in statute.

AMBER HOWELL (Deputy Administrator, Division of Child and Family Services, Department of Health and Human Services):
The Division of Child and Family Services is supportive of this bill with the amendment.

AMBER JOINER (Director of Governmental Relations, Nevada State Medical Association):
The Nevada State Medical Association is also in support of this bill as amended.

JENNIFER HADAYIA (MPA, Public Health Program Manager, District Health Department, Washoe County):
The District Health Department of Washoe County supports this bill as amended. I have given you a copy of my testimony ([Exhibit E](#)) as well as our "EPI-NEWS" ([Exhibit F](#)).

NICOLE BUNGUM (Southern Nevada Health District):
My written testimony has also been submitted ([Exhibit G](#)), and my comments echo those given in support of the amended bill.

CHRISTOPHER ROLLER (Senior Advocacy Director, American Heart Association):
I have submitted testimony that I will read ([Exhibit H](#)). We are in support of S.B. 27 as amended. Along with my testimony, I submitted a copy of an article from the *Journal of the American Heart Association* ([Exhibit I](#)).

SENATOR WIENER:

It was said by Nicole Bungum that 36 percent of the children entering kindergarten are overweight, and Jennifer Hadayia said Washoe County was 27 percent. Could you clarify that percentage?

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MS. HADAYIA:

My data is specific to Washoe County. The data Nicole Bungum presented is statewide.

SENATOR WIENER:

In many of our data presentations, we combine overweight and obesity because we are concerned about both.

SENATOR HARDY MOVED TO AMEND DO PASS AS AMENDED S.B. 27.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR BROWER WAS ABSENT FOR THE VOTE).

* * * * *

CHAIR COPENING:

We will now open the meeting on S.B. 111.

SENATE BILL 111: Makes various changes concerning the placement of certain children who are in protective custody in certain counties. (BDR 38-697)

SENATOR JAMES A. SETTELMAYER (Capital Senatorial District):

You have been given a copy of a letter sent December 13, 2007 ([Exhibit J](#)). A few years back, there were problems in Las Vegas with Child Haven of Southern Nevada. In 2007, A.B. No. 147 of the 74th Session was worked on with amendments that allowed some exemptions to help out in smaller communities where there is not a multitude of places to send children. We are lucky to find one home or facility to accept children. After A.B. No. 147 of the 74th Session was passed, there were problems with the implementation within DHHS. When I was contacted by Ms. Cuddy regarding these problems, I asked for an interpretation from the Legislative Counsel Bureau's Legal Division. The Legal Division provided me with a letter interpreting the amendments, and that they should be followed. We had a meeting with Michael Willden, Director, Department of Health and Human Services, gave that letter to DHHS and it was not followed.

The idea behind the bill is to exempt the smaller communities by a population cap. If DHHS were following the law on point, we would not be here today. Because that bill was not followed, children were taken from Douglas County, sent to the Stagecoach area in Lyon County and placed in a foster-care facility rather than using Austin's House built by the community of Douglas County. I have been told the problem has been dealt with by talking to the appropriate people, and it will never happen again. I prefer to see something in law to ensure this does not happen again in the future.

LINDA CUDDY (Coordinator, CASA of Douglas County):

I am the coordinator for the Court Appointed Special Advocate (CASA) for Douglas County. I have been the program coordinator for 10 years, and I was a CASA volunteer for approximately 4 years prior to assuming that position. I have dealt with hundreds of these cases. We currently have 35 volunteers advocating for 68 children.

Nevada Revised Statute 432B.3905 deals with the placement of children under the age of six who are taken into protective custody. As Senator Settlemeyer stated, he introduced A.B. No. 147 of the 74th Session which contained amendments regarding the placement of children in congregate care. Placement occurs if there are no foster homes available in the child's county, or to avoid the separation of siblings. Those amendments are already part of the aforementioned statute. That legislation addressed the fact that in rural Douglas County there are insufficient foster homes. However, children continue to be placed in neighboring counties and outside their communities.

In S.B. 111, we are attempting to add an additional exemption to the two already passed by the 2007 Legislature. We hope to finally gain some resolution to a problem I have been dealing with for the past 10 years. The use of volunteers in today's world is vital to our society. The CASA program is referred to by our judges as the most fiscally responsible program in Douglas County. Many of the children we are helping suffer from physical and developmental problems from the effects of abuse and/or neglect. Volunteers spend many hours transporting children to medical and counseling appointments. We also transport children to and from their supervised visits with their families. That is a crucial element in the reunification process, and the first thing we work towards when a family is divided. If a child is placed in Stagecoach, the volunteer drives to Stagecoach to pick up the child, takes the child to Reno for an appointment with a professional, drives back to Stagecoach to drop off the

child and drives back to Douglas County. Volunteers do the same for visitation. Social workers try to help as well. However, they have many cases. A volunteer is not only donating their valuable time, but are also incurring expenses for gasoline and wear and tear of their vehicle. Even after the passage of A.B. No. 147 of the 74th Session, children continue to be placed away from their community. It is my sincere hope this bill will resolve this issue and eliminate the hardship we are incurring.

SENATOR LESLIE:

Do you know how widespread the problem is, and how many children it is affecting?

Ms. CUDDY:

Douglas County does not have as many cases as the larger cities. It is affecting approximately 10 children a year currently. There are more and more children coming into care than ever before.

SENATOR LESLIE:

Why are we having such a hard time getting foster families?

Ms. CUDDY:

I do not know. I would also like to add there are times when the child is taken from the home at 2 a.m. on the weekend. We are asking for time to work with the professionals who are responsible for placement and to not take the child out of the county immediately. Let us all work together in the best interest of the child.

SENATOR WIENER:

I know your intent is to not keep them for an extended period of time, but it is not drafted that way. Would you consider putting a time frame in this?

SENATOR SETTELMAYER:

I have no problem with that.

Ms. CUDDY:

I do not know if you can put a timetable on it. The facility I am speaking of is a short-term facility. When it comes to placement issues, I am not sure we can make the decision within a few hours. Oftentimes, there is a family member who lives out of town and has to make arrangements.

SENATOR WIENER:

It could say that within 24 hours when practicable.

SENATOR SETTELMAYER:

It could say that within 24 hours a plan would be developed.

SENATOR WIENER:

If we are basing a timeline around a plan, my concern would be that the plan may say in two weeks.

Ms. HOWELL:

In A.B. No. 147 of the 74th Session, it was prohibited to place children in congregate care if they are six years of age or younger unless the child met one of the following criteria: they are a member of a sibling group; it was medically necessary; or there was no other foster home available. The legislation came about at a time when congregate care was typically the first type of placement for a child when removed from their home. This practice re-traumatized children due to multiple placement moves and put them in environments that had multiple faces and changes of staff throughout the day and night. This practice also placed children in emergency shelters for longer periods of time than necessary, because we were relying on congregate care.

This State has made such great progress in reducing the use of congregate care that the State was credited for decreasing the displacement type and finding alternative placements such as traditional foster homes. Every child needs a mother, whether male or female, related or unrelated. Attachment researchers have determined that young children need a primary relationship to a caregiver in order to develop emotionally and cognitively. A primary caregiver not only provides an emotional attachment but provides stability and predictability, which are the basis for cognitive development. Nonverbal communication with the caregiver is the basis for language and learning. Response to the child's needs based on this communication is the beginning of their social interaction.

Children raised in group facilities with rotating caregivers show long-lasting emotional behavior and cognitive impairment. The effect is based on rotating caregivers rather than inadequate physical conditions. We have met with Senator Settelmeyer and understand the impetus for this legislation. The Health Division believes we can collaborate and work together to develop a process that works well for children and educate staff on the flexibility of the

law when situations arise that cannot prevent placement of a child in congregate care. The Division does not support eliminating children in the rural areas from this statute. We will always try our best to find regular foster homes for children as an alternative to congregate care.

SENATOR KIECKHEFER:

What are the challenges for recruiting foster parents in rural Nevada and in Douglas County? Is it better keeping siblings together in a group setting or splitting them up and putting them into individual homes?

Ms. HOWELL:

It is very difficult to recruit foster parents, especially in the rural areas. When recruiting in Douglas County, most people respond that we already have Austin's House. As to your other question, we have a statute that requires us to place siblings together. If a sibling group is removed, it is allowable to place them in congregate care.

SENATOR LESLIE:

How often are children being placed outside the county?

Ms. HOWELL:

I do not have that data. This is the first I have heard it was a problem. I know there are some training issues around the implementation of this law. Some workers think the three exceptions are actually violations and are fearful of placing children in congregate care. Because there has been so much impetus on moving away from congregate care, we have tried not to place children there.

SENATOR LESLIE:

It is hard for me to evaluate the bill without knowing the facts. Can you get that information to us?

Ms. HOWELL:

Yes.

SENATOR WIENER:

In section 1, subsection 3, there is a requirement to notify the director, and as soon as possible move the child to another placement. Do we have information available as to how many times that has occurred?

MS. HOWELL:

Anytime a child is placed in congregate care, a report has to be developed every year and submitted to the Legislative Counsel Bureau. We do have that information, and it includes Austin's House, Child Haven of Southern Nevada and Kid's Cottage.

SENATOR LESLIE:

Have you heard that this is an issue in any other rural county?

MS. HOWELL:

I have not.

REBECCA GASCA (American Civil Liberties Union of Nevada):

I have submitted written testimony ([Exhibit K](#)). We are in opposition to this bill as it would allow for the institutionalization of children under the age of six. We have concerns with that, particularly, as it relates to a settlement agreement that was reached with Clark County. Some of the issues are detailed in section 2 of my testimony, [Exhibit K](#), and the related case. I would like to note the provisions of that settlement agreement were made with the understanding that congregate group-care facilities are detrimental to the welfare of young children. I also want to note that in section 2, [Exhibit K](#), that the Clark County agreement mandated they would no longer house any child under the age of 6 for more than 12 hours at Child Haven of Southern Nevada. We hope that with any modification of this proposal, you will take into account that time frame. Finally, I do want to note that the American Civil Liberties Union understands why Senator Settlemeyer has brought this forward, and we support family unification.

CHAIR COPENING:

We will now close the hearing on [S.B. 111](#) and open the meeting on [S.B. 112](#).

[SENATE BILL 112](#): Revises provisions relating to the release of certain records in the custody of an agency which provides child welfare services.
(BDR 38-199)

SENATOR SHEILA LESLIE (Washoe County Senatorial District No. 1):

There was a report done by the interim Legislative Committee on Child Welfare and Juvenile Justice that is available for you to view at <http://leg.state.nv.us/Division/Research/Publications/InterimReports/2011>.

The committee received testimony from Judge Doherty on several occasions about the problem she faced as a District Judge in the Family Division. Senate Bill 112 is an effort to address the confidentiality of records, and to ensure due process rights are protected while also ensuring that judges are able to access the information they need. There was some concern about the implementation in terms of possible conflict with other statutes or rules about confidentiality, admissibility of evidence or court procedure.

The recommendation approved by the committee was to draft legislation to amend *Nevada Revised Statutes* (NRS) chapters 432 and 432B to allow child welfare records, including reports, recommendations and orders, to be disclosed to the Family Division for child treatment, custodial and case-planning purposes. Senate Bill 112 is the response to this recommendation. However, Judge Doherty has continued to work with all the parties to address the concerns, and she has an extensive amendment to S.B. 112 to present to you today. I believe it honors the intent of the committee.

FRANCES DOHERTY (District Judge, Family Division, Department 12, Second Judicial District):

I have prepared written testimony that you have been given ([Exhibit L](#)) and a proposed amendment ([Exhibit M](#)). I have been a Juvenile Court Judge in an elected position for the past eight years. Prior to that time, I was a Juvenile Court Master for five years. I serve as the lead court judge in our model court initiative through the National Counsel for Juvenile and Family Court Judges. I am also the lead court judge in our Juvenile Detention Alternatives Initiative. In juvenile court, we are presented with children in a planned manner and in an unplanned manner. We have children who either violate some type of status offense provision or commit delinquent offenses. We process them through the juvenile court and address their delinquent behavior if it exists.

We also address, from the moment we meet that child until the moment of that child's departure, the child's likelihood of success through ensuring health, safety and welfare factors. The first time we meet a child is at a juvenile detention hearing. We discuss what the terms of the child's release should be. In the back of the courtroom, there are individuals who provide information about that child, the child's home life and their relationship to that child. The majority of that information is appropriate and accurate. We also have children who have adults in their lives who care about them, and have information that is inconsistent with existing court orders. We have to scramble with ways to

interact with that child and whether to release the child into the home of the adult who is presenting to the court. We make calls to social services, other adults in the child's life and any information in our court files.

In NRS chapter 432, we have a scheme by which the court may review, in private, a child's welfare file, consider that file and make a determination as to whether the file should be public. In NRS chapter 47, we have provisions that a judge can take judicial notice of court orders and consider those orders. In juvenile delinquency cases, we have the right to notice information the court considers for our parties and counsel. While we meet the need in our various statutes to figure out who the parents are at the moment the child is presented, we often do not know. We encounter more administrative challenges and challenges to information than we should. This bill and the proposed amendment is not trying to change existing law. It is trying to coordinate the information we have so the Juvenile Delinquency Court and the parties have access to information about the child's legal status, health and welfare. The way we do that is either by asking child protective services to provide that information or identify court files that exist in our jurisdiction for review and provide that information to the parties for due-process consideration.

The bill allows the court to direct child protective services to give this information. It also allows the court to share that information with the parties on the basis that the information is not used against the child in a delinquency hearing and is not rereleased. *Nevada Revised Statutes* 432B.290, 432B.170, 47.150 and Nevada Supreme Court cases, as well as the Juvenile Delinquency and Prevention Act, all contemplate this, but we do not have any mechanism to pull it together, or to identify and give it to the parties in a way that meets due process. That is what this bill is about. It is not for any other court to do; it is only for the juvenile court. It is to make sure when we touch a child, we are all talking to each other in the same way about the same things. When we do that, the parties have a copy of the information available to them, and the court is not unilaterally making decisions or garnering information the parties do not have. This bill tries to pull that together with the notice provisions as well as the sharing of information provisions.

SENATOR KIECKHEFER:

If I understand this correctly, there are two different systems. One is the child welfare system where there is a record of children's previous experience of abuse or neglect through no fault of their own and they are removed from the

home. Then, there is the delinquency system children enter due to their own actions. Are we bringing together two worlds that should not be brought together?

JUDGE DOHERTY:

We have the responsibility to address the delinquent behaviors of children in our community to ensure safety. We have the equal federal and State responsibility to address the health, welfare and likely success of that child growing into a healthy adult in our community. Juvenile Delinquency Court is a civil proceeding. The U.S. Supreme Court has attached to those civil proceedings certain constitutional rights akin to the criminal-constitutional protections of a defendant in criminal court. When that child is charged with delinquent behavior, that child needs to have the same type of evidentiary protections.

Once we have addressed those issues of delinquent behavior, we have the broader responsibility to address that child's safety, health and welfare. We need to make sure that child's education is on track. We need to see if that child's behavior is associated with bipolar disorders, domestic violence, schizo-effective challenges or adult drug using. We do not let that child go until we ensure the child's issues have been fully challenged. We operate as a criminal court in a component of our case that addresses the delinquent behavior, and we act as a civil court in the component of our case that addresses everything else. We are trying to bring those two together and not use the information we gather from various agencies against that child during the component of his case that is at trial. We do not want our social-service agencies and our juvenile probation departments duplicating their efforts. We do not want the courts in one arena to order physiological evaluations that have already been done, paid for and treatment identified if we can avoid it. We want judges understanding what other judges are doing and making sure we are acting consistently in a way that gives the parties notice, and that is a significant component of this bill.

SENATOR HARDY:

In section 1, subsection 3 of the bill, it ascribes the juvenile court definition according to the NRS. Are you adding a subsection 4 and leaving subsection 3 as it is?

JUDGE DOHERTY:

Yes. That is our intent. Section 1 is under the subheading chapter 432. The amendment has given the Legislative Counsel Bureau the ability to identify the most appropriate locations under each of the four areas. Section 1, subsection 3, of the original bill remains the same. Subsections 1 and 2 of the original bill are supplanted by subsections 1 through 4 of my proposed amendment.

SENATOR HARDY:

The bill's section 1, subsection 1 is being amended with your subsection 1. The amended subsection 2 is added to subsection 2 of the bill and would then go under paragraph (c). Subsection 3 of the bill would stay the same. Subsection 3 of your amendment would become subsection 4. Subsection 4 in the amendment would become subsection 5.

JUDGE DOHERTY:

I included section 2 as a new section. Section 1 was slightly amended; section 3 was also amended; and I added section 4.

SENATOR HARDY:

Are you talking about subsections?

JUDGE DOHERTY:

Yes.

SENATOR LESLIE:

Are the public defender's office and the district attorney's office comfortable with the amended version?

JUDGE DOHERTY:

I have spoken with various entities in the State, but not everyone. Judge Gamble and Judge Puccinelli find this bill appropriate and consistent with their practice. I spoke with the Washoe County District Attorney's Office and the Washoe County Public Defender's Office, and they understand the purpose of the bill. It is my impression they are not concerned about it. The only issue with anyone is to make sure that when we refer to the court it is always the juvenile court. We are not expanding the authority of any other court to access this information.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We are concerned about the separation of powers. We do not have any problem with the intent. As soon as a judge starts acting in an executive capacity and gathering information, they make their own independent determinations about what information should be before the court in those types of terms. Even though you cannot use the information the judge gathers in the determination of a delinquency, it would allow the judge use of the information to determine sentencing in that court. Our concern is a matter of due process. It is for the parties to bring that information before the judge. Sometimes, the parties make their own strategic decisions. We do not object to the parties having any of this information. However, due process must still be observed.

Ms. GASCA:

We are neutral on this bill, but we would like to have time to review the proposed amendment.

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CHAIR COPENING:

We will close the hearing on S.B. 112. I adjourn the Senate Committee on Health and Human Services at 4:46 p.m.

RESPECTFULLY SUBMITTED:

Shauna Kirk,
Committee Secretary

APPROVED BY:

Senator Allison Copening, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: February 15, 2011

Time of Meeting: 3:33 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	Agenda	Agenda
	B	Attendance Roster	Attendance Roster
S.B. 27	C	Amendment No. 5685	
S.B. 27	D	Dr. Tracey D. Green	Testimony
S.B. 27	E	Jennifer Hadayia	Testimony
S.B. 27	F	EPI News	
S.B. 27	G	Nicole Bungum	Testimony
S.B. 27	H	Christopher Roller	Testimony
S.B. 27	I	<i>Journal of the American Heart Association</i>	Article
S.B. 111	J	letter sent December 13, 2007	
S.B. 111	K	Rebecca Gasca	Testimony
S.B. 112	L	Judge Frances Doherty	Testimony
S.B. 112	M	Amendment	Amendment